

## Queensland Police Service Briefing to the Economics and Governance Committee

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

#### BACKGROUND

1. The *Police Service Administration Act 1990* (PSAA) provides for the management, development and administration of the Queensland Police Service (QPS). A component of managing the QPS involves establishing and maintaining a discipline system that can guide, correct, rehabilitate and, if necessary, discipline police officers and police recruits employed by the QPS and police officers who have left the employ of the QPS after grounds for discipline have arisen.
2. The complaint management and internal discipline of the QPS is governed by the PSAA, the *Police Service (Discipline) Regulations 1990* (Discipline Regulation), and the policies and procedures of the QPS. Additionally, the Crime and Corruption Commission (CCC) also performs an investigative, oversight and monitoring function pursuant to the *Crime and Corruption Act 2001* (CC Act). The CC Act also contains relevant definitions and the ability of parties to apply for review of certain decisions.
3. In order to maintain public confidence in the QPS, it is necessary to ensure officers adhere to appropriate standards of conduct. This is achieved through a robust complaint management and internal discipline system.
4. Pursuant to the CC Act, the CCC has primary responsibility for dealing with corrupt conduct (as defined in the CC Act) affecting Queensland public sector agencies (including the QPS) and can deal with such complaints in 'an appropriate way' subject to certain legislated principles. In the case of the QPS, this may include performing the investigation itself; co-operating with the QPS during an investigation; or devolving the investigation to the QPS.
5. The CC Act provides that the Police Commissioner has primary responsibility for dealing with complaints about police misconduct. However, this is subject to the monitoring role of the CCC, whereby the CCC can monitor the progress and outcome of investigations, issue guidelines, review and audit handling of complaints and require the QPS to report to the CCC about an investigation. Furthermore, the CCC can also assume responsibility for and complete investigations into police misconduct.
6. However, the CCC has no role in the investigation of minor police complaint matters currently classed as breaches of discipline (as defined in the PSAA), except to ensure that complaints that should be classed as misconduct are not inappropriately dealt with as a breach of discipline. Generally, the CCC has no ability to review a discipline decision relating to a breach of discipline.
7. The current legislative and policy framework allows investigations into inappropriate police conduct to be undertaken. If sufficient evidence exists, the allegation may be referred to an appropriate officer (the prescribed officer) to conduct a disciplinary hearing where the prescribed officer determines if the allegation(s) are substantiated. The officer subject to the allegations (the subject officer) may contest the allegation(s) and/or any sanction that the prescribed officer intends to impose if the allegations are substantiated. The available sanctions are outlined in section 7.4 'Disciplinary action' of the PSAA and section 10 'Disciplines that may be imposed' of the Discipline Regulation.

8. The relevant provisions of the PSAA and the Discipline Regulation have remained largely unchanged since enactment in 1990, leading to an inefficient system that has not kept pace with organisational, officer and community expectations. A number of reviews and general stakeholder commentary have identified several aspects of the police discipline system suitable for improvement and modernisation. These areas of dissatisfaction included:
  - a general lack of public and officer confidence in the current police discipline system;
  - unnecessarily lengthy timeframes taken to investigate and resolve some complaints;
  - outdated sanctions that focus primarily on punitive measures;
  - the overly adversarial and legalistic nature of discipline proceedings;
  - a perceived lack of consistency in decisions made about matters involving similar conduct; and
  - differing opinions of the QPS and CCC in relation to the direction of some investigations or appropriate sanctions, as evidenced by CCC applications for review of QPS discipline decisions.
9. Extensive work has been undertaken in recent years by the QPS and the CCC to work with stakeholders, including the Queensland Police Commissioned Officers' Union of Employees (QPCOUE) and the Queensland Police Union of Employees (QPUE), to create a modernised and more efficient discipline system that is supported by all stakeholders.
10. As part of the 2015 Election, the Government committed to "review the police complaints system and implement a new disciplinary system, in collaboration with the Queensland Police Union of Employees, which ensures accountability and fairness for both police officers and the public."
11. It was acknowledged that a new system was needed that addressed stakeholder concerns, focused on resolution through managerial action, maintained accountability and restored community and officer confidence.
12. On 20 June 2016, Mr Alan MacSporran QC, Chairperson of the CCC, convened a forum with Ministers, Shadow Ministers and key stakeholders to further examine methods and frameworks to achieve the Government Election Commitment. The forum established a Working Group consisting of representatives of the QPS, QPCOUE, QPUE and CCC to improve the police discipline system. At the same time, a trial of Joint Assessment and Moderation Meetings was undertaken. These meetings involve QPS and CCC officers collaborating at the outset of a potential disciplinary matter to consider the circumstances surrounding a complaint and any subsequent disciplinary action that should be undertaken and to provide clear direction during the investigation.
13. On 16 October 2017, the Chairperson of the CCC announced that a revised police discipline model had been negotiated and had the support of the Government, CCC, QPS, QPCOUE, QPUE and relevant members of the Opposition. All stakeholders committed their support via a Memorandum of Understanding.
14. The CCC, QPUE and QPCOUE were actively consulted during drafting of the Bill ensuring stakeholder support was retained, and that the Bill achieved the policy position as agreed by the parties and announced by the Chairperson of the CCC. Relevant members of the Opposition were recently briefed on how the Bill implements the agreed model.
15. In order to enhance the police discipline system prior to the passage of required legislative amendments, the CCC, QPS, QPCOUE and QPUE agreed that any proposed changes that were not dependant on legislative amendment would commence prior to the passage of the Bill. These changes commenced on 1 July 2018 by amending the internal policies and processes of the QPS, in so far as the current legislative regime allowed.

## **PURPOSE OF THE BILL**

16. The primary purpose of the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (the Bill) is to:
  - replace part 7 of the *Police Service Administration Act 1990* (PSAA), enabling the new part 7 to contain the legislative framework for the new police discipline system;
  - insert new chapter 5, part 3 into the *Crime and Corruption Act 2001* (CC Act) containing the provisions enabling a subject officer or the CCC to review a disciplinary decision made under the PSAA; and
  - repeal the *Police Service Administration (Discipline) Regulations 1990*.
17. The Bill makes consequential amendments to the PSAA and CC Act to facilitate the primary purposes of the Bill.
18. The primary purposes of the Bill implement recommendations 15, 17 and 18 of the Parliamentary Crime and Corruption Committee Report 97 *Review of the Crime and Corruption Commission* (the PCCC Report), by providing the ability for the CCC to apply for a QCAT review of a QPS decision not to institute disciplinary proceedings against an officer and amending the provisions in relation to the suspension of disciplinary sanctions. A sanction of dismissal will no longer be able to be suspended and in the case of any other sanction, if it is suspended, the sanction will remain part of the officer's discipline record.

## **KEY AMENDMENTS**

### **New part 7 of the PSAA**

19. Clause 9 of the Bill replaces the current part 7 of the PSAA with a new part 7 'Internal command and discipline'. The new part 7 will contain the framework for the new police discipline system, excluding the right of parties to apply for review of a decision, and provides amendments that will:
  - introduce timeframes for the investigation of complaints;
  - modernise discipline sanctions that can be imposed on an officer;
  - formalise the role and range of management strategies available as part of the discipline process;
  - introduce an abbreviated discipline process if the conduct is not in dispute and the CCC approves the proposed sanction; and
  - create a central disciplinary unit, responsible for conducting disciplinary proceedings.
20. Clauses 6-8 of the Bill amend and relocate the exiting sections 7.1-7.3 of the PSAA to other parts of the Act, thereby allowing part 7 to be dedicated solely to the new police discipline system.

### *Unchanged features*

21. The ability of the community to complain about police misconduct or misbehaviour is not diminished, nor are amendments being made to the range of misbehaviours or conduct that police may be disciplined for. While the drafting language of the 'grounds for disciplinary action' contained in section 7.4 'Grounds for disciplinary action' is modernised, the underlying behaviours that may lead to disciplinary action have not been substantively changed from the current grounds provided in section 9 'Grounds for disciplinary action' of the Discipline Regulation.

22. The role of the CCC as the oversight body is enhanced through the Bill as the CCC will be involved in the decision-making process at an earlier stage in the life of a complaint, have direct input to the finalisation of matters through the abbreviated discipline process and expand its ability to apply for review of disciplinary decisions.

*Introduction of timeframes to commence disciplinary proceedings*

23. A common complaint from the QPUE and members of the public has been the lengthy time taken to investigate and finalise matters. Currently, neither the PSAA or Discipline Regulation contain timeframes prescribing when an investigation of a complaint must be finalised or a disciplinary proceeding commenced.
24. The Bill imposes time limits by which any disciplinary proceeding arising from a complaint must be implemented. New sections 7.12 and 7.13 work jointly to establish timeframes for the institution of disciplinary proceedings. Generally, an investigation must be finalised and proceedings commenced within the later of (a) one year from the date the disciplinary ground arose; or (b) six months from the complaint being made. This allows for circumstances where a complaint is not made until one year had passed since the conduct occurred.
25. Where officers are charged with criminal offences, discipline proceedings must be commenced within six months of a criminal matter being finalised or withdrawn. This seeks to achieve a balance between timeliness of the discipline investigation and the officer's rights before the criminal courts.
26. New section 7.13 provides an exception to these timeframes, where the commencement of discipline proceedings would compromise a prescribed operation being undertaken by the CCC or QPS. In this case, the ground for disciplinary action is not taken to arise until the date the prescribed operation ends. Therefore, the general time limitation of 12 months would commence from that date. The exception ensures that ongoing investigations into serious matters are not compromised by the QPS being required to institute disciplinary proceedings prematurely in order to comply with the general timeframe requirements.

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

27. The currently available discipline sanctions have not been updated since the PSAA was enacted and are limited in scope, inflexible and do not necessarily address the cause of any deficiency in behaviour.
28. The current range of sanctions may be criticised due to the limited sanctions that are available and the significant incremental differences between the severity of such sanctions. New section 7.34 'Disciplinary sanctions' addresses these deficiencies and provides a greater range of disciplinary sanctions that may be imposed on an officer for inappropriate behaviour.
29. Section 7.35(4) also clarifies that a prescribed officer may impose more than one disciplinary sanction on a subject officer. This provides greater flexibility for the prescribed officer to tailor the sanction to appropriately reflect the subject officer's actions and circumstances. For example, if an allegation is substantiated that warrants the demotion of the subject officer, it may be appropriate in the circumstances to also impose a local transfer on the officer. This would allow the officer to be moved to alternate duties, within the scope of the definition of local transfer, that are deemed appropriate in the circumstances.

30. The Bill removes the currently available sanctions of reduction in the officer's level of salary within their current rank and the forfeiture or deferment of a salary increment or increase. This removes unintended long-term consequences of those sanctions, including a possible reduction in superannuation. However, the maximum fine that can be imposed on an officer has been significantly increased and therefore still allows significant monetary penalties to be imposed without the potential for unintended long-term and disproportionate consequences to occur.

*Addressing PCCC Report recommendations regarding the suspension of disciplinary sanctions*

31. The Bill implements Recommendations 17 and 18 of the PCCC Report by amending the ability of a prescribed officer to suspend a disciplinary sanction imposed on an officer. Section 7.41 'Suspension of disciplinary sanctions' provides that a prescribed officer will not be able to suspend the sanction of dismissal or probation. Other disciplinary sanctions may be suspended but will remain part of the subject officer's disciplinary history. This section establishes the procedures that are to be adopted in relation to sanctions that are suspended, including establishing a show cause proceeding before QCAT in relation to any alleged breach of the conditions of a suspended sanction.

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

32. The current police discipline system and available sanctions do not allow subject officers to undertake educational activities or development opportunities that may assist in improving their professionalism or minimise the risk of similar inappropriate behaviour occurring in the future. The Bill formalises 'professional development strategies' in the new police discipline process in three distinct manners.
33. Firstly, the Commissioner must consider whether to impose a professional development strategy on an officer in response to a complaint as a risk mitigation strategy, to improve the officer's performance or for any other purpose. These professional development strategies can be tailored to meet the individual needs of a subject officer. Section 7.9 'Implementation of professional development strategies by commissioner' requires the Commissioner to consider the imposition of a professional development strategy in this manner as soon as reasonably practical after the ground for disciplinary action arises.
34. Secondly, section 7.10 'Referral of complaint to prescribed officer' provides that before a complaint is referred to a prescribed officer for a discipline hearing, the Commissioner must consider whether a discipline hearing is required to achieve the purposes of new part 7. The matters the Commissioner must have regard to include any professional development strategies that have already been implemented under section 7.9 and whether the imposition of any further professional development strategy would achieve the purposes of new part 7.
35. Thirdly, professional development strategies may be imposed on a subject officer when a prescribed officer is finalising a disciplinary proceeding. Section 7.42 'Professional development strategies' outlines that a prescribed officer may impose one or more professional development strategies to achieve the purposes of new part 7 either instead of, or in addition to, a disciplinary sanction.
36. The use of professional development strategies in this manner establishes the central role they will play in the new police discipline system. Not all complaints will result in a disciplinary proceeding being instituted where the matter can be adequately resolved through the use of professional development strategies. However, where matters are appropriately referred to a prescribed officer, a professional development strategy can be included in the finalisation of the matter.

*Introduction of Abbreviated Disciplinary Proceedings*

37. The Bill establishes Abbreviated Disciplinary Proceedings (ADP) in new part 7, division 3 of the PSAA. The ADP is designed to simplify and improve the timeframes for finalising disciplinary proceedings where there is little doubt the conduct occurred, and the officer readily admits the conduct. The ADP process is not limited to only low-level complaints but can be used in more serious complaints where evidence is compelling, and the officer admits the conduct.
38. Participation by the subject officer in the ADP process is completely voluntary, prefaced upon informed consent and allows an officer to make submissions in relation to any proposed sanction or professional development strategy that may be offered.
39. In order to ensure the ADP process is as efficient as possible and appropriate discipline sanctions are imposed, a prescribed officer is unable to make an offer to a subject officer without first obtaining CCC approval of the proposed sanction or strategy.
40. Due to the voluntary nature of the ADP and the requirement for the CCC to approve any proposed sanction or strategy, a right to apply for review of an ADP decision by either the CCC or subject officer is not required.
41. However, if fresh, additional or substituted evidence later becomes available that would have altered the decision of the prescribed officer had it been considered, the CCC or subject officer can apply to QCAT for an order quashing the ADP process and outcome.

*Creation of a central disciplinary unit*

42. Section 7.43 provides the ability for the Commissioner to create a central unit responsible for conducting disciplinary proceedings. The central unit will generally deal with disciplinary proceedings regarding serious allegations where a subject officer may face the disciplinary sanctions of dismissal, suspension without pay, disciplinary probation, comprehensive transfer or demotion. New section 7.35 restricts the ability to impose these sanctions to prescribed officers of the ranks of either Deputy or Assistant Commissioner.
43. A central disciplinary unit will improve efficiencies in disciplinary hearings requiring a prescribed officer at the rank of Deputy Commissioner or Assistant Commissioner. Currently these officers must manage disciplinary proceedings in addition to their core responsibilities associated with their region or command. The central unit will alleviate this requirement and therefore it is expected the timeframes for conducting disciplinary proceedings will improve.
44. Ordinarily the Commissioner could establish a central unit through the normal allocation of staff within the QPS. However, to ensure natural justice is maintained for subject officers, the Bill requires the central unit to be separate from the unit involved in investigating complaints (the Ethical Standards Command) and cannot fall under the operation, supervision or command of the executive officer responsible for Ethical Standards Command. This is designed to ensure responsibility for investigations and any subsequent disciplinary hearings are separated and thereby ensures natural justice is maintained for subject officers. Furthermore, the Bill provides that an officer of Assistant Commissioner rank assigned to the central unit will be able to impose disciplinary sanctions available to a Deputy Commissioner, and an officer at the rank of Chief Superintendent will be able to impose disciplinary sanctions available to an Assistant Commissioner.

### **New chapter 5, part 3 and schedule 1 of the CC Act**

45. Clauses 18-31 of the Bill amend the CC Act by amending the existing chapter 5, part 2 and inserting a new chapter 5, part 3 and new schedule 1. These amendments create a discrete part in the CC Act to cater for the right of the CCC and a subject officer to apply for review of a disciplinary decision under the PSAA in QCAT.
46. In order to avoid unintentional effects on the existing review provisions for other units of public administration contained in part 5, chapter 2 of the CC Act, the CCC, QPS, QPCOUE and QPUE agreed to place all necessary provisions relating to police discipline in new part 3. This approach has necessitated the replication of some provisions in both chapter 5, part 2 and 3 of the CC Act in order to simplify the drafting of the amendments and improve the user friendliness of the amended Act.
47. The definition of a *reviewable decision* is provided in the new section 219O, being a decision mentioned in schedule 1, column 1. In addition to the ability of the CCC or a subject officer to apply for the review of the decision of a prescribed officer at the conclusion of a disciplinary proceeding, the CCC will have the ability to apply for review of a QPS decision not to commence disciplinary proceedings against an officer. This new review right will implement Recommendation 15 of the PCCC Report.
48. As a result of simplifying the discipline system through removing the term 'breach of discipline' from the PSAA, the CCC's ability to apply for review of a disciplinary decision will no longer be prefaced upon whether the matter was classified as 'misconduct' or a 'breach of discipline'. This change will remove the potential for disagreement between the two agencies regarding the classification of alleged behaviours. At the conclusion of a disciplinary proceeding conducted under the PSAA, if the CCC is of the opinion that the matter was inadequately dealt with, the CCC may apply for review of the decision in QCAT regardless of which ground for discipline is alleged in the matter. This simplified approach therefore focuses the CCC's ability to apply for review of a decision solely on the alleged behaviour and sanction or strategy imposed, rather than an artificial classification of the conduct.

### **CONSULTATION**

49. Targeted consultation with key stakeholders was undertaken on a draft of the Bill. Consultation occurred with the:
  - Aboriginal and Torres Strait Islander Legal Service;
  - Bar Association of Queensland;
  - Crime and Corruption Commission;
  - Queensland Council for Civil Liberties;
  - Queensland Law Society;
  - Queensland Police Commissioned Officers' Union of Employees; and
  - Queensland Police Union of Employees.
50. As a result of feedback provided by the stakeholders, a number of amendments were made to the draft Bill.
51. Furthermore, the Chairperson of the CCC and Assistant Commissioner, Ethical Standards Command met with representatives of the Aboriginal and Torres Strait Islander Legal Service, Bar Association of Queensland, Queensland Council for Civil Liberties and Queensland Law Society to discuss the proposed amendments and overall modernisation of the police discipline system.

## **FUNDAMENTAL LEGISLATIVE PRINCIPLES**

52. The Bill has been drafted with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* by achieving an appropriate balance between the individual rights and liberties of the police officers and recruits subject to the Bill and the need to ensure accountability, community confidence and the highest standards of professional behaviour of the QPS. There are however, a number of proposed amendments that may be perceived as inconsistent with the fundamental legislative principles. These inconsistencies are addressed in pages 15 to 20 of the Explanatory Notes.