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Conciliation Versus Mediation of Complaints Against Police: Lessons from the Queensland Experience

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ABSTRACT AND ARTICLE INFORMATION

Since the 1990s, alternative dispute resolution practices for dealing with citizen-initiated complaints against police, such as conciliation, have progressively been trialled and implemented in police services across Australia. The Queensland Police Service was one of the most proactive services in trialling independently facilitated complaints mediation programs – in collaboration with its oversight agency. However, despite repeated positive outcomes, the Service refrained from actively using mediation, preferring instead to use management dominated informal resolution (conciliation). This process, characterised by police investigating police, continues to limit complainant participation by denying them the opportunity to meet face-to-face with the subject officer. Yet the literature cites mediation, especially practices based on restorative principles as beneficial because it brings disputing parties together in dialogue that is educative for both parties, reparatory, and better satisfies complainants' aspirations for an inclusive and neutral complaints system, while data from mediated complaints can also be used to inform police conduct improvement strategies. Complaints mediation is available upon request within the Queensland Police Service, however, it is not widely promoted, and is internally facilitated. In view of this, an historical account of the application of mediation and conciliation to the Queensland Police Service complaints system is examined in this paper to answer the question why conciliation has become the default approach and mediation continues to be largely ignored. This is done through a qualitative analysis of publicly available documents and semi-structured interviews with key stakeholders. The findings reveal that the 1992 Mediation Pilot was very successful. However, the Queensland Police Service adopted conciliation because it was cheaper and, they claim, better aligned with managing behavioural improvements. Three decades on, there has been little evidence of this, while the literature clearly shows that mediation should be a key component of any police complaints and discipline system.

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Since the 1990's, alternative dispute resolution practices have progressively been trialled and implemented in police complaints systems across Australia (Goldsmith, 2000; Riley et al., 2018). The existing internal, full-investigation complaints process came under scrutiny in several misconduct inquiries including the Wood and Fitzgerald Inquiries. As a result, there was consensus that the process of police investigating police had to change if police legitimacy and procedural justice for complainants were to be enhanced (Goldsmith, 2000). The simultaneous alternative dispute resolution movement in the civil and criminal justice systems proffered conciliation and mediation as options to open dialogue between the police and complainants over allegations. To varying degrees, informal resolution – an internally facilitated shuttle approach to conciliating disputes between civilian complainants and police officers – replaced the traditional complaints process (Australian Law Reform Commission, 2018; Ede & Barnes, 2002) and gave complainants a more active, albeit limited, role in the process and outcome. Mediation, which typically refers to a process that brings conflicting parties together in facilitated dialogue to reach a mutual resolution, gained momentum in international police jurisdictions as an inclusive, consultative tool for resolving minor complaints to the satisfaction of all parties (Schaible et al., 2012).

The Queensland Police Service has been the most proactive of Australian police jurisdictions in trialling innovative complaints resolution approaches, such as mediation, to improve their service to the community (Riley et al., 2018). However, despite the success of the trials and the growing body of evidence on the effectiveness of mediated complaints (Bartels & Silverman, 2005; Schaible et al., 2012; Young et al., 2005), the Queensland Police Service (like other Australian police services) has refrained from actively using it, preferring rather to use an internal, conciliatory method such as informal resolution of minor complaints. This preference may be linked to the police view that they, unlike civilians, have the commensurate skill set – knowledge of the law and police procedures – to deal with complaints themselves (Maguire & Corbett, 1991). Yet, complaint trends since the 1990s have shown consistently high complaint numbers across the country (Productivity Commission, 2018), including in Queensland, suggesting that many complainants remain unsatisfied with the conciliatory approaches. Research supports the preference of complainants for face-to-face mediation (Prenzler, 2009) because direct communication reassures complainants that their concerns are taken seriously, the process is non-discriminatory, and they have a meaningful

participatory involvement in the resolution of their complaint.

The aim of this case study was to provide an in-depth analysis of policy and practice in relation to civilian-police complaints mediation in the Queensland Police Service complaints system. A review of the system from the 1989 post-Fitzgerald reform period to the present day was undertaken for this purpose.

The Fitzgerald Inquiry was established in response to community concern over police misconduct and corruption (Crime and Misconduct Commission [CMC], 2004). The Inquiry found that the Queensland Police Service Internal Investigations Section was “inept, inefficient and grossly biased in favour of police officers” (Fitzgerald, 1989, p. 82) in the conduct of investigations, and the Police Complaints Tribunal had inadequate mechanisms to respond to misconduct and corruption. Reforms included the abolition of these bodies (Fitzgerald, 1989) and a focus on community-policing (Prenzler, 2009) to rebuild trust. The police oversight body – the Criminal Justice Commission was established. However, ten years on, Prenzler (2009) noted Fitzgerald’s vision “was never implemented at the local level, and the pre-Fitzgerald model of police investigating police remains dominant” (p. 576). That approach has continued to today; however, the reasons why remain vague. Therefore, the case study seeks to identify why mediation is available but not used in favour of conciliation, what has hindered the civilianisation of the complaints system, and what overall lessons are available for improved practice in the Queensland Police and other police departments.

Literature Review

The legitimacy of a police complaints system rests on its objectivity, procedural rigor, and fairness (Sunshine & Tyler, 2003; Wells & Schafer, 2007). These features can be clouded by internally managed and adversarial systems. Police complaints systems tend to focus on police discipline and are complicated by multiple layers of overlapping decision-makers, including Internal Affairs, command staff, and in-line supervisors (De Angelis & Kupchik, 2007; Queensland Police Service [QPS], 2016). For civilian complainants, this maze of police investigating police often denies them participation in the resolution of their concerns and leaves many with the view that complaining is futile (Schulenberg et al., 2015). Yet complaints are important indicators of how well a service is performing and where improvements could be made. High-profile police corruption and civilian

deaths in custody scandals, civil rights movements, and the introduction of civilian oversight agencies have all highlighted the need for greater transparency, independence, and civilian involvement in police complaints processes.

Since the start of the alternative dispute resolution movement in the 1990s, and in response to complainants' calls for more inclusive civilian-police complaints resolution processes (Goldsmith 1990; Holland, 1996), mediation programs have been trialled and implemented in many countries. Research by Walker and colleagues (2002) of the 16 civilian complaint mediation programs in the United States showed that independently facilitated mediation offered a safe environment in which recognition, empowerment, understanding, and the potential for relationship-building can be promoted. It also found that mediation was approximately half the cost of investigations conducted by the police. The research identified obstacles faced by some mediation programs, including unwillingness to participate, power imbalances, mediator skills, and confidentiality. However, these obstacles were largely attributed to limited understanding of mediation itself. Overall, they concluded that mediation was a "promising alternative" to dealing with complaints and offered potential benefits to complainants and police, such as improved police accountability and police-community relations (Walker et al., 2002, p. 91). Three studies in the United Kingdom (Hill et al., 2003; Maguire & Corbett, 1991; Waters & Brown, 2000) considered complainant and police responsiveness to mediation over existing complaints resolution options. The findings of these studies revealed that complainants felt genuinely aggrieved by their encounter with police and expressed strong sentiments for face-to-face meetings. The main reasons for this were a "desire to talk matters through and receive an explanation" and "to extract an apology" (Maguire & Corbett, 1991, p. 16). Complainants were not motivated by a desire for severe sanctions to be imposed on the subject police officers but rather the prevention of the same behaviour in the future.

Three program evaluation studies (Bartels & Silverman, 2005; Schaible et al., 2012; Young et al., 2005) detailed below, assessed the effectiveness of the established mediation programs and found further evidence of complainants' aspirations for mediation. A 2005 evaluation of the New York City Civilian Complaint Review Board Mediation Program found that complainants who participated in mediation ($n = 16$) over a full investigation ($n = 19$) recorded higher rates for all satisfaction indicators (81% compared with 32%, respectively). These included having an opportunity to meet face-to-face with the subject

officer, having a say in the complaint disposition, and being able to discuss the complaint in a confidential space with an independent mediator (Bartels & Silverman, 2005, p. 624). Police officers who participated in mediation ($n = 15$) recorded high satisfaction rates (67%) for having a say in the complaint resolution.

A study conducted across two police districts in England in 2005 compared the restorative justice-based complaints mediation program in the Thames Valley Police with the informal resolution process used by the Hampshire Police. The Thames Valley Police approach achieved greater levels of satisfaction with the process for complainants (61% compared to 33% in Hampshire Police) and police officers (85% compared to 69%) because of the way that open communication between the parties had been promoted. Mediator emphasis on respectful language and equal time to talk generated the high satisfaction levels.

In Young and colleagues' (2005) study, 47 cases were offered face-to-face mediation during the study period, of which 22 were successfully mediated, and a further 19 cases were restoratively resolved by a facilitator who "took on the role of a genuine 'go-between' for the parties" (p. 291). The facilitators were either trained police or non-police mediators. Complainant satisfaction related to "venting of feelings, hearing the other side of the story and the development of some mutual understanding" (Young et al., 2005, p. 298). The negative aspects of informal resolution spoke equally high to the benefits of mediation. Young and colleagues (2005) found that complainants who participated in Hampshire Police's informal resolution expressed dissatisfaction with "the lack of transparency concerning what had actually been said by the appointed officer to the officer complained against (and whether or not this had amounted to a 'telling off')" (p. 302) and "any admissions of wrongful behaviour tended to become lost within the conventional informal procedure due to the lack of any flow of information back to the complainant" (p. 304).

A 2012 evaluation of the Denver Citizen/Police Complaint Mediation Program revealed that from inception in 2005, complainant and police satisfaction levels with the complaints process had increased steadily (Proctor et al., 2008). Ninety-six percent of respondents agreed that mediation, which was conducted through an independent mediation vendor, "allowed them the opportunity to explain their points" (Proctor et al., 2008, p. 23). Eighty-five percent of complainants and 87% of officers felt that mediation "was either somewhat or very effective at helping them to understand the actions of the other party" (Proctor et al., 2008, p. 23). Other benefits

identified in this study included the alleviation of bias in the neutral forum and lower cost and quicker resolution of complaints compared with formal investigations. A mix of complaint types from incivility to excessive force and racially biased policing complaints had been successfully mediated, indicating mediation's usefulness in more than minor complaints resolution.

Similarly, a 2015 report of the New Orleans Community-Police Mediation Program, after its first year of operation, found that of the 22 cases mediated, all complainants and police officers thought the process was unbiased. Ninety-two percent of police officers agreed that "mediation is a good way of resolving disputes between civilians and police officers," and all agreed that if they received a civilian complaint in the future that they would agree to a mediation (Office of the Independent Police Monitor, City of New Orleans, 2015).

The findings of these studies show that complainants want to voice their grievances directly with the subject police officer(s), preferably in the presence of a neutral third party. At the very least, complainants want the option to choose how their complaint will be resolved.

In Europe, police organisations also grapple with civilian participation in complaints resolution. Most systems are characterised by oversight agencies working at arms-length from police organisations with limited civilian involvement. In Denmark, public mistrust of the police complaints system led to the establishment of the Danish Independent Police Complaints Authority in 2011. The public viewed the complaints system as favouring the police, arguably supported by the continuously low substantiation rates (e.g., 0% in 2008 and 6% in 2016) and increased complainant dissatisfaction rates over the period 2008 to 2016 (from 58% to 74%; Holmberg, 2019).

A recent evaluation of the Independent Police Complaints Authority examined complainant satisfaction and trust in the independence of the new system. Complainants who received decisions on their complaints between August 2014 and March 2016 ($N = 1,597$) were contacted; 658 were interviewed. The research findings echoed many of the aspects found in the studies noted above. Complainants were dissatisfied with the system because they felt it lacked investigational independence from the police and was preoccupied with proving police officer wrongdoing. Most complainants (57%) wanted the police service to take organisational action to ensure the behaviour (e.g., rough handling and inappropriate language) would not happen in the future. Forty-seven percent of complainants wanted the organisation to acknowledge that wrongdoing had happened, and 43% felt that their

complaint was not taken seriously and wanted the organisation to recognise their experience of events.

The National Police of Denmark use informal resolution to resolve civilian complaints. However, the current study showed that many complainants thought their complaints had been dealt with by the Independent Police Complaints Authority. As Holmberg (2019) suggests, "some informants probably participated in a process of informal resolution without realising it" (p. 8). Complainant confusion may relate to the fact that the system has changed several times since the service was reformed in 2007 and limited information provided at the outset of the complaint. To better address complainants' needs, mediation was considered in the lead up to the establishment of the Independent Police Complaints Authority (Holmberg, 2019). However, two obstacles limited its application: By law, complainants were not prevented from lodging formal complaints if dissatisfied with mediation, and police policy meant that police officers could not rely on the confidential nature of mediation to protect them from possible disciplinary measures. Had these issues been addressed prior to the establishment of the Authority, mediation may have been adopted (Holmberg, 2019). Nonetheless, the findings support complainants' aspirations elsewhere in the literature for recognition and an opportunity to understand the police perspective on incidents.

Method

The study used a two-phase qualitative approach. This consisted of content analysis of (1) publicly available and confidential documents and (2) analysis of semi-structured interviews with key informants. The mixed-method approach occurred sequentially, although some documents were provided at the time of the interviews. The information gathered from the initial documentary collection and analysis informed the case study design, including the identification of vital agencies and individuals for interview.

To provide some perspective on the operation of the Queensland Police Service, a brief demography follows.

Research Site Demography

At the time of the pilot mediation program in 1992, the Queensland Police Service consisted of approximately 5,500 sworn officers (Australian Bureau of Statistics [ABS], 1992, p. 58) who served a population of 3.6 million (ABS, 2003). Three hundred and nineteen complaints against police were lodged with the Crime and Misconduct Commission in that

year (Criminal Justice Commission [CJC], 1992a, p. 26). However, the pilot mediation program was confined to the Brisbane Region (including the Brisbane and South East Queensland districts) where a significant proportion (currently 3.6 million) of the state's population resided and still does (Queensland Government Statistician's Office, 2020).

The Queensland Police Service currently consists of approximately 15,000 sworn officers (Productivity Commission, 2019, p. 6.3) who serve a population of 5.1 million people (Queensland Government Statistician's Office, 2020) across five police regions, divided into districts (QPS, 2019, p. 21) over a geographical area of approximately 1.729 million square kilometres (Geoscience Australia, 2020). The population is characterised by a 49% female, 51% male gender split, with approximately one fifth (1 million) of residents born overseas and a 4% Indigenous population (Queensland Government, 2020). Police service delivery across the broad Queensland landscape continues to be challenging as the regions have differing community needs. The rate of complaints against the Queensland Police Service during 2019 was 9.5 per 100 sworn (operational) staff (QPS, 2019, p. 27) but should be viewed in the context of the millions of interactions the police have with people in the community each day, which do not result in complaints (QPS, 2019, p. 79).

Two-phase Qualitative Approach

The following reports from the Queensland Police Service website were accessed: eight years of annual reports covering the period 2010-11 to 2017-18 (annual reports prior to that period were unavailable) and four years of complaints policy and strategic plan documents covering the period 2014-15 to 2017-18. The following reports from the Criminal Justice Commission website were accessed: twelve years of annual reports covering the period 1991-92 to 2003-03 and three evaluations of the informal resolution trial, from 1994 to 1996. Six years of annual reports were accessed from the Department of Justice and Attorney-General's website covering the period 2012-13 to 2017-18. Also provided was a copy of the 1992 *Report on the Pilot Project for the Mediation of Complaints Against Police*. In addition, primary sources, such as inquiry reports, and secondary sources specific to Queensland, including those identified in the literature review search (Goldsmith, 1990; Holland, 1996; Walker et al., 2002; Young et al., 2005) were searched to provide background and further information. Keyword, and keyword combination searches, including 'complaints', 'police', 'civilian', 'alternative dispute resolution', 'mediation',

'restorative justice', 'informal resolution' and 'local managerial resolution' were used.

All organisations involved in the areas of police complaints and dispute resolution in Queensland were approached and agreed to provide nominated employees for interviews. The semi-structured interviews were conducted with twelve key stakeholders (past and present employees) in the Queensland Police Service (Interviewees 1-6), Crime and Corruption Commission (previously known as Criminal Justice Commission and Crime and Misconduct Commission; Interviewees 7-9), and the Dispute Resolution Branch of the Department of Justice and Attorney General (Interviewees 10-12), over a twelve-month period from June 2018 to June 2019. Seven interviews were held, varying in duration from one to two hours. A group interview with the Queensland Police Service was held in the Brisbane headquarters with an Inspector from the Integrity & Performance Group and three uniformed professional practice managers, all of whom were involved in complaints management and police discipline. A separate interview was held with a retired Queensland Police Service officer. Interviews were also conducted with a retired member of the Research and Coordination Division of the Criminal Justice Commission, who provided background information on the driving force for change in the police complaints system, and two members of the Dispute Resolution Branch (Department of Justice & the Attorney General), who discussed the Branch's involvement in the early mediation pilots. Telephone and email interviews were also held with two retired and two current members of the Crime and Corruption Commission and one retired police officer from outside of Queensland who had first-hand knowledge of the introduction of informal resolution and mediation into the Queensland Police Service.

Given the small number of interview participants, it is acknowledged that the views expressed may not be representative of the Service or other agencies involved.

The semi-structured format was utilised to provide each interview with a basic structure and to simultaneously afford flexibility. The draft questions were developed from the findings of the Stage 1 documentary research and were focused on reasons for and against mediation in practice. The research was approved by the Queensland Police Service Research Committee. The interview questions were designed to gain individual and organisational perceptions, experiences, and use of alternative dispute resolutions and to determine any obstacles to institutional implementation of mediation. They included questions

about the pilot mediation program and the successive changes to the complaints system, to date, such as

1. The QPS website lists mediation as an option, how often is it used?
2. Is it ever independently facilitated? If not, why not?
3. If not used, what were the reasons for not taking up this option?

There were limitations associated with the interview data collection method, including the unavailability or non-recollection of facts of some interviewees and the potential effect of the group interview format on the individual participants. Also, complainants were not interviewed as part of this study. However, the seniority of the police officers and background knowledge and experience of all interviewees provided deep insight into the operation of the complaints system from an institutional perspective. The use of documentary and interview data enabled the triangulation of data sources to establish a common set of facts.

Findings 1: Documentary Sources

Analysis of the historical data enabled the evolution of the Queensland Police Service complaints system to be mapped and understood. The findings show the path from a traditional adversarial discipline-based approach in the late-1980s through mediation pilots and conciliation to the latest iteration – “local managerial resolution”.

Traditional QPS Complaints System

Prior to the Fitzgerald Inquiry, all citizen-initiated complaints were processed through a lengthy and secretive internal investigation system. However, the Fitzgerald Inquiry found that the Internal Investigations Section had “no standard operating procedures” and that the Police Complaints Tribunal lacked adjudicative powers and was “wholly dependent on the very institution into which it is[was] meant to be inquiring” (Fitzgerald, 1989, pp. 288, 290). Complainants were interrogated and pressured to change or withdraw their complaints, and substantiation rates hovered at 2%. A major overhaul of the service was recommended including the introduction of an independent civilian oversight agency. Although mediation was not specifically mentioned, the Fitzgerald Report recommended a “civilianisation” program using trained civilians in specialist positions not requiring police skills.

Criminal Justice Commission

The establishment of the permanent body, the Criminal Justice Commission in 1989, meant that an enlarged element of independence was introduced into the Queensland Police Service’s integrity management model (Prenzler, 2009). Oversight of the police was the primary responsibility of the new Commission, including reform to the complaints system. The Commission was charged with the investigation of allegations of “official misconduct” (serious conduct that could warrant dismissal or prosecution) and “police misconduct” (improper behaviour as defined in the *Police Service Administration Act 1990*; Fitzgerald, 1989) and was given “own motion” powers to decide which cases to investigate (CJC, 1993). The Review Unit within the Commission also provided oversight of the Service’s handling of minor complaints and was meant to provide advice to the Service on how to reduce complaints (CJC, 1992a).

Mediation Pilot

The idea for a mediation pilot stemmed from the positive outcome achieved by the newly formed Criminal Justice Commission in dealing with a complaint involving a plain-clothes police officer and civilians in 1991 (CJC, 1992b). Misunderstandings, sketchy suspect details, and reactive measures taken by both sides produced an incident the Commission felt would be best resolved through an alternative dispute resolution process. The innovative step led to the engagement of the state government’s Community Justice Program, skilled in family and neighbour mediations. This was reportedly the first time that mediation had been used in Australia for resolving civilian complaints against police. Mediation of this “difficult and emotionally charged dispute” achieved “an effective and satisfying agreement for all parties involved”, including an apology to the complainants (CJC, 1992b, p. 1).

The success of the mediation and the Commission’s study of alternative dispute resolution overseas led to the design and implementation of a pilot mediation project in collaboration with the Community Justice Program and the Police Service. In 1992, a six-month program for minor complaints – such as inappropriate behaviour, threats, and lack of assistance – was trialled.

The pilot involved 33 sessions co-mediated by independent, experienced mediators, with agreements reached in all but one session (CJC, 1993). Initial referrals averaged four per month, but this rose to 31 in the fifth month. Reasons cited for the spike included increased recognition of the program’s “credibility and workability” (CJC, 1992b, p. 11). A

few minor problems were experienced, such as difficulties in contacting police officers and briefing mediators on cases.

Participants were surveyed about their satisfaction at the end of the pilot, with responses from 21 complainants and 19 police officers. Ninety-nine percent of complainants valued the opportunity to discuss their views, and 80% felt that mediation was the best way to deal with complaints. Mediation was considered to be quicker, more cost effective, and more satisfying for complainants than formal investigations. Similarly, 79% of police officers responded positively to questions relating to discussion of views and expressed a preference for mediation over existing practices. In six cases, both parties “signed a written suggestion for consideration by the Police Commissioner proposing changes to police procedures” (CJC, 1992b, p. 24). These findings led to a recommendation that mediation should be available in all areas where the Community Justice Program was in operation.

Despite the pilot project’s success, the viability of mediation was later questioned on financial, logistical, confidentiality, and procedural grounds (CJC, 1996; CMC, 2004). The Community Justice Program, which had funded the pilot, had insufficient staff to operate programs across Queensland, and the Police Service was faced with meeting future costs (CJC, 1996). Further, the confidential nature of the mediations met with some resistance as it meant that neither the Police Service nor the Criminal Justice Commission could take corrective action against officers (CCC, 2019). Some complainants had been unwilling to participate, in part because of trepidation about confronting the subject officer (CJC, 1993). As a result, the Commission and the Police Service shifted focus to informal resolution. Conciliation was gaining momentum in the United Kingdom, and a police representative, Dennis Meadus, was invited to Australia to develop and present an informal resolution training program (CJC, 1994b). The Commission felt that informal resolution would be accepted by police as it was not “designed to establish culpability with consequential adverse effects on promotional prospects,” and a senior police officer would be able to unofficially discipline the officer by way of guidance (CJC, 1993, p. 61).

Informal Resolution – Queensland

Training in informal resolution was initially provided for 286 officers (known as “Authorised Members”) across the state, and the program was evaluated in 1994 after seven months of operation. The Criminal Justice Commission reported that 345 cases from 5,595 complaints have been finalised using

informal resolution (CJC, 1994b). Mediation was still an available option, but only 95 cases were mediated during this time. The mean time taken to finalise an informal resolution was 51 days. While better than the 152 days required to resolve a complaint via formal investigation, referral of cases to informal resolution was slow and complainants’ satisfaction with outcomes was unclear. Meadus provided follow-up training and made several recommendations including increased use of mediation. A completely independent process was recommended as “it is probably better for the police not to be seen as both investigators and the authority which determines whether or not a complaint is sustained” (Meadus, 1988, p. 48). However, mediation received little further attention despite the Commission stating that “the statutory basis for mediation makes it a possible alternative to both formal investigation and informal resolution, or an option to be used in situations where informal resolution fails” (CJC, 1994b, p. 3).

A follow-up evaluation of informal resolution at twelve months of operation revealed an adoption rate of 60% across police services. The evaluation found that productivity gains had been achieved through reductions in the time taken to deal with complaints (CJC, 1994a). Most Authorised Members reported satisfaction with their informal resolution role. However, a few reported “experiencing difficulty in acting as a conciliator rather than an investigator” and found the amount of paperwork involved to be problematic (CJC, 1994c, p. xiii). Their responses on whether informal resolution improved police/community relations were fairly-evenly split. However, 65% were sceptical about its success in changing officers’ behaviour. Complainants’ satisfaction was reported as high, due in part to the easing of the burden of proof required for formal investigations and the broader range of possible outcomes. However, approximately 33% of complainants said they felt pressured to accept the outcome determined by the police (CJC, 1994c). Police officers were generally more satisfied with informal resolution over formal investigation, although one-third found the informal resolution process to be stressful (CJC, 1994c). Some officers felt the process made them aware of their faults, and the confidentiality of the process helped them to be open about this. Others said it allowed some officers responsibility for their actions (CJC, 1994c). While the opinions of 23% of complainants had improved in relation to the police, 26% said the experience had “worsened their view of the police service” (CJC, 1994c, p. xi).

The Criminal Justice Commission reported that informal resolution guidelines had been amended to encourage mediation where the complaint was “of a

sensitive nature” or where there was likely to be “hostility” or an “ongoing dispute” that would be better managed by an independent party (CJC, 1994c, p. 102). However, it also noted that the Police Service considered mediation to be too costly and unnecessary for resolving minor matters, and that prevented senior officers giving guidance to an officer at fault. As a result, referrals to mediation almost completely ceased.

Evaluation of Models

A further evaluation of informal resolution in 1996 revealed reduced levels of satisfaction amongst both complainants and police (CJC, 1996). Six percent of matters involved a face-to-face meeting between a complainant and an officer, although “half of the complainants would have appreciated a face-to-face meeting” (CJC, 1996, p. vi). This preference had not changed from the 1994 evaluation, and the findings resulted in a recommendation to delete the following sentence from the police HRM manual: “The preference of the Service is to resolve the complaint informally without conducting meeting/s between the complainant and the subject member/s” (CJC, 1996, p. vi). Subsequent amendments affirmed the value of mediation where “the complaint is unrelated to the performance of the officer’s official duties and is more akin to a dispute between citizens” (CJC, 1996, p. vii). Nonetheless, it appears that mediation remained inactive.

Managerial Resolution – Queensland Police Service

In 2000, after almost a decade of informal resolution, “managerial resolution” was introduced into the Queensland Police Service. This involved the subject officer’s supervisor conducting conciliation. The process also included more serious matters that could require training or guidance. A trial, called Project Resolve, was conducted in two police regions. The findings revealed similar issues to those identified in the 1994 informal resolution evaluation, including a lack of adequate training for supervisors conciliating complaints (Webbe et al., 2011).

In 2007, the Crime and Misconduct Commission joined with the Police Service in another complaints-handling initiative, Project Verity, aimed at reducing the double handling of complaints by the Commission and the Service by devolving minor matters to the local level. The learnings from Projects Resolve and Verity were later included in a wider review of the Police Service integrity system by an independent panel (Webbe et al., 2011). The Review found that the projects reinforced the practice of police

investigating police and the focus remained on officer punishment with little regard for the complainant. The Review concluded that the Service needed to include more civilians in its governance and “incorporate solutions beyond discipline and punishment, such as a more responsive consideration of the needs of the complainant and restorative justice principles” (Webbe et al., 2011, p. 18). Mediation remained as an option on the Police Service’s website, although there is no evidence available regarding its use (CMC, 2010).

Local Managerial Resolution

In 2018, “local managerial resolution” replaced informal resolution and managerial resolution with the aim, again, of devolving minor complaints to the local level. A professional practice manager works with the subject officer to devise a strategy to prevent unprofessional behaviour recurring. The complainant may be consulted during the formulation of the plan, if deemed appropriate, but there is no evidence yet that this happens. The Complaint Resolution Guidelines describe local managerial resolution as providing “a raft of management options,” including mediation (QPS, 2018a, section 3.2). However, the Police Service website complaints information page does not include mediation. Local resolution/conciliation is mentioned, and the complaints form has provision for complainants to express their expectations (QPS, 2018b). The available options are reportedly discussed at the intake level, although there are no publicly available data on requests for mediation or its usage.

Findings 2: Semi-Structured Interviews

Many of the stakeholders involved in the implementation and early days of informal resolution and mediation in Queensland have now retired and were either uncontactable for interview or simply did not remember much about the post-Fitzgerald era and why changes to the Queensland Police Service complaints system occurred. Nonetheless, twelve past and current representatives from across the stakeholder agencies agreed to be interviewed. The findings have been incorporated under three major headings below: Crime and Corruption Commission (Interviews 1 - 3), Dispute Resolution Branch (Interviews 4 - 5), and the Queensland Police Service (Interviews 6 - 7). The interviewees from the Crime and Corruption Commission consisted of past employees from the 1990s and current employees with approximately 15 – 20 years’ experience in their current complaints’ management positions. The

interviewees from the Dispute Resolution Branch have held a variety of positions in a range of criminal justice related organisations, with one having been involved in the pilot program in 1992 and two employees with approximately 5 - 10 years' experience in their current mediation positions. The interviewees from the Queensland Police Service have all been members of the Service for 15 - 20 years, acting in their current positions, which involve dealing with complaints, for 2 - 5 years.

An interpretative framework for data analysis was used with the semi-structured interviews. The focus was on the experiences, knowledge, and opinions of the interviewees. Some interviews were conducted as group sessions, and others involved individual participants. Using QSR *NVivo* software, the interview data were analysed in conjunction with the documentary data, including coding of themes. Individual responses were labelled, and recurrent themes, such as cost, behavioural management, internal control, and trust were identified.

Crime and Corruption Commission

In the post-Fitzgerald era, the challenge for the Criminal Justice Commission was to handle the volume of official and police misconduct complaints received and to do this effectively within the new organisational structure (i.e., five divisions: Official Misconduct, Misconduct Tribunal, Research and Co-ordination, Intelligence, and Witness Protection Divisions; Fitzgerald, 1989). Data were shared amongst the Criminal Justice Commission divisions, although at times on a need to know basis (Interviewee 7: CCC Interviews 1 - 3). Internal divisional rivalry existed, with the Complaints Section averse to any type of 'soft' option for complaints management. This unit was comprised mainly of lawyers and seconded senior police officers, and neither the lawyers nor the Queensland Police Service encouraged encounters between complainants and the subject officers (Interviewee 7).

Nonetheless, the Criminal Justice Commission's powers were constrained with respect to the Queensland Police Service, being limited to making recommendations only. The agency was resource-starved and very soon the volume of complaints that it had to deal with proved to be an unmanageable workload (Interviewee 9). At this time, the internal disciplinary systems of the Queensland Police Service had reportedly become more effective, and a decision was made to pass the less serious complaints back to the Queensland Police Service for handling (Interviewee 8). However, the way that investigations of minor breaches of discipline were carried out was "in the same detailed manner as

investigations of criminal matters without achieving any greater level of complainant satisfaction (Interviewee 7). Consideration was subsequently given to improving the police complaints system through a review of alternative options, including mediation (Interviewee 8). Although, Interviewee 7 stated that police would likely resist this change "because when you go to mediation you give up control." This was assumed to mean that the parties, including an independent mediator, determine the content of discussion and the final agreement, with police management losing the final say on this. According to Interviewee 9, the pilot mediation program satisfied complainants' needs for timely resolution and direct contact, compared to formal investigations, but was problematic for the Service for reasons such as cost and behaviour management - as identified in the documentary analysis. The Service was focused on "re-engineering" the complaints system in the post-Fitzgerald era, but there was little time to "actually measure the effectiveness of different approaches" (Interviewee 7). In practice, informal resolution was considered a better fit for the police.

Dispute Resolution Branch, Queensland

Interviewee 12 (DRB Interview 4) had first-hand knowledge and experience of the pilot complaints mediation program in 1992. Interviewees 10 and 11 (DRB Interview 5) had current knowledge of the operation of the Dispute Resolution Branch and its interactions with the Queensland Police Service but relied on the *Report on the Pilot Project for the Mediation of Complaints Against Police* for historical information.

The Dispute Resolution Branch, which commenced in 1990, initially mediated neighbourhood disputes before expanding to adult offender mediation. The Branch also trained mediators, some of whom were involved in the Mediation Pilot through the Community Justice Program. At the same time as the Pilot, the Dispute Resolution Branch was proactive in bringing about institutional change in government organisations through the implementation of alternative dispute resolution processes (Interviewee 11). Following the success of the Mediation Pilot, the Branch worked collaboratively with the Queensland Police Service to implement a mediation strategy for citizen-initiated complaints. This included police officers attending mediation out of uniform (Interviewee 12) - likely to promote mediation aims of equality and minimisation of power imbalances. However, a subsequent re-focus by the Queensland Police Service on internal or conciliatory complaints resolution measures saw mediation fall into disuse. Some of the interviewees

were surprised that the Queensland Police Service had moved to conciliation “because of the lack of impartiality in that process” (Interviewee 10 and 11). They could only recall one occasion when the Queensland Police Service “inquired about a restorative justice process” for a complaint, but nothing eventuated and the reasons for that were unknown (Interviewee 10).

In 2015, the Dispute Resolution Branch again initiated conversations with the Queensland Police Service about the scope for a restorative justice process in responding to civilian complaints. According to Interviewee 10: “the police superintendent at the time was open to that,” but changes in senior police staff meant that many of those conversations did not come to fruition. However, after years of working closely with police, the interviewee sensed that the complaints system did not work effectively for the rank-and-file officers leaving many to feel stigmatised and aggrieved by the process (Interviewee 10). Police officers were reportedly frustrated that due to the nature of their work, public complaints were generated, yet the resolution mechanism did not afford them “the same kind of protections or access to this idea of being innocent until proven guilty that members of the public have (...) in their jobs” (Interviewee 10). The police officers reportedly felt that a double standard, with limited scope to defend themselves, existed under the complaints system. According to one interviewee, “most of the police I’ve encountered would be desperate for some other kind of model for dealing with public complaints” (Interviewee 10).

Recently, mediation training programs, to resolve workplace conflict, have commenced with the Queensland Police Service. The interviewees said that participating police officers are extremely satisfied with the model, view the programs as fair, and believe that the credibility of mediation resides in its independence. As mediation is the primary component of restorative justice, the Dispute Resolution Branch posit that a ‘restorative debrief model’ would enable the police “to reflect on an incident and learn lessons in a non-stigmatizing way” (Interviewee 11). They suggested that the application of restorative practices in day-to-day police interactions with the public would ease the path to a restorative debrief model of mediation. A cultural shift within policing would be required, but the Dispute Resolution Branch believe most police officers “would be quite receptive to a new [complaints] model, one that involves restorative principles” (Interviewee 10). It was added that the Dispute Resolution Branch was not averse to facilitating a civilian-police mediation program.

Queensland Police Service

The following issues were identified by the Queensland Police Service (QPS Interviews 5 and 6) as problematic in the use of independent mediation for civilian-police complaints; and the future direction for complaints resolution.

Cost and Timeliness

The Queensland Police Service interviewees challenged the efficacy of mediation in terms of cost, including resource allocation, mediation fees, and timeliness, including scheduling of sessions and diminution of the complainant concerns. As most complaints relate to minor misconduct allegations, the Queensland Police Service holds that there is little justification for taking officers off their rosters to attend mediation. Also, sessions incur a cost that the Queensland Police Service would prefer to allocate to operational work. A mediation session may occur weeks after the alleged incident, which can negatively impact the “fairly tight schedule (...) of the staff to allocation model” (Interviewee 1). Further, several Queensland Police Service interviewees stated from their experience, that many complainants “cool down” and change their minds before the initial police contact about their complaints (Interviewees 2 and 4). Hence, the need to schedule a mediation is negated.

Confidentiality

It was argued that the confidential nature of mediation poses several problems for the Queensland Police Service. Firstly, the Service is provided with very little useable information to determine whether a subject officer should be monitored, given further training, or disciplined. Secondly, the Service is concerned that police officers may feel compelled to admit to things in mediation, that they did not do, and that keeping information like that confidential, cannot be guaranteed. Thirdly, the Service is concerned with the possibility that mediation may be used by some complainants, as a forum to vent their problems and berate police officers. The Service (rightly) wants to protect its members against personal abuse. However, the interviewees reported knowing of only two incidents where mediation was considered. One involved a complainant who was adamant that she was not going to accept a resolution unless she had the opportunity to meet the subject officer personally and receive an apology. The Service declined the request on the basis that the complainant would likely vent her anger on the officer. The use of a trained independent mediator was rejected because it was felt that directing the police officer to participate in mediation would change the voluntary nature of the process and likely be unsuccessful. The other incident, which related to a

minor allegation, was facilitated by a police officer and had a positive outcome.

Diverse Complainants

The Queensland Police Service is both institutionally comprised of a spread of generational and culturally diverse staff and is policing a public with the same spread. The population mix of Generation X, Y, and Z respond differently when interacting, which can lead to complaints. The Service feels that mediation may suit some generations and not others, although this concept has not been directly explored by them. A comparison was drawn with the United States in relation to cultural issues. The view expressed was that the “serious community mistrust” issues in many states in that country are not experienced in Australia (Interviewee 1). The legalistic approach to dealing with these types of complaints (i.e., police officers immediately “union up”), can lead to mediation to avoid problems escalating, such as into riots. Australian police do not experience this level of cultural unrest (Interviewee 1).

Resistance to Independent Mediation

Queensland Police Service interviewees stated that the 1990s trial of complaints mediation “sat in the space of an organisation unprepared to have a conversation with a complainant, and this made mediation desirable” (Interviewee 1). However, progressive changes to the complaints system, including the 2018 introduction of the Complaint Reform Project, have opened-up dialogue between the Queensland Police Service and the public. The current trial of the Project requires complaints to be assessed by an internal committee, triaged and managed by one of 23 Professional Practice Managers. Hence, the Service considers that it now converses well with complainants. Mediation is an available option, but the interviewees were unable to comment on its use. Interviewee 2 said,

if it [mediation] was the best option it would be more prevalent. We would naturally lean towards it if we thought it was the best option. The fact that it hasn't obviously indicates [the Service] (...) found more cons with it.

The Service broached no opposition to the use of ‘civilian’ external mediators, provided they were skilled, but said that the preference has always been for “a QPS mediator with the option to use an independent one if required” (Interviewee 4).

More serious complaints continue to be viewed as inappropriate for mediation at any stage of the investigation. The Service has a legislative obligation to report serious conduct issues to the Crime and Corruption Commission. Therefore, the matter to be addressed is whether the police officer

should remain in the Service. From the Service's perspective, “they are not interested in a mediated outcome. (. . .) They're not aggrieved by it” (Interviewee 1).

Trust

According to the interviewees, the policing landscape has changed dramatically over the past 30 years. Accountability mechanisms have propelled law enforcement into procedural transparency and justice especially in relation to complaints management (Interviewee 3). They operate under the trust bestowed on them by the Crime and Corruption Commission to investigate conduct issues, impose disciplinary sanctions, and terminate officers, and by extension, to manage complaints (Interviewee 1). This trust was highlighted in 2018 with the introduction of the Abridged Disciplinary Process (ADP), which gave the Queensland Police Service the power to fast track minor disciplinary issues. Provided there is an immediate admission of responsibility by the subject police officer to the allegations, the matter is expedited. A written notification is issued to the complainant and the Crime and Corruption Commission waive their legislative review rights (Interviewee 7). The Crime and Corruption Commission posits that the Queensland Police Service is “too far down the track with ADP” to consider mediation as an option, and that amendments to the police legislation should “future proof” the Abridged Disciplinary Process and negate the need for mediation (Interviewee 7). In addition, the recent public satisfaction rating for police professionalism (87%) was said to be indicative of the trust the public has in the Service.

Restorative Justice

As previously mentioned, the Queensland Police Service has engaged in mediation training with an external provider to resolve workplace conflict. Project Juniper, launched recently, is focused on bullying, harassment, and resilience training. According to one interviewee, it is “a big body of work (...) [and] we're moving towards a mediated restorative justice sort of approach to the internal matters” (Interviewee 1). Workplace consultancy teams, including external mediators, are conducting programs in regional Queensland police stations with the aim of embedding mediation into best practice. There are no plans, however, to extend this to external complaints.

Discussion

The findings of this study showed a long and continual process of change to the Queensland Police

Service complaints system, aimed at improving the resolution process for the public. What was disappointing, however, was that the learnings from the evaluations of the informal resolution model and mediation pilots resulted in added complexity to the internal complaints process, rather than a simpler, more transparent system. The additional layers of managerial involvement have continued to focus on detection and prevention of misconduct and police discipline. The recent changes to the disciplinary process (including the Abridged Disciplinary Process) reflect the Service's desire to improve and modernise the system. The new discipline system has a remedial approach to officer misconduct through the application of a "professional development strategy ... in response to a complaint, as a risk mitigation strategy, to improve the officer's performance, or for any other purpose" (Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019, p. 4). However, this paper also argues that attention should be given to the 'needs' of civilian complainants during complaint investigations.

As outlined, mediation is typically used in situations where the actions of police do not attract disciplinary or prosecutorial responses. Yet the Queensland Police Service appear to have confounded mediation with an alternative to disciplinary processes, stating, "so once you achieve a resolution what is the purpose of mediation?" (QPS, 2018). The focus on punitive actions against officers has ignored an important element of the complaints process – that of education and reparation following conflict, for complainants and police alike. Mediation outcomes can also contribute to behavioural improvement plans for individual officers and feed into organisational improvements through modifications to policy and procedures.

Research shows that complainants want face-to-face meetings; they want to voice their concerns in a safe environment, get an explanation, and possibly elicit an apology (Bartels & Silverman, 2005; Holmberg, 2019; Schaible et al., 2012; Young et al., 2005). The Queensland Police Service quoted an 87% complainant satisfaction rate with "police professionalism" but did not refer to the 75% rate for "police treat people fairly and equally" (Productivity Commission, 2018, p. 6.16). This means that 25% of those surveyed clearly remain unhappy with their treatment, which likely includes communicating how they felt about the incident to the subject police officer. The Queensland Police Service has refrained from promoting a forum for direct communication in favour of further developing the internal conciliatory process.

The other reasons cited by the Queensland Police Service for refraining from mediation included cost, timeliness, confidentiality, and diverse

complainants. Mediation services attract a fee, and sessions take time to organise. However, consideration must also be given to the costs associated with the investigation of allegations, communication with complainants, and staff mediation training. The literature indicates that independent mediation is less expensive and a quicker option than formal investigations (Goldsmith, 1990; Holland, 1996; Walker et al., 2002). However, finding reliable data on the comparison of informal resolution and mediation is difficult. Nonetheless, given the increased complexity of the informal resolution process, mediation by skilled independent mediators may be less expensive than existing conciliation. Some international programs (e.g., Denver and New York) are funded by city ordinances, or mediators work on a pro bono basis. Both these factors warrant further exploration in relation to Queensland. The argument that the confidential nature of mediation prevents the Service from gathering relevant training data, may force inaccurate admissions, or promote venting by complainants is countered by research that says that "this misconception is largely due to a lack of understanding of what mediation is and how the process works" (Walker et al., 2002, p. 1). A recommendation by stakeholders in the research, which was supported by the literature, was to inform the parties "of the potential outcomes before they participate in mediation" (Walker et al., 2002, p. 25). Mediation, including practices based on restorative principles, are focused on repairing relationships harmed by conflict. It is akin to a diversionary process that does not punish participants but does allow them to learn new behaviours. Avoiding confrontation can lead to conflict festering, which can damage the trust between the police and the public and reinforce the findings by Schulenberg and colleagues (2015) that many people view the police complaints process as biased and complaining as futile. Finally, the claim that mediation is not required because Australian police face very low levels of racial conflict compared to the United States ignores the experiences of the disadvantaged and marginalised within Australian society who often come to the attention of police, such as ethnic minority groups and Indigenous Australians. Mediation of these complaints may help to reduce arrests and impact the high numbers of Indigenous peoples in custody.

The themes of resistance to independent mediation, trust and restorative justice, reflect the positioning of the Queensland Police Service in relation to 'control' of the resolution process for minor citizen-initiated complaints. Yet, this positioning seems more aligned with the historical obstacles to implementing mediation than with the benefits of conciliation – expressed in the interviews. As Walker

and colleagues (2002) state, a lack of top-down support, managerial fears over loss of control of the process, and a lack of incentives for complainants and police officers to participate in mediation are the main obstacles to its implementation and success. The Queensland Police Service's development of the latest local managerial resolution model of complaints demonstrates continued managerial support for the internal process that retains police control. However, this appears to be based on the assumption that mediation agreements exclude police supervisors from any further action regarding the conduct of the officer concerned, although mediation does not need to be structured in this way. While some complaints against police may not be appropriate for mediation (e.g., allegations where the 'complainant' is not an alleged victim), they may also be inappropriate for informal (conciliatory) resolution, requiring instead a formal investigation. Therefore, the opposition to processing minor complaints through an independent mechanism that addresses complainants' calls for a voice seems weak.

Other jurisdictions, such as Denver and Los Angeles, have addressed the themes raised through collaboration with external, professional mediation organisations on the development of a mediation program through the promotion and support of independent complaints mediation at senior levels of the police services and through the incorporation of mediation into police policy and practice (Los Angeles Police Department, 2018; Office of the Independent Monitor, Denver, 2018). These systems provide a model in which mediation is a key option for consideration in determining responses to complaints (Riley, et al., 2018). Foregrounding mediation, in a police integrity system based on the science, would involve specialist staff in an oversight agency or a government or private sector mediation agency. In the case of a geographically dispersed state such as Queensland, a large-scale egalitarian mediation program could be operationalised through a public sector-wide integrity commission with regional offices (Riley et al., 2018, p. 14).

Conclusion

The Queensland Police Service complaints system has undergone continuous change over the past three decades. The learnings from several trials utilising alternative dispute resolutions, including mediation, have informed best practice. However, conciliation, characterised by cycles of devolution, has prevailed as the preferred approach. The historical account of the case study has provided a road map of the developments in complaints management and the justifications for the changes. The Queensland Police

Service maintains that the position of authority held by the police, and their knowledge of the law, places them outside of the realm of individuals needing a mediated resolution to their issues. However, this view appears to be one-sided and overlooks complainant aspirations for mediation as identified in the empirical research. The introduction of informal resolution or conciliation was meant to alleviate "the sidelining of complainants which happened in full investigations (...) but seems to have crept back in" (Meadus, 1994, p. 108). The situation appears similar today. In Queensland, complainants are largely excluded from the investigation of their complaint. They are notified of the outcome, which may include an apology, but are not afforded the opportunity to directly express how they were affected by the incident or get answers to questions around why the police officer acted the way they did.

A complaints mediation option exists within police procedures, but the extent to which it is disclosed to complainants is difficult to determine. Nonetheless, despite its resistance to mediation for external complaints, the Queensland Police Service has implemented it for the resolution of internal staff complaints – suggesting the value of independent mediation as a conflict resolution tool is slowly infiltrating the Service. Yet, the difficulty in forging ahead with the development of civilian-police complaints mediation seems to lie in the dearth of studies that have evaluated existing programs. The evaluations are aged and relate to jurisdictions that differ culturally, economically, and politically from Australia. As such, the generalisability of the findings is therefore limited. More research is required to consider these factors that influence the implementation and effectiveness of programs. Nonetheless, the message that complainants view mediation as the way to have a voice in the resolution of their complaints remains loud and clear.

Community confidence and trust in the police is imperative to a service's capacity to perform its duties. Inextricably linked to this confidence and trust is the police complaints system. As Goldsmith (2000) states, "the nature of police accountability mechanisms [e.g., complaints system] is absolutely vital to broad public acceptance of the role of the police" (p. 36). From the present study, a lesson for all police services is that cycles of complaints reform that convolute the process of police investigating police rather than 'managing' complaints by actively utilising resolution options that include independent facilitation will do little to remedy public dissatisfaction and meet complainants' needs.

The Queensland Police Service has identified a challenge it faces in "maintaining community satisfaction and confidence in police in an

environment of changing expectations” (QPS, 2019, p. 13). Complaints resolution is a part of this challenge, and as other jurisdictions have experienced, internal conciliation practices fail to keep pace with civilian demands for process transparency, neutrality, equity, time and cost efficiency, and behavioural change.

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Disclaimer

The views expressed in this publication are not necessarily those of the Queensland Police Service and any errors of omission or commission are the responsibility of the authors.

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