

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Policing, Security and Community Safety Bill

Submission by Dr Vicky Conway, Associate Professor of Law, Dublin City University.

To the Members of the Justice Committee,

I wish to make the following submission on the General Scheme of the Policing, Security and Community Safety Bill. I have attempted to be as comprehensive as possible, but do not suggest that this is exhaustive. As with any Bill of this size reflection on every head from different perspectives can generate additional thoughts. Therefore I submit the following as preliminary thoughts on the General Scheme.

If I can be of any further assistance to the Committee members I would be delighted to.

Dr Vicky Conway

Associate Professor of law, Dublin City University

Host of Policed in Ireland podcast

Former member of the Policing Authority and of the Commission on the Future of Policing

Email: Vicky.conway@dcu.ie

14 September 2021

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Head 3

It should not be for the Minister to determine whether a matter is one of policing or security. This distinction should not be politicised. It is submitted that where a dispute arises the Independent Examiner of Security Legislation for determination. It is noted that in Head 114(6), and a number of subsequent heads, it is the independent examiner of security legislation who makes the determination when a conflict arises on the issue, between the Authority and the Commissioner.

Head 7

The current legislation provides a unique opportunity to embed a need for trauma informed service within policing. Research tells us very clearly that the vast majority of persons that the police interact with have experienced trauma, and score highly in terms of Adverse Childhood Experiences (including factors such as abuse, poverty, parental imprisonment and so on). All those who come to the police as victims have experienced something that has brought them there and research is clear that offenders have very high rates of ACEs. All of this trauma shapes how people behave – perhaps why they engage in criminality, but also how they interact with the police. A trauma informed approach to policing will lead to greater understanding of the needs of those interacting with the gardaí, more effective interventions and greater confidence in policing. It is submitted that a separate principle of policing should be operate from a trauma informed perspective. There is already an element of this present in how gardaí conduct interviews under the Garda Síochána Interview Model, where a key step in conducting the interview is to make it interviewee specific – to assess the needs and experiences of the interviewee, in part to assess potential hostility towards gardaí. This has proven highly effective in improving interactions with interview subjects. I also point members to an episode of my podcast, Policed in Ireland, with James Leonard where a garda's sensitive and informed response to an overdose set James on a path to recovery (<https://tortoishack.ie/21-addiction-with-james-leonard/>)

Head 8

In line with the Commission on the Future of Policing Report the functions of the gardaí should include community safety.

Head 9

The Commission on the Future of Policing was very clear that the gardaí should no longer prosecute offences. The Commission found that vast resources are spent in attending court and prosecuting. It is a waste of what gardaí are trained to do. It is also something that they are not inherently trained to do and so are not qualified for. Many gardaí have gone and undertaken the BL course at the Kings Inns but again this is a waste of valuable garda CPD time. If we are to enhance garda ability to perform its functions effectively, and make the best use of garda resources, then we need to restrict their activities to those which we need them to perform and for which they are professionally trained. It can be tempting to use the gardaí for additional functions, but these undermines recognition of policing as a profession and that members are highly skilled and trained for particular functions (crime prevention, investigation and detection of offences etc).

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Finally, and most importantly, it completely blurs roles and separation of powers to have those who investigate crimes, prosecute them. These functions should be very clearly separated in the interests of fairness, and the right to a fair trial. Prosecutions should be taken by those trained to do so.

Head 10

I, Dr Conway, and Dr Molloy disagreed with the majority of the Commission in respect of the recommendations relating to the establishment of a Board, and the consequences of that for other dimensions of accountability and governance. I submit that the creation of a Board is a retrograde step.

The Board will not enable clear, independent, empowered, transparent oversight and accountability, as is needed.

1. (clarity) this approach will create inherent duplication between the work of the Board, PCSOC and the relevant parliamentary committee(s). Thus there will not be clarity for the Commissioner, members of An Garda Síochána, members of other bodies or for the public, as to how oversight and accountability are achieved in practice. Rather than simplifying the system, an additional layer is being proposed.
2. (independent) The proposals confuse the place for accountability of the Commissioner, with the Commissioner accountable to the Board, the Minister and Government, and then overseen by the Authority. Thus the Commissioner is accountable to politicians and an internal board. As members of the Board of AGS, the duties of the members will be to AGS, rather than to society. It is very much an internal part of AGS. Accountability will not be independent in the way in which it needs to be. It will also be complicated and conflicting for the Commissioner.
3. (transparency) by moving certain engagements from the remit of the Policing Authority to a board setting, the achievements made by the Authority regarding transparency will be diluted. PCSOC will not have powers of enforcement or powers to achieve change: thus it will encounter many of the frustrations and limitations the Policing Authority has experienced. Meanwhile the Board will not conduct its activities publicly.
4. (culture) The installation of “supportive” governance via the Board, as envisaged by the Commission’s report, is highly unlikely to disrupt the deeply embedded culture of resistance to external oversight and accountability. This is an essential point. The Policing Authority has achieved a huge amount over the last 6 years, and through its persistent oversight many issues (including problems requiring a homicide review, and issues with the juvenile diversion programme) have come to light. These have been key to cultural changes: in response to the homicide review, and the perspectives of members of the Authority, over 100 members of AGS have been professionally trained to conduct reviews of investigations. Professionalism in that space will over take a blue wall of silence that has been seen in the past. The Authority has achieved that while having somewhat minimal powers of enforcement. The proposals erode that power even further, given the Minister and the Board far greater authority over the Commissioner. In effect, satisfying the Authority may become third on the pecking order. So the body which has the potential to increase transparency, oversight and in time effect cultural change will lose its capacity to do so.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

The Board represents a backward step in police governance and accountability. It took numerous scandals and events to justify the movement of certain key oversight and governance functions from the Minister to the Authority, having been shown that policing in Ireland needed to be depoliticised. It is now proposed to move these to a board that will be internal to AGS, with a number of powers also being returned to the Minister. This is even less independent than the arrangement which existed prior to the establishment of the Authority. At a minimum it reflects a repoliticisation of policing in Ireland.

[the proposed appointment process is not independent, indeed these are direct political appointments. Further, there is no overt requirement of knowledge of crime, victims or human rights. Also, will enough individuals of sufficient caliber and expertise will be attracted to these roles given there would now be a board and an Authority.]

It can be taken as my submission that all references to the Board should be removed, and, unless otherwise stated, should be read as a reference to the Authority instead. If anything the power of the Authority should be strengthened, through an increased hand in the budgetary process, and ideally, accountability over the Commissioner.

Head 11

It is highly problematic that the functions listed would all be performed by a Board that it is internal to AGS. These all require independent oversight and attention. The Policing Authority has proven the value of this since its creation in 2016. They are all integral to the operation of policing. And while it is important that internal governance structures are strong, that does not mitigate the need for external, independent input to and oversight of these key matters of governance. It is particularly concerning that the processes for assessing the performance of the Commissioner would fall to an internal board, especially where the independent element that had been inserted into the appointment and removal of the Commissioner is being removed.

That the Commissioner is envisaged as attending the meetings of the Board – in a role similar to a CEO reporting to the Board, also undermines the independence of the performance of these functions.

Head 12

Many of the earlier points are reinforced by the fact that none of the meetings are in public. In a democratic society, police governance and accountability should be transparent. Agendas, minutes and reports should also be published.

Head 18

That these functions will not be performed in an independent way is further evidenced by the fact that the Commissioner will provide services to the Board. The secretary will be a senior garda member. This Board is, as the terminology of an internal board suggests, very much part of the garda organization. The risk of regulatory capture is high. These functions are too important to be performed internally.

Head 19

It is highly disappointing that a backward step is being taken in relation to the appointment of the Garda Commissioner. While in the last number of years the Policing Authority has had a strong role in this process, running the competition and nominating the Commissioner to government, it is now envisaged to bring this back to a government appointment, with the Authority and the Board simply consulted. It is not clear why this is viewed as necessary as no clear difficulty emerged in the most recent appointment of the Commissioner. It is submitted that this decision is part of an overall process of disempowering the Authority, which has no evidentiary justification and would be a backward step. GRECO, the Council of Europe body for the prevention of corruption recommends independent appointment of the Chief of Law Enforcement Agencies. Political appointment of the chief can be a corruption risk. In the UK Chief Constables are appointed by the Police and Crime Commissioners, the equivalent of the Authority. And while the argument can certainly be made that there is a difference because the Commissioner is also head of the security service this did not prove problematic in the appointment of Commissioner Harris, the competition for which was run, and the nomination made by, the Policing Authority.

When this head is viewed in line with other heads, which include statements of accountability and who dismisses the Commissioner, the collective result is that the Commissioner is very much controlled by the Minister. This is of concern as it may create, even subconsciously, an inclination to please the Minister, and to perform functions in line with goals that are, to some extent, politicized.

Head 20

Again, for the same reasons it is problematic that the Deputy would be appointed by government. The Policing Authority has shown itself adept at making senior appointments and this should continue. It can be argued that senior staff should be appointed by the Commissioner but it is submitted that concerns about the fairness of internal promotion processes have abounded, and they have been quite slow processes. For the time being these appointments should continue to be made by the Authority.

It should also be made clear that the Deputy does not need to be an internal candidate.

Head 23

It is, for reasons outlined above, problematic that the Minister is the only person who can dismiss the Commissioner. We have seen this used historically for political reasons (DeValera was very clear on dismissing Eoin O'Duffy that he wanted a Commissioner he trusted). If the position is held at the control of government then the potential is created for the role to be politicized. This function should be assumed by the Authority, as the oversight body and the body with the greatest perspective on how the Commissioner is performing her functions, with the consent of the Minister.

Consideration should be given to include a grounds for suspension and dismissal that includes conduct which brings AGS into disrepute, given that the Commissioner is the leader of that organization and his actions have an enhanced symbolic significance.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Head 24

For the same reasons mentioned above, such inquiries into the performance of the Commissioner's functions should not be entirely under the control of the government.

There should be clarity in terms of the qualifications of the person undertaking such an inquiry, perhaps a judge or a senior counsel, or provision could be made for a senior police officer from another jurisdiction to perform this inquiry.

Head 25

It is highly problematic, and contradictory with other provisions (including Head 23, Head 11, Head 28), that the Commissioner is accountable to the Board for the performance of her functions. This creates a deeply confusing situation for the Commissioner whereby he is stated, reading across the Bill, to be accountable to the Board, the Minister and Government, and overseen by the Authority, while possibly subject to an independent inquiry. One of the aims of this legislation (and a concern that drove the creation of the Commission on the Future of Policing) was to simplify accountability structures. This does not do this. It is also problematic because the Board is internal, and the members are political appointees, and this is not a satisfactory system when it comes to the accountability of the Commissioner.

Head 27

This is a confusing statement. It suggests, in contradiction with Head 25, that the Commissioner is not accountable to the Board for anything. The phrasing in relation to the matters for which the Commissioner is not accountable to government is peculiar. Surely the point is to give the Commissioner operational control, while also ensuring that she is accountable for the performance of her functions? We do not want government to have any say in or control over what the police do, but we do want the Commissioner to be accountable for the actions of AGS. For instance, we may well want to ask the Commissioner to account for why she did not dismiss an individual that had been convicted of a serious crime, or about how a particular protest was policed in comparison with another, or why a certain individual was not charged with an offence (particularly if there is any suggestions of favoritism, discrimination or corruption). But we do not want the Minister to have the ability to direct her to dismiss a police a protest in a particular way.

A more positive statement that the Commissioner has operational control and independence is to be preferred, with the Commissioner then fully accountable for the performance of her functions, and for AGS.

Head 28

Political accountability is problematic for the reasons outlined above. Further, as has been criticized by others including Prof Dermot Walsh, the ability of the Sec Gen to request any document, as created by the 2005 Act, gives government too much control.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Head 29

The need to not politicize policing must be balanced against the democratic needs of the state. At a minimum this should also apply to the Authority.

Head 30

The ability of the Minister to issue written directives is far too broad, creates potential for political interference, and for conflict with the Commissioner's operational control and independence. It is difficult to understand the need for this.

Head 33

The Commissioner should also consult with the Authority on this point, particularly as the Authority will have much more engagement with the public than the Board, who will have none.

Head 40

Consideration should be given to permitting a member of another police service, from another jurisdiction, to perform such a function. This can increase professionalism.

Head 47

The Policing Authority should be given a function to review the engagement and use of consultants to ensure that public funds are being effectively used, and that AGS is building the internal professional capacity and expertise it requires, rather than just continually and expensively engaging consultants.

Head 48

Representative bodies have had extensive power, to the point of being able to stymie reform and development. Consideration should be given to placing more detail in the parent act, rather than just in regulations, in terms of their power, function and operation. There should also be greater clarity in terms of their oversight and accountability, given that issues have arisen in the past, as regards their finances in particular. The government financial support for the unions should be withdrawn. Clear duties to operate to the benefit of their members should be created.

Chapter 6 is entitled accountability and funding but a great many heads prior to this have addressed the issue of accountability. This is confusing.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Head 51

In line with my earlier statement, this function should be retained by the Authority who have performed well in terms of overseeing the strategy statements.

The inclusion of outcomes by which achievement is measured should be mandatory, not optional. This is essential for both driving policing but also for effective oversight. There are different forms which such KPIs can take and this can be discussed as appropriate.

The assessment of human rights issues should be mandatory, not at the belief of AGS. This is not a subjective matter. Indeed, they should be required to consult with IHREC on this.

There should be a public consultation on the strategic plan.

Head 52

The Authority should provide the oversight and progress reports on the implementation of the strategic plan. The current proposals effectively include duplication of this function.

Head 53

This brings the form and manner of the service plan back within the control of the Minister, while this has been done by the Authority since its creation. This is a further example of the re-politicisation of policing which is occurring via this legislation. This is a regressive development in policing which takes us back to a space of less independent standard and target setting in policing.

There should be clear deadlines, specified by date, for the completion of the service plan, always occurring before 01 January.

Is it very positive to see the financial elements being included in the service plan.

By stating (5(i)) that the plan must be consistent with Directives issued under head 30, scope is created for the Minister to direct and control policing which is in direct contravention with the concept of the Commissioner's operational independence, a cornerstone of democratic policing.

Directions as regards amendments to the plan should come from the Authority, not the Minister. Again, looking collectively at the powers being reverted to the Minister, we can see extensive repoliticisation of policing.

Head 54

This is a very broad power of amendment being given to the Minister. Consideration should also be given to placing some parameters on the basis for amending the plan, given its centrality to delivering policing services. This should only be on the basis of some exceptional event (the pandemic is good example of this, however the visit of a head of state, or a sporting/musical event is not, in that contingency should always be made for such events).

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Head 55

The Authority should oversee the delivery of the service plan.

Head 56

The inclusion of a required capital plan is to be endorsed though again this should be approved by the Authority. This is a key way to ensure that the oversight function of the Authority is achievable in realistic ways. It is all well and good for the Authority to engage in conversations about how reform is progressing, but if this is not done in the context of a clear budget, it is not entirely realistic. It should be noted that in the North the Policing Board determines the budget for the PSNI.

Head 57

For a capital plan to be successful, consideration should be given as to whether 57(2) is overly permissive. Surely rather than just informing the Authority and the Minister there should have to be an application for exceeding the approved expenditure, with stated justification? It is appreciated that this is a huge shift from the current process of financing policing in the state, but if the capital plan is to be meaningful, and if the functions around achieving economy in policing are to be realized then the structures in place need to be tighter than simply submitting a capital plan which can be easily be worked around.

Head 59

It should perhaps be clarified that the Commissioner appears before committees (other than PAC) as a witness, and those committees (other than PAC) do not have the power to hold the Commissioner to account.

It is submitted (noting the submitted objection to the Board) that the Chairperson of the Board should not be able to substitute for the Commissioner (but perhaps accompany).

Head 60

The Audit Committee should be appointed by the Policing Authority to ensure its independence and legitimacy.

Head 63

As an internal matter, the governance framework should be the responsibility of the Commissioner, to be approved by the Authority.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Head 64

The Policing Authority has done considerable work over the last number of years on the form, shape and content of the annual report. It should continue to reside with the Authority as it will be overseeing its implementation.

The inclusion of matters in relation to s.42 of the public sector duty should not be at the discretion of the board or AGS.

It should include key statistics on police powers and on key demographic information about their use: e.g. stop and search, arrest, detention, use of force, interrogation, along with details of age, gender, ethnicity, and location of use. These details are key to oversight of policing.

Head 65

In addition to what has been stated, the Commissioner should be required to compile and publish key statistics on police powers and on key demographic information about their use: e.g. stop and search, arrest, detention, use of force, interrogation, along with details of age, gender, ethnicity, and location of use. She should also be required to publish data on deaths in or following garda custody and contact (within 48 hours).

Head 69

It is submitted that such a function should properly be performed by the Garda Ombudsman Commission. It is the body created to investigate issues, and with its wider remit it should be capable of such investigations. Alternative mechanisms of inquiry are confusing for all concerned and blur the lines of accountability.

Head 70.

It is submitted that AGS, in addition to the State should be actionable, and that payments from such actions should come from the garda budget. The learnings and accountability from such actions is significantly limited where it has no repercussions for AGS. Millions are paid out every year in civil actions, with no consequences for AGS.

The term actionable wrong should also include a breach of human rights, not just constitutional.

Head 71

The contribution to legal costs by the Commissioner should also come from the garda budget.

Head 75/76

Serious consideration should be given to secondments from other police services. While this was established as part of the peace process, it has wide benefits and we could learn a great deal from other services.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Equally transfers from other services should be possible to equivalent ranks, subject to completion of appropriate training. Again there is great benefit in this.

Head 83

Under subsection 5, the term media is not defined. Does it then apply that if someone is wearing some uniform or dress in a video or picture, for instance, placed on social media that this would be covered? Should it, alternatively be 'and' subsection 5(b), rather than or?

Part 3 – Community Safety

Head 85

The lack of a definition of community safety is problematic. It is such a fundamental concept to so much of this bill that it needs definition or relevant bodies won't be able to work to the concept of the Bill. Read in tandem with other sections it is hard to get an appreciation for what falls within the scope of this part of the Bill. Will different agencies, offices and groups have discretion in deciding what comes under the ambit of community safety? What is there is dispute about what is within their remit? What is members of the public feel their safety needs are not being met?

Is the Minister best placed to devise the Community Safety strategy or should it come from the National Office/Steering Group?

Head 87

Inter-agency cooperation is likely to be the greatest impediment to the achievement of these goals (once community safety is well defined). The current provisions do not provide sufficient clarity and requirements on how this is to be achieved.

Head 88

The Director should be appointed by the Public Appointment Service and not government. All such appointments should be independent.

Head 89

There is a conflict between head 88 and 89 in that it appears that the Director is accountable both to the Minister (88) and to Oireachtas Committees (89). It is submitted that the language of giving an account to the committee should be removed, in favour of appearing before the committee as a witness.

Head 92

In my study of Joint Policing Committees (Conway, 2019), one of the critiques which emerged was that the format of meetings often was overly formal and replicated council proceedings. This could

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

be exclusion to those who are not from that background i.e. lay or community members. Every effort should be made to ensure that the local community safety partnerships (LCSPs) are as inclusive as possible.

Head 93

The stated functions of the LCSPs are impressive but what powers will they have to achieve implementation? Will they be able to demand action from different agencies? Without this the plans may not be deliverable.

Head 95

In line with the comment re head 93, should this also require cooperation with the LCSPs, as well as AGS?

95(2) appears to provide a partial definition of community safety which is not used elsewhere. This could cause issues. Further, this definition is very individually focused, and not inclusive of communities.

Part 4 – Policing and Community Safety Authority

Head 99

Should consideration be given to broader diversity, beyond gender, in the membership of the Authority?

Head 101/102

Given that a member may hold office on the Authority for up to 8 years, why are members of the previous policing authority precluded from appointment if they have had more than 4 years' service? An aggregate of 8 (following an application for appointment to the new body) across the two may enable a smoother transition from one body to the next. I do not believe there is any suggestion that the current Authority has performed so poorly in its service that its members should be precluded from membership, and indeed the current proposals do not preclude all members.

Head 104

As is clear from early in this submission, functions which have been moved from the Authority to the Board or the Minister (strategic plans, policing plans, senior appointments and so on) should be retained by the new Authority.

Oversight of delivery of objectives is hard to achieve, without clear KPIs, as previously mentioned.

Should the Authority be required to have regard to the community safety strategy in carrying out its functions (104(3))?

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

I have long argued, since before the creation of the Authority, that the Commissioner should be accountable to the Authority for policing functions of AGS. This connected to, at minimum, an ability to recommend dismissal of the Commissioner, and some role in the budget, would give the Authority the necessary teeth to achieve independent oversight of policing. At present it is reliant on 'soft transparency' powers of being able to have discussions in public and publish documents and reports. While powerful, this could and should be strengthened. Instead, by moving key powers to the Board and the Minister this current bill weakens the position of the Authority, thereby weakening independent oversight and accountability of policing in Ireland.

Head 118

This deals with implementation of inspections requested by the Minister, but not those undertaken at the Authority's own request. The Authority should be required to monitor and assess measures taken by AGS in relation to all inspections done. Indeed, this is one of the benefits of the merger of the Authority with the Inspectorate, that it will be well placed to do so.

Head 122

This is inappropriately named Accountability of Authority to Oireachtas Committees. The Authority is accountable to the Minister, and to PAC for spending, and it should not be confused in this way. It would be better to describe their role as witnesses.

Part 5 Garda Síochána Ombudsman

Head 139

The Commission on the Future of Policing was very clear that the name of GSOC should be changed so as not to include 'Garda Síochána'. The Commission spoke to many witnesses who indicated that they believed GSOC, because of its name, was not independent of AGS. Indeed, this is substantiated by GSOC's own public attitude survey which shows that in 2019 34% of respondents believed it was part of AGS, a figure which has been consistently increasing since 2013 (27%). The Commission made clear recommendations in relation to this. The perception of impartiality is absolutely essential and given that a simple name change could enhance this, it should be done.

Head 143

The functions are stated to be in relation to complaints or concerns surrounding 'conduct of a member'. The Commission on the Future of Policing was clear that the work of the Ombudsman's body should be broadened to reviewed conduct, policies and procedure. So it should be possible for a complaint to concern 'policing' broadly.

It should also be required to conduct research into public satisfaction with the work of the office, as happens with the PNSI.

Head 150

For the purposes of independence, police officers from either AGS or other police services should not be engaged by the Ombudsman. Doing so undermines the independence of the office. Particularly in the light of police occupational subculture, even police from other jurisdictions cannot be considered fully independent as they bring the cultural values, norms and beliefs which pervade policing internationally. No investigations for the Ombudsman's office should be conducted by police officers from any police service. This was clearly recommended by the Commission on the Future of Policing (p. 49).

Head 153

As has been stated on previous occasions, referring to the office's 'accountability' to Oireachtas committees is inappropriate. The office is accountable to the Minister.

Head 157

The concept of admissible complaints should be done away with. Complaints should not have to pass an admissibility test. We would not accept this in other areas of public service – if someone has a complaint it should be investigated. If it is deemed to be vexatious, which only a tiny proportion of complaints to GSOC ever are, then that can be the outcome of the investigation. But to tell a someone who has taken the time and effort to make a complaint that the state does not consider their issue worthy of complaint is poor public service. It should be noted that OPONI in NI does not have an admissibility stage and it has not proved problematic. All complaints should be investigated.

It is good to see under the definition of 'incident of concern' that the member does not have to be a member at the time of investigation. This should be the case for all investigations. Retirement or resignation should not be a barrier to investigation. It may mean that no discipline can follow investigation, but there is much more that comes from investigations: there are learnings for the organisation, as well as substantiation or otherwise for the complainant.

Head 158

While it is encouraging to see that actions and omissions, and the standard of service provided are covered by complaints, it should not be so focused on an individual member. It may be that an individual has been failed by the service as a whole, but this phrasing would direct the investigation at a particular named member. For instance, if there has been a failure to investigate effectively a murder or a rape it is likely that numerous members are involved. The investigation should be open to review how an incident was handled, as per the recommendations of the Commission on the Future of Policing which was accepted by government which spoke of investigating 'incidents'.

Head 160

As discussed previously, the requirement of admissibility should be scrapped. We would not accept this in any other public service.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

As mentioned it is good and proper that retirement, resignation or no longer being a member should not disqualify a complaint.

Head 161

In terms of determining what complaints may be resolved by AGS the legislation takes a very different approach to what was proposed by the Commission on the Future of Policing. The Commission had clearly recommended that only 'performance management' matters should be resolved by AGS, however the Bill only secures criminal offences, breach of standards justifying court proceedings, and death or serious harm from garda investigation. This is a very different and much higher standard being applied. Independent investigations are essential for confidence and legitimacy. It is also entirely unacceptable to suggest that what gets investigated by AGS can be determined between the Ombudsman and the Commissioner. This needs to be enshrined in law for public confidence. These are standards which should be legally determined and set, not in private spaces.

Further, investigation of complaints by members of AGS is not only inappropriate, but it also a waste of valuable garda resources. Far too many members (particularly at the senior level) reported spending significant portions of their time conducting investigations for GSOC. This is not how their professionalism and expertise should be used. The Commission was clear that non-core duties should be redirected from AGS and again this recommendation is being supplanted.

Head 162

How AGS investigates complaints should not be for the Commissioner to determine, but should be set down in Regulations supplementary to the Act. Again the public are entitled to transparency and confidence that their complaint will be handled properly, with the possibility of recourse to law for enforcement. Members of AGS are also entitled to certainty in the process. The Commission on the Future of Policing had been clear that because these would be just performance management issues, they should be handled under performance management processes. This recommendation strikes a strong balance between ensuring independent investigation and enabling the Commissioner to manage her staff. It is unclear why the deviation from the report of the Commission has occurred.

Head 164

This is too narrowly written. The Commissioner should be required to refer any incident in which serious harm or death has occurred in or following police contact and or custody. It should not be dependent on the Commissioner forming the opinion that the contact was the cause of the harm or death. That is for the ombudsman to determine. Further, for the benefit of confidence in the system and learning about engagements with people, there should be clarity that all deaths which occur within 72 hours are investigated. This is just not for the purpose of assessing whether AGS caused the death in any way, but also to ensure that its duty of care towards those it interacts with are fulfilled. To this end I refer Committee Members to the episode of Policed in Ireland where we heard from Johanna O'Hara whose son died within 5 hours of being released from garda custody and for

which there has been no independent investigation (<https://tortoiseshack.ie/10-policed-in-ireland-a-voice-for-niall/>)

Head 165

Too great scope and potential is provided for incidents of concern to be investigated by AGS, rather than the Ombudsman's office. It should be remembered that the purpose of this provision is to ensure that all incidents of concern are investigated – not just those that happen to be witnessed by members of the public. If a supervisor or colleague witnesses wrongdoing this should just as much be subject to independent investigation as those seen by members of the public. As per the Commission on the Future of Policing the determinant of what should be investigated by AGS is whether or not it is a performance management issue or not. This recommendation strikes a strong balance between ensuring independent investigation and enabling the Commissioner to manage her staff. This chimes with rulings to the ECtHR whereby cases which may involve a breach of human rights by police should be independently investigated.

Head 166

Throughout this section the requirement that the breach of standards of professional behaviour would justify court proceedings is unjustified. Indeed, it is unclear how a breach of professional behaviour could result in court proceedings. Surely a breach of professional standards in itself merits investigation? Further, it is suggested that an additional criterion of bringing AGS into disrepute, or undermining confidence in AGS should be added. This is essential to maintain confidence in, and the legitimacy of, AGS.

Head 167

In addition to the forms of protected disclosures listed, when a disclosure is made under section 6 of the 2014 Act to the employer or designated person, the Ombudsman's Office should be advised of the disclosure and progress in relation to its investigation. The Ombudsman's Office should have the capacity to intervene if it believes that the matter merits an independent investigation. Alerting the Office in this way, creates a balance whereby the person making the disclosure retains the option of disclosing internally but we can still be confident that the matter will be appropriately dealt with and that AGS are either satisfying an independent body that it has been addressed, or it is being independently investigated. For instance, if someone disclosed that a colleague had not interviewed a key witness had not been interviewed in a sexual offences case, AGS would alert the Ombudsman that in an unnamed case such a disclosure had been made. The Ombudsman would require updates on the case or could undertake an investigation under either head 166 or 168. In such a case there are concerns which go beyond those of the individual making the protected disclosure (the victim and any future victims) and which demand effective investigation of the concern. It is not just, in such a case, just about satisfying the person making the disclosure.

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

Head 168

Is the descriptor 'formal' necessary? Simply calling it an investigation, given that there is no power of informal investigation, might be more accurate and minimise the stress experienced by members of AGS.

Head 172

It is submitted that rather than discontinuing an investigation, what are listed to be 'opinions' in 1(a) should instead be potential proven outcomes of an investigation.

Head 174

The Ombudsman should also have the capacity to undertake informal resolution where it is clear that this might be effective. This has been trialled very effectively by GSOC and is a development that should not be lost. Often complainants want to be believed, and want an apology and so informal resolution can be very effective. We should be forcing all cases into an adversarial process where this can be avoided. Restorative justice can be used very effectively.

Consideration should also be given to permitting the Ombudsman's office to make recommendations as to sanctions where appropriate. It is unclear whether this is covered in the current wording of 'with such recommendations as she sees fit'.

The Ombudsman should also be required to published redacted versions of investigation reports to enhance public confidence in the investigation of complaints.

Head 175

The grounds for investigation here are limited. It is implicit that misconduct which does not meet the level of serious, by the Commissioner, will thus not be independently investigated. It is difficult to see the justification for this given the symbolic importance of the Commissioner's behaviour. Further, in addition to excluding 'serious', it is submitted that an additional criterion of 'behaviour which undermines public confidence in AGS' should be included.

Head 182

Reviews of decisions are welcome, but should be extended to outcomes of investigations. This could be on the basis that not all appropriate factors or issues were taken into account, or proper procedure was not followed, in the making of the decision. It would be preferable that some kind of internal review would be possible rather than leaving complainants no alternative than to judicially review the office. Head 183 is welcome in this regard but it is not automatic and is at the behest of the Minister. An internal review possibility may stave off the need for head 183 inquiries.

Head 189

Officers of the Ombudsman's office (and indeed gardaí) should not be performing functions for the coroner's office. This was included in the Commission on the Future of Policing Report. It takes up time better spent on core policing/Ombudsman functions, and creates problems for the separation of powers. Similar conclusions were reached in a report published earlier this year by the ICCL - <https://www.iccl.ie/iccl-death-investigations-coroners-inquests-the-rights-of-the-bereaved/>

Part 7 – Independent Examiner of Security Legislation

Head 194

The objectives listed here centre on whether legislation is adequate to combat threats. This is different to what was recommended by the Commission on the Future of Policing which stated that the aim would be to “maintain a continuous review of how security legislation is being implemented by police and other agencies, and evaluate the case for changes needed to match the evolving threats while respecting fundamental rights”. The Examiner should primarily be about ensuring that these powers are being used appropriately. There has been a complete absence of oversight in the area of state security and this has been deeply problematic. Policing in this space has caused many issues in the past: from the Heavy Gang, to the Morris Tribunal and the Cory Inquiry. It is also the space in which the greatest powers are given to the gardaí, from lengthier detention periods, to minimised evidentiary requirements, to surveillance and seizure. It is also a space generally tried by the Special Criminal Court and the denial of the right to a trial by jury demands additional safeguards be put in place throughout the system. There is a proven need for oversight of how these powers are used, not just whether the law is adequate. It is very disappointing that the recommendations of the Commission would be dismissed in this way. To understand the potential of this role, if properly created, it is worth reviewing the reports of the Independent Reviewer of Terrorism in the UK (<https://terrorismlegislationreviewer.independent.gov.uk/category/reports/>) Even a quick glance generates a sense of confidence that the use of these powers are being properly overseen. And it is also clear that this is done in a way which does not compromise the security of the state at all.

Head 195

This head needs to more clearly state that a function is to ‘oversee the use of security legislation.’ It could potentially be inferred from the wording as it stands but it needs to be much more explicit. This is an important opportunity to introduce independent oversight that gives confidence in the use of security powers.

Heads 198 – 201

It is essential the Independent Examiner have the powers and responsibilities outlined herein. Without access to this information, even information of a highly sensitive nature, the Examiner will be unable to perform their functions.

If the Committee wishes to understand this better, it would be hugely beneficial for the Committee to hear from one of the Reviewers from the UK. The Commission met, for instance, with Lord David Anderson, who has continually taken an interest in developments in Ireland and it was highly

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

illuminating to hear how he did his work, what powers and resources he required to do so. This would give the Committee a key understanding of how such a role can work to achieve far greater confidence in policing in this space.

Head 207

It is submitted, as per the Reviewer in the UK, the annual report should contain more than just 'general statements'. It should provide a detailed analysis on the use of powers, such as to establish public confidence both that the powers are being used appropriately, and that they are being overseen appropriately. It should of course be appropriately redacted for the purposes of data protection and state security but this is easily done, as the Reviewer role in the UK clearly establishes.

Head 208

The ability to submit other reports is very important.

Head 209

Again, the use of the word 'general' seems problematic in this space. She should be required to submit a detailed review of the performance of her functions.

Head 211

It maybe implicit, but a clear requirement to publish these reports publically, on the internet, should be included.

Head 213

The appointment should be following an independent process by the Public Appointment Service (as recent events have shown, simple nominations by government are highly problematic). It is also questionable whether the role needs to be restricted to a practicing lawyer or judge. It would be preferable to set out criteria which would be assessed through the appointments process. It may be, for instance, that there are some senior academics with specialist knowledge of terrorism legislation that would be very well placed to fill this role.

Part 8 – Regulations and miscellaneous

Head 221

While this is delegated to regulations it is important that this is approached carefully. The investigation of disciplinary matters has been a thoroughly overly legalised process to date, involving extensive delays in decision making and excessive appeals against process and outcomes. This is not good for the member concerned, nor is it good for the organisation (for instance the suspension of

Submission of Dr Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill

the Director of HR in 2018 which has not, to date, been resolved as far as I know. This has prevented the organisation from hiring a new Director, leaving an absolutely pivotal role empty). Care must be taken to structure a system of discipline which has greater agility in the future, while maintaining rights to due process and fair proceedings.

Head 228

While there may be good reason to confer the powers outlined on the authorised bodies there needs to be oversight and accountability for the use of powers. These include powers of search, seizure, requiring identification and use of force. These are quite serious powers which have the capacity to be misused, in breach of human rights. Therefore, it is essential that there is oversight and accountability. The office of the Ombudsman would seem to be the appropriate body for such work: members of the public should be able to complain to them about their treatment by security officers of appropriate bodies.