

GPO Box 3123
Brisbane QLD 4001

Level 2
North Tower Green Square
515 St Pauls Terrace
Fortitude Valley QLD 4006

Tel.: **07 3360 6060**
Toll-free: 1800 061 611
(in Queensland outside
Brisbane)

Fax: 07 3360 6333

mailbox@ccc.qld.gov.au
www.ccc.qld.gov.au

ABN 32 164 714 360



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OFFICIAL

16 November 2022

Community Support and Services Committee
Parliament House
George Street, Brisbane
Queensland 4000

By email: cssc@parliament.qld.gov.au

Dear Committee,

**RE: Submission in relation to the Police Service Administration and Other
Legislation Amendment Bill (No. 2) 2022**

Thank you for the opportunity to provide feedback in relation to the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 (the Bill).

The Crime and Corruption Commission (CCC) has reviewed the Bill and there are some particular areas of interest we wish to draw to your attention which may require further consideration.

Extension of time limits for disciplinary action

The CCC notes clause 54 of the Bill contains several amendments to address time limits for the taking of disciplinary action against current officers. The CCC also raises two further matters that should be considered:

- 1. An extension to the time limit for starting a disciplinary proceeding against a serving police officer where the officer has been investigated by the CCC (including where the CCC has assumed responsibility for an investigation pursuant to sections 47(1)(c) or 48(1)(d) of the Crime and Corruption Act 2001 (CC Act)) to within 6 months of the CCC providing a report to the QPS pursuant to s 49 of the CCC Act, recommending disciplinary action be considered.*

The CCC's experience has been that the existing time limits, introduced in 2019 as part of a suite of reforms in the disciplinary system, have presented some difficulties in implementation. That is particularly so where a complaint is received by the CCC more than six months after the disciplinary ground has arisen. In such a case, disciplinary proceedings need to be started within six months of the complaint being received by the CCC.

Given that CCC investigations into corrupt conduct by police officers inevitably involve serious allegations, it is important that investigations can be completed fully. The quality of investigations should not be compromised in order to meet the provided timeframes.

That is particularly so where a matter uncovered during a CCC investigation may not rise to the level of prosecutable corrupt conduct but may nevertheless warrant disciplinary action. In such cases, the Queensland Police Service (QPS) should not be prevented from taking disciplinary action. If matters are referred to the QPS for disciplinary action, the QPS needs sufficient time to consider whether and what disciplinary action should be taken. The CCC understands that there have been instances where time limits have expired before the QPS has been able to commence proceedings.

At present, s7.13(2) of the *Police Service Administration Act 2009* (PSAA) provides that the time for commencing disciplinary action is extended where a prescribed operation is being conducted, and the officer overseeing the operation forms the view that commencing disciplinary action would compromise the operation. The proposed amendments clarify the nature of a 'prescribed operation'. The difficulty with the current approach is that this extension is limited to circumstances in which the operation would be compromised, rather than any proceedings which may flow from it.

As a general proposition, criminal proceedings are usually undertaken before disciplinary proceedings. That may also include consideration of whether criminal proceedings should be commenced. As a practical matter, taking such an approach avoids the risk of contamination of evidence by investigators having access to compulsorily obtained information, such as directed disciplinary interviews, in determining whether to charge. However, this would not presently fall within the 'carve-out' in s7.13.

In addition, once implemented, recommendations 24 – 30 from the recent *Commission of Inquiry relating to the Crime and Corruption Commission Report* (published 9 August 2022) regarding the CCC seeking advice from the Director of Public Prosecutions (DPP) before charging, are likely to further impact on the availability of disciplinary action within the prescribed timeframes. That is likely to be the case at least in those matters where the DPP advice is to not proceed with criminal charge(s) but where disciplinary action is an alternative deterrent action available to the QPS.

2. *To allow disciplinary declarations against a former officer to be made within six months of a relevant proceeding being finalised by incorporating an equivalent provision to s. 7.12(1)(c) (as amended by the Bill) in s. 7A.1(4).*

As you are aware, s7A.1(4) of the PSAA currently imposes a two-year time limit for the making of a disciplinary declaration for former police officers. Unlike the position for serving police officers, this time limit is not extended where the former officer has been charged with a criminal offence.

This amendment would ensure the time limit for taking disciplinary action does not expire where there are lengthy court delays. It would also mean that where criminal proceedings do not result in a conviction (but there is still sufficient evidence to substantiate the allegations), a disciplinary declaration can still be made that will be able to be shared with other public sector agencies should the former officer seek further employment in the public sector.

Unauthorised use of confidential information

The CCC notes proposed amendments to s10.1 pertaining to unauthorised use of confidential information include an increase to the maximum penalty to 100 penalty units or two years' imprisonment. The CCC supports an increase in penalty, but also draws the Committee's attention to recommendation 10 of its report: *Operation Impala – report on misuse of confidential information in the Queensland public sector* (published February 2020) which proposed a new offence of misuse of

confidential information by public officers in both a simpliciter (for access to confidential information) and aggravated form (including where disclosure is made to a third party) attracting 5 years' and 10 years' imprisonment respectively.

Improper access to and disclosure of confidential information has been a key area of focus for the CCC for some time. The need to keep people's personal information confidential to only be accessed and used for legitimate purposes is of increasing importance in the current technological environment where personal information can be retained and accessed far more easily. The consequences of misuse of such information can be significant as evidenced in case studies detailed in the CCC's Operation Impala investigation report.

Recommendation 10 was also raised for discussion in the Queensland government's recent *Consultation Paper: proposed changes to Queensland's Information Privacy and Right to Information Framework* and the CCC has made a public submission in support of this change.

We note the proposed amendments in relation to information access do not address the issues raised in Operation Impala.

Other matters

The proposed inclusion of s7.17A makes clear that, where a subject officer does not accept an abbreviated disciplinary process, that disciplinary proceeding ends and a disciplinary hearing under Division 4 may be commenced. The CCC submits that the 'new' disciplinary proceeding should be able to be undertaken by a different prescribed officer, including a prescribed officer at a different level than the prescribed officer who dealt with the abbreviated disciplinary process.

The proposed s7.42A sets out circumstances in which a prescribed officer may be replaced where they are unable to continue with the disciplinary proceeding. It is understood this reflects an intention that prescribed officers may not generally be changed during disciplinary proceedings.

The CCC submits that the Act should provide that where an ADP process has ended under s7.17A, the new disciplinary proceeding may be referred to a new prescribed officer, including one at a higher rank than the prescribed officer who dealt with the ADP process. The CCC notes that, as the level of the prescribed officer determines what sanctions may be imposed on a subject officer, this is an appropriate point for this issue to be reconsidered.

Finally, as part of the CCC's review it came to our attention that in Part 11 of the PSAA, dealing with transitional provisions, there is an issue with the section numbering. Divisions 10, and Divisions 11 and 12 have duplicate section numbering. There are two of each of ss 11.19 – 11.26.

The CCC is happy for this submission to be made public. Should you wish to discuss the matter further, or have any questions in relation to this submission, please contact Mr David Caughlin, Executive Director, Legal, Risk and Compliance on [REDACTED]

Yours sincerely,



Bruce Barbour
Chairperson