

## Economics and Governance Committee

### Response to Submissions for the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019

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**TITLE OF BILL:** Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019

**REPORT OF:** Queensland Police Service

**DATE:** 21 March 2019

#### INTRODUCTION AND SUMMARY

On 13 February 2019, the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly and referred to the Economics and Governance Committee (the Committee) for consideration.

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*.

The Queensland Police Service (QPS) and CCC provided a joint written briefing to the Committee and representatives from the QPS and the CCC have assisted the Committee by participating in a public briefing about the Bill. The Committee sought public submissions on the Bill and requested the QPS provide a written response to these submissions by 22 March 2019.

The following submissions have been received by the Committee:

Submission Number	Submitter Name
1	Women's Legal Service Qld
2	Queensland Law Society
3	Queensland Police Union of Employees
4	Bar Association of Queensland

The QPS response to these submissions is as follows:

#### **Submission 1 – Women's Legal Service Qld**

The Women's Legal Service Qld (WLSQ) raises areas of concern in relation to the WLSQ's experience of their client's interaction with the QPS. The WLSQ submits that their client's interactions with the QPS are not positive and that such interactions may be evidence of broader systemic issues.

The WLSQ submits that the Bill should protect victims of serious crime “as much as possible” or that such victims should have “grounds for making a complaint for unprofessional and/or disrespectful behaviour”. Specifically, the WLSQ submits that section 7.4 ‘Grounds for disciplinary action’ of the Bill should contain a specific cross reference to the Queensland Charter of Victim’s Rights and that a breach of the Charter should be a ground for disciplinary action. The WLSQ supports the particular ground for disciplinary action contained in section 7.4(1)(c), being that an officer has performed their “duties carelessly, incompetently or inefficiently”.

### Queensland Police Service response to WLSQ issues

The QPS acknowledges the work and support provided by WLSQ to Queensland women, particularly in relation to victims of sexual violence or domestic and family violence. The QPS notes that the WLSQ submission states:

*The survivor / clients regularly report being treated disrespectfully by QPS, not being told about where the Police investigation is up to, they often feel dismissed and forgotten after they have made their complaint, they state that they are left in a position of having the [sic] "chase up" the QPS for information about the criminal matter, about bail conditions that might actually protect them.*

The issues raised by the WLSQ are dealt with in Schedule 1AA ‘Charter of victim’s rights’ of the *Victims of Crime Assistance Act 2009* (the Charter). The Charter may be perused through accessing the Office of Queensland Parliamentary Counsel website: <https://www.legislation.qld.gov.au/>.

QPS policy has been developed to provide guidance and instruction to officers in relation to both general aspects of operational policing and specific matters such as the Charter. The Operational Procedures Manual (OPM) is a general direction given by the Commissioner under section 4.9 of the PSAA. This section provides that unless a direction is inconsistent with the provisions of the PSAA, *every officer or staff member to whom a direction of the Commissioner is addressed is to comply in all respects with the direction.*

Section 2.12 ‘Victims of crime’ of the OPM contains the Commissioners directions relevant to compliance with the Charter. This section provides inter alia:

*When dealing with a victim of crime, officers are to comply with the provisions of the Charter which places an onus on agencies to provide information to victims.*

The section outlines the general rights of victims and specific rights of victims in accordance with the Charter, including a victim’s rights in the criminal justice system, as a prosecution witness, in special circumstances (eg cases of rape or sexual assault) and how victim impact statements are to be made. The section also outlines the rights of a victim to make a complaint relating to a contravention of a right afforded by the Charter.

This section of the OPM is publicly available and may be perused through accessing the following website:

<https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

A copy of section 2.12 of the OPM is attached to this response.

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The Bill does not make any changes to the ability of a victim of crime, or any other person, to make a complaint to the QPS or CCC in relation to the behaviour of an officer. The Bill also enhances the ability of the CCC to perform its monitoring and overview functions by allowing the CCC to apply for review of QPS decision not to institute disciplinary proceedings against a subject officer and removing the distinction between 'misconduct' and 'breach of discipline'.

The Bill inserts new section 7.4 'Grounds for disciplinary action' which outline the circumstances that may cause a subject officer to be disciplined under part 7. The grounds for discipline outlined in section 7.4(1) of the PSAA relevant to the WLSQ submission are if the subject officer has:

- (a) committed misconduct; ...
- (c) performed the subject officer's duties carelessly, incompetently or inefficiently; or...
- (e) contravened, without reasonable excuse –
  - (ii) a code of conduct that applies to the subject officer; or
  - (iii) a direction given to the subject officer under the PSAA or by a senior officer with authority to give the direction.

It is noted that the WLSQ supports the inclusion of section 7.4(1)(c), being that an officer may be subject to disciplinary action if they perform their duties carelessly, incompetently or inefficiently.

The failure of an officer to comply with the Charter (being a direction of the Commissioner under the PSAA) may constitute grounds for disciplinary action pursuant to new section 7.4(1)(a), (c) or (e). The context and seriousness of the failure to comply with the Charter would determine the specific ground for disciplinary action that is alleged in each specific matter. Similarly, if the allegation is substantiated, the nature and context of the officer's failure to comply with the Charter will determine the appropriate professional development strategy or disciplinary sanction that is imposed.

Section 7.4 'Grounds for disciplinary action' has been deliberately drafted at a macro level, as opposed to specifically outlining numerous behaviours or matters of non-compliance that amount to unacceptable conduct. In doing so, the provision can cater for changing public expectations and changes in other legislation or directions of the Commissioner without requiring section 7.4 to be amended.

Accordingly, it is submitted that the Bill, as drafted, contains grounds for disciplinary action that encapsulate the concerns of the WLSQ. Furthermore, as the Bill enhances the ability of the CCC to apply for review of all disciplinary decisions, including the decision not to institute disciplinary proceedings against an officer, any complaint alleging non-compliance with the Charter will be subject to appropriate oversight and if relevant, will also be subject to independent review.

#### **Recommendation:**

No Change.

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**Submission 2 – Queensland Law Society**

The Queensland Law Society (QLS) supports the reform of the police disciplinary system and notes that the Bill seeks to focus upon correction and education, while still allowing for appropriate discipline action when warranted. The QLS supports the Bill on the whole, however expresses concern in relation to the following aspects of the Bill.

Amendments to the *Police Service Administration Act 1990*

*Clause 9 – Replacement of part 7 (Internal command and discipline)*

In relation to new section 7.1 ‘Main purposes of part’, the QLS submits that an amendment should be made to the drafting of new section 7.1(a) and (b).

Section 7.1 of the Bill, as currently drafted, outlines the main purposes of new part 7 are to:

- (a) provide for a system of guiding, correcting, rehabilitating and if necessary, disciplining officers; and
- (b) ensure appropriate standards of discipline are maintained within the service to—
  - (i) protect the public; and
  - (ii) uphold ethical standards within the service; and
  - (iii) promote and maintain public confidence, and officers’ confidence, in the service.

The QLS submits that the phrase “if necessary” in section 7.1(a) should be amended to “for deciding if further action is necessary”, as any further action must be linked to disciplinary action.

The QLS also submits that section 7.1(b) essentially inserts a public interest test into the disciplinary scheme. However, the QLS submits that the considerations contained in section 7.1(b) should be redrafted, using sections 447 ‘Decision of commissioner to start a proceeding under ch 4’ and 448 ‘Dismissal of complaint’ of the *Legal Profession Act 2007* as a model.

In relation to new section 7.39 ‘Community service’, the QLS observes that the section does not provide any guidance in relation to how any community service is to be performed and that details should be provided “either in the Bill, in a regulation or some other guidance statement.”

*Clauses 10 to 13 – Disciplinary declarations*

The QLS submits that the timeframes contained in the existing provisions of the PSAA and relevant provisions of the Bill to implement a disciplinary declaration against a former officer should be reduced from 2 years after their employment ends, to 6 months after their employment ends. The QLS submits the reduced timeframe of 6 months post separation from the QPS would be in the public interest and avoid injustice to the former officer.

*Insertion of new pt 11, div 10*

The QLS acknowledges the rationale for inserting transitional provisions into the Bill is to allow disciplinary proceedings to proceed without delay. However, the QLS submits that procedural fairness and natural justice should be afforded to the subject officer in any proceeding. Furthermore, written notice of any change in proceeding must be provided to all parties within seven days of the amending legislation being enacted to allow sufficient time for the subject officer to obtain further advice, if necessary.



Amendments to the Crime and Corruption Act 2001

*Clause 28 – insertion of new ch 5, pt 3*

The QLS correctly submits that new section 219O ‘Reviewable decisions’ and new schedule 1 ‘Reviewable decisions – ch5, pt3’ of the CC Act will operate to provide the CCC with the ability to apply for review of a QPS decision not to commence disciplinary action against an officer. However, the QLS opines that the proposed amendments are not clear in relation to what decision is able to be reviewed and what will occur post review. The QLS submits the matter should be returned to the QPS for a disciplinary hearing to occur by a prescribed officer.

In relation to new section 219S ‘Additional power for substituted decisions’ of the CC Act, the QLS submits that the power of QCAT to impose any disciplinary sanction upon review will infringe upon the natural justice and procedural fairness afforded to a subject officer. The QLS premises this upon the notion that subject officers may have ‘...taken certain steps in respect of a disciplinary action, knowing what the possible outcomes may be...’. Accordingly, any successful review should be returned to the QPS to be dealt with at a new level of prescribed officer, with all submissions and pleas vacated from the previous proceedings.

**Queensland Police Service response to QLS issues**

Amendments to the Police Service Administration Act 1990

*Clause 9 – Replacement of part 7 (Internal command and discipline)*

In relation to section 7.1(a), the QPS submits that the drafting language is adequate and fulfils its policy objective. The Explanatory Notes outline that the objective of section 7.1(a) is to outline that the following provisions contained in part 7 are designed to provide a discipline system that will guide, correct, rehabilitate and *if necessary*, discipline officers. The words ‘if necessary’ clarify that recourse to disciplining an officer is only required where management actions are not sufficient in the context of the matter and it is necessary to discipline the officer. Where it is necessary to discipline an officer, the Bill provides a comprehensive framework in later provisions that outlines the procedure that must be followed.

Prior to instituting disciplinary proceedings, the requirements of part 7, division 2 must be complied with. Specifically, new section 7.10 ‘Referral of complaint to prescribed officer’ of the Bill requires the Commissioner to have regard to five distinct considerations before a complaint may be referred to a prescribed officer for possible disciplinary proceedings. Subsection (2) requires the Commissioner to consider:

- (a) any professional development strategy, or management action that has been implemented in relation to the subject officer;
- (b) whether implementation of another professional development strategy would be sufficient to achieve the purposes in section 7.1(b);
- (c) the subject officer’s disciplinary and service history;
- (d) the seriousness of the conduct to which the complaint relates; and
- (e) whether it is necessary to take disciplinary action against the subject officer to achieve the purposes mentioned in section 7.1(b), which includes ensuring that appropriate QPS discipline standards are maintained.

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The specific consideration in section 7.10(2)(e) achieves the same purpose as the amendment suggested by the QLS, being that if disciplinary action is necessary in the matter, any disciplinary action must be necessary to achieve the purposes mentioned in section 7.1(b).

In relation to section 7.1(b), the QPS submits that the purpose of section 7(1)(b), with respect to the QLS, is not designed to implement a public interest test similar to sections 447 and 448 of the *Legal Profession Act 2007*.

The purpose of section 7.1(b) is to provide context and guidance in relation to the objects of part 7, being to ensure appropriate standards of discipline are maintained within the QPS and therefore protect the public; uphold ethical values within the QPS; and to promote and maintain public and officer's confidence in the QPS. These objects are necessary considerations to be had in relation to whether to implement professional development strategies or institute disciplinary proceedings and importantly, are guiding principles in relation to the imposition of any disciplinary sanction.

Section 42 'Dealing with complaints – commissioner of police' of the CC Act outlines what the Commissioner must do when a complaint of police misconduct is received. This section achieves the same purpose as the QLS's proposal. Section 42 provides inter alia:

- (1) The commissioner of police must expeditiously assess complaints, or information or matter (also a *complaint*) made or notified to, or otherwise coming to the attention of, the commissioner of police.
- (2) The commissioner of police must deal with a complaint about police misconduct in the way the commissioner of police considers most appropriate, subject to the commission's monitoring role.
- (3) If the commissioner of police is satisfied that—
  - (a) a complaint—
    - (i) is frivolous or vexatious; or
    - (ii) lacks substance or credibility; or
  - (b) dealing with the complaint would be an unjustifiable use of resources;the commissioner of police may take no action or discontinue action taken to deal with the complaint.

Section 42 further provides:

- (7) If a person makes a complaint that is dealt with by the commissioner of police, the commissioner of police must give the person a response stating—
  - (a) if no action is taken on the complaint by the commissioner of police or action to deal with the complaint is discontinued by the commissioner of police—the reason for not taking action or discontinuing the action; or
  - (b) if action is taken on the complaint by the commissioner of police—
    - (i) the action taken; and
    - (ii) the reason the commissioner of police considers the action to be appropriate in the circumstances; and
    - (iii) any results of the action that are known at the time of the response.
- (8) However, the commissioner of police is not required to give a response to the person—
  - (a) if the person has not given his or her name and address or does not require a response; or
  - (b) if the response would disclose information the disclosure of which would be contrary to the public interest.

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The Bill does not amend section 42 of the CC Act or relocate that provision to the PSAA, as amendments are only made to the CC Act where it was necessary to achieve the policy objectives of the new police discipline system. The content and location of section 42 is considered sufficient to achieve the purposes proposed by the QLS submission.

In relation to new section 7.39 'Community Service', the section purposely does not provide details in relation to organisations where community service may be performed or other detailed requirements of how the community service is to be performed. Due to the varied locations across Queensland where subject officers may reside and work, including rural and remote communities, access to organisations and facilities to perform community service may be significantly varied between locations. Therefore, providing detailed requirements in the Bill would be overly restrictive and may fail to cater for changing circumstances between locations and require future amendment.

The QLS submits that such detail could be provided in a regulation. While subordinate legislation is often used to prescribe detailed operational requirements, the QPS submits that this may also be overly restrictive.

The diverse range of organisations where community service may be appropriately performed and the details of how such community service is to be performed is more appropriately determined either through policy or through agreement between the prescribed officer and subject officer in the context of each matter and the subject officer's personal circumstances. The Bill provides, in new section 7.44 'Guidelines', that the Commissioner may make guidelines relating to the disciplinary process, including the matters to which a prescribed officer must have regard when imposing a disciplinary sanction. A guideline is currently under development that will outline the appropriate considerations that must be made in imposing community service.

The Bill ensures any guideline made will be fair to officers and the community as the Commissioner must actively consult with the CCC and each union representing officers and recruits before making a guideline.

Furthermore, the Bill requires the prescribed officer to issue a notice to the subject officer outlining a proposed sanction (new section 7.28 'Proposed sanction notice') prior to the disciplinary sanction being imposed. New section 7.29 'Subject officer's right to make written submission' affords a subject officer the opportunity to respond to the proposed sanction notice. Matters such as where and how the subject officer would perform community service could be dealt with by agreement between the prescribed officer and the subject officer within the context of sections 7.28 and 7.29.

If so, this would allow the community service requirements to take account of the subject officer's personal circumstances, for example child custody arrangements, while still imposing an appropriate disciplinary sanction. Any agreement reached in this context will still be subject to CCC overview and rights of review, thereby ensuring the sanction of community service and any conditions imposed are reasonable in the circumstances.

#### *Clauses 10 to 13 – Disciplinary declarations*

Part 7A 'Disciplinary declarations against former officers' of the PSAA currently provides a mechanism through which the Commissioner can continue or commence an investigation to determine if a former officer is liable for disciplinary action in relation to the officer's conduct during the time they were employed as a police officer.

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The former officer is afforded natural justice by ensuring their right to be heard or reply to the allegations. If the alleged conduct is substantiated, a disciplinary declaration may be made against the former officer, being that if the former officer's employment had not ended he or she would have received the disciplinary sanction of 'termination of employment' or 'reduction in rank'.

No actual sanction can be imposed on the former officer; however the existence of the disciplinary declaration may be required to be disclosed to subsequent employers (for example section '179A 'Requirement to disclose previous history of serious disciplinary action' of the *Public Service Act 2008*).

Part 7A of the PSAA currently provides a limitation timeframe of 2 years after the former officer's employment ends for the investigation and disciplinary action (being the making of a discipline declaration) to be concluded. The existing timeframe of 2 years after a former officer's employment ends is consistent with equivalent provisions in the *Public Service Act 2008*, *Fire and Emergency Services Act 1990* and *Ambulance Service Act 1991*.

The Bill makes no amendments to the substantive operation of part 7A. Rather, the Bill makes the amendments necessary to ensure consistency between the drafting of new part 7 and the existing provisions of part 7A. For example, the Bill amends section 7.2A 'Disciplinary action that may be taken against a former officer' to allow a disciplinary declaration to be made where the sanction that would have been imposed but for the officer's employment ending, would have been dismissal, suspension without pay for at least three months, probation or demotion (whether permanent demotion or for a stated period).

The QLS's submission to reduce the timeframe to make a disciplinary declaration would be inconsistent with other similar provisions in the public sector. Additionally, reducing the timeframe to make a disciplinary declaration may result in investigations against former officers being prioritised over investigations relating to current serving officers.

Furthermore, an officer may resign from their employment before the existence of a ground for disciplinary action is known to the QPS. It is unreasonable to expect that the ground for potential disciplinary action will become known to the QPS, an investigation occur and a disciplinary declaration made within the suggested timeframe of six months. This suggested amendment may result in disciplinary declarations being unable to be made for relevant matters, facilitating the non-disclosure of serious matters to subsequent employers, which is not in the public interest.

*Insertion of new pt 11, div 10*

The transitional provisions in the Bill seek to ensure a balance is provided between finalising existing discipline proceedings without delay, ensuring officers have access to the updated and expanded range of discipline sanctions, and ensuring natural justice and review rights of all parties is maintained.

The Bill provides that existing discipline proceedings are continued under the current provisions of the PSAA if the prescribed officer has already determined that the allegation is substantiated. This ensures certainty of outcome, including possible disciplinary sanctions, and procedural fairness is afforded to the subject officer.

However, the subject officer may consent to the proceeding being withdrawn and restarted under the new provisions outlined in the Bill. This would allow the subject officer to have



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access to the updated and modernised disciplinary sanctions which may be more useful to the subject officer than the sanctions available under current provisions.

For example, an allegation may be substantiated and the most appropriate disciplinary sanction under the current provisions is a reduction in pay points. The subject officer may consent to the matter being withdrawn, recommenced under the new part 7 and dealt with by way of Abbreviated Disciplinary Proceedings with the officer submitting that a fine and professional development strategies are appropriate. In such case, the withdrawal and recommencement of the matter is purely at the election of the subject officer.

However, if a discipline proceeding has been commenced against an officer but the prescribed officer has not decided whether the allegation is substantiated before commencement of the Bill, the discipline proceeding will move into the new Part 7 of the PSAA. Therefore, the modernised and agreed sanctions, processes and appeal rights will be accessible. If so, the prescribed officer in the new proceeding will have to comply with all requirements of new part 7, including section 7.32 requiring the rules of natural justice to be observed and part 7, division 4, subdivision 2 providing for the officer's right to make submissions on the proposed disciplinary sanction.

Neither the transitional provisions nor other parts of the Bill contain amendments that would affect the likelihood of an allegation being proven. Therefore, the transitional provisions are unlikely to adversely affect or unduly benefit an officer.

The CCC, Queensland Police Union of Employees (QPUE) and Queensland Police Commissioned Officers' Union of Employees (QPCOU) support this proposal as an acceptable balance between the need to ensure discipline proceedings continue without undue delay and allowing officer's already subject to discipline proceedings to access the modernised sanctions and review rights.

#### Amendments to the *Crime and Corruption Act 2001*

##### *Clause 28 – insertion of new ch 5, pt 3*

Proposed new section 219O 'Reviewable decisions' and schedule 1 'Reviewable decisions – ch5, pt3' of the CC Act operate conjointly to establish what disciplinary decisions can be reviewed before QCAT and which party may apply for review. The CCC will now be afforded the ability to apply for review of a QPS decision not to institute disciplinary proceedings in response to a complaint made against a subject officer.

However, section 219O and schedule 1 cannot be read in isolation from new section 219T 'Requirement to return particular matters to commissioner of police' of the CC Act. Section 219T will apply if the reviewable decision is a decision not to start a disciplinary proceeding under part 7 of the PSAA. The section provides that if QCAT sets aside the decision not to commence disciplinary proceedings, QCAT must return the matter to the Commissioner with:

- (a) a direction to commence a disciplinary proceeding under part 7 of the PSAA against the subject officer; and
- (b) any other direction QCAT considers appropriate.

Section 219T(3) further provides that the Commissioner must commence a disciplinary proceeding within six months of the order being made by QCAT.

Accordingly, the Bill provides clear instructions on what must occur if QCAT sets aside the QPS decision not to commence disciplinary proceedings. These instructions ensure the subject



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officer is afforded all procedural protections and natural justice rights that are contained in new part 7 of the PSAA. Importantly, the Bill does not affect the independence of the eventual prescribed officer or dilute the rights of review of either the subject officer or CCC arising from the subsequent disciplinary proceeding.

New section 219S 'Additional power for substituted decisions' of the CC Act continues the operation of section 219J 'Additional power for reviewable decisions' of the CC Act. Section 219J currently applies to reviewable decisions relating to 'prescribed persons' being both police officers and persons employed in other units of public administration, for example, public servants and local government employees. Section 219J currently provides that upon review, QCAT can impose any discipline provided for upon the matter being proved, even though the original decision maker could not have imposed that discipline.

The Bill amends section 219J by omitting police officers from the operation of section 219J and relocating the relevant provisions to new section 219S. The effect of new section 219S does not differ from the current operation of s219J as it applies to police officers. The Bill retains the ability of QCAT to substitute any discipline sanction, even if the sanction imposed was not available to the original prescribed officer.

The ability of QCAT to substitute the original disciplinary sanction with any disciplinary sanction is central to the operation of the review mechanisms in a timely and efficient manner, particularly for matters where the CCC are the applicant for review on the basis of an inappropriately low sanction. If QCAT were required to return the matter to the QPS for rehearing and sanctioning at a different level of prescribed officer, it is possible that the second prescribed officer may impose a second disciplinary sanction that is the same or similar to the original sanction. If so, it is likely that the CCC would again apply for review of the disciplinary sanction on the grounds that it is insufficient.

Such an outcome would limit the independence of the second prescribed officer, as QCAT has already determined the original sanction was insufficient, therefore impliedly the second prescribed officer must impose a sanction that is more detrimental to the subject officer. Furthermore, such operation would create an inefficient system through potentially several hearings and reviews being conducted on the same matter.

The amendment suggested by the QLS would also create two different QCAT outcomes dependant on whether the relevant person was employed by the QPS or a different unit of public administration.

In relation to subject officer 'taking certain steps in respect of disciplinary action...', current section 219H 'Conduct of proceedings relating to reviewable decisions' of the CC Act allows new evidence to be provided to QCAT during a review if it would be unfair not to allow the person to adduce new evidence. New section 219Q 'QCAT to decide review on evidence before original decision maker' of the CC Act replicates this provision. If a subject officer was provided with a proposed sanction notice in accordance with new section 7.28 'Proposed sanction notice' of the PSAA indicating a proposed disciplinary sanction at the lower end of the range, it is conceivable that the subject officer may not obtain detailed reports or references.

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However, if the sanction were to be reviewed and the CCC sought a significant increase in sanction, the subject officer could apply to QCAT under section 219Q to allow new evidence on the basis that it would be unfair not to adduce such material.

**Recommendation:**

No Change.

**Submission 3 – Queensland Police Union of Employees**

The QPUE supports the Bill. The QPUE submission acknowledges the involvement of the QPUE in the formulation of the Bill.

The QPUE provides specific comment relating to the following aspects of the Bill:

- officers will be dealt with in a timely manner;
- officers will be encouraged to identify areas where they can improve through training, supervision, mentoring and other strategies;
- where a sanction is necessary, new sanctions are available including community service and the current sanction of pay point reduction will be removed;
- the Commissioner and the CCC retain the power to prosecute an officer who engages in corrupt conduct; and
- the Commissioner can still dismiss officers.

The QPUE believes the Bill will lead to a “quicker, fairer and more transparent discipline system, which encourages officers to act professionally, yet recognises on occasions shortfalls can occur, which can be quickly and successfully remedied.”

**Queensland Police Service response to QPUE comments**

The QPS concurs with the comments of the QPUE. The Bill addresses concerns of the QPUE regarding the existing police discipline system by:

- implementing timeframes for the conclusion of investigations and implementation of disciplinary proceedings;
- introducing Abbreviated Disciplinary Proceedings where appropriate to simplify the discipline process and improve efficiencies;
- formalising the role and range of professional development strategies available as either:
  - risk mitigation strategies, to improve an officer’s performance or for any other purpose; or
  - as an outcome from a disciplinary proceeding, either instead of, or in addition to, a disciplinary sanction; and
- modernising the disciplinary sanctions that may be imposed upon a subject officer where complaints are substantiated.

The QPS also supports the QPUE’s comments in relation to the “new system is not a return to the pre-Fitzgerald era either”. The comments of Mr Alan MacSporran QC, Chairperson of the

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CCC at page 6 of the Transcript of Proceedings for the Public Briefing reiterate this, where Mr MacSporran stated:

*...This is probably important even though we are working very closely together. The CCC jealously guards its independence in this process. I must also say—and the guidelines have recognised this from day one—that the independence of the service itself and the ESC command in particular are also jealously guarded. We have ongoing discussions about these things—not to interfere, but simply to arrive at an appropriate outcome. If at the end of the day—and it has happened, although infrequently, I am pleased to say—if we cannot agree on what is an appropriate way forward, we simply agree to disagree. But we are very keen to maintain our independence, as we should, because that is a fundamental plank in this whole process.*

Furthermore, Mr MacSporran QC outlined to the Committee (at page 3 of the transcript), the historical background of several failed attempts to fix the police discipline system. The agreement contained in the Bill was only possible after Mr MacSporran facilitated the stakeholder meetings to robustly discuss and eventually reach a suitable compromise for all parties. Accordingly, the Bill cannot fairly be claimed to be an agreement purely between the QPS and relevant employee unions.

The Bill contains appropriate safeguards and mechanisms to ensure CCC independence and oversight of the police discipline system is enhanced, while modernising and improving the discipline system. The Bill:

- requires CCC approval of any proposed sanction in an Abbreviated Disciplinary Proceeding;
- allows the CCC to apply for QCAT to:
  - quash an Abbreviated Disciplinary Proceeding outcome in appropriate circumstances;
  - review any disciplinary decision, including matters currently classified as a ‘breach of discipline’, and
  - review a QPS decision not to commence disciplinary proceedings in response to a complaint made against an officer.

**Recommendation:**

No Change.

**Submission – Bar Association of Queensland**

The Bar Association of Queensland (BAQ) supports the “comprehensive changes proposed in the Bill and believes that the new system will be a great improvement on the current system of police discipline.” However, the BAQ recommends the following aspects of the Bill be reconsidered.

*7.3 Definition of ‘discipline history’ should include Professional Development Strategies*

The BAQ submits that the Bill should expressly include the imposition of a Professional Development Strategy (PDS) in the definition of a subject officer’s disciplinary history. BAQ

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members often use a police officer's disciplinary history when representing defendants in criminal trials. The BAQ advises that this use is to support their client's allegation of inappropriate conduct by a police officer and, anecdotally, BAQ's members have not been able to substantiate a pattern of complaints against the subject officer as the complaints were dealt with by way of 'managerial guidance'. The current provisions of the police discipline system do not necessarily involve any 'finding' by a prescribed officer for managerial guidance to be imposed.

*7.12 Status of disciplinary proceedings while criminal proceedings are on foot*

The BAQ notes that the Bill provides for discipline investigations and discipline proceedings against a subject officer to be placed on hold while criminal proceedings are on foot. Further, the BAQ notes those criminal proceedings will be against a defendant other than the subject officer. The BAQ submits that the Bill should be used to end the practice of putting disciplinary proceedings on hold "pending court outcome".

The BAQ contends that the logic applied to suspending a disciplinary matter 'pending court outcomes' is that the resolution of the criminal charge may make further investigation or disciplinary proceedings unnecessary through the assumption that a guilty finding by a court necessarily means that a complaint is false.

The BAQ acknowledges that a disciplinary investigation into allegations against police officers prior to a criminal trial may assist a criminal defendant, however the BAQ considers this to further support immediate disciplinary investigations.

The BAQ limits its submission to complaints against third party criminal defendants and does not address subject officers saving to note that the submission does not suggest that a subject officer should face disciplinary and criminal charges at the same time. In the case of third party criminal defendants, the BAQ submits that there is no reason, in principle, that disciplinary proceedings cannot proceed at the same time as a criminal complaint.

The BAQ recommends that the Bill should include a requirement that disciplinary investigations should proceed immediately and at the same time as a criminal complaint, unless an officer of "appropriate rank" identifies specific reasons why this cannot occur. A similar requirement should be introduced requiring disciplinary proceedings to be commenced once the investigation is complete.

*7.16 Abbreviated Disciplinary Proceedings*

The BAQ supports the proposed Abbreviated Disciplinary Proceedings (ADP) framework and, in particular, the strong oversight role given to the CCC. However, the BAQ believes there is a potential for the QPS, in order to achieve the speedy resolution of matters, to offer the subject officer an attractive factual basis and sanction. Despite the CCC oversight role, the BAQ submits that the CCC will rely upon the QPS information when deciding whether or not to agree to a factual basis for the ADP.

The BAQ recommends that the Bill include the requirement for the complainant to be advised of the factual basis being offered to a subject officer prior to CCC endorsement of the ADP offer, and that the complainant is provided a limited timeframe to comment on the offer.

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*7.35 Removal of reduction in pay as an available sanction*

The BAQ does not support the removal of a reduction in salary level, or pay points, from the police discipline scheme. While the BAQ notes the contents of the Explanatory Notes and Minister's Introductory Speech in relation to unintended long-term consequences of a reduction in pay points, the BAQ submits that these consequences can be projected and considered by the prescribed officer or QCAT. Furthermore, the BAQ submits these complexities or consequences are even greater in relation to a sanction of demotion and that the Bill leaves a large gap between the maximum fine that can be imposed and the sanction of demotion.

*7.37 Sanctions: Comprehensive Transfer*

The BAQ submits that the sanction of comprehensive transfer may be a severe sanction depending on the relationships and family status of the subject officer, which can lead to injustice between cases where the sanction is imposed. The BAQ recommends that comprehensive transfer is unable to be implemented as a sanction by itself and should only be available in conjunction with other sanctions such as probation or professional development strategies.

*7.39 Sanctions: Community Service*

The BAQ acknowledges community service can be an appropriate sanction, however the BAQ is aware of at least one matter where the community service imposed on the subject officer required the subject officer to act in a role the subject officer was already performing voluntary work in. Therefore, the BAQ submits that the community service required to be performed must be different to and in addition to any activity the subject officer has habitually undertaken in the previous 24 months.

*7.41 Suspension of disciplinary sanctions*

The BAQ submits that while suspended sanctions have a clear role to play in the criminal justice system, they are not supported in the police discipline system. The suspension of sanctions can create the risk of injustice within the disciplinary system as relatively minor matters may attract fines, while more serious matters may attract suspended sanctions. The BAQ acknowledges that suspended sanctions are available in other disciplinary regimes and offenders in the criminal justice system can be deterred from future offending by having a suspended sanction imposed. However, in relation to police officers, the sanctions themselves should be sufficient deterrence from committing unacceptable conduct.

The BAQ supports the abolition of the power to suspend sanctions of probation and dismissal, however the BAQ does not support the ability to suspend any disciplinary sanction.

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*7.3 Definition of 'discipline history' should include Professional Development Strategies*

The Bill provides that PDS can be imposed on a subject officer:

- (i) by the Commissioner when a complaint is first received as a risk management strategy, to improve the officer's performance or for any other purpose (section 7.9 'Implementation of professional development strategies by commissioner'); and



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- (ii) by the prescribed officer, at the conclusion of a disciplinary hearing, either instead of, or in addition to any disciplinary sanction (section 7.42 'Professional development strategies').

Further, the Bill provides that in considering whether to refer a complaint to a prescribed officer to conduct a disciplinary hearing, the Commissioner must consider whether a discipline hearing is required to achieve the purposes of part 7, having regard, inter alia, to any PDS already implemented and whether any further PDS would achieve the purposes of part 7 without the need for a disciplinary hearing (section 7.10 'Referral of complaint to prescribed officer').

Additionally, the Bill provides a definition of 'disciplinary history' for the purposes of new part 7 of the PSAA. The disciplinary history of an officer includes:

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

The new section 7.3 'Definitions for part' of the PSAA provides that a further definition for *disciplinary action* means - *a disciplinary proceeding or the imposition of a professional development strategy under this part*.

Accordingly, any PDS imposed on an officer under part 7 will be included in the subject officer's discipline history.

However, in accordance with modern management practices and having regard to the objects of part 7, not every minor workplace indiscretion or inappropriate act in the performance of an officer's duties will result in a complaint being made and the behaviour formally dealt with through part 7 of the PSAA. This is an essential element of any workplace management strategy.

Section 7.5 'Imposition of professional development strategies' clearly articulates in subparagraph (2)(b) that a senior officer can provide a subject officer with guidance in relation to inappropriate acts or omissions of the subject officer. However, this section must be read in conjunction with the requirements upon officers and staff members in new section 6A.1 'Duty concerning misconduct and other grounds for disciplinary action'. Section 6A.1(2)(c) requires any officer or staff member to report conduct they know or reasonably suspect to have occurred that is misconduct. Section 6A.1(2)(d) also requires any officer, in the case of conduct that is any ground for disciplinary action, to take all action necessary to achieve the purposes of part 7 that is warranted and reasonable in the circumstances and within their authority.

Section 6A.1 'Duty concerning misconduct and other grounds for disciplinary action' has not been substantially amended by the Bill and currently is numbered as section 7.2 'Duty concerning misconduct or breaches of discipline'. Therefore, the PSAA has always contemplated that misconduct and other significant inappropriate acts or omissions will be reported and dealt with through the formalised complaints mechanisms. However, minor matters that do not amount to misconduct may be appropriately dealt with by ordinary workplace management practices and will not form part of an officer's disciplinary history unless it is formally dealt with under part 7.

For example, if an officer is absent from duty because they incorrectly read their roster, the officer may be liable for disciplinary action under section 7.4(1)(d) 'Grounds for disciplinary action'. However, a senior officer may determine that the issue can be resolved through appropriate guidance as the workplace manager and no further action is necessary. This type

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of management action is appropriate and should not form part of an officer's disciplinary history.

If, however, the officer is habitually absent from duty without approved leave, the senior officer is likely to record a complaint about this behaviour and the matter will be dealt with according to part 7. Any professional development strategy or other disciplinary sanction imposed will form part of the subject officer's disciplinary history.

*7.12 Status of disciplinary proceedings while criminal proceedings are on foot*

The QPS agrees with BAQ's interpretation that the definition of *relevant criminal proceeding* in section 7.12 'When disciplinary proceeding must be started' is not restricted to criminal proceedings where the subject officer is the criminal defendant.

In order to afford procedural fairness to a subject officer and to ensure the probity of evidence in a criminal trial, section 7.12(1)(c) is likely to be used to delay the commencement of disciplinary proceedings against a subject officer who is also facing criminal charges that substantially relate to the ground for disciplinary action.

Further, if a person (not the subject officer) is charged with an offence that substantially relates to the ground for disciplinary action alleged against the subject officer, section 7.12(1)(c) may also delay the commencement of any disciplinary proceedings until the criminal proceedings against the other person are finalised.

However, the QPS does not agree with the BAQ comment that the logic being applied in suspending a disciplinary matter is based upon an assumption that a guilty finding by a court necessarily means that a complaint is false. Findings by a court in a criminal proceeding may assist a disciplinary investigation by outlining the circumstances of the case but may not exculpate subject police officers from the ramifications of their actions. For example, a person may be found guilty of committing the offence of obstructing police and a police officer involved in that matter may later face discipline sanctions for using excessive force. Similarly, there are several precedents where the criminal defendant was convicted of serious indictable offences and officers were subsequently disciplined for failing to comply with Commissioner's directions or excessive use of force during the arrest.

Regardless of this, the BAQ's observation that disciplinary investigations do not occur simply because there is a criminal matter on foot is now incorrect. The method of finalising a complaint, before any investigation occurred, as 'pending court outcome' is no longer used by the QPS. Internal QPS Ethical Standards Command policies indicate that disciplinary investigations should be completed as quickly as possible and this approach now applies to matters where there are relevant criminal proceedings commenced against the complainant in the discipline matter or another person.

The QPS does not have a default position or policy of not conducting any investigation of a complaint simply because a related criminal proceeding has commenced. Each matter is individually assessed and the extent of investigations determined for those unique circumstances. For example, if a criminal defendant was charged with serious indictable offences and alleged that the arresting officer fabricated evidence or otherwise perverted the course of justice, it is likely that extensive investigations will occur before the related criminal proceedings are concluded. If evidence was located that substantiated the complaint, discipline proceedings would be instituted and appropriate steps taken to avoid a miscarriage of justice against the accused.

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However, in another matter, investigations may be finalised and the QPS may determine that any potential disciplinary proceedings should await the outcome of the relevant criminal proceedings. The decision to take such course is normally made by an officer of at least the rank of Superintendent. There can be several justifiable reasons to do so. The example provided by the BAQ of a complaint of excessive force used during arrest can illustrate these reasons.

Firstly, an accused person (not the subject officer) is not required to provide any corroborating evidence at the time of making the disciplinary complaint. Nor is the accused required to reveal their defence strategies before trial. The QPS investigation of the complaint may not locate any independent evidence to substantiate the version of the accused over the version of the subject officer. In such case, the QPS may determine that it is premature to finalise the matter and decide whether disciplinary proceedings will or will not be commenced against the subject officer until the evidence of all persons becomes available to a disciplinary investigation and has been tested before a court. It is conceivable that during the trial, defence counsel may produce a video recording which establishes excessive force was used by the subject officer. Such recording is not required to be provided to the QPS before its production at trial and rightly would substantiate the complaint. If the QPS was unable to delay commencing disciplinary proceedings against the subject officer under section 7.12(1)(c), the timeframe to commence any disciplinary proceeding may have expired and an injustice would occur. This outcome is not in the public interest.

Secondly, cases have arisen where the criminal defendant may be a police officer, but the subject officer in the potential disciplinary proceeding is not the officer charged. For example, subject officer A is charged criminally with an offence and is the subject of a disciplinary investigation which is delayed due to the operation of section 7.12(1)(c). Subject officer B is not charged with any criminal offence, however the QPS also investigates subject officer B for failing to report the alleged misconduct of subject officer A. If the QPS was forced to commence disciplinary proceedings against subject officer B before the related criminal proceedings against subject officer A were finalised, an injustice may occur to subject officer B if the disciplinary allegations were substantiated and subject officer A was later acquitted. In this instance, subject officer B will have been disciplined for failing to report a matter which was later found to be lawful or did not occur.

Accordingly, the QPS submits that the Bill must allow for the commencement of disciplinary proceedings to be delayed where a relevant criminal proceeding is commenced against any person. Despite the need for the Bill to allow for this, the QPS is currently developing a guideline, in consultation with the QPUE and CCC to restrict the operation of section 7.12(1)(c) ordinarily to matters where the subject officer is the person charged in the relevant criminal proceeding. It is envisaged that the policy, when agreed, will also allow for the operation of section 7.12(1)(c) where:

- (i) the subject officer consents to its use to delay the commencement of discipline proceedings and the consent is provided within the applicable timeframes to ordinarily commence a disciplinary proceeding under section 7.12(1)(a) or (b); or
- (ii) it is in the interests of justice to not commence the disciplinary proceedings until after the relevant criminal proceeding is concluded.

The decision made to delay the commencement of disciplinary proceedings under the policy will be restricted to officers of appropriate rank, likely to be of the rank of Superintendent or higher.

### *7.16 Abbreviated Disciplinary Proceedings*

The ADP process has been designed to be as efficient as possible whilst ensuring appropriate CCC oversight is maintained. Prior to the CCC approving any ADP offer, the CCC will have access to the summary of the complaint, the factual basis that the QPS is proposing to proceed on and any submissions or other material provided by the subject officer. The CCC can also request access to any further material in the possession of the QPS relating to the complaint. During the initial recording of a complaint, the person making the complaint is asked to provide the details of what outcome they would like to occur. Therefore, the CCC will be in possession of the relevant material to determine if the QPS is offering an 'attractive' factual basis to the subject officer simply to resolve the matter.

The QPS acknowledges that the factual basis of the abbreviated process notice required to be provided to the subject officer under section 7.18 'Abbreviated process notice' may differ from the initial complaint that was taken. However, there are several reasons this may occur, including that the available evidence only supports some allegations and not others. The BAQ's recommendation that the complainant in a discipline matter be provided with the factual basis of the abbreviated process notice and provided the opportunity to comment is not supported.

The requirement to seek the views of the complainant would overly complicate the ADP process and potentially render the process unworkable. The BAQ recommendation does not detail how a matter should be resolved if the complainant refuses to agree with the factual basis of the offer, despite the evidence indicating that it is a fair representation. If the CCC were precluded from approving the ADP in such situation, a significant number of disciplinary proceedings would be required to be commenced before a prescribed officer that otherwise would have been finalised through the ADP process.

Section 7.24 'New evidence and quashing of proceeding by QCAT' provides an important safeguard in the ADP process. If the CCC or the Commissioner became aware that an ADP offer was approved on the basis that the abbreviated process notice contained an 'attractive' factual basis that was deliberately misleading or false, the CCC or Commissioner could apply to QCAT for an order quashing the ADP. If the application was successful, the ADP would be taken to have never occurred and a new disciplinary proceeding could be commenced.

Further, the officers who were responsible for authoring the misleading ADP documents could be liable for disciplinary action themselves.

As acknowledged by the BAQ, the CCC has a strong oversight role in the ADP process. The central role of the CCC in this process is designed to prevent any abuse of process and therefore the BAQ's recommendation is not supported.

### *7.35 Removal of reduction in pay as an available sanction*

The currently available disciplinary sanction of a reduction in salary, or a reduction in 'pay points', has long been a matter of concern through its long term effect and unintended consequences. The Bill attempts to correct this by removing the disciplinary sanction of a reduction in salary and significantly increasing the maximum fine which may be imposed on a subject officer.

The maximum fine of 50 penalty units (approximately \$6,500) is, generally speaking, for most ranks from constable to inspector inclusive, equivalent to a reduction in approximately 4 pay



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points within a rank. Therefore, the maximum fine that can be imposed is likely to be similar to a reduction in pay points that could be imposed under the currently available discipline sanctions.

However, the imposition of a substantial fine avoids two significant issues associated with a reduction in pay points. Firstly, if an officer is reduced in pay points by 4 levels within their rank, they are effectively fined each subsequent year until they reach the top pay point in that rank. Secondly, depending on the subject officer's superannuation arrangements and how close they are to retiring, the effect of any reduction in pay points can be significantly multiplied. Arguably, both of these consequences can be disproportionate to and longer lasting than the offending behaviour of the officer.

Whilst the BAQ submission outlines that relevant calculations can be conducted to inform the prescribed officer of these matters, these are complex and time-consuming calculations. Further, the calculations require an assumption of future events such as promotion, transfer and relieving at a higher level. The Bill creates a fairer and more efficient manner of imposing a monetary sanction on relevant subject officers.

The QPS acknowledges the BAQ's comment in relation to the effect that demotion would have on an officer. However, the disciplinary sanction of demotion can be distinguished from a monetary fine, in that demotion reflects that the conduct is unacceptable for an officer holding that rank and the subject officer has demonstrated they are unsuitable to hold such rank. Although, as a consequence, the subject officer will suffer a pecuniary penalty through a demotion, which can be significant, a pecuniary penalty is not the sole purpose of imposing the sanction of demotion.

The QPS contends that the proposed disciplinary sanctions in section 7.34 'Disciplinary sanctions' do not leave a 'large gap' between the maximum fine and the sanction of demotion. Section 7.35(4) 'Power of prescribed officer to impose disciplinary sanction' clarifies that a prescribed officer may impose more than one disciplinary sanction against a subject officer. Therefore, the appropriate disciplinary sanction in a matter could conceivably include the imposition of the maximum fine, performance of community service and local transfer. Furthermore, section 7.42 'Professional development strategies' would also allow a prescribed officer to impose reasonable PDS on the subject officer in addition to a fine.

The QPS does not support the BAQ's recommendation.

*7.37 Sanctions: Comprehensive Transfer*

The QPS acknowledges the BAQ's comments in relation to the potential severity of the disciplinary sanction of a comprehensive transfer.

However, the ability to transfer an officer to another location, as a result of substantiated disciplinary allegations, is required to effectively achieve the purposes of part 7 of the PSAA in appropriate cases. For example, the nature of substantiated allegations against a subject officer in a rural location may mean that public confidence in the QPS cannot be maintained if the officer remains in that community and therefore the disciplinary sanction of comprehensive transfer is imposed.

In recognition of the potential severity of the sanction, the Bill restricts the ability to impose a sanction of comprehensive transfer to a prescribed officer of the rank of Commissioner or Deputy Commissioner. Further, the Bill affords the subject officer the right to make



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submissions in relation to any proposed sanction. The subject officer would ordinarily provide submissions relevant to the impact on their personal circumstances in the event a comprehensive transfer was proposed, which will be considered by the prescribed officer.

It is unlikely that the disciplinary sanction of comprehensive transfer would be imposed in isolation and would, in most instances, involve the imposition of another disciplinary sanction or professional development strategy. However, to require the disciplinary sanction of comprehensive transfer to be imposed with another sanction in every matter would undermine the independence of the prescribed officer. In the example highlighted above, the prescribed officer may determine that the severity of requiring the subject officer to relocate from the rural community they are a part of, is sufficient sanction in itself and not impose any other sanction. Importantly, a subject officer can review the imposition of any sanction, including comprehensive transfer to QCAT. QCAT will review the decision by way of a fresh hearing on the merits to determine whether a comprehensive transfer is appropriate and produce the correct and preferable decision.

Consequently, the QPS does not support this recommendation.

*7.39 Sanctions: Community Service*

The QPS is unaware of the instance referred to by the BAQ where community service was imposed upon a subject officer compelling him to continue to act in a voluntary role he was already fulfilling. However, since being alerted to this possibility, the QPS will seek to implement policy that should prevent subject officers from being ordered to perform community service in a role that they were already voluntarily undertaking. Additionally, prescribed officers will be provided with guidance in relation to the framing of the disciplinary sanction to further avoid this possibility.

The QPS does not support the component of the BAQ recommendation that the community service must be “in addition to any activity” already habitually undertaken within the previous 24 months. As an employer, the QPS is unable to reasonably require a subject officer to continue their pre-existing voluntary work at one organisation (which is not part of a disciplinary sanction) while imposing a disciplinary sanction that the subject officer perform community service at another organisation. The arrangement of the private affairs of the subject officer and how they manage their time and family commitments to meet the requirements of the sanction of community service is beyond the scope of the Bill.

*7.41 Suspension of disciplinary sanctions*

The QPS acknowledges that the use of suspended sanctions in the police discipline system has caused debate amongst stakeholders, as evidenced by the Parliamentary Crime and Corruption Committee (PCCC) Report No. 97 of *Review of the Crime and Corruption Commission* (the PCCC Report) which was tabled in 2016. The PCCC acknowledged (at page 79 of the PCCC Report) that the *issue raises complex questions of policy, both for and against the use of suspended disciplinary sanctions*.

After reviewing submissions made by several parties, the PCCC did not recommend the removal of suspended sanctions from the police disciplinary system, but rather made two recommendations (Recommendations 17 and 18) about the use of suspended sanctions. The Bill implements both recommendations, namely that the sanction of dismissal is unable to be

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suspended; and that the suspension of any other sanction will remain part of the officer's disciplinary history.

It is important to note the modernised and expanded range of disciplinary sanctions and the formalisation of PDS contained in the Bill when examining the issue of suspension of disciplinary sanctions. The new disciplinary sanctions and ability for prescribed officers to impose PDS may decrease the use of suspended sanctions. For example, the current provisions of the PSAA do not allow community service to be imposed as a sanction or allow for an officer to be formally required to undertake training or counselling services. However, a prescribed officer could, for example, determine that demotion may be warranted in a case, but after regard is had to mitigating circumstances, believe the officer should perform community service and is likely to benefit from counselling services. Currently, the only way these conditions could be imposed would be by ordering a sanction of demotion, suspended on the basis that the subject officer completed community service and undertook counselling.

The Bill removes the need to impose a higher sanction than would be otherwise justified in the matter, and then suspend that sanction, in order to require the officer to perform community service and undertake training courses or other PDS.

Similarly, a prescribed officer may have been ordinarily considering a reduction in pay points was an appropriate sanction in the current police discipline system, however the prescribed officer was aware that the long term effect of such sanction was disproportionate to the offending behaviour. In such cases, the prescribed officer may have suspended the reduction in pay points with other conditions imposed on the suspension to reach a fair outcome. The Bill would alleviate this concern as the substantial increase in monetary fine and removal of pay point reduction as a sanction will remove the need for prescribed officers to suspend some sanctions in order to achieve fairness.

However, the ability to suspend a sanction remains an important component of the police disciplinary system and could correctly be utilised by prescribed officers after considering the unique circumstances of each matter and the subject officer's personal circumstances and disciplinary history.

Importantly, the Bill retains CCC's ability to apply for independent review of any sanction that is suspended before QCAT. The Commissioner submitted to the PCCC (at page 78 of the PCCC Report) that reasonable minds can differ in relation to the power to suspend a sanction, and if so, the CCC can review that decision.

Therefore, with respect to the BAQ, it is submitted that reasonable minds can and do differ in relation to whether the police discipline system should contain a mechanism to suspend disciplinary sanctions. This is evidenced by the PCCC Report. The Bill implements the two recommendations that were made by the PCCC and in reaching agreement on the overall police discipline scheme and the specific contents of the Bill, the QPS, CCC, QPUE and QPCOU have agreed that the Bill strikes an appropriate balance in this contentious issue.

**Recommendation:**

No Change.

## 2.12 Victims of crime

### 2.12.1 Victims of Crime Assistance Act

#### Introduction

The Service plays a vital role in responding to and providing support to victims of violence or domestic violence offences. The 'Charter of Victims' Rights' (the Charter) contained in Schedule 1AA of the Victims of Crime Assistance Act (VOCAA) seeks to recognise and promote the rights of victims of crime. The Charter sets out the general rights of victims, as well as specific rights relating to the criminal justice system.

The purpose of the VOCAA is to:

- (i) declare the Charter to underlie the treatment of victims by Queensland Government and non-government entities that deal with victims; and
- (ii) provide a mechanism for implementing the rights and processes for making complaints about conduct inconsistent with the Charter; and
- (iii) provide a scheme to offer financial assistance to certain victims of acts of violence, including victims of domestic and family violence.

For interstate coronial inquiries involving victims of crime see s. 8.6.5: 'Interstate coronial inquiries involving victims of crimes' of this Manual.

#### Dealing with victims of crime

##### ORDER

When dealing with a victim of crime, officers are to comply with the provisions of the Charter which places an onus on agencies to provide information to victims.

Investigating officers should, until a matter is finalised, maintain contact with victims to ensure the provisions of the Charter are followed. Investigating officers are to ask the victim how they prefer to be contacted (e.g. phone, email). Contact with victims should be recorded in the:

- (i) Case Diary Log for matters before the court; or
- (ii) Occurrence Enquiry Log (OEL) for matters not before the court,

of the relevant QPRIME occurrence to demonstrate the officer's efforts to keep the victim informed throughout the process.

Members should be vigilant where a change in circumstances would reasonably cause apprehension to the victim (e.g. an alleged offender has absconded before trial and an arrest warrant has been issued).

Ordinarily, if the ODPP has made a decision to discontinue a prosecution, or substantially reduce a charge, they will contact the victim to explain the decision. However, in some circumstances it may be more appropriate for the investigating officer to provide this advice to the victim. In such cases the ODPP will provide written advice of its decision to the investigating officer together with a request that the investigating officer advise the victim of the decision.

Where the ODPP:

- (i) are to advise the victim of the reasons for the discontinuance/reduction in charge, wherever reasonably practicable, the investigating officer will be advised of the reasons before the victim is advised; or
- (ii) request the investigating officer to advise the victim of the reasons for the discontinuance/reduction in charge, the officer is to advise the victim as soon as reasonably practicable.

#### General rights of victims

In accordance with the Charter, members are to:

- (i) ensure compliance with 'Professional Conduct' of the Ethical Standards Command policies, in relation to acting with fairness, reasonable compassion, courtesy, respect and dignity in professional duties. Where appropriate, consider and apply the provisions of Chapter 6: 'Special Needs' of this Manual;
- (ii) ensure that a victim's personal information, including the victim's address and telephone number, are not disclosed unless authorised by law and the provisions of s. 5.6: 'Release of information' of the Management Support Manual, are complied with in relation to releasing information to persons and organisations external to the Service; and

(iii) provide information at the earliest practicable opportunity regarding services available to the victim through, but not limited to:

- (a) Police Referral to support agencies (see s. 6.3.14: 'Police Referrals' of this Manual) including information in relation to financial assistance to victims of crime under the VOCAA;
- (b) the Queensland Homicide Victims Support Group (see Service Manuals Contact Directory);
- (c) community conferencing services; and
- (d) 'crime scene clean-up' service providers who can assist the victim or family members. Crime scene clean-up is coordinated by Queensland Homicide Support Group. Where required, investigating officer should submit a Police Referral (see s. 6.3.14 of this Manual) to assist with payment. In the event there is no victim or family member available to arrange a crime scene clean-up, for example blood removal from a public place, the investigating officer should seek a direction from their regional crime coordinator.

### **Rights of victims relating to the criminal justice system**

In accordance with Schedule 1AA of the VOCAA, investigating officers are to, as far as reasonably practicable:

- (i) keep victims appropriately informed about the progress of the investigation of the crime, unless informing the victim may jeopardise the investigation. If the investigation may be jeopardised, the victim must be informed accordingly;
- (ii) inform the victim of major decisions (including the reasons for the decision) made about the prosecution of a person accused of committing the crime, including decisions about the following matters:
  - (a) the charges brought against the accused;
  - (b) the decision to not proceed with the charges, or to substantially amend the charge;-
  - (c) accepting a plea of guilty to a lesser or different charge;
- (iii) inform the victim about the following matters:
  - (a) the name of a person charged with an offence in relation to the crime;
  - (b) the issue of a warrant for the arrest of a person accused of committing the crime;
  - (c) details of relevant court processes, including when the victim may attend a court proceeding and the date and place of a hearing of a charge against the accused;
  - (d) details of any diversionary programs offered to the accused in relation to the crime, which can include:
    - the formal cautioning of a young person under the Youth Justice Act (see s. 5.3: 'Cautioning of children' of this Manual);
    - justice mediation (see the 'Justice mediation' page on the Department of Justice and Attorney-General (DJAG) website); and
    - youth justice conferencing (see s. 5.4: 'Restorative justice process' of this Manual);
  - (e) the outcome of a criminal proceeding against the accused, including the sentence imposed and the outcome of an appeal;
- (iv) inform the victim about the outcome of a bail application made by the accused and any arrangement made for the release of the accused, including any special bail conditions imposed that may affect the victim's safety or welfare;
- (v) if a victim is a witness at the accused's trial, inform the victim about the trial process and the victim's role as a witness. Resources are available from VAQ and the Victim Support Service, ODPP (State) (see Service Manuals Contact Directory) to explain the processes victims of crime may be involved with following the commission of an offence and will assist victims in understanding the State's system of justice;
- (vi) during a court proceeding, protect the victim from unnecessary contact with, or violence or intimidation by, the accused, defence witnesses and family members and supporters of the accused;
- (vii) inform a victim of their right to make a victim impact statement under the Penalties and Sentences Act for consideration by the court during sentencing of a person found guilty of an offence relating to the crime; and
- (viii) return any property of the victim held by the State for an investigation or as evidence to the victim as soon as possible (see also s. 4.2.6: 'Retention of exhibits' of this Manual). In relation to the custody or disposal of property investigating officers should inform victims of the relevant provisions of the:
  - (a) Police Powers and Responsibilities Act, particularly Chapter 20, Part 2 (ss. 621-623): 'Safeguards for things seized' and Chapter 21, Part 3 (ss. 686-724): 'Dealing with things in the possession of police service';

(b) rule 100: 'Returning exhibits' of the Criminal Practice Rules; and

(c) s. 39: 'Power of court to order delivery of certain property' of the Justices Act.

## **Victim's role as a prosecution witness**

### **POLICY**

When speaking with a victim who is a witness the prosecutor and investigating officer should pay particular attention to the trial process and the victim's role as a prosecution witness. This may include reference to the:

- (i) requirement not to discuss proceedings with other witnesses;
- (ii) standard of proof required in different courts;
- (iii) type of evidence required (i.e. hand-up statement under the provisions of s. 110A: 'Use of tendered statements in lieu of oral testimony in committal proceedings' of the Justices Act or evidence in full);
- (iv) differences between evidence-in-chief, cross-examination and re-examination of a witness; and
- (v) requirements for observing court room etiquette.

Especially in cases of rape and sexual assault, wherever possible, investigating officers should liaise with the allocated prosecutor (or where no prosecutor has been allocated with the officer in charge of the relevant prosecutions corps) to:

- (i) introduce the victim to the prosecutor;
- (ii) give the victim an opportunity to become familiar with the layout of the court room before the trial begins;
- (iii) give the victim an opportunity to see a trial in progress;
- (iv) advise victims of sexual assault of their automatic recognition as a special witness and the protections available to them during the court process;
- (v) explain legislation, including the provisions of s. 21A: 'Evidence of special witnesses' and Part 2, Division 6: 'Cross-examination of protected witnesses' of the Evidence Act may help victims become familiar with the trial process and their role as prosecution witnesses. Members are to also refer to ss. 3.10.6: 'Special witnesses' and 7.13: 'Preparation of child witnesses for court' of this Manual; and
- (vi) advise victims that court support officers are available to assist victims of crime throughout Queensland. Where a victim indicates they will need support during a court hearing at these court houses, a Police Referral should be submitted.

### **PROCEDURE**

Members should be aware of the real threat of violence and intimidation to victims and be prepared to protect victims from these types of situations.

Investigating officers and prosecutors are to take precautions to minimise contact and protect a victim from intimidation by:

- (i) the accused;
- (ii) family members and supporters of the accused; or
- (iii) defence witnesses,

when a victim is attending a court as a witness (see s. 3.10.6 of this Manual).

## **Victim impact statement**

A victim impact statement (VIS) is a statement which details the impact an offence has had on a victim. The usual application of a VIS is on a plea of guilty and subsequent sentence of a defendant (see s. 3.7.10: 'Victim impact statement' of this Manual).

## **Special circumstances**

In cases of rape and sexual assault, where appropriate consider and apply the provisions s. 2.6.3: 'Sexual offences' of this chapter and follow the protocols contained in 'Response to sexual assault' (available on the Queensland Health 'sexual assault' web page).

In relation to a victim's right to compensation or restitution for injury, loss or damage caused to the victim by the crime:

- (i) magistrates and judges may make an order for compensation or restitution at the time of sentencing the offender(s). When seeking an order for restitution or compensation, officers are to comply with the provisions of s. 3.7.3: 'Restitution/compensation' and Appendix 3.1: 'Factors for consideration in restitution/compensation' of this Manual; or
- (ii) victims may pursue their own claim for compensation or restitution by taking private action in a civil court. Where victims of crime wish to pursue their own claim, officers are to advise the person to seek independent legal advice. In these circumstances a Police Referral under the Legal Advice category may be made (see s. 6.3.14 of



this Manual).

(iii) in certain circumstances, financial assistance may be provided for by VAQ. All victims of an act of violence should be offered a Victim Assist- Financial assistance for violent crimes Police Referral. A victim may be offered Police Referrals for more than one category on a single Police Referral. The victim assist referral should only be made with consent of the victim (see s. 6.3.14 of this Manual).

### **Rights of victims to make a complaint**

In accordance with Schedule 1AA of the VOCAA, a victim may make a complaint about a contravention of a right under the Charter and must be given information about the procedure for making a complaint under Chapter 2 of the VOCAA.

Where a victim of crime believes they have not been dealt with in accordance with the Charter of the VOCAA, the person may make a complaint under s. 19: 'Victim may make complaint' of the Act to the appointed victim services coordinator or directly to the relevant government or non-government entity (see Schedule 3: 'Dictionary' of the VOCAA).

#### **POLICY**

Any complaints under the VOCAA made:

- (i) to the Victim Services Coordinator; or
- (ii) directly to the Service,

are to be dealt with in accordance with s. 20(2): 'Dealing with complaint' of the Act.

The Service, in dealing with complaints under the VOCAA is to:

- (i) give information to a victim about the process that applies for resolving the complaint; and
- (ii) take all reasonable steps to resolve the complaint as soon as reasonably practicable.

#### **PROCEDURE**

Officers who receive complaints under the VOCAA are to comply with 'Complaint Management' of the Ethical Standards Command policies.

The Victim Services Coordinator may liaise with the Service in order to facilitate the resolution of the complaint. The Victim Service Coordinator may also refer the complaint to the relevant government or non-government entity.

Where the Victim Services Coordinator has referred a complaint to the Service and the complaint has been resolved, the officer resolving the complaint is to inform the Victim Services Coordinator as soon as practicable about how the complaint was resolved. The preferred method for advising the victim services coordinator is by Service email using police letterhead and ensuring the QPRIME reference number and victim's name are included (see Service Manuals Contact Directory).

### **Eligible persons register (Queensland Corrective Services Victims Register)**

#### **POLICY**

Sections 320: 'Eligible persons register' and 325: 'Releasing information' of the CSA and Section 282A: 'Eligible persons register' and 282G: 'Releasing information' of the Youth Justice Act provide that the Chief Executive of Queensland Corrective Services (QCS) must establish a register of persons who are eligible to receive information about a prisoner who has been sentenced to a period of imprisonment for an offence of violence or a sexual offence. The following persons may apply in the approved form to be registered as eligible persons:

- (i) the actual victim of the offence;
- (ii) if the victim is deceased, an immediate family member of the deceased victim, when the offender is an adult;
- (iii) if the victim is deceased because of the offence, an immediate family member of the deceased victim if the offender is a child;
- (iv) if the victim is under 18 years or has a legal incapacity, the victim's parent or guardian; when the offender is an adult;
- (v) if the victim is a child or has a legal incapacity, the victim's parent when the offender is a child; and
- (vi) another person who:
  - (a) gives the Chief Executive documentary evidence, to the Chief Executive's satisfaction, of the prisoner's or detainee's history of violence against the person; or
  - (b) satisfies the Chief Executive that the person's life or physical safety could reasonably be expected to be endangered because of a connection between the person and the offence.

The establishment of and access to a register of eligible persons is consistent with the Charter as outlined in Schedule 1AA of the VOCAA.

### PROCEDURE

Where appropriate, officers should provide eligible persons with information regarding application to the Chief Executive, QCS for registration on the eligible person's register using Form 49: 'Application to Register with the Queensland Corrective Services Victims Register', which is available on the Queensland Corrective Services' 'Approved forms' web page.

### 2.12.2 Victim Support Service (Office of the Director of Public Prosecutions (State))

The Victim Support Service within the Office of the Director of Public Prosecutions (State) provides information and referral to victims of crime throughout the prosecution process for matters which the Office of the Director of Public Prosecutions is handling, including committals prosecuted by the Office of the Director of Public Prosecutions. To assist the Office of the Director of Public Prosecutions meet its obligations under the Victims of Crime Assistance Act it is important accurate contact details regarding victims of crime are forwarded to the Office of the Director of Public Prosecutions by members of the Service.

The Victim Support Service has staff located in the Brisbane, Townsville, Maroochydore, Southport, Cairns, Rockhampton and Ipswich Office of the Director of Public Prosecutions offices. In all other offices, Office of the Director of Public Prosecutions staff liaise with victims (see Service Manuals Contact Directory).

### POLICY

When Office of the Director of Public Prosecutions takes responsibility for prosecuting a case, the investigating officer is to complete and forward a QP 0323: 'List/Non-Availability of Witnesses (Including Police Officers)', including the relevant contact details of the victim of crime, to the relevant Office of the Director of Public Prosecutions office as soon as possible. Changes in these details are to be forwarded to the relevant Office of the Director of Public Prosecutions office when they are made known to investigating officers.

Where a bail application pursuant to s. 13: 'When only the Supreme Court may grant bail', or review of a bail decision, or s. 19C: 'Review by Supreme Court of magistrate's decision on a review' of the Bail Act is being made investigating officers are to pass details of victims of crime, including telephone numbers and changes of address, to the Office of the Director of Public Prosecutions office handling the bail application as soon as possible.

### 2.12.3 Victim Assist Queensland

Victim Assist Queensland, the Department of Justice and Attorney-General provides information to victims of crime and is staffed during regular business hours.

Staff from Victim Assist Queensland can assist victims by:

- (i) providing general advice to victims;
- (ii) providing information regarding referral agencies which may assist victims;
- (iii) assisting victims with the initial application for financial assistance under the Victims of Crime Assistance Act;
- (iv) providing advice of the status of submitted applications for financial assistance; and
- (v) providing assistance to victims who are completing a victim impact statement for production in court.

### PROCEDURE

Where an officer believes a victim requires the assistance of Victim Assist Queensland, a Police Referral is to be submitted (see s. 6.3.14: 'Police Referrals' of this Manual).