COMMUNITY SUPPORT AND SERVICES COMMITTEE

Members present:
Ms CP McMillan MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP
Mr JE Madden MP
Mr RCJ Skelton MP

Staff present:
Ms K O'Sullivan—Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE POLICE SERVICE ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL (NO. 2) 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 5 DECEMBER 2022

Brisbane

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The committee met at 11.16 am.

CHAIR: Good morning. I declare open this public hearing for the committee's consideration of the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022. I would like to respectfully acknowledge the traditional custodians of the land on which we meet this morning and pay my respects to elders past, present and emerging. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we are all so lucky to now share.

On 27 October 2022 the Hon. Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, introduced the bill into the Queensland parliament. The bill was referred to the Community Support and Services Committee for its detailed consideration. The purpose of today is to assist the committee with its examination of the bill.

My name is Corrine McMillan; I am the member for Mansfield and chair of the committee. With me here today are: Mr Stephen Bennett MP, the deputy chair and member for Burnett; Mr Michael Berkman MP, the member for Maiwar; Mr Robert Skelton MP, the member for Nicklin; and Mr Jim Madden MP, the member for Ipswich West, who is a substitute for Ms Cynthia Lui MP, the member for Cook. We thank you, member. Dr Mark Robinson MP, the member for Oodgeroo, is unavailable today.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee or at my discretion as chair.

Proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. The media rules are available from committee staff if required. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

CAUGHLIN, Mr David, Executive Director, Legal, Risk and Compliance, Crime and Corruption Commission

CHAIR: Thank you for appearing before the committee today. I recognise the work of the Crime and Corruption Commission and acknowledge the tremendous support, knowledge and experience they so willingly share with committees of the parliament. We certainly appreciate your time today. We welcome you; we wish you a good morning. We would like you to start with a brief opening statement, after which I am sure our committee will have some very important questions.

Mr Caughlin: The Crime and Corruption Commission thanks the committee for the opportunity to appear this morning. I respectfully acknowledge the traditional custodians of the land on which this meeting is taking place and pay my respects to elders past, present and emerging.

On 16 November 2022 the CCC provided a written submission to this committee on the contents of the bill which has been numbered as submission No. 001. The substantive amendment given effect by the bill is to make provision for the summary dismissal of officers who are sentenced to terms of imprisonment. The CCC supports this amendment. The High Court in the case of Ziems, dealing with the question of whether a barrister who had been sentenced to imprisonment should be suspended or struck off, noted the incongruity of the person maintaining the status of a barrister while serving a sentence of imprisonment. The same must obviously be true for police officers.

Beyond that, the CCC's submission on the bill deals primarily with three issues (1) extension of time limits in relation to disciplinary action against serving police officers and in relation to disciplinary declarations against former police officers; (2) the importance of adequate offences to

deal with misuse of information; and (3) a suggestion to improve disciplinary proceedings by ensuring a higher ranked prescribed officer can be appointed where an abbreviated disciplinary process, ADP, ends.

Reforms introduced in 2019 aimed to improve the timeliness of the complaints management and discipline system. The recent report titled *A call for change: commission of inquiry into the Queensland Police Service responses to domestic and family violence* notes at page 308 that 'improvements appear to have been realised with respect to timeliness' but that 'imposing strict time frames may also have implications for the thoroughness of investigations'. That is not to say that investigations are necessarily compromised by requiring that they be completed within a certain time frame but to highlight that this is a risk. While the act presently extends time frames for matters involving CCC investigations, those extended time frames only relate to compromising, effectively, a covert investigation. They do not engage with such a process compromising potential prosecution.

A thorough investigation into a complaint of corrupt conduct may reveal evidence of matters which do not rise to the level of corrupt conduct but will nonetheless warrant disciplinary action or which, while rising to the level of corrupt conduct, may be more appropriately dealt with through a police disciplinary process. Under the current regime, the time limits may prevent such action being taken. Given that criminal proceedings are ordinarily considered and dealt with before disciplinary action is taken, this has posed some practical difficulties regarding the current time limits.

For this reason, the CCC recommends that, once the CCC investigation has been finalised and a report provided to the QPS pursuant to section 49 of the Crime and Corruption Act, the QPS should have six months from that point to start a disciplinary proceeding. We consider this particularly important in light of the recommendations made in the recent commission of inquiry relating to the Crime and Corruption Commission. That report recommended that the CCC obtain advice from the Director of Public Prosecutions before charging criminally from a corruption investigation, which will obviously have a bearing on the time frame.

At present, section 7A.1(4) of the Police Service Administration Act imposes a two-year time limit for the making of a disciplinary declaration against former police officers. Unlike with serving police officers, this time limit is not extended where the former officer has been charged with a criminal offence. It is not uncommon for officers to resign following criminal proceedings being commenced against them. What we have proposed would mean that, where criminal or domestic violence proceedings against former police officers do not result in a conviction but where there is still sufficient evidence to substantiate the allegations, a disciplinary declaration could be made notwithstanding that it may have been more than two years since the resignation.

Turning to misuse of information, as set out in our submission the CCC supports the amendments to section 10.1 that deal with the unauthorised use of confidential information. However, we have consistently maintained the view that the current legislative framework dealing with improper use of confidential information by public sector officers generally is inadequate. In the CCC's report on Operation Impala we proposed a new offence of misuse of confidential information by public officers. That proposal was raised for consideration in the current review of the right-to-information and information privacy legislative schemes. While the present amendments are satisfactory, we understand that they are not intended to—and we make the point that they do not—address this broader issue which we have raised.

As the committee may be aware, under the Police Service Administration Act the level of prescribed officer appointed to deal with a disciplinary matter determines what type of sanction may be imposed on the officer. Under the current framework, once a prescribed officer has been appointed that officer cannot be changed. The new proposed part 7, division 6, subdivision 1 is to facilitate the appointment of a new prescribed officer in circumstances where the allocated prescribed officer is unable to conclude a disciplinary proceeding.

The CCC is of the view that the act should also be amended to allow the appointment of a new prescribed officer where an abbreviated disciplinary process fails. The bill proposes the introduction of 7.17A which provides that, where an abbreviated disciplinary process is rejected by an officer, that disciplinary process concludes and a new process is started. In our view, that is an appropriate juncture for the level of prescribed officer to be reconsidered. An ADP is premised on the agreement of the subject officer.

As is the case with any disciplinary process, an officer's acceptance of wrongdoing is relevant to the appropriate sanction, as it may reflect insight and remorse into the conduct and thereby allow a decision-maker to have greater confidence that the conduct is less likely to recur. An ADP necessarily factors in an officer's acknowledgment of wrongdoing in considering the sanction offered.

Rejection of an ADP may mean that that officer may not receive the same discount. That is not to say that any officer should be punished for rejecting an abbreviated disciplinary process, rather that the reduction in severity of sanction otherwise factored in may not be available. In those circumstances, we consider it would be appropriate that fresh consideration be given at this point to the rank of the prescribed officer and therefore the range of sanctions that may be available if it proceeds to a disciplinary hearing.

I would like to thank the committee again for inviting the CCC's submission on this bill. I welcome any questions you may have.

Mr BENNETT: I noticed in your submission that you have been talking about information being misused and you have been looking at it for some time. For the committee's benefit and my benefit as well, are there examples you can talk about that may be in the public domain? You do talk about section 10.1 being amended. You mentioned that you would like to go further and that it is a real problem.

Mr Caughlin: Yes.

Mr BENNETT: Are there examples the committee may be alerted to—or just hypotheticals if you feel more comfortable with that?

Mr Caughlin: Perhaps an example is an easy way to deal with it. Section 10.1 of the Police Service Administration Act deals with conduct limited to a police officer as distinct from other public sector officers, so it is fairly narrow in its focus. One of the concerns from Operation Impala was having appropriate safeguards available for all public sector employees who may have access to information. In terms of the available penalties for the information, 100 penalties or two years imprisonment, that may not be sufficient to deal with the gravity of the conduct.

One of the offences which is often charged in relation to misuse of information is under section 408E of the Criminal Code, which is computer hacking and misuse. That is generally charged where there are two features: one is where the information access and misuse is more serious; and, generally speaking, where there is a circumstance of aggravation, which means that the charge is not a summary one and can be brought outside the 12-month limitation for summary offences.

The difficulty with that is that that may not be appropriate to the particular facts of the case. It may be that it is sufficiently serious to justify criminal proceedings, but the time limit which would otherwise apply for a summary offence may pose difficulties because the information misuse is one of those matters that may not be detected for a period of time afterwards or where an investigation may take some time in order to forensically identify computer records in terms of information access to be able to fully investigate and prove the matter. Those time frames can be problematic.

Mr BENNETT: Are there some examples of the misuse of this confidential information the committee could be alerted to? Are there some that are quite prevalent? I am trying to get my head around what sort of information is used and how.

Mr Caughlin: There are myriad examples of access to Police Service information within their computer system, including officers who access QPS computer systems to look up details of family and friends of people and who they are or have been in a relationship with.

Mr BENNETT: I see.

Mr Caughlin: The Operation Impala public report is a really useful catalogue of some of those examples. I do not have any of them to hand, but certainly there are a lot of examples out in the public domain.

Mr SKELTON: In your submission you referred to section 7.13(2) of the Police Service Administration Act in that this current approach is limited to circumstances where the operation would be compromised rather than proceedings flowing from it. Can you explain to the committee what you mean by this and how this would potentially affect time limits for disciplinary proceedings?

Mr Caughlin: Certainly. Section 7.13 refers to prescribed operations. Prescribed operations are, as is set out in subsection (7): 'a controlled activity or controlled operation … specific intelligence operation'. These are circumstances where there may be what are commonly referred to as 'covert strategies' for an investigation. In those circumstances, taking disciplinary action may identify to the subject of an investigation that they are under investigation at a stage where it may not be desirable to reveal that. That is distinct from a decision as to whether or not disciplinary proceedings should be commenced or contemplated where there is a current investigation—which may be overt; it may be that any of those strategies have been concluded—but where, say, a decision about whether to charge someone criminally is being considered, including referring to, say, the Director of Public

Prosecutions for advice, but where that decision has not yet been concluded. It may be that, to preserve the integrity of the investigation, a directed or compulsory disciplinary interview is not undertaken so as to avoid the risk of, I guess, contamination of the evidence which may bear on the viability of the prosecution. Those are separate considerations which need to necessarily occur in sequence. The difficulty in taking disciplinary action at that point arises from the stage of the proceeding rather than necessarily the nature of the investigation.

Mr BERKMAN: Apologies if you addressed this and I have not heard your response over the construction noise, but my question relates to the previous answer. Your submission states that as a general proposition—and you have addressed this now—criminal proceedings are undertaken before disciplinary proceedings to avoid the risk of contamination of evidence, essentially. The submission then states that this would not presently fall in the carve-out of section 7.13. Can you explain to the committee what you mean by this?

Mr Caughlin: Yes. If you go to 7.13(2)(b), the grounds on which the carve-out operates is if the relevant officer overseeing the operation believes that starting disciplinary action against the subject officer may compromise the operation. We would ordinarily understand that as being the investigative phase of the operation rather than a prosecutorial decision or prosecutorial proceedings following on from the operation itself.

Mr MADDEN: Even though I am a visitor to the committee, I fully appreciate that the submission by the CCC with regard to this bill is critical and crucial. My question relates to a submission that you made with regard to clause 38. Clause 38 amends section 8.3 of the Public Service Administration Act to appoint a police officer deemed unfit for duty on medical grounds to be a public servant. Obviously in the Police Service fitness is very broad, because it deals with mental health issues as well as physical health issues. I invite you to expand on your views on this proposed amendment.

Mr Caughlin: Respectfully, I think it is the ATSILS submission that deals with 8.3.

Mr MADDEN: I am sorry. Thank you.

Mr Caughlin: That said, I have given some consideration to that issue. Certainly, I note the point about ensuring that there be appropriate transitional provision such that if an officer is to be treated as an employee under the Public Service Act we would agree with the submission that the drafting of the provision should be such that it makes clear that the CCC retains investigative jurisdiction—that the QPS can take disciplinary action and that the CCC could take corrupt conduct proceedings against such an officer if that was the transition from a police officer to a Public Service Act employee.

Mr MADDEN: You are saying that, notwithstanding that that person transfers from being a police officer to a public servant, the CCC would continue with its investigations?

Mr Caughlin: We would continue with our investigation, but it would be useful if there were a provision which also addressed that. The proposal in the ATSILS submission is that the Crime and Corruption Commission be given explicit powers over disciplinary matters concerning such an individual. We agree with that.

Mr BENNETT: We are establishing that the police disciplinary process is going to be different to other Queensland public servants?

Mr Caughlin: Yes.

Mr BENNETT: You have said earlier in evidence to me that you would prefer to see public servants included more broadly in this sort of legislative reform?

Mr Caughlin: Perhaps we are at cross-purposes on that point. The existing disciplinary process for police officers is currently different from Public Service officers. There are express provisions in the Police Service Administration Act which provide for discipline of police officers, as distinct from public servants under the Public Service Act. There are review provisions available to the CCC in relation to both public servants and police officers, but they are differently framed provisions. The information misuse provision I was talking about before is actually a criminal offence provision which we would want to see applied both to police officers and to the public sector.

Mr BENNETT: That makes sense, thank you.

CHAIR: Mr Caughlin, thank you for your time this morning. Certainly the questions our committee did have you were able to answer very thoroughly, which is very helpful. Thank you again for your time this morning. We thank you for all that you do and we wish you a good day.

MOORE, Mr Luke, Project Officer, Queensland Police Union of Employees

PRIOR, Mr Shane, Acting President, Queensland Police Union of Employees

CHAIR: Good morning, Mr Prior. Congratulations on your acting role.

Mr Prior: Very temporary.

CHAIR: Congratulations or commiserations! Thank you very much for appearing before the committee today. Our committee appreciates the work of the Queensland Police Union and certainly contributions that your union makes to any changes to the Police Powers and Responsibilities Act as well as any of the police administration bills. We thank you for your time this morning. We will ask you, Mr Prior, to start with a brief opening statement, after which I am sure our committee will have many important questions.

Mr Prior: Good morning, and thank you for having me here today. The Queensland Police Union welcomes the opportunity to comment on the Police Service Administration and Other Legislation Amendment Bill (No. 2). I want to say from the outset that I speak on behalf of 12, 500 police across Queensland. The union can only comment on matters contained in the bill that relate to police. There are other provisions in the legislation which I am not here to comment on today. The QPUE supports the legislation before the committee. We note a number of commonsense amendments which bring the Police Service Administration Act and Police Powers and Responsibilities Act in line with modern drafting practices.

The committee will be aware that the last parliament dealt with significant reforms to the police discipline system in 2019. The QPUE was proudly at the centre of those reforms, advocating on behalf our members to ensure a system that was robust and workable. As is the nature of things, time and practice have revealed opportunities for further reforms which this legislation is seeking to address. The QPUE has been engaged with the processes behind this legislation and we welcome the chance today to represent the needs of our members. I will touch on a few points inside the legislation that the union wishes to make particular comment on and then I am happy to take any questions from the committee.

With respect to the discipline system reform, previous work on the discipline system made changes to the system to account for a criminal proceeding occurring. In such an instance, a discipline proceeding must start within one year from the date the grounds for the discipline action arose or six months from the date the criminal proceedings were finalised. This delay was important to ensure that procedural fairness could be maintained in a criminal proceeding and that nothing out of the discipline proceeding could exert undue influence in the criminal matter. It allowed for a system where a criminal matter which would determine a disciplinary matter could then proceed and the outcomes then form part of the discipline process. No such provision was made for an application for a protection order made under the Domestic and Family Violence Protection Act 2012. This bill will extend those provisions in relation to applications for a protection order where the respondent officer is named, and the QPUE welcomes that.

The community holds police in high regard and has high expectations the standard police must hold themselves today. The QPUE acknowledges the work of the commission of inquiry and the reflections the QPS must undertake in responding to that report. Let me be clear to the parliament today: police in Queensland work very difficult jobs, and the conduct of some does not reflect the hard work and tireless dedication of the many. The men and women who serve Queensland as police officers are united in a common goal of protecting our community and preserving the peace of our community.

In terms of summary dismissals, this bill deals with summary dismissal provisions. These provisions operate where an officer or recruit is convicted and sentenced to a period of imprisonment, whether or not it is wholly suspended. The effect of such is that an officer is taken to have been immediately dismissed upon conviction. This is a simple codification of existing case law from QCAT welcomed by the QPUE. The significance of these reforms is that the commissioner no longer needs to commence a separate discipline investigation to dismiss such an officer. Rightly, these amendments are balanced by provisions that revoke that dismissal and deem it to have never occurred in the circumstances where a conviction is overturned on appeal or where the sentence is reduced to one other than imprisonment. Police are trusted figures in the community but as employees are entitled to natural justice and procedural fairness. These provisions accommodate this.

In terms of confidential information, the QPUE welcomes the changes to section 10.1 of the Police Service Administration Act and makes it clear to the community what constitutes confidential information and how information in the QPS's possession can be lawfully used. An important

amendment which will support the new unlawful use of information offence is the provision which allows a prosecution to be commenced within one year of the offence occurring. This commonsense change recognises that current time frames do not provide enough time for a proper investigation. Expanding the time frames will allow investigating police the time required to build a proper case.

With respect to the Weapons Act changes, the amendments to the Weapons Act are supported by the QPUE. The bill will allow the commissioner, an executive officer or a commissioned officer to delegate a police officer or a QPS staff member the licensing functions of an authorised officer under the Weapons Act 1990. The QPUE is aware of the need to balance community safety against the need for a timelier response to weapons licensing. These reforms will speed up processes and should support primary producers and others doing their work.

Finally, the bill before the committee has been well considered, stakeholders have been consulted and the reform has been drafted to respect the work police do and the important position police hold in our society. I commend the legislation to the committee.

CHAIR: Thank you very much, Mr Prior, for a very thorough introduction.

Mr BENNETT: You were there earlier when I was talking to Mr Caughlin about 10.1 and the misuse of information. In your submission it is acknowledged that now it has been disseminated down to consultants or other staff—that is, non-commissioned officers. What training would you consider might need to be implemented now into the QPS for all staff to be cognisant of this important reform about misuse of this information?

Mr Moore: I think that is probably a question best directed to the QPS, and I do note that you did direct that question to them. From our perspective there is a robust training process, but I think it is really important to be clear here: any changes to the way that police are trained will require time for police to come off the job, to come off shift hours, to go and be trained. We are supportive of those mechanisms, but how the service manages that is that balancing act for us. We want to be able to ensure that community safety is paramount and that our members are well trained on these things but also that training is commensurate with what is available to be done, if that makes sense.

Mr BENNETT: Yes. If we park the more current reports into the Queensland Police Service that have been tabled, is the misuse of information from your members something that happens quite regularly and people have been convicted on that misuse of information? I am just trying to get my head around it. Obviously it has been put in here for a reason. Are you able to comment on that on behalf of your members?

Mr Prior: What I could say is that I do not have those figures in front of me right now, but there have been circumstances; that is the case.

Mr BENNETT: Some? Many?

Mr Prior: Again, I do not have those numbers in front of me and I would not be comfortable in giving you an exact figure or even alluding to what a figure would be.

Mr Moore: I think what is principally important out of the legislation—and I note we mentioned this in our submission—is that primarily the changes to the legislation can give the community of Queensland some certainty about what that information is now in the act and how police are dealing with that and also streamlining some of these processes and being honest with people and saying, 'These things deserve a fulsome amount of time.' I note previously it was one month of time from when the service became aware of these instances to commence an investigation and then start with a prosecution. The changes in the bill will move that to one-year and six-month time frames—much better time frames in terms of meeting the community's expectations about what does happen if and when this ever does occur. I think that might have been the cut and thrust of your question.

Mr BENNETT: I appreciate that. Thank you.

Mr SKELTON: Clause 38 of the bill proposes that police officers who are deemed medically unfit will be employed as public servants rather than staff members. Do you support this amendment?

Mr Moore: Yes, we do in the sense that people who have experience and who have a high degree of technical training who have spent many years as serving police officers—men and women—should have a pathway to continuing employment, and we are a union for our members. We fight for our members all of the time. We are unashamed of doing that. We value any opportunity which gives people who have been deemed unfit to be police officers further opportunities to continue serving the people of Queensland.

To the matter of weapons licensing, which I think dovetails with this a little bit, one of the things we are seeing—and I am sure Mr Bennett sees it in his community, and possibly you, Mr Madden—is that we have instances where if a weapon is stolen or if it is lost there is a system of licensing that

has to occur to reissue a licence to hold another weapon. Hopefully, with some of the processes we are seeing with the Weapons Act changing, we might be able to find former police officers working in such an environment who can streamline those processes, and I know Mr Prior has been working extensively with our members in that section and we welcome those reforms.

Mr SKELTON: Thank you and you have already pre-empted my follow-up question, because I do have that issue too.

Mr Moore: Of course, yes; sorry.

Mr BERKMAN: I appreciate your time today. Generally, did you have any further comments to make beyond your submission in response to any of the issues raised by the CCC in the evidence? I understand that you were here for Mr Caughlin's statement.

Mr Prior: Are you saying with respect to the ADP process, because that is something that we would like to talk about?

Mr BERKMAN: Yes.

Mr Prior: Let me be clear: this contention was never subject to any consultation with relevant stakeholders and in our view demonstrates a lack of understanding of the abbreviated discipline system, commonly known as an ADP process. The ADP is an option offered at an early stage and occurs prior to an investigation being fully completed. It can even be used in circumstances where an investigation has not commenced. ADP allows an officer to cooperate with the discipline process and deal with matters quickly. It is important to note for the benefit of the committee that ADP is offered in circumstances where relevant mitigating factors may not be known to either the prescribed officer or the CCC. Whilst an officer can make submissions on the offered sanction, there is no requirement for the sanction to be reconsidered. If an officer makes submissions which are not considered, the officer loses the right to review that sanction. As such, it is completely appropriate for an officer to reject an ADP offer in circumstances where the ADP does not accurately reflect the alleged misconduct or where mitigating factors would make a substantial change to the offered sanction.

There have also been circumstances where ADP has been offered with a sanction which is completely out of range of the conduct and contrary to comparable QCAT decisions. In those circumstances the QPUE believes that such matters should be rejected, as QCAT brings a public perspective to police discipline, ensuring the rights and protection of the public is balanced against the rights and personal circumstances of the subject officer.

Additionally, the officer may not have committed misconduct and wish to challenge those allegations. ADP does not allow for this. Natural justice principles apply and people do have a right to be presented with the evidence against them and to defend themselves if necessary. In our view it is outrageous that the CCC would suggest otherwise. Let me be clear to the committee today: declining ADP does not show a lack of insight or remorse. The CCC's track record on prosecutions is appalling. It has been subject to extensive criticism, including by a committee of this very parliament. Unfortunately, it seems these comments by the CCC show it has not appreciated its failings or learned to respect the rights of members of our community, including the police.

CHAIR: Mr Prior, I have a question in relation to clause 39 of the bill which proposes to amend the Police Service Administration Act 1990 so a police officer or a recruit will be dismissed immediately upon being sentenced to a term of imprisonment, including a suspended sentence of imprisonment. I would imagine that the QPUE will be undertaking significant education or communication campaigns with members. Would you like to expand on that process?

Mr Prior: An information campaign has not been discussed as of yet, but, as with most other things, if not all, we always embark on notifying each of our members as to the changes and any legislative changes that are going to affect them and their work.

CHAIR: Great. Thank you, Mr Prior.

Mr BENNETT: Would that not be part of a recruitment process? Is that what happens when recruits go off to the academy—that is, all of these sorts of legislative things?

Mr Prior: Yes, absolutely.

Mr BENNETT: You talked about QCAT a lot this morning. Say a member gets into this rabbit hole of prosecution or whatever. Can the police or CCC be prosecutors; is that right?

Mr Prior: Yes.

Mr BENNETT: What is your member's recourse? They get a solicitor? You were talking about going to QCAT. Is that the only line of defence they have?

Mr Prior: Ultimately when it comes to a disciplinary proceedings, yes.

Mr BENNETT: Where I live, QCAT can be incredibly tiresome and cumbersome with delays in hearings. Is that still the case?

Mr Prior: Yes, unquestionably.

Mr BENNETT: How does that affect the time line proposal that is now going to be embedded in the bill?

Mr Prior: The discipline system can be long and arduous. Since the reforms in 2019 we have seen a reduction in those times, but once you start looking at QCAT and those proceedings we are at the whim of those agencies which, unfortunately, is those time lines that they dictate.

Mr Moore: One valid point to make as to why we are supportive of this legislation is that the discipline system is two years old. We are in the process of working through a new one. I think the Crime and Corruption Commission is proposing a whole new system or amendments that we would think are substantially out of place with what is currently in operation. On behalf of our members, we would respectfully say to the committee that we have been consulted on these reforms. We are supportive of these reforms. We will be in the process of engaging our membership on how these reforms operate. This legislation is good because it gives certainty. To take your point about QCAT, I would hope that with these statutory requirements going into the legislation we might see our friends over at QCAT meeting those expectations and making sure that these time lines in statute are adhered to.

Mr BENNETT: Thanks.

Mr MADDEN: I have a quick question to do with the issue of delaying the disciplinary proceedings until domestic violence proceedings are concluded. I just wanted to confirm: what we would be talking about there in normal circumstances would be the initial application for temporary orders for a protection order. Is that the stage that disciplinary proceedings could be made, once a temporary order is made, or would it be when the final order is made?

Mr Moore: I believe this question was put to the QPS at the last hearing and my understanding from what the service said is that it was at the conclusion.

Mr MADDEN: At the conclusion?

Mr Moore: Yes.

Mr BERKMAN: You would be obviously well aware of the recommendations that came out of the recent commission of inquiry, including the recommendation for an independent police integrity unit, a civilian-led unit. Is there anything in this suite of amendments that is inconsistent with that proposal?

Mr Moore: I think we should make it really clear here and now that the Queensland Police Union opposes an independent police integrity unit as proposed by the commission of inquiry. As I sort of foreshadowed, for two years the Crime and Corruption Commission, the Police Service and the police unions came together to work on this system that we are working with.

I think probably the substantive point out of the Coaldrake inquiry—and I understand there was a question raised in parliament last week around this—is that there have been a lot of inquiries and there have been a lot of recommendations, and we need to see harmonisation across those recommendations. For us, introducing a third discipline system in three years is just a step too far. We have systems in place. We need to be making sure that those systems are working, and I think substantively the bill before the committee today addresses that. With respect to your question, I appreciate it, but in terms of what you are considering, we are supportive of that.

Mr BENNETT: I appreciate you are supportive of the legislation and you are speaking on behalf of 12,500 members. For the committee's benefit, could you comment on the mood in the rank and file about the proposed legislation? Is it generally accepted, or is it seen as another attack on their integrity and the work they do? Their work is completely different, as you said, Mr Prior, with the circumstances your members turn up to every day. What is the general feeling on the ground?

CHAIR: Mr Prior—

Mr BENNETT: Is it hypothetical?

CHAIR: Mr Prior, I am happy for you to use some consideration around answering that question. It is asking you for an opinion. Perhaps the member could reword that slightly.

Mr BENNETT: On behalf of your members, are your members also supportive of this legislation?

Mr Prior: We as an executive and as a union consult widely with our members on a day-to-day basis. I think we would be lying if we said that members are not finding things difficult at the moment. The reputation of the service has been under question and, by extension of that, so have our members, so our members are hurting right now. I want to reiterate what I said earlier: the police in Queensland do a very difficult job and the actions of a few certainly do not represent the actions of the wide majority of our members.

Mr BENNETT: Well said.

Mr BERKMAN: I am interested in the response to the previous question I put. If I understood your answer correctly, you were essentially saying that the amendments put forward in this bill to some extent address the concerns that point towards in the recent inquiry the need for an independent police integrity unit. I am curious about how QPU sees that recommendation more broadly. Surely confidence of the general public in the efficacy of the QPS is integral to its function, so we really need to see the recommendations such as those from the commission of inquiry followed through on if we are going to maintain that public confidence. Is that not the case?

Mr Moore: I take your point. I think the point from our perspective is that the Crime and Corruption Commission are a standing royal commission. They have broad powers. They have a history of working with the QPU, with the commissioned police officers union and with the service to build a discipline model that everyone is satisfied in.

The commission of inquiry made its considerations and made its recommendations. The reality is that, in terms of the work that we as an organisation have undertaken, we have consulted broadly. I guess our caution is that, okay, those recommendations are available. In terms of the consultation that has occurred, in terms of the discipline system that is currently in operation in Queensland, we are satisfied that that system meets the community's expectations—that the Crime and Corruption Commission retains a right of review, that there are processes that are above board and able to be reviewed and that the people of Queensland can have confidence in.

I take the points made by the commission of inquiry that the Queensland Police Service has to reflect on those, but, in terms of that separate integrity unit, we do not support it because we believe the mechanisms are already in place. To go back to that, as I said earlier, this is a system that has been around for three years. Let us let that system flow a little more before we propose radical changes. Let us come together and make the thing we actually have working for the people of Queensland work, and then we can review it later.

Mr BERKMAN: In the interests of clarity, can I put it to you again? The commission of inquiry obviously held a different perspective—that the current process of internal review, of police review of police conduct, was inadequate. You just simply disagree with that?

Mr Moore: I think the point is to get back to what is before the committee today. This is industrial legislation; we are an industrial organisation. We represent the interests of police as workers. Do we also have a role in the community in talking about how police are perceived and the matters that were subject to the commission of inquiry? Yes. We participated fully in that process. We engaged and we gave information over. Our president, Ian Leavers, appeared and gave evidence on behalf of our members. I think the point is more that we do not see the need for the proposal for that integrity unit. We believe that there are processes in place which will be enhanced by this legislation before the committee which address those concerns. That is our answer.

CHAIR: Thank you. Mr Prior, I think you summed up the context very well when you said that the actions of a few should not reflect the general standing of all. Our committee feels very strongly around that notion and supports that position that the actions of a few should not impact on the standing of all. We as a committee acknowledge and appreciate the great work of our Queensland Police Service on the whole, and we are very confident that those few will be dealt with accordingly. We respect the work of our Queensland Police Service.

Mr Prior: Thank you, Chair.

CHAIR: I thank you both for your deliberations and your time today. We know that you are busy. Our committee appreciates the knowledge, experience and wisdom you always provide. Our bill will be the better for it.

SHARMA, Mrs Pree, Prevention, Early Intervention and Community Legal Education Officer, Aboriginal and Torres Strait Islander Legal Service

SHILLITO, Mr Lewis, Director, Criminal Law, Aboriginal and Torres Strait Islander Legal Service

CHAIR: Welcome. Thank you for giving up your time to support the work of our committee. We acknowledge the great expertise that you bring. Would you like to make a brief opening statement, after which we will have questions?

Mrs Sharma: Thank you for inviting the Aboriginal and Torres Strait Islander Legal Service, also known as ATSILS, to attend and speak at the public hearing for the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022. ATSILS is a community-based public benevolent organisation established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland in the primary practice areas of criminal, family and civil law. ATSILS also delivers community legal education and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

In the interests of respecting the time of the committee, rather than outlining each of the provisions that we found noteworthy in our written submission, I will discuss our concerns more broadly and the basis of those concerns. In our written submission on the bill which is the subject of this hearing, we flagged some of the proposed amendments which we viewed to be noteworthy when considering potential impacts on Aboriginal and Torres Strait Islander peoples and communities.

Our primary concerns in this bill relate to proposed amendments to the Police Service Administration Act which we consider may reduce transparency and rigour, regarding the process for disclosure of matters of suitability by persons engaged or seeking to be engaged by QPS, and do not go far enough with respect to the proposed summary dismissal provisions where a police officer or recruit is sentenced to a term of imprisonment and on successful appeal that sentence is changed to a sentence other than imprisonment.

We also hold concerns that the proposed amendments create a framework where police officers who are deemed to be unfit for duty on medical grounds are subject to disciplinary provisions under the Public Service Act and not the Police Service Administration Act, despite the fact that, under the existing provisions of the Police Service Administration Act, the commissioner may delegate her powers to, amongst others, a staff member and staff members may be appointed as watch house officers by the commissioner.

The recent disclosure in the media of recordings which captured conversation between watch house officers and sworn officers while working in the holding cells in the Brisbane city watch house in which those persons used abhorrent racist slurs and offensive language, including with respect to First Nations detainees, serves to highlight just how critical it is that this repugnant behaviour is stamped out. Making staff members, who in practice may include watch house officers, subject to a different system of discipline to sworn police officers is not supported. In our view, this involves implementing a very high standard of behaviour for police officers and staff members alike and strong disciplinary mechanisms which support this high standard of behaviour.

The recent report of the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence revealed damming evidence relating to racism within QPS, in particular against Aboriginal and Torres Strait Islander peoples, and found that such cultural issues have contributed to the over-representation of Aboriginal and Torres Strait Islander peoples in prison. In the domestic and family violence context, Aboriginal and Torres Strait Islander peoples were found to have been overpoliced as police assessed respondents and underpoliced as victim-survivors. As stated in our written submission, for Aboriginal and Torres Strait Islander peoples, the quality and integrity of our police force is quite literally a critical issue, and for some it may mean the difference between life and death. In our view, some of the proposed amendments in this bill appear to pull QPS further away from the transparency and reform that is needed to regain public confidence in its operations.

Mr BENNETT: I want to move away from the Police Service for a moment. I notice you also made comments around the fire services issue, particularly around remote communities and how we disseminate information. There would be the SES, there would often be a police officer and there would be other mechanisms for information sharing so that people can be essentially safe and evacuated. Are there other examples I am missing, given you have made that comment? Most people would listen to the ABC radio and have all of those other things, but you have raised it as a concern. Can you expand on that for the committee's benefit?

Mrs Sharma: I do not have any specific examples to hand, except from reviewing the findings in the Royal Commission into National Natural Disaster Arrangements from 2020. As you mentioned, yes, we have ABC radio and there are community broadcast stations which appear to in practice be used. We were just concerned that there is nothing explicit in the legislation, and since the committee is considering reworking this provision we saw it as an opportunity to make that comment. It may be the case that those practices are being implemented, but it is just something that we found noteworthy.

Mr BENNETT: That is fine. Bringing it to the attention of the committee is an important part of the legislative reform process. I think the Inspector-General Emergency Management has also spoken about dissemination of information in remote communities, so thank you.

Mr SKELTON: On the Fire and Emergency Services Act, in your submission you referred to extending the powers of authorised fire officers to 'an appropriately qualified person acting under the supervision of the officer, using a device remotely controlled by the officer or person'. I assume that is drones or something similar. Could you tell the committee why you do not support that proposed amendment?

Mrs Sharma: It is not necessarily that we do not support that proposed amendment, but as currently drafted it expands those particular powers which we see as police-like powers—powers to enter and use these electronic devices to inspect—to not just officers but to appropriately qualified persons acting under the supervision of the officer using a device remotely controlled by the officer or person. Our concern is that that is quite broad in its application. It is just to ensure that we do not have, as I think the examples we have used in our submission show, circumstances which justify an ambulance officer or a special emergency services volunteer, for example, being able to exercise these types of powers. They were our main concerns with that one.

Mr BERKMAN: You made the point both in your submission and in the opening statement that the quality and integrity of policing in Queensland is quite literally a matter of life and death for First Nations people and for a number of your clients. In that light, I invite your reflections on the statement earlier from QPEU and others that the indiscretions of a few within the Queensland police force should not be taken as a reflection on the whole and how that notion sits within our role as regulators—the need to manage police powers and the exercise of those powers for vulnerable people.

Mr Shillito: The starting point is probably the findings of the QPS DFV inquiry which found cultural issues, not isolated incidents. Our experience is that commentary of that kind—that it is the acts of a few—is not reflective of the day-to-day experience of our clients. Whilst there may be some confining of it within QPS, it is a common experience of our clients across the state. It is not isolated to particular areas. It features in all manner of police interactions that our clients have in the sense of the fact of an interaction occurring full stop, the nature of that interaction and decisions made by operational police officers to that effect—whether they choose to charge, whether they choose to instigate diversionary options, the involvement they may choose to have with other services or agencies to try to divert a person from the criminal justice system and just the way in which they view people who are our clients. It is not a new phenomenon; it is one that is increasingly coming to light, which we are pleased to see. I can say from personal experience—I used to work once upon a time for QPS, and it was something that was well known internally at the time.

We are pleased that there are these findings. Our position would firmly be aligned with recommendations of the QPS DFV inquiry that an independent body being the principal investigator for disciplinary matters is fundamental. It has been our longstanding advice to clients that the way in which disciplinary processes presently work within the internal QPS investigative regime is inadequate. Invariably a vast number of cases including, as the QPS DFV inquiry found, those involving serious allegations of misconduct are still dealt with by way of what is effectively internal guidance to their members. We frequently will advise clients that there is limited point in pursuing those mechanisms for that reason.

Mr MADDEN: My question relates to something that you said in your opening statement, Mrs Sharma, to do with the staffing of watch houses. Was your submission that, at least in the Brisbane watch house, there are people there who are not sworn police officers but who are Queensland Police Service staff members?

Mrs Sharma: That is my understanding. Under the provisions of the Police Service Administration Act, there is an ability for the commissioner to appoint staff members who can also be appointed as watch house officers. In that particular report that I mentioned in my opening statement, it was revealed that the particular people involved in those conversations were both sworn police officers and watch house officers—non-policing, essentially.

Mr MADDEN: You may not know this, but do you have any idea how long that has been the case? This is news to me. Do you know how long that situation has existed?

Mr Shillito: I do not how long in total, but it has been at least as long as I have been practising in that jurisdiction—from 2008.

Mr MADDEN: I just really want you to confirm your position that you want those staff members to be subject to the same code of conduct and disciplinary tribunal as sworn police officers. Is that your position?

Mrs Sharma: That is our position. There is a difference between the two disciplinary regimes. Specifically, the Police Service Administration Act has in certain respects a more rigorous disciplinary regime when compared with the Public Service Act, because it is designed for police officers. I can give you some specific examples. Under 7.4 of the PSAA, the grounds for disciplinary action are slightly different. There are some common factors. For example, subparagraph (a), which refers to where a subject officer has committed misconduct, the term 'misconduct' itself is differently defined under both pieces of legislation. The PSAA refers to 'disgraceful, improper or unbecoming of an officer', 'shows unfitness to be or continue as an officer' and 'does not meet the standard of conduct the community reasonably expects of a police officer'. Comparing that with the definition in the Public Service Act, it refers to 'inappropriate or improper conduct in an official capacity' and 'inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service'. You can see the differences in that definition.

Additionally, subparagraph (b) under the PSAA is that new provision regarding where a police officer is convicted of an indictable offence. That is not included in the Public Service Act, although there are mechanisms for ongoing suitability disclosure. Say if you are a Public Service officer and you are convicted of an indictable offence, there are separate pathways for disclosing that but it is not a discrete grounds for discipline under the act.

Additionally, subparagraph (e) of 7.4 of the PSAA refers to some specific grounds for refusal where the officer has contravened without reasonable excuse the provisions of the Police Powers and Responsibilities Act but also a code of conduct that applies to the subject officer, which I think may be relevant, especially in the case of watch house officers. Maybe there are some internal policies and procedures or codes of conduct that apply. Also, there is a direction given to the subject officer by the commissioner under this act by a senior officer with authority to give the direction.

Mr MADDEN: I guess at this point I will ask you the question that I pre-empted earlier about where a police officer is deemed unfit for duty on medical grounds and then becomes a public servant. It raises the possibility that an investigation having started when they were a police officer currently ends when they cease to be a police officer. Can you expand on your views on that?

Mr Shillito: Yes, we share that specific concern that that might truncate an investigation, loss of evidence, other issues or just disadvantage both the member being investigated and the investigative process. Similarly, it is not quite clear, as I read the Public Service Administration Act, what contextual information may be disclosable on an investigation under that basis whereas a sworn member may have a history that may be considered relevant—aggravating, mitigating or otherwise—to an investigation that we feel strongly should be incorporated in such an investigation. If there were a transitional arrangement whereby an investigation can be effectively continued, it would make good sense.

Mr MADDEN: Effectively, you are saying that if we have a sworn police officer, an investigation commences and he or she ceases to be a sworn police officer, the investigation would continue as if they were still a sworn police officer?

Mr Shillito: I would agree with that and also expand it to a situation where an investigation occurs into conduct that occurred before a sworn member became a staff member so that it would hopefully catch that circumstance also.

CHAIR: We have come to the end of our time together. Thank you very much again for all the work that you have considered for both bills but particularly for this bill. We do appreciate your efforts, certainly your knowledge and experience in the area and your strong advocacy for members of our most vulnerable community. We thank you for the great work you do every day to support those people in Queensland.

That concludes our hearing. On behalf of the committee I thank the witnesses and stakeholders who have participated today. I would also like to thank submitters who have engaged with this bill and this inquiry. We thank our Hansard reporters, as always. A transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare this public hearing closed.

The committee adjourned at 12.27 pm.