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Office of the President

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Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [redacted]

Dear Committee Secretary

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

Thank you for the opportunity to provide comments on the Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 (the **Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Occupational Discipline Law Committee who has substantial expertise in this area.

QLS welcomes sound reform of the police disciplinary system, which has been dysfunctional for more than 25 years. We note that the Bill seeks to modernise this system and to focus upon correction and education, while still allowing for appropriate discipline action when warranted. We are pleased that the drafters have adopted some principles from other disciplinary systems, such as those in the *Legal Profession Act 2007* and, on the whole, we agree with the approach taken.

In respect of specific provisions in the Bill, the Society expresses its concerns regarding some of the proposed drafting. These are outlined as follows:

1. Amendment of *Police Service Administration Act 1990*:

a. Clause 9, regarding proposed sections 7.1 and 7.39, and the 'public interest test';
b. Clauses 10 to 13, and the timeframe for disciplinary declarations;
c. Clause 17, regarding the insertion of new Part 11, Division 10; and

2. Amendment of *Crime and Corruption Act 2001*:
   a. Clause 28, regarding proposed sections 219O and 219S(2).

1. Amendment of *Police Service Administration Act 1990*

a) Clause 9 – Replacement of pt 7 (Internal command and discipline)

I. Clause 9 introduces a new Part 7 into the *Police Service Administration Act 1990*. Proposed section 7.1(a) states:

> 7.1 Main purposes of part
> The main purposes of this part are—
> (a) to provide for a system of guiding, correcting, rehabilitating and, if necessary, disciplining officers; …

We submit that the phrase "if necessary" with respect to disciplining officers should be amended to "for deciding if further action is necessary", as in our opinion, any further action must be linked to disciplinary action.

II. We note that proposed section 7.1(b) essentially insert a "public interest test" into this disciplinary scheme:

> (b) to 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.

Whilst we welcome this consideration, we consider the provisions need to be refined and suggest that sections 447 and 448 of the *Legal Profession Act 2007*, which are well-understood and effective, ought to be used as a model. These sections provide as follows:

> **447 Decision of commissioner to start proceeding under ch 4**
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> As the commissioner considers appropriate in relation to a complaint or investigation matter that has been or continues to be investigated, other than a complaint or investigation matter about the conduct of an unlawful operator, the commissioner may start a proceeding under this chapter before a disciplinary body.

448 Dismissal of complaint

(1) The commissioner may dismiss the complaint or investigation matter if satisfied that—

(a) there is no reasonable likelihood of a finding by a disciplinary body of—

(i) for an Australian legal practitioner—either unsatisfactory professional conduct or professional misconduct; or

(ii) for a law practice employee—misconduct in relation to the relevant practice; or

(b) it is in the public interest to do so.

(2) The commissioner must give the respondent and any complainant written notice about the commissioner's decision to dismiss the complaint or investigation matter.

III. Proposed section 7.39 regarding community service does not provide any guidance about how the community service is to be performed, including what organisations community service can be completed at. We urge further consideration be given to providing these details either in the Bill, in a regulation or in some other guidance statement.

b) Clauses 10 to 13 – Disciplinary declarations

IV. As to provisions of the legislation dealing with disciplinary declarations, in our view, the timeframe for disciplinary declaration should be 6 months and be in the public interest (we refer to our above comments in regarding the "public interest" test). We do not understand how the sanctions outlined in these amendments can be taken against a former officer. The reason for a 6-month timeframe is that, in the experience of our members, the delay can cause a real injustice in circumstances where an officer resigned, ending their career, but after 6 to 12 months is faced with additional discipline action. There are examples where officers have gained alternate employment and have then had to disclose the disciplinary action taken by QPS, resulting in this new employment being terminated.

c) Clause 17 – Insertion of new pt 11, div 10

V. Clause 17 proposes the insertion of Part 11, Division 10 into the *Police Service Administration Act*. We understand that the insertion of these transitional provisions is intended to allow for disciplinary proceedings to proceed without delay. However, the changes should not prevent a subject officer or other person from being afforded natural justice or procedural fairness in respect of a proceeding. Further, appropriate notices advising of any change in a proceeding should be provided to all parties within seven days after the amending legislation is enacted to allow sufficient time for additional advice to be sought, if necessary.

2. Amendment of *Crime and Corruption Act 2001*

a) Clause 28 – Insertion of new ch 5, pt 3

VI. Clause 28 proposes the insertion of new Chapter 5, Part 3 into the Act. Proposed section 219O provides:

> (1) A ***reviewable decision*** is a decision made under the *Police Service Administration Act 1990* that is mentioned in schedule 1, column 1.
>
> (2) However, a decision under part 7, division 4 of that Act that a disciplinary charge, or another ground for disciplinary action, has been proved in relation to an officer is a ***reviewable decision*** only if the officer is entitled to be given a QCAT information notice for the decision under section 7.27(4) or 7.31(1) of that Act.

Proposed section 219O amends the current law which prevented the CCC from having review rights if the QPS did not commence disciplinary action.[1] There is a public interest argument that the CCC should have this review right. If the QPS decides to take no action against a clearly corrupt police officer, the CCC is not presently able to review this decision under the current act.

However, the proposed amendments are unclear about what decision is able to reviewed. The review, in this instance, should simply be that disciplinary action should have been taken (was warranted) and the matter then returned to the QPS for this action to be taken; otherwise, the officer will be denied the first step in the process, an actual hearing before the QPS.

The matter should not be determined by QCAT prior to this initial disciplinary process being completed. The CCC will then have the opportunity to be involved in the disciplinary action to ensure that matter is dealt with appropriately, in the fulfilment of its role to investigate corrupt conduct and an independent body.

VII. We also hold concerns with respect to proposed section 219S(2), which states:

> (2) QCAT—
>
> (a) has the same powers as the commissioner of police under the *Police Service Administration Act 1990*, part 7, division 5; and
>
> (b) may impose *any* disciplinary sanction on the subject officer under that part, *even if the person who made the reviewable decision would not be authorised under that part to impose the disciplinary sanction.* [emphasis added]

Whilst this provision reflects the current section 219J(2), our concern is that this power will likely infringe upon the natural justice and procedural fairness afforded to an officer

[1] The current law was articulated in *Arndt v Crime & Corruption Commission* [2013] QCATA and *Crime & Corruption Commission v Dawes & Anor* [2017] QCAT where it was held that the CCC (and CMC) did not have standing to bring an application in QCAT for review of the decisions made, and similarly, QCAT did not have the jurisdiction to determine such applications.

in circumstances where they may have taken certain steps in respect of disciplinary action, knowing what the possible outcomes may be, only to have a different sanction imposed on them by QCAT. If the officer was aware that such action could be taken, then it would have been open to them to make a different decision, or take additional or alternate steps at the initial stages of the matter.

For example, an officer may be put on notice that a sanction will not exceed a certain level, and so may make a decision – such as pleading guilty rather than not guilty to an allegation – only to have a higher sanction imposed by QCAT. Further, if QCAT imposed a sanction that was not able to be imposed at first instance, then the officer is unlikely to have obtained and adduced information and documents in respect of this new sanction. The delay in obtaining such evidence could adversely affect their matter.

The effect of any such decision by QCAT could therefore have serious consequences on the officer and their career not previously contemplated.

We note that the courts have allowed for this power to be exercised in certain cases.[2] However, for the above reasons, we do not consider that such a power should be provided for, without restriction, in legislation. In our view, a review to QCAT should only consider the sanction open to the original decision-maker. If the review is successful, then the matter should be sent back to QPS to be dealt with according to the law at the new level, with all pleas and submissions vacated from the previous proceedings.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Deborah Kim by phone on [redacted] or by email to [redacted]

Yours faithfully

[redacted]

Bill Potts
President

[2] *Chapman v Richards & Anor* [2008] QSC 120.