

Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (the Bill).

Policy objectives and the reasons for them

Police Service Administration Act 1990

The *Police Service Administration Act 1990* (PSAA) provides for the management, development and administration of the Queensland Police Service (QPS). A component of managing the QPS involves establishing and maintaining a discipline system that can guide, correct, rehabilitate and, if necessary, discipline police officers and police recruits employed by the QPS and police officers who have left the employ of the QPS after grounds for discipline have arisen.

Maintaining a comprehensive and effective police discipline system is necessary to ensure that members of the QPS adhere to proper standards of conduct and that public confidence in the QPS is preserved.

Currently, the framework for the police discipline system is outlined by the PSAA, the *Police Service (Discipline) Regulations 1990* (Discipline Regulation) and by QPS policy. The *Crime and Corruption Act 2001* (CC Act) also contains provisions relevant to police discipline including relevant definitions; the investigative, monitoring and oversight functions of the Crime and Corruption Commission (CCC); and the ability of parties to apply for review of certain decisions.

The current legislative and policy framework allows investigations into inappropriate police conduct to be undertaken. If sufficient evidence exists, the allegation may be referred to an appropriate officer (the prescribed officer) to conduct a disciplinary hearing where the prescribed officer determines if the allegation(s) are substantiated. The officer subject to the allegations (the subject officer) may contest the allegation(s) and/or any sanction that the prescribed officer intends to impose if the allegations are substantiated.

The sanctions that may be imposed upon a subject officer are outlined in the Discipline Regulation. These sanctions are:

- dismissal from the QPS;
- a reduction in the officer's rank or classification (demotion);
- forfeiture or deferment of a salary increment or increase;
- a reduction in the officer's level of salary or wages;
- a deduction from the officer's salary or wages of an amount equivalent to a fine of 2 penalty units; or
- cautioning or reprimand.

The Discipline Regulation limits the sanctions a prescribed officer may impose upon a subject officer according to the prescribed officer's rank. For instance, a commissioned officer, upon being satisfied that a subject officer's conduct warranted a discipline sanction may only impose the sanctions of cautioning or reprimand, or a 2-penalty unit deduction from the officer's salary or wage. In comparison, the Commissioner or a Deputy Commissioner may impose any of the sanctions that are warranted in the circumstances.

These sanctions may be suspended by the prescribed officer upon the subject officer agreeing to perform community service, or to undergo counselling or treatment. Upon successful completion of the community service or counselling, the disciplinary sanction is rescinded and is taken to have never been imposed.

Although policy changes to the QPS disciplinary system have been made since the PSAA and Discipline Regulation were enacted, these changes have been limited to ensure consistency with the legislative framework. This has led to a police discipline system that has remained functionally unchanged since the inception of the PSAA in 1990.

The police discipline system has been the subject of numerous reviews by the QPS and the CCC (including its previous iterations as the Crime and Misconduct Commission, and the Criminal Justice Commission). As a result of these reviews and general stakeholder dissatisfaction, a number of aspects of the police discipline systems were identified for improvement and modernisation. These areas of dissatisfaction included:

- a general lack of public and officer confidence in the current police discipline system;
- unnecessarily lengthy timeframes taken to investigate and resolve some complaints;
- outdated sanctions that focus primarily on punitive measures;
- the overly adversarial and legalistic nature of discipline proceedings;
- a perceived lack of consistency in decisions made about matters involving similar conduct; and
- the sometimes differing opinions of the QPS and CCC in relation to the direction of investigations or appropriate sanctions, as evidenced by CCC applications for review of QPS discipline decisions.

As part of the 2015 Election, the Government committed to "review the police complaints system and implement a new disciplinary system, in collaboration with the Queensland Police Union of Employees, which ensures accountability and fairness for both police officers and the public."

The QPS and the CCC have consulted with stakeholders in the police discipline system, including the Queensland Police Commissioned Officers' Union of Employees (QPCOUE) and the Queensland Police Union of Employees (QPUE) to create a modernised and more efficient discipline system that is supported by all stakeholders. On 16 October 2017, the Chairperson of the CCC announced that a revised police discipline system had been negotiated with bipartisan support and the support of the CCC, QPS, QPCOUE and QPUE.

The Bill contains the amendments necessary to implement the proposed police discipline system and will:

- ensure the public's confidence in the QPS is maintained;
- provide efficiencies in the investigation of complaints and hearing of allegations;
- educate officers and improve their performance; and
- suitably discipline officers, if required.

Amendments in the Bill will improve key facets of the police discipline system by:

- reducing delays in finalising discipline investigations;
- modernising the discipline sanctions that can be imposed upon a subject officer;
- formalising the role and range of management strategies available as part of the discipline process; and
- addressing review provisions that apply to the CCC.

Reducing delays in finalising discipline investigations

A common complaint of the police discipline system has been the time taken to investigate and finalise matters. Currently, there are no timeframes provided in the PSAA or Discipline Regulation prescribing when an investigation of a complaint must be finalised. Stakeholders agree that the expeditious finalisation of matters would lead to fairer outcomes for both the complainant and the subject officer involved in the discipline process and would also provide the QPS with a better opportunity to address inappropriate behaviours before they become ingrained or escalate.

The new police discipline system is designed to provide more timely outcomes through reducing delays in finalising discipline investigations. This will be achieved through amendments in the Bill that:

- establish timeframes for the institution of discipline proceedings and the finalisation of investigations; and
- enhance the efficiency of the investigative process and discipline proceedings by introducing an Abbreviated Disciplinary Process (ADP). The ADP will allow a subject officer to elect to expedite an investigation by dispensing with the need for a full investigation or discipline hearing before a prescribed officer in matters that are simple or not in dispute.

Modernising the disciplinary sanctions that may be imposed upon a subject officer

Currently, section 7.4 of the PSAA and section 10 of the Discipline Regulation outline the sanctions that can be imposed by a prescribed officer on an officer subject to disciplinary action. The sanctions have not been updated since the PSAA was enacted and are limited in scope, inflexible and do not necessarily address the cause of any deficiency in behaviour.

The current range of sanctions may be criticised due to the significant incremental differences between the severity of sanctions. For example, there is a large difference in severity between the sanction of demotion and that of dismissal. Similarly, if a monetary fine is considered an appropriate sanction, the maximum monetary fine that can be imposed on an officer is currently two penalty units. If that option is not appropriate, the next most likely sanction is a reduction in the officer's level of salary within their current rank and the forfeiture or deferment of a salary increment. This sanction may have unintended long-term consequences, including a possible reduction in superannuation and may be considered disproportionately punitive in response to the conduct that occurred.

The Bill will remedy these shortcomings by introducing amendments that directly address these deficiencies and also provide a greater range of disciplinary sanctions for inappropriate behaviour. The Bill will also provide certainty about the impact of sanctions by omitting the sanction of a reduction in the officer's level of salary.

New disciplinary sanctions include:

- suspension from duty without pay for a period not exceeding 12 months;
- disciplinary probation;
- demotion for a specified period (in addition to the current permanent demotion);
- comprehensive transfer;
- local transfer;
- performance of up to 100 hours community service; and
- increasing the maximum fine from 2 penalty units to 50 penalty units.

The Bill also amends the ability of a prescribed officer to suspend a disciplinary sanction imposed on an officer and comprehensively outlines the procedures that are to be adopted in relation to sanctions that are suspended. A prescribed officer will no longer be able to suspend the sanction of dismissal or probation. Other disciplinary sanctions may be suspended but will remain part of the subject officer's disciplinary history. This amendment is consistent with recommendations made in the Parliamentary Crime and Corruption Committee Report 97 *Review of the Crime and Corruption Commission* (the PCCC Report) tabled in Parliament on 30 June 2016. The PCCC report recommended the ability to suspend the sanction of dismissal should be reviewed (Recommendation 17) and in the case of any other sanction that is suspended, the sanction should remain part of the officer's discipline record (Recommendation 18).

Formalising the role and range of management strategies available as part of the discipline process

The currently available sanctions do not allow subject officers to undertake educational activities or development opportunities that may assist in improving their professionalism or in minimising the risk of analogous behaviour occurring in the future. The Bill formalises 'professional development strategies' in the new police discipline process by allowing the Commissioner to impose a professional development strategy on an officer in response to a complaint as a risk mitigation strategy, to improve the officer's performance or for any other purpose. These professional development strategies can be tailored to meet the individual needs of a subject officer.

Addressing review provisions that apply to the CCC

The Bill will not alter the role of the CCC as the oversight body in the police discipline system. The CC Act provides that the Commissioner has primary responsibility for dealing with complaints about police misconduct. However, this is subject to the monitoring role of the CCC, whereby the CCC can overview the progress of police investigations into disciplinary matters and their outcomes, issue guidelines, review and audit handling of complaints and require the QPS to report to the CCC about an investigation. Furthermore, the CCC can also assume responsibility for and complete investigations into police misconduct.

The current police discipline system classifies allegations of officer misbehaviour into two categories, namely a 'breach of discipline' and 'misconduct'. A 'breach of discipline' is defined as 'a breach of this Act (the PSAA), the *Police Powers and Responsibilities Act 2000* (PPRA) or a direction of the Commissioner given under this Act but does not include misconduct'. Examples of 'breaches of discipline' include the failure to correctly complete a watchhouse register as required by the PPRA; the failure to comply with the code of dress as required by the Commissioner; instances where an officer performs their duty carelessly or inefficiently; or if an officer is absent from duty without authorised leave.

‘Misconduct’ is defined as ‘conduct that - (a) is disgraceful, improper or unbecoming an officer; or (b) shows unfitness to be or continue as an officer; or (c) does not meet the standard of conduct the community reasonably expects of a police officer’. ‘Misconduct’ is not limited to acts or omissions that occur in an official capacity. Officers may commit misconduct in their private life as well as when acting in their official role. There is no requirement for a nexus between an officer’s conduct in a private capacity and their official role.

‘Misconduct’ can be distinct behaviour which clearly fits within the definition, for example sexual harassment, or it can also be established through more serious examples of conduct that is otherwise a ‘breach of discipline’. For example, if an officer systematically failed to complete watchhouse registers for a nefarious purpose; or the officer was absent from duty without leave and consuming alcohol in a licensed venue.

Currently, there are two different avenues for review of a disciplinary decision dependent upon whether the offending conduct is considered to be ‘misconduct’ or a ‘breach of discipline’. In relation to misconduct allegations, a subject officer or the CCC can apply for review in the Queensland Civil and Administrative Tribunal (QCAT) of a decision by a prescribed officer to substantiate or not substantiate an allegation, or the resulting imposition of a certain sanction by the prescribed officer. However, the CCC is unable to apply for review of a QPS decision not to commence a disciplinary hearing in relation to a complaint. This may occur where the QPS determines the investigation of the complaint did not provide sufficient evidence to commence a proceeding, or that the allegation or evidence only indicated a breach of discipline as opposed to misconduct. The PCCC Report recommended the CCC have the ability to apply for review of a QPS decision not to institute disciplinary proceedings against an officer (Recommendation 15).

Further, in relation to allegations of breaches of discipline, an officer can apply for review of the prescribed officer’s decision before a commissioner for Police Service Reviews under Part 9 of the PSAA. While the CCC can apply for review in QCAT of a decision to find that an allegation of misconduct only amounted to a breach of discipline, the CCC has no ability to apply for review of a disciplinary decision arising from a complaint the CCC believes was incorrectly categorised, commenced and determined as a breach of discipline.

The Bill removes the artificial distinctions of ‘misconduct’ and ‘breach of discipline’ and replaces these categories with the term a ‘ground for disciplinary action’. A ‘ground for disciplinary action’ will encompass the behaviours that are currently listed in section 9 ‘Grounds for disciplinary action’ of the Discipline Regulation and incorporates the definition of ‘breach of discipline’. ‘Misconduct’ will remain as a distinct ground for disciplinary action.

The removal of the separate and distinct discipline categories of ‘breach of discipline’ and ‘misconduct’ will assist in simplifying the police discipline system, as the ability to review a decision or the sanction imposed for improper conduct will not be dependent upon the categorisation of behaviour. If an officer is found to have committed the alleged behaviour, a sanction will be imposed that is commensurate with the seriousness of the allegation, regardless of whether it would have previously been classified as a ‘breach of discipline’ or ‘misconduct’.

The Bill will also allow the CCC to apply for review of QPS decisions not to institute disciplinary proceedings against an officer, thereby implementing Recommendation 15 of the PCCC Report. Furthermore, the CCC will also obtain the ability to apply for review of disciplinary decisions in relation to any grounds for disciplinary action, ensuring that the QPS is not mishandling matters that should be dealt with as misconduct.

Maintaining an officer's right to contest allegations

The Bill enshrines aspects of disciplinary proceedings that are currently contained in QPS policy. For example, the Bill ensures the subject officer has a right of reply to the allegations and if the prescribed officer substantiates the allegations, the officer also has a right to submit on the appropriateness of the proposed sanction.

Repeal of Police Service (Discipline) Regulations 1990

The Bill inserts the amendments required to achieve the modernised police discipline system into part 7 of the PSAA and chapter 5 of the CC Act. Clause 17 of the Bill repeals the existing Discipline Regulation as all components of the police discipline system will be contained within primary legislation.

Crime and Corruption Act 2001

Chapter 5, part 2 of the CC Act currently provides for the ability of an officer or the CCC to apply for review of a disciplinary decision made by the QPS in relation to an allegation of 'misconduct'. The provisions in relation to the CCC instituting corrupt conduct proceedings in QCAT's original jurisdiction against an officer are also contained in part 2.

In order to implement provisions in relation to the ability of both the CCC and subject officers to apply for review of a QPS disciplinary decision, amendments are required to chapter 5, part 2 of the CC Act.

The Bill will enhance the CCC's ability to apply for the review of QPS decisions by providing for the review of all QPS decisions made in relation to any ground for disciplinary action including the decision not to institute disciplinary proceedings against an officer.

Achievement of policy objectives

The Bill achieves its objectives by repealing the *Police Service (Discipline) Regulations 1990* and amending the following Acts:

- *Crime and Corruption Act 2001*;
- *Evidence Act 1977*;
- *Police Powers and Responsibilities Act 2000*; and
- *Police Service Administration Act 1990*.

Police Service Administration Act 1990

Modernised police discipline system

The Bill inserts a new part 7 into the PSAA and repeals the Discipline Regulation, creating the legislative framework for the modernised police discipline system. The police discipline system will apply to officers, which has been defined for this part to include a police officer and a police recruit.

New part 7 details extensive requirements of the police discipline system to ensure fairness and certainty to subject officers, including the requirements for commencing disciplinary proceedings against a subject officer, how proceedings must be conducted and how

proceedings are finalised. These provisions ensure procedural fairness and natural justice for subject officers, while establishing an efficient and transparent framework.

New section 7.1 outlines the main purposes of the part, being:

- (a) to provide for a system of guiding, correcting, rehabilitating and if necessary, disciplining officers; and
- (b) to ensure appropriate standards of discipline are maintained within the QPS to –
 - (i) protect the public; and
 - (ii) uphold ethical standards within the QPS; and
 - (iii) promote and maintain public confidence, and officers' confidence, in the QPS.

Currently, section 3 of the Discipline Regulation outlines the purposes of the regulation and the existing police discipline system. The Bill only makes subtle changes to these purposes in new section 7.1, however these changes have significant influence on the design of the police discipline system and its integration with the broader performance management focus. By amending the purposes of Part 7 to include the phrase “rehabilitating and if necessary, disciplining officers” in new section 7.1(a), it is clear that the new police discipline system is not purely focussed on retributive sanctions against officers, if the error or misbehaviour can be corrected by other appropriate means. However, if it is necessary to impose a sanction against an officer, either on its own or in combination with a professional development strategy, the Bill allows for this to occur.

Similarly, a minor change reflected in new section 7.1(b) recognises the importance of ensuring that both officers and the public have confidence in the QPS and the police discipline system.

In order to achieve the purposes of the new part 7, the Bill outlines the grounds for disciplinary action against an officer; creates a mechanism to impose professional development strategies on an officer; imposes timeframes for disciplinary proceedings to be implemented; establishes a full disciplinary hearing process allowing subject officers to dispute allegations or proposed sanctions; creates an abbreviated disciplinary process for dealing with matters not in dispute; and outlines the sanctions that can be imposed on officers at the conclusion of a disciplinary proceeding.

New section 7.44 specifically allows the Commissioner to create guidelines in relation to the disciplinary process. Examples of matters that may be appropriate for guidelines to be made include:

- how investigations of complaints are to be conducted; and
- how disciplinary proceedings are to be conducted, including matters that the prescribed officer must have regard to when imposing a disciplinary sanction.

To ensure fairness for officers and maintain public confidence, new section 7.44 requires the Commissioner to actively consult with the Chairperson of the CCC and each union representing officers before making any guidelines under this section. This balances the need for fairness and certainty with the requirement for flexibility in relation to some components of the discipline system. This will be achieved by the Bill providing a detailed and robust framework in the PSAA for the QPS discipline system that is supported by policies and guidelines made by the Commissioner. These guidelines cannot be inconsistent with the provisions of new part 7 (or the CC Act as the case may be) and consultation with both the oversight body and the relevant industrial bodies is required.

As the Bill inserts all legislative requirements of the police discipline system into the PSAA and specifically provides the power for the Commissioner to make guidelines, the Discipline Regulation will be repealed as it will become superfluous.

The new discipline system will focus on improving performance of subject officers and will integrate more closely with the broader performance management practices of the QPS. This is reflected in the purposes of new part 7, as outlined in new section 7.1.

New section 7.9 requires the Commissioner, upon receiving a complaint about an officer's conduct, to consider whether any professional development strategy (as defined in new section 7.3) should be imposed on the officer before considering any disciplinary action. Any professional development strategy must be implemented as soon as reasonably practicable on the officer after the complaint is received. The Commissioner may implement a professional development strategy to reduce the recurrence of similar conduct; improve the officer's performance; or for any other purpose related to achieving the purposes of section 7.1(b).

New section 7.9 does not prevent disciplinary action from being taken against an officer where such action is warranted. However, new section 7.10 requires the Commissioner to consider a number of matters prior to referring a complaint to a prescribed officer for the commencement of disciplinary proceedings. The matters to be considered are:

- any professional development strategy, or other management action, that has been implemented in relation to the subject officer;
- whether the implementation of any other professional development strategy would be sufficient to achieve the purposes outlined in new section 7.1(b);
- the subject officer's disciplinary history (which includes disciplinary action taken against the officer, complaints made against the officer where a disciplinary proceeding was commenced but the disciplinary charge was not proved, and complaints against the officer where no disciplinary action was taken) and the subject officer's service history (which includes rank and positions held, performance history and other matters);
- the seriousness of the conduct to which the complaint relates; and
- whether it is necessary to take disciplinary action against the subject officer to achieve the purposes mentioned in section 7.1(b).

These sections clarify that disciplinary action does not need to be taken against an officer in relation to all complaints. Once the Commissioner has considered the relevant matters outlined in new section 7.10, the Commissioner may determine that the purposes of new section 7.1(b) can be met without referring the complaint to a prescribed officer for a disciplinary hearing and possible sanction being imposed on the officer.

The new discipline system ensures that appropriate actions and strategies taken by management to provide professional development to officers must be considered prior to the imposition of any sanction. These professional development strategies can be imposed either in lieu of, or in addition to disciplinary sanctions and are designed to decrease the likelihood of further incorrect behaviour and improve the performance of an officer. However, sanctions are still available where an officer's conduct warrants a disciplinary sanction being imposed.

The ability to implement professional development strategies as a formal response to complaints about officer behaviour will improve the outcome of the discipline system for both officers and the public by providing an opportunity for officers to improve their behaviour or standards, either in addition to, or in instead of, a sanction being imposed.

Grounds for disciplinary action

New section 7.4 outlines the grounds, or the behaviours, for which an officer may be disciplined. This section is reflective of section 9 of the Discipline Regulation which currently outlines these grounds; however the Bill has modernised the language used to describe some

of the grounds for disciplinary action. Importantly, the Bill will continue to address the underlying behaviours that give rise to a ground for disciplinary action.

The Bill omits the term ‘breach of discipline’ from the definitions in current section 1.4 of the PSAA as the behaviours captured in the current definition of ‘breach of discipline’ are contained within the updated grounds for disciplinary action in new section 7.4. Rather than referring to certain conduct as a ‘breach of discipline’ or as ‘misconduct’, the Bill makes an officer liable to disciplinary action as a consequence of transgressing the ‘grounds for disciplinary action’ outlined in new section 7.4. The Bill does not amend the definition of ‘misconduct’ in section 1.4, nor the corresponding definition of ‘police misconduct’ in the CC Act.

This amendment will not excuse an officer for engaging in inappropriate behaviour. The new QPS discipline system will tailor the disciplinary sanction to reflect the seriousness of the inappropriate behaviour. If an officer engages in conduct at the lower end of the listed ‘grounds for disciplinary action’, the resulting sanction imposed or professional development strategy implemented in relation to the officer, will address the relatively minor misbehaviour.

Alternatively, if the officer engages in serious conduct or behaviour that constitutes ‘misconduct’, the sanction will reflect the seriousness of the behaviour or misconduct.

The omission of the term ‘breach of discipline’ will work in combination with the revised ability of the CCC to apply for the review of any disciplinary decision pursuant to new chapter 5, part 3 of the CC Act. This will enhance the oversight and monitoring functions of the CCC by ensuring the QPS investigates misconduct appropriately. The ability of the CCC to apply for review of a decision will no longer be determined by whether the matter was classified as ‘misconduct’ by the prescribed officer.

Modernised disciplinary sanctions

New section 7.34 provides the disciplinary sanctions that can be imposed on officers as a result of disciplinary proceedings. New section 7.35 provides a sliding scale of sanctions available to prescribed officers of various ranks. These provisions amend the sanctions currently available in section 7.4 of the PSAA and section 10 of the Discipline Regulation. The revised sanctions will provide more scope and flexibility to deal with police misconduct and achieve appropriate outcomes in a modernised framework.

The Bill omits the currently available sanctions of reduction in the officer’s level of salary within their current rank and the forfeiture or deferment of a salary increment or increase. The Bill also inserts the new sanctions of suspension from duty without pay for a period not exceeding 12 months; disciplinary probation; demotion for a specified period (in addition to the current permanent demotion); comprehensive transfer; local transfer; performance of up to 100 hours community service; and increases the maximum fine from 2 penalty units to 50 penalty units.

The currently available sanction of a reduction in the officer’s level of salary within their current rank may have unintended long-term consequences, including a possible reduction in superannuation, which can be disproportionate to the conduct that occurred. A more appropriate financial penalty is inserted in the Bill, being that the maximum amount an officer can be fined as a disciplinary outcome has increased substantially in lieu of a reduction in the officer’s level of salary within their current rank.

The ability to impose a sanction of ‘comprehensive transfer’ or ‘local transfer’, allows the QPS to manage the risk of an officer committing similar conduct in the future and is closely associated with the formalisation of professional development strategies as a response to

complaints about officer conduct. For example, it may be identified that an officer working in an entertainment precinct is subject to repeated complaints when dealing with intoxicated people. Should the allegations be substantiated, the disciplinary sanction subsequently imposed may include a transfer from that location to a police station that is not within an entertainment precinct. Further professional development strategies may also be implemented, including supervision at the new work location. This sanction will alleviate the cause of the complaints, protect members of the public, allow the officer to be formally supervised and reduce the likelihood of inappropriate behaviour repeating.

Professional development strategies

The Bill formalises the role of ‘professional development strategies’ in the discipline system. The definition of a ‘professional development strategy’ is provided in new section 7.3. Professional development strategies must be considered when a complaint is first received and may also be considered in lieu of, or in addition to any disciplinary sanction imposed at the conclusion of any disciplinary proceeding.

New section 7.9 requires the Commissioner to consider whether to impose a professional development strategy on an officer when a complaint is first received. This section provides that the Commissioner can impose a professional development strategy on an officer in response to a complaint as a risk mitigation strategy, to improve the officer’s performance or for any other purpose. If a professional development strategy is imposed on an officer under this provision, it must be implemented as soon as reasonably practicable after the ground for disciplinary action arises.

New section 7.42 clarifies that to achieve the purposes of part 7, a prescribed officer may impose one or more professional development strategies on a subject officer either instead of, or in addition to, a disciplinary sanction.

The formalisation of professional development strategies in the new police discipline process will provide avenues for risk mitigation to occur while complaints are investigated and provide avenues to ensure officers undertake development strategies to reduce the likelihood of further complaints arising in the future.

Introduction of timeframes to commence disciplinary proceedings

New section 7.12 imposes limitations to the timeframe in which the QPS can commence disciplinary proceedings against an officer. The term ‘disciplinary proceeding’ is defined in new section 7.3 to be ‘a proceeding against the subject officer under division 3 or 4’. Division 3 incorporates the Abbreviated Disciplinary Proceedings and Division 4 incorporates the process for a full disciplinary hearing before a prescribed officer.

Through the imposition of timeframes to commence a disciplinary proceeding, the Bill impliedly imposes a timeframe by which the QPS or CCC must have completed an investigation. This overcomes concerns of stakeholders in relation to the timeliness of the police discipline system.

The timeframes provided in new section 7.12 are dependent upon when a ground for disciplinary action arises. New section 7.13 provides that the date a ground for disciplinary action arises is: (a) the date on which the conduct occurred for single acts or omissions; or (b) if the conduct is part of ongoing conduct of the same or similar nature or arising out of the same circumstances, the ground for disciplinary action arises on the latest day the conduct occurs.

New section 7.12 provides that generally disciplinary proceedings in relation to a complaint must be commenced within the later of (a) one year from the date the disciplinary ground arose; or (b) six months from the complaint being made. This allows for instances where a complaint may not be made about an officer's behaviour until after one year had already transpired.

However, new section 7.13 creates exceptions to when grounds for disciplinary action arise (and therefore the timeframes to commence a disciplinary proceeding). If during a prescribed operation, the Commissioner or the CCC becomes aware of a ground for disciplinary action arising against a subject officer and, if starting disciplinary action against the officer would compromise a prescribed operation, the ground for disciplinary action is taken to arise on the day the operation ends.

Currently, officers charged with criminal offences are not subject to disciplinary proceedings until those charges have been finalised. Often, the disciplinary investigation is also suspended until the criminal charges are finalised. Although these delays are intended to avoid infringing on the natural justice rights of the officer before the criminal courts, it can result in extremely lengthy discipline timeframes. The Bill seeks to improve this by imposing a timeframe to bring disciplinary proceedings within six months of a criminal matter being finalised or withdrawn. This seeks to achieve a balance between timeliness of the discipline investigation and the officer's rights before the criminal courts.

Introduction of Abbreviated Disciplinary Proceedings

In order to further improve the timeliness of the discipline system, the Bill establishes Abbreviated Disciplinary Proceedings (ADP) designed to simplify and improve the timeframes for finalising disciplinary proceedings where there is little doubt the conduct occurred, and the officer readily admits the conduct. A prescribed officer authorised to take disciplinary action may, with the approval of the CCC, at any time during an investigation invite a subject officer to participate in the ADP process instead of a full disciplinary hearing proceeding, thereby creating efficiencies in the disciplinary process. The subject officer may also request the Commissioner to consider commencing the disciplinary proceedings through the ADP process.

The ADP process is not limited to only low-level complaints but can be used in more serious complaints where evidence is compelling, and the officer admits the conduct. In such cases, the sanction proposed and confirmed by the CCC will be reflective of the seriousness of the matter. For example, CCTV may clearly capture an officer committing misconduct. In these cases, significant time and resources can be saved vis a vis conducting unnecessary full investigations into the alleged conduct. A sanction reflective of the seriousness of the inappropriate behaviour would still be offered.

Participation by the subject officer in the ADP process is completely voluntary and prefaced upon informed consent. New section 7.17 requires the invitation to the subject officer to participate in the ADP process to outline the allegations and further particulars. The subject officer is provided with the opportunity to provide submissions to the prescribed officer within a stated period of at least 21 days addressing the complaint and indicating the disciplinary sanction or professional development strategy the subject officer would be prepared to accept.

New section 7.17 has been designed to streamline the disciplinary process by promoting the flow of information between the subject officer and the prescribed officer. Any submissions or other material provided by the subject officer to the prescribed officer under subsection (3), in response to the invitation, do not need to be overly complex, lengthy or legalistic. If further information is needed by the prescribed officer to determine whether to make an offer under section 7.16 or to decide the disciplinary sanction or professional development strategy to be

offered under section 7.16, the prescribed officer can require further information from the subject officer.

This provision strikes a balance between maximising the effectiveness of the ADP process ensuring the prescribed officer and CCC are provided with appropriate information, and the subject officer's right to provide submissions and other material that may be relevant to the matter.

For example, a subject officer may provide submissions that their conduct was out of character and due in part to stress caused by a marriage breakdown and family law matters. Depending on the nature and seriousness of the allegations, the prescribed officer may either accept those submissions, or alternatively, may decide that further information is required. In the latter case, the prescribed officer may issue a written notice requiring the subject officer to give further detailed submissions or supporting evidence, such as medical reports, that are relevant to the prescribed officer's decision to either make an offer under section 7.16 or the appropriate sanction or professional development strategy to offer in the circumstances.

Once the prescribed officer has considered the submissions provided by the subject officer, the prescribed officer must obtain the consent of the CCC prior to making an offer to the subject officer. If the CCC approves the proposed sanction, the prescribed officer may issue an abbreviated process notice to the subject officer, outlining the matters as required in new section 7.18, including the proposed sanction. If the subject officer consents to finalising the matter through the ADP process, the prescribed officer must impose the sanction approved by the CCC.

This process is effective as it allows the CCC to consider any submissions made to a prescribed officer prior to approving the proposed sanctions. The CCC is accordingly informed of relevant matters and can make a definitive decision regarding whether the sanction is appropriate. Therefore, a right to apply for review of an ADP decision by either the CCC or subject officer is not required.

However, if fresh, additional or substituted evidence later becomes available that would have altered the decision of the prescribed officer had it been considered, the CCC or subject officer can apply to QCAT for an order quashing the ADP process and outcome.

For example, the complaint may be relatively minor in nature (for example failing to investigate an offence in a timely manner) and the known sequence of events appears to support the complaint. It may be determined to offer ADP at the outset of the investigation and if the officer accepts his or her conduct was not appropriate, the matter can be finalised quickly and efficiently. However, if it later emerged that the officer had engaged in misconduct in relation to the complaint which was not known at the time of offering ADP, the CCC could apply for QCAT to quash the ADP proceeding and another disciplinary proceeding can be started.

Creation of a central discipline unit

The Bill provides the ability for the Commissioner to create a central unit responsible for conducting disciplinary proceedings. The central unit will ordinarily deal with disciplinary proceedings regarding serious allegations where a subject officer may face the disciplinary sanctions of dismissal, suspension without pay, disciplinary probation, comprehensive transfer or demotion. New section 7.35 restricts the ability to impose these sanctions to prescribed officers of certain ranks. The Commissioner or Deputy Commissioners may impose any disciplinary sanction. However, an Assistant Commissioner is unable to impose the sanctions of dismissal, suspension from duty without pay for longer than 28 days, disciplinary probation or comprehensive transfer.

A central unit that may conduct disciplinary proceedings will improve efficiencies in disciplinary hearings requiring a prescribed officer at the rank of Deputy Commissioner or Assistant Commissioner. The creation of a separate office will alleviate the need for other Deputy Commissioners or Assistant Commissioners to manage the responsibilities associated with their region or command and also attend to disciplinary hearings. Therefore, it is expected that timeframes taken to finalise disciplinary hearings will decrease.

The Commissioner could ordinarily create a unit responsible for disciplinary proceedings through the Commissioner's prescribed responsibilities in the *Police Service Administration Regulation 2016* and allocate appropriate officers to such unit. However new section 7.43 is required to provide officers performing duty at the central unit with the relevant powers of prescribed officers at the rank of Deputy Commissioner or Assistant Commissioner.

New section 7.43 provides that an Assistant Commissioner assigned to the central unit will have the same powers to impose disciplinary sanctions as a Deputy Commissioner. Similarly, an officer of Chief Superintendent rank assigned to the central unit will have the same powers to impose disciplinary sanctions as an Assistant Commissioner.

In order to ensure natural justice for subject officers, new section 7.43 requires the central unit to be separate to the unit involved in investigating complaints (currently known as the Ethical Standards Command). Furthermore, the Assistant Commissioner Ethical Standards Command cannot be responsible for the operation, supervision or command of the central unit; ensuring responsibility for investigations and any subsequent disciplinary hearings are separated. This ensures natural justice is maintained for subject officers as senior officers involved in decision making during investigations are not involved in disciplinary proceedings and the determination of any subsequent sanction resulting from those proceedings.

Crime and Corruption Act 2001

The Bill amends the CC Act by amending the existing chapter 5, part 2 and inserting a new chapter 5, part 3 and new schedule 1. The existing schedule 1 will be relocated to schedule 2.

The current chapter 5, part 2 of the CC Act contains provisions relevant to the review of disciplinary decisions and proceedings in relation to corrupt conduct instituted by the CCC or the chief executive officer of a unit of public administration. These provisions apply not only to police officers, but also any prescribed person, as defined in the CC Act.

The Bill does not amend the provisions in relation to corrupt conduct proceedings being instituted against either police officers or other prescribed persons.

The Bill does however amend the provisions in chapter 5, part 2 that apply to the review of disciplinary decisions relating to police officers. The Bill omits police officers from the application of the existing part 2 provisions regarding the review of disciplinary decisions. However, the amendments do not diminish the ability of the CCC to overview and monitor QPS decisions in disciplinary proceedings.

In order to enhance the scope of the CCC's ability to apply for review of PSAA disciplinary decisions and to cater for the updated and modernised disciplinary sanctions provided in new Part 7 of the PSAA, the Bill inserts new chapter 5, part 3 which specifically provides for rights of the CCC or subject officer to apply to QCAT for the review of a PSAA disciplinary decision. In doing so, the Bill does not affect the existing provisions in chapter 5, part 2 regarding prescribed persons other than police officers or former police officers.

Expanded ability of the CCC to apply for review of a PSAA disciplinary decision

New section 219O provides that a *reviewable decision* for the purposes of new chapter 5, part 3 is a decision made under the PSAA that is mentioned in new schedule 1, column 1. The application for review is to QCAT.

New schedule 1, column 1 provides that the CCC or subject officer can apply for review of a decision to substantiate a disciplinary charge against an officer; a decision to impose or not impose a disciplinary sanction or professional development strategy against an officer; a decision to dismiss or not dismiss an officer in a show cause proceeding under new section 7.36 of the PSAA; or a decision under new section 7.41 of the PSAA to give effect to a suspended sanction or to further continue the suspension. New schedule 1, column 1 also provides that the CCC can apply for review of a QPS decision not to commence disciplinary proceedings against an officer; or a decision not to substantiate a disciplinary charge against an officer.

The inclusion of the ability for the CCC to apply for review of a QPS decision not to commence disciplinary proceedings against an officer implements Recommendation 15 of the PCCC Report. The inclusion of the ability for the CCC or an officer to apply for review of decisions under new sections 7.36 and 7.41 of the PSAA is required as a result of the modernised sanctions and disciplinary processes provided by the amended part 7 of the PSAA.

Part 9 of the PSAA currently provides that officers who are aggrieved about decisions in relation to allegations of a ‘breach of discipline’ can apply for review of the decision before a commissioner for Police Service Reviews. Currently, the CCC is unable to apply for review of a disciplinary decision in relation to a ‘breach of discipline’ as the existing provisions of chapter 5, part 2 of the CC Act only conferred on the CCC an ability to apply for review of decisions regarding ‘misconduct’.

New section 219O and schedule 1 of the CC Act apply to a disciplinary decision under part 7 of the PSAA, regardless of the classification of the ground for disciplinary action. This expands the ability of the CCC to apply for review of decisions relating to conduct that would previously have been classed as a ‘breach of discipline’. This will enhance the oversight and monitoring functions of the CCC in relation to police misconduct where the CCC is of the opinion that the QPS has inappropriately dealt with a complaint by classifying it as a ground for disciplinary action other than misconduct.

As a result of providing the CCC with the ability to apply for review of a decision relating to any ground for disciplinary action, a separate review mechanism in the PSAA is not required for decisions in relation to grounds for disciplinary action other than misconduct. The right of an officer to apply for review of these decisions is not affected, other than relocating the relevant provisions to the CC Act. The ability of both officers and the CCC to apply for review of decisions that were previously classified as a ‘breach of discipline’ will be contained in the new chapter 5, part 3 of the CC Act. Therefore, the Bill also amends part 9 of the PSAA to omit the ability of officers to apply for review of decisions regarding ‘breaches of discipline’.

The Bill also establishes the parties to a review. New section 219R provides that the applicant for review and the decision maker are parties to the review. If the CCC is the applicant for review, the subject officer to whom the decision relates is automatically joined as a party.

If the applicant is the subject officer, new section 219P requires that a copy of the application for review is given to the CCC. In this case, new section 219R then provides that the CCC has a specified timeframe after receiving notice of the review to decide whether they will be joined as a party to the review. This alleviates the need for the CCC to apply to QCAT to be joined as

a party. Once the subject officer or CCC are joined as a party, they may file a counter-application according to the provisions of the *Queensland Civil and Administrative Tribunal Rules 2009*.

New chapter 5, part 3 also contains procedural provisions relevant to applications for review of disciplinary decisions under part 7 of the PSAA. In order to avoid confusion with the amended part 2, some provisions have been replicated in part 3 to ensure they remain applicable to applications for review of police disciplinary decisions and the operation of the remaining provisions in part 2 are not adversely affected by the new part 3.

Alternative ways of achieving policy objectives

There are no alternative means of achieving the policy objectives other than by legislative reform.

Estimated cost for government implementation

Any costs arising from the implementation of the Bill are expected to be minimal and will be met from existing budgets.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* (LSA) by achieving an appropriate balance between the individual rights and liberties of the police officers and recruits subject to the Bill and the need to ensure accountability, community confidence and the highest standards of professional behaviour of the QPS. There are however, a number of proposed amendments that may be perceived as inconsistent with the fundamental legislative principles.

These amendments and their relationship with the fundamental legislative principles are addressed below.

Whether a Bill has sufficient regard to the rights and liberties of individuals (Sections 4(2)(a) and 4(3) of the LSA)

Consistency with natural justice

The Bill contains provisions outlining how allegations of misconduct and other grounds for disciplinary action against police officers and recruits are to be dealt with. Significant consequences can be imposed on an officer if complaints are substantiated, including termination of his or her employment. However, the Bill ensures that natural justice is maintained throughout the discipline process.

Complaints will be investigated in accordance with QPS policy as agreed by representatives of the QPS Ethical Standards Command, the CCC, the QPUE and QPCOUE. If prima facie evidence exists to substantiate an allegation, the officer is afforded the right to be heard before any decision is made by a prescribed officer about the complaint and before the prescribed officer imposes any sanction or professional development strategy they consider appropriate.

The Bill provides two mechanisms for allegations against an officer to be decided namely:

- introducing the ADP process which may be employed where there is little doubt the conduct occurred and the officer readily admits the conduct; and
- retaining the disciplinary hearing process before a prescribed officer for matters that are not suitable for ADP, or where officers wish to contest the allegations or proposed sanction.

In all instances, the subject officer is afforded natural justice.

The Bill provides that the ADP process is initiated by the prescribed officer (being the Commissioner, Deputy Commissioner, Assistant Commissioner or another Commissioned Officer assigned to deal with the complaint). However, a subject officer may ask the Assistant Commissioner, Ethical Standards Command to consider commencing an ADP process. If an ADP is commenced, the Bill requires the prescribed officer to provide written notice to the subject officer outlining the details of the complaint and further particulars of the allegation. The subject officer is afforded the opportunity to provide written submissions and supporting materials addressing the complaint and proposing a sanction the subject officer would accept if they were to admit the allegations.

The Bill requires the prescribed officer to consider any submission or other material provided by the subject officer before issuing a further notice containing details of the allegation; the sanction or professional development strategy proposed to be imposed; the timeframe of “a reasonable period of at least 21 days” for the officer to consider the sanction; and details in relation to the effects of accepting the sanction. Importantly, the matter is not finalised, and the officer is not taken to have admitted the conduct, until they accept the sanction and it is imposed.

It may be suggested that the ADP process could be seen to limit natural justice by being decided solely on the papers. However, this concern is mitigated as the previous Scrutiny Committee has not expressly objected to such processes and, further, the officer’s participation in the ADP process is voluntary. The objective of ADP is to ensure a speedy resolution of matters where there is little doubt the alleged conduct occurred, which justifies the process being conducted on written submissions only. Additionally, regardless of the weight of evidence appearing to indicate guilt, an officer can refuse to participate in the ADP. If the officer does not accept the offer to participate in the ADP process, the complaint will be heard through normal disciplinary hearing processes before a prescribed officer.

Procedural fairness is also maintained for officers, regardless of whether the allegations are tested in the ordinary disciplinary hearing process or the ADP. All disciplinary proceedings are instigated by a written notice outlining the allegations and must be supported by further and better particulars.

The agreed internal policies supporting the legislative framework introduced by the Bill will also ensure that the prescribed officer assigned to hear any disciplinary proceedings will not have been involved in the investigation, therefore providing an unbiased decision maker. The Bill provides that if the Commissioner establishes a central unit that is responsible for conducting disciplinary proceedings, the central unit must be separate from the command established to investigate complaints. This requirement eliminates the possibility that in matters before the central unit, the prescribed officer has been involved in any decision making during the investigative process. In other disciplinary proceedings not before the central unit, the agreed internal policy ensures that the prescribed officer has not been involved in the investigation.

The QPS policy promoting natural justice in disciplinary proceedings will be enshrined by the proposed section 7.32 ‘Principles for conducting disciplinary proceeding’ of the Bill. This section expressly provides that a prescribed officer when conducting disciplinary proceedings (including the ADP process) must observe the rules of natural justice. Further principles listed in this section must be read subject to this requirement. These requirements include that a prescribed officer:

- must act as quickly and informally as is consistent with a fair and proper consideration of the matters;
- is not bound by the rules of evidence;
- may get information on a matter in a way they consider appropriate; and
- may decide the procedures for the hearing, subject to any guidelines made under section 7.44.

Natural justice is also maintained in that any reviewer of the original decision will not be the original decision maker. The provisions in the Bill relating to the ability of a subject officer to apply for review of a decision enhance natural justice by providing that reviews of disciplinary proceedings are heard at QCAT.

Reviewing the use of administrative power

The Bill establishes an avenue for subject officers to apply for review of both a decision to substantiate allegations against them and the sanction that is imposed in any disciplinary proceeding before a prescribed officer.

However, neither the subject officer nor the CCC can ordinarily review a sanction imposed through the ADP process. This may be considered to infringe upon natural justice as there is no review of the use of an administrative power. Section 4(3)(a) of the LSA requires that legislation should make rights and liberties, or obligations, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review. The previous Scrutiny Committee was generally opposed to legislation that removed rights of review. However, the Committee did acknowledge this can be justified by the overriding significance of the legislation.

In relation to the ADP processes, the lack of ordinarily available review rights for the subject officer is justified as the officer must consent to operation of the ADP process and proposed sanction. Furthermore, this consent is fully informed consent, in that the officer is required to be provided with the particulars of the allegation, proposed sanction and the consequences of agreeing to the ADP process, including the impact upon their disciplinary history and the lack of review rights.

The Bill provides safeguards to the subject officer during the ADP process. If the subject officer does not agree to participating in the ADP process at any stage, the ADP offer is withdrawn, and a disciplinary hearing can be implemented before a prescribed officer. Additionally, any request to participate in the ADP by the subject officer or any submissions or additional material provided by the subject officer may not be used in any proceedings after the ADP process ends.

The Bill provides a mechanism for either the CCC or the subject officer to apply for QCAT to seek an order to quash the ADP sanction in the limited circumstances that ‘fresh, additional or substituted evidence (new evidence) later emerges’ that would have affected the decision of the prescribed officer had it been known earlier. However, QCAT must be satisfied that the new evidence would have had a considerable effect on the sanction and it is in the interests of justice to quash the proceeding.

Therefore, the Bill allows flexibility to ensure that officers cannot hide serious misconduct by quickly accepting an ADP offer before the QPS or CCC are aware of their further misbehaviour. However, the officer's rights to certainty of outcome are safeguarded by requiring QCAT to be satisfied that the new evidence would have had a considerable effect on the sanction and it is in the interests of justice to quash the ADP sanction.

The ADP process is designed to overcome the significant criticisms that have been made of the current police discipline system, whereby lengthy and complex processes are undertaken for allegations that are either relatively simple or minor in nature; or alternatively, even where the matter is serious, the officer has admitted to the conduct.

Therefore, the lack of review rights ordinarily available to subject officers is justifiable when regard is had to the objectives of the ADP process and the requirement for informed consent of the subject officer. It is also important to note that the relevant industrial bodies representing police officers, namely the QPUE and QPCOUE support the ADP processes.

Retrospectivity

The Bill imposes timeframes for the imposition of disciplinary proceedings in relation to a complaint against an officer. The proposed section 7.12 'When disciplinary proceeding must be started' will require the QPS to commence a proceeding against a subject officer within the latter period of (a) 1 year from when the ground for disciplinary action arose; (b) 6 months from the date a complaint was received about the ground for disciplinary action; or (c) 6 months from the conclusion of any relevant criminal proceeding. Furthermore, the proposed section 7.13 'When ground for disciplinary action arises' delays the date on which the ground for disciplinary action is taken to have arisen in certain circumstances.

The effect of these provisions is that the proposed disciplinary processes introduced by the Bill would apply to an officer's conduct that occurred prior to the commencement of the Bill.

Section 4(3)(g) of the LSA outlines that legislation should not retrospectively affect rights and liberties or impose obligations retrospectively. The previous Scrutiny Committee brought to Parliament's attention any provisions in a Bill that had retrospective application, regardless of whether the Scrutiny Committee was concerned about the implications of the provisions.

The Scrutiny Committee had regard to the following factors when evaluating the effect of provisions with retrospective effect:

- a) whether the retrospective application is beneficial to persons other than the Government; and
- b) whether individuals have relied on the legislation and have a legitimate expectation under the legislation before retrospective clauses commence.

The Scrutiny Committee had no concerns regarding retrospective legislation that did not adversely affect any person other than the State. However, the Scrutiny Committee did object to the retrospective imposition of a liability to pay a penalty.

The retrospective application of the Bill is justified in this instance. The current provisions of the PSAA do not contain timeframes within which disciplinary proceedings must be commenced. In fact, this limitation is one of the major criticisms of the current police disciplinary system, in that relatively simple investigations can take an inordinate time to resolve and any disciplinary proceedings can be instituted several years after the complaint was made or the matter arose. The Bill resolves these complaints by implementing timeframes and creating an ADP.

The PSAA does not currently provide a maximum timeframe in which a complaint about an officer's conduct must be made. For example, a complaint could be received in 2018 regarding conduct alleged to have occurred in 2013. This complaint would be investigated and if sufficient evidence exists, disciplinary proceedings would be commenced. This is an important mechanism to ensure that the community can make complaints about an officer's conduct regardless of when it occurred, thereby ensuring the highest standards of police conduct are maintained by preventing officers from escaping disciplinary action simply because a complaint was not made within a specified time.

The Bill maintains this position, however requires the QPS and CCC to work efficiently and allocate appropriate resources to investigate and resolve the complaint within a specified time. If sufficient evidence exists to institute disciplinary proceedings, they must be commenced within the specified timeframe. A failure to institute disciplinary proceedings within the required time after the complaint was received or the grounds for disciplinary action arose will prevent the QPS from bringing disciplinary action. However, this failure does not prevent the CCC from commencing proceedings for 'corrupt conduct' if appropriate.

The Bill does not retrospectively amend the grounds for disciplinary action against an officer. While the language used in proposed section 7.4 'Grounds for disciplinary action' has been modernised, the Bill does not alter in substance or excuse an officer from the consequences of engaging in the underlying behaviours that give rise to disciplinary action. Therefore, the Bill does not retrospectively impose different obligations or standards upon officers.

The amendments contained in the Bill have no effect on the wider community, except to ensure a speedy resolution of any complaint they make against an officer.

The Bill's effect on officers is, on-balance, positive therefore reducing concerns in relation to the retrospective application of the Bill. The improved and modernised disciplinary sanctions have been sought and approved by the industrial bodies representing officers, being the QPUE and QPCOUE. Updated disciplinary sanctions of professional development strategies, community service, and the replacement of the sanction of deferring salary increments with increased maximum fines, will all have a positive outcome for officers' subject to disciplinary action.

Transitional provisions in the Bill balance the advantages of the modernised disciplinary sanctions and processes with natural justice requirements for the subject officer. Disciplinary proceedings already commenced against an officer will be continued under the current provisions of the PSAA if the prescribed officer has already determined that the allegation is substantiated. In this case, any sanction imposed on the subject officer will be in accordance with the current provisions of the PSAA and Discipline Regulation. However, if the officer consents to the withdrawal of the disciplinary proceeding, the existing proceeding can be withdrawn, and a new proceeding commenced under the amended Part 7.

If a disciplinary proceeding has been commenced but the prescribed officer has not yet determined if the allegations are substantiated, the disciplinary proceeding will be conducted under the amended Part 7. In these situations, the modernised sanctions and review processes will be available. These transitional arrangements recognise that these modernised sanctions have been sought and agreed to by the QPUE and QPCOUE, and that these sanctions are more appropriate than the current provisions, regardless of when the conduct is alleged to have occurred. The CCC has also agreed to these transitional arrangements, recognising that the provisions are designed to maximise the benefits of the modernised sanctions for officers already facing disciplinary allegations.

Therefore, the retrospective application of the Bill is justified to ensure continued high levels of officer behaviour, ensure community confidence is maintained by holding officers to account where required and providing access to the benefits of the modernised disciplinary processes and sanctions for conduct that had already occurred, but not been reported.

Whether a Bill has sufficient regard to the institution of Parliament (Sections 4(2)(b) and 4(4) of the LSA)

The Bill has been drafted to ensure sufficient regard is had to the institution of Parliament. The Bill repeals the current *Police Service (Discipline) Regulations 1990* and includes all amendments necessary to place the agreed policy position into the PSAA or the CC Act. Consequently, the Bill cannot be considered to inappropriately delegate significant legislative power into subordinate legislation.

The Bill provides a definition of ‘professional development strategy’ that is comprehensive. However, the Bill also provides for the definition to be extended by regulation. The previous Scrutiny Committee examined the power to modify a list contained in an Act by another instrument and in some instances determined this to be an inappropriate delegation of legislative power. However, in this instance, it is impractical to list all possible or future strategies that could assist the professional development of officers. Furthermore, any addition to the list would not have far reaching consequences and would have no effect outside of authorising additional training or other mechanisms to assist in developing the professionalism of officers.

The Bill also provides that the Commissioner can make policy and guidelines on the way investigations and disciplinary proceedings are to be conducted. It is appropriate for the Bill to outline the major components and requirements of the discipline process and to allow the Commissioner to make policy that provides guidance and instruction on how that legislation is to be applied. Any policy or guidelines that are made must be consistent with the framework and requirements contained in the Bill. The Bill expressly provides that natural justice must be maintained and also contains numerous provisions to ensure this is achieved.

Section 4.9 ‘Commissioner’s directions’ of the PSAA allows the Commissioner to make policy or give directions to officers and staff members to discharge the Commissioner’s prescribed responsibilities and for the efficient and proper functioning of the Service. The Commissioner has prescribed responsibility for the discipline of members of the QPS, in accordance with section 7(k) ‘Particular matters within scope of prescribed responsibility’ of the *Police Service Administration Regulation 2016*.

Therefore, the ability for the Commissioner to make guidelines in relation to the discipline process is consistent with the powers and responsibilities of the Commissioner that are already provided for in legislation. The fairness of these policies and QPS compliance with them will be promoted by the involvement of the relevant industrial bodies in their formulation.

Consultation

A consultation draft of the Bill was sent to the following key community stakeholders:

- Aboriginal and Torres Strait Islander Legal Service;
- Bar Association of Queensland;
- Crime and Corruption Commission;
- Queensland Council for Civil Liberties;
- Queensland Law Society;

- Queensland Police Commissioned Officer's Union of Employees; and
- Queensland Police Union of Employees.

The stakeholders were advised that any comment they wished to make in relation to the draft Bill would be held in confidence. The consultation process was undertaken confidentially to ensure stakeholders could make uninhibited comment on the proposed Bill without concern that their responses would be made public.

All stakeholders made submissions in relation to the Bill.

A number of amendments were made to the Bill as a result of the comments provided by stakeholders, including:

- recommendations throughout the Bill to improve the clarity and consistency of the drafting style;
- increasing the minimum timeframe for officers to respond and provide submissions in either the abbreviated disciplinary proceeding or a disciplinary proceeding before a prescribed officer;
- requiring any notices that are to be served on an officer to also be served on the officer's legal representative (if known); and
- clarifying that both the CCC and the subject officer can apply for review of a show cause decision regarding the implementation of a suspended sanction.

Consistency with legislation of other jurisdictions

The Bill amends legislation that is specific to the State of Queensland and is not part of uniform national legislation.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 states that, when enacted, the Bill may be cited as the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*.

Part 2 Amendment of Police Service Administration Act 1990

Clause 2 Act amended

Clause 2 provides that this part will amend the *Police Service Administration Act 1990*.

Clause 3 Amendment of s 1.4 (Definitions)

Clause 3 amends section 1.4 by inserting definitions required for the operation of the new discipline system introduced by the amending Act and omitting those which are superfluous as a consequence of the amending legislation.

The term ‘breach of discipline’ and ‘disciplinary ground’ have been omitted as the behaviour and activities that would fall within these definitions are captured under the new amalgamated definition of ‘ground for disciplinary action’, which includes the current term ‘misconduct’.

Clause 3 also relocates the wording of the definition of ‘disciplinary action’ to part 7, section 7.3 ‘Definitions for part’.

This clause also provides a definition of ‘senior officer’ which will apply for the purposes of new part 7 and renumbered section 2.3AA. A senior officer will be defined to mean, in relation to another officer (the subordinate):

- an officer designated as the subordinate’s senior officer in accordance with established administrative arrangements or policies; or
- if there is no such officer:
 - an officer holding a higher rank than the subordinate as prescribed by regulation; or
 - an officer of the same rank but who has held that rank for a longer period; or
 - an officer of the same rank and who has held that rank for the same period but has been an officer for a longer period of continuous service.

Clause 4 Amendment of s 5A.23 (Limitation on disciplinary proceedings)

Section 5A.23 provides that if two or more contraventions of part 5A (Alcohol and drug tests) by a person to whom part 5A applies arise from the same set of circumstances, a disciplinary proceeding against the person may be started for only one disciplinary offence.

Clause 4 amends section 5A.23 to clarify that for the purposes of the limitation on disciplinary proceedings, a disciplinary proceeding not only includes serving police officers or a recruit but may include a former officer under part 7A.

Clause 5 Insertion of new pt 6A, hdg

Clause 5 inserts the heading for new part 6A ‘Reporting obligations of officers and staff members’ into the *Police Service Administration Act 1990*. Later clauses 7 and 8 relocate existing sections 7.2 ‘Duty concerning misconduct or breaches of discipline’ and 7.3 ‘Offence of victimisation’ into this new part, therefore allowing part 7 to be devoted to the discipline process for officers.

Clause 6 Amendment, relocation and renumbering of s 7.1 (Responsibility for command)

Clause 6 amends section 7.1 by replacing the wording of subsection (1)(c) - (e) with ‘action taken, is the senior officer who is present’. The amendment reflects that the officer responsible for command at an incident that calls for action by police will be the senior officer present. This clause must be read in conjunction with the new definition of ‘senior officer’ in section 1.4 ‘Definitions’.

Currently, determining who is responsible for commanding an incident requires officers to identify administratively, whether a particular officer has been designated that function. If there is no such designation, the officer of the most senior rank is then considered to be responsible for any police action in response to the incident. If there are two or more officers of the most senior rank at an incident, the officer of the greatest length of continuous service is considered to be responsible for the policing response to that incident. This may result in a newly promoted officer being responsible for command due to their overall length of service, despite the presence of an officer with longer experience at the same rank but less overall service.

It is considered that the determining factor in designating responsibility in command should be the length of time spent at the highest rank, as officers gain improved supervisory and leadership skills when working continuously at a higher rank.

The amendment will assist police officers to determine who should be responsible for command at any incident that calls for police action. In instances where two or more police officers of the same rank are at an incident, the new definition of ‘senior officer’ will deem the officer who has been at the most senior rank for the longest period is responsible for command.

Reference to the length of an officer’s continuous service will also be used to determine command in instances where two or more officers present at an incident were promoted to the same rank at the same time.

The amended definition also ensures a consistent approach in determining seniority for both discipline and incident command processes under the *Police Service Administration Act 1990*.

Clause 6 relocates section 7.1 to part 2 of the *Police Service Administration Act 1990* and renumbers this provision as a new section 2.3AA.

Clause 7 Amendment, relocation and renumbering of s 7.2 (Duty concerning misconduct or breaches of discipline)

Section 7.2 places reporting obligations upon any officer or staff member who knows or reasonably suspects an officer is engaging in inappropriate conduct regardless of whether the other officer is on or off duty. This section also requires all officers to take the prescribed action within their authority if they become aware of behaviour that is misconduct or a breach of discipline.

Clause 7 omits reference to the term ‘breaches of discipline’ in the heading of section 7.2 and inserts the new term ‘grounds for disciplinary action’. The new part 7 ‘Discipline process for officers’ defines ‘ground for disciplinary action’ to mean a range of activities and behaviours that would constitute a breach of discipline. Consequently, the term a ‘breach of discipline’ has become superfluous.

This clause does not obviate any current reporting obligations or the existing duty of an officer or a staff member to report instances of known or suspected misconduct by an officer. Instead, this amendment expands the scope of actions that an officer may undertake in response to known or suspected misconduct or any other ground for disciplinary action, by authorising the officer to use any action that is warranted and reasonable in the circumstances that will achieve the purposes of part 7. This amendment is an improvement on the current position that limits the action an officer may take to those prescribed under regulation.

Finally, this clause relocates and renumbers section 7.2 to section 6A.1 under the new part 6A.

Clause 8 Amendment, relocation and renumbering of s 7.3 (Offence of victimisation)

Clause 8 makes a technical amendment to section 7.3 by replacing a reference to section 7.2 with section 6A.1 and by relocating and renumbering this section as section 6A.2.

Clause 9 Replacement of pt 7 (Internal command and discipline)

Clause 9 omits the current part 7 (Internal command and discipline) and inserts the new part 7 (Discipline process for officers). This new part consists of sections 7.1 to 7.46 which are explained below:

Part 7 Discipline process for officers

Division 1 Preliminary

7.1 Main purposes of part

New section 7.1 outlines the main purposes of the discipline system. The objectives of the current discipline system are contained in section 3 ‘Object’ of the *Police Service (Discipline) Regulations 1990*, which outlines that the current discipline system is designed to guide, correct, chastise and discipline subordinate officers and ensure appropriate standards of discipline are maintained with the QPS.

This amendment will relocate these existing objectives from the *Police Service (Discipline) Regulations 1990* into the new section 7.1 and will modernise the drafting language by omitting the reference to ‘chastising’ an officer as a purpose of the part. New section 7.1 also introduces an additional purpose for new part 7, being to rehabilitate an officer and also clarifies that recourse to disciplining an officer is only required if it is necessary to do so.

Furthermore, the purposes of the part are also to ensure appropriate standards of discipline are maintained within the QPS to:

- (i) protect the public; and
- (ii) uphold ethical standards within the QPS; and
- (iii) promote and maintain public confidence, and officers’ confidence, in the QPS.

This amendment reflects the policy objectives of the new discipline system which includes a focus on managing and improving the behaviour of officers, rather than merely imposing

sanctions on individual officers. However, where management actions are not sufficient, and it is necessary to discipline an officer, part 7 provides the procedure to be undertaken. This is reflective of the purpose of discipline systems adopted in the public sector generally.

Clause 17 repeals the *Police Service (Discipline) Regulations 1990* as this regulation will become superfluous through relevant provisions being inserted in the *Police Service Administration Act 1990* by the amending Act.

7.2 Application of part

New section 7.2 provides that part 7 applies to a complaint about an officer (the subject officer) that has been received by the Commissioner of Police (the Commissioner) or the CCC, and the CCC has not assumed responsibility for investigating the complaint under the *Crime and Corruption Act 2001*. New section 7.7 details when a complaint is taken to have been ‘received’ by either the Commissioner or the CCC.

An officer is defined in new section 7.3 to include a police recruit for the purposes of part 7.

7.3 Definitions for part

Clause 9 inserts a new section 7.3 which defines words and terms used in part 7 including key terms such as ‘disciplinary action’, ‘disciplinary history’, ‘officer’, ‘prescribed officer’, ‘professional development strategy’, ‘service history’ and ‘subject officer’.

‘Disciplinary action’ is defined to mean a disciplinary proceeding or the imposition of a professional development strategy under part 7.

‘Disciplinary history’ of an officer includes disciplinary action taken against the officer; complaints made against the officer in relation to which a disciplinary proceeding was started but the disciplinary charge was not proved; and complaints made against the officer for which no disciplinary action was taken.

The definition of an ‘officer’ for the purposes of part 7 includes a recruit.

A ‘prescribed officer’ is defined to be an officer mentioned in existing section 2.2(2)(a), (b) or (c) who holds a rank above the rank of the subject officer. Existing section 2.2(2)(a), (b) and (c) refers respectively to the Commissioner, persons holding an appointment as an executive police officer, and persons holding an appointment as a commissioned officer. Schedule 1 of the *Police Service Administration Regulation 2016* provides executive police officers are officers holding the rank of deputy commissioner or assistant commissioner; and commissioned officers are officers holding the ranks of chief superintendent, superintendent or inspector.

A ‘professional development strategy’ is instigated by a senior officer or a prescribed officer and is to be undertaken by a subject officer. Professional development strategies may require the subject officer to do one or more of the following things:

- be mentored for a stated period not longer than 6 months;
- be subject to closer supervision for a stated period not longer than 6 months;
- comply with additional reporting obligations for a stated period not longer than 6 months;
- complete internal training;
- complete external training or professional development, at the expense of the service or subject officer;

- undertake counselling, whether provided within the service or externally, at the expense of the service or the subject officer;
- receive guidance;
- undertake a temporary reassignment of duties for a stated period not longer than 6 months;
- undertake or complete another program, development or strategy, at the expense of the service or the officer and with the subject officer's agreement;
- anything else prescribed by regulation.

'Service history' of an officer includes the rank and positions held by the officer; the officer's performance history, other than matters included in the officer's disciplinary history; and other matters related to the officer's service.

The term 'subject officer' is defined in new section 7.2 as an officer about whom a complaint has been made.

A 'ground for disciplinary action' is defined in new section 7.4.

7.4 Grounds for disciplinary action

New section 7.4 details the circumstances that may cause a subject officer to be disciplined under part 7. These circumstances include if the subject officer has:

- committed misconduct;
- been convicted either in Queensland of an indictable offence or outside of Queensland of an offence that would be an indictable offence in Queensland;
- performed his or her duties carelessly, incompetently or inefficiently; or
- without reasonable excuse:
 - been absent from duty without approved leave; or
 - contravened:
 - a provision of the *Police Service Administration Act 1990* or the *Police Powers and Responsibilities Act 2000*;
 - a code of conduct that applies to the subject officer; or
 - a direction by the Commissioner under the *Police Service Administration Act 1990* or a senior officer with authority to give the direction.

Section 7.4 further clarifies that for the purposes of the section, a subject officer is *convicted* of an indictable offence if a court makes a finding of guilt or the officer pleads guilty, regardless of whether the conviction is recorded or not recorded.

7.5 Imposition of professional development strategies etc.

New section 7.5 explains the term 'temporary reassignment of duties' as it pertains to a 'professional development strategy' and imposes safeguards to ensure the fairness of a 'temporary reassignment' on a subject officer. A temporary reassignment of duties may only be imposed against a subject officer if the officer is not required to travel more than 40 kilometres by road from the officer's place of residence to the location of the officer's reassigned duties without the officer's consent; and during the reassignment, the officer's salary, allowances and other entitlements are not less than they were immediately before the reassignment.

Subsection (2) also clarifies that nothing in part 7 limits a senior officer from:

- reasonably imposing professional development strategies on the subject officer in relation to a ground for disciplinary action; or
- providing the subject officer guidance in relation to inappropriate acts or omissions in the performance of the subject officer's duty.

Subsection (3) provides that subsection (2) applies even if the period for starting a disciplinary proceeding against the subject officer (as provided in section 7.12) has ended. This allows the QPS to impose professional development strategies on an officer, where appropriate, even in circumstances where a disciplinary proceeding cannot commence due to the expiration of the timeframe outlined in new section 7.12.

7.6 Corrupt conduct

New section 7.6 clarifies that nothing in this part prevents the CCC or the Commissioner starting a proceeding for corrupt conduct under the *Crime and Corruption Act 2001*. This section provides that if a corrupt conduct proceeding is commenced, and a disciplinary proceeding for the relevant conduct has been started but is yet to be finalised, the disciplinary proceeding is taken to have been withdrawn and is of no effect.

7.7 When complaints are received

New section 7.7 states that a complaint is taken to be received by the Commissioner or the CCC when it is recorded in an electronic system for complaints management. Where more than one complaint is received by the Commissioner or the CCC about the same matter or substantially similar matters, the complaints are taken to be received when any of the complaints is first recorded. A complaint must be recorded as soon as reasonably practicable after it is made.

One of the policy objectives of the new discipline system is to improve the timeliness of dealing with complaints. New section 7.7 when read in conjunction with new sections 7.12 and 7.13 helps meet this objective by imposing timeframes by which investigations must be finished and any resulting disciplinary proceedings commenced.

7.8 Requirement to give notices to subject officer's lawyer

New section 7.8 places a requirement upon a person who may give a notice to a subject officer under this part to give a copy of the notice to the subject officer's lawyer. This obligation only arises if the person is aware that the subject officer is legally represented. Failure to provide a copy of the notice to the subject officer's lawyer does not affect the validity of the notice given to the subject officer, or the person's compliance with the respective section of part 7 that required or permitted the notice to be given to the subject officer.

Division 2 Preliminary provisions for starting disciplinary proceedings

7.9 Implementation of professional development strategies by commissioner

New section 7.9 obliges the Commissioner to consider implementing a professional development strategy in response to a complaint received about a subject officer. This

obligation arises upon the receipt of the complaint by the Commissioner, regardless of whether the complaint was first recorded by the CCC. The professional development strategy must be implemented, in a reasonable way, as soon as practicable after the ground for disciplinary action arises.

Further, this section outlines that professional development strategies may be implemented to reduce the risk of recurrence of similar conduct, to improve the subject officer's performance or for any other purpose. This section emphasises that professional development strategies are designed to enhance the performance of subject officers, benefiting those individuals and the QPS as an organisation, rather than acting as a punitive measure.

New section 7.35 requires that any professional development strategy imposed under this section must be considered by a prescribed officer for deciding what, if any, disciplinary sanction may be imposed against a subject officer.

7.10 Referral of complaint to prescribed officer

New section 7.10 outlines the considerations that must be made by the Commissioner in deciding whether to refer a complaint to a prescribed officer for consideration of disciplinary proceedings. After first having considered whether a professional development strategy should be imposed under new section 7.9, the Commissioner must have regard to:

- any professional development strategy, or management action that has been implemented in relation to the subject officer;
- whether implementation of another professional development strategy would be sufficient to achieve the purposes in section 7.1(b);
- the subject officer's disciplinary and service history;
- the seriousness of the conduct to which the complaint relates; and
- whether it is necessary to take disciplinary action against the subject officer to achieve the purposes mentioned in section 7.1(b), which includes ensuring that appropriate QPS discipline standards are maintained.

7.11 Requirements for starting disciplinary proceeding

New section 7.11 applies if, after considering the matters outlined in section 7.10, the Commissioner determines that a complaint against a subject officer should be referred to a prescribed officer to commence disciplinary action. A prescribed officer may only start a disciplinary proceeding against the subject officer if the prescribed officer reasonably believes there is a ground for disciplinary action against the officer.

7.12 When disciplinary proceeding must be started

New sections 7.12 and 7.13 address concerns that the current discipline system lacks timeliness in resolving some complaints, by providing strict timeframes within which a disciplinary proceeding against a subject officer must be started.

New section 7.12 provides that a disciplinary proceeding must start within the latest of the following periods:

- within 1 year from the date the ground for disciplinary action arose; or
- within 6 months from a complaint under part 7 being received by the Commissioner or the CCC; or

- if a relevant criminal proceeding in relation to the complaint has been commenced, within 6 months from the date the criminal proceeding has been finalised.

In calculating the period to commence a disciplinary proceeding, any time that the subject officer is absent from duty is not counted if the Commissioner can demonstrate the absence caused or contributed to a delay in starting a disciplinary proceeding. For example, a subject officer may be considered to be absent from duty in the context of this section if the subject officer is on leave and cannot be contacted for a protracted period.

The section also provides that a disciplinary proceeding starts when an abbreviated process notice or a disciplinary proceeding notice is given to the subject officer by the prescribed officer. In this section 'relevant criminal proceeding' is defined as a criminal proceeding in relation to conduct that substantially relates to the ground for disciplinary action.

7.13 When ground for disciplinary action arises

New section 7.13 provides that a ground for disciplinary action arises on:

- if there is only a single act or omission that constitutes the grounds - the day the conduct occurred;
- if the ground relates to ongoing conduct of the same or a similar nature - the latest day on which the conduct occurs; or
- the day a prescribed operation ends if, during the operation, the Commissioner or the CCC becomes aware of a ground for disciplinary action and the relevant officer overseeing part or all of the operation reasonably believes that starting disciplinary action may compromise the operation.

This section defines a prescribed operation to mean an investigation by the CCC, a controlled activity or controlled operation under the *Police Powers and Responsibilities Act 2000* or the *Crime and Corruption Act 2001*, or a specific intelligence operation under the *Crime and Corruption Act 2001*. This section also defines a relevant officer to mean the Commissioner, the Chairperson of the CCC or their respective delegate.

If it is determined that the grounds for disciplinary action arose during a prescribed operation being conducted by the CCC, the Chairperson must provide a statutory declaration or report to the Commissioner outlining the information required by subsection (6). Similarly, if the prescribed operation was undertaken by the QPS, the Commissioner must issue a notice outlining the information required in subsection (6). The information includes:

- that the CCC or the Commissioner, as the case may be, became aware of a ground for disciplinary action against a named officer during a prescribed operation;
- the dates the operation started and ended; and
- a named relevant officer overseeing all or part of the operation reasonably believed that the operation would have been compromised if disciplinary action against the named officer had been started before the operation was finalised.

7.14 Examination by medical practitioner

New section 7.14 provides that if a prescribed officer is considering starting disciplinary action in relation to the subject officer's absence from duty, the prescribed officer may appoint a medical practitioner to examine the subject officer and report on the subject officer's mental or physical condition.

To facilitate a medical examination, this section authorises the prescribed officer to direct the subject officer to submit to the examination. A report on the medical examination must include the medical practitioner's opinion as to whether the subject officer's mental or physical condition was a cause of the subject officer's absence from duty. In order to ensure procedural fairness, the Commissioner must provide a copy of the report to the subject officer.

Division 3 Abbreviated disciplinary proceedings

Subdivision 1 Preliminary

7.15 Application of division

New section 7.15 introduces a further mechanism for disciplinary proceedings, namely an abbreviated disciplinary proceeding. Abbreviated disciplinary proceedings will enhance the efficiency and timeliness of finalising complaints particularly where the circumstances surrounding a matter are not in dispute or an officer readily admits to inappropriate behaviour.

This section provides that an abbreviated disciplinary proceeding only applies if a disciplinary proceeding under division 4 relating to the complaint has either not been started, or if a disciplinary proceeding has been started, it has not been finally dealt with.

Subdivision 2 Invitation and making of offer

7.16 Offer to impose disciplinary sanction or professional development strategy

New section 7.16 authorises a prescribed officer to offer a disciplinary sanction or a professional development strategy to a subject officer through an abbreviated disciplinary proceeding regardless of whether the investigation of the relevant complaint has been started or finalised.

The ability to offer an abbreviated disciplinary proceeding to an officer regardless of the status of the investigation will assist in improving the timeliness and efficiency of the police discipline system. For example, initial investigations may uncover sufficient evidence to establish that the complaint has merit and the matter can be finalised efficiently by making an offer to the subject officer to participate in an abbreviated disciplinary proceeding at an early stage, as opposed to delaying the matter to finalise the investigation for potentially little added benefit.

The offer to participate in an abbreviated disciplinary proceeding may only be made with the consent of the CCC, which may be sought after the prescribed officer has complied with new section 7.17. This requirement ensures the CCC retains and fulfils its monitoring function in relation to police misconduct by confirming that the QPS is not inappropriately finalising matters that may require further investigation or imposing a sanction on the subject officer that is inappropriate.

7.17 Requirement to give subject officer an invitation and ability to seek further information

New section 7.17 outlines the procedural requirements that must be complied with by the prescribed officer when inviting a subject officer to participate in an abbreviated disciplinary proceeding. Prior to the prescribed officer seeking the consent of the CCC as required under

new section 7.16, the prescribed officer must comply with subsections (2), (3) and if relevant, subsection (4). Section 7.17(2) requires that the prescribed officer must first give the subject officer a written notice (an invitation) stating:

- the date and details of the complaint and the alleged ground for disciplinary action;
- any further particulars necessary to identify the conduct alleged to constitute the ground for disciplinary action; and
- that within a stated period of at least 21 days, the subject officer may give the prescribed officer a written submission and other material addressing the complaint or the disciplinary sanction or professional development strategy the subject officer would accept.

Nothing in this section prevents a prescribed officer from extending the period stated in the invitation for the subject officer to provide a written submission or other material if requested by a subject officer. Each request will be considered by the prescribed officer on its merits and in the context of the matter.

New section 7.17(3) obliges the prescribed officer to consider any written submission or material submitted within the stated period in the invitation.

Furthermore, new section 7.17(4) provides that the prescribed officer may, after considering any submission or other material provided by the subject officer, require the subject officer to provide further stated information reasonably required by the prescribed officer to decide whether to make an offer under new section 7.16, or to decide the disciplinary sanction or professional development strategy that will be offered to the subject officer. If a prescribed officer decides to require further material, the requirement must be in writing and provide a reasonable period of at least 14 days for the subject officer to comply. This timeframe may be extended by the prescribed officer.

The ability of a prescribed officer to request further information in subsection (4) is designed to minimise the complexity of submissions and the amount of supporting material that a subject officer may submit in response to the invitation made under subsection (2) in the first instance.

For example, a subject officer may make reference to the fact they are suffering from and receiving treatment for a medical condition in response to an invitation to participate in an abbreviated disciplinary process. However, obtaining a full report from a treating doctor can be time consuming and reduce overall efficiencies in the abbreviated disciplinary process and may not be required on all occasions. In the circumstances of the matter and after considering the submissions and any supporting material, the prescribed officer may require the subject officer to provide a copy of the medical report to allow the prescribed officer to properly assess and decide whether to make an offer under section new 7.16, or to decide the appropriate discipline sanction or professional development strategy to be offered. In such cases, the prescribed officer may provide written notice of the requirement and a reasonable timeframe for the subject officer to provide the required material.

After receiving any further required material, the prescribed officer may then seek the agreement of the CCC for the purposes of new section 7.16. This ensures that the CCC is afforded the opportunity to consider any further material required by the prescribed officer under new section 7.17(4).

7.18 Abbreviated process notice

New section 7.18 details the procedural requirements that must be complied with in making an offer to impose a disciplinary sanction or professional development strategy under new section

7.16. Prior to making the offer, the requirements of new section 7.17 must have been complied with, and the consent of the CCC obtained in accordance with new section 7.16.

An offer must be made by giving the subject officer a written notice (an abbreviated process notice) stating:

- the date and details of the complaint and the alleged ground for disciplinary action;
- any further particulars necessary to identify the conduct alleged to constitute the ground for disciplinary action;
- the disciplinary sanction or professional development strategy the prescribed officer proposes to impose;
- that the proposed sanction or strategy will only be imposed if the subject officer accepts it;
- the period in which, and how, the proposed sanction or strategy may be accepted (being a reasonable period of at least 21 days after the subject officer is given the abbreviated process notice);
- that the subject officer's acceptance of the proposed sanction may be accompanied by a submission or other materials about the complaint or the proposed sanction or strategy;
- that if the proposed sanction or strategy is imposed, the sanction or strategy will be part of the subject officer's discipline history and there is no right of review; and
- the officer may apply to QCAT for an order quashing the disciplinary proceeding in particular circumstances as outlined in new section 7.24.

7.19 Subject officer may ask commissioner to make offer

New section 7.19 authorises a subject officer to, at any time, ask the Commissioner to consider making an offer under this part. This request may be accompanied by a written submission or other material to assist the Commissioner in determining whether to make the offer and, if so, the appropriate disciplinary sanction or professional development strategy that should be imposed.

Subdivision 3 Acceptance of offer and imposition of sanction or strategy

7.20 Definition for subdivision

New section 7.20 provides a definition for the term 'required period' in subdivision 3. The required period is defined to mean either the period stated in the abbreviated process notice or, if the period is later extended by agreement between the prescribed officer and the subject officer, that new period.

7.21 Subject officer's acceptance of proposed sanction or strategy

New section 7.21 provides that if an abbreviated process notice is given to the subject officer, the subject officer may, by written notice accept the proposed sanction or strategy. However, the subject officer's notice must be given within the required period (of at least 21 days) and in the way stated in the abbreviated process notice. The subject officer's notice may be accompanied by a submission or other materials about the complaint or the proposed sanction or strategy.

This section also provides that the prescribed officer may, by agreement with the subject officer, extend the period stated in the abbreviated process notice in which the subject officer may accept the proposed sanction or strategy.

7.22 Ending of proceeding – subject officer does not accept proposed sanction or strategy

New section 7.22 provides that if the subject officer does not accept the proposed sanction or strategy within the required period:

- the disciplinary proceeding under division 3 (Abbreviated disciplinary proceedings) ends; and
- a disciplinary proceeding against the subject officer may be started under division 4 (Process for hearings by prescribed officers); and
- each of the following is not admissible against the subject officer in any subsequent proceedings:
 - a submission made by the subject officer in response to an invitation under new section 7.17, including any accompanying materials;
 - a request made by the subject officer to the Commissioner under the new section 7.19, including any accompanying submission or other materials.

The section provides a further timeframe for commencing a disciplinary proceeding against the subject officer under division 4, if the subject officer does not accept the proposed sanction or strategy provided in the abbreviated process notice. In order to ensure that the timeframe for commencing a disciplinary proceeding under division 4 is not frustrated, new section 7.12(1)(b) applies as if it referred to the period of 6 months to commence a disciplinary proceeding from the following day:

- if the subject officer gives a written notice to the prescribed officer refusing to accept the proposed sanction or strategy within the required period – the day the notice is given;
- otherwise, the day the required period ends.

7.23 Imposition of disciplinary sanction or professional development strategy

New section 7.23 applies if the subject officer accepts the proposed sanction or strategy contained in the abbreviated process notice within the required period. After considering any submission made by the subject officer, the prescribed officer must impose the proposed sanction or strategy and give the subject officer notice of the decision, including a brief statement of the reasons for the decision. The subject officer is taken to have admitted the ground for disciplinary action stated in the abbreviated process notice. The complaint is finalised on imposition of the disciplinary sanction or strategy. This section applies subject to new section 7.24 and division 5 ‘Disciplinary sanctions’.

Subdivision 4 Quashing proceeding

7.24 New evidence and quashing of proceeding by QCAT

New section 7.24 applies if a disciplinary sanction or professional development strategy has been imposed under division 3 ‘Abbreviated disciplinary proceedings’ and fresh, additional or substituted evidence (new evidence) later emerges that, had it been considered by the

prescribed officer, would have affected his or her decision. The CCC, the Commissioner or the subject officer may apply to QCAT for an order quashing the abbreviated disciplinary proceeding. QCAT may make an order quashing the proceeding if satisfied the new evidence would have had a considerable effect on the sanction or strategy imposed and it is in the interests of justice to quash the proceeding.

If QCAT makes an order quashing the abbreviated disciplinary proceeding, the abbreviated disciplinary proceeding is taken to have never occurred and each of the following is inadmissible in any subsequent disciplinary proceeding or proceeding for corrupt conduct:

- an invitation under section 7.17, an abbreviated process notice, or a request to be given an abbreviated process notice;
- a submission or decision made under section 7.17, 7.19 or 7.21; or
- anything else produced by the subject officer for the proceeding.

If QCAT makes an order quashing the proceeding, a new disciplinary proceeding may be started against the subject officer in relation to the same matter or a substantially similar matter. Despite section 7.12, the new disciplinary proceeding must be started within 6 months of QCAT making the order.

Division 4 Process for hearings by prescribed officers

Subdivision 1 Decision to take disciplinary action

7.25 How disciplinary proceeding is started

New section 7.25 states that a prescribed officer may start a disciplinary proceeding under division 4 by giving the subject officer a disciplinary proceeding notice stating:

- the particulars of the alleged ground for disciplinary action; and
- that the subject officer may, within a stated period of at least 28 days, provide a written submission and other material to the prescribed officer outlining why disciplinary action should not be taken in relation to the disciplinary charge.

7.26 Subject officer's right to make written submission

New section 7.26 reinforces the subject officer's right to make a written submission to the prescribed officer showing why disciplinary action should not be taken in relation to the disciplinary charge. This submission should be made within the required period stated in the disciplinary proceeding notice. However, the prescribed officer, by agreement with the subject officer, may extend this period.

The 'required period' is defined for the purposes of new section 7.26 to mean the period mentioned in the disciplinary proceeding notice under new section 7.25 or an extended period under section 7.26(2).

7.27 Decision about whether disciplinary charge is proved

New section 7.27 outlines that a prescribed officer must decide whether a disciplinary charge or another ground for disciplinary action is proved. The section applies if either the required period under new section 7.26 for the subject officer to make a written submission has ended, or a written submission has been provided by the subject officer under new section 7.26.

If the subject officer has provided a written submission or other materials under new section 7.26, the prescribed officer must consider any such submission and other materials before deciding whether the disciplinary charge, or another ground for disciplinary action, has been proven.

Within 14 days of making the decision, the prescribed officer must:

- if the prescribed officer is not reasonably satisfied the disciplinary charge, or another ground for disciplinary action is proved - give the CCC a QCAT information notice for the decision and give the subject officer written notice of the decision; or
- if the prescribed officer is reasonably satisfied the disciplinary charge or another ground for disciplinary action is proven but does not propose to impose a disciplinary sanction or professional development strategy on the subject officer - give the subject officer and the CCC a QCAT information notice for the decision.

Subdivision 2 Decision to impose disciplinary sanction or professional development strategy

7.28 Proposed sanction notice

New section 7.28 applies if under new section 7.27 the prescribed officer is reasonably satisfied a disciplinary charge or another ground for disciplinary action has been proven. The prescribed officer may give the subject officer a proposed sanction notice stating:

- that the prescribed officer has decided the disciplinary charge or another ground for disciplinary action is proved;
- the reasons for the decision;
- the disciplinary sanction or professional development strategy that the prescribed officer proposes to impose on the subject officer (the proposed sanction or strategy); and
- that the subject officer may provide a written submission and other materials, within a stated period of at least 21 days, to show why the proposed sanction or strategy should not be imposed.

7.29 Subject officer's right to make written submission

New section 7.29 reinforces the officer's right to make a written submission within the period stated in the proposed sanction notice as to why the proposed sanction or strategy should not be imposed. The section also allows the prescribed officer, by agreement with the subject officer, to extend the stated period whereupon submissions are due.

7.30 Decision about imposition of disciplinary sanction or professional development strategy

New section 7.30 applies if a proposed sanction notice is given to a subject officer under new section 7.28. Upon either the required period provided in new section 7.29 for the subject officer to provide submissions or other material ending, or the subject officer earlier providing submissions or further material, the prescribed officer must decide whether to impose a disciplinary sanction or professional development strategy. However, the prescribed officer must first consider any written submission or material given to the prescribed officer by the subject officer under new section 7.29.

The prescribed officer must decide either to impose:

- the proposed sanction or strategy;
- any other disciplinary sanction or professional development strategy that is no more detrimental than the proposed sanction or strategy; or
- no disciplinary sanction or professional development strategy.

The prescribed officer's decision takes effect on the day the subject officer is given a QCAT information notice about the decision. Section 7.30 applies subject to division 5 'Disciplinary sanctions' which sets out the disciplinary sanctions or professional development strategies that can be applied in relation to an abbreviated disciplinary process under division 3 or as a consequence of the discipline hearing process under division 4.

7.31 QCAT information notices

New section 7.31 states that a prescribed officer who makes a decision under section 7.30 must give the subject officer and the CCC a QCAT information notice within 14 days of making the decision. The section also lists the matters that a QCAT information notice must state if a prescribed officer decides to impose a disciplinary sanction or professional development strategy.

The information that is required to be included in a QCAT information notice under section 7.31(2) does not limit the application of section 157(2) 'Information notice to be given' of the *Queensland Civil and Administrative Tribunal Act 2009*, which outlines what a QCAT notice must state.

Subdivision 3 General

7.32 Principles for conducting disciplinary proceeding

To support the policy objective of implementing a new discipline system which ensures accountability and retains fairness for officers, new section 7.32 enshrines the general principles a prescribed officer should adhere to when conducting a disciplinary proceeding.

The prescribed officer:

- must observe the rules of natural justice;
- must act quickly and with as little formality and technicality, as is consistent with a fair and proper consideration of the matter;
- is not bound by the rules of evidence;
- may get information on a matter in a way they consider appropriate; and
- may decide the procedures to be followed for the proceeding, subject to guidelines under section 7.44 made by the Commissioner relating to the disciplinary process.

Division 5 Disciplinary sanctions

7.33 Application of Division

New section 7.33 states that division 5 applies for imposing a disciplinary sanction or professional development strategy on the subject officer under division 3 'Abbreviated disciplinary proceedings' or division 4 'Process for hearings by prescribed officers'.

7.34 Disciplinary sanctions

New section 7.34 lists the disciplinary sanctions that a prescribed officer may impose on a subject officer as a result of an abbreviated disciplinary proceeding or a discipline hearing before a prescribed officer. The sanctions are listed in order of descending gravity ranging from dismissal to a reprimand.

The sanctions are:

- dismissal;
- suspension from duty without pay for not longer than 12 months;
- probation for not longer than 12 months;
- demotion, whether permanently or for a stated period;
- comprehensive transfer;
- local transfer;
- performance of up to 100 hours of community service;
- a fine of up to 50 penalty units; and
- a reprimand.

The new discipline sanctions of probation, comprehensive transfer and local transfer have been introduced and the maximum monetary fine has been increased from 2 to 50 penalty units to support the purposes of part 7 and to enhance the management of discipline within the QPS. Further specific information regarding individual sanctions is provided in later sections.

7.35 Power of prescribed officer to impose disciplinary sanction

New section 7.35 authorises a prescribed officer to impose any of the disciplinary sanctions listed in the new section 7.34 on a subject officer if the prescribed officer considers the sanction to be appropriate to the circumstances of each case.

The new section 7.35 limits the sanctions that may be imposed by a prescribed officer according to their rank. A prescribed officer who is a commissioned officer may impose the following sanctions upon a subject officer:

- performance of up to 100 hours of community service;
- a fine of up to 50 penalty units; or
- a reprimand.

A prescribed officer who is an Assistant Commissioner may impose the following sanctions in addition to any of the sanctions available to a commissioned officer:

- suspension from duty without pay, with a restriction that the suspension without pay cannot be longer than 28 days
- demotion; or
- local transfer.

A prescribed officer who holds the rank of Deputy Commissioner or Commissioner may impose any of the discipline sanctions listed in the new section 7.34 as appropriate to the circumstances.

The new section 7.35 also obliges the prescribed officer, in deciding the disciplinary sanction, to have regard to any considerations provided for in a guideline made under section 7.44, the subject officer's disciplinary and service history and any professional development strategies imposed on, or completed by, the subject officer in relation to the ground for disciplinary action.

New section 7.35(4) clarifies that a prescribed officer may impose more than one disciplinary sanction on a subject officer. The section does not limit how a prescribed officer may impose more than one disciplinary sanction, however the totality of the sanction must be commensurate with the seriousness of the disciplinary charge and achieve the purposes of part 7. For example, depending on the circumstances of the matter, an appropriately authorised prescribed officer may impose a sanction of suspension from duty for six months and, in addition, the comprehensive transfer of the subject officer. In another matter, it may be appropriate to impose a sanction of demotion and local transfer. Alternatively, it may be appropriate for the prescribed officer to only impose one of the listed sanctions on a subject officer.

7.36 Probation

New section 7.36 introduces probation as a new disciplinary sanction to support a modernised disciplinary framework. New section 7.36 requires an information notice to be given to the subject officer stating the period of the probation and any conditions of the probation set by the prescribed officer. In addition, the notice must indicate the subject officer may be asked to show cause as to why the officer should not be dismissed if they breach the probation or if the commissioner reasonably believes they are unsuitable to continue as a police officer.

The purpose of probation is to enable the Commissioner to assess the subject officer's suitability to continue as a police officer. If, during the probation period, the subject officer breaches the probation or the Commissioner reasonably believes the officer is unsuitable to continue as a police officer, the Commissioner may dismiss the subject officer. Dismissal may only occur after the Commissioner has conducted a show cause proceeding, allowing the subject officer to show cause as to why the subject officer should not be dismissed.

The section outlines the conduct that will constitute a breach of probation and provides that if the probation is breached, a show cause proceeding must be conducted by a prescribed officer who holds the rank of Deputy Commissioner or above within 12 months from the date the probation was breached. A prescribed officer who conducts the show cause proceeding must give the subject officer and the CCC a QCAT information notice for the decision to either dismiss or not dismiss the officer.

7.37 Comprehensive transfer

New section 7.37 introduces and defines the new discipline sanction 'comprehensive transfer'. A comprehensive transfer is a transfer of a subject officer, without the officer's consent, to a position in another location in Queensland which reasonably requires the subject officer to relocate their residence or travel more than 40 kilometres by road from their residence to the location.

Due to the impact a comprehensive transfer may have upon an officer, new section 7.35 limits the ability to impose this disciplinary sanction to a prescribed officer of the rank of Deputy Commissioner or Commissioner.

7.38 Local transfer

New section 7.38 introduces and defines the new discipline sanction of local transfer. A ‘local transfer’ is:

- a transfer to another position, at the same location in Queensland, that involves a change in the nature of the subject officer’s duties; or
- a transfer of the subject officer to another position, at a different location in Queensland, if the transfer does not reasonably require the officer to relocate their residence or travel more than 40 kilometres by road between their residence and the location.

A local transfer may be imposed without the consent of the subject officer. New section 7.35 restricts the ability to impose this disciplinary sanction to a prescribed officer of the rank of Assistant Commissioner or above.

Further, if the subject officer consents to the transfer, a local transfer includes a transfer of the subject officer to another position at a different location in Queensland that does reasonably require the officer to relocate his or her residence or travel more than 40km by road between the officer’s residence and the location.

7.39 Community service

New section 7.39 applies if the disciplinary sanction imposed on the subject officer is community service. The officer must be allowed at least 1 calendar month to complete each 10 hours of the community service or part thereof. A prescribed officer of the same rank as the prescribed officer who imposed community service may, on application by the subject officer, extend the time to perform the community service sanction or vary the community service sanction if there are reasonable grounds to do so.

7.40 Fines

New section 7.40 applies if the disciplinary sanction imposed on the subject officer is a fine. The fine must not be deducted from the officer’s fortnightly salary at a rate of more than 2 penalty units each fortnight, without the subject officer’s written consent. The section also provides that any outstanding amount of a fine may be deducted in full from a subject officer’s salary, allowances or other entitlement if the officer retires, resigns or otherwise stops being an officer.

7.41 Suspension of disciplinary sanctions

The new section 7.41 allows disciplinary sanctions, excepting for dismissal or probation, to be suspended. All other discipline sanctions outlined in the new section 7.34 may, in whole or in part, be suspended by a prescribed officer for a period of not more than 12 months. The prescribed officer must give the subject officer written notice of the suspension and any conditions.

If the subject officer complies with the conditions of the suspension, the disciplinary sanction imposed on the subject officer will remain part of the officer’s disciplinary history and upon the suspension ending, the disciplinary sanction is taken to have been discharged or satisfied.

If the subject officer does not comply with the conditions of the suspension, the Commissioner must, as soon as reasonably practical, give the CCC a written notice stating the details of the

non-compliance and any information known to the Commissioner about the reason for the non-compliance.

In addition to providing written advice to the CCC about non-compliance with the conditions of the suspension, a prescribed officer, of at least the same rank as the officer who imposed the suspension, must give effect to the disciplinary sanction unless the subject officer can show cause why the conditions should be varied or cancelled. The show cause proceeding must be started within 12 months from the end of the period of the suspension.

When conducting the show cause proceeding the prescribed officer must decide to:

- give effect to the disciplinary sanction; or
- continue the suspension and vary the conditions, including extending the period of suspension for a further period of not more than 12 months; or
- continue the suspension and cancel the conditions.

The prescribed officer must give the subject officer and the CCC a QCAT information notice for the decision.

7.42 Professional development strategies

New section 7.42 allows a prescribed officer to impose one or more professional development strategies against a subject officer instead of, or as well as, a disciplinary sanction. A professional development strategy is required to be imposed in a reasonable way and must be imposed to achieve the purposes of part 7 as detailed in section 7.1.

Division 6 Other provisions

7.43 Central disciplinary unit

New section 7.43 permits the Commissioner to establish a central unit that is responsible for conducting disciplinary proceedings. The central unit must be separate from the unit involved in investigating complaints. To this end, the executive officer responsible for investigating complaints must not be responsible for the operation, supervision or command of the central unit. An officer performing duties as the Assistant Commissioner within the central unit will have the same powers to impose disciplinary sanctions under part 7 as a Deputy Commissioner. An officer performing duties as the Chief Superintendent within the central unit will have the same powers to impose disciplinary sanctions under part 7 as an Assistant Commissioner.

7.44 Guidelines

New section 7.44 permits the Commissioner to make guidelines relating to the disciplinary process, including the way investigations and disciplinary hearings are to be conducted and matters which a prescribed officer must have regard to when imposing a disciplinary sanction. Before making guidelines under this section the Commissioner must actively consult with and have regard to the views of the chairperson of the CCC and each union that represents officers and recruits.

This section encourages active consultation between key stakeholders about relevant policy matters to ensure the new discipline system will continue to achieve its purposes.

7.45 Record-keeping

New section 7.45 requires the Commissioner keep a record of each complaint made about an officer, any disciplinary action taken against an officer and any other matter that may be prescribed by regulation for this section.

7.46 Commissioner's powers not to be delegated

New section 7.46 states that despite section 4.10, the Commissioner may not delegate the Commissioner's powers as a prescribed officer under Part 7.

Clause 10 Amendment of s 7A.1 (Power to conduct disciplinary investigation against a former officer)

Section 7A.1 authorises the Commissioner to continue or start an investigation to decide whether a person who is no longer employed as an officer (a former officer) may be liable to disciplinary action for conduct that occurred while that person was a police officer.

Clause 10 inserts a new section 7A.1(3A) which details matters the Commissioner may consider in determining whether to continue or start an investigation. These matters include:

- the seriousness of the ground for disciplinary action;
- how far advanced the investigation is and the cost of continuing the investigation;
- access to the former officer and his or her disciplinary history;
- any benefit to the service in proceeding or not proceeding with the investigation;
- whether the matter is being considered or investigated by the CCC or another authority;
- any offence substantially related to the ground for disciplinary action;
- the likelihood of the former officer engaging in future employment which would require the officer to disclose the making of a disciplinary declaration by the Commissioner;
- any other matter the Commissioner considers relevant.

With the exception of the Commissioner considering the likelihood of the former officer engaging in future employment requiring the disclosure of any disciplinary declaration and minor drafting changes, these considerations are consistent with the conditions that previously were contained in section 13 of the *Police Service (Discipline) Regulations 1990*.

Clause 11 Amendment of s 7A.2 (Disciplinary action that may be taken against a former officer)

Section 7A.2 authorises the Commissioner to make disciplinary findings and take disciplinary action against a former officer. This disciplinary action takes the form of a disciplinary declaration which states that a disciplinary finding was made against the former officer and outlines the disciplinary action that would have been taken against the officer had the former officer's employment not ended. Currently, a disciplinary declaration may only be made if the disciplinary action that would have been taken against the former officer was a reduction in rank or termination of employment.

Clause 11 amends this section by aligning the circumstances in which a disciplinary declaration can be made with the discipline sanctions introduced in new section 7.34.

The amendments will allow a disciplinary declaration to be made in instances where the disciplinary action that would have been taken against a former officer was dismissal,

suspension from duty without pay for at least 3 months, probation, or demotion – whether permanently or for a stated period.

Clause 12 Amendment of s 7A.3 (Procedure)

Before a disciplinary declaration may be made against a former officer, section 7A.3 obliges the Commissioner to give the former officer a notice in relation to the disciplinary ground asking the former officer to respond in writing within 28 days. After notice has been given to the former officer, the Commissioner may hold a disciplinary hearing in relation to the disciplinary grounds.

Clause 12 makes a minor amendment to section 7A.3(1)(a) to clarify that a notice given by the Commissioner to a former officer must be in writing and state the alleged ground for disciplinary action. Additionally, this clause makes a technical drafting amendment to section 7A.3(1)(b) to replace references to ‘disciplinary ground’ with ‘ground for disciplinary action’.

As a result of the amendment to section 7A.3(1)(a), existing section 7A.3(2) becomes superfluous and is omitted. A technical amendment is also made to renumber the remaining subsections.

Clause 13 Replacement of s 7A.4 (Commissioner to notify former officer of decision)

Clause 13 replaces the existing section 7A.4 by obliging the Commissioner to give written notice of a disciplinary declaration or a disciplinary finding to a former officer and the CCC within 14 days of making the finding or declaration. Further, this clause provides that the notice must be a QCAT information notice ensuring consistency between the types of notices given to current and former officers.

Clause 14 Omission of s 7A.5 (Notice of misconduct finding to Crime and Corruption Commission)

Clause 14 omits section 7A.5, which requires the Commissioner to give the CCC a QCAT information notice if an allegation of misconduct is decided against a former officer, or when deciding an allegation of a breach of discipline against a former officer, the prescribed officer finds that the former officer is guilty of misconduct. This section has become superfluous through an amendment to section 7A.4 by clause 13.

Clause 15 Omission of s 9.1 (Operation of part)

Clause 15 omits section 9.1 as this section will become superfluous as later amendments will amend the right of a person to apply for review of discipline decisions under section 9.3 of the *Police Service Administration Act 1990* or section 219G of the *Crime and Corruption Act 2001*. The right to apply for review of a discipline decision will now be located in new chapter 5, part 3 of the *Crime and Corruption Act 2001*.

Clause 16 Amendment of s 9.3 (Application for review)

Currently, section 9.3 of the *Police Service Administration Act 1990* authorises, in part, the commissioner for police service reviews to review discipline decisions relating to a breach of

discipline. It has been agreed by all stakeholders that any review of disciplinary decisions made under part 7 or 7A will be heard and determined by QCAT and that the commissioner for police service reviews should no longer have the capacity to conduct reviews into decisions relating to a breach of discipline.

Consequently, clause 16 removes all references to decisions regarding breach of discipline matters for both current and former officers and makes minor technical amendments to renumber the remaining sections.

Clause 17 Insertion of new pt 11, div 10

Clause 17 inserts transitional provisions for the amending Act, to be contained in new Division 10 'Repeal and transitional provisions for Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019'. The new part 11, division 10 consists of new sections 11.18 to 11.26 which are explained below:

11.18 Definitions for division

New section 11.18 defines terms used in part 11, division 10 and clarifies that for the purposes of division 10, a disciplinary proceeding under section 7.4 was started when the subject officer was given a notice detailing the alleged breach of discipline or misconduct.

11.19 Repeal of Police Service (Discipline) Regulations 1990

New section 11.19 repeals the *Police Service (Discipline) Regulations 1990* upon commencement of the amending Act.

11.20 Existing disciplinary proceedings - saving of previous s 7.4 and repealed regulations

New section 11.20 provides that if disciplinary proceedings have already been started, but not finally dealt with, prior to the commencement of the amending Act, the previous section 7.4 and the repealed Regulations will continue to apply until the completion of the disciplinary proceeding. However, an officer may consent to the withdrawal of the previously commenced disciplinary proceeding. In such case, a prescribed officer can commence a new discipline proceeding under the amended part 7.

Section 11.20 applies subject to section 11.21, which allows the new part 7 to be applied to existing disciplinary proceedings in some circumstances.

11.21 Existing disciplinary proceedings – application of new pt 7 in particular circumstances

New section 11.21 applies if a disciplinary proceeding was started prior to the commencement of the amending Act, but the prescribed officer had not made a finding in relation to whether the allegation(s) were substantiated at the commencement of the amending Act. In this case, any decision made by the prescribed officer after commencement of the amending Act is taken to be a decision made under new section 7.27 regarding whether the disciplinary charge or another ground for disciplinary action is proved under the amended Part 7. If so, the subsequent

requirements of new part 7 and the chapter 5, part 3 of the *Crime and Corruption Act 2001* will apply to the disciplinary hearing.

11.22 Alleged misconduct or breaches of discipline occurring before commencement

Clause 17 also provides in new section 11.22 that:

- if misconduct or a breach of discipline is alleged to have occurred before the commencement of the amending Act; and
- a disciplinary proceeding for the alleged misconduct or breach of discipline:
 - has not commenced before the commencement of the amending Act; or
 - was started before the commencement of amending Act but was withdrawn with the subject officer's consent,

then the disciplinary proceeding may be commenced under the new part 7 as if the misconduct or breach of discipline were a ground for disciplinary action. These disciplinary proceedings must be started within 6 months of the commencement of the amending Act or within the period mentioned in section 7.12, whichever is the later.

11.23 Existing reviews of disciplinary decisions – breaches of discipline

The clause also inserts section 11.23 which provides that if a review under the previous section 9.3 was started before the commencement of the amending Act and is yet to be completed, that section continues to apply.

11.24 Review of particular disciplinary decisions about breaches of discipline

New section 11.24 allows an officer or former officer to apply for a review of a decision or declaration under the previous section 9.3 if the following circumstances apply:

- either -
 - a decision was made under previous section 7.4 about an allegation of a breach of discipline; or
 - a disciplinary declaration was made under previous section 7A.2(2) for a breach of discipline; and
- the period of applying for a review of the decision or declaration under previous section 9.3 had not ended immediately before commencement of the amending Act.

New section 11.24 also applies if a decision is made under previous section 7.4, as applied by section 11.20, about an allegation of a breach of discipline. If new section 11.24 applies, the officer or former officer to whom the decision or declaration relates may apply for review of their matter under previous section 9.3 as if the amending Act had not commenced.

11.25 Existing discipline history

Clause 17 inserts section 11.25 which provides that a disciplinary sanction imposed under section 7.4 or the repealed regulations continues to have effect as if the amending Act had not commenced. Further, an officer's disciplinary history under the repealed regulations is taken to be part of the officer's disciplinary history for the new part 7. However, managerial guidance provided before the commencement of the amending Act does not form part of an officer's disciplinary history under new part 7 unless the officer was otherwise advised in writing at the time of being provided with the managerial guidance.

11.26 Continued application of previous pt 7A

Finally, the clause inserts section 11.26 which provides that previous part 7A continues to apply in relation to a disciplinary ground that arose before the commencement of the amending Act.

Part 3 Other amendments

Division 1 Amendment of Crime and Corruption Act 2001

Clause 18 Act amended

Clause 18 provides that this division will amend the *Crime and Corruption Act 2001*.

Clause 19 Amendment of ch 5, hdg (Offences and disciplinary proceedings relating to corruption)

Clause 19 inserts ‘etc.’ after the chapter 5 heading ‘Offences and disciplinary proceedings relating to corruption’. The amendment reflects that chapter 5 will be amended by the insertion of a new part 3 into chapter 5. The new part will provide the CCC with the ability to apply for a review of any QPS discipline decision and better reflects the content of the amended chapter.

Clause 20 Amendment of ch 5, pt 2 hdg (Disciplinary proceedings relating to corruption)

Clause 20 amends the heading of chapter 5, part 2 by including ‘etc – particular prescribed persons’ after ‘Disciplinary proceedings relating to corruption’. This amendment reflects that chapter 5, part 2 will only apply to prescribed persons under section 50(3) of the *Crime and Corruption Act 2001*.

Clause 21 Amendment of s 219B (Definitions for pt 2)

Clause 21 inserts the definition of ‘former officer’ into the definitions for chapter 5, part 2 of the *Crime and Corruption Act 2001*. The definition refers to the definition of ‘former officer’ contained in section 7A.1(1)(b) of the *Police Service Administration Act 1990*.

Clause 22 Amendment of s 219BA (Meaning of reviewable decision)

Clause 22 amends the meaning of ‘reviewable decision’ under section 219BA to include a decision made in relation to an allegation of corruption against a prescribed person other than a decision made by a court or QCAT, or made by a prescribed officer under part 7 of the *Police Service Administration Act 1990*. A decision made by a prescribed officer under part 7 will be reviewable under new part 3, inserted by clause 28 into chapter 5 of the *Crime and Corruption Act 2001*.

This clause also provides that a reviewable decision will include a decision under part 7A of the *Police Service Administration Act 1990* to make a disciplinary finding or declaration against a former officer.

Clause 23 Amendment of s 219G (Proceedings relating to reviewable decisions)

Clause 23 amends section 219G by removing references to sections 7.4(2A), 7A.4 or 7A.5 of the *Police Service Administration Act 1990* and inserting a reference to section 219BA(1)(b) of the *Crime and Corruption Act 2001*. This clause is a technical amendment to support the relocation of provisions about reviewable decisions relating to officers to the new part 3.

Clause 24 Amendment of s 219I (Powers for corrupt conduct)

Clause 24 amends section 219I so that on a finding of corrupt conduct against a person who is a member of the police service, QCAT may make an order the Commissioner could make under the *Police Service Administration Act 1990*, part 7, division 5, other than section 7.41, if a ground for disciplinary action had been proven against the person under part 7, division 4 of that Act.

Clause 25 Amendment of s 219IA (QCAT powers for prescribed persons whose employment or appointment ends)

Clause 11 amends the range of disciplinary actions which may be taken against a former officer, being a prescribed person as defined in section 50(3)(a)(ii), under the new disciplinary system. Clause 25 amends section 219IA of the *Crime and Corruption Act 2001* to ensure QCAT powers are consistent with amendments to the *Police Service Administration Act 1990* with respect to former officers.

This clause retains the existing disciplinary actions which may be taken with respect to a prescribed person, other than a former officer, as defined in section 50(3)(b)(ii).

Clause 26 Amendment of s 219J (Additional power for reviewable decisions)

Section 219J currently applies if, after reviewing a reviewable decision, QCAT finds corruption has been proved against a person and sets aside the decision and substitutes another decision.

Clause 26 amends section 219J by limiting the scope of reviewable decisions that QCAT may consider under this section to former officers against whom a ground for disciplinary action under the *Police Service Administration Act 1990* has been proven, or for any other prescribed person against whom an allegation of corruption has been proven. In these cases, QCAT retains the ability to order a disciplinary sanction be imposed, despite any limitations the original decision maker had to impose the particular sanction.

The clause also amends the instances in which QCAT can make a disciplinary declaration against a former officer to be consistent with amendments to part 7A of the *Police Service Administration Act 1990*, reflecting the new disciplinary sanctions available under part 7 of the *Police Service Administration Act 1990*.

An amendment contained in clause 28 ensures that if QCAT finds a ground for disciplinary action is proven against a current officer, QCAT can still order any disciplinary sanction to be imposed, regardless of whether the original prescribed officer was unable to impose that disciplinary sanction.

Clause 27 Amendment of s 219L (QCAT's power to suspend orders)

Section 219L of the *Crime and Corruption Act 2001* provides that QCAT may suspend an order or discipline that is imposed on a person under sections 219I or 219J of the *Crime and Corruption Act 2001* or a discipline imposed on a person by QCAT as a result of an application for review before QCAT. However, if the person subject to the order or discipline is found to have committed an act of corruption or contravened a condition during the operational period of the suspended order or discipline, the suspension is revoked, and the order imposed.

Clause 27 amends section 219L, to allow the Commissioner or CCC, where the prescribed person is a member of the police service, to apply to QCAT for an order to either revoke the suspension and give effect to the order or discipline; or to continue the suspension and vary or cancel any conditions of the suspension. Before making any such order, QCAT must hear any submissions made by the prescribed person.

This amendment establishes a show cause proceeding for members of the police service before a suspended order or discipline is given effect. This amendment reflects the dynamic nature of policing and that the conditions attached to a QCAT ordered suspension may not be complied with for a number of reasons, including operational factors or other matters beyond the control of the officer. In such cases, the Commissioner or CCC could apply for an order to amend or cancel the conditions.

The amendment will also apply if a member of the police service is found to have committed an act of corruption as defined in the *Crime and Corruption Act 2001* during the operational period of the suspension.

The amendment does not alter the existing powers of QCAT in relation to a prescribed person, other than a member of the police service, who is found to have committed an act of corruption or contravened a condition during the operational period of the suspension.

Clause 28 Insertion of new ch 5, pt 3

Clause 28 inserts new part 3 'Review of particular police disciplinary decisions' into chapter 5 of the *Crime and Corruption Act 2001*. Clause 28 relocates all provisions relevant to applying for review of disciplinary decisions made under part 7 of the *Police Service Administration Act 1990* into new chapter 5, part 3 of the *Crime and Corruption Act 2001*.

This clause also achieves the policy objective of allowing the CCC to apply for review of a QPS decision not to commence a disciplinary proceeding against an officer.

The new chapter 5, part 3 consists of sections 219N to 219U which are explained below:

219N Definitions for part

New section 219N contains definitions of 'aggrieved person', 'disciplinary sanction', 'ground for disciplinary action', 'reviewable decision' and 'subject officer' for part 3.

219O Reviewable decisions

New section 219O defines 'reviewable decision' to mean a decision made under the *Police Service Administration Act 1990* that is mentioned in new schedule 1, column 1 of the *Crime and Corruption Act 2001*.

However, a decision under part 7, division 4 of the *Police Service Administration Act 1990* that a disciplinary charge, or another ground for disciplinary action, has been proven in relation to an officer is a reviewable decision only if the officer is entitled to be given a QCAT information notice for the decision under section 7.27(4) or 7.31(1) of the *Police Service Administration Act 1990*.

This ensures that the right of an aggrieved person to apply for a review of a reviewable decision does not arise until the matter is finally dealt with under either section 7.27 or section 7.31 of the *Police Service Administration Act 1990*. This will overcome a procedural anomaly where the subject officer or the CCC could previously apply for review of a decision to substantiate or not substantiate a disciplinary allegation before the prescribed officer has made a decision in relation to the sanction to be imposed.

219P Applications for review

New section 219P stipulates when an aggrieved person for a reviewable decision may apply to QCAT for a review of the reviewable decision. For a decision not to start a disciplinary proceeding under part 7 of the *Police Service Administration Act 1990* against an officer to whom a complaint mentioned in section 7.2 of that Act has been made, the application must be made within 28 days after the aggrieved person becomes aware of the decision. Otherwise, an application must be made within 28 days after the aggrieved person is given a QCAT information notice for the decision. An application may also be made as otherwise provided under the *Queensland Civil and Administrative Tribunal Act 2009*.

If the subject officer is the applicant for review, the subject officer must also give a copy of the application for review to the CCC within the period stated in section 37(2) of the *Queensland Civil and Administrative Tribunal Act 2009*. This requirement does not limit the operation of section 37(2) of the *Queensland Civil and Administrative Tribunal Act 2009*.

219Q QCAT to decide review on evidence before decision maker

Section 219Q outlines that a QCAT review of a reviewable decision is by way of rehearing on the evidence (original evidence) given in the proceeding before the original decision-maker (original proceeding). However, QCAT may give leave to adduce fresh, additional or substituted evidence (new evidence) if satisfied the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the original proceeding, or if in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.

If QCAT gives leave to adduce new evidence, the review is by way of rehearing on the original evidence and on the new evidence adduced.

New section 219Q replicates the operation of section 219H as it applied to all reviewable decisions before the commencement of the amending Act, including review of decisions in relation to police misconduct. Due to amendments in clause 22, section 219H is limited in operation to reviewable decisions under part 2. New section 219Q ensures consistency between part 2 and part 3 in relation to the conduct of QCAT proceedings for review of decisions.

219R Parties to review

New section 219R provides that the parties to a review are the applicant for the review, the person who made the reviewable decision, and if the CCC is the applicant for the review, the subject officer to whom the decision relates.

If the subject officer to whom the decision relates is the applicant for review, the CCC may elect to become a party to the review. If so, the CCC must provide written notice of the election to become a party to QCAT, the subject officer and the person who made the reviewable decision. The CCC can exercise the election to become a party within the later of the periods ending as provided in new section 219P(2)(a) or 14 days after the CCC receives notice of the application for review from the subject officer.

This amendment removes the administrative step of the CCC filing an application to be joined as an interested party under the *Queensland Civil and Administrative Tribunal Act 2009*. However, new section 219R does not affect the operation of section 42 of the *Queensland Civil and Administrative Tribunal Act 2009* in relation to the CCC or any other party making application to QCAT to be joined as a party to an application.

219S Additional power for substituted decisions

New section 219S outlines QCAT's powers if, after reviewing the reviewable decision, QCAT finds a ground for disciplinary action has been proven against the subject officer and sets aside the decision and substitutes another decision. In these circumstances, QCAT has the same powers under part 7, division 5 of the *Police Service Administration Act 1990* as the Commissioner and may impose any disciplinary sanction on the subject officer under that part, even if the person who made the reviewable decision would not be authorised under that part to impose that disciplinary sanction.

This amendment continues the operation of section 219J as it applied to reviews of decisions relating to police misconduct before the commencement of the amending Act. Amendments in clause 22 limit the operation of section 219J to reviewable decisions under part 2. Therefore, new section 219S ensures consistency between part 2 and part 3 in relation to the power of QCAT to impose any applicable disciplinary sanction, regardless of whether the original decision maker or prescribed officer had the power to impose that disciplinary sanction or not.

The ability of QCAT to impose any disciplinary sanction upon substituting the decision is required to ensure the oversight and monitoring abilities of the CCC are not curtailed by restricting QCAT to the disciplinary sanctions available to the original decision maker. Without this capability, QCAT may not be able to increase the disciplinary sanction imposed on an officer in appropriate cases.

219T Requirement to return particular matters to commissioner of police

New section 219T states that if QCAT sets aside a decision not to start a disciplinary proceeding under part 7 of the *Police Service Administration Act 1990* against an officer the subject of a complaint mentioned in section 7.2 of that Act, QCAT must return the matter to the Commissioner.

When returning the matter, QCAT must issue a direction to start a disciplinary proceeding under part 7 of the *Police Service Administration Act 1990* and any other direction which it considers appropriate. The Commissioner must ensure a disciplinary proceeding is started

against the officer within 6 months of the date the order is made by QCAT. The time limits within new section 7.12 do not apply in these circumstances.

219U QCAT may refer matter for investigation

New section 219U states that QCAT may, by order, refer the matter before it to the CCC or the Commissioner for investigation, with the view to the taking of a criminal proceeding or for another purpose. QCAT may adjourn the proceeding before it until the investigations are completed.

This amendment continues the operation of section 219K as it applied to reviews of decisions relating to police misconduct before the commencement of the amending Act. Due to earlier amendments, section 219K is limited in operation to reviewable decisions under part 2. Therefore, new section 219U ensures consistency between part 2 and part 3 in relation to the power of QCAT to refer matters before it for investigation.

Clause 29 Insertion of new ch 8, pt 16

Clause 29 inserts new chapter 8, part 16 ‘Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019’ into the *Crime and Corruption Act 2001*. This part contains transitional provisions for the new discipline system by inserting new sections 451 to 453 into the *Crime and Corruption Act 2001* as explained below:

451 Definition for part

New section 451 defines ‘previous’ in relation to a provision of the *Crime and Corruption Act 2001* or a provision of the *Police Service Administration Act 1990* to mean as in force from time to time before the commencement.

452 Saving of previous ch 5, pt 2

New section 452 applies in relation to a relevant chapter 5, part 2 decision if a disciplinary proceeding under previous section 219G for the decision was started, but not finally dealt with, before the commencement of the amending Act, or the period for applying for a review of the decision under previous section 219G had not ended immediately before the commencement. In these circumstances, the previous chapter 5, part 2 applies for the review of the decision as if the amending Act had not commenced.

Section 452 also applies to a finding mentioned in the previous section 7.4(2A)(b) and 7A.5(1)(b) of the *Police Service Administration Act 1990* in relation to an allegation of corruption against an officer or former officer. Part 11, division 10 of the amendment Act, except for section 11.21, applies to these findings.

453 Ending of particular suspensions under previous s 219L

The new section 453 applies if:

- under the previous section 219L, QCAT suspended an order under the previous section 219I or discipline mentioned in previous section 219J(2); and
- the person is a prescribed person mention in section 50(3)(a)(i); and

- during the operational period, the prescribed person is found to have committed an act of corruption or to have contravened a condition of the suspension.

New section 453 provides that section 219L(4) as in force on the commencement of the amending Act, applies in relation to the revocation of the suspension.

Clause 30 Insertion of new sch 1

Clause 30 inserts new schedule 1, ‘Reviewable decisions – ch 5, pt 3’ into the *Crime and Corruption Act 2001*. The schedule lists different types of reviewable decisions relating to decisions under part 7 of the *Police Service Administration Act 1990* and who may be an aggrieved person in relation to the different types of reviewable decision.

Schedule 1 works in conjunction with the definitions in new section 219N and the provisions of new section 219O to establish the ability of a subject officer or the CCC to apply for review of a discipline decision arising from part 7 of the *Police Service Administration Act 1990*. These definitions underpin the new chapter 5, part 3 of the *Crime and Corruption Act 2001*.

For the purposes of section 219O, schedule 1 outlines that an officer subject to a disciplinary decision and the CCC will be an aggrieved person for the following *Police Service Administration Act 1990* decisions:

- a decision under part 7, division 4 that a disciplinary charge or any other ground for disciplinary action has been proven in relation to an officer;
- a decision under part 7, division 4 to impose or not to impose a disciplinary sanction or professional development strategy on an officer;
- a decision under section 7.36 to dismiss or not to dismiss an officer; and
- a decision under section 7.41 to give effect to a disciplinary sanction or to continue the suspension of a disciplinary sanction.

Furthermore, new schedule 1 provides that the CCC is also an aggrieved person in relation to a decision:

- that a disciplinary charge or any other ground for disciplinary action has not been proven against an officer; and
- not to start a disciplinary proceeding against an officer in relation to whom a complaint mentioned in section 7.2 of the *Police Service Administration Act 1990* has been made. This further right of the CCC to apply for review if a decision not to commence disciplinary proceedings gives effect to Recommendation 15 of the PCCC Report.

Clause 31 Amendment of sch 2 (Dictionary)

Clause 31 omits the definitions of ‘officer’ and ‘reviewable decision’ from schedule 2 (Dictionary). The clause inserts a new definition of ‘aggrieved person’ and also definitions for the terms ‘disciplinary charge’, ‘disciplinary sanction’, ‘former officer’, ‘ground for disciplinary action’, ‘professional development strategy’, ‘reviewable decision’ and ‘subject officer’.

Division 2 Minor and consequential amendments

Clause 32 Acts amended

Clause 32 contains a schedule making minor and consequential amendments to the Acts it mentions.

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