

Developing a better police complaints system: the ALRC looks at other models

The Australian Law Reform Commission (ALRC) was requested last year by the then federal Attorney-General, Michael Lavarch, to inquire into and report on the complaints system of the Australian Federal Police (AFP) and the National Crime Authority (NCA).

As part of this task, the commission released an issues paper *'Under the Spotlight: Complaints against the AFP and NCA'* with three main themes. The first deals with general issues about complaints against the AFP and the NCA, including objectives, models for external review, examples of Australian and overseas approaches, alternative dispute resolution and different types of decision making processes.

The second theme concerns the detail and mechanics of the systems including processing, investigating and determining complaints, while the third looks at the special needs of groups in the community and territories relevant to the AFP.

An edited extract from the chapter dealing with *'Some overseas models'*, printed here, provides an insight into systems used by Canada, England, and the USA. The chapter also looks at systems in Northern Ireland, the Republic of Ireland, Scotland, New Zealand, Denmark, other Scandinavian and European systems and some Asian systems.

Copies of the paper are available from the ALRC in Sydney.

Canada

The federal system

The Canadian Government which is responsible for the federal police force, the national Royal Canadian Mounted Police (RCMP), created a Public Complaints Commission which began in September 1988. The commission receives complaints from the public; reviews complaints from people who are not satisfied with the RCMP's disposition of their complaints; and prepares reports on its reviews of complaints.

The Commission Chairperson can also initiate a complaint when satisfied that there are reasonable grounds to investigate the conduct of any member or other person appointed or employed under the RCMP Act; investigate a complaint in the public interest; and hold a public hearing to inquire into a complaint.

The commission must be notified of all complaints not made directly to it. The RCMP complaints system has been categorised as a civilian or external supervisory model. This grants the commission agency an active monitoring and inquiring role but the major investigative and disciplinary decision making is with the police. It is not as intrusive as the model used in Toronto in terms of investigation and disciplinary making powers. The provinces of Canada have their own provincial police forces and different types of complaints systems.

Before 1981 the Toronto complaints system was basically an internal system of investigation, review and adjudication. However, in response to a series of highly publicised complaints involving the Toronto police force a new system was trialled. The Office of the Public Complaints Commissioner was established in December 1981 as a three year pilot project. The project was evaluated as successful and in 1984 the *Metropolitan Toronto Police Force Complaints Act* was introduced. Under the Act, every complaint lodged by a citizen against the police is received by the Complaints Commissioner wherever the complaint is registered. The Public Complaints Commissioner monitors the handling of complaints by police; performs initial investigations in unusual circumstances; re-investigates and reviews findings when the complainant is dissatisfied with response by police; refers cases to a civilian board of inquiry with direct disciplinary power when the public interest requires a hearing; and performs a preventive function, making recommendations to the Chief of Police, the Board of Commissioners of Police, the Attorney-General and the Solicitor-General, with respect to policing issues arising out of complaints.

The Toronto system has three significant features which distinguish it from other models - its extensive civilian investigation of complaints; substantial rights of complainants; and civilian boards of inquiry with direct disciplinary power.

Investigations

The investigation of a complaint is usually initially conducted by the special internal police unit, the Public Complaints Investigation Bureau, that deals only with public complaints. The complaints commissioner can take over any initial investigation at any time after 30 days from the filing of the complaint, at the request of the chief of police or where the commissioner has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of the investigation. Complainants must be provided with investigative reports every 30 days. A final investigative report must be provided to the complainant and the chief of police must deliver a written decision. The officer is entitled to periodic reports on the progress of the investigation.

Hearings

On reviewing a complaint, the commissioner may order a public hearing by a board of inquiry composed of a panel of civilians if it is in the public interest. These are administrative tribunals independent of the police and of the complaints commissioner. The boards may be composed of

one or three people who hear and decide upon allegations of misconduct. Where misconduct is proved beyond reasonable doubt, the board imposes discipline directly upon police officers. The penalties can range from a reprimand to dismissal from the force. Police officers can also appeal to the boards of inquiry where there has been an internal trial arising from a citizen's complaint. The subject officer has a right of appeal from the finding of misconduct by the internal tribunal to a board of inquiry. Any party can appeal a decision of the board of inquiry to the Divisional court, a branch of the Supreme Court of Ontario.

Other aspects

No officer can be compelled to testify before a police tribunal or Board of Inquiry. A police officer's prior statement is admissible in evidence at a disciplinary hearing without the officer's consent. The chief of police can declare a complaint to be frivolous, vexatious, or made in bad faith, subject to review by the police complaints commissioner. Minor complaints can be resolved informally with the officer's consent without permanent detriment to the officer.

Boards of inquiry

A board of inquiry is drawn from a panel of people appointed by the Government of Ontario on the nomination of three discreet groups. One-third, all of whom must be lawyers, are nominated by the attorney-general and the solicitor-general of Ontario jointly. Those people chair proceedings. One-third, who must not be serving police officers, are nominated by the police commissioner and the police association jointly. The last third are nominated by the metropolitan Toronto Municipal Council. If a board of inquiry is convened, counsel on behalf of the attorney-general has the carriage of the case and the complainant is routinely named as a party with the right to appeal to the divisional court and is entitled to appear with counsel.

Extension of Toronto system to Ontario

After some protracted political and community debate, in December 1989 the Solicitor-General of Ontario introduced the Police Services Act 1989. The Act increased the jurisdiction of the Office of the Public Complaints Commissioner on a mandatory basis throughout the province of Ontario. This meant that all 117 Ontario police forces were subject to a consistent public complaints system based on what is in place in Toronto.

Quebec

Quebec's complaints system is similar to Toronto. Boards of inquiry will be permitted to

impose discipline directly. The standard of proof in Quebec is that applicable to employment discipline, not the criminal standard.

Manitoba

Manitoba has a legislative complaints framework under the supervision of the Law Enforcement Review Agency. It is similar to the Toronto system. However, it has problems with limited funding and staffing and has to rely on government investigative support.

British Columbia

It has a system which is more internal than the Toronto system but borrows from Toronto's legislation. It has a complaints chair who functions under the supervision of the British Columbia Police Commission.

England

The Police Complaints Authority (PCA) was established in 1984 under the *Police and Criminal Evidence Act 1984 (UK) (the PACE Act)*. The PCA is organised into two divisions. One, consisting of a deputy chairman and five members carries out a supervisory function. The other, composed of a deputy chairman and six members reviews and adjudicates. The PCA has three basic functions:

- to supervise the investigation of the most serious complaints against police officers;
- to supervise investigations into non-complaint matters voluntarily referred by police forces because of their potential gravity;
- to review the outcome of every investigation whether supervised or not and to decide whether disciplinary action should be taken against any officer.

Supervised cases

The PCA must supervise the investigation of all complaints relating to death or serious injury. No other case must be referred to it. It is up to the PCA to decide whether or not to supervise. The PCA may also supervise any complaint not referred to it. Supervised investigations represent approximately 10 per cent of all cases dealt with by the PCA.

In supervised cases the PCA must approve the appointment of the investigating officer. It has power to impose any requirements that it believes are necessary for the proper conduct of the investigation. It ensures that the investigation is thorough, impartial and effective. When the investigation is complete, the PCA must issue a formal statement indicating whether or not it is satisfied with the investigation and specify any

areas about which it is concerned.

The PACE Act requires that a complaint must be recorded by the force whose officers have been complained about before an investigation can begin. Complaints may be made by, or on behalf of, a member of the public and must be about the conduct of a serving officer.

The PCA advocates a continuing and increasing use of informal resolution. Between 30 per cent and 40 per cent of all recorded complaints are presently dealt with in this way without reaching the PCA. The PCA intends to retain its existing powers to supervise serious complaints but its role on the less serious complaints would only be exercised on appeal when the complainant, after receiving a final letter from the local police, decided that he or she wishes the matter to be reviewed by the PCA.

According to the PCA, it is an independent authority but it largely depends on the police to carry out investigations. However, the PCA contends that the complaints investigations carried out by the police are impartial, efficient and thorough. Most were carried out by complaints and discipline teams led by experienced officers specifically dedicated to this one task. The PCA argues that the police are the best and most professional investigators and it would be difficult to construct an alternative system which combined that professionalism with a safeguard of independent oversight.

Review and adjudication

Whether the investigation is being supervised or not, the final investigation report is submitted to the deputy or assistant chief constable of the force concerned. Under the PACE Act, he or she must first consider whether the report indicates that an officer may have committed a criminal offence and whether the person should be charged. If a criminal charge is considered appropriate the case goes to the Crown Prosecution Service (CPS) which must decide whether or not to prosecute. The PCA may direct that a case be submitted to the CPS even though the chief officer has decided not to do so. If the CPS decides to prosecute, the case is heard in a criminal court. Whatever the outcome, the officer cannot be charged with a disciplinary offence based on the same facts. In the English system the standard of proof in disciplinary offences is beyond reasonable doubt which the PCA in its report has criticised. In a case where there are no criminal charges brought, the chief officer must submit a memorandum to the PCA specifying whether or not disciplinary charges are to be brought and, if not, the reason for that decision. The PCA then reviews the whole case and decides whether or not to accept the

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recommendation. If it disagrees, the PCA has the power to recommend or if necessary to direct that disciplinary charges be preferred.

Suggested reforms

The Home Secretary has proposed changes to the police disciplinary code with the aim of bringing the process much closer to the industrial model without the present legalised format. An attempt is being made to separate misconduct that would fall into the Police Complaints Authority's ambit from other misdemeanours which will be dealt with by management action.

USA

In the United States civilian oversight of police has been closely tied to the issue of civil rights for minorities. Racial discrimination or allegations of it are usually at the heart of most movements to introduce a civilian oversight mechanism. This is certainly the case in most jurisdictions in the United States and it appears to be a leading factor in the development of such schemes elsewhere in the world.

Civilian review in the United States

'Civilian oversight' is where a government entity is constituted through a legislative or administrative act which mandates citizens' participation in the processing of complaints against the police, from the initial filing of complaints through to the disposition of complaints (W. Petterson 'Police Accountability and Civilian Oversight of Policing: An American Perspective'). In the United States civilian oversight agencies are primarily created by local city or county government. There are only a few exceptions where local agencies have been created by state legislatures. The federal government has not established such an institution. Policing is a local government function with statutory and regulatory powers ascribed to state governments.

There is a very wide range of models of external and civilian review in the United States. They range from two ends of a spectrum. At one end is an internal complaints procedure with

virtually no civilians involved, and at the other end an external complaints procedure that has no police involvement. The former exists in many American cities but there are no examples of the latter. A Police Executive Research Forum (PERF) survey of 101 United States police departments, published in 1987, reported that 83.9 per cent considered their complaints procedure to be of the internal police variety.

Petterson has argued that the external review form has three tiers:

1. the civilian oversight agency receives, investigates, adjudicates and recommends discipline to the police executive;
 2. these agencies carry out the same functions as the first tier, except for the investigative phase which is conducted by police departments; and
 3. agencies in this category have identical authorities as in one of the first two tiers, but the city's chief administrator acts as an arbitrator or mediator of disciplinary disputes between the oversight agency and the police executive.
- First tier examples include Michigan and Des Moines, Iowa. These have a generalist ombudsman who handles complaints against all city employees including police officers. They report to the city's governing council, but not to any civilian board or commission.
 - A second tier example is Cleveland, Ohio. The Police Review Board (PRB) can handle complaints. If the PRB is chosen, the complaint is investigated by the Office of Professional Standards which is staffed with seconded Cleveland police officers and is a part of the PRB. The investigated complaints are reviewed by the PRB and a public hearing is held as another step in considering the complaint. The Board adjudicates the complaint and sends it to the police chief with disciplinary recommendations. If the PRB and the police chief cannot resolve their differences about discipline the city's public safety director makes the final decision.

The full report is available from the ALRC on Ph. (02) 284 6333.