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Senate Legal and Constitutional Affairs Committee
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Submission - National Integrity Commission Bill 2018 [Provisions], National Integrity (Parliamentary Standards) Bill 2018 [Provisions], and National Integrity Commission Bill 2018 (No. 2)

The Police Federation of Australia (PFA), representing in excess of 62,000 police officers across every jurisdiction, together with our Australian Federal Police Association (AFPA) Branch, supports the intent of the above Bills, however we make the following observations and comments specifically as the proposed oversight body (“the proposed Commission”) relates to police/law enforcement agencies such as the Australian Federal Police (“AFP”) and the Australian Criminal Intelligence Commission (ACIC).

The PFA and AFPA generally support a model for police oversight in the federal arena provided the underlying principles are adhered to:

- the powers granted to such agency are comparable to agencies overseeing police in other jurisdictions;
- the agency has all the resources and legislative powers necessary to perform the required functions;
- the AFP, who it is anticipated will be expected to undertake much of the investigative function for the Commission, will be provided with sufficient resources to investigate potentially protracted matters and back-fill positions within the AFP during these investigations, and the appropriate legislative powers to perform their required functions;

- there are appropriate administrative arrangements and safeguards to ensure that there is no duplication between the proposed Commission's jurisdiction and other existing agencies, including those in other jurisdictions;
- the proposed Commission is not an obstacle to the operation of the AFP's or any other police force's effective management of complaints, discipline and investigations;
- the procedures and outcomes of the proposed Commission are fair and equitable, and accord with the principles of natural justice; and
- the proposed Commission and its staff are held to the same high standard of accountability and integrity as the police officers which it is designed to oversee.

A Clearly Defined Scope is essential

Investigations by bodies such as the proposed Commission must not involve matters that fall short of corruption or serious misconduct. To ensure that that is the case, the commencement of an investigation, a hearing or a public hearing, should not be determined by a Commissioner alone. Consideration must be given to establish a protocol that ensures the proposed Commission's powers are only enlivened in the most serious cases and with appropriate oversight and consultation.

Any activity that falls short of such conduct, does not warrant the independent investigation of an external agency, with the great powers afforded it. Those matters are better handled through internal investigation with external review to ensure accountability.

Therefore, there needs to be a clear distinction between investigative and review functions, and powers to conduct an independent investigation should only be enlivened by reaching a strict legislative threshold, namely, whether the alleged conduct would, if proven, constitute corruption or serious misconduct.

The decision to begin an independent investigation should also involve the following considerations:

- whether another oversight agency, including one based in another police jurisdiction, the Coroner, or the AFP or other police jurisdiction, has a better capacity to investigate the alleged conduct;
- whether another agency, including one based in another police jurisdiction, has already commenced an investigation into the same matter;
- the primacy of the Coroner's role in any matter involving death; and
- whether the initiation of an independent oversight investigation would prejudice the investigations of any other agency.

The proposed Commission must ensure procedural fairness

Procedural fairness for those being investigated is paramount.

Over the years, police have witnessed an array of investigations where numerous examples of the protections for individuals are inadequate and they have been denied procedural fairness. They include:

- the publication of allegations without the opportunity to respond or without the allegations ever being tested;

- pre-judgement and bias from the outset of investigations;
- reliance on untested and questionable sources; and
- publication of unreliable findings.

To ensure the support and confidence of those subject to the proposed Commission's actions, as well as the wider community, the issues of transparency and accountability are essential.

The wellbeing of those subject to investigations

The PFA and the AFPA understand and appreciate the need for confidentiality in oversight inquiries. However, such provisions should never prevent an officer from seeking appropriate medical treatment/support. Giving evidence at any inquiry can be a stressful and traumatic experience, and can place the mental health and safety of officers at risk.

To ensure that individual police officers, who are the subject of inquiries can access appropriate medical support, exemptions from disclosure prohibitions should apply in a similar way to exemptions relating to legal advisers.

Obligations on staff of the proposed Commission

Employees of agencies tasked with examining the integrity of police officers need to themselves be held to the highest standards of integrity. Therefore, they should be subject to at least the same accountability and integrity measures as police officers, including drug and alcohol testing, integrity related declarations and integrity testing.

Police retain the primary role in the police complaints system

Police must remain a primary part of any police oversight system because:

- Police are the best investigators –

Police officers have the most experience and expertise in conducting investigations and gathering evidence and intelligence.
- In the federal arena, the AFP is the only agency which can perform the task –

Police retaining a primary role is necessitated by the workload generated by complaints and the need to be ready to deploy a fully resourced investigative team 24 hours a day, 365 days of the year, anywhere in the Commonwealth's jurisdiction.
- It would be detrimental to the professionalism and integrity of the AFP to remove the internal capacity to address misconduct and corruption –

The engagement of line-managers in the managerial approach to discipline and the work of the Professional Standards unit have been crucial factors in the improvement of the professionalism, integrity and ethical culture of the AFP. To remove or reduce these functions would be counter-productive.

Whistle blowers

Whistleblowing in policing agencies is a necessary measure to counteract actual or potential corruption by officers or systemic organisational issues, however it is difficult for employees to initiate complaints and they are often left with little support. The December 2017 Survey of Victoria Police employees "*Perceptions of corruption*" undertaken by the Independent Broad-based Anti-Corruption Commission reports at page 15 that:

Concern around the potential personal costs of reporting corruption may be a barrier to reporting in Victoria Police. Nearly half of respondents agreed that *if I reported corruption, I would experience personal repercussions (other than losing my job)* (46 per cent), while nearly one in five respondents agreed with the statement *if I reported corruption, I could lose my job* (18 per cent).

Only 38 per cent of Victoria Police respondents agreed that meaningful action would be taken if corruption was reported.

The proposal to establish a Whistleblower Protection Commissioner is commendable.

However, that Office must have sufficient resources and legislative powers to manage and resolve complaints efficiently and ensure the safety and well-being of employees who report these matters throughout the reporting/investigation process.

There likewise needs to be a process to deal with malicious complaints.

Conclusion

We thank you for the opportunity to provide input on such an important matter and would appreciate ongoing involvement as this matter progresses.

Yours sincerely

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