



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

**Report No. 24, 56th Parliament
Economics and Governance Committee
April 2019**

Economics and Governance Committee

Chair	Mr Linus Power MP, Member for Logan
Deputy Chair	Mr Ray Stevens MP, Member for Mermaid Beach
Members	Ms Nikki Boyd MP, Member for Pine Rivers Mr Sam O'Connor MP, Member for Bonney Mr Dan Purdie MP, Member for Ninderry Ms Kim Richards MP, Member for Redlands

Committee Secretariat

Telephone	+61 7 3553 6637
Fax	+61 7 3553 6699
Email	egc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/egc

Acknowledgements

The committee acknowledges the assistance provided by the Queensland Police Service and the Crime and Corruption Commission.

Contents

Abbreviations	iii
Chair’s foreword	iv
Recommendations	v
1 Introduction	1
1.1 Role of the committee	1
1.2 Inquiry process	1
1.2.1 Submissions	1
1.2.2 Public briefing and written advice	1
1.2.3 Inquiry material	2
1.3 Policy objectives of the Bill	2
1.4 Consultation on the Bill	2
1.5 Should the Bill be passed?	3
2 Background to the Bill	4
2.1 Stakeholder support	6
3 Examination of the Bill	7
3.1 Modernising the police discipline system	7
3.1.1 Submitter views	8
3.1.2 QPS response	9
3.2 Grounds for disciplinary action	11
3.2.1 Submitter views	12
3.2.2 QPS response	13
3.3 Modernising the disciplinary sanctions that can be imposed on a subject officer	14
3.3.1 Proposed sanctions	14
3.3.2 Suspension of sanctions	15
3.3.3 Former officers	16
3.3.4 Transitional arrangements	16
3.3.5 Submitter views	17
3.3.6 QPS response	18
3.4 Formalising the role and range of management strategies available in the discipline process	20
3.4.1 Submitter views	20
3.4.2 QPS response	21
3.5 Improving the timeliness of the disciplinary process	21
3.5.1 Introducing timeframes for the commencement of disciplinary proceedings	21
3.5.2 Introducing an ADP process	22
3.5.3 Submitter views	24
3.5.4 QPS response	26
3.6 Guidelines	28
3.7 Central disciplinary unit	28
3.8 Addressing the review provisions in the <i>Crime and Corruption Act 2001</i>	29
3.8.1 Submitter views	32
3.8.2 QPS response	33

4	Compliance with the <i>Legislative Standards Act 1992</i>	35
4.1	Fundamental legislative principles	35
4.1.1	Rights and liberties of individuals	35
4.1.2	Institution of Parliament	41
4.2	Explanatory notes	42
	Appendix A – Submitters	43
	Appendix B – Witnesses at the public briefing	44

Abbreviations

ADP	Abbreviated Disciplinary Proceeding
BAQ	Bar Association of Queensland
Bill	Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019
CC Act	<i>Crime and Corruption Act 2001</i>
CCC	Crime and Corruption Commission
CCTV	closed circuit television
Charter	Charter of Victim's Rights, <i>Victims of Crime Assistance Act 2009</i> , schedule 1AA
CMC	Crime and Misconduct Commission
Commissioner	Commissioner of Police
committee	Economics and Governance Committee
Discipline Regulation	Police Service Discipline Regulations 1990
FLPs	fundamental legislative principles
LSA	<i>Legislative Standards Act 1992</i>
Minister	Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services
MoU	memorandum of understanding
OPM	Operational Procedures Manual
OQPC	Office of the Queensland Parliamentary Counsel
PCCC	Parliamentary Crime and Corruption Committee
PCCC Report	Parliamentary Crime and Corruption Committee, <i>Report No. 97, 55th Parliament – Review of the Crime and Corruption Commission</i> , 30 June 2016
POQA	<i>Parliament of Queensland Act 2001</i>
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
PSAA	<i>Police Service Administration Act 1990</i>
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society
QPCOUE	Queensland Police Commissioned Officers' Union of Employees
QPS	Queensland Police Service
QPUE	Queensland Police Union of Employees
Standing Orders	Standing Rules and Orders of the Legislative Assembly
WLSQ	Women's Legal Service Qld

All Acts are Queensland Acts unless otherwise specified.

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019.

The committee's task was to consider the policy outcomes to be achieved by the proposed legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff, the Queensland Police Service, and the Crime and Corruption Commission for their assistance.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Recommendation 1

3

The committee recommends the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Legislative Assembly.¹ The committee's areas of portfolio responsibility are:

- Premier and Cabinet, and Trade
- Treasury
- Aboriginal and Torres Strait Islander Partnerships, and
- Local Government, Racing and Multicultural Affairs.²

The committee is responsible for examining each Bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles (FLPs).³

1.2 Inquiry process

On 13 February 2019, the Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services (Minister) introduced the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (Bill) into the Legislative Assembly. On 14 February 2019, the Bill was referred to the committee for examination, with a reporting date of 12 April 2019.

1.2.1 Submissions

The committee contacted 60 key stakeholder organisations and community groups from across the police, justice and legal sectors, and over 900 email subscribers, to advise them of the committee's inquiry and call for submissions on the Bill. Details of the inquiry and call for submissions were also published on the committee's inquiry webpage.⁴

Submissions were open for a period of three weeks, closing on 11 March 2019. The committee received four submissions, a list of which is provided at **Appendix A**.

1.2.2 Public briefing and written advice

The committee received a joint written briefing on the Bill from the Queensland Police Service (QPS) and the Crime and Corruption Commission (CCC), prior to a public briefing from these agencies held on 25 February 2019. A list of officers who appeared at the briefing is provided at **Appendix B**.

Recognising that the Bill's reforms seek to address issues that have previously attracted significant public commentary, the committee had also planned to hold a public hearing on the Bill, to provide stakeholders with an opportunity to discuss their views. However, given the small number of submissions received and the relatively few issues raised in these submissions, the committee determined not to proceed with the hearing. The committee considered that this limited stakeholder feedback was likely a reflection of the widespread stakeholder support for the proposed reforms, and the considerable consultation and previous opportunities for input that informed the Bill's development (see further discussion in section 1.4 of this report).

The QPS provided the committee with written advice in response to those issues that submitters raised.

¹ The committee was established on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA), section 88, and the Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

² POQA, s 88; Standing Orders, SO 194, Schedule 6.

³ POQA, s 93(1).

⁴ <https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/PoliceSADROLA2019>

1.2.3 Inquiry material

Copies of the material published in relation to the committee's inquiry, including the submissions, transcript and written advice, are available on the committee's inquiry webpage.

1.3 Policy objectives of the Bill

The objective of the Bill is to implement a new police discipline system that 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.⁵

1.4 Consultation on the Bill

The QPS advised the committee that the Bill 'represents a culmination of years of effort and involves input from multiple agencies and from stakeholders ... to improve the current discipline system'.⁶

Following a series of previous reviews and reform discussions, in June 2016, CCC Chairperson Mr Alan MacSporran QC convened a bipartisan forum with the QPS, Queensland Police Union of Employees (QPUE), Queensland Police Commissioned Officers' Union of Employees (QPCOUE), and relevant government and shadow (opposition) ministers, to initiate a cooperative approach to the reform of the police discipline system.⁷

Mr MacSporran advised the committee:

*Everyone to their credit immediately agreed that it was an important reform that needed to be progressed and we then formed a smaller subcommittee and started to work through the issues.*⁸

After a series of roundtable discussions and negotiation on different aspects of the system, in October 2017 all of the key parties, including the relevant government ministers and shadow ministers, signed a memorandum of understanding (MoU) on the principles of a new police discipline system, upon which the Bill has been based.⁹

The committee was advised that during the drafting process:

*The CCC, QPUE and QPCOUE were actively consulted ... ensuring stakeholder support was retained, and that the Bill achieved the policy position as agreed by the parties and announced by the Chairperson of the CCC.*¹⁰

Additionally, the following key community stakeholders were invited to provide comments on a consultation draft of the Bill through a stakeholder feedback process undertaken confidentially,

⁵ Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019, explanatory notes, p 2.

⁶ Assistant Commissioner Sharon Cowden, Ethical Standards Command, QPS, public briefing transcript, Brisbane, 25 February 2019, p 2.

⁷ QPS and CCC, correspondence dated 20 February 2019, p 2; Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 3.

⁸ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 3.

⁹ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 3; QPS and CCC, correspondence dated 20 February 2019, p 2.

¹⁰ QPS and CCC, correspondence dated 20 February 2019, p 2.

‘to ensure stakeholders could make uninhibited comment on the proposed Bill without concern that their responses would be made public’.¹¹

- Aboriginal and Torres Strait Islander Legal Service
- Bar Association of Queensland (BAQ)
- CCC
- Queensland Council for Civil Liberties
- Queensland Law Society (QLS)
- QPUE, and
- QPCOUE.¹²

The explanatory notes advise that all of these stakeholders made submissions in relation to the Bill, and that a number of amendments were made as a result of stakeholders’ comments.¹³

QPS Assistant Commissioner Sharon Cowden, Ethical Standards Command, stated that the processes of ‘continued consultation, collaboration and cooperation’ that have informed the Bill’s development have meant:¹⁴

*... we are in a unique position... because we have agreement right across the state in terms of unions, the QPS and the CCC. It [the Bill] has been developed with the support of all the key stakeholders.*¹⁵

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill and its policy objectives, and consideration of the information provided by the QPS, CCC and submitters, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 be passed.

¹¹ Explanatory notes, p 21.

¹² Explanatory notes, pp 20-21.

¹³ Explanatory notes, p 21.

¹⁴ Assistant Commissioner Sharon Cowden, Ethical Standards Command, QPS, public briefing transcript, Brisbane, 25 February 2019, p 2.

¹⁵ Assistant Commissioner Sharon Cowden, Ethical Standards Command, QPS, public briefing transcript, Brisbane, 25 February 2019, p 10.

2 Background to the Bill

In Queensland, the *Police Service Administration Act 1990* (PSAA) provides for the management, development and administration of the QPS. A component of managing the QPS involves establishing and maintaining an internal discipline system that can guide, correct, rehabilitate, and if necessary, discipline current and former police officers, including police recruits.¹⁶

The QPS' complaint management and internal discipline system is governed by the PSAA, the Police Service Discipline Regulations 1990 (Discipline Regulation), and QPS policy and procedures. Additionally, the *Crime and Corruption Act 2001* (CC Act) sets out an investigative, oversight and monitoring function for the CCC with respect to incidents involving corrupt conduct within the QPS (and other public sector agencies).¹⁷

The state's police discipline system has been the subject of numerous reviews by the QPS and by the CCC and its predecessors, the Crime and Misconduct Commission (CMC) and the Criminal Justice Commission.¹⁸ These reviews have highlighted a number of aspects of the system that require improvement and modernisation, and which have also historically been a source of significant stakeholder dissatisfaction.¹⁹ Identified issues have 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 disciplinary sanctions that focus primarily on punitive measures and are limited in range
- the overly adversarial and legalistic nature of discipline proceedings
- a perceived lack of consistency in decisions made about matters involving similar conduct, and
- sometimes differing opinions of the QPS and the CCC in relation to the direction of investigations or appropriate sanctions, as evidenced by CCC applications for the review of QPS discipline decisions.²⁰

Despite a range of reforms having been proposed to address these issues, for various reasons few system changes have eventuated.²¹ As a result, the explanatory notes state that only limited policy changes have been implemented, with the effect that the police discipline system has 'remained functionally unchanged' since the inception of the PSAA in 1990.²² The QPS and CCC advised that this

¹⁶ QPS and CCC, correspondence dated 20 February 2019, p 1.

¹⁷ QPS and CCC, correspondence dated 20 February 2019, p 1.

¹⁸ See, for example: Criminal Justice Commission, *Integrity in the Queensland Police Service: Implementation and Impact of the Fitzgerald Inquiry Reforms*, September 1997; CMC, *Dangerous Liaisons: A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)*, July 2009; CMC, *CMC Review of the Queensland Police Service's Palm Island Review*, June 2010; CMC, *Setting the Standard: A review of current processes for the management of police discipline and misconduct matters*, December 2010; Simon Webbe, Hon Glen Williams AO, QC and Felix Grayson APM, *Simple, Effective, Transparent, Strong: An independent review of the Queensland police complaints, discipline and misconduct system*, Report by the Independent Expert Panel, May 2011.

¹⁹ Explanatory notes, p 2; Assistant Commissioner Sharon Cowden, Ethical Standards Command, QPS, public briefing transcript, Brisbane, 25 February 2019, p 2.

²⁰ Explanatory notes, pp 2-3.

²¹ At the public briefing on 25 February 2019, CCC Chairperson Mr Alan MacSporran stated:

... there had been a number of high-level reviews carried out over a number of years, all of which had recommended major reform of the kind that we are now dealing with, but through the fault of no-one in particular none of those reform measures had been advanced. Governments had changed, personnel had changed and for whatever reason, or for a variety of reasons, those reforms had not been progressed at all. See: Public briefing transcript, Brisbane, 25 February 2019, p 3.

²² Explanatory notes, p 2.

has led to ‘an inefficient system that has not kept pace with organisational, officer and community expectations’.²³

At the 2015 election, the government committed to ‘review the police complaints system and implement a new disciplinary system... which ensures accountability and fairness for both police officers and the public’.²⁴ The QPS and CCC advised:

*It was acknowledged that a new system was needed that addressed stakeholder concerns, focused on resolution through managerial action, maintained accountability and restored community and officer confidence.*²⁵

Since that time, the committee was informed that ‘extensive work has been undertaken... to create a modernised and more efficient system that is supported by all stakeholders’,²⁶ including through an initial, bipartisan stakeholder forum, and a collaborative reform process driven by a working group with representatives from the QPS, CCC and both police unions.²⁷

On 16 October 2017, CCC Chairperson Mr Alan MacSporran announced the working group’s successful negotiation of a revised police discipline system, with the parties’ agreement formalised in an MoU signed by the QPS, CCC, QPUE, QPCOUE and relevant government and shadow ministers.²⁸

The Bill contains the amendments necessary to implement the agreed changes and thereby ‘improve key facets of the police discipline system’.²⁹ This includes:

- modernising and expanding the range of disciplinary sanctions that can be imposed on an officer who is the subject of a complaint (a subject officer)³⁰
- formalising the role of professional development strategies and other management strategies available as part of the discipline process, to ensure that officers are appropriately educated and supported in ways that may improve their performance
- introducing timeframes for the investigation of complaints to reduce delays in finalising discipline investigations
- introducing an abbreviated discipline process if the conduct is not in dispute and the CCC approves the proposed sanction
- creating a central disciplinary unit responsible for conducting disciplinary proceedings
- providing for the establishment of guidelines to support the operation of the system, and
- addressing review provisions that apply to the CCC, to expand the CCC’s oversight of disciplinary decision-making.³¹

At the agreement of the CCC, QPS, QPCOUE and QPUE, those aspects of the new system that were not dependent on legislative amendment commenced on 1 July 2018, by way of amendments to the internal policies and processes of the QPS, to the extent possible under the current regime. The QPS

²³ QPS and CCC, correspondence dated 20 February 2019, p 1.

²⁴ Explanatory notes, p 2.

²⁵ QPS and CCC, correspondence dated 20 February 2019, p 2.

²⁶ QPS and CCC, correspondence dated 20 February 2019, p 1. See also: Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 3. Mr MacSporran stated that the Bill ‘is the product of a fairly extensive, impressive piece of work’.

²⁷ Explanatory notes, p 2; QPS and CCC, correspondence dated 20 February 2019, p 1.

²⁸ Explanatory notes, p 2.

²⁹ Explanatory notes, p 3.

³⁰ See: Bill, clause 9, ss 7.2 and 7.3. These new sections provide that a ‘subject officer’ is an officer or police recruit who is the subject of a complaint received by the commissioner or the CCC. This can include a former police officer.

³¹ Explanatory notes, p 3; QPS and CCC, correspondence dated 20 February 2019, pp 2-3.

and CCC advised that the early commencement of these non-legislative provisions has allowed key aspects of the system to be trialled and refined prior to the passage of the Bill.³²

In his explanatory speech, the Minister described the Bill as representing a ‘watershed moment ... more than 20 years in the making’,³³ that ‘builds on the Fitzgerald legacy’ and marks ‘an historic shift in the handling of police disciplinary matters’.³⁴

2.1 Stakeholder support

As is reflected in their signing of an MoU recognising the principles underpinning this Bill, all key stakeholders are united in their support for the new police discipline system, having been instrumental to its development.³⁵ As Senior Sergeant Gavin Hackett of the QPS Legislation Branch noted, the Bill reflects:

*... work that has been put together by the various stakeholders to solve Queensland's unique needs and overcome the historical problems that have come to the fore in the past few years.*³⁶

Mr Alan MacSporran further stated of the process:

*I have nothing but praise for all of those stakeholders who participated because at no stage was there ever a show-stopping problem that could not be solved. It is just another testament to what can be achieved if there is the will to cooperate and work through the issues. That is what has happened here ... All of the parties, including the shadow ministers, signed the memo of understanding and then the matter went to the parliamentary draftsman and that high-level, detailed cooperation between the stakeholders continued during the process while the parliamentary draftsman was setting out the provisions that you now have before you in the bill. I think it is an outstanding success ...*³⁷

The committee received four submissions, all of which expressed general support for the Bill or particular amendments.³⁸

The QLS stated that it ‘welcomes sound reform of the police disciplinary system, which has been dysfunctional for more than 25 years’, and that ‘on the whole, we agree with the approach taken’.³⁹ The BAQ submitted that it ‘supports the comprehensive changes proposed in the Bill and believes the new system will be a great improvement on the current system of police discipline’.⁴⁰ The QPUE also commended the Bill to the committee, describing it as ‘a far sighted, modern approach to dealing with police discipline, which recognises the public’s investment in the QPS and its officers’.⁴¹

However, these submitters also identified issues in relation to some amendments. These issues, and the QPS’ response to the issues, are outlined in chapter 3 of this report, which examines the Bill in detail.

³² QPS and CCC, correspondence dated 20 February 2019, p 2.

³³ Minister, explanatory speech, *Record of Proceedings*, 13 February 2019, pp 140-141.

³⁴ Minister, explanatory speech, *Record of Proceedings*, 13 February 2019, pp 140, 143.

³⁵ The Minister stated that the Bill was developed through a collaborative process, the result of which was ‘bipartisan support from all of those stakeholders’. The Minister further stated: ‘It was through these discussions and a united determination to make a difference that we reached this watershed moment’. See: Minister, explanatory speech, *Record of Proceedings*, 13 February 2019, p 141.

³⁶ Senior Sergeant Gavin Hackett, Instructing Officer, Legislation Branch, QPS, public briefing transcript, Brisbane, 25 February 2018, p 10.

³⁷ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 3.

³⁸ Women’s Legal Service Qld (WLSQ), submission 1, p 3; QLS, submission 2, p 1; QPUE, submission 3, pp 2-3; BAQ, submission 4, p 1.

³⁹ QLS, submission 2, p 1.

⁴⁰ BAQ, submission 4, p 1.

⁴¹ QPUE, submission 3, pp 2-3.

3 Examination of the Bill

The Bill repeals the Discipline Regulation⁴² and inserts a new part 7 into the PSAA which contains the legislative framework for the modernised police discipline system.⁴³

The Bill also inserts a new chapter 5, part 3 into the CC Act to enhance oversight of disciplinary processes by establishing provisions enabling a subject officer or the CCC to review a disciplinary decision made under the PSAA.

Various consequential amendments to the PSAA, CC Act and related legislation would facilitate the operation of the new system and review provisions.⁴⁴

3.1 Modernising the police discipline system

The majority of the Bill's amendments are contained in clause 9, which replaces part 7 of the PSAA with a proposed new part 7 setting out the discipline processes for officers under the modernised police discipline system.

In contrast to the current part 7, which contains four sections with relevant definitions and duties (7.1 to 7.4) and leaves the purposes and most requirements of the discipline system to be articulated in the Discipline Regulation, the proposed new part 7 outlines the processes and requirements of the modernised discipline system in significant detail across 46 sections of the PSAA (7.1 to 7.46).

The purposes of the proposed new part 7, identified in section 7.1, are:

- (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 service to—*
 - (i) *protect the public; and*
 - (ii) *uphold ethical standards within the service; and*
 - (iii) *promote and maintain public confidence, and officers' confidence, in the service.*

These purposes are consistent with the purposes of the existing system set out in section 3 of the Discipline Regulation, with the exception of two changes. Firstly, to reflect a shift in focus from retributive sanctions to a more nuanced performance management approach under the new system, the Bill replaces a current reference to 'guiding, correcting, chastising and disciplining' officers with the phrase 'guiding, correcting, *rehabilitating and if necessary*, disciplining officers'.⁴⁵ Secondly, a minor change to 7.1(b)(iii) recognises the importance of maintaining officers' confidence in the QPS, as well as maintaining the public's confidence in the service.⁴⁶

The CCC noted that these changes reflect a central tenet of the reforms, which is:

*... the notion that the investment in the training and equipping of a police officer is a significant investment for taxpayers, that if the conduct is not so serious as to warrant dismissal from the service every attempt should be made and will be made under these proposals to correct bad behaviour, to have the officer gain some insight and to become once more a valuable member of the service.*⁴⁷

⁴² Bill, cl 17, s 11.19.

⁴³ Bill, cl 9.

⁴⁴ QPS and CCC, correspondence dated 20 February 2019, p 3; explanatory notes, p 6.

⁴⁵ Discipline Regulation, s 3(a); Bill, cl 9, s 7.1(a).

⁴⁶ Discipline Regulation, s 3(b)(iii); Bill, cl 9, s 7.1(b)(iii).

⁴⁷ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 4.

At the same time, the CCC emphasised that the new system also seeks to ensure that managerial strategies are deployed appropriately, and that proportionate sanctions are imposed for serious conduct:

*If you can save them they should be saved, if the conduct is so serious that they fundamentally undermine confidence in the service they should be weeded out and for that purpose some of the sanctions will be ultimately more serious than those in the past.*⁴⁸

The subsequent provisions of the proposed new part 7 outline relevant definitions, requirements and processes to achieve the purposes listed in proposed section 7.1.

Within these provisions, many of the core features of the current discipline system are unchanged. The QPS and CCC emphasised:

*... the ability of the community to complain about police misconduct or misbehaviour is not diminished, nor are amendments being made to the range of misbehaviours or conduct that police may be disciplined for.*⁴⁹

Rather, the changes focus on ensuring that more appropriate sanctions and/or professional development strategies are imposed, and that disciplinary processes are carried out in a more timely and accountable manner.

As all legislative requirements of the police discipline system will be inserted into the PSAA, including a power for the Commissioner of Police (Commissioner) to make guidelines (see section 3.6 of this report), the Bill also repeals the Discipline Regulation.⁵⁰

The remainder of this chapter considers the provisions of proposed new part 7 and other related and consequential amendments, including amendments to the CC Act, in greater detail.

3.1.1 Submitter views

The QLS suggested possible amendments to the purposes of proposed new part 7, set out in proposed section 7.1. In relation to the phrase ‘guiding, correcting, rehabilitating and, if necessary, disciplining officers’ in proposed section 7.1(a), the QLS submitted that the words ‘if necessary, disciplining officers’ should be amended to ‘for deciding if further action is necessary’. The QLS stated that ‘in our opinion, any further action must be linked to disciplinary action’.⁵¹

The QLS further noted that ‘proposed section 7.1(b) essentially inserts a “public interest test” into this disciplinary scheme’, through its emphasis on ensuring appropriate standards of discipline are maintained to:

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

Whilst welcoming this inclusion, the QLS submitted:

... we consider the provisions need to be refined and suggest that sections 447 and 448 of the Legal Provisions Act 2007, which are well understood and effective, ought to be used as a model. These sections provide as follows:

447 Decision of commissioner to start proceeding under ch 4

As the commissioner considers appropriate in relation to a complaint or investigation matter that has been or continues to be investigated, other than a complaint or investigation matter

⁴⁸ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 4.

⁴⁹ QPS and CCC, correspondence dated 20 February 2019, p 3.

⁵⁰ Explanatory notes, pp 7, 43. The Discipline Regulation will be repealed on the commencement of the enabling Act. See: Bill, cl 17.

⁵¹ QLS, submission 2, p 2.

about the conduct of an unlawful operator, the commissioner may start a proceeding under this chapter before a disciplinary body.

448 Dismissal of complaint

- (1) The commissioner may dismiss the complaint or investigation matter if satisfied that—
- (a) there is no reasonable likelihood of a finding by a disciplinary body of—
 - (i) for an Australian legal practitioner—either unsatisfactory professional conduct or professional misconduct; or
 - (ii) for a law practice employee—misconduct in relation to the relevant practice; or
 - (b) it is in the public interest to do so.
- (2) The commissioner must give the respondent and any complainant written notice about the commissioner’s decision to dismiss the complaint or investigation matter.⁵²

3.1.2 QPS response

In response to the QLS’ submission that the words ‘if necessary, disciplining officers’ in proposed section 7.1(a) should be amended to ‘for deciding if further action is necessary’ so that any further action is linked to disciplinary action, the QPS stated:

The words ‘if necessary’ clarify that recourse to disciplining an officer is only required where management actions are not sufficient in the context of the matter and it is necessary to discipline the officer. Where it is necessary to discipline an officer, the Bill provides a comprehensive framework in later provisions that outlines the procedure that must be followed.

Prior to instituting disciplinary proceedings, the requirements of part 7, division 2 must be complied with. Specifically, new section 7.10 ‘Referral of complaint to prescribed officer’ of the Bill requires the Commissioner to have regard to five distinct considerations before a complaint may be referred to a prescribed officer for possible disciplinary proceedings.

Subsection (2) requires the Commissioner to consider:

- (a) any professional development strategy, or management action that has been implemented in relation to the subject officer;
- (b) whether implementation of another professional development strategy would be sufficient to achieve the purposes in section 7.1(b);
- (c) the subject officer’s disciplinary and service history;
- (d) the seriousness of the conduct to which the complaint relates; and
- (e) 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.

The specific consideration in section 7.10(2)(e) achieves the same purpose as the amendment suggested by the QLS, being that if disciplinary action is necessary in the matter, any disciplinary action must be necessary to achieve the purposes mentioned in section 7.1(b).⁵³

In relation to proposed section 7.1(b), the QPS submitted ‘with respect to QLS’, the section ‘is not designed to implement a public interest test similar to sections 447 and 448 of the *Legal Profession Act 2007*’.⁵⁴ Rather, the QPS stated:

The purpose of section 7.1(b) is to provide context and guidance in relation to the objects of part 7, being to ensure appropriate standards of discipline are maintained within the QPS and

⁵² QLS, submission 2, pp 2-3.

⁵³ QPS, correspondence dated 21 March 2019, pp 5-6.

⁵⁴ QPS, correspondence dated 21 March 2019, p 6.

*therefore protect the public; uphold ethical values within the QPS; and to promote and maintain public and officer's confidence in the QPS. These objects are necessary considerations to be had in relation to whether to implement professional development strategies or institute disciplinary proceedings and importantly, are guiding principles in relation to the imposition of any disciplinary sanction.*⁵⁵

Within the context of the police discipline system, the QPS advised that the implementation of a public interest test is provided for in section 42 of the CC Act, which outlines what the Commissioner must do when a complaint of misconduct is received.⁵⁶ The QPS stated that section 42, which 'achieves the same purpose as the QLS' proposal ... provides inter alia':

- (1) *The commissioner of police must expeditiously assess complaints, or information or matter (also a complaint) made or notified to, or otherwise coming to the attention of, the commissioner of police.*
- (2) *The commissioner of police must deal with a complaint about police misconduct in the way the commissioner of police considers most appropriate, subject to the commission's [CCC] monitoring role.*
- (3) *If the commissioner of police is satisfied that—*
 - (a) *a complaint—*
 - (i) *is frivolous or vexatious; or*
 - (ii) *lacks substance or credibility; or*
 - (b) *dealing with the complaint would be an unjustifiable use of resources;*

the commissioner of police may take no action or discontinue action taken to deal with the complaint

...
- (7) *If a person makes a complaint that is dealt with by the commissioner of police, the commissioner of police must give the person a response stating—*
 - (a) *if no action is taken on the complaint by the commissioner of police or action to deal with the complaint is discontinued by the commissioner of police—the reason for not taking action or discontinuing the action; or*
 - (b) *if action is taken on the complaint by the commissioner of police—*
 - (i) *the action taken; and*
 - (ii) *the reason the commissioner of police considers the action to be appropriate in the circumstances; and*
 - (iii) *any results of the action that are known at the time of the response.*
- (8) *However, the commissioner of police is not required to give a response to the person—*
 - (a) *if the person has not given his or her name and address or does not require a response; or*
 - (b) *if the response would disclose information the disclosure of which would be contrary to the public interest.*⁵⁷

The QPS submitted that it considers that the content and location of section 42 is sufficient for the purposes identified by the QLS and that 'amendments are only made to the CC Act where it was necessary to achieve the policy objectives of the new police discipline system'.⁵⁸

⁵⁵ QPS, correspondence dated 21 March 2019, p 6.

⁵⁶ QPS, correspondence dated 21 March 2019, p 6.

⁵⁷ QPS, correspondence dated 21 March 2019, p 6. See also CC Act, s 42.

⁵⁸ QPS, correspondence dated 21 March 2019, p 7.

3.2 Grounds for disciplinary action

Proposed section 7.4 outlines the grounds, or behaviours, for which an officer may be disciplined under the modernised system.⁵⁹ The section provides that a subject officer may be disciplined if the subject officer has:

- committed misconduct
- been convicted of an offence that is an indictable offence in Queensland
- performed their duties carelessly, incompetently or inefficiently
- been absent from duty without approved leave and without reasonable excuse
- contravened, without reasonable excuse, any of:
 - a provision of the PSAA or the Police Powers and Responsibilities Act 2000 (PPRA)
 - a code of conduct that applies to the subject officer, or
 - a direction by the Commissioner under the PSAA, or by a senior officer with authority to give that direction.⁶⁰

The provisions are consistent with section 9 of the Discipline Regulation, which currently outlines the grounds for disciplinary action. However, the Bill makes some minor changes to the wording used in the section, which the explanatory notes describe as having ‘modernised the language used to describe some of the grounds for disciplinary action’.⁶¹ For example, the Bill replaces references to an officer’s ‘unfitness, incompetence or inefficiency’ and ‘negligence, carelessness or indolence’ in the discharge of their duties;⁶² with a simpler reference to a subject officer having ‘performed the subject officer’s duties carelessly, incompetently or inefficiently’.⁶³

The Bill also omits the term ‘breach of discipline’ from the definitions in the current section 1.4 of the PSAA,⁶⁴ as the behaviours captured in the current definition of ‘breach of discipline’ are contained within the updated grounds for disciplinary action in proposed section 7.4.⁶⁵ By removing this term from the PSAA, the Bill removes the artificial distinction between the two categories of ‘breach of discipline’ and ‘misconduct’ under which behaviours are categorised in the current system. That is, currently, the PSAA provides that a ‘breach of discipline’ means ‘a breach of this Act [PSAA], the *Police Powers and Responsibilities Act 2000* [PPRA] or a direction of the Commissioner under this Act, but does not include misconduct’.⁶⁶ The explanatory notes advise that examples of a breach 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.*⁶⁷

⁵⁹ Explanatory notes, p 8.

⁶⁰ Bill, cl 9, s 7.4.

⁶¹ Explanatory notes, pp 8-9.

⁶² Discipline Regulation, s 9(a)-(b)

⁶³ Bill, cl 9, s 7.4(1)(c).

⁶⁴ Bill, cl 3.

⁶⁵ Explanatory notes, p 9.

⁶⁶ PSAA, s 1.4.

⁶⁷ Explanatory notes, p 4.

Misconduct, on the other hand, is defined as conduct that is: '(a) disgraceful, improper or unbecoming of an officer; or (b) shows unfitness to be or continue to be an officer; or (c) does not meet the standard of conduct the community expects of a police officer'.⁶⁸

Misconduct can be distinct behaviour which clearly fits within the definition – for example, sexual harassment. However, the explanatory notes acknowledge that:

*... 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.*⁶⁹

Currently, there are two different avenues for review of a disciplinary decision, dependent upon whether the offending conduct is considered to be a 'breach of discipline' or 'misconduct'. An officer can respectively apply for a review of a prescribed officer's decision before a Commissioner for Police Service Reviews⁷⁰ for a breach of discipline matter, and in the Queensland Civil and Administrative Tribunal (QCAT) for a misconduct matter. However, the CCC has review rights only in relation to misconduct allegations.⁷¹

In his explanatory speech, the Minister stated that:

Categorising misbehaviour into either a breach of discipline or misconduct is problematic. Disputes have arisen about whether particular behaviour would constitute a breach of discipline or misconduct, and as prescribed police officers from different police regions may conduct discipline hearings, there is fertile ground for inconsistencies to arise between decisions made about similar acts of misbehaviour around the state. Further, the inherent complexities of our current discipline system are exacerbated through the avenues of review available for a discipline decision...

*Removing the artificial distinction between a breach of discipline or misconduct simplifies the police discipline system as the ability to review a decision will no longer be dependent upon how the behaviour is categorised.*⁷²

As a result of the omission of the term 'breach of discipline' and the recognition of such behaviours and of behaviours amounting to misconduct within the grounds for discipline described in proposed section 7.4, the explanatory notes further state:

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'.⁷³

Accompanying amendments to support CCC review rights for all disciplinary decisions, regardless of the nature of the grounds for discipline, are discussed at section 3.8 of this report.

3.2.1 Submitter views

The WLSQ submitted that it 'supports in particular section 7.4(1)(c)', which recognises a subject officer's careless, incompetent or inefficient performance of their duties as a grounds for disciplinary

⁶⁸ PSAA, s 1.4.

⁶⁹ Explanatory notes, p 5.

⁷⁰ A Commissioner for Police Service Reviews is defined under section 9.2A of the PSAA as: a person nominated by the Chair of the CCC who is a commissioner or former commissioner of the CCC; or a person nominated by the Chair of the CCC and appointed by the Governor in Council who is a former member of the Criminal Justice Commission, a person qualified for appointment as chairman of the CCC, or a person who has community service experience or experience of community standards and expectations relating to public sector officials and public sector administration.

⁷¹ Explanatory notes, p 5.

⁷² Minister, explanatory speech, *Record of Proceedings*, 13 February 2018, p 141.

⁷³ Explanatory notes, p 5.

action.⁷⁴ WLSQ stated that sexual violence survivors, domestic violence survivors and other clients regularly report being disrespectfully treated by the QPS, including not being told where the police investigation is up to, feeling dismissed and forgotten after they have made their complaint, and having to ‘chase up’ officers about a criminal matter, including in relation to bail conditions that might protect them.⁷⁵

Accordingly, the WLSQ submitted that it would also support a cross-reference to the current Queensland Charter of Victim’s Rights (Charter) in section 7.4, such that a breach of the Charter would constitute a ground for disciplinary action:

*... we believe that victims of serious crime should be protected as much as possible or at least have grounds for making a complaint for unprofessional and/or disrespectful behaviour.*⁷⁶

3.2.2 QPS response

The QPS acknowledged the work of the WLSQ to support Queensland women, particularly in relation to victims of sexual violence or domestic and family violence. The QPS also acknowledged the WLSQ’s comments regarding their clients’ interactions with QPS officers and emphasised that section 4.9 of the PSAA requires an officer to comply with a direction of the Commissioner as far as is consistent with the PSAA, including those articulated in the Operational Procedural Manual (OPM).⁷⁷ Section 2.12 of the OPM (‘Victims of Crime’) contains the Commissioner’s directions relevant to compliance with the Charter, as follows:

*When dealing with a victim of crime, officers are to comply with the provisions of the Charter which places an onus on agencies to provide information to victims.*⁷⁸

The section outlines the general rights of victims and specific rights of victims in accordance with the Charter, including a victim’s rights in the criminal justice system, as a prosecution witness, in special circumstances (eg cases of rape or sexual assault) and how victim impact statements are to be made. The section also outlines the rights of a victim to make a complaint relating to a contravention of a right afforded by the Charter.⁷⁹ The QPS advised that accordingly:

*The failure of an officer to comply with the Charter (being a direction of the Commissioner under the PSAA) may constitute grounds for disciplinary action pursuant to new section 7.4(1)(a), (c) or (e). The context and seriousness of the failure to comply with the Charter would determine the specific ground for disciplinary action that is alleged in each specific matter. Similarly, if the allegation is substantiated, the nature and context of the officer’s failure to comply with the Charter will determine the appropriate professional development strategy or disciplinary sanction that is imposed.*⁸⁰

Regarding the WLSQ’s proposed cross-reference to the Charter in new section 7.4, the QPS further stated:

Section 7.4 ‘Grounds for disciplinary action’ has been deliberately drafted at a macro level, as opposed to specifically outlining numerous behaviours or matters of non-compliance that amount to unacceptable conduct. In doing so, the provision can cater for changing public

⁷⁴ WLSQ, submission 1, p 2.

⁷⁵ WLSQ, submission 1, p 1.

⁷⁶ WLSQ, submission 1, p 2.

⁷⁷ QPS, correspondence dated 21 March 2019, p 2.

⁷⁸ QPS, correspondence dated 21 March 2019, p 2. See also QPS, *Operational Procedures Manual (public edition)*, no. 68, 25 January 2019, p 111, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter2.pdf>

⁷⁹ QPS, correspondence dated 21 March 2019, p 2. See also QPS, *Operational Procedures Manual (public edition)*, no. 68, 25 January 2019, pp 110-121.

⁸⁰ QPS, correspondence dated 21 March 2019, p 3.

expectations and changes in other legislation or directions of the Commissioner without requiring section 7.4 to be amended.

Accordingly, it is submitted that the Bill, as drafted, contains grounds for disciplinary action that encapsulate the concerns of the WLSQ.⁸¹

3.3 Modernising the disciplinary sanctions that can be imposed on a subject officer

The explanatory notes advise that the disciplinary sanctions that can be imposed on a subject officer⁸² 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'.⁸³

The explanatory notes also highlight the potential for criticism arising from the significant differences between the severity of sanctions that may be applied to subject officers. For example, the maximum monetary fine that can be imposed on a subject officer is two penalty units (\$261.10).⁸⁴ However, the next incremental financial sanction for an officer is a reduction in their level of salary within their rank and the forfeiture or deferment of a salary increment, a sanction that may have unintended long-term consequences, such as reducing the subject officer's superannuation balance.⁸⁵

3.3.1 Proposed sanctions

As summarised in Table 1, the Bill proposes to amend the disciplinary sanctions that may be imposed on subject officers, to 'provide more scope and flexibility to deal with police misconduct'.⁸⁶ The amendments provide for more than one sanction to be applied to a subject officer, to provide greater flexibility for the prescribed officer to tailor the disciplinary action to appropriately reflect the subject officer's actions and circumstances.⁸⁷

The new disciplinary process and sanctions would apply to existing and former police officers and recruits.⁸⁸

⁸¹ QPS, correspondence dated 21 March 2019, p 3.

⁸² An officer who is the subject of a complaint, as set out in s 7 of the PSSA and s 10 of the Discipline Regulation.

⁸³ Explanatory notes, p 3.

⁸⁴ Regulation 3 of the Penalties and Sentences Regulation 2015 sets the value of a penalty unit at \$130.55, as at 1 July 2018.

⁸⁵ Explanatory notes, p 3.

⁸⁶ Explanatory notes, p 9.

⁸⁷ QPS and CCC, correspondence dated 20 February 2019, p 4.

⁸⁸ Explanatory notes, p 1.

Table 1: Proposed changes to sanctions included in the PSAA

Sanctions to be included in the PSAA	Sanctions to be removed from the PSAA
<p><u>Unchanged sanctions</u></p> <ul style="list-style-type: none"> • Dismissal⁹⁰ • Demotion (permanent)⁹¹ • Reprimand⁹² <p><u>Amended sanction</u></p> <ul style="list-style-type: none"> • Fine – increased from a maximum fine of 2 penalty units (\$261.10) to 50 penalty units (\$6,527.50)⁹⁴ <p><u>New sanctions</u></p> <ul style="list-style-type: none"> • Suspension from duty without pay for up to 12 months⁹⁵ • Disciplinary probation for up to 12 months⁹⁶ • Demotion for a specified period⁹⁷ • Comprehensive transfer⁹⁸ • Local transfer⁹⁹ • Performance of up to 100 hours of community service¹⁰⁰ 	<ul style="list-style-type: none"> • Salary reduction⁸⁹ • Forfeiture or deferment of a salary increment or increase⁹³

3.3.2 Suspension of sanctions

The Bill proposes to amend a prescribed officer's ability to suspend a disciplinary sanction imposed on a subject officer, with proposed section 7.41 providing that a prescribed officer will no longer be able to suspend the sanctions of dismissal or probation, as is currently the case. Other disciplinary sanctions may be suspended, but the Bill provides that these will remain part of the subject officer's disciplinary history.¹⁰¹

⁸⁹ Currently provided for in s 10(c) of the Discipline Regulation.

⁹⁰ Bill, cl 9, s 7.34(a); Discipline Regulation, s 10(f).

⁹¹ Bill, cl 9, s 7.34(d); Discipline Regulation, s 10(e).

⁹² Bill, cl 9, s 7.34(i); Discipline Regulation, s 10(a)

⁹³ Currently provided for in s 10(d) of the Discipline Regulation.

⁹⁴ Bill, cl 9, 7.34(h); Discipline Regulation, s 10(b).

⁹⁵ Bill, cl 9, s 7.34(b).

⁹⁶ Bill, cl 9, ss 7.34(c), 7.36.

⁹⁷ The PSAA's provision for an officer to be permanently demoted is not proposed to be changed.

⁹⁸ A comprehensive transfer is defined as a transfer of the subject officer to a position in another location in Queensland, if: the transfer reasonably requires the subject officer to relocate their residence or travel more than 40km by road between their residence and the location, and the subject officer does not consent to the transfer. Bill, cl 9, s 7.37.

⁹⁹ A local transfer is defined as one of either: 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 a position in another location in Queensland, if the transfer does not reasonably require the subject officer to relocate their residence, or travel more than 40km by road between their residence and the location. Bill, cl 9, s 7.38.

A local transfer is also defined as a transfer of the subject officer to a position in another location in Queensland, if: the transfer reasonably requires the subject officer to relocate their residence, or travel more than 40km by road between their residence and the location; and *the subject officer consents to the transfer* (emphasis added). Bill, cl 9, s 7.38(3).

¹⁰⁰ Bill, cl 9, ss 7.39.

¹⁰¹ Bill, cl 9, s 7.41(3)(a).

These amendments are consistent with recommendations made in the Parliamentary Crime and Corruption Committee's (PCCC) *Report No 97 – Review of the Crime and Corruption Commission* (PCCC Report), tabled in Parliament on 30 June 2016.¹⁰²

3.3.3 Former officers

For former officers, as no actual sanction can be imposed on the officer, disciplinary action takes the form of a disciplinary declaration which states that a disciplinary finding would have been carried out against an officer had the former officer's employment not ended. The PSAA provides a process for former officers to make submissions and/or participate in a hearing in relation to the disciplinary ground before a finding is made, with any investigation and disciplinary action required to be taken within two years of the end of the former officer's employment.¹⁰³ Currently, section 7A.2 of the PSAA provides that a disciplinary declaration may only be made if the action that would have been taken against the officer was dismissal or a reduction in rank.¹⁰⁴

The Bill would amend section 7A.2 to allow for a declaration to be made where the action that would have been taken is dismissal, suspension from duty without pay for at least three months, probation, or demotion (whether permanently or for a stated period).¹⁰⁵ The explanatory notes advise that this amendment is intended to align the circumstances in which a disciplinary declaration can be made with the revised disciplinary sanctions established by the Bill.¹⁰⁶

Accompanying this change, the Bill proposes to insert a requirement that the Commissioner consider the likelihood of the former officer engaging in future employment which would require the officer to disclose the making of a disciplinary declaration.¹⁰⁷ Other matters that must be considered reflect those currently contained in section 13 of the Discipline Regulation, and include the seriousness of the ground for disciplinary action, any benefit to the service in proceeding or not proceeding with the investigation, any offence substantially related to the ground for disciplinary action, and whether the matter is being considered by the CCC or another authority.¹⁰⁸

3.3.4 Transitional arrangements

For disciplinary proceedings that have already commenced, the Bill proposes transitional arrangements that allow for existing proceedings to continue under the PSAA if the prescribed officer has already determined that the allegation is substantiated. In such cases, any sanction imposed on the subject officer will be in accordance with the current provisions of the PSAA and Discipline Regulation. However, on the commencement of the Bill, if a subject officer consents to the withdrawal of the disciplinary proceeding, it can be withdrawn and a new proceeding commenced subject to the provisions of the amended PSAA.¹⁰⁹

FLP issues regarding the proposed sanctions are discussed in section 4.1.1 of this report.

¹⁰² The PCCC Report recommended that the ability to suspend the sanction of dismissal be reviewed (Recommendation 17) and that in the case of any other sanction that is suspended, the sanction should remain part of the officer's discipline record (Recommendation 18). See: PCCC, *Report No. 97, 55th Parliament – Review of the Crime and Corruption Commission*, June 2016, p 79.

¹⁰³ PSAA, ss 7A.1-7A.5.

¹⁰⁴ Explanatory notes, p 41.

¹⁰⁵ Bill, cl 11 (amending PSAA, s 7A.2).

¹⁰⁶ Explanatory notes, p 41.

¹⁰⁷ Bill, cl 10 (amending PSAA, s 7A.1).

¹⁰⁸ Explanatory notes, p 41; Discipline Regulation, s 13.

¹⁰⁹ Explanatory notes, p 19.

3.3.5 Submitter views

The BAQ raised concerns in relation to a number of the proposed sanctions, as outlined below.

Proposed removal of a reduction in salary as a sanction

The BAQ recommended that the sanction of a reduction in salary be retained. While acknowledging that reducing a subject officer's salary may create uncertainty about when the officer will return to that pay level and have implications for their superannuation balance, the BAQ noted that QCAT routinely considers the broad consequences of reducing an officer's salary and the QPS human resources department would be able to provide advice on these areas.¹¹⁰ The BAQ also submitted that the complexities of these matters would arguably be greater under the sanction of demotion – an existing sanction the Bill proposes to retain in the new system.¹¹¹

Further, the BAQ expressed concern that the Bill 'leaves a very large gap' between the proposed maximum fine that can be imposed (around \$6,500) and the sanction of demotion.¹¹²

Proposed sanction of a comprehensive transfer

The BAQ submitted that the sanction of a comprehensive transfer should not be permitted to be used on its own, recommending that it should only be available for application in conjunction with other sanctions such as probation or professional development strategies.¹¹³ The BAQ highlighted that this proposed sanction would empower the Commissioner to transfer a subject officer to a location that would require the officer to move home, even if the officer does not consent to the transfer, and submitted that this:

- could be quite a severe sanction, depending on the officer's relationship and family status
- would cause different impacts on officers with different family arrangements – the impact on a single person with no children could be much less than the impact on an officer with a working partner and/or school-aged children, and
- if implemented on its own, could relocate a problem rather than resolve it.¹¹⁴

Proposed sanction of community service

The BAQ supported the introduction of community service as a disciplinary sanction, but submitted that a community service activity should be different from, and in addition to, any activity a subject officer has regularly undertaken within the previous two years.¹¹⁵ The BAQ advised that it is 'aware of at least one instance where community service was imposed 'requiring' the subject officer to continue to act in a voluntary role he was already fulfilling at the time the sanction was imposed'.¹¹⁶

Proposed suspension of sanctions

The BAQ endorsed the Bill's removal of the ability to suspend the sanctions of promotion and dismissal, but recommended the provision for the suspension of sanctions be removed altogether.¹¹⁷ The BAQ noted that criminal law does not allow for the suspension of fines or community service, and submitted that to suspend these matters in the police disciplinary system is 'most unusual'.¹¹⁸ The BAQ also

¹¹⁰ BAQ, submission 4, p 3.

¹¹¹ BAQ, submission 4, p 3.

¹¹² BAQ, submission 4, p 4.

¹¹³ BAQ, submission 4, p 4.

¹¹⁴ BAQ, submission 4, p 4.

¹¹⁵ BAQ, submission 4, p 4.

¹¹⁶ BAQ, submission 4, p 4.

¹¹⁷ BAQ, submission 4, p 4.

¹¹⁸ BAQ, submission 4, p 5.

highlighted the potential for injustice if one officer's sanction for a minor matter is a fine, which they pay, whereas another officer's sanction for a more serious matter may be more severe than a fine but is suspended and never imposed.¹¹⁹

3.3.6 QPS response

The QPS' response to the concerns raised by the BAQ is outlined below.

Proposed removal of a reduction in salary as a sanction

The QPS stated that the proposed maximum fine that can be imposed on a subject officer (of about \$6,500) is broadly equivalent to a pay reduction of around four pay points within a rank, and therefore likely to be similar to a reduction in salary imposed under the current sanctions. However, the QPS submitted that a fine avoids two significant issues with reducing an officer's salary:

*Firstly, if an officer is reduced in pay points by 4 levels within their rank, they are effectively fined each subsequent year until they reach the top pay point in that rank. Secondly, depending on the subject officer's superannuation arrangements and how close they are to retiring, the effect of any reduction in pay points can be significantly multiplied.*¹²⁰

The QPS contended that the impact of these issues can be disproportionate to, and longer lasting than, the officer's offending behaviour.¹²¹

The QPS also asserted that the calculations necessary to guide the officer about the outcomes of a reduction in salary are complex and time-consuming, noting that they rely on a number of assumptions about future events, such as promotion, transfer and relieving at a higher level.¹²²

Further, the QPS contended that the proposed disciplinary sanctions do not leave a 'large gap' between the maximum fine and the sanction of demotion, highlighting that a prescribed officer can impose more than one disciplinary sanction on a subject officer, as well as a professional development strategy.¹²³

Proposed sanction of a comprehensive transfer

The QPS acknowledged the BAQ's comments regarding the potentially significant impacts on an officer if they are subject to a comprehensive transfer, but submitted that:

*... the ability to transfer an officer to another location, as a result of substantiated disciplinary allegations, is required to effectively achieve the purposes of part 7 of the PSAA in appropriate cases. For example, the nature of substantiated allegations against a subject officer in a rural location may mean that public confidence in the QPS cannot be maintained if the officer remains in that community and therefore the disciplinary sanction of comprehensive transfer is imposed.*¹²⁴

The QPS also noted that in recognition of the severity of the sanction:

*... the Bill restricts the ability to impose a sanction of comprehensive transfer to a prescribed officer of the rank of Commissioner or Deputy Commissioner. Further, the Bill affords the subject officer the right to make submissions in relation to any proposed sanction. The subject officer would ordinarily provide submissions relevant to the impact on their personal circumstances in the event a comprehensive transfer was proposed, which will be considered by the prescribed officer.*¹²⁵

¹¹⁹ BAQ, submission 4, p 5.

¹²⁰ QPS, correspondence dated 21 March 2019, p 19.

¹²¹ QPS, correspondence dated 21 March 2019, p 19.

¹²² QPS, correspondence dated 21 March 2019, p 19.

¹²³ QPS, correspondence dated 21 March 2019, p 19.

¹²⁴ QPS, correspondence dated 21 March 2019, p 19.

¹²⁵ QPS, correspondence dated 21 March 2019, pp 19-20.

The QPS further stated that it would be unlikely that a comprehensive transfer would be imposed in isolation, and would in most instances involve the imposition of another disciplinary sanction or professional development strategy. However, ‘to require the disciplinary sanction of comprehensive transfer to be imposed with another sanction in every matter would undermine the independence of the prescribed officer’.¹²⁶

Proposed sanction of community service

The QPS submitted that it does not support the inclusion of a requirement that a subject officer’s community service be an activity undertaken ‘in addition to any activity’ already regularly undertaken within the previous two years, as proposed by the BAQ.¹²⁷ The QPS stated in this regard:

*As an employer, the QPS is unable to reasonably require a subject officer to continue their pre-existing voluntary work at one organisation (which is not part of a disciplinary sanction) while imposing a disciplinary sanction that the subject officer perform community service at another organisation. The arrangement of the private affairs of the subject officer and how they manage their time and family commitments to meet the requirements of the sanction of community service is beyond the scope of the Bill.*¹²⁸

In response to the example cited by the BAQ of a subject officer who is subject to a sanction of community service being compelled to act in a role they are already voluntarily fulfilling, the QPS advised it would implement policy to prevent such orders being imposed on subject officers, and provide guidance to prescribed officers to prevent such an outcome occurring.¹²⁹

Proposed suspension of sanctions

The QPS acknowledged that the use of suspended sanctions in the police discipline system has been a source of ongoing debate amongst stakeholders, with the PCCC Report having identified that ‘the issue raises complex questions of policy, both for and against the use of suspended disciplinary sanctions’.¹³⁰ The QPS emphasised that the Bill implements the relevant recommendations from the PCCC Report,¹³¹ and that:

*... in reaching agreement on the overall police discipline scheme and the specific contents of the Bill, the QPS, CCC, QPUE and QPCOUE have agreed that the Bill strikes an appropriate balance in this contentious issue.*¹³²

The QPS submitted that the modernised and expanded range of sanctions provided by the Bill, and the scope to impose professional development strategies on a subject officer, may decrease the use of suspended sanctions. For example:

*... the current provisions of the PSAA do not allow community service to be imposed as a sanction or allow for an officer to be formally required to undertake training or counselling services. However, a prescribed officer could, for example, determine that demotion may be warranted in a case, but after regard is had to mitigating circumstances, believe the officer should perform community service and is likely to benefit from counselling services. Currently, the only way these conditions could be imposed would be by ordering a sanction of demotion, suspended on the basis that the subject officer completed community service and undertook counselling.*¹³³

¹²⁶ QPS, correspondence dated 21 March 2019, p 20.

¹²⁷ QPS, correspondence dated 21 March 2019, p 20.

¹²⁸ QPS, correspondence dated 21 March 2019, p 20.

¹²⁹ QPS, correspondence dated 21 March 2019, p 20.

¹³⁰ QPS, correspondence dated 21 March 2019, p 20.

¹³¹ QPS, correspondence dated 21 March 2019, pp 20-21.

¹³² QPS, correspondence dated 21 March 2019, p 21.

¹³³ QPS, correspondence dated 21 March 2019, p 21.

The QPS also emphasised that the Bill will preserve the ability of the CCC to apply for independent review of any suspended sanction before QCAT.¹³⁴

3.4 Formalising the role and range of management strategies available in the discipline process

Currently, there is no opportunity for officers who are subject to a disciplinary complaint to participate in professional development opportunities that may assist in improving their professionalism or in reducing the risk of similar behaviour reoccurring.¹³⁵

The Bill proposes to introduce such opportunities to improve subject officers' behaviour by:

*... allowing professional development strategies such as mentoring and additional training, which will reduce the risk of reoffending behaviour and improve the performance of subject members by addressing the underlying causes that lead to inappropriate behaviour. Rather than simply imposing a punitive sanction on a subject officer, these strategies give a subject officer the opportunity to reflect on their behaviour, to enhance their professionalism and to develop and improve.*¹³⁶

The Bill proposes to allow 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.¹³⁷ These strategies can be tailored to meet the individual needs of a subject officer.¹³⁸ The Bill defines a professional development strategy as a requirement that a subject officer does at least one of the following:

- undertake mentoring for up to six months
- undertake closer supervision for up to six months
- comply with additional reporting obligations for up to six months
- complete internal training
- complete external training or professional development, at the expense of the QPS or the subject officer
- undertake counselling, whether provided within the QPS or externally, at the expense of the QPS or the subject officer
- receive guidance
- undertake a temporary reassignment of duties for up to six months
- undertake or complete another program, development or strategy, at the expense of the QPS or the subject officer and with the subject officer's agreement, and/or
- anything else prescribed by regulation.¹³⁹

3.4.1 Submitter views

The BAQ recommended that the Bill explicitly state that if a subject officer has a professional development strategy imposed on them, this must form part of the officer's disciplinary history.¹⁴⁰

¹³⁴ QPS, correspondence dated 21 March 2019, p 21.

¹³⁵ Explanatory notes, p 4.

¹³⁶ Queensland Police Service, public briefing transcript, Brisbane, 25 February 2019, p 2.

¹³⁷ Bill, cl 9, s 7.9(3).

¹³⁸ Explanatory notes, p 4.

¹³⁹ Bill 2019, cl 9, s 7.3

¹⁴⁰ BAQ, submission 4, p 1.

The BAQ submitted that it understands that this is what is intended, but notes that proposed section 7.3, which outlines the professional development activities that may be required to be undertaken, is silent in this regard.¹⁴¹

The BAQ further explained:

*The Association's members who practice in Criminal Law often use a police officer's disciplinary history in criminal trials to support a client's allegation of inappropriate conduct by a police officer. The Association's members have anecdotally noted a pattern of complaints against an officer but have been unable to prove that pattern of complaint conduct at trial because the subject officer was dealt with by 'managerial guidance'. Under the existing regime 'managerial guidance' does not necessarily involve any 'finding' by a prescribed officer. In those circumstances, judges and juries have been deprived of evidence that is considered likely to have been relevant to the assessment of the police officer's conduct.*¹⁴²

3.4.2 QPS response

The QPS confirmed that any professional development strategy 'imposed on an officer under part 7 will be included in the subject officer's discipline history'.¹⁴³

3.5 Improving the timeliness of the disciplinary process

The explanatory notes advise that a common complaint of the police discipline system has been the time taken to investigate and finalise matters.¹⁴⁴ To improve the timeliness of the disciplinary process, the Bill proposes to:

- introduce timeframes in which disciplinary proceedings must be commenced, and
- introduce an abbreviated disciplinary proceeding (ADP) process.

3.5.1 Introducing timeframes for the commencement of disciplinary proceedings

Currently, neither the PSAA nor the Discipline Regulation impose any limit on the length of time taken to finalise a complaint. The Bill proposes to establish timeframes for the initiation of disciplinary proceedings and the finalisation of investigations.¹⁴⁵ The explanatory advise that:

*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.*¹⁴⁶

The Bill proposes that an investigation must be finalised, and proceedings commenced, within the later of:

- one year from the date the disciplinary ground arose,¹⁴⁷ or
- six months from the date the complaint is received by the Commissioner or the CCC.¹⁴⁸

¹⁴¹ BAQ, submission 4, p 1.

¹⁴² BAQ, submission 4, pp 1-2.

¹⁴³ QPS, correspondence dated 21 March 2019, p 15.

¹⁴⁴ Explanatory notes, p 3.

¹⁴⁵ Explanatory notes, p 3.

¹⁴⁶ Explanatory notes, p 3.

¹⁴⁷ Proposed 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.

¹⁴⁸ Bill, cl 9, ss 7.12, 7.13.

If subject officers are charged with criminal offences, the Bill proposes that disciplinary proceedings must start within six months of the criminal matter being finalised or withdrawn.¹⁴⁹ The explanatory notes state that this provision seeks to balance the need for a timely discipline investigation and an officer's rights before the criminal courts.¹⁵⁰

The Bill proposes an exception to the above timeframes, if the commencement of discipline proceedings would compromise a prescribed operation being undertaken by the CCC or QPS. In this case, the ground for disciplinary action is not taken to arise until the date the prescribed operation ends, with the general time limitation of 12 months commencing from that date.¹⁵¹ This exception ensures that ongoing investigations into serious matters are not compromised by the QPS being required to start disciplinary proceedings prematurely in order to comply with the timeframe requirements.¹⁵²

Further, the revised timeframes will not apply in relation to disciplinary declarations against a former officer (see also report section 3.3.3). As is the case under the current provisions of the PSAA, any investigation and disciplinary action taken in relation to a former officer will be required to occur within two years of the end of the former officer's employment.¹⁵³

3.5.2 Introducing an ADP process

The Bill's establishment of an ADP process is also intended to simplify and improve timeframes for disciplinary proceedings. The ADP process would allow a subject officer to elect to expedite an investigation by dispensing with the need for a full investigation or discipline hearing in matters that are considered simple or are not in dispute.¹⁵⁴ The process may be used where there is little doubt the conduct occurred – for example if CCTV footage clearly shows an officer committing misconduct – and the subject officer admits to the misconduct. While anticipated to be used primarily for low-level complaints, the process can also be used for more serious complaints.¹⁵⁵

Who can initiate an ADP

Participation in the ADP process is completely voluntary and is prefaced upon the informed consent of the subject officer.¹⁵⁶ A prescribed officer can, with the approval of the CCC, invite the subject officer to participate in the ADP instead of a full disciplinary hearing proceeding at any time during an investigation.¹⁵⁷ The subject officer may also request that the Commissioner consider commencing the disciplinary proceedings through the ADP process.¹⁵⁸

The ADP process and requirements

The Bill requires the prescribed officer to provide the subject officer with a written invitation to participate in the ADP, outlining the following matters:

- (a) *the date and details of the complaint and alleged ground for disciplinary action;*
- (b) *any further particulars necessary to identify the conduct alleged to constitute the ground for disciplinary action;*

¹⁴⁹ Bill, cl 9, s 7.12(b).

¹⁵⁰ Explanatory notes, p 11.

¹⁵¹ Bill, cl 9, ss 7.13(2)-(3).

¹⁵² QPS, correspondence dated 20 February 2019, p 4.

¹⁵³ PSAA, s 7A.1; Bill, cl 10 (amending S 7A.1).

¹⁵⁴ Explanatory notes, p 3; QPS, correspondence dated 20 February 2019, p 6.

¹⁵⁵ Explanatory notes, p 12; Acting Inspector Steven Wyatt, Legal and Policy Unit, Ethical Standards Command, QPS, public briefing transcript, Brisbane, 25 February 2019, p 7.

¹⁵⁶ QPS, correspondence dated 22 March 2019, p 6.

¹⁵⁷ Explanatory notes, p 11.

¹⁵⁸ Explanatory notes, p 11; Bill, cl 9, s 7.19.

- (c) *that the subject officer may give the prescribed officer a written submission and other material, within a stated period of at least 21 days, addressing—*
- (i) *the complaint; or*
 - (ii) *what disciplinary sanction or professional development strategy the subject officer would accept if an offer were made...*¹⁵⁹

The prescribed officer must then consider any written submission or other materials provided by the subject officer within the stated 21 day period,¹⁶⁰ and may also request further information from the subject officer by written notice, as is reasonably required for the prescribed officer to decide whether to make an offer to the subject officer or decide on what disciplinary sanction or disciplinary strategy to offer.¹⁶¹

Before making an offer, the prescribed officer must obtain the consent of the CCC. If the CCC approves the sanction, the prescribed officer may issue an abbreviated process notice to the subject officer,¹⁶² outlining the proposed sanction or strategy and other matters including:

- that the sanction or strategy will be part of the subject officer’s disciplinary history
- the period within which and manner in which the subject officer may accept the proposed strategy (the stated period must be a reasonable period of at least 21 days)
- that the subject officer’s acceptance of the proposed sanction or strategy may be accompanied by a submission or other materials about the complaint or the proposed strategy, and
- that the subject officer has no right of review under the PSAA or the CC Act regarding the sanction or strategy.¹⁶³

The explanatory notes state that ‘a right to apply for review of an ADP decision by either the CCC or subject officer is not required’ in this instance due to:

- the voluntary nature of the ADP process, and
- the requirement that the CCC approve the proposed strategy or sanction (the CCC is able to consider any submissions made by the subject officer prior to approving the proposed sanctions).¹⁶⁴

The removal of this right of review in relation to the ADP process is discussed further in section 4.1.1 of this report.

Subject officer to accept or reject the proposed sanction or strategy

The same sanctions are available under the ADP process as are available under a full disciplinary proceeding.¹⁶⁵

If the subject officer chooses to accept the proposed sanction or strategy, the subject officer must provide a written notice to the prescribed officer stating this.¹⁶⁶ If the subject officer does not accept the officer, the ADP process ends and the subject officer’s disciplinary matter may be dealt with under the general disciplinary process. If this occurs, any submission and/or accompanying

¹⁵⁹ Bill, cl 9, s 7.17(2).

¹⁶⁰ Bill, cl 9, s 7.17(3).

¹⁶¹ Bill, cl 9, s 7.17(4). Subsections 7.17(5) and 7.17(6) specify that a written request for further information must state the period within which the required information must be given to the prescribed officer, and that this period must be at least 14 days, or longer if the prescribed officer opts to extend the time for providing the required information.

¹⁶² Bill, cl 9, s 7.16(2).

¹⁶³ Bill, cl 9, s 7.18.

¹⁶⁴ Explanatory notes, p 12. See also: QPS, correspondence dated 20 February 2019, p 6.

¹⁶⁵ Explanatory notes, p 12.

¹⁶⁶ Bill, cl 9, s 7.21.

materials the subject officer provided to the prescribed officer or CCC are not admissible in any subsequent proceeding.¹⁶⁷

Ability to quash the ADP process and outcome if additional information comes to light

The Bill proposes to allow subject officers and the CCC to appeal to QCAT for an order to quash the ADP process and outcome if information comes to light that would have changed the decision of the prescribed officer had it been available when the complaint was being considered.¹⁶⁸ This 'fail safe' provision¹⁶⁹ is intended to mitigate the risk of subject officers opting to enter the ADP process when an allegation is made against them, when they know that the information provided to support that allegation does not fully reflect the severity of the misconduct, and if the information was known, a stronger disciplinary outcome would be possible.¹⁷⁰

ADP trial

The QPS and CCC advised that they have been trialling the ADP process since late 2018, to the extent that is possible under the current legislative framework.¹⁷¹ The QPS advised that 'so far ... fifty have been offered, 24 have been finalised and currently we have 18 active ... It is a fair process and, more so, it is a timely process'.¹⁷² CCC Chairperson Mr Alan MacSporran stated:

*Of those 50-odd there has only been a handful, less than 10 per cent, that we have failed to agree to and some of those have been further negotiated and have come back to the process and then gone through ... I have worked closely with Assistant Commissioner Cowden to try to get this backlog dealt with and once this new system is up and running that will be more easily achievable because a lot of matters will go to the abbreviated system and not take up valuable time that would otherwise be spent.*¹⁷³

3.5.3 Submitter views

The QPUE expressed its support for the streamlined approach under the new system, stating that 'officers will be dealt with in a timely manner, and encouraged to identify areas where they can improve through training, supervision, mentoring and other strategies'.¹⁷⁴ The QPUE submitted that 'under the old system':

*... police officers were left with months, if not years of uncertainty while they faced disciplinary complaints... Officers were taken off line and stood down from their duties during those processes. Ultimately in most instances the outcome would not be dismissal or even demotion of the officers concerned. The delay however not only deprived the public and the QPS of the services of the subject officer, but also had a negative impact on the officer, their family and colleagues.*¹⁷⁵

The BAQ also supported the proposed ADP process and particularly the oversight role given to the CCC. However, the BAQ expressed concern that there is 'an inherent danger in the system', in that the desire for a fast resolution to a disciplinary proceeding may incline the QPS to compile an abbreviated process notice that is 'attractive' to the subject officer in terms of the facts of the complaint and proposed

¹⁶⁷ Bill, cl 9, s 7.22(c).

¹⁶⁸ QPS, correspondence dated 20 February 2019, p 6.

¹⁶⁹ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 5.

¹⁷⁰ Explanatory notes, p 12.

¹⁷¹ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 5; Deputy Commissioner Tony Wright, State Discipline Office, QPS, public briefing transcript, Brisbane, 25 February 2019, p 9.

¹⁷² Deputy Commissioner Tony Wright, State Discipline Office, QPS, public briefing transcript, Brisbane, 25 February 2019, p 9.

¹⁷³ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, pp 4-5.

¹⁷⁴ QPUE, submission 3, p 2.

¹⁷⁵ QPUE, submission 3, p 2.

sanction. Whilst acknowledging that the CCC will act as a safeguard, the BAQ noted that when making any decision the CCC would rely on information provided by the QPS in deciding whether to agree to the offer being made to the subject officer.¹⁷⁶

In light of this, the BAQ recommended that before the CCC endorses an ADP offer to be made to a subject officer, the complainant in the disciplinary proceeding should be advised of the factual basis of abbreviated process notice made to the subject officer, and be given the chance to comment on the offer.¹⁷⁷

Proposal that disciplinary proceedings and criminal proceedings cannot occur concurrently

The BAQ also expressed concern that the Bill is structured on an understanding that disciplinary proceedings will be placed on hold while criminal proceedings are on foot, noting that the new timeframes for initiating disciplinary proceedings and finalising investigations apply only once the criminal matter is finalised or withdrawn.¹⁷⁸ The BAQ submitted that in practice, such proceedings are typically proceedings against a criminal defendant who is not the subject officer, and that the historic practice of putting disciplinary complaints on hold 'pending court outcome' is inappropriate:

The Association notes that a "pending court outcome" suspension usually arises where a criminal defendant alleges misconduct by police during an investigation that results in the criminal defendant being charged. An example of this might be where there is an allegation of excessive force being used during an arrest.

The logic being applied in suspending a disciplinary matter "pending court outcome" is that the resolution of the criminal charge before the courts may make further investigation or disciplinary proceedings unnecessary. This assumes that a guilty finding by a court necessarily means that a complaint is false.¹⁷⁹

The BAQ stated that such assumptions are flawed for a number of reasons, and ignore that:

- the majority of criminal charges are resolved by plea, and pleas of guilty based on convenience can and do occur in Queensland
- a defendant may have other concurrent charges, such that successfully contesting the related disciplinary complaint charge may make no meaningful difference to the sentence
- legal aid is not available for the majority of contested matters in the Magistrates Court, meaning a defendant may not have the resource, inclination or ability to defend themselves, and
- a disciplinary investigation is conducted for the benefit of the community as a whole, not for the subject officer or the complainant.¹⁸⁰

The BAQ also noted that a disciplinary investigation into police conduct prior to a criminal trial may assist a criminal defendant, but submitted that this is an argument in favour of immediate disciplinary investigation.¹⁸¹ The BAQ therefore considered that the commencement of a disciplinary proceeding should not be deferred if the subject officer is not a criminal defendant, and recommended that the Bill include a requirement for disciplinary investigations to occur immediately, unless an officer of appropriate rank considers the proceeding should not happen.¹⁸²

¹⁷⁶ BAQ, submission 4, p 3.

¹⁷⁷ BAQ, submission 4, p 3.

¹⁷⁸ BAQ, submission 4, p 2.

¹⁷⁹ BAQ, submission 4, p 2.

¹⁸⁰ BAQ, submission 4, p 2.

¹⁸¹ BAQ, submission 4, p 2.

¹⁸² BAQ, submission 4, pp 2-3.

Timeframes for disciplinary declarations against former officers

The QLS noted that the Bill does not amend the two year timeframe applicable for investigating and taking disciplinary action against a former officer, submitting that ‘in our view, the timeframe for disciplinary declaration should be 6 months and be in the public interest’.¹⁸³ The QLS stated:

*... in the experience of our members, the delay can cause a real injustice in circumstances where an officer resigned, ending their career, but after 6 to 12 months is faced with additional discipline action. There are examples where officers have gained alternative employment and have then had to disclose the disciplinary action taken by the QPS, resulting in this new employment being terminated.*¹⁸⁴

3.5.4 QPS response

The QPS rejected the BAQ’s recommendation that the complainant in a case be provided the factual basis of the abbreviated process notice and be given the opportunity to respond, as a further potential safeguard on the ADP process.¹⁸⁵

The QPS advised that during the initial recording of a complaint, the person making the complaint is asked to provide the details of what outcome they would like to occur. The QPS submitted that the CCC will therefore ‘be in possession of the relevant material to determine if the QPS is offering an ‘attractive’ factual basis to the subject officer simply to resolve the matter’.¹⁸⁶

The QPS also noted the scope for the content of a complaint and an abbreviated process notice to differ for several reasons, including that the available evidence only supports some allegations and not others. Involving complainants at this stage, it submitted, would overly complicate the practice and make it ‘unworkable’:

*If the CCC were precluded from approving the ADP in such situation, a significant number of disciplinary proceedings would be required to be commenced before a prescribed officer that otherwise would have been finalised through the ADP process.*¹⁸⁷

The QPS also noted the CCC’s strong oversight role in the process and that if the CCC or the Commissioner considered that an ADP offer was approved on the basis of an ‘attractive’ factual basis that was deliberately misleading or false, the CCC or Commissioner could apply to QCAT for an order quashing the ADP and if successful, the ADP would be quashed. As a further disincentive to make a factual basis ‘attractive’, the QPS also highlighted that the officers responsible for authoring any misleading documents could be liable for disciplinary action.¹⁸⁸

Proposal that disciplinary proceedings and criminal proceedings cannot occur concurrently

The QPS agreed with the BAQ’s interpretation that the definition of ‘relevant criminal proceedings’ used when articulating when disciplinary proceedings must be commenced (proposed section 7.12(c)) is not restricted to criminal proceedings where the subject officer is the criminal defendant.¹⁸⁹

¹⁸³ QLS, submission 2, p 3.

¹⁸⁴ QLS, submission 2, p 3.

¹⁸⁵ QPS, correspondence dated 21 March 2019, p 18.

¹⁸⁶ QPS, correspondence dated 21 March 2019, p 18.

¹⁸⁷ QPS, correspondence dated 21 March 2019, p 18.

¹⁸⁸ QPS, correspondence dated 21 March 2019, p 18.

¹⁸⁹ QPS, correspondence dated 21 March 2019, p 18.

However, the QPS advised that it does not agree with the BAQ's comments that the logic applied in suspending a disciplinary matter is based upon an assumption that a guilty finding by a court necessarily means that a complaint is false:

*For example, a person may be found guilty of committing the offence of obstructing police and a police officer involved in that matter may later face discipline sanctions for using excessive force. Similarly, there are several precedents where the criminal defendant was convicted of serious indictable offences and officers were subsequently disciplined for failing to comply with the Commissioner's directions or excessive use of force during the arrest.*¹⁹⁰

Further, the QPS also submitted that 'the BAQ's observation that disciplinary investigations do not occur because there is an ongoing criminal matter on foot is now incorrect':

*The method of finalising a complaint, before any investigation occurred, as 'pending court outcome' is no longer used by the QPS. Internal QPS Ethical Standards Command policies indicate that disciplinary investigations should be completed as quickly as possible and this approach now applies to matters where there are relevant criminal proceedings commenced against the complainant in the discipline matter or another person.*¹⁹¹

The QPS stated that it does not have a default position or policy of not conducting a disciplinary proceeding while a criminal proceeding is also underway, stating that matters are individually assessed and the extent of investigations determined according to the particular circumstances.¹⁹² Accordingly, there may be instances where the QPS determines that any potential disciplinary proceedings should await the outcome of the related criminal proceedings, with any such decisions likely to be made by an officer at least as senior in rank as a Superintendent.¹⁹³

The QPS advised that it is developing a guideline, in consultation with the QPUE and CCC, to restrict the operation of proposed section 7.12(1)(c) ordinarily to matters where the subject officer is the person charged in the relevant criminal proceeding. It envisages that the policy would also allow for the operation of section 7.12(1)(c) where:

- the subject officer consents to its use to delay the start of disciplinary proceedings and the consent is provided within the applicable timeframes to ordinarily start a disciplinary proceeding, or
- it is in the best interests of justice to not start the disciplinary proceedings until after the relevant criminal proceeding is concluded.¹⁹⁴

The decision to delay the start of disciplinary proceedings under the policy will be restricted to senior officers, likely Superintendents at a minimum.¹⁹⁵

Timeframes for disciplinary declarations against former officers

While emphasising that the Bill's intention is to align the disciplinary sanctions for which a declaration may be made against a former officer with the sanctions under the revised discipline system, and not to amend the timeframe within which this must occur, the QPS acknowledged the QLS proposal to reduce the limitation timeframe from two years to a six month period.¹⁹⁶ The QPS advised that such a proposal would be inconsistent with similar provisions in the public sector, noting for example,

¹⁹⁰ QPS, correspondence dated 21 March 2019, p 18.

¹⁹¹ QPS, correspondence dated 21 March 2019, pp 16-17.

¹⁹² QPS, correspondence dated 21 March 2019, p 16.

¹⁹³ QPS, correspondence dated 21 March 2019, p 17.

¹⁹⁴ QPS, correspondence dated 21 March 2019, p 17.

¹⁹⁵ QPS, correspondence dated 21 March 2019, p 17.

¹⁹⁶ QPS, correspondence dated 21 March 2019, p 17.

equivalent two year limitations in relation to former officers under the *Public Service Act 2008*, *Fire and Emergency Services Act 1990*, and *Ambulance Services Act 1991*.¹⁹⁷

Further, the QPS stated:

*... an officer may resign from their employment before the existence of a ground for disciplinary action is known to the QPS. It is unreasonable to expect that the ground for potential disciplinary action will become known to the QPS, an investigation occur and a disciplinary declaration made within the suggested timeframe of six months. This suggested amendment may result in disciplinary declarations being unable to be made for relevant matters, facilitating the non-disclosure of serious matters to subsequent employers, which is not in the public interest.*¹⁹⁸

3.6 Guidelines

The Bill specifically provides for the Commissioner to create guidelines in relation to the disciplinary process. The following are provided as examples of matters for which guidelines may be made:

- (a) *the way investigations of complaints are to be conducted; and*
- (b) *the way disciplinary proceedings are to be conducted, including matters to which a prescribed officer must have regard when imposing a disciplinary sanction.*¹⁹⁹

Before making any such guidelines, the Bill requires the Commissioner to have actively consulted with, and considered the views of, the Chairperson of the CCC and each union representing officers.²⁰⁰ The explanatory notes state that this provision ‘balances the need for fairness and certainty with the requirement for flexibility in relation to some components of the discipline system’.²⁰¹

Any policy or guidelines that are made will be required to be consistent with the framework and requirements in the PSAA and the CC Act.²⁰²

The provision for the making of guidelines is discussed further in section 4.1.2 of this report, regarding FLP issues.

3.7 Central disciplinary unit

The Bill also provides the ability for the Commissioner to create a central unit responsible for conducting disciplinary hearings. Ordinarily the Commissioner could establish such a unit through the normal allocation of staff within the QPS. However, to ensure natural justice is maintained for subject officers, the Bill requires the central unit to be ‘separate and distinct from the unit involved in investigating complaints’ (currently the Ethical Standards Command).²⁰³ This includes a requirement that the executive officer responsible for investigating complaints must not be responsible for the operation, supervision, or command of the central unit.²⁰⁴ The QPS advised:

*This demarcation ensures ... senior officers overseeing a discipline investigation will not later be involved in actually hearing discipline proceedings or the imposition of a disciplinary sanction that may result from those proceedings.*²⁰⁵

According to the explanatory notes, the central unit will deal with disciplinary proceedings regarding serious allegations where a subject officer may face the disciplinary sanctions of dismissal, suspension

¹⁹⁷ QPS, correspondence dated 21 March 2019, p 8.

¹⁹⁸ QPS, correspondence dated 21 March 2019, p 8.

¹⁹⁹ Bill, cl 9, s 7.44(1).

²⁰⁰ Explanatory notes, p 7.

²⁰¹ Explanatory notes, p 7.

²⁰² Explanatory notes, p 20.

²⁰³ Bill, cl 9, ss 7.43(2).

²⁰⁴ Bill, cl 9, ss 7.43(3).

²⁰⁵ Assistant Commissioner Sharon Cowden, Ethical Standards Command, QPS, public briefing transcript, Brisbane, 25 February 2019, p 3.

without pay, disciplinary probation, comprehensive transfer, or demotion. Under proposed section 7.35, the ability to impose these sanctions is limited to prescribed officers of certain ranks. That is, while the Commissioner or Deputy Commissioners may impose any disciplinary sanction, 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.²⁰⁶ Further, a 'commissioned officer' may impose only community service, a fine, or a reprimand.²⁰⁷ To support the operation of the central unit, the Bill provides an exception to these limitations, such that an Assistant Commissioner assigned to the central unit will have the same powers to impose disciplinary sanctions as a Deputy Commissioner, and an officer of Chief Superintendent rank assigned to the central unit will have the same powers to impose disciplinary sanctions as an Assistant Commissioner.²⁰⁸

The explanatory notes state that assigning an Assistant Commissioner and officer of Chief Superintendent rank to the unit and granting them these powers will:

*... alleviate the need for other deputy commissioners or assistant commissioners to attend to discipline hearings and provide them with increased opportunity to manage their heavy workloads and responsibilities associated with running a region or a command ...*²⁰⁹

As part of the move to begin implementing elements of the new discipline system prior to the commencement of the necessary amendments in the Bill, the QPS established the new central disciplinary unit, known as the State Discipline Office, on 25 June 2018.²¹⁰ The QPS advised the committee of the unit:

*We are starting to see more consistency, because all of the matters are going into the State Discipline Office, instead of being sent out across the state for an individual to hold a hearing in different areas. Just setting up the State Discipline Office is starting to assist in terms of the process and also making sure that we are getting consistency, which is important in terms of fairness, whichever side of the fence you are on.*²¹¹

3.8 Addressing the review provisions in the *Crime and Corruption Act 2001*

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 monitor the progress of police investigations into disciplinary matters and their outcomes, issue guidelines, review and audit the 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.²¹²

As noted at section 3.2 of this report, there are currently two avenues for review of a disciplinary decision, dependent on whether the offending conduct is considered to be 'a breach of discipline' or 'misconduct', with the jurisdiction of the CCC and associated review rights applying only in relation to 'misconduct'.²¹³

In relation to misconduct allegations, a subject officer or the CCC can apply for a review in QCAT of a prescribed officer's decision to substantiate an allegation, or the resulting imposition of a certain

²⁰⁶ Explanatory notes, p 12.

²⁰⁷ Bill, cl 9, s 7.35(2)(d).

²⁰⁸ Bill, cl 9, ss 7.43(4)-7.43(5).

²⁰⁹ Explanatory notes, p 13.

²¹⁰ QPS, *Annual Report 2017-18*, 2018, p 54.

²¹¹ Assistant Commissioner Sharon Cowden, Ethical Standards Command, QPS, public briefing transcript, Brisbane, 25 February 2019, p 10.

²¹² Explanatory notes, p 4. See also: CC Act, s 47.

²¹³ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 4.

sanction prescribed by the officer. However, the CCC is unable to apply for a review of a QPS decision not to commence a disciplinary hearing in relation to a complaint. This could include circumstances where the prescribed officer decides there is insufficient evidence to commence a proceeding or there is only sufficient evidence to substantiate a breach of discipline instead of misconduct.²¹⁴ The PCCC Report recommended that the CCC have the ability to apply for a review of a QPS decision not to institute disciplinary proceedings against an officer (Recommendation 15),²¹⁵ noting historical examples of circumstances in which it has been identified that the lack of such provision has enabled the independent review process to be circumvented, undermining public confidence in the police discipline system.²¹⁶ The PCCC further stated:

*The Committee considers that it is anomalous that the Commission should have the power to apply to QCAT for a review of what is in its opinion a lenient disciplinary decision made by the QPS in respect of a substantiated allegation of police misconduct, but that it should not have the power to apply for the review of what is, in effect, no penalty at all.*²¹⁷

In relation to allegations of discipline, while a subject officer can apply for review of the prescribed officer's decision before a Commissioner for Police Service Reviews (as defined under section 9.2A of the PSAA); the CCC has no such right of review. Further:

*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.*²¹⁸

Mr MacSporran explained the effect of this limitation:

*... our jurisdiction to review the decisions in that disciplinary process depended upon the matter being characterised as misconduct as opposed to a breach of discipline. What could happen and had been happening, although only in isolated cases, to avoid our jurisdiction and our review rights there was a characterisation of some conduct that we clearly believed was more serious than a breach of discipline, which is the lowest level of breach, deliberately to avoid our jurisdiction. There are a number of cases that have been decided in QCAT that have ruled correctly that we had no jurisdiction if the matter was characterised as a breach of discipline. Whether in fact it was or not, that characterisation defeated our jurisdiction.*²¹⁹

The Bill addresses these limitations by:

- providing the CCC with the ability to apply for the review of disciplinary decisions in relation to any grounds for discipline (aided by the Bill's omission of the term 'breach of discipline' from the PSAA, which removes the distinction between the different grounds for discipline – see section 3.2 of this report), and
- providing the CCC with the ability to apply for a review of a QPS decision not to commence disciplinary proceedings, thereby implementing Recommendation 15 of the PCCC Report.²²⁰

The Bill would establish a discrete part in the CC Act to cater for the right of the CCC to apply for review of a disciplinary decision under the CC Act, by inserting a new chapter 5, part 3 and accompanying new

²¹⁴ Minister, explanatory speech, *Record of Proceedings*, 13 February 2018, p 141.

²¹⁵ Explanatory notes, p 5; QPS, and CCC, correspondence dated 20 February 2019, p 7.

²¹⁶ PCCC Report, p 74. The PCCC particularly highlighted the QPS decision not to initiate disciplinary proceedings in relation to officers involved in two investigations relating to the death in custody of Mulrunji on Palm Island in 2004. See also: CMC, *CMC's Review of the Queensland Police Service's Palm Island Review*, June 2010.

²¹⁷ PCCC Report, p 76.

²¹⁸ Explanatory notes, p 5.

²¹⁹ Mr Alan MacSporran QC, Chairperson, CCC, public briefing transcript, Brisbane, 25 February 2019, p 4.

²²⁰ Explanatory notes, pp 5, 13-14.

schedule 1. Within the proposed new chapter 5 part 3, section 219O inserts a new definition of a 'reviewable decision' for the part, being a decision made under the PSAA that is mentioned in the accompanying new schedule 1 column 1 of the CC Act (see Table 2).²²¹ This new definition reflects the modernised sanctions and disciplinary processes provided by the proposed new part 7 of the PSAA.²²²

Table 2: Reviewable decisions under the PSAA, as defined by proposed section 219O and Schedule 1 of the CC Act

<i>Who can apply for a review?</i>	<i>Reviewable decisions</i>
CCC	<ul style="list-style-type: none"> • a decision that a disciplinary charge or any other ground for disciplinary action has not been proved in relation to the officer • a decision not to start a disciplinary proceeding against an officer in relation to whom a complaint has been made (implementing PCCC Report Recommendation 15)
CCC or a subject officer	<ul style="list-style-type: none"> • a decision that a disciplinary charge or any other grounds has been proved in relation to the officer • a decision to impose a disciplinary sanction or professional development strategy on an officer • a decision not to impose a disciplinary sanction or professional development strategy on an officer • a decision to dismiss, or not to dismiss, an officer • a decision to give effect to a disciplinary sanction or to continue the suspension of the disciplinary sanction

The Bill provides that all reviews of disciplinary decisions made under the proposed new part 7 or part 7A (in relation to former officers) will be heard and determined by QCAT. Currently, the PSAA provides that a subject officer may apply to have a decision reviewed by a Commissioner for Police Service Reviews.²²³ The explanatory notes advise:

*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.*²²⁴

The Bill also establishes the parties to a review, being the applicant for review and the decision-maker.²²⁵ If the CCC is the applicant for review, the subject officer to whom a decision relates is automatically joined as a party.²²⁶ If the applicant is the subject officer, the Bill requires that a copy of the application for review is given to the CCC²²⁷ and sets out the timeframe within which, after receiving notice of the review, the CCC must decide whether the CCC will be joined as a party to the review.²²⁸

Consistent with existing provisions of the CC Act, proposed section 219S provides that where QCAT finds a ground for disciplinary action has been proven against a subject officer and sets aside the decision and substitutes the decision, QCAT has the same powers as the Commissioner under the

²²¹ Bill, cl 28, s 219O; cl 30, Schedule 1.

²²² Explanatory notes, p 14.

²²³ PSAA, s 9.3.

²²⁴ Explanatory notes, p 43.

²²⁵ Bill, cl 28, s 219R.

²²⁶ Explanatory notes, p 14.

²²⁷ Bill, cl 28, s 219P.

²²⁸ Bill, cl 28, s 219R.

proposed new part 7, division 5 of the PSAA Act in these circumstances.²²⁹ Proposed section 219S(2) clarifies that QCAT can impose any disciplinary sanction under that part, regardless of whether the original decision maker or prescribed officer had the power to impose that disciplinary sanction or not.²³⁰ The explanatory notes advise in this regard:

*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.*²³¹

3.8.1 Submitter views

The QLS submitted that ‘there is a public interest argument’ that the CCC should have review rights in relation to a QPS decision not to commence disciplinary action, noting the CCC is not presently able to do so under the current framework.²³² However, the QLS argued that the proposed amendments are unclear about what decision is able to be reviewed. The QLS submitted:

The review, in this instance, should simply be that the disciplinary action should have been taken (was warranted) and the matter then returned to the QPS for this action to be taken; otherwise, the officer will be denied the first step in the process, an actual hearing before the QPS.

*The matter should not be determined by QCAT prior to this initial disciplinary process being completed. The CCC will then have the opportunity to be involved in the disciplinary action to ensure the matter is dealt with appropriately, in the fulfilment of its role to investigate corrupt conduct and an independent body.*²³³

The QLS submitted that it also holds concerns in relation to proposed section 219S(2), which allows QCAT to impose any disciplinary sanction available to the Commissioner when setting aside and substituting a decision, regardless of whether the person who made that decision would be authorised to impose the sanction. The QLS acknowledged that this provision reflects the current section 219(J)(2) of the CC Act, but submitted:

... our concern is that this power will likely infringe upon the natural justice and procedural fairness afforded to an officer in circumstances where they may have taken certain steps in respect of disciplinary action, knowing what the possible outcomes may be, only to have a different sanction imposed on them by QCAT. If the officer was aware that such action could be taken, then it would have been open to them to make a different decision, or take additional or alternate steps at the initial stages of the matter.

*For example, an officer may be put on notice that a sanction will not exceed a certain level, and so may make a decision – such as pleading guilty rather than not guilty to an allegation – only to have a higher sanction imposed by QCAT. Further, if QCAT imposed a sanction that was not able to be imposed at first instance, then the officer is unlikely to have obtained and adduced information and documents in respect of this new sanction. The delay in obtaining such evidence could adversely affect their matter.*²³⁴

²²⁹ Bill, cl 28, s 219S.

²³⁰ Bill, cl 28, s219S(2)(b).

²³¹ Explanatory notes, p 49.

²³² QLS, submission 2, p 4.

²³³ QLS, submission 2, p 4.

²³⁴ QLS, submission 2, pp 4-5.

While acknowledging that courts have allowed for this power to be exercised in certain cases, the QLS expressed a view that this power should not be provided for without restriction:

*In our view, a review to QCAT should only consider the sanction open to the original decision-maker. If the review is successful, then the matter should be sent back to the QPS to be dealt with according to the law at the new level, with all pleas and submissions vacated from the previous proceedings.*²³⁵

3.8.2 QPS response

In response to the comments of the QLS regarding proposed section 219O, including the suggestions that there is a lack of clarity about what can be reviewed in relation to a decision not to commence disciplinary action, the QPS emphasised that section 291O and schedule 1 cannot be read in isolation from proposed section 219T of the CC Act ('Requirement to return particular matters to commissioner of police').²³⁶ The QPS noted that proposed section 219T will apply if the reviewable decision is a decision not to commence a disciplinary proceeding. The section provides that if QCAT sets aside the decision not to commence disciplinary proceedings, QCAT must return the matter to the Commissioner with:

- (a) a direction to commence a disciplinary proceeding under part 7 of the PSAA against the subject officer; and
- (b) any other direction QCAT considers appropriate.²³⁷

The QPS noted that proposed section 219T(3) further provides that the Commissioner must commence a disciplinary proceeding within six months of the order being made by QCAT.²³⁸ The QPS submitted:

*Accordingly, the Bill provides clear instructions on what must occur if QCAT sets aside the QPS decision not to commence disciplinary proceedings. These instructions ensure the subject officer is afforded all procedural protections and natural justice rights that are contained in new part 7 of the PSAA. Importantly, the Bill does not affect the independence of the eventual prescribed officer or dilute the rights of review of either the subject officer or CCC arising from the subsequent disciplinary proceeding.*²³⁹

In response to the concerns of the QLS regarding proposed section 291S, the QPS also maintained that this provision is appropriate.²⁴⁰ The QPS stated:

The ability of QCAT to substitute the original disciplinary sanction with any disciplinary sanction is central to the operation of the review mechanisms in a timely and efficient manner, particularly for matters where the CCC are the applicant for review on the basis of an inappropriately low sanction. If QCAT were required to return the matter to the QPS for rehearing and sanctioning at a different level of prescribed officer, it is possible that the second prescribed officer may impose a second disciplinary sanction that is the same or similar to the original sanction. If so, it is likely that the CCC would again apply for review of the disciplinary sanction on the grounds that it is insufficient.

Such an outcome would limit the independence of the second prescribed officer, as QCAT has already determined the original sanction was insufficient, therefore impliedly the second prescribed officer must impose a sanction that is more detrimental to the subject officer.

²³⁵ QLS, submission 2, p 5.

²³⁶ QPS, correspondence dated 21 March 2019, p 9.

²³⁷ Bill, cl 28, s 219T(2).

²³⁸ QPS, correspondence dated 21 March 2019, p 9.

²³⁹ QPS, correspondence dated 21 March 2019, pp 9-10.

²⁴⁰ QPS, correspondence dated 21 March 2019, pp 10-11.

Furthermore, such operation would create an inefficient system through potentially several hearings and reviews being conducted on the same matter.

The amendment suggested by the QLS would also create two different QCAT outcomes dependent on whether the relevant person was employed by the QPS or a different unit of public administration.²⁴¹

²⁴¹ QPS, correspondence dated 21 March 2019, p 10.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

It is the committee’s role to consider whether a bill has sufficient regard to the FLPs articulated in the LSA and to advise the Legislative Assembly accordingly. Where the committee identifies a possible breach of those principles, it will consider and advise on whether the breach may be justified in the context of the objectives of a bill.

The committee has examined the application of the FLPs to the Bill, and considers that clauses 9 and 17 raise possible FLP issues.

4.1.1 Rights and liberties of individuals

Reasonableness and fairness

Clause 9 of the Bill, which inserts the new part 7 containing the framework for the modernised police discipline system, introduces a number of new sanctions and professional development strategies.

As noted in section 3.3 of this report, the available disciplinary sanctions include:

- dismissal
- suspension without pay
- demotion
- comprehensive and local transfer (which might require additional travel of greater than or up to 40km respectively or relocation of the officer’s residence)
- performance of up to 100 hours of community service, and
- a fine of up to 50 penalty units (the previous maximum was two penalty units).²⁴²

The professional development strategies that can be imposed on a subject officer (see report section 3.4) include:

- undertaking mentoring, closer supervision or additional reporting obligations for a period of up to six months
- completing internal training
- completing external training or professional development at the expense of the service or the officer
- undertaking counselling at the expense of the service or the officer, and
- undertaking a temporary reassignment of duties for up to six months (the officer may be required to travel up to 40km or more without the officer’s consent – see proposed section 7.5).²⁴³

²⁴² Bill, cl 19, s 7.34.

²⁴³ Bill, cl 19, ss 7.3, 7.9, 7.35, 7.37, 7.40. Note that a comprehensive transfer can only be applied by a Commissioner, a Deputy Commissioner, or an Assistant Commissioner appointed to the central discipline unit and granted equivalent powers, and would require the relocation of the subject officer’s residence or travel of more than 40km, without the officer’s consent.

These disciplinary sanctions and professional development strategies may also be part of an offer to a subject officer through an ADP (see report section 3.5.2).²⁴⁴ Further, the Bill provides that 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.²⁴⁵

Under proposed section 7.14, where the conduct involves absence from duty, a subject officer may be required to undergo an examination by a medical practitioner which involves assessment of the officer's mental and physical condition.²⁴⁶

Issue of fundamental legislative principle

The creation of any new offences and provision for penalties has the potential to breach the FLP that legislation must have sufficient regard to the rights and liberties of individuals. Relevant to the consideration of such matters is the reasonableness and fairness of treatment of individuals, and whether penalties are proportionate to the offence.

In relation to the proportionality of penalties, the Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

*... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*²⁴⁷

Many of the disciplinary sanctions proposed by the Bill will affect a subject officer's rights and liberties and their ordinary lives.

In terms of financial sanctions, the application of a maximum fine of 50 penalty units (\$6,527.50) under the Bill is a significant increase from the current maximum fine of two penalty units (\$261.10).²⁴⁸ The Bill also removes the previously available sanction of a reduction in an officer's level of salary within their current rank and the forfeiture or deferment of a salary increment or increase. The explanatory notes advise of these changes:

*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.*²⁴⁹

The Bill's provision for the sanctions of comprehensive or local transfer has the potential to require additional travel for an officer of up to 40km or more, and could involve the relocation of an officer's residence. This is a significant imposition on a person's rights and liberties. While the explanatory notes do not address these transfers in the context of consistency with FLPs, they explain:

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

²⁴⁴ Bill, cl 9, s 7.16.

²⁴⁵ Explanatory notes, p 10; Bill, cl 19, s 7.42.

²⁴⁶ Bill, cl 19, s 7.14.

²⁴⁷ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

²⁴⁸ Regulation 3 of the Penalties and Sentences Regulation 2015 set the value of a penalty unit at \$130.55, as at 1 July 2018.

²⁴⁹ Explanatory notes, p 9.

*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.*²⁵⁰

An officer may also be required to undergo training, professional development and counselling at either the expense of the QPS or their own expense. This again could be a significant imposition on a person's time and may impose an expense on the officer.

Other available sanctions, such as demotion, additional reporting, performance of community service, among others, also similarly impose on an officer's freedoms and rights.

In relation to professional development strategies, the explanatory notes state:

*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.*²⁵¹

Committee consideration and comment

Any disciplinary framework necessarily provides for the imposition of sanctions which may impinge on the rights and liberties of individuals to some extent. Where the contraventions are more serious, it is appropriate that any effects on rights and liberties are more significant, as is in line with community expectations, and necessary to ensure consistently high standards of behaviour. This is particularly the case for the state's police force, noting the powers of police officers, their role in upholding laws, and the need for public confidence in the QPS.

In this case, the committee is satisfied that the Bill will provide for a sufficiently flexible range of disciplinary options to support the imposition of sanctions that are fair, proportionate, and in keeping with the identified purposes of the new discipline system. Further, the committee notes that the Bill is sufficiently clear in setting out the matters that constitute grounds for discipline as to enable officers to understand what is required of them, as well as providing for further education and training to support improved understanding and behavioural change.

Administrative power and natural justice

Many of the disciplinary processes outlined in the Bill are consistent with those of the existing system, with the Bill effectively enshrining aspects of disciplinary proceedings that are currently contained in QPS policy.²⁵²

However, the Bill also introduces the new concept of an ADP, as outlined in section 3.5.2 of this report. There is no provision for a subject officer or the CCC to ordinarily review a sanction imposed through this abbreviated process.²⁵³

²⁵⁰ Explanatory notes, p 9.

²⁵¹ Explanatory notes, p 10.

²⁵² Explanatory notes, p 6.

²⁵³ The new Division 3, introduced in clause 9, does not provide for a review process in an ADP.

Issue of fundamental legislative principle

Sections 4(3)(a) and 4(3)(b) of the LSA respectively provide that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example:

- the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review, and
- the legislation is consistent with the principles of natural justice.

The principles of natural justice include a principle that a person should not be deprived of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case, and that the decision maker must be unbiased. In addition, the person should be afforded procedural fairness, including through clear communication regarding the process and adequate notice and opportunity to be heard.²⁵⁴

In relation to section 4(3)(a) of the LSA, the explanatory notes recognise the potential FLP breach associated with the lack of review rights for subject officers in relation to an ADP, as opposed to a standard disciplinary process:

*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.*²⁵⁵

Clauses removing the right of review should be carefully scrutinised, to ensure adherence to the principle that there should be a review or appeal against the exercise of administrative power. Where ordinary rights of review are removed, thereby preventing individuals from having access to the courts or a comparable tribunal, particular care is needed to assess whether sufficient regard has been afforded to individual rights, noting that such a removal of rights might be justified by the overriding significance of the objectives of the legislation.²⁵⁶

In this instance, the explanatory notes emphasise:

*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 officer 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.*²⁵⁷

Further, the Bill also provides for further review through QCAT, either by the application of CCC or the subject officer, where ‘fresh, additional or substituted evidence (new evidence) later emerges that would have affected the decision of the prescribed officer had it been known earlier’.²⁵⁸

The explanatory notes also provide the following justification:

... [T]he 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.

²⁵⁴ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, pp 24-32.

²⁵⁵ Explanatory notes, p 17.

²⁵⁶ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 19.

²⁵⁷ Explanatory notes, p 17.

²⁵⁸ Explanatory notes, p 17.

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 QPCOU support the ADP process.²⁵⁹

In relation to section 4(3)(b) and the Bill's consistency with natural justice generally, the explanatory notes state:

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.²⁶⁰

Committee consideration and comment

Given that the ADP process is entirely voluntary, has an in-built process for informed consent from its commencement, and still allows for the proceedings and outcome to be further reviewed and quashed by QCAT (while also providing the benefit of a streamlined process), the committee is satisfied that any potential FLP breach is reasonable in the circumstances.

The committee considers that the disciplinary processes outlined in the Bill establish a framework for disciplinary proceedings that is generally consistent with the principles of natural justice.

Retrospectivity

As discussed in section 3.5 of this report, the Bill imposes timeframes for the imposition of disciplinary proceedings in relation to a complaint against an officer.²⁶¹ That is, a disciplinary proceeding must be commenced within whichever period is the last of:

- a year from when the ground for disciplinary action arose
- six months from the date a complaint was received about the ground for disciplinary action, or
- six months from the conclusion of any relevant criminal proceeding.²⁶²

²⁵⁹ Explanatory notes, p 18.

²⁶⁰ Explanatory notes, p 17.

²⁶¹ Bill, cl 9, ss 7.12, 7.13.

²⁶² Bill, cl 9, 7.13.

An exception is provided only where the Commissioner or Chairperson of the CCC or their delegate believes the commencement of a proceeding before the end of a prescribed operation may compromise the operation (in which case these timeframes apply from the date the prescribed operation is concluded).²⁶³

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.²⁶⁴

Transitional provisions set out in clause 17 provide that 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 proposed new part 7.²⁶⁵ For disciplinary proceedings that have been commenced and for which the prescribed officer has already determined that the allegation is substantiated, the current sanctions will apply.²⁶⁶ 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 proposed new part 7.²⁶⁷

Issue of fundamental legislative principle

Section 4(3)(g) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

In respect of the transitional provisions, the QLS submitted:

*... the changes should not prevent a subject officer or other person from being afforded natural justice or procedural fairness in respect of a proceeding.*²⁶⁸

The explanatory notes acknowledge the potential FLP breach associated with the retrospective application of the provisions but argue that in this instance, the retrospective effect may be beneficial for the subject officer, as it will allow the matter to be concluded more promptly and provide the officer with the advantages of access to the modernised sanctions.²⁶⁹ The former Scrutiny Committee, it was noted, 'had no concerns regarding retrospective legislation that did not adversely affect any person other than the State'.²⁷⁰

The explanatory notes further outline this justification as follows:

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...

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

²⁶³ Bill, cl 9, s 7.13.

²⁶⁴ Explanatory notes, p 18.

²⁶⁵ Explanatory notes, p 19.

²⁶⁶ Bill, cl 17, s 11.20.

²⁶⁷ Bill, cl 17, s 11.22.

²⁶⁸ QLS, submission 2, p 3.

²⁶⁹ Explanatory notes, p 19.

²⁷⁰ Explanatory notes, p 18.

engaging in the underlying behaviours that give rise to disciplinary action. Therefore, the Bill does not retrospectively impose different obligations or standards upon officers...

Transitional provisions in the Bill balance the advantages of the modernised disciplinary sanctions and processes with natural justice requirements for the subject officer. ... These transitional arrangements recognise that these modernised sanctions are more appropriate than the current provisions, regardless of when the conduct is alleged to have occurred. The CCC [Crime and Corruption Commission] 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.²⁷¹

The explanatory notes also highlight that the amendments ‘have no effect on the wider community, except to ensure a speedy resolution of any complaint they make against an officer’.²⁷²

Committee consideration and comment

The committee is satisfied with the explanation provided regarding the retrospective effect of the provision. The committee notes that the transitional provisions will ensure that subject officers will have access to the benefits of more timely disciplinary processes and modernised sanctions for conduct that has already occurred, but has not yet been reported, and for proceedings which have commenced, but for which the allegation has not yet been substantiated. On balance, the retrospective effect is likely to be positive.

4.1.2 Institution of Parliament

Delegation of legislative power

As detailed in section 3.6 of this report, the Bill provides a power for the Commissioner to make guidelines relating to the disciplinary process, including guidelines regarding the way in which investigations and disciplinary hearings are to be conducted and matters which a prescribed officer must have regard to when imposing a disciplinary sanction.²⁷³

Additionally, the Bill sets out a definition of ‘professional development strategy’ in proposed section 7.3, which is introduced by clause 9. The definition provides that ‘professional development activity’ means a requirement that a subject officer do one or more of a number of listed specified things (such as training, reporting, receiving counselling, mentoring or guidance), to which is added, at paragraph (j), ‘anything else prescribed by regulation’.²⁷⁴

Issue of fundamental legislative principle

Section 4(4)(a) of the LSA provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

This issue is concerned with the level at which delegated legislative power is used. The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.²⁷⁵

Committees look unfavourably on regulation-making powers being expressed too generally.

²⁷¹ Explanatory notes, p 19.

²⁷² Explanatory notes, p 19.

²⁷³ Explanatory notes, p 40.

²⁷⁴ Bill, cl 9, s 7.3.

²⁷⁵ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

With respect to the power for the Commissioner to make guidelines relating to the disciplinary process, the explanatory notes state:

- 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, and
- the fairness of these policies and QPS compliance with them will be promoted by the involvement of the relevant industrial bodies in their formulation, in accordance with the requirement that consultation is undertaken before any guideline is made.²⁷⁶

With respect to the definition of a ‘professional development activity’ in proposed section 7.3, which includes ‘anything else prescribed by regulation’, the Bill establishes a broad power for the administering department to create regulations which are not limited in scope, and which could potentially have great impact on officers for whom a professional development activity is imposed.

Effectively, a subject officer could be required to undertake a professional development activity that could be perceived as a punishment that is open to be made by regulation, rather than by Parliament. This could be seen to be unfair to an officer who is subject to a professional development activity, particularly as the lack of limitations on this aspect of the definition mean that a regulation could prescribe an activity which does not align, or is not commensurate, with other professional development activities set out in the Bill.

The explanatory notes provide the following justification for the provision:

*... 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.*²⁷⁷

Committee consideration and comment

The committee considers that the provision for the Commissioner to make guidelines relating to the disciplinary process is an appropriate means by which to support the consistent application of the provisions of the PSAA in this respect, offering further direction on practical matters. The Bill incorporates significantly more detail about disciplinary processes in the PSAA than is currently provided, thereby imposing stricter limits on the scope of matters that can be prescribed. Further, the requirement for consultation to be undertaken will also ensure guidelines are appropriately informed by input from key stakeholders, thereby helping to ensure the fairness of the system.

The committee also considers that, on balance, proposed section 7.3 has sufficient regard to the institution of Parliament. While it is likely that the professional development strategy may cover significant matters, the committee notes that the content of the professional development strategy will be made by regulation and will therefore be subject to parliamentary scrutiny through processes for the examination of subordinate legislation.

4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the Bill on its introduction. The explanatory notes are sufficiently detailed and contain the information required by part 4 of the LSA and a reasonable level of background information and commentary to facilitate an understanding of the Bill’s aims and origins.

²⁷⁶ Explanatory notes, p 20; Bill, cl 9, 7.44(2).

²⁷⁷ Explanatory notes, p 20.

Appendix A – Submitters

Sub #	Submitter
001	Women’s Legal Service Qld
002	Queensland Law Society
003	Queensland Police Union of Employees
004	Bar Association of Queensland

Appendix B – Witnesses at the public briefing

Public briefing

25 February 2019

Queensland Police Service

- Assistant Commissioner Sharon Cowden, Ethical Standards Command
- Acting Deputy Commissioner Tony Wright, State Discipline Office
- Chief Superintendent Glenn Horton, Operations Commander, Ethical Standards Command
- Acting Inspector Steven Wyatt, Legal and Policy Unit, Ethical Standards Command
- Senior Sergeant Gavin Hackett, Instructing Officer, Legislation Branch

Crime and Corruption Commission

- Mr Alan MacSporran QC, Chairperson

