

Government response to the Crime and Misconduct Commission report “Setting the standard – A review of the current processes for the management of police discipline and misconduct matters”

In December 2010, a Crime and Misconduct Commission (the CMC) report was tabled in the Parliament, *Setting the Standard: A review of current processes for the management of police discipline and misconduct matters (the CMC report)*. The CMC report identified the central attributes of a model police discipline system: simple, effective, transparent and strong. However, it did not recommend a specific model for implementation. Instead, the CMC report recommended that the CMC and the Queensland Police Service (QPS) work together to develop a new system. The CMC report contains 11 recommendations relating to police discipline.

In March 2011, the Premier announced the appointment of an independent panel of experts to undertake this further work and provide a report to the Government. The panel was supported in its work by a Steering Committee comprising the CMC Chairperson, the Police Commissioner and the Director-General, Department of the Premier and Cabinet as chair.

The panel delivered its report to the Government in May 2011. Titled *Simple, Effective, Transparent, Strong: An independent review of the Queensland police complaints, discipline and misconduct system (the Review report)*, the report makes 57 recommendations for changes to the current system.

The Review report found that the current police discipline system is “dysfunctional and unsustainable”. It noted that complainants and police “are subjected to a complex, administratively burdensome, overly legalistic and adversarial process that is dishonoured by chronic delays, inconsistent and disproportionate outcomes”.

The CMC report and the Review report present an opportunity to develop and implement a discipline system that will effectively serve the community and the Queensland Police Service (the QPS) for at least the next decade.

Report Recommendation	Lead Agency	Government response
Recommendation 1 The CMC recommends that the QPS develop a standard of practice and enhanced policies complementary to the proposed Queensland public	QPS	The CMC report recommendation 1 is related to several of the Review report recommendations and is supported. The recommendation proposes the QPS develop a ‘standard of practice’ under the <i>Public Sector Ethics Act</i>

<p>sector code of conduct with a view to ensuring that:</p> <p>a. where inappropriate conduct is identified, it is linked to a clear ethical rationale</p> <p>b. indicative sanctions are identified for more serious, systemic and problematic misconduct.</p>		<p>1994 and policies to complement the Queensland public sector code of conduct. Further, that such standard of practice and policy clearly links inappropriate conduct to an ethical rationale, and indicative sanctions are identified for more serious, systemic and problematic misconduct.</p> <p>The QPS has had a standard of practice in place since 1 January 2011. Under s 12G (Review of standard) of the <i>Public Sector Ethics Act</i> the Commissioner must review the standard of practice for the QPS within the first year. Subsequent reviews must be undertaken at least every 2 years. The QPS will amend the QPS standard of practice and policy documents such as the QPS Human Resource Management Manual to give effect to the fundamental changes to the police discipline system as proposed in the Review report.</p> <p>The Review report recommendations provide a more detailed analysis of the issues such as the CMC and QPS roles in a new discipline system with a focus on correcting rather than punishing, and the use of case studies, matrices and indicative sanctions to inform officers. The CMC report recommendation and related Review report recommendations are supported.</p>
<p>Recommendation 2</p> <p>The CMC recommends that the Queensland Government amend the <i>Police Service Administration Act 1990</i> and the <i>Crime and Misconduct Act 2001</i> to ensure there is consistency in:</p> <p>a. the definitions of misconduct</p> <p>b. the tests imposing an obligation on the Commissioner of Police and members of the police service to report misconduct by a member the QPS.</p>	<p>QPS & DJAG</p>	<p>The CMC report recommendation 2 relates to several of the Review report recommendations and is supported.</p> <p>Under the CM Act the definition of ‘police misconduct’ excludes the more serious category of ‘official misconduct’ as specific provisions apply to these categories of misconduct. These two terms are used in the CM Act in various contexts. Under the PSAA the definition of ‘misconduct’ includes ‘official misconduct’ as specific provisions apply to both categories of misconduct such as the requirement to report reasonably suspected misconduct. In all other respects the definitions of misconduct and police misconduct are very similar. Essentially, the definition of misconduct</p>

	<p>under the PSAA is relevant for specific provisions under that Act, while the definition of police misconduct is relevant for a different range of provisions under the CM Act.</p> <p>The Review report recommendations provide a more detailed analysis of the issues relating to how misconduct is categorised and its impact on the CMC and QPS functions in the police discipline system. The Review report recommends the five existing categories of misconduct be reduced to three new categories. The proposed categories will affect the role and responsibilities of both the CMC and the QPS with respect to police discipline. The Review report recommendation is supported.</p>
<p>Recommendation 3 The CMC recommends that the QPS, in consultation with the CMC, review the relevant policies and procedures, steps and processes in the current system for the management of police complaints and discipline with a view to:</p> <ul style="list-style-type: none"> a. reducing the level of complexity in the system b. identifying clearer and simpler work flows for managing and dealing with misconduct and other inappropriate conduct c. identifying and developing strategies to address potential choke points in the system caused by inadequate resourcing d. identifying and assessing work-flow risks and articulating appropriate treatments e. incorporating the recommendations made in the audit report (Appendix C), and giving officers adequate training in conducting preliminary inquiries and making assessment decisions about complaints ‘interwoven with court’ 	<p>The CMC report recommendation 3 proposed the QPS, in consultation with the CMC, review its discipline policies and procedures to reduce complexity and improve timeliness and efficiency. The Review report recommendations were primarily developed to address recommendation 3. Generally, the Review report’s recommendations are supported.</p> <p>The review proposed in CMC report recommendation 3 has been implemented by the undertaking of the Review report and so the CMC recommendation is supported.</p>

<p>f. putting timeframes on key steps in the process, and linking these to appropriate consequences to ensure a timely conclusion of the matter.</p>		
<p>Recommendation 4 The CMC recommends that the Queensland Government amend the <i>Crime and Misconduct Act 2001</i> to enable the CMC — for the purpose of discharging its monitoring function and to ensure the police service deals with complaints of police misconduct effectively and appropriately — to require the Commissioner of Police:</p> <p>a. to report to the commission about an investigation into police misconduct in the way and at the times the commission directs; or</p> <p>b. to undertake the further investigation into the police misconduct that the commission directs.</p>	<p>QPS & DJAG</p>	<p>The CMC report recommendation 4 proposed expanding the CMC’s existing authority to give the Police Commissioner directions about the investigation of misconduct. The recommendation proposes legislation to allow the CMC to give the Police Commissioner directions about the investigation of the less serious ‘police misconduct’ category. The CMC report used a misconduct investigation case study to illustrate the need for such an authority. Ultimately, both the QPS and the CMC investigations unsubstantiated the misconduct allegation.</p> <p>The Review report examined recommendation 4 and proposed an alternative recommendation (rec 9) to address the issues identified in the CMC report. Recommendation 9 of the Review report proposes new CMC monitoring powers including a new adjudicative power.</p> <p>The CMC recommendation 4 is not supported. The Review report recommendation 9 is supported with modification as an alternative to the CMC recommendation 4.</p>
<p>Recommendation 5 The CMC recommends that the QPS, in consultation with the CMC:</p> <p>a. review the capacity and resources, staff retention and attraction strategies of the ESC to ensure that it has an appropriate number of personnel, skills and physical resources to perform its functions, consistent with recognising those functions as core business</p> <p>b. evaluate the effectiveness of the role of the professional practice manager to ensure it is</p>	<p>QPS & DJAG</p>	<p>The CMC report recommendation 5 relates to several Review report recommendations, and is supported.</p>

<p>c. better utilised and resourced to improve the quality, consistency and timeliness of complaint and disciplinary outcomes develop a discipline and complaints management system capable of improving the efficiency of reporting processes, increasing research and analysis capability to create and enhance prevention strategies, and supporting the more timely, efficient and effective management of complaints.</p>		
<p>Recommendation 6 The CMC recommends that the Queensland Government amend the <i>Police Service Administration Act 1990</i>, the <i>Crime and Misconduct Act 2001</i> and the <i>Queensland Civil and Administrative Tribunal Act 2009</i> so that the police discipline system can operate effectively by ensuring that:</p> <p>a. a member of the QPS is required to answer questions and/or provide information for the purpose of a disciplinary investigation or disciplinary proceedings, including disciplinary proceedings conducted by QCAT, on the ground that the answer to the question or provision of information may incriminate the member</p> <p>b. if so required, any answer or information provided is not to be used in any criminal proceeding against the member who made the statement, other than if the proceeding is about</p> <p>– the falsity or misleading nature of the answer or information given by the</p>	<p>QPS & DJAG</p>	<p>The CMC report recommendation 6 relates to Review report recommendation 27. The CMC report recommendation proposes legislative amendment to require a QPS member answer questions even though the answer might be incriminating and to also limit the direct use of such an answer to circumstances listed in the recommendation.</p> <p>A legislative authority to direct an officer to answer questions for a disciplinary investigation or proceeding is supported. While the limitations on the use of directed answers in criminal proceedings as proposed by the CMC is generally supported, careful policy analysis is required with respect to the permitted use of directed answers in other contexts not related to the discipline system.</p> <p>The Review report recommendation 27 proposed a detailed analysis of the issues related to the use of directed answers. The Government will await the results of that review before considering how directed answers should be used. Consequently, part b of the CMC recommendation is generally supported subject to the results of the review.</p>

<p>– individual; or an offence against the CM Act.</p>		
<p>Recommendation 7 The CMC recommends that the QPS regularly review its policies, procedures, guidelines and training materials for the police disciplinary process to ensure that:</p> <ul style="list-style-type: none"> a. prescribed officers will accept and act on admissions of misconduct by police officers b. these materials accurately communicate and explain relevant legal principles c. the language used reflects the proper nature and purpose of disciplinary proceedings. <p>The CMC also recommends that the Queensland Government amend the <i>Police Service Administration Act 1990</i> to ensure that the language used reflects the proper nature and purpose of disciplinary proceedings.</p>	<p>QPS & DJAG</p>	<p>The CMC report recommendation 7 relates to several Review report recommendations. Both the CMC report and related Review report recommendations are supported.</p>
<p>Recommendation 8 The CMC recommends that the Queensland Government amend the <i>Police Service (Discipline) Regulations 1990</i>, the <i>Police Service Administration Act 1990</i>, the <i>Crime and Misconduct Act 2001</i> and any other Act to:</p> <ul style="list-style-type: none"> a. ensure that a range of disciplinary sanctions, including monetary penalties and community service are available to prescribed officers consistent with the purpose of the discipline process 	<p>QPS & DJAG</p>	<p>The CMC report recommendation 8 relates to several Review report recommendations. The recommendation is supported in part.</p> <p>The CMC report recommendation parts a and c are supported. The Government supports a broad range of disciplinary and managerial options, that may be selected for particular circumstances and used conjointly to correct misconduct and encourage professional conduct. The concept of restorative justice principles as identified in the Review Report is also supported.</p> <p>The Government does not support completely removing the ability to</p>

<p>b. remove the power to suspend disciplinary sanctions</p> <p>c. provide an indicative list of managerial strategies that prescribed officers may use in conjunction with any disciplinary sanction imposed, or in any situation, whether or not a disciplinary allegation has been proven.</p>		<p>suspend a sanction.</p> <p>The Review report recommends allowing sanctions, other than dismissal, to be suspended. If the misconduct of a police officer is so serious as to warrant dismissal then the officer cannot be regarded as suitable to hold such office. It is contradictory to then suspend the dismissal and allow the officer to continue employment with the Police Service.</p> <p>The Government recognises particular circumstances may make the suspension of a sanction appropriate. Also, the operational period itself or the conditions of a suspended sanction may be particularly valuable tools to correct misconduct. The Government supports the Review report recommendation about suspending sanctions.</p>
<p>Recommendation 9 The CMC recommends that the Queensland Government amend the:</p> <p>a. Police Service Administration Regulation 1990, for the purpose of s. 5.2 of the <i>Police Service Administration Act 1990</i> and;</p> <p>b. the Police Service (Discipline) Regulations 1990 for the purpose of discipline and management action;</p> <p>to allow the Commissioner of Police to transfer a police officer in the public interest.</p>	QPS	<p>Changing the officer's functions or workplace can be an important risk management response to a serious allegation, and may reduce the need for stand down action. The Government supports the recommendation.</p>
<p>Recommendation 10 The CMC recommends that the Queensland Government amend the Police Service (Discipline) Regulations 1990, the <i>Police Service Administration Act 1990</i>, and the <i>Crime and Misconduct Act 2001</i> to</p>	QPS	<p>The CMC report recommendation 10 relates to the concept of 'restorative justice' as discussed in the Review report. The Review report proposes restorative justice be an important part of the police discipline system. The CMC recommendation proposes legislative amendment to allow an officer to apologise to an aggrieved person without precluding any sanction or</p>

<p>allow a police officer to apologise to aggrieved persons in respect of his or her conduct without precluding any sanction or other management action being taken in respect of the officer’s conduct.</p>		<p>management action in response to the conduct.</p> <p>The <i>Civil Liability Act 2003</i> specifically addresses the issue of an apology or expression of regret by a person.</p> <p>In a discipline context, the ability in appropriate circumstances to impose a sanction or take managerial action in response to misconduct is supported, even in the event of an apology. However, the Government is not at this time persuaded of the need for legislative change over policy change in order to achieve this objective. Consequently, the recommendation is supported in principle.</p>
<p>Recommendation 11 The CMC recommends that the Queensland Government amend the <i>Police Service Administration Act 1990</i> and any other Act as necessary to:</p> <p>a. provide a basis for the dismissal of a police officer on loss of confidence grounds</p> <p>b. provide for a fair system of review to a single judge of the Supreme Court, which recognises the functions and purpose of the police service, the special nature of the employment of a police officer and the office of constable</p> <p>c. recognise the right of the Commissioner reasonably to determine questions concerning an officer’s suitability for employment and fitness to hold office.</p>	<p>QPS</p>	<p>Currently, unlike many other Australian jurisdictions the Queensland Police Service Commissioner does not have loss of confidence provisions available to deal with the general suitability of its members to be police officers. Any changes in this regard would require legislative reform. The QPS has mechanisms available to manage QPS officers including:</p> <ul style="list-style-type: none"> • Disciplinary provisions; • Managerial intervention; and • Medical assessment and retirement. <p>These mechanisms operate independently of each other. However, loss of confidence may arise because of a combination of misconduct, performance or health issues.</p> <p>The Government supports the need for a Commissioner’s authority to end the appointment of an officer including through retirement (or possibly redeployment as a staff member) due to their unsuitability to hold office for reasons of competence, performance, health, integrity or conduct. Further, the Government supports a prescribed decision making process that requires natural justice and procedural fairness. Finally, the Government supports an appropriate avenue for review which is consistent with existing policy parameters. The recommendation proposes a review of such a decision be determined by the Supreme Court. However, dismissal decisions relating to</p>

		<p>misconduct are currently reviewable before QCAT. To ensure policy consistency it is proposed the appropriate review body be the subject of further consideration. For this reason the recommendation is supported and an appropriate review process with strict time limits for reviews will be included as part of the implementation.</p>
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