ABORIGINAL &
TORRES STRAIT ISLANDER
LEGAL SERVICE (QLD SOUTH) LTD

CMC
Inquiry into Policing in Indigenous Communities
GPO Box 3123
BRISBANE QLD 4001

indigenouspolicing@cmc.qld.gov.au

Our Ref: Shane Duffy

6 July 2007

CMC Indigenous Policing Inquiry Submission

Foreword

If any one event may be said to symbolize the state of relations between Aboriginal and Torres Strait Islander people and members of the Queensland Police Service (QPS), then the tragic circumstances surrounding the death on Palm Island on 19 November 2004 provides such an example. The subsequent events relating to the methods of police investigation; the actions of rank and file police force members; Police Union statements and other deliberations in certain quarters – were equally revealing.

We also acknowledge that the Police Service is comprised of a high percentage of dedicated and community-minded individuals. They

have an important and often dangerous function to perform. Irrespective of such, if they are required to police laws which effectively discriminate against the most disadvantaged members of our Society – then Police/Indigenous Australians relations will never improve. We also acknowledge that we believe that the current Commissioner of Police is genuine in his desire to achieve an improvement in this relationship. We do however wonder whether such is undermined by the seemingly disproportionate influence of the more radical members of the Police Union.

Summary of Submission

(a) The challenges:

1. Historically the Police Service was often used by the Government of the day to implement and enforce polices which were counterproductive to the well being of Indigenous Australian people. This in turn led to entrenched deep-seated resentment and mistrust of the Police Service within our communities.
2. Current policing methods within Indigenous Australian communities are often contrary to the rationale embodied in the Recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (as well as related legislation and required police procedures).
3. Adverse legislative reform has been compounded by police service attitudes (at least in certain quarters) of "zero tolerance" and incredibly poor people management skills. So often Indigenous Australians end up being arrested in circumstances where no offence was committed prior to the involvement of the police.

4. The findings of the Deputy State Coroner who conducted the inquest into the Palm Island tragedy as such related to police procedural issues were damming in the extreme.
5. The mind-set of many in the Police Service was clearly demonstrated by media releases through the Queensland Police Service Media Advisory Unit and the Police Union in the aftermath of the Palm Island issue.
6. The actions of the Police Minister (for example, sitting in the front row of a Police Union rally post the charging of Constable Hurley) did little to imbue Indigenous Australians with any confidence in the impartiality of the justice system. Further, recent announcements by the Police Minister regarding a review the *Police Powers and Responsibilities Act 2000* (PPRA) seem to be predicated upon the basis that the Police Service will set the agenda for discussions prior to any involvement by other stakeholders. Such raises the perception (which is probably correct) that there will be further increases to police powers – with the resultant worsening of Police/Indigenous Australian interactions. Since the introduction of the PPRA we have seen dozens of amendments – all aimed at increasing police powers. Should this trend continue (which appears to be the case) then we would pose the question as to what sort of society will our children and grandchildren inherit? A Police State?
7. The mistrust of the "system" by Indigenous Australians is compounded by the appallingly ineffectual nature of the police complaint process (whether by the Crime and Misconduct Commission (CMC) or the QPS itself). The track history of the current process has <u>conclusively</u> demonstrated that police

investigating themselves simply does not work. It is akin to having a jury system where all the jurors are comprised of family and friends of the accused – there would be no convictions ever. The current system is an utter farce, and this lack of faith further undermines the Police/Indigenous Australians relationship.

8. Contemporary law reform has seen a constant diet of ever-increasing police powers with the result of increased intrusion into the every-day lives of both Indigenous and non-Indigenous Australians in Queensland. This has especially been the case in so-called "public space" offences. For many Indigenous Australians, such "public" spaces are culturally and historically their "private" space. Consequently, law reform targeting such areas has had a disproportionate impact upon Indigenous Australians. The recent tragedy on Palm Island is a prime example of a death in custody which arose out of an arguably inappropriate and unnecessary arrest.

(b) The solutions:

1. Lessons need to be learned from such findings as those of the Deputy State Coroner who conducted the Inquest into the Palm Island tragedy

2. Key stakeholders in the criminal justice arena need to be actively consulted on relevant legislative reform *before* Departmental draft legislation comes into being and is all but set in concrete. Further, it is essential that law reform is not predicated upon the desires of some for more and more

intrusive and ever increasing police powers. A line needs to be drawn in the sand to protect the further erosion of civil liberties so integral to a democracy.

3. Police recruiting methods need to be re-visited if entrenched police cultures are to be worn away. Such will undoubtedly be a process which will take a long time to achieve – but to seek to do otherwise would be disastrous, not only to Indigenous Australians communities but to non-indigenous alike. It has been commented in certain quarters that today's "school yard bullies" often gravitate towards a career in the police force. The recruiting of such individuals must be eradicated. Having at least one independent Indigenous Australian representative on all police selection panels (with a right of veto) would be a good start.
4. Either the CMC needs to be adequately resourced, such that it is no longer required to refer complaints against police back to the police for internal investigation - or a totally separate Police Complaints procedure needs to be established. Such is fundamental to making the police accountable for their behaviour and thereby address the entrenched mindset of some that they are effectively 'above the law". If that mindset is allowed to continue, Police/Indigenous Australian relations will never improve.
5. Police adopt a more sensitive and tolerant approach to community policing instead of the oppressive "zero tolerance" policy now seemingly in vogue. Law reform needs to set the tone and support the police in this – as, at least in part, we are shooting the "messenger" (or enforcer of legislative reform which continues to ever-expand police powers and

provide them with more and more opportunities to be invasive in the arena of civil liberties – both Indigenous Australian and non-indigenous).

6. The establishment of a peak non-government Indigenous Australian body in Queensland to further facilitate the Government/Indigenous Australian and Police/Indigenous Australian consultation process is vital. Parties need a mind set of mutual respect and trust which are focused upon solution-based outcomes (rather than dwelling upon the sins of the past). Our Organisation is currently actively pursuing the establishment of such with the Queensland government.
7. Law reform also needs to recognise that "anti-social" behaviour which is born out of poverty, homelessness, mental health problems and the like – should not be channeled through the criminal justice arena – but rather addressed as social-justice issues. Law reform which targets the most marginalized and disadvantaged members of our society will do nothing but fuel the fires of discontent towards the police service whose unenviable task it is to "police" the current legislation. Such issues are often exacerbated in the more remote Indigenous Australian communities due to the lack of support service infrastructure in the human services sector. The answer is not to pour millions of dollars into more police stations and prisons – but to provide much needed infrastructure to address basic needs such as employment, housing, health and education. We would submit that the issue of "education" across all quarters holds the long term key to success.

8. The increased use of Indigenous Police Liaison Officers would be beneficial. However, the Palm Island incident has demonstrated that such of itself is no answer. In the short term, such officers need to be given enhanced powers so that they can more effectively intervene in volatile Police/Indigenous Australian situations. As things currently stand their role is effectively reduced to that of a powerless spectator. Police training to underscore the benefits of rank and file being guided by liaison officers in such situations need to be emphasised. Feedback suggests that many in the QPS currently view Liaison Officers with disdain. In the longer term, the increased recruitment of Indigenous Australians as fully fledged police officers will also be crucial to this whole issue. In the meantime, positive discrimination aimed at dramatically increasing funding for Indigenous Australian police numbers needs to be instigated. Half measures will not suffice.

9. Our Organisation has a good working relationship with the Police Service – including a Memorandum of Understanding (MOU) with the Commissioner of Police. We are ready, willing and able to do all within our power to assist the process of police/community reconciliation in a constructive and respectful manner. Such could include the presentation of joint Community Legal Education (CLE) programs.

10. Generally (not just in terms of the policing of Indigenous Australian Communities) – "arrest" *must* be the option of last resort. Our Organisation has had feedback from *within* the Police Service itself that when Notices to Appear were first introduced, some police officers were incensed over the fact

that charges did not flow from a related failure to appear in court. So much so that they got into the habit of requiring those charged with petty offences to attend at police stations for the production of "identifying particulars" (that is, in situations where such an attendance was totally unwarranted as they already knew full well who the person was). Such was to ensure that an offence would flow from the failure to attend the police station. This sort of "arrest and charge at all costs" mentality needs to be curtailed by specific legislative reform. Relying upon the Police Service to exercise overly-wide discretionary powers in a sensible manner, so often simply does not work in practice. Such legislative reform could of course contain certain provisory safeguards. Consultation is the key.

11. Additional resources need to be provided to ensure that sufficient diversionary facilities are always available so as to provide the Police Service with means to divert intoxicated individuals to diversionary centres rather than being arrested. Legislative reform needs to ensure that such an option is considered by an officer (prior to arrest) as a mandatory requirement.

12. The *Summary Offences Act 2005* needs to be amended in a number of ways. Most importantly, the offence of "public nuisance" needs to be revisited – with the threshold conduct justifying an arrest being clearly spelt out – and hopefully in a way which make it clear that trivial conduct which is unlikely to provoke a physical response should not constitute an offence. Begging simpliciter (ie without any aggravating circumstances) should not be an offence. Begging which was

done in an intimidatory fashion etc could constitute a public nuisance – thus there is no need to criminalise begging simpliciter. "Public Intoxication" of itself without any aggravating conduct should not be an offence. The Palm Island tragedy highlights only too clearly the potential outcomes where people are arrested in trivial circumstances.

13. Police sent to Indigenous Australian communities should be required to first undergo very specific training in a number of areas – the recommendations emanating from the RCIADIC and the contents of the Supreme Court's Equal Treatment Benchbook being obvious examples. Such training could draw upon the expertise of staff such as our own. We are willing to work closely with the Police Service in terms of their training.

14. Our MOU with the Police Service contains a requirement (which is a flow-on from certain legislative and procedural requirements) that they contact an Aboriginal and Torres Strait Islander Legal Service (ATSILS) whenever an Indigenous Australian suspect is in custody. So often this falls down – or is otherwise ineffective (for example, sending a facsimile notification of arrest to an empty office at 3.00 am). Our Organisation operates a 24 hour telephone service and we are always available to assist if contact is made. This issue needs to be reinforced through training and the implementation of more precise police protocols.

Historical Setting

From the time of white settlement onwards, generations of Indigenous Australians were deprived of their ancestral lands and sea as well as their cultural heritage because of discriminatory governmental legislation and policy.

As a matter of course, police officers in Queensland were required to enforce these policies and procedures. In the result, relationships between Indigenous Australians and members of the Queensland Police Service have long been tainted with a deep sense of mistrust and persecution on the part of Aboriginal and Torres Strait Islander people and misunderstanding coupled with strict policing, frequent arrest and allegations of brutality by members of the Queensland Police Service.

As an example, decisions to forcibly repatriate Aboriginal and Torres Strait Islander people to settlements such as missions were carried out by police, often with a great deal of force. In addition, contact between police and Aboriginal and Torres Strait Islander people living in deprived circumstances in urban settlement invariably resulted in the arrest and jailing of these people, often for quite minor offences such as those related to intoxication.

Whilst the 1967 referendum went some way towards removing the apathy associated with the disempowerment of Aboriginal and Torres Strait Islander people, there was no real change in the relationship between Aboriginal and Torres Strait Islander people and members of the Queensland Police Service.

The Royal Commission into Aboriginal Deaths in Custody

After a nationwide inquiry, the Royal Commission published 339 recommendations designed to meet the disadvantages faced by Aboriginal and Torres Strait Islander people on a daily basis. Particular attention was given to contact between Aboriginal and Torres Strait Islander people and members of the Queensland Police Service, with recommendations 79 – 91 relating to methods of diverting people away from police custody and arrest.

In 1992, the Minister for Family Services and Aboriginal and Islander Affairs, when publishing the Queensland Government response to the Royal Commission's 339 recommendations, declared that 337 of the recommendations had been agreed to after careful consideration by the Queensland Government.

Subsequently, the *Police Powers and Responsibilities Act 2000* contains the following provisions which accord with some of the Royal Commission's recommendations, namely

"Division 3--Special requirements for questioning particular persons

420. Questioning of Aboriginal people and Torres Strait Islanders
421. Questioning of children
422. Questioning of persons with impaired capacity
423. Questioning of intoxicated persons

The Police Operational Procedures Manual also specifically provides for circumstances such as those to which the Royal Commission expressly raised.

Contemporary Policing Practices

Whilst the Queensland Police Service may point to legislation and operational procedures as evidencing compliance with the Royal Commission's Recommendations, it is the *conduct* of members of the Queensland Police Service that falls to be measured in order to objectively appraise their standing in the eyes of Aboriginal and Torres Strait Islander people.

Any such analysis must of necessity traverse relations between all Aboriginal and Torres Strait Islander people regardless of their place of domicile. To seek to limit the inquiry by the Crime and Misconduct Commission to remote communities overlooks the fact that Aboriginal and Torres Strait Islander people and members of the Queensland Police Service frequently move between non-urban centres and urban centres. As a result, both Aboriginal and Torres Strait Islander people and members of the Queensland Police Service will inevitably experience policing methods which will vary according to local exigencies.

Inquest by the Deputy State Coroner (Palm Island issue)

The circumstances prior to, and subsequent to, the death were extensively described in evidence given at an inquest presided over by the Deputy State Coroner.

For present purposes, it is sufficient to suggest:

- That no proper basis was present warranting the arrest or charging in the first place.
- That the death occurred at approximately 11.00 am in the police watchhouse following the arrest which occurred at approximately 10.20 am.
- That the cause of death was intra-abdominal haemorrhaging due to, or as a consequence of, a rupture of the liver and portal vein, the injuries also including four broken ribs.
- That the preponderance of expert medical evidence from the pathologists was that the injuries resulted from the application of a compressive force of very considerable magnitude to the right lower right rib cage whilst the rest of the body was immobilized.
- That Senior Sergeant Hurley deliberately misled family members who called in at the watchhouse in the early afternoon to enquire as to when he was to be released, by informing them that he was up at the Hospital when he knew that he had already passed away.
- That the conduct of the police investigation into the death diverged markedly from the requirements of the operational police procedures manual and the RCIADIC recommendations.

The results of the final autopsy were published on 23 August 2004.

When the Palm Island community learnt for the first time the nature of the injuries which caused the death, civil unrest occurred leading to the destruction of the police station. Whilst such behaviour deserves severe censure, it may be characterized as being the product of a long history of oppression which boiled over when news of the injuries became known.

The Queensland Police Service Media Advisory Unit

The Queensland Police Service Media Advisory Unit issued a number of media releases in relation to events on Palm Island, the first of which was released within hours of the death. These media releases have

been copied from the Queensland Police Service website and are set out below:

"Death in custody, Palm Island

Media Advisory

November 20, 2004 - ISSUED AT: 4:20PM

Death in custody, Palm Island

A police investigation, overseen by Ethical Standards Command and the CMC, is currently being conducted into the death of a 36-year-old man in police custody at Palm Island yesterday.

At 10.20am, the man had been arrested for creating a public nuisance and being drunk.

He allegedly become violent at the Palm Island Watchhouse and was placed in a cell with another man.

A welfare check of both men shortly after being placed in the cell revealed they were both asleep and snoring.

During a further welfare check an officer noticed that one man appeared pale and had a weak pulse.

The QAS were immediately called however upon their arrival the man was pronounced dead.

Issued by Jo Cameron - 3015 2444
Media and Public Affairs

Comment

This media release:

- fails to mention any physical action by Constable Hurley.
- fails to mention that Mulrunji had to be dragged into a cell because he had become limp.
- incorrectly asserts that a weak pulse was present when the police officer involved knew that no pulse was detected.

"Media Advisory

November 26, 2004 - ISSUED AT: 2:40PM

Palm Island police station damaged

A critical situation has developed on Palm Island and the Queensland Police Service is aware of extensive damage to the police station and residence.

The first consideration is to ensure the safety of police, other officials and anyone else considered at risk on the island. At this time there is no reported injuries.

The situation is being monitored.

Issued by Kirsten Roos - 3015 2444
Media and Public Affairs

Comment

The singular fact that derived no comment from the QPS media unit was the cause of death as determined following post mortem analysis. Further, it is misleading in the extreme as the QPS was fully aware that, after the police station had burnt down, those involved dispersed and a situation of relative calm prevailed.

"Appeal for calm on Palm Island

Media Advisory

November 26, 2004 - ISSUED AT: 8:10PM

Appeal for calm on Palm Island

Police continue to bolster numbers on Palm Island with police from Townsville and Cairns arriving to restore order.

Queensland Police Service Commissioner Bob Atkinson, who has traveled to Townsville, has appealed for the community's Elders to restore order and calm among the residents.

About 80 police are currently on Palm Island and have control of the airport, school and hospital. An Emergent Situation was declared this afternoon which allows police to execute certain powers such as closing the airport, taking control of resources or buildings, and close roads.

Major incident rooms have been established at Brisbane and Townsville to co-ordinate the response to the incident, under the command of Deputy Commissioner Dick Conder.

Currently the situation on Palm Island is calm and four Commissioned officers are on the island to command the police response.

There have been some evacuations off the island including contractors, private residents and public servants, however some people have remained.

All but one of the police officers who resided on the island, have left, as well as half of the police who were flown onto the island earlier this week. More police officers will arrive tomorrow. Food and provisions will be flown into the island for the increased policing presence.

Twenty officers were inside the police station about 1pm today when it was stormed by a large number of local residents.

The police station, courthouse and officer in charge's accommodation were destroyed in the attack. The police barracks was not destroyed however was damaged.

"(The death) will be fully and thoroughly investigated by the CMC. The Police Department has no fear of that and we will cooperate fully with that investigation," Commissioner Atkinson said.

Issued by Kirsten Roos - 3015 2444
Media and Public Affairs

Comment

What this press release blithely fails to state is that 80 members of the highly trained tactical response group were transported by RAAF helicopters to the island where they slid down ropes to the airport

tarmac in full combat gear (including machine guns) and wearing helmets & balaclavas as if a terrorist attack had occurred.

We understand that the Queensland Police Minister ordered in the Tactical Response Group (TRG) - which was created to respond to terrorist threats.

Contemporary accounts reveal the following events:

“During the early morning raids the police officers from the TRG wore balaclavas, bulletproof vests, & were armed with automatic rifles. They broke down the doors of houses in which residents were sleeping, forcing the occupants outside to lie face down onto the ground.

This included dragging children as young as two and women as old as ninety out of their beds and two people in wheel chairs were also forced out of their chairs and onto the ground.

The TRG police pointed guns with red laser lights on to people’s heads, while ordering them to shut up & not move as their arms & legs were cuffed. Women, children the elderly and the disabled were not spared. They were expected to stop screaming and not to cry, as their houses were ransacked.

All nineteen central figures involved in the riot walked out of their homes into the street with arms raised & dressed only in their underwear for fear of being shot by the TRG police and were detained.

After their arrest the TRG conducted numerous police raids on the remaining residents (Murri community only). These raids commenced between 3am to 4am in the morning for maximum effect.

A seven year old boy 'Douglas' described how he was dragged from his bed and cuffed while a gun was pointed at his head "…a red dot was on the floor beside my head then on my nose, the bully-men shouting …like da movies …thought I was have'n bad dreams …my heart was pound'n". The term 'bully-man' is commonly used by Aboriginal people throughout regional areas of Australia to describe police officers.

It has been reported that one such raid was carried out in response to a rumor that a semi-automatic gun had been stolen from the TRG …no weapon was recovered & the accusation never substantiated.

It is to be remembered that this occurred after the 19 accused rioters had surrendered to police & were being held in three different locations in Townsville and in regional precincts to the north of Townsville.

The Crime & Misconduct Commission inquiry has since declared that the raids by the TRG "may have been unlawful" because "The Public Safety Prevention Act" does not authorize police to unlawfully enter people's homes and use the excessive force that they did including illegally handcuffing people. However, no disciplinary proceedings will be instituted and no acknowledgment of wrongdoing will be made by the State of Queensland. [1]

[1](The Australian, Tuesday 26/07/05, pg 2). How is it possible that the TRG whose role it is to uphold and work within the legal framework of The Public Safety Prevention Act actually do not know what is lawfully within their power to do? In plain language this means the

TRG police officers do not know the act. I find this proposition farcical and very disturbing, but to the intelligent these statements again smack of a white washing of the illegal bullying and intimidation of the state & its police officers.

Comment

Following a lengthy hearing into the circumstances surrounding the death on Palm Island, the Police Commissioner steadfastly refused to acknowledge any shortcomings on the part of the Queensland Police Service notwithstanding unchallenged evidence of gross failure to follow established QPS procedure before and after the death.

To date, there has not been any disciplinary action taken against any of the police officers who were identified by the Deputy State Coroner as breaching established QPS procedure. Hopefully such will be forthcoming post completion of the Hurley trial.

Subsequent Events (including examples of police conduct)

The events of late 2004 highlights the need for a sensitive and tolerant approach to policing in Indigenous communities - with particular reference to relevant recommendations made by the Royal Commission into Aboriginal and Torres Strait Islanders deaths in Custody, the QPS Operational Procedures Manual and provisions of the Police Powers and Responsibilities Act pertaining to the interviewing of Aboriginal and Torres Strait Islander people by police.

Regrettably, the approach to policing on Palm Island and elsewhere has seemingly become more dogmatic and reflective of a zero tolerance policy on the part of the police. Undoubtedly part of the problem can be sheeted home to recent law reform which has seen ever-increasing police powers – coupled with strict interpretations

being applied to police on such issues as what constitutes a “public nuisance”.

Taking Palm Island as an example, there has been a marked increase in the charging of people with offences – often of a minor nature. Such has been reflected by a virtual doubling of court sitting days with a backlog of cases awaiting hearing.

Anecdotal evidence indicates that seemingly innocuous behaviour is being made the subject of offences. One such example relates to the charging of a man for having two cartons of beer in his possession contrary to the Liquor Act (which limits possession to one carton at a time). When this man explained to the police officer that he had only purchased one carton and the other belonged to his brother who was a very short distance away (which was confirmed by his brother upon his return), the police officer none-the-less charged him!

In the remote community of Doomadgee, police sought the forfeiture of a late model four wheel drive vehicle because the Aboriginal woman who was the owner of the vehicle valued at $20,000 was the driver when eleven cartons of beer were found in her vehicle contrary to the Liquor Act. Again, such was the case notwithstanding that the extra cartons were purchased by the other passengers of the vehicle and there had been no prior history of such offences.

As is the case in other parts of Queensland, police on Palm Island either do not know or do not understand the importance of cultural factors that are vital to the integrity of interviews with Aboriginal and Torres Strait Islander people and/or do not comply with provisions of the Police Powers and Responsibilities Act 2000 and the Operational

Procedures Manual when interviewing Aboriginal and Torres Strait Islander people.

In addition to these issues, a large volume of complaints are being received from Aboriginal and Torres Strait Islander people throughout Queensland regarding police conduct such as:

- Strip searching of juveniles.
- Threatening Aboriginal and Torres Strait Islander people with arrest if they do not allow their photographs to be taken.
- The use of excessive force when questioning juveniles.
- Indecently dealing with juveniles during strip searching.
- Assaulting Aboriginal and Torres Strait Islander people prior to and after arrest.
- Requiring Aboriginal and Torres Strait Islander people to provide proof of identity without any legal basis providing for same.
- Failing to act on complaints by Aboriginal and Torres Strait Islander people about criminal offences committed upon them.
- Denying Aboriginal and Torres Strait Islander people the right to telephone a solicitor and conducting interviews without a lawyer/independent person being present.
- Charging and arresting Aboriginal and Torres Strait Islander people for offences such as public nuisance and obstructing police in circumstances where no such conduct has occurred.
- Placing a hood on the head of a person detained in a police watchhouse.
- Engaging in the motorized pursuit of Aboriginal and Torres Strait Islander people resulting in collisions with the vehicles being pursued.
- Verbally insulting and abusing Aboriginal and Torres Strait Islander people.
- Improper and unnecessary use of equipment such as capsicum spray and handcuffs.
- The wearing of “Hurley blue support “ wrist bands by police officers when in contact with Aboriginal and Torres Strait Islander people.

The Crime and Misconduct Commission

Any submission regarding interaction between Aboriginal and Torres Strait Islander people and police must, of necessity, include a consideration of the procedure of the Crime and Misconduct Commission in dealing with complaints about police conduct towards Aboriginal and Torres Strait Islander people.

It is trite to observe that relations between police and Aboriginal and Torres Strait Islander people are characterized by distrust, disrespect and a lack of understanding on both sides. Unless this improves, it is difficult to see any worthwhile change occurring. Central to any such change is a departure from the current practice which the Crime and Misconduct Commission is currently obliged to follow – necessitating the vast majority of police complaints being referred back by the CMC to the police for internal investigation.

In stark contrast to this practice of police investigating complaints about the conduct of other police, the practice of the Queensland Law Society investigating complaints against members of the Society was trenchantly criticized by the State's first law officer, the then Minister for Justice and Attorney-General, in the following terms when introducing the *Legal Profession Act* in 2003:

"The system we are introducing will be tough but fair. The principal measures address public dissatisfaction with the current complaints and disciplinary processes for lawyers. Currently, the Queensland Law Society is responsible for investigating complaints against solicitors. The Legal Ombudsman monitors this process but does not have investigative powers.

This system has been widely criticised for not being sufficiently independent of the profession.

There is also no current statutory complaints process for barristers. An effective complaints and discipline regime is therefore vital in maintaining public confidence in the justice system. Greater independence, accountability and transparency will be brought to these processes through the appointment of a legal services commissioner.

• The commissioner will receive all complaints against lawyers and will be responsible for the investigation of complaints.
• The commissioner will decide whether or not disciplinary action is taken against a lawyer.

• Legal Services Commission staff will assist the commissioner in these matters.
• The commissioner will also be able to call on the investigative capacities of the Queensland Law Society or the Bar Association of Queensland.
• High standards of client service will be required of the commission in its dealings with the public."

In recent years, our Organisation is unaware of any situation where a complaint by an Aboriginal or Torres Strait Islander person about alleged police misconduct has been substantiated where those complaints were investigated by other police officers. If the proof of the pudding truly is in the eating – then the statistics say it all. What would the police service think of a jury system which was only empanelled from friends and relations of an accused? The police have a hard task – and inevitably, team spirit will mean that where one officer investigates another (at least in terms of an external complaint), he or she will as a matter of human nature "cleave ever to the sunnier side of doubt" when it comes to investigating a fellow officer. The complaints process must be changed if there is to be any semblance of police accountability. Further, the current system flies in the face of the old (but true) adage that justice must not only be done – it must be seen to be done.

As a result, Aboriginal and Torres Strait Islander people throughout Queensland have no confidence in the current system. The CMC needs to be adequately resourced such that they have the capacity to investigate such complaints in-house. The CMC, properly resourced can make a huge difference. Indeed, we applaud the difference which they made to the Palm Island investigation itself.

Police Recruitment and the use of Indigenous Police liaison Offers

Please see our observations on these issues under our "summary" heading above. In the interests of brevity we will not further expand upon such here.

Indigenous Community Legal Education

Please see our observations on this issue under our "summary" heading above. In the interests of brevity we will not further expand upon such here

The establishment of a peak non-government Indigenous Organisation in Queensland

Please see our observations on this issue under our "summary" heading above. In the interests of brevity we will not further expand upon such here

In conclusion

Should any matter outlined above require any further clarification – or if we can assist in any way, please do not hesitate to contact the author at our Brisbane head office. We also take this opportunity to thank those concerned for taking the time to consider this submission – as well as for providing us with the opportunity to make same.

Yours faithfully,

Shane Duffy
Chief Executive Officer