



[GOVERNANCE: SCOTT PRASSER]

The island shame that stains a state

Forgetting Doomadgee

The Queensland Police Service, and the agencies that oversee it, must be reviewed urgently

Informant readers may recall an article in July last year about the Queensland Crime and Misconduct Commission inquiry into two police reviews of Cameron Doomadgee's death in custody on Palm Island.

Let's recall. In 2004, Doomadgee, an Aborigine also known as Mulrunji, whom a deputy chief magistrate said last year "was not suffering any injury when the police van arrived at the police station" on the island, subsequently died of "massive compressive forces to the front of his body" after the arresting officer, Senior Sergeant Chris Hurley, fell on him. The Queensland Police Service immediately carried out a special internal inquiry, which confirmed that Mulrunji's death was an accident.

However, the acting state coroner, who carried out the second inquest into Mulrunji's death, the findings of which were issued in September 2006, was dissatisfied with the initial internal police review of Hurley's conduct. The Director of Public Prosecutions also believed there was a case for Hurley to answer. The officer was subsequently tried for manslaughter, but was acquitted and returned to work.

After the acting coroner criticised the internal police review, Queensland's Police Commissioner, Bob Atkinson, formed an investigations review team in December 2006 to respond to the complaints. The team reported in November 2008, and it was not overly critical of the initial police review.

However, the Crime and Misconduct Commission was "not satisfied

with the IRI's process, conclusions or recommendations concerning the initial QPS investigation on Palm Island in November 2004". The commission investigated the police's two reviews and reported in June last year. That report was neither a review of the circumstances of Mulrunji's death nor Hurley's behaviour. Rather, it was a review of the two internal police reviews.

The commission's report agreed with the acting coroner's criticisms about the flaws in the initial police review of Mulrunji's death. There had been too much contact between the investigating police officers and Hurley, and "demonstrated bias" in favour of Hurley in the investigations of earlier complaints about his behaviour on Palm Island. Key witnesses were not interviewed. Important processes were not followed. The commission also concluded that the investigations review team Atkinson had established personally had not investigated thoroughly the issues raised by the coroner. The commission therefore recommended that several of the police officers involved in the reviews be disciplined. It gave Atkinson a time limit to take action on these matters.

Atkinson took no action because the officers concerned launched a successful action in Queensland's Industrial Court that prevented him from disciplining them. Consequently, he referred the issue to his Deputy Commissioner, Kathy Rynders. Her report was delivered to the Crime and Misconduct Commission in January this year – and there it sat until the commission responded last month. Rynders reported that, despite a number of problems, no disciplinary action would be taken against the officers concerned.

The commission's chairman, Justice Martin Moynihan, QC, held a press conference to respond to the Rynders report, saying, "I am astounded at this failure. How can the police service find that the conduct of

these officers does not meet the threshold to even commence disciplinary proceedings for police conduct? It is almost incomprehensible that the police service has decided that there is no case for these officers to answer."

Moynihan concluded that "the failure by the QPS to take action means the CMC's hands are now tied. The police service has circumvented the independent review process." This is because the commission has no legislative power to review a failure to commence disciplinary proceedings for policy misconduct. This is a flaw in the law. The commission is of the view that the police exploited this flaw to avoid further commission action, such as a possible appeal against Rynders's decision.

There are important lessons from this affair for those who value integrity in government.

First, the Crime and Misconduct Commission, probably Australia's most powerful anti-corruption body, has been sidelined. While one empathises with Moynihan's anger about the police's recent decision, we may ask whether the commission could have been more proactive. For example, could it have stepped in earlier and taken over the initial investigations into police processes? By allowing the police to conduct the investigations, it guaranteed that any investigation would possibly be open to charges of a cover-up. The commission's failure to actively monitor and intervene when appropriate, during the many years that have elapsed, indicates that it, as an institution, is compromised in supervising the actions of the police service.

This issue highlights the challenge that regulatory bodies face in avoiding capture by those they seek to oversee. The commission has long relied on police officers to do much of its work and to collaborate with police commissioners to achieve desired outcomes. The sad case of

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Mulrunji suggests there was too close an association between the commission and the police, and that trust has now broken down.

Second, we can question the present state of the Queensland Police Service. Its investigations failed to properly and impartially investigate Hurley. It was only through community agitation that he was subsequently charged. The prosecution failed to take effective action to prevent jury and community views being influenced against the deceased.

Third, it could be argued that the Office of the Director of Public Prosecutions is culpable in this case in failing to ensure that such a sensitive matter was properly and thoroughly investigated and prosecuted. Queensland's Attorney-General, as first law officer, must also take responsibility.

It appears that the officers involved in this case, where their behaviour has been questioned, have been protected by the actions, and inaction, of high-ranking Queensland Police Service staff. This suggests a culture that protects the actions of errant officers.

There are glaring problems with

the laws that regulate police officers' actions and empower the bodies responsible for acting on breaches of discipline. This applies to internal and external disciplinary bodies. The Crime and Misconduct Commission is now seeking "legislative changes to ensure all QPS discipline decisions are potentially subject to independent review". It is also considering its current agreements with the state's police service.

It is now apparent that, in 21st-century Queensland, no one holds responsibility for causing the death of a black man in highly politically charged circumstances. Not one minister has been sacked, and the Bligh Government has renewed the contract of its Police Commissioner. The very idea that a system of justice exists in Queensland must now be questioned.

Some urgent reforms are needed, but we should not look to the Bligh Government to implement them. If there is a change of government in Queensland, there must be a review of the state police service's existing senior ranks to ensure that they are comprised of people who will exercise impartial discipline over police officers, without regard to pressure

from bodies such as the Queensland Police Union. The administration of justice must also be reviewed.

An independent and impartial body must actively oversee disciplinary actions in the police service, and that body must be vested with sufficient legislative powers and the necessary resources to monitor and, where appropriate, intervene and take over police disciplinary matters.

Finally, there must be an independent review, preferably a royal commission, of the Crime and Misconduct Commission's performance. The commission has not been independently reviewed since it was established in 1989. This review should be extended to the Queensland Police Service and the justice system.

And where, throughout this disgrace, have the academics been hiding, when they should have been leading public debate?

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Ignored: Palm Islanders march in protest in 2006 after Senior Sergeant Chris Hurley was cleared of the manslaughter of Mulrunji Doomadgee.

Photo: PAUL HARRIS