

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

**RECEIVED**

17 APR 2019

**Committee Office**



**Crime and Corruption  
Commission**

**QUEENSLAND**

Our Reference: AD-19-0172 - 19/061672

8 April 2019

Mr Linus Power MP  
Chair  
Economics and Governance Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Via email: [ecg@parliament.qld.gov.au](mailto:ecg@parliament.qld.gov.au)

Dear Mr Power,

***Inquiry into the Police Service Administration (Discipline Reform) and other Legislation Amendment Bill 2019 (the Bill)***

I am writing in relation to the Economics and Governance Committee's (the Committee) examination of the policies that the Bill gives effect to, specifically relating to how this effects the Crime and Corruption Commission's (CCC) review of discipline matters.

**Background**

The Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (the Bill) will:

- 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 Crime and Corruption Commission (CCC) to review a disciplinary decision made under the PSAA; and
- repeal the *Police Service Administration (Discipline) Regulations 1990*.

As you are aware the CCC and the Queensland Police Service (QPS) provided a joint written briefing to the Committee, and on 25 February 2019 representatives from the QPS and myself assisted the Committee by participating in a public briefing about the Bill. Both the CCC and the QPS agree that, as the oversight body, our role will be enhanced through the Bill and it will expand our ability to apply for review of disciplinary decisions.<sup>1</sup>

The CCC had previously expressed concerns to the Parliamentary Crime and Corruption Committee (PCCC) regarding our inability to review a decision by the QPS

<sup>1</sup> QPS and CCC joint briefing to the Economics and Governance Committee on the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019, 25 February 2019 3, [22].

not to initiate disciplinary proceedings against an officer for misconduct (see – *Arndt*).<sup>2</sup> As a consequence of these concerns the PCCC recommended (*Recommendation 15*) to the Queensland Government that the definition of ‘reviewable decision’ in section 219BA of the CC Act be amended to specify that the CCC may apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review.<sup>3</sup>

The CCC is of the view that the key amendments in the new chapter 5, part 3 and schedule 1 of the CC Act will adequately address these concerns, namely:

The definition of a ‘reviewable decision’ is provided in the new section 219O [of the CC Act], 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.<sup>4</sup>

However, during the current trial of the new discipline system a serious matter involving corrupt conduct has been brought to the attention of the CCC which, to some extent, undermines the effect of *Recommendation 15* relating to our ability to apply for a review of a decision not to commence disciplinary proceedings against an officer who retires or resigns from the QPS before the finalisation of discipline proceedings.

### **Disciplinary declarations against former officers (Part 7A)**

Part 7A of the current PSAA allows the Commissioner of Police (the Commissioner) to take discipline action against a former officer and to make a discipline declaration.<sup>5</sup> However, before making such a declaration the Commissioner must give the former officer a notice either to respond or to attend a disciplinary hearing.<sup>6</sup> In these circumstances, once a decision is made a notice of misconduct finding (or a discipline declaration) must be given to the former officer<sup>7</sup> and to the CCC.<sup>8</sup>

If the above procedure is complied with then a discipline declaration would be a ‘reviewable decision’, as defined in section 219BA of the CC Act.<sup>9</sup> The CC Act notes that ‘[A] reviewable decision may also involve a failure to make a disciplinary declaration’.<sup>10</sup> However, if the procedure is not initiated then the current section is limited in a similar way to a decision by the QPS not to initiate disciplinary proceedings against a serving officer for misconduct, which the current Bill seeks to address and rectify.

The CCC is of the view that there are significant corruption risks arising from failing to make a discipline declaration. This is because a subject officer is able to leave the QPS, while under investigation, and then gain employment within another Unit of Public Administration (UPA) and potentially be able to continue with similar conduct despite there being significant evidence of corrupt conduct.

### **Recent example of the limitations of Part 7A**

The recent matter brought to the attention of the CCC involved a QPS officer who was found to have accessed and disclosed confidential information about an impending search warrant. The actions of the officer had the distinct possibility of compromising a QPS operation that was on foot, and it was only by chance that the information was not disclosed to the main target of the operation. The subject officer

<sup>2</sup> *Arndt v Crime and Misconduct Commission* [2013] QCATA 340; *Crime & Corruption Commission v Dawes & Anor* [2017] QCAT 066.

<sup>3</sup> Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission* (Report No 97, 30 June 2016) Recommendation 15.

<sup>4</sup> QPS and CCC joint briefing, above n 1, [47].

<sup>5</sup> *Police Service Administration Act 1990* (Qld) s 7A.2.

<sup>6</sup> *Ibid* s 7A.3.

<sup>7</sup> *Ibid* s 7A.4.

<sup>8</sup> *Ibid* s 7A.5(2).

<sup>9</sup> *Crime and Corruption Act 2001* (Qld) s 219BA(1)(b).

<sup>10</sup> *Ibid* s 219BA(2) – Note.

was also deceptive and attempted to hide the conduct but sufficient evidence was obtained to prove the alleged conduct both from a criminal and disciplinary perspective.

The officer was charged with one count of computer hacking / misuse and was fined \$1000, although no conviction was recorded.<sup>11</sup> The officer resigned from the QPS before discipline proceedings were instituted.

Initially the QPS was satisfied, based on the available evidence, that the officer should be subject of a disciplinary declaration, pursuant to Part 7A of the PSAA. The CCC held the view that had the subject officer remained in the QPS then we would expect that the officer would be dismissed.<sup>12</sup>

However, prior to the QPS giving the officer a formal notice<sup>13</sup> a decision was made not to commence post-separation discipline action but instead to make a 'note to file' should the officer decide to re-join the Service. Although this decision may prevent the subject officer returning to the QPS it is not a decision that can be reviewed by the CCC. Also, it does not fulfil the original objectives that introduced Part 7A, namely that it was intended to send a 'strong message to the public sector workforce and the broader community that those who hold public positions cannot expect to break the rules and get away with it'<sup>14</sup>, and to provide a warning mechanism to prospective government employers when subject officers have retired or resigned to avoid scrutiny only to attempt to gain employment with another UPA.<sup>15</sup>

As this decision was not a 'reviewable decision' the CCC was only able to write to the QPS requesting they reconsider their decision. The decision not to take any action remains and the CCC is unable to review this matter in QCAT. This would mean that the subject officer could obtain employment in a UPA without being required to declare that they were subject of an investigation into serious corrupt conduct.

### **CCC concerns**

In our joint submission we agreed that the proposed amendments to Part 7 of the PSAA and the introduction of the new section 219O of the CC Act, will give the CCC the ability to apply for review of a QPS decision not to commence disciplinary proceedings against an officer.<sup>16</sup> However, these proposed changes will only deal with those officers who remain within the QPS.

As I stated in my public briefing to the Committee, the CCC has expressed concerns that in a few cases some QPS officers, who are subject of serious allegations, have been able to avoid our jurisdiction.<sup>17</sup> We are concerned that that this 'gap' in Part 7A will allow some officers to again avoid our jurisdiction simply by retiring or resigning. The current proposed changes do not address the aforementioned circumstances, as they were not originally considered by the stakeholder – working group.

### **Consultation with the stakeholders – working group**

As you are aware the stakeholder working group (the stakeholders) consists of representatives of the QPS, the CCC, the Queensland Police Union of Employees and the Queensland Police Commissioned Officers' Union of Employees. The working group agreed upon the framework and the concepts to improve the current discipline system but the limitations of Part 7A did not form part of the consultation process.

<sup>11</sup> *R v Mareddy*, 22 March 2018.

<sup>12</sup> Letter from CCC to the QPS dated 17 April 2018.

<sup>13</sup> *Police Service Administration Act 1990* (Qld) s 7A.3.

<sup>14</sup> Explanatory Speech, Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Bill 2009 (Qld) 611.

<sup>15</sup> *Ibid.*

<sup>16</sup> QPS and CCC joint briefing to the Economics and Governance Committee, above n 1, 7 [47].

<sup>17</sup> Transcript of Proceedings, Public Hearing - Inquiry into the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (Brisbane, 25 February 2019) 4 [7].

Once the CCC identified the potential gap the stakeholders met to discuss whether a resolution could be achieved prior to the Committee reconvening. The stakeholders immediately reached a consensus that a gap in the legislation does exist and needs to be resolved. The gap was not intentional and is clearly an oversight given that the stakeholders reached a consensus to amend the definition of a reviewable decision so as to include a decision not to commence an ADP / Discipline Hearing. Unfortunately, given the current timeframes, they were unable to reach a consensus on how best to address this issue before the Committee would have to report back to Parliament. However, in the meantime the stakeholders are continuing to work together in the short term to temporarily address this issue.

The CCC has been advised that the QPS are looking at internal policy changes that may alleviate some of our concerns in the interim by providing a more accountable and consistent approach across the QPS.

The QPUE supports the need for changes to Part 7A but are of the view that, as there is no current consensus, the stakeholders should continue to work towards a solution and report back to Parliament within 6 months.

However, the CCC holds the view that this is a matter that should be considered at the Committee stage as it is an amendment that will assist in immediately reducing corruption risks across the broader public sector, which is within the wider purview of the proposed legislative changes. To this extent the CCC has considered the current legislation and, to assist the Committee, we have set out below suggested amendments to Part 7A of the PSAA and to the CC Act that mirrors the proposed changes that are currently under consideration by the Committee.

### **Suggested amendments to the PSAA and the CC Act**

The CCC recommends to the Committee three amendments: two to the CC Act and one to the PSAA as follows:

#### **Clause 22**

Clause 22 of the Bill amends section 219BA (Meaning of a *reviewable decision*) of the CC Act by replacing existing (1)(a) and (b) with the following:

- (a) a decision made in relation to an allegation of corruption against a prescribed person, other than a decision –
  - (i) made by a court or QCAT; or
  - (ii) made by a prescribed officer under the *Police Service Administration Act 1990*, part 7; or
- (b) a decision under Part 7A of the PSAA to make a disciplinary finding or disciplinary declaration against a former officer

We suggest inserting an additional paragraph:

- (c) a decision not to give a written notice or hold a disciplinary hearing under section 7A.3 of the PSAA in relation to a former officer who, before they resigned or retired, was the subject of a complaint mentioned in section 7.2 of the PSAA.<sup>18</sup>

If this amendment is accepted it will mean that paragraphs (a), (b) and (c) will all be relevant to Part 7A decisions. In particular, paragraph (c) will allow the CCC to initiate QCAT proceedings where a decision is made not to pursue a Part 7A disciplinary declaration when we believe it is in the public interest to do so.

<sup>18</sup> NB: in drafting this additional paragraph the CCC has considered what s. 7A.3 will look like after it has been amended and have adopted the drafting style in the proposed new Schedule 1 of the CC Act.

### Clause 30

Clause 30 of the Bill inserts a new Schedule 1<sup>19</sup> into the CC Act defining a ‘reviewable decision’ and the aggrieved party. We are of the opinion that an amendment to the last entry in Schedule 1 would also address the issue of not making a discipline declaration. We suggest that the last entry in Schedule 1, column 1, should be amended by inserting the underlined words:

#### Reviewable decision

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

If this amendment is accepted we are of the view that it will align with our suggested amendment to Clause 22 above, and is consistent with the intention of the Bill regarding the insertion of the new section 2190 into the CC Act.

### Clause 3

Clause 3 of the Bill amends section 1.4 (Definitions) of the PSAA. The CCC believes that the aforementioned amendments would benefit from an entire definition of *disciplinary proceeding* in section 1.4. The suggested definition would read as follows:

***Disciplinary proceeding*** means a proceeding against the subject officer under part 7, division 3 or 4, or a former officer under part 7A.

This amendment provides clarity to the definition of *disciplinary proceeding* in the PSAA. We believe that this is necessary because Clause 9 of the Bill, which inserts a definition of disciplinary proceeding in section 7.3 of the PSAA, only relates to Part 7 of the PSAA and not Part 7A.

### Recommendations

The CCC recommends these amendments to the Committee on the basis that they will address the identified gap in Part 7A and will assist the Committee in its inquiry into the Bill. Importantly, these amendments align with the intention of the Bill and the original PCCC recommendation (*Recommendation 15*). In addition, they maintain the original intention of Part 7A, which was to call to account former members of the Police Service who attempt to avoid scrutiny by resigning or retiring. These amendments will also preserve the rights of the affected member as it will require the CCC to initiate proceedings in QCAT, which ensures procedural fairness for the member.

It is unfortunate that the matter was not identified at an earlier stage but I take the view that it would be remiss of the CCC not to raise this with the Committee during the inquiry stage. Although the CCC has considered the position of the other stakeholders we are firmly of the view that the gap identified in Part 7A is a significant corruption risk to the QPS, and to the wider public sector community, requiring that it be closed as soon as is reasonably practicable.

We concede that these situations arise on rare occasions but, despite their infrequency, when they do occur the conduct is of such a serious nature that it is in the public interest for the CCC to consider proceedings in QCAT to ensure that we continue to be effective in reducing incidence of corruption.

However, if the Committee does not accept the suggested amendments then I ask that the Committee directs that the stakeholders continue to consult and collaborate on a solution and that the stakeholders be mandated to report back to the Minister within three (3) months with an effective resolution.

<sup>19</sup> Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (Qld), Schedule 1 Reviewable decisions – Chapter 5, Part 3.

Should the Committee require any further information, please do not hesitate to contact me or Assistant Director, Mr Darren Brookes (Assistant Director, Police Program, CCC) on telephone [REDACTED] or via [REDACTED]

I trust this information is of assistance to the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. MacSporran', followed by a long horizontal line extending to the right.

**A J MacSporran QC**  
**Chairperson**