

I hereby certify that this PUBLIC BILL has finally passed the Legislative Assembly of Queensland.

Legislative Assembly Chamber,
Brisbane,

The Clerk of the Parliament.

30 October 2019

In the name and on behalf of the Queen, I assent to this Bill.

Paul de Jersey

Government House,

Brisbane,

30 October 2019



Queensland

No. 32 of 2019

A BILL for

An Act to amend the Crime and Corruption Act 2001, the Police Service Administration Act 1990 and the Acts mentioned in schedule 1 for particular purposes, and to repeal the Police Service (Discipline) Regulations 1990



Queensland

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

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2019

A Bill

for

An Act to amend the *Crime and Corruption Act 2001*, the *Police Service Administration Act 1990* and the Acts mentioned in schedule 1 for particular purposes, and to repeal the *Police Service (Discipline) Regulations 1990*

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*.

Part 2 Amendment of Police Service Administration Act 1990

2 Act amended

This part amends the *Police Service Administration Act 1990*.

Note—

See also the amendments in schedule 1.

3 Amendment of s 1.4 (Definitions)

(1) Section 1.4, definitions *breach of discipline*, *disciplinary action*, *disciplinary ground* and *officer—*

omit.

(2) Section 1.4—

insert—

abbreviated process notice, for part 7, see section 7.18(1).

CCC means the Crime and Corruption Commission under the *Crime and Corruption Act 2001*.

complaint, for part 7, see section 7.3.

comprehensive transfer, for part 7, division 5, see section 7.37.

disciplinable conduct, for part 7, see section 7.3.

disciplinary action see section 7.3.

disciplinary charge, for part 7, division 4, see section 7.25(a).

disciplinary history, of an officer, for part 7, see section 7.3.

disciplinary proceeding see section 7.3.

disciplinary proceeding notice, for part 7, see section 7.25.

disciplinary sanction, for part 7, see section 7.34.

finally dealt with, for part 7, see section 7.3.

ground for disciplinary action see section 7.3.

local transfer, for part 7, division 5, see section 7.38.

officer—

(a) generally, means a police officer; and

(b) for part 7, see section 7.3.

prescribed officer, for part 7, see section 7.3.

professional development strategy, for part 7, see section 7.3.

proposed sanction notice, for part 7, see section 7.28(2).

proposed sanction or strategy—

(a) for part 7, division 3, see section 7.18(1)(c);
or

(b) for part 7, division 4, see section 7.28(2)(c).

QCAT information notice, for a decision, means

a notice complying with the QCAT Act, section 157(2) for the decision.

required period, for part 7, division 3, subdivision 3, see section 7.20.

senior officer, in relation to another officer (the **subordinate**), means—

- (a) an officer designated as the subordinate's senior officer in accordance with established administrative arrangements or policies; or
- (b) if there is no officer mentioned in paragraph (a)—
 - (i) an officer holding a higher rank than the subordinate as prescribed by regulation; or
 - (ii) an officer holding the same rank as the subordinate but who has held that rank for a longer period; or
 - (iii) an officer holding the same rank as the subordinate for the same period but who has the longer period of continuous service as an officer.

service history, of an officer, for part 7, see section 7.3.

subject officer, for part 7, see section 7.2.

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

Section 5A.23—

insert—

- (2) In this section—

disciplinary proceeding includes a proceeding against a former officer under part 7A.

5 Insertion of new pt 6A, hdg

After part 6—

insert—

**Part 6A Reporting obligations
of officers and staff
members**

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

(1) Section 7.1(1), from ‘action taken’—

omit, insert—

action taken, is the senior officer who is present.

(2) Section 7.1(2)—

omit.

(3) Section 7.1—

relocate and renumber as section 2.3AA.

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

(1) Section 7.2, heading, ‘or breaches of discipline’—

omit, insert—

and other grounds for disciplinary action

(2) Section 7.2(2)(d)—

omit, insert—

(d) of the officer, in the case of conduct that is misconduct or another ground for disciplinary action, to take all action necessary to achieve the purposes of part 7 that is—

(i) warranted and reasonable in the circumstances; and

(ii) within the authority of the officer.

(3) Section 7.2—

relocate to part 6A, as inserted by this Act, and *renumber* as section 6A.1.

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

(1) Section 7.3, ‘section 7.2’—

omit, insert—

section 6A.1

(2) Section 7.3—

relocate to part 6A, as inserted by this Act, and *renumber* as section 6A.2.

9 Replacement of pt 7 (Internal command and discipline)

Part 7—

omit, insert—

Part 7 Discipline process for officers

Division 1 Preliminary

7.1 Main purposes of part

The main purposes of this part 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.

7.2 Application of part

This part applies in relation to a complaint about an officer (the *subject officer*) if—

- (a) the complaint is received by the commissioner or the CCC; and
- (b) the CCC has not assumed responsibility for investigating the complaint under the *Crime and Corruption Act 2001*, section 47 or 48.

Note—

See section 7.7 for when the complaint is received by the commissioner or the CCC.

7.3 Definitions for part

In this part—

abbreviated process notice see section 7.18(1).

complaint, about an officer, includes a report about the officer's conduct under section 6A.1.

comprehensive transfer see section 7.37.

disciplinable conduct means conduct of the subject officer that may constitute a ground for disciplinary action.

disciplinary action means a disciplinary proceeding or the imposition of a professional development strategy under this part.

disciplinary charge, for division 4, see section 7.25(a).

disciplinary history, of an officer, includes—

- (a) disciplinary action taken against the officer; and
- (b) complaints made against the officer in relation to which a disciplinary proceeding was started, if the disciplinary charge was found not to have been proved; and
- (c) complaints made against the officer for which no disciplinary action has been taken.

disciplinary proceeding means a proceeding against the subject officer under division 3 or 4.

disciplinary proceeding notice see section 7.25.

disciplinary sanction see section 7.34.

finally dealt with, in relation to a proceeding, means the proceeding has been withdrawn or dismissed or has otherwise ended, including—

- (a) any review or appeal relating to the proceeding; or
- (b) the period for starting a review or appeal relating to the proceeding.

ground for disciplinary action means a ground for disciplining the subject officer mentioned in section 7.4.

local transfer see section 7.38.

officer includes a recruit.

prescribed officer means a police officer mentioned in section 2.2(2)(a), (b) or (c) who holds a rank above the rank of the subject officer.

professional development strategy means a requirement that the subject officer do 1 or more of the following things—

- (a) undertake mentoring for a stated period not longer than 6 months;
- (b) undertake closer supervision for a stated period not longer than 6 months;
- (c) comply with additional reporting obligations for a stated period not longer than 6 months;
- (d) complete internal training;
- (e) complete external training or professional development, at the expense of the service or the subject officer;
- (f) undertake counselling, whether provided within the service or externally, at the expense of the service or the subject officer;
- (g) receive guidance;
- (h) undertake a temporary reassignment of duties for a stated period not longer than 6 months;

Note—

See also section 7.5(1) in relation to a temporary reassignment of duties.

- (i) undertake or complete another program, development or strategy, at the expense of the service or the subject officer and with the subject officer's agreement;
- (j) anything else prescribed by regulation.

proposed sanction notice see section 7.28(2).

proposed sanction or strategy—

- (a) for division 3, see section 7.18(1)(c); or
- (b) for division 4, see section 7.28(2)(c).

required period, for division 3, subdivision 3, see section 7.20.

service history, of an officer, includes—

- (a) the rank and positions held by the officer;
and
 - (b) the officer's performance history, other than
matters included in the officer's disciplinary
history; and
 - (c) other matters related to the officer's service.
- subject officer* see section 7.2.

7.4 Grounds for disciplinary action

- (1) The subject officer may be disciplined under this
part if the subject officer has—
 - (a) committed misconduct; or
 - (b) been convicted—
 - (i) in Queensland of an indictable offence;
or
 - (ii) outside Queensland of an offence that,
if it were committed in Queensland,
would be an indictable offence; or
 - (c) performed the subject officer's duties
carelessly, incompetently or inefficiently; or
 - (d) been absent from duty without approved
leave and without reasonable excuse; or
 - (e) contravened, without reasonable excuse—
 - (i) a provision of this Act or the *Police
Powers and Responsibilities Act 2000*;
or
 - (ii) a code of conduct that applies to the
subject officer; or
 - (iii) a direction given to the subject officer
by the commissioner under this Act or
by a senior officer with authority to
give the direction.

- (2) For subsection (1)(b), the subject officer is **convicted** if a court makes a finding of guilt, or accepts a plea of guilty, whether or not a conviction is recorded.

7.5 Imposition of professional development strategies etc.

- (1) For the definition *professional development strategy*, paragraph (h), a temporary reassignment of duties may be imposed on the subject officer under this part only if—
- (a) the subject officer is not required to travel more than 40km by road from the officer's place of residence to the location of the officer's reassigned duties without the officer's consent; and
 - (b) during the reassignment, the officer's salary, allowances and other entitlements under an industrial instrument are not less than the officer's entitlements immediately before the reassignment.
- (2) Nothing in this part limits a senior officer—
- (a) imposing, in a reasonable way, professional development strategies on the subject officer in relation to a ground for disciplinary action; or
 - (b) giving the subject officer guidance in relation to inappropriate acts or omissions of the subject officer in the performance of the subject officer's duty.
- (3) Subsection (2) applies even if the period for starting a disciplinary proceeding against the subject officer based on the ground for disciplinary action has ended.

7.6 Corrupt conduct

- (1) Nothing in this part prevents the CCC or the commissioner starting a corrupt conduct proceeding against the subject officer instead of a disciplinary proceeding.
- (2) Subsection (3) applies if—
 - (a) a corrupt conduct proceeding is started against the subject officer; and
 - (b) a disciplinary proceeding relating to the corrupt conduct has been started against the subject officer but has not been finally dealt with.
- (3) The disciplinary proceeding is taken to have been withdrawn and is of no effect.
- (4) In this section—

corrupt conduct proceeding means a proceeding for corrupt conduct under the *Crime and Corruption Act 2001*, section 219F.

7.7 When complaints are received

- (1) For this part, a complaint is taken to be received by the commissioner or the CCC when the complaint is first recorded.
- (2) However, if more than 1 complaint is received by the commissioner or the CCC about the same matter or substantially similar matters, each complaint is taken to be received by the commissioner or the CCC when any of the complaints is first recorded.
- (3) The commissioner and the chairperson of the CCC must ensure a complaint is recorded as soon as reasonably practicable after it is made.
- (4) In this section—

recorded means recorded in an electronic system

for complaints management operated by the service or the CCC.

7.8 Requirement to give notices to subject officer's lawyer

- (1) This section applies if—
 - (a) a provision of this part requires or permits a person to give a notice to the subject officer; and
 - (b) the person is aware the subject officer is represented by a lawyer.
- (2) The person must give the subject officer's lawyer a copy of the notice given to the subject officer.
- (3) Failure to comply with subsection (2) does not affect—
 - (a) the validity of the notice given to the subject officer; or
 - (b) the person's compliance with the provision mentioned in subsection (1)(a).

Division 2 Preliminary provisions for starting disciplinary proceedings

7.9 Implementation of professional development strategies by commissioner

- (1) This section applies when the complaint mentioned in section 7.2 is received by the commissioner, regardless of whether it was first recorded by the CCC.
- (2) The commissioner must consider whether to impose a professional development strategy on the subject officer.

- (3) The commissioner may impose a professional development strategy under this section—
 - (a) to reduce the risk of recurrence of similar conduct; or
 - (b) to improve the subject officer's performance; or
 - (c) for any other purpose.
- (4) The professional development strategy must be implemented, in a reasonable way, as soon as practicable after the ground for disciplinary action arises.

Note—

See also section 7.35(3) in relation to the professional development strategy being taken into account by a prescribed officer deciding the disciplinary sanction to be imposed on the subject officer.

- (5) In this section—
recorded see section 7.7.

7.10 Referral of complaint to prescribed officer

- (1) This section applies if—
 - (a) the complaint mentioned in section 7.2 has been received by the commissioner; and
 - (b) the commissioner has considered under section 7.9 whether to impose a professional development strategy.
- (2) The commissioner must decide whether to refer the complaint to a prescribed officer, having regard to the following matters—
 - (a) any professional development strategy, or other management action, that has been implemented in relation to the subject officer;

- (b) whether implementation of any other professional development strategy would be sufficient to achieve the purposes mentioned in section 7.1(b);
- (c) the subject officer's disciplinary history and service history;
- (d) the seriousness of the conduct to which the complaint relates;
- (e) whether it is necessary to take disciplinary action against the subject officer to achieve the purposes mentioned in section 7.1(b).

7.11 Requirements for starting disciplinary proceeding

- (1) This section applies if the commissioner has, under section 7.10, referred the complaint to a prescribed officer.
- (2) The prescribed officer may start a disciplinary proceeding against the subject officer if the prescribed officer reasonably believes there is a ground for disciplinary action against the subject officer.

7.12 When disciplinary proceeding must be started

- (1) A disciplinary proceeding against the subject officer must start within the latest of the following periods to end—
 - (a) 1 year from the date the ground for disciplinary action arises;
 - (b) 6 months from the date the complaint mentioned in section 7.2, or another complaint substantially relating to the same ground for disciplinary action, is received by the commissioner or the CCC;

- (c) if a relevant criminal proceeding has been started—6 months from the day the criminal proceeding is finally dealt with.
- (2) For this section, a period for which the subject officer is absent from duty is not counted if the commissioner can demonstrate the absence caused or contributed to a delay in starting a disciplinary proceeding.

Examples of the subject officer being absent from duty—

- the subject officer is on leave
- the subject officer is suspended from duty

- (3) For this part, a disciplinary proceeding starts when an abbreviated process notice or disciplinary proceeding notice for the proceeding is given to the subject officer by the prescribed officer.

- (4) In this section—

relevant criminal proceeding means a criminal proceeding, started against a member of the service or a former officer within the meaning of section 7A.1(1)(b), in relation to conduct that substantially relates to the ground for disciplinary action.

7.13 When ground for disciplinary action arises

- (1) For this part, a ground for disciplinary action against the subject officer arises on—
- (a) if the ground relates to conduct involving a single act or omission—the day the conduct occurred; or
- (b) if the ground relates to ongoing conduct of the same or a similar nature or arising out of the same circumstances—the latest day the conduct occurs.
- (2) However, subsection (3) applies if—

- (a) during a prescribed operation, the commissioner or the CCC becomes aware of a ground for disciplinary action against the subject officer; and
 - (b) a relevant officer overseeing all or part of the operation reasonably believes that starting disciplinary action against the subject officer may compromise the operation.
- (3) The ground for disciplinary action is taken to arise on the day the operation ends.
- (4) If subsection (3) applies because the CCC becomes aware of the ground for disciplinary action, the chairperson of the CCC must include the information mentioned in subsection (6) in a statutory declaration, or a report under the *Crime and Corruption Act 2001*, section 49, given to the commissioner.
- (5) If subsection (3) applies because the commissioner becomes aware of the ground for disciplinary action, the commissioner must issue a notice including the information mentioned in subsection (6).
- (6) For subsections (4) and (5), the information is—
- (a) that the commissioner or the CCC, as the case may be, became aware of a ground for disciplinary action against a named officer during a prescribed operation; and
 - (b) the dates the operation started and ended; and
 - (c) that a named relevant officer had oversight of all or part of the operation; and
 - (d) the relevant officer reasonably believed that starting disciplinary action against the officer mentioned in paragraph (a) before

the end of the operation may have compromised the operation.

(7) In this section—

prescribed operation means—

- (a) a controlled activity or controlled operation under the *Crime and Corruption Act 2001* or the *Police Powers and Responsibilities Act 2000*; or
- (b) a specific intelligence operation under the *Crime and Corruption Act 2001*; or
- (c) an investigation by the CCC.

relevant officer means—

- (a) the commissioner; or
- (b) the chairperson of the CCC; or
- (c) a delegate of the commissioner or the chairperson of the CCC.

7.14 Examination by medical practitioner

(1) This section applies if—

- (a) a prescribed officer is considering starting disciplinary action against the subject officer; and
- (b) the disciplinable conduct involves absence from duty.

(2) The prescribed officer may—

- (a) appoint a medical practitioner to examine the subject officer and give the commissioner a written report on the subject officer's mental or physical condition; and
- (b) direct the subject officer to submit to the examination.

(3) The report on the medical examination must

include the medical practitioner's opinion as to whether the subject officer's mental or physical condition was a cause of the subject officer's absence from duty.

- (4) The commissioner must give the subject officer a copy of the report.

Division 3 Abbreviated disciplinary proceedings

Subdivision 1 Preliminary

7.15 Application of division

This division applies in relation to the subject officer if a disciplinary proceeding under division 4 relating to the complaint mentioned in section 7.2—

- (a) has not been started; or
- (b) has been started but has not been finally dealt with.

Note—

See also the requirements in sections 7.11 and 7.12 for starting disciplinary proceedings under this division.

Subdivision 2 Invitation and making of offer

7.16 Offer to impose disciplinary sanction or professional development strategy

- (1) A prescribed officer may offer to impose a disciplinary sanction or professional development strategy on the subject officer under this division.

- (2) However, the offer may be made only if the CCC has agreed to the making of the offer.
- (3) The offer may be made regardless of whether an investigation relating to the complaint has started or been finalised.

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

- (1) Before seeking the agreement of the CCC for section 7.16, the prescribed officer—
 - (a) must comply with subsections (2) and (3); and
 - (b) may obtain further information from the subject officer under subsection (4).
- (2) The prescribed officer must give the subject officer a written notice (an *invitation*) stating 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;
 - (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 under section 7.16.
- (3) The prescribed officer must consider any written submission or other materials given within the

stated period to the prescribed officer by the subject officer.

- (4) After complying with subsection (3), the prescribed officer may, by written notice, require the subject officer to give the prescribed officer further stated information (the *required information*) reasonably required by the prescribed officer to decide—
 - (a) whether to make the subject officer an offer under section 7.16; or
 - (b) the disciplinary sanction or professional development strategy to be offered to the subject officer under section 7.16.
- (5) A notice given under subsection (4) must state the period, of at least 14 days, within which the required information must be given to the prescribed officer.
- (6) The prescribed officer may extend the period mentioned in subsection (5).

7.18 Abbreviated process notice

- (1) An offer under section 7.16 must be made by giving the subject officer a written notice (an *abbreviated process notice*) stating 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;
 - (c) the disciplinary sanction or professional development strategy (the *proposed sanction or strategy*) the prescribed officer proposes to impose;

- (d) that the proposed sanction or strategy will be imposed only if the subject officer accepts it;
 - (e) the period within which, and how, the subject officer may accept the proposed sanction or strategy;
 - (f) 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 sanction or strategy;
 - (g) that if a disciplinary sanction or professional development strategy is imposed under this division—
 - (i) the sanction or strategy will be part of the subject officer's disciplinary history; and
 - (ii) there is no right of review under this Act or the *Crime and Corruption Act 2001* in relation to the imposition of the disciplinary sanction or professional development strategy;
 - (h) that the subject officer may apply to QCAT under section 7.24 for an order quashing the disciplinary proceeding in particular circumstances.
- (2) For subsection (1)(e), the stated period must be a reasonable period of at least 21 days after the subject officer is given the abbreviated process notice.

7.19 Subject officer may ask commissioner to make offer

- (1) The subject officer may, at any time, ask the commissioner to consider making an offer under

section 7.16.

- (2) The request may be accompanied by a written submission or other materials about matters the subject officer believes the commissioner should consider in deciding—
 - (a) whether to make the offer; or
 - (b) an appropriate disciplinary sanction or professional development strategy to be proposed.

Subdivision 3 Acceptance of offer and imposition of sanction or strategy

7.20 Definition for subdivision

In this subdivision—

required period means—

- (a) the period stated in the abbreviated process notice under section 7.18(1)(e); or
- (b) if the period mentioned in paragraph (a) is extended under section 7.21(3)—the extended period.

7.21 Subject officer's acceptance of proposed sanction or strategy

- (1) If an abbreviated process notice is given to the subject officer, the subject officer may, by written notice that complies with subsection (2)(a), accept the proposed sanction or strategy.
- (2) The subject officer's notice—
 - (a) must be given to the prescribed officer—
 - (i) within the required period; and

- (ii) in the way stated in the abbreviated process notice under section 7.18(1)(e); and
 - (b) may be accompanied by a submission or other materials about the complaint or the proposed sanction or strategy.
- (3) The prescribed officer may, by agreement with the subject officer, extend the period stated in the abbreviated process notice in which the subject officer may accept the proposed sanction or strategy.

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

- (1) If the subject officer does not accept the proposed sanction or strategy within the required period—
 - (a) the disciplinary proceeding under this division ends; and
 - (b) a disciplinary proceeding against the subject officer may be started under division 4; and
 - (c) each of the following is not admissible against the subject officer in any proceeding, including a subsequent disciplinary proceeding—
 - (i) a submission made by the subject officer in response to an invitation under section 7.17, including any accompanying materials;
 - (ii) a request made by the subject officer under section 7.19, including any accompanying submission or other materials.
- (2) For starting a disciplinary proceeding against the subject officer under division 4, section 7.12(1)(b) applies as if it referred to the period of

6 months from the following day—

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

7.23 Imposition of disciplinary sanction or professional development strategy

- (1) This section applies if the subject officer accepts the proposed sanction or strategy within the required period.
- (2) The prescribed officer must, after considering any written submission and other materials given to the prescribed officer by the subject officer under this division—
 - (a) impose the proposed sanction or strategy; and
 - (b) give the subject officer notice of the decision, including a brief statement of the reasons for the decision.
- (3) The subject officer is taken to have admitted the alleged ground for disciplinary action stated in the abbreviated process notice.
- (4) The imposition of the disciplinary sanction or professional development strategy finalises the complaint to which the proceeding relates.
- (5) This section applies subject to section 7.24 and division 5.

Subdivision 4 Quashing proceeding

7.24 New evidence and quashing of proceeding by QCAT

- (1) This section applies if—
 - (a) a disciplinary sanction or professional development strategy has been imposed under this division; and
 - (b) fresh, additional or substituted evidence (*new evidence*) later emerges that, had it been considered by the prescribed officer in deciding the disciplinary sanction or professional development strategy to be imposed, would have affected the decision.
- (2) The CCC, the commissioner or the subject officer may apply to QCAT for an order quashing the proceeding under this division.
- (3) QCAT may make an order quashing the proceeding under this division if satisfied—
 - (a) the new evidence would have had a considerable effect on the disciplinary sanction or professional development strategy imposed; and
 - (b) it is in the interests of justice to quash the proceeding.
- (4) If QCAT makes an order quashing the disciplinary proceeding under this division—
 - (a) the proceeding is taken to have never occurred; and
 - (b) subject to subsection (5), a new disciplinary proceeding may be started against the subject officer in relation to the same matter or a substantially similar matter; and
 - (c) each of the following is inadmissible in a new disciplinary proceeding or proceeding for corrupt conduct under the *Crime and Corruption Act 2001*—

- (i) an invitation under section 7.17, an abbreviated process notice or a request to be given an abbreviated process notice;
 - (ii) a submission or decision made under section 7.17, 7.19 or 7.21;
 - (iii) anything else produced by the subject officer for the proceeding.
- (5) Despite section 7.12, a new disciplinary proceeding mentioned in subsection (4)(b) must be started within 6 months of the making of the order by QCAT.

Division 4 Process for hearings by prescribed officers

Subdivision 1 Decision to take disciplinary action

7.25 How disciplinary proceeding is started

A prescribed officer may start a disciplinary proceeding under this division by giving the subject officer a notice (a *disciplinary proceeding notice*) stating—

- (a) particulars of the alleged ground for disciplinary action (the *disciplinary charge*); and
- (b) that the subject officer may, within a stated period of at least 28 days, give the prescribed officer a written submission and other materials to show why disciplinary action should not be taken in relation to the disciplinary charge.

Note—

See also the requirements in sections 7.11 and 7.12 for starting disciplinary proceedings under this division.

7.26 Subject officer's right to make written submission

- (1) The subject officer may, within the required period, give the prescribed officer a written submission and other materials to show why disciplinary action should not be taken in relation to the disciplinary charge.
- (2) The prescribed officer may, by agreement with the subject officer, extend the period stated in the disciplinary process notice under section 7.25(b).
- (3) In this section—
required period means—
 - (a) the period mentioned in the disciplinary proceeding notice under section 7.25; or
 - (b) if the period mentioned in paragraph (a) has been extended under subsection (2)—the extended period.

7.27 Decision about whether disciplinary charge is proved

- (1) This section applies if—
 - (a) either—
 - (i) the required period under section 7.26 has ended; or
 - (ii) a written submission has been given to the prescribed officer by the subject officer under section 7.26(1); and
 - (b) the prescribed officer has considered any written submission and other materials

given to the prescribed officer by the subject officer under section 7.26(1).

- (2) The prescribed officer must decide whether the disciplinary charge, or another ground for disciplinary action, is proved.
- (3) Subsection (4) applies if—
 - (a) the prescribed officer is not reasonably satisfied the disciplinary charge, or another ground for disciplinary action, is proved; or
 - (b) the prescribed officer—
 - (i) is reasonably satisfied the disciplinary charge, or another ground for disciplinary action, is proved; but
 - (ii) does not propose to impose a disciplinary sanction or professional development strategy on the subject officer.
- (4) Within 14 days after making the decision, the prescribed officer must—
 - (a) for a decision mentioned in subsection (3)(a)—
 - (i) give the subject officer written notice of the decision; and
 - (ii) give the CCC a QCAT information notice for the decision; or
 - (b) for a decision mentioned in subsection (3)(b)—give the subject officer and the CCC a QCAT information notice for the decision.

Notes—

- 1 If the prescribed officer is satisfied the disciplinary charge or another ground for disciplinary action is proved, see also section 7.31 for the requirement to give a QCAT information notice for—

- the decision that the disciplinary charge, or another ground for disciplinary action, is proved
 - the decision to impose, or not to impose, a disciplinary sanction or professional development strategy.
- 2 See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decisions mentioned in subsection (3).

Subdivision 2 Decision to impose disciplinary sanction or professional development strategy

7.28 Proposed sanction notice

- (1) This section applies if, under section 7.27, the prescribed officer is reasonably satisfied the disciplinary charge, or another ground for disciplinary action, is proved.
- (2) The prescribed officer may give the subject officer a notice (a *proposed sanction notice*) stating each of the following matters—
 - (a) that the prescribed officer has decided the disciplinary charge, or another ground for disciplinary action, is proved;
 - (b) the reasons for the decision;
 - (c) the disciplinary sanction or professional development strategy (the *proposed sanction or strategy*) the prescribed officer proposes to impose on the subject officer;
 - (d) that the subject officer may give the prescribed officer a written submission and other materials, within a stated period of at

least 21 days, to show why the proposed sanction or strategy should not be imposed.

7.29 Subject officer's right to make written submission

- (1) The subject officer may, within the required period, give the prescribed officer a written submission and other material to show why the proposed sanction or strategy should not be imposed.
- (2) The prescribed officer may, by agreement with the subject officer, extend the period stated in the proposed sanction notice under section 7.28(2)(d).
- (3) In this section—
required period means—
 - (a) the period stated in the proposed sanction notice under section 7.28(2)(d); or
 - (b) if the period mentioned in paragraph (a) has been extended under subsection (2)—the extended period.

7.30 Decision about imposition of disciplinary sanction or professional development strategy

- (1) This section applies if—
 - (a) the prescribed officer has given the subject officer a proposed sanction notice; and
 - (b) either—
 - (i) the required period under section 7.29 has ended; or
 - (ii) the subject officer has given the prescribed officer a written submission under section 7.29(1); and

- (c) the prescribed officer has considered any written submission and other materials given to the prescribed officer by the subject officer under section 7.29(1).
- (2) The prescribed officer must decide—
 - (a) to impose on the subject officer—
 - (i) the proposed sanction or strategy; or
 - (ii) any other disciplinary sanction or professional development strategy that is no more detrimental to the subject officer than the proposed sanction or strategy; or
 - (b) not to impose a disciplinary sanction or professional development strategy on the subject officer.
- (3) A decision under subsection (2)(a) takes effect on the day the subject officer is given a QCAT information notice for the decision under section 7.31.
- (4) This section applies subject to division 5.

7.31 QCAT information notices

- (1) Within 14 days after making a decision under section 7.30(2), the prescribed officer must give the subject officer and the CCC a QCAT information notice for each of the following decisions—
 - (a) the decision under section 7.27(2) that the disciplinary charge, or another ground for disciplinary action, is proved;
 - (b) the decision under section 7.30(2) to impose, or not to impose, a disciplinary sanction or professional development strategy.

Note—

See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decisions mentioned in subsection (1).

- (2) A QCAT information notice for a decision to impose a disciplinary sanction or professional development strategy must state the following matters—
- (a) the disciplinary sanction or professional development strategy imposed;
 - (b) the date the sanction or strategy takes effect;
 - (c) whether the sanction or strategy is suspended under section 7.41 and, if so, the period and any conditions of the suspension;
 - (d) that the sanction or strategy will form part of the subject officer's disciplinary history;
 - (e) that the sanction or strategy may be taken into account in future disciplinary proceedings for deciding—
 - (i) whether to start a disciplinary proceeding for any future alleged disciplinable conduct; and
 - (ii) the suitability of the subject officer to be or continue to be a police officer, including a police officer of a particular rank.

Note—

If the disciplinary sanction is probation, see also section 7.36(3) for additional matters that must be stated in the QCAT information notice.

- (3) Subsection (2) does not limit the QCAT Act, section 157(2).

Subdivision 3 General

7.32 Principles for conducting disciplinary proceeding

In conducting the disciplinary proceeding, the prescribed officer—

- (a) must observe the rules of natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before the prescribed officer; and
- (c) is not bound by the rules of evidence; and
- (d) may get information on a matter in a way the prescribed officer considers appropriate; and
- (e) may decide the procedures to be followed for the proceeding, subject to any guidelines made under section 7.44.

Division 5 Disciplinary sanctions

7.33 Application of division

This division applies for imposing a disciplinary sanction or professional development strategy on the subject officer under division 3 or 4.

7.34 Disciplinary sanctions

Each of the following sanctions is a *disciplinary sanction*—

- (a) dismissal;
- (b) suspension from duty without pay for not longer than 12 months;
- (c) probation for not longer than 12 months;

Note—

See also section 7.36 in relation to probation.

- (d) demotion, whether permanently or for a stated period;
- (e) comprehensive transfer;
- (f) local transfer;
- (g) performance of up to 100 hours of community service;

Note—

See also section 7.39 in relation to community service.

- (h) a fine of up to 50 penalty units;

Note—

See also section 7.40 in relation to fines.

- (i) a reprimand.

7.35 Power of prescribed officer to impose disciplinary sanction

- (1) The prescribed officer may impose a disciplinary sanction on the subject officer that—
 - (a) is mentioned in subsection (2); and
 - (b) the prescribed officer considers is appropriate in the particular case.
- (2) For subsection (1)(a), the following disciplinary sanctions may be imposed—
 - (a) if the prescribed officer is the commissioner—any disciplinary sanction;
 - (b) if the prescribed officer is a deputy commissioner—any disciplinary sanction;
 - (c) if the prescribed officer is an assistant commissioner—

- (i) suspension from duty without pay for not longer than 28 days; or
 - (ii) demotion; or
 - (iii) local transfer; or
 - (iv) community service; or
 - (v) a fine; or
 - (vi) a reprimand;
- (d) if the prescribed officer is a commissioned officer—
 - (i) community service; or
 - (ii) a fine; or
 - (iii) a reprimand.
- (3) In deciding the disciplinary sanction to be imposed, the prescribed officer must have regard to the following matters—
 - (a) any considerations provided for in a guideline made under section 7.44;
 - (b) the subject officer's disciplinary history and service history;
 - (c) any professional development strategies imposed on, or completed by, the subject officer in relation to the ground for disciplinary action.
- (4) For the removal of doubt, it is declared that the prescribed officer may impose more than 1 disciplinary sanction on the subject officer.

7.36 Probation

- (1) This section applies if the disciplinary sanction imposed on the subject officer is probation.
- (2) The prescribed officer may impose conditions on the probation.

- (3) Without limiting the QCAT Act, section 157(2), the information notice for the decision to impose the disciplinary sanction given to the subject officer under section 7.31(1)(b) must state—
 - (a) the period and any conditions of the probation; and
 - (b) that the subject officer may be asked to show cause as to why the officer should not be dismissed if—
 - (i) the subject officer breaches the probation; or
 - (ii) the commissioner reasonably believes the subject officer is unsuitable to continue to be a police officer.
- (4) The purpose of the probation is to enable—
 - (a) during the period of the probation, the commissioner to assess the subject officer's suitability to continue to be a police officer; and
 - (b) if, during the period of the probation, the subject officer breaches the probation or the commissioner reasonably believes the subject officer is unsuitable to continue to be a police officer—the dismissal of the subject officer after conducting a show cause proceeding.
- (5) For this section, the subject officer *breaches* the probation if, during the period of the probation, the subject officer—
 - (a) commits misconduct; or
 - (b) fails without a reasonable excuse to comply with a condition of the probation.
- (6) A show cause proceeding for dismissal of the subject officer on a ground mentioned in subsection (3)(b) must—

- (a) be conducted by a prescribed officer who is authorised under this division to impose a disciplinary sanction of probation; and
 - (b) be started within 12 months from the date of the breach; and
 - (c) observe the rules of natural justice.
- (7) The prescribed officer who conducts the show cause proceeding must give the subject officer and the CCC a QCAT information notice for the decision to dismiss, or not to dismiss, the subject officer.

Note—

See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decision.

7.37 Comprehensive transfer

A *comprehensive transfer* is a transfer of the subject officer to a position in another location in Queensland, if—

- (a) the transfer reasonably requires the subject officer to—
 - (i) relocate the subject officer's residence; or
 - (ii) travel more than 40km by road between the subject officer's residence and the location; and
- (b) the subject officer does not consent to the transfer.

7.38 Local transfer

- (1) A *local transfer* is—
- (a) 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
- (b) 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—
- (i) relocate the subject officer's residence; or
 - (ii) travel more than 40km by road between the subject officer's residence and the location.
- (2) A local transfer mentioned in subsection (1) may be imposed without the consent of the subject officer.
- (3) Also, a transfer of the subject officer to a position in another location in Queensland is a *local transfer* if—
- (a) the transfer reasonably requires the subject officer to—
 - (i) relocate the subject officer's residence; or
 - (ii) travel more than 40km by road between the subject officer's residence and the location; and
 - (b) the subject officer consents to the transfer.

7.39 Community service

- (1) This section applies if the disciplinary sanction imposed on the subject officer is community service.
- (2) The subject officer must be allowed at least 1 calendar month to complete each 10 hours, or part of 10 hours, of the community service.
- (3) A prescribed officer of at least the same rank as

the prescribed officer who imposed the disciplinary sanction of community service may, on application by the subject officer, extend the time for performing the community service, or otherwise vary the community service, on reasonable grounds.

7.40 Fines

- (1) This section applies if the disciplinary sanction imposed on the subject officer is a fine.
- (2) The fine must not be deducted from the subject officer's fortnightly salary at a rate of more than 2 penalty units each fortnight, without the subject officer's written consent.
- (3) If the subject officer retires, resigns or otherwise stops being an officer, any outstanding amount of the fine may be deducted in full from any allowances, salary or other entitlements owing to the subject officer.

7.41 Suspension of disciplinary sanctions

- (1) This section does not apply if the disciplinary sanction imposed on the subject officer is dismissal or probation.
- (2) The prescribed officer imposing the disciplinary sanction may wholly or partly suspend the sanction for not more than 12 months—
 - (a) by giving the subject officer written notice of the suspension; and
 - (b) subject to any conditions stated in the notice.
- (3) If the subject officer complies with the conditions of the suspension—

- (a) the disciplinary sanction remains part of the subject officer's disciplinary history but, to the extent it is suspended, is not to be given effect; and
 - (b) when the suspension ends, the disciplinary sanction is taken to have been discharged or satisfied.
- (4) If the subject officer does not comply with the conditions of the suspension—
- (a) as soon as reasonably practicable after becoming aware of the non-compliance, the commissioner must give the CCC a written notice stating—
 - (i) details of the non-compliance; and
 - (ii) any information known to the commissioner about the reasons for the non-compliance; and
 - (b) a prescribed officer of at least the same rank as the officer who imposed the suspended sanction must give effect to the disciplinary sanction unless the subject officer can show cause why the conditions should be varied or cancelled.
- (5) A show cause proceeding under subsection (4)(b) must be started within 12 months from the end of the period of the suspension.
- (6) The prescribed officer conducting a show cause proceeding under subsection (4)(b) must decide to—
- (a) give effect to the disciplinary sanction; or
 - (b) continue the suspension of the disciplinary sanction and vary the conditions, including by extending the period of the suspension for a further period of not more than 12 months; or

- (c) continue the suspension and cancel the conditions.
- (7) The prescribed officer must give the subject officer and the CCC a QCAT information notice for the decision.

Note—

See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decision.

7.42 Professional development strategies

The prescribed officer may decide to impose, in a reasonable way, 1 or more professional development strategies on the subject officer—

- (a) for achieving the purposes of this part; and
- (b) instead of, or as well as, a disciplinary sanction.

Division 6 Other provisions

7.43 Central disciplinary unit

- (1) The commissioner may establish a central unit (the *central unit*) that is responsible for conducting disciplinary proceedings.
- (2) The central unit must be separate and distinct from the unit involved in investigating complaints for this part.
- (3) The executive officer responsible for investigating complaints for this part must not be responsible for the operation, supervision or command of the central unit.
- (4) An officer, while performing duties as an assistant commissioner within the central unit, is taken to have the same powers to impose disciplinary

sanctions under this part as a deputy commissioner.

- (5) An officer, while performing duties as a chief superintendent within the central unit, has the same powers to impose disciplinary sanctions under this part as an assistant commissioner.

7.44 Guidelines

- (1) The commissioner may make guidelines relating to the disciplinary process, including—
- (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.
- (2) Before making guidelines under this section, the commissioner must actively consult with, and have regard to the views of—
- (a) the chairperson of the CCC; and
 - (b) each union that represents officers and recruits.

7.45 Record-keeping

The commissioner must ensure a record is kept of—

- (a) each complaint made about an officer; and
- (b) disciplinary action taken against an officer; and
- (c) any other matter prescribed by regulation for this section.

7.46 Commissioner's powers not to be delegated

Despite section 4.10, the commissioner may not delegate the commissioner's powers as a prescribed officer under this part.

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

Section 7A.1—

insert—

- (3A) For deciding whether to continue or start an investigation, the commissioner may consider the following matters—
- (a) the seriousness of the ground for disciplinary action;
 - (b) how far advanced the investigation is;
 - (c) the cost of continuing the investigation;
 - (d) access to the former officer;
 - (e) the former officer's disciplinary history;
 - (f) any benefit to the service in proceeding or not proceeding with the investigation;
 - (g) whether the matter is being considered or investigated by the CCC or any other authority;
 - (h) any offence substantially related to the ground for disciplinary action;
 - (i) the likelihood of the former officer engaging in future employment for which the officer would be required to disclose the making of a disciplinary declaration;
 - (j) any other matter the commissioner considers relevant.

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

Section 7A.2(3)(a) and (b)—

omit, insert—

- (a) dismissal; or
- (b) suspension from duty without pay for at least 3 months; or
- (c) probation; or
- (d) demotion, whether permanently or for a stated period.

12 Amendment of s 7A.3 (Procedure)

- (1) Section 7A.3(1)(a), ‘notice in relation to the disciplinary ground’—

omit, insert—

written notice stating the alleged ground for disciplinary action and

- (2) Section 7A.3(1)(b), ‘disciplinary ground’—

omit, insert—

ground for disciplinary action

- (3) Section 7A.3(2)—

omit.

- (4) Section 7A.3(3) and (4)—

renumber as section 7A.3(2) and (3).

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

Section 7A.4—

omit, insert—

7A.4 Commissioner to give former officer and the CCC a QCAT information notice

- (1) This section applies if the commissioner makes a disciplinary finding or a disciplinary declaration against a former officer.
- (2) Within 14 days after making the decision, the commissioner must give the former officer and the CCC a QCAT information notice for the decision.

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

Section 7A.5—

omit.

15 Omission of s 9.1 (Operation of part)

Section 9.1—

omit.

16 Amendment of s 9.3 (Application for review)

- (1) Section 9.3(1)(c)—

omit.

- (2) Section 9.3(1)(d), after ‘officer’—

insert—

under section 6.1

- (3) Section 9.3(1)(d) and (e)—

renumber as section 9.3(1)(c) and (d).

- (4) Section 9.3(1)—

insert—

Note—

See the *Crime and Corruption Act 2001*, chapter 5, part 3 for review provisions relating to disciplinary decisions made under part 7 or 7A.

(5) Section 9.3(1C) and (2)—

omit.

(6) Section 9.3(1A) to (3)—

renumber as section 9.3(2) to (4).

17 Insertion of new pt 11, div 10

Part 11—

insert—

Division 10 Repeal and transitional provisions for Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019

11.18 Definitions for division

(1) In this division—

amending Act means the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*.

breach of discipline means a breach of discipline within the meaning of previous section 1.4.

new, in relation to a provision of this Act, means as in force on the commencement.

previous, in relation to a provision of this Act or the repealed regulations, means as in force from time to time before the commencement.

repealed regulations means the repealed *Police Service (Discipline) Regulations 1990*.

- (2) For this division, a disciplinary proceeding against an officer under previous section 7.4 **started** when the officer was given a notice stating details of the alleged breach of discipline or misconduct.

11.19 Repeal of Police Service (Discipline) Regulations 1990

The Police Service (Discipline) Regulations 1990 are repealed.

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

- (1) This section applies if—
 - (a) before the commencement, a disciplinary proceeding against an officer was started; and
 - (b) immediately before the commencement, the proceeding had not been finally dealt with.
- (2) However, this section does not apply if the disciplinary proceeding is withdrawn with the officer's consent.
- (3) Previous section 7.4 and the repealed regulations continue to apply, despite their repeal, for the completion of the disciplinary proceeding.
- (4) This section applies subject to section 11.21.

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

- (1) This section applies if the prescribed officer conducting a disciplinary proceeding to which

section 11.20 applies—

- (a) is a police officer mentioned in section 2.2(a), (b) or (c); and
 - (b) on or after the commencement, finds that misconduct or a breach of discipline is, or is not, proved against the officer.
- (2) Previous section 7.4(2A) and (3) does not apply in relation to the finding.
- (3) The finding is taken to be a decision made under new section 7.27(2) about whether the disciplinary charge, or another ground for disciplinary action, is proved.
- (4) For subsection (3), new part 7 and the *Crime and Corruption Act 2001*, chapter 5, part 3, apply in relation to the finding as if—
- (a) the officer were the subject officer under new part 7; and
 - (b) the allegation to which the proceeding relates were the disciplinary charge; and
 - (c) the misconduct or breach of discipline the subject of the finding were a ground for disciplinary action under new section 7.4; and
 - (d) the requirements under new part 7, division 2 were satisfied in relation to the disciplinary proceeding.

11.22 Alleged misconduct or breaches of discipline occurring before commencement

- (1) This section applies if—
- (a) misconduct or a breach of discipline is alleged to have occurred before the commencement; and

- (b) a disciplinary proceeding for the alleged misconduct or breach of discipline—
 - (i) has not been started before the commencement; or
 - (ii) was started before the commencement but has been or is withdrawn with the officer's consent.
- (2) A disciplinary proceeding in relation to the alleged misconduct or breach of discipline may be started under new part 7 as if the misconduct or breach of discipline were a ground for disciplinary action under that part.
- (3) The disciplinary proceeding must be started within the later of the following periods to end—
 - (a) the period mentioned in new section 7.12;
 - (b) 6 months from the commencement.

11.23 Existing reviews of disciplinary decisions—breaches of discipline

- (1) This section applies if—
 - (a) under previous section 9.3 a review of either of the following was started before the commencement—
 - (i) action taken under previous section 7.4 or the repealed regulations against an officer for a breach of discipline;
 - (ii) a disciplinary declaration made against a former officer under previous section 7A.2(2) for a breach of discipline; and
 - (b) the review was not finally dealt with before the commencement.
- (2) Previous section 9.3 continues to apply for the completion of the review of the action or declaration.

Note—

For reviews started before the commencement in relation to action taken under previous section 7.4 for misconduct, see the *Crime and Corruption Act 2001*, section 452.

11.24 Review of particular disciplinary decisions about breaches of discipline

- (1) This section applies if—
 - (a) either—
 - (i) a decision was made under previous section 7.4 about an allegation of a breach of discipline; or
 - (ii) a disciplinary declaration was made under previous section 7A.2(2) for a breach of discipline; and
 - (b) the period for applying for a review of the decision or declaration under previous section 9.3 had not ended immediately before the commencement.
- (2) Also, this section applies if a decision is made under previous section 7.4, as applied by section 11.20, about an allegation of a breach of discipline, except if section 11.21 applies in relation to the decision.
- (3) The officer or former officer to whom the decision or declaration relates may apply for review of the decision or declaration under previous section 9.3 as if the amending Act had not commenced.

Note—

For reviews in relation to action taken under previous section 7.4 for misconduct, see the *Crime and Corruption Act 2001*, section 452.

11.25 Existing discipline history

- (1) A disciplinary sanction imposed under previous section 7.4 or the repealed regulations continues to have effect as if the amending Act had not commenced.
- (2) An entry made in an officer's discipline history under the repealed regulations is taken to be part of the officer's disciplinary history for new part 7.
- (3) The giving of managerial guidance, whether in writing or not, before the commencement forms part of an officer's disciplinary history only if, when the guidance was given, the officer was advised in writing that the guidance would form part of the officer's discipline history.

11.26 Continued application of previous pt 7A

Previous part 7A continues to apply in relation to a disciplinary ground that arose before the commencement.

Part 3 Other amendments

Division 1 Amendment of Crime and Corruption Act 2001

18 Act amended

This division amends the *Crime and Corruption Act 2001*.

Note—

See also the amendments in schedule 1.

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

Chapter 5, heading, after ‘corruption’—

insert—

etc.

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

Chapter 5, part 2, heading, after ‘corruption’—

insert—

etc.—particular prescribed persons

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

Section 219B—

insert—

former officer see the *Police Service Administration Act 1990*, section 7A.1(1)(b).

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

Section 219BA(1)(a) and (b)—

omit, insert—

(a) a decision made in relation to an allegation of corruption against a prescribed person, other than a decision—

(i) made by a court or QCAT; or

(ii) made by a prescribed officer under the *Police Service Administration Act 1990*, part 7; or

(b) a decision under the *Police Service Administration Act 1990*, part 7A to make a

disciplinary finding or disciplinary declaration against a former officer; or

- (c) a decision under the *Police Service Administration Act 1990*, part 7A to do neither of the following in relation to a former officer—
 - (i) give the former officer a written notice under section 7A.3(1)(a) of that Act;
 - (ii) hold a disciplinary hearing under section 7A.3(1)(b) of that Act.

22A Insertion of new s 219FA

After section 219F—

insert—

219FA Proceedings relating to particular reviewable decisions about former officers

- (1) This section applies in relation to a reviewable decision mentioned in section 219BA(1)(c).
- (2) The commission may apply to QCAT, as provided under subsection (3), for a review of the reviewable decision.
- (3) The application must be made—
 - (a) within 28 days after the commission becomes aware of the decision; and
 - (b) as otherwise provided under the QCAT Act.
- (4) The commission must, within the period mentioned in the QCAT Act, section 37(2), give the former officer a copy of the application.
- (5) Subsection (4) does not limit the QCAT Act, section 37(2).
- (6) The parties to the proceeding are—
 - (a) the commission; and

- (b) the person who made the reviewable decision; and
 - (c) if the former officer to whom the reviewable decision relates elects to become a party to the proceeding—the former officer.
- (7) Notice of an election under subsection (6)(c) must be given—
- (a) to QCAT, the commission and the person who made the reviewable decision; and
 - (b) within 14 days after the former officer is given notice of the application for review under subsection (4).

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

- (1) Section 219G, heading, after ‘relating to’—

insert—

other

- (2) Section 219G, before subsection (1)—

insert—

(1A) This section applies in relation to a reviewable decision mentioned in section 219BA(1)(a) or (b).

- (3) Section 219G(1), ‘a reviewable decision’—

omit, insert—

the reviewable decision

- (4) Section 219G(2)(a), from ‘or finding mentioned’ to ‘7A.5’—

omit, insert—

mentioned in section 219BA(1)(b)

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

(1) Section 219I—

insert—

(1AB) Subsection (3) applies if—

- (a) the prescribed person is a person mentioned in section 50(3), definition *prescribed person*, paragraph (a)(i); and
- (b) QCAT finds that corrupt conduct is proved against the person.

(1AC) QCAT may make any order the commissioner of police could make under the *Police Service Administration Act 1990*, part 7, division 5, other than section 7.41, if a ground for disciplinary action had been proved against the prescribed person under part 7, division 4 of that Act.

(2) Section 219I(1), after ‘a prescribed person’—

insert—

mentioned in section 50(3), definition *prescribed person*, paragraph (b)(i)

(3) Section 219I(2), ‘subsection (1)(d)(ii)’—

omit, insert—

subsection (4)(d)(ii)

(4) Section 219I(1AA) to (2)—

renumber as section 219I(1) to (5).

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

Section 219IA(3), from ‘section 219I(1)’—

omit, insert—

section 219I(4) if the prescribed person’s employment or appointment had not ended would

have been—

- (a) if the prescribed person is a former officer, that the prescribed person—
 - (i) be dismissed; or
 - (ii) be suspended from duty without pay for at least 3 months; or
 - (iii) be placed on probation; or
 - (iv) be demoted, whether permanently or for a particular period; or
- (b) otherwise, that the prescribed person—
 - (i) be dismissed; or
 - (ii) be reduced in rank.

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

(1A) Section 219J, heading, after ‘for’—

insert—

particular

(1) Section 219J(1), from ‘, QCAT’—

omit, insert—

mentioned in section 219BA(1)(a) or (b), QCAT—

- (a) finds that the following has been proved against the prescribed person—
 - (i) if the prescribed person is a former officer—a ground for disciplinary action under the *Police Service Administration Act 1990*;
 - (ii) otherwise—corruption; and
- (b) sets aside the decision and substitutes another decision.

- (2) Section 219J(2), ‘finding of corruption being proved’—
omit, insert—
finding mentioned in subsection (1)(a)
- (3) Section 219J(5)(a) and (b)—
omit, insert—
- (a) if the prescribed person is a former officer—
- (i) be dismissed; or
 - (ii) be suspended from duty without pay for at least 3 months; or
 - (iii) be placed on probation; or
 - (iv) be demoted, whether permanently or for a particular period; or
- (b) otherwise—
- (i) be dismissed; or
 - (ii) be reduced in rank.

26A Insertion of new s 219JA

After section 219J—

insert—

219JA Requirement to return particular matters to commissioner of police

- (1) This section applies in relation to a reviewable decision mentioned in section 219BA(1)(c) if, after reviewing the decision, QCAT sets aside the decision.
- (2) QCAT must return the matter to the commissioner of police with—
- (a) a direction to give the former officer a written notice under the *Police Service Administration Act 1990*, section 7A.3(1)(a)

or to hold a disciplinary hearing under section 7A.3(1)(b) of that Act; and

- (b) any other direction QCAT considers appropriate.
- (3) If QCAT makes an order under subsection (2), the commissioner of police must ensure a written notice under the *Police Service Administration Act 1990*, section 7A.3(1)(a), or a notice mentioned in section 7A.3(1)(b) of that Act, is given to the former officer within 6 months of the making of the order by QCAT.
- (4) Subsection (3) applies despite section 7A.1(4) of that Act.

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

Section 219L(4), from 'operational period,'—

omit, insert—

operational period—

- (a) for a person mentioned in section 50(3), definition *prescribed person*, paragraph (a)(i)—QCAT may, on an application by the commission or the commissioner of police and after hearing any submission made by the prescribed person—
 - (i) revoke the suspension and give effect to the order or discipline; or
 - (ii) continue the suspension and vary or cancel any conditions to which it is subject; or
- (b) for another prescribed person—on the finding—
 - (i) the suspension is revoked; and

- (ii) the order or discipline has immediate effect.

28 Insertion of new ch 5, pt 3

Chapter 5—

insert—

Part 3 Review of particular police disciplinary decisions

219N Definitions for part

In this part—

aggrieved person, for a reviewable decision, means a person stated in schedule 1, column 2 opposite the decision.

disciplinary sanction see the *Police Service Administration Act 1990*, section 7.34.

ground for disciplinary action see the *Police Service Administration Act 1990*, section 7.3.

reviewable decision see section 219O.

subject officer, in relation to a reviewable decision, means the subject officer under the *Police Service Administration Act 1990*, part 7 to whom the decision relates.

219O Reviewable decisions

- (1) A *reviewable decision* is a decision made under the *Police Service Administration Act 1990* that is mentioned in schedule 1, column 1.
- (2) However, a decision under part 7, division 4 of that Act that a disciplinary charge, or another ground for disciplinary action, has been proved in

relation to an officer is a *reviewable decision* only if the officer is entitled to be given a QCAT information notice for the decision under section 7.27(4) or 7.31(1) of that Act.

(3) In this section—

disciplinary charge see the *Police Service Administration Act 1990*, section 7.25(a).

219P Applications for review

(1) An aggrieved person for a reviewable decision may apply to QCAT, as provided under subsection (2), for a review of the reviewable decision.

(2) The application must be made—

(a) within the following period—

(i) for a decision not to start a disciplinary proceeding under the *Police Service Administration Act 1990*, part 7 against an officer in relation to whom a complaint mentioned in section 7.2 of that Act has been made—28 days after the aggrieved person becomes aware of the decision;

(ii) otherwise—28 days after the aggrieved person is given a QCAT information notice for the decision; and

(b) as otherwise provided under the QCAT Act.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of a reviewable decision, either on application by a person or on its own initiative.

(3) If the subject officer is the applicant, the subject officer must, within the period mentioned in the QCAT Act, section 37(2), give the commission a copy of the application.

- (4) Subsection (3) does not limit the QCAT Act, section 37(2).
- (5) In this section—
officer see the *Police Service Administration Act 1990*, section 7.3.

219Q QCAT to decide review on evidence before decision maker

- (1) A review of a reviewable decision is by way of rehearing on the evidence (*original evidence*) given in the proceeding before the original decision-maker (*original proceeding*).
- (2) However, QCAT may give leave to adduce fresh, additional or substituted evidence (*new evidence*) if satisfied—
 - (a) the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the original proceeding; or
 - (b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.
- (3) If QCAT gives leave under subsection (2), the review is—
 - (a) by way of rehearing on the original evidence; and
 - (b) on the new evidence adduced.

219R Parties to review

- (1) The parties to a review are—
 - (a) the applicant for the review; and
 - (b) the person who made the reviewable decision; and

- (c) if the commission is the applicant for the review—the subject officer to whom the decision relates.
- (2) If the applicant for the review is the subject officer, the commission may elect to become a party to the review.
- (3) Notice of an election under subsection (2) must be given—
 - (a) to QCAT, the subject officer and the person who made the reviewable decision; and
 - (b) within the later of the following periods to end—
 - (i) the period mentioned in section 219P(2)(a);
 - (ii) 14 days after the commission is given notice of the application for review under section 219P(3).

219S Additional power for substituted decisions

- (1) This section applies if, after reviewing the reviewable decision, QCAT—
 - (a) finds a ground for disciplinary action has been proved against the subject officer; and
 - (b) sets aside the decision and substitutes another decision.
- (2) QCAT—
 - (a) has the same powers as the commissioner of police under the *Police Service Administration Act 1990*, part 7, division 5; and
 - (b) may impose any disciplinary sanction on the subject officer under that part, even if the person who made the reviewable decision

would not be authorised under that part to impose the disciplinary sanction.

219T Requirement to return particular matters to commissioner of police

- (1) This section applies if—
 - (a) the reviewable decision is a decision not to start a disciplinary proceeding under the *Police Service Administration Act 1990*, part 7 against an officer in relation to whom a complaint mentioned in section 7.2 of that Act has been made; and
 - (b) after reviewing the decision, QCAT sets aside the decision.
- (2) QCAT must return the matter to the commissioner of police with—
 - (a) a direction to start a disciplinary proceeding against the subject officer under part 7 of that Act; and
 - (b) any other direction QCAT considers appropriate.
- (3) If QCAT makes an order under subsection (2), the commissioner of police must ensure a disciplinary proceeding is started against the officer within 6 months of the making of the order by QCAT.
- (4) Subsection (3) applies despite section 7.12 of that Act.

219U QCAT may refer matter for investigation

- (1) QCAT may, by order, refer the matter before it for investigation, or further investigation, with a view to the taking of a criminal proceeding or for another purpose.
- (2) The matter may be referred to—

- (a) the commission; or
- (b) the commissioner of police.
- (3) QCAT may adjourn the proceeding until the investigations are completed.

29 Insertion of new ch 8, pt 16

Chapter 8—

insert—

Part 16 Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019

451 Definition for part

In this part—

previous, in relation to a provision of this Act or the *Police Service Administration Act 1990*, means as in force from time to time before the commencement.

452 Saving of previous ch 5, pt 2

- (1) This section applies in relation to a previous ch 5, pt 2 decision if—
 - (a) a disciplinary proceeding under previous section 219G for the decision was started, but not finally dealt with, before the commencement; or
 - (b) the period for applying for a review of the decision under previous section 219G had

not ended immediately before the commencement.

- (2) Also, this section applies in relation to a finding mentioned in the *Police Service Administration Act 1990*, previous section 7.4(2A)(b) or 7A.5(1)(b), as applied by part 11, division 10 of that Act, about an allegation of corruption, except if section 11.21 applies in relation to the finding.
- (3) Previous chapter 5, part 2 applies for the review of the decision or finding as if the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019* had not commenced.
- (4) In this section—
previous ch 5, pt 2 decision means—
 - (a) a decision made before the commencement in relation to an allegation of corruption against a prescribed person who was an officer within the meaning of previous section 219B; or
 - (b) a finding mentioned in the *Police Service Administration Act 1990*, previous section 7.4(2A)(b) made before the commencement.

452A Application of ch 5, pt 2—particular reviewable decisions relating to former officers

- (1) This section applies in relation to a decision made after the commencement under the *Police Service Administration Act 1990*, part 7A to do neither of the following in relation to a former officer—
 - (a) give the former officer a written notice under section 7A.3(1)(a) of that Act;
 - (b) hold a disciplinary hearing under section 7A.3(1)(b) of that Act.

- (2) Chapter 5, part 2, as amended by the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*, applies to the reviewable decision even if it relates to a disciplinary ground that arose before the commencement.

Note—

See also the *Police Service Administration Act 1990*, section 11.26.

- (3) In this section—

disciplinary ground has the meaning given under the *Police Service Administration Act 1990*, previous section 1.4.

453 Ending of particular suspensions under previous s 219L

- (1) This section applies if—
- (a) under previous section 219L, QCAT suspended or suspends an order made under previous section 219I or discipline mentioned in previous section 219J(2); and
 - (b) the prescribed person is a person mentioned in section 50(3), definition *prescribed person*, paragraph (a)(i); and
 - (c) during the operational period, the prescribed person is found to have committed an act of corruption or to have contravened a condition of the suspension.
- (2) Section 219L(4), as in force on the commencement, applies in relation to the revocation of the suspension.
- (3) Subsection (2) applies despite section 452(3).
- (4) In this section—
- previous section 219L* includes previous section
-

219L as applied by section 452.

30 Insertion of new sch 1

Before schedule 2—

insert—

**Schedule 1 Reviewable
decisions—ch 5, pt 3**

section 219N, definitions *aggrieved person* and *reviewable decision*

Reviewable decision

a decision under the *Police Service Administration Act 1990* (the *PSAA*), part 7, division 4 that a disciplinary charge, or any other ground for disciplinary action, has not been proved in relation to an officer

subject to section 219O(2), a decision under part 7, division 4 of the *PSAA* that a disciplinary charge, or any other ground for disciplinary action, has been proved in relation to an officer

a decision under part 7, division 4 of the *PSAA* to impose a disciplinary sanction or professional development strategy on an officer

Aggrieved persons

the commission

the officer

the commission

the officer

the commission

Reviewable decision

Aggrieved persons

a decision under part 7, division 4 of the PSAA not to impose a disciplinary sanction or professional development strategy on an officer

the officer
the commission

a decision under section 7.36 of the PSAA to dismiss, or not to dismiss, an officer

the officer
the commission

a decision under section 7.41 of the PSAA to give effect to a disciplinary sanction or to continue the suspension of the disciplinary sanction

the officer
the commission

a decision not to start a disciplinary proceeding against an officer in relation to whom a complaint mentioned in section 7.2 of the PSAA has been made

the commission

31 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions *officer* and *reviewable decision*—
omit.

(2) Schedule 2—
insert—

aggrieved person, for chapter 5, part 3, see section 219N.

disciplinary charge, for schedule 1, see the *Police Service Administration Act 1990*, section 7.25(a).

disciplinary sanction, for chapter 5, part 3 and schedule 1, see section 219N.

former officer, for chapter 5, part 2, see section 219B.

ground for disciplinary action, for chapter 5, part 3 and schedule 1, see section 219N.

professional development strategy, for schedule 1, see the *Police Service Administration Act 1990*, section 7.3.

reviewable decision—

(a) for chapter 5, part 2, see section 219BA; or

(b) for chapter 5, part 3, see section 219N.

subject officer, in relation to a reviewable decision, for chapter 5, part 3, see section 219N.

Division 2

Minor and consequential amendments

32 Acts amended

The schedule amends the Acts it mentions.

Schedule 1 Acts amended

section 32

Crime and Corruption Act 2001

1 Section 39(1)(a), ‘7.2(3)’—

omit, insert—

6A.1(3)

2 Section 49(4)(c) and (d), ‘or 219G’—

omit, insert—

, 219FA or 219G

**3 Section 219B, definition *disciplinary proceeding*,
paragraph (b), after ‘section’—**

insert—

219FA or

Evidence Act 1977

**1 Section 21G(5), definition *professional misconduct*,
paragraph (b), ‘a breach of discipline’—**

omit, insert—

another ground for disciplinary action

Police Powers and Responsibilities Act 2000

1 Section 7, example 1, ‘breach of discipline’—

omit, insert—

ground for disciplinary action, other than
misconduct,

Police Service Administration Act 1990

1 Section 1.4, definition *disciplinary finding*, ‘disciplinary ground’—

omit, insert—

ground for disciplinary action

2 Section 3.2(1), ‘section 7.1’—

omit, insert—

section 2.3AA

3 Section 5A.20(5), ‘a breach of discipline’—

omit, insert—

another ground for disciplinary action

4 Section 6.1(1)(a)(ii), ‘section 7.4’—

omit, insert—

part 7

5 Section 6.4(c), ‘section 7.4’—

omit, insert—

part 7

6 Section 7A.1, ‘disciplinary ground’—

omit, insert—

ground for disciplinary action

**7 Section 7A.2(5), definition *disciplinary declaration*,
paragraph (b), ‘section 7.4(3)’—**

omit, insert—

part 7

8 Part 11, division 9, second mention—

renumber as part 11, division 9A.

9 Section 11.17, second mention—

renumber as section 11.17A.

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