Ethical Standards Command

Complaint Resolution Guidelines

Version 3.05

Effective Date: 20/10/2021

Last Review Date: 04/03/2022

Approved by: Assistant Commissioner Ethical Standards Command

OFFICIAL

Uncontrolled when printed

Ownership

Region/Command/Division:	Ethical Standards Command (ESC)
Document Owner:	Assistant Commissioner, Ethical Standards Command
Contact Details:	[redacted]
Document Status:	Final

Approval

Name	Signature	Date
David Nixon Acting Chief Superintendent Ethical Standards Command	[redacted]	04/03/2022
Virginia Nelson Acting Assistant Commissioner Ethical Standards Command	[redacted]	04/03/2022

Revision History

Version	Date	Description	Author
1.00	01.07.2018	New discipline system guidelines	S/Sgt S Wyatt
2.00	31.10.2019	Post Discipline Reform Bill Version	S/Sgt S Wyatt
2.01	30.06.2020	Review update	S/Sgt S Wyatt
3.00	07.01.2021	Post PSC Directive update version ESC stakeholder review	Inspector D Meehan S/Sgt N Jaramazovic
3.01	11.05.2021	Review update	A/S/Sgt J Broughton
3.02	22/06/2021	Review update	S/Sgt N Jaramazovic
3.03	23/07/2021	Review update	A/S/Sgt J Broughton
3.04	20/10/2021	Review update (CRG Working Party)	A/Inspector S Wyatt
3.05	4/3/2022	Review update (CRG Working Party)	S/Sgt S Wyatt

Table of Contents

Contents

Application of Complaint Resolution Guidelines 5
1. Complaint Entry 6
1.1 Purpose 6
1.2 Additional Reporting Avenues 6
1.2.1 Grievances 6
1.2.2 Workplace Behaviours Policy 6
1.3 Reporting a Complaint 6
1.4 Client Service Record 7
1.5 Disciplinary Complaint 8
1.6 Complaints received by Policelink 9
1.7 Duty to report misconduct and other grounds for discipline 10
1.8 Reporting exemptions 10
1.9 Criminal Offences 10
1.10 Desktop Managerial Resolution 10
1.11 Complaints involving the Commissioner and/or Deputy Commissioners 11
1.12 Complaints from persons with a disability 11
2. Assessment and Management of Complaints 12
2.1 Purpose 12
2.2 Background 12
2.3 Receipt of Complaints 13
2.4 Initial Review 13
2.5 Security Classifications 14
2.6 Complaint Assessment Committee 15
2.6.1 When held 15
2.6.2 Attendance 15
2.6.3 Individual roles of members of the Complaint Assessment Committee 15
2.6.4 Matters considered by the Complaint Assessment Committee 16
2.6.5 Assessment Decision Making 16
2.6.6 Assessment of Grounds for Discipline other than Misconduct and Client Service matters 17
2.7 Post Complaint Assessment Committee Responsibilities 18
2.7.1 Responsibilities of members of Complaint Assessment Committee 18
2.7.2 Recording the Complaint Assessment Committee decision in PIPS 19
2.8 Management of Complaint Assessment Committee decisions 19
2.8.1 Management of Assessment Inquiries 19
2.8.2 Notification to complainants 20
2.9 The role of the Joint Assessment and Moderation Committee (JAMC) 20
2.10 Conduct and Performance Excellence Assessment 20
2.11 Management of disciplinary complaints where members separate from the Service 20
2.12 Consideration of Implementing a Professional Development Strategy or Management Action Plan on Receipt of Disciplinary Complaints 21
2.12.1 Police 21
2.12.2 Staff members 21
3. Local Management Resolution 22
3.1 Purpose 22
3.2 General Information 22
3.3 Formulating Professional Development Strategies or Management Action Plans 23
3.4 Local Management Resolution Plan 23

3.5 Implementing a Local Management Resolution Plan 23
3.6 Modification of the Local Management Resolution Plan 25
3.7 Recording the Local Management Resolution Process 25
3.8 Effect of Local Management Resolution on a Subject Member's Personal Record 25
3.9 Failure of member to complete strategies agreed to in LMR Plan 25
4. Investigative Processes 26
4.1 Purpose 26
4.2 Authority to Investigate 26
4.3 Scope and Purpose of the Investigation 27
4.4 Extent of the investigation 27
4.5 Timeliness - Alternatives to Full Investigation 27
4.6 Criminal Allegations 28
4.7 The Investigation 29
4.8 Witness/subject member versions 29
4.8.1 Complainant 30
4.8.2 Subject member 30
4.8.3 Interviewing members on extended sick or other leave 31
4.8.4 Transcripts 31
4.9 Additional Allegations 31
4.10 Commissioner's direction concerning disciplinary investigation 31
4.11 Management response during investigation 32
4.12 Investigation reports 33
4.13 Overview of investigation 33
4.14 Client and Subject Member feedback 33
5. Investigative Issues 34
5.1 Conflicts of Interest 34
5.2 Criminal/Discipline Investigations 34
5.3 Double Jeopardy/Res Judicata 35
5.4 Order of Proceedings 36
5.5 Onus of Proof 36
5.6 Standard of Proof 36
5.7 Natural Justice/Procedural Fairness Principles 37
5.8 Timelines for commencing a Disciplinary Proceeding 37
5.8.1 Police officers 37
5.8.2 Staff members 38
5.9 Monitoring of Timelines for commencing a Disciplinary Proceeding 38
6. Discipline Process 40
6.1 Discipline Proceeding 40
6.1.1 Purpose 40
6.1.2 Process 40
6.2 Abbreviated Discipline Process 43
6.2.1 Purpose 43
6.2.2 Process 44
6.3 Post Separation Disciplinary Declarations 46
7. Sanction Guidelines 47
7.1 Specific decisions/subject matter 48
8. Dictionary 49

Application of Complaint Resolution Guidelines

The Complaint Resolution Guidelines (guidelines) were created as an adjunct to the Queensland Police Service (QPS) Discipline Policy to facilitate actions and decisions pertaining to complaints and disciplinary processes. The guidelines apply to all members of the Service including staff members and police officers. The guidelines are separated into police and staff members, due to effects of differing legislation.

The Discipline Policy and these guidelines were drafted to be compliant with the *Police Service Administration Act 1990* (Qld) and the *Public Service Act 2008* (Qld). Any inconsistencies between the guidelines and the two acts are to be resolved in favour of the legislation.

The *Human Rights Act 2019* (Qld) requires the Service and its members to act and make decisions in a way compatible with human rights, with relevant human rights given proper consideration when making decisions. This means the QPS needs to ensure decisions and acts in relation to its complaint management processes are compatible with and appropriately consider the protected human rights when applied to members of the Service as well as members of the public involved in the complaint process.

These considerations extend to the protection and/or limitation of human rights outlined in the *Human Rights Act 2019* arising from requirements placed on, or conditions imposed upon, members of the Service subject to investigation and/or disciplinary resolution actions (including disciplinary proceedings, Local Management Resolution, Professional Development Strategies or Management Action Plans). Where a member's human rights are to be limited due to any decision or action outlined in these guidelines, such limitations must be lawful, reasonable and demonstrably justifiable and be necessary and proportionate to the objective to be achieved. For further information refer to Human Rights general guide and the QPS intranet.

1. Complaint Entry

1.1 Purpose

In order to protect the reputation of the Service and maintain efficiency it is necessary to have a robust and transparent system to deal with complaints made about the conduct of members or provision of its services. The purpose of these guidelines is to detail the process for receiving, making and resolving these complaints. The complaints may be initiated from external sources or from members of the Service.

Types of complaints covered by these guidelines include:

- Customer complaints (s. 219A 'Departments to have complaints management system for customer complaints' of the *Public Service Act*);
- Complaints about acts or decisions which are incompatible with human rights (*Human Rights Act*);
- Complaints about corruption (s. 36 'Complaining about corruption' *Crime and Corruption Act 2001* (Qld)); and
- Complaints about grounds for discipline (s. 187 'Grounds for discipline' of the *Public Service Act* and s. 7.4 'Grounds for disciplinary action' of the *Police Service Administration Act*).

1.2 Additional Reporting Avenues

1.2.1 Grievances

QPS employees can make grievances in compliance with the QPS Grievance Policy (see the Human Resources policy and procedures webpage on the Service Intranet). Staff members also have access to lodging an 'individual employee grievance' pursuant to the Public Service Commission's 'Individual employee grievances' Directive 11/20. Under Directive 11/20, staff members have a distinct resolution process including review rights.

* Note: Under the Public Service Directive, reference to a grievance does not refer to this process and should generally be read as 'complaint'.

The guidelines and the grievance procedures are two separate entities insofar as the two processes are directed towards two different outcomes. However, a grievance lodged under the Grievance Policy may result in a complaint being made under these guidelines as part of the resolution of the matter. If a grievance is reported as a disciplinary complaint, the provisions of these guidelines apply.

Managers may wish to consult with their Professional Practice Manager (PPM) or Employee Relations for clarification.

1.2.2 Workplace Behaviours Policy

The Workplace Assessment and Support Team is an alternative pathway to report inappropriate workplace behaviour, specifically sexual harassment and unlawful discrimination. The Workplace Assessment and Support Team adopts a human-centric approach with an emphasis on ensuring the affected person feels supported by the service.

So far as practicable and within the bounds of legislation and employer responsibilities, the purpose of the exemptions is to empower an employee who has experienced unlawful discrimination or sexual harassment to have choice in how the behaviour is addressed in the workplace. Nothing in this policy should prevent or inhibit an employee from making a criminal complaint about the conduct of another employee if they choose to do so.

Members are encouraged to report inappropriate behaviours to the Workplace Assessment and Support team SharePoint site located under Communications, Culture and Engagement Division webpage on the Service Intranet. A link to The Workplace Behaviours Policy can be also found on this webpage.

1.3 Reporting a Complaint

A complaint is an expression of dissatisfaction made to or about the Service, related to the conduct of members or provision of services, where a response or resolution is reasonably expected.

Complaints relating to Service members are classified into two categories:

- Client Service Record; and
- Disciplinary Complaint.

1.4 Client Service Record

Not all complaints will constitute a disciplinary complaint (see s. 1.5). In appropriate circumstances, a complaint may be dealt with in accordance with the principles of the Client Service Charter (available on the QPS intranet). This includes matters where a complaint is received concerning:

(i) **Lawful and reasonable conduct** – the complaint does not indicate any conduct or behaviour which is unlawful or unreasonable having regard to the known circumstances of the matter;

(ii) **Off duty / private conduct** –

- Police Officer - relates to off-duty private conduct of a member which does not constitute misconduct (i.e. where there is no ground for discipline identified and there is clearly no nexus readily apparent between the alleged conduct and the integrity or ability of the member to fulfil their official duties)
- Staff Member – relates to off-duty private conduct of a member which does not constitute misconduct (i.e. where the conduct does not reflect seriously and adversely on the Public Service.)

[an initial assessing officer should be contacted if any doubt exists for this category]; and/or

(iii) **Service delivery issue** - relates solely to a service delay or a performance issue relating to the standard of delivery which can be adequately dealt with managerially. A service delivery issue may also include a complaint alleging an act or decision by the Service was incompatible with human rights, but only if the complaint is not a disciplinary complaint.

Where the receiving member considers the complaint to be about conduct which is lawful and reasonable or off duty private conduct, the receiving member is to:

(i) advise the complainant of the determination and a brief explanation of the reasoning for the decision;

(ii) provide the complainant with the name and contact details for a senior member if they require verification or are dissatisfied with the explanation; and

(iii) submit a QP464B, Client Service Record.

Where the complaint concerns a service delivery issue, the receiving member is to:

(i) advise the complainant the matter will be referred to a supervisor/manager responsible for the relevant service; and

(ii) refer the matter as soon as practicable to a supervisor/manager responsible for the relevant service.

A supervisor or manager who is advised by a receiving member about a service delivery issue is to:

(i) consider the service delivery issue and, if possible, take steps to resolve any identified problems;

(ii) if the complaint relates to human rights, consider:

- what human rights are relevant to the act or decision;
- have the complainant's rights been limited by the Service's act or decision;
- is any limit reasonable and demonstrably justifiable under authorising law.

(iii) as soon as practicable, contact the complainant and provide an explanation of the issues surrounding the service delivery issue and what, if any, steps were taken to resolve the problem;

(iv) provide the complainant with the name and contact details for a senior member if they require verification or are dissatisfied with the explanation; and

(v) submit a QP464B, Client Service Record.

Advice to the complainant can be provided by telephone, email, letter, or in person. Details of the advice to the complainant are to be included in the QP464B.

If a receiving member is unsure about what action to take in relation to a client service record, they should seek advice from their supervisor/manager or Professional Practice Manager (PPM).

1.5 Disciplinary Complaint

A disciplinary complaint is a complaint relating to an employee of the Service which raises a reasonable suspicion the member has committed a ground for discipline. A member of the Service who becomes aware of a matter which reaches the threshold for reporting is to report the matter in compliance with this section as a disciplinary complaint (see s. 1.7).

Where a receiving member determines a complaint to be a disciplinary complaint, the member is to:

(i) obtain full particulars from the complainant/concerned party (CP) as well as details of the complaint;

(ii) ascertain the complainant/CP's expectations concerning the resolution of the matter (e.g. wants subject member given guidance, trained, punished, dismissed or just wants complaint recorded); and

(iii) as soon as practicable, notify an initial assessing officer of the complaint (if appropriate, the initial assessing officer could attend and speak directly to the complainant).

On notification of a disciplinary complaint, an initial assessing officer is to:

(i) ensure the complaint has been correctly classified as a disciplinary complaint;

(ii) if the matter is assessed as suitable for resolution as a client service issue (QP464B) or for desktop managerial resolution (QP465), ensure the relevant actions and forms are completed in compliance with these guidelines;

(iii) conduct any necessary enquiries to confirm the classification or to preserve any evidence which may be lost if not obtained immediately (these enquires are to be conducted as soon as practicable and not unreasonably delay the submission of a QP466 (Complaint against member of the Service), and may include obtaining rosters, job logs, digital recordings or Watchhouse registers);

(iv) for grounds for discipline other than misconduct, consider whether reporting mechanisms outlined in other Service guidelines (e.g. Performance Review & Development Policy [performance review and development and managing unacceptable work performance], risk management, grievances) are more appropriate to resolve the matter;

- **Staff members**: Also refer to the requirements of Public Service Directive 14/20 Discipline, regarding action required before a complaint against a staff member can be investigated.

(v) if the disciplinary complaint involves the commission of a criminal offence, ensure compliance with the sections of these guidelines relating to criminal offences (ss. 1.9 and 4.6);

(vi) where a member is subject to criminal proceedings, or named as a respondent in a domestic violence application (private or police, including a Police Protection Notice) or domestic violence order (including temporary) in addition to submitting the QP466 complaint, the actioning District is responsible for submitting an Executive Briefing Note (EBN) for transmission via normal briefing arrangements to the AC ESC for consideration of stand down or suspension action (see Stand Down and Suspension Guidelines at ESC's SharePoint site on the QPS Intranet). This may also require advice from the owning Region or Command where a member is not based within the area where the offence occurred;

(vii) where a member is subject to criminal proceedings, in addition to submitting the QP466 complaint, the actioning District is responsible for submitting an Executive Briefing Note (EBN) for transmission via normal briefing arrangements to the AC ESC for consideration of stand down or suspension action (see Stand Down and Suspension Guidelines at ESC's SharePoint site on the QPS Intranet). This may also require advice from the owning Region or Command where a member is not based within the area where the offence occurred;

(viii) consider any Professional Development Strategies (PDS) or Management Action Plan (MAP) which may assist in the resolution of the disciplinary complaint and include this information in the QP466;

(ix) ensure a QP466 form is completed and submitted;

(x) provide advice to the complainant concerning the action taken (e.g. QP466 submitted);

(xi) ensure the confidentiality of the QP466;

(xii) provide the complainant or informant with a Police Integrity and Professional Standards (PIPS) reference number and contact details of who to contact for further information (if possible, generate and provide a 'complainant's receipt' to the complainant or informant); and

(xiii) provide any additional material to the PPM in a manner which ensures confidentiality.

The QP466 and any associated documents are confidential and not to be provided to any person without appropriate authorisation.

Only members involved in the resolution of a disciplinary complaint pursuant to these guidelines should have access to a QP466 and associated documents.

1.6 Complaints received by Policelink

Complaints can be received by the Service in many ways. When a complaint is received by Policelink or a police communications centre, the details of the complaint are to be recorded and emailed directly to the PPM responsible for the area subject of the complaint.

A PPM, upon receipt of details from Policelink or a police communications centre, will triage and assess the information and, if it does not meet the requirements of a disciplinary complaint, forward the matter to the relevant officer in charge/manager for attention and finalisation.

There is no requirement for PPMs to follow up the finalisation of these matters once they are allocated for action to the Regions and Commands. PPMs are to maintain a record of Policelink matters on a database. The database is to be properly maintained and accurately reflect the receipt and finalisation, including actions taken, of the client service issue.

Once Policelink matters are allocated to the responsible Region/Command, the resolution of those matters is their responsibility. Any outcomes are to be in line with the QPS Client Service Charter and these guidelines.

An officer in charge/manager allocated a Policelink complaint is to:

(i) have inquiries made directly with the members involved through the most expeditious means;

The standard of information should be sufficient so a manager can understand the concerns and make enquiries with police or staff members before finalising the matter with the member of the community.

(ii) within 7 days of receipt of the matter, contact the member of the community who raised the issue and provide outcome advice on action taken and resolution strategies implemented (it is not necessary to provide outcome advice for anonymous complaints, or where it states no outcome advice is wanted);

(iii) cause the matter to be recorded on a local 'client service' database and include details of the outcome;

The local recording/management system should be available for inspection by the section's supervising commissioned officer or ESC Inspections Teams as required

(iv) if the actions of the members were lawful and reasonable, take no further action and explain to the member of the community who raised the concern the reason and justification for no further action;

(v) any identified guidance, training or risk management issues are to be managed through the appropriate performance appraisal and risk management processes by their supervisor; and

(vi) where enquiries reveal the threshold for reporting has been reached, in consultation with the PPM, submit a QP466 in accordance with Part 6A 'Reporting obligations of officers and staff members' of the *Police Service Administration Act*.

1.7 Duty to report misconduct and other grounds for discipline

There is a legislated requirement under s. 6A.1(2) 'Duty concerning misconduct and other grounds for disciplinary action' of the *Police Service Administration Act* for members of the Service to report suspected misconduct of police officers.

Members are also required to identify, and report staff member conduct which is not consistent with the Code of Conduct for the Queensland Public Service.

Conduct which falls within the definition of staff member misconduct or police officer grounds for discipline is to be reported to the member's supervisor or manager.

Subject to reporting exemptions, members of the Service who become aware of information which they reasonably suspect may involve misconduct by police officers, which has not previously been reported, are to obtain full details of the matter and as soon as practicable report the matter to an initial assessing officer. If a member suspects the matter has been previously reported, they should seek advice from an initial assessing officer.

Where the complainant is a member of the Service, the initial assessing officer should be of a higher rank (at least Senior Sergeant or PO5/AO7).

1.8 Reporting exemptions

Section 6A.1(3) 'Duty concerning misconduct and other grounds for disciplinary action' of the *Police Service Administration Act* provides the Commissioner with authority to exempt, by written instrument, certain members of the Service from their obligation to report misconduct. Members who are subject to a written exemption, do not have to comply with complaint reporting procedures to the extent of their exemption.

Exemptions have been provided by the Commissioner in two areas.

- In relation to unlawful discrimination, including sexual harassment, the details of the exemption are contained within s. 5 of the Workplace Behaviours Policy;
- An exemption is also provided to QPS Senior Psychologists (formally known as Human Services Officers) and Senior Social Workers while they are providing professional counselling services in an official capacity. This exemption does not apply to circumstances where the suspected conduct would give reasonable grounds for the dismissal of the subject member.

1.9 Criminal Offences

If a member is found committing any criminal offence or is suspected of committing a criminal offence, all necessary action is to be taken to deal with the matter in accordance with normal Service policy and procedures.

As soon as practicable, the matter is to be reported to an initial assessing officer who will determine if a QP466 should be submitted. The on-call Ethical Standards Command (ESC) officer is to be advised of any enforcement action taken with respect to an employee of the Service.

See s. 1.5 of these guidelines regarding the submission of an EBN for matters where criminal proceedings have been commenced against a member.

Generally, off-duty conduct which results in a traffic infringement notice being issued where the outcome is the payment of a fine and/or demerit points will not require submission of a complaint and normally would not constitute misconduct. A police officer detected drink driving, however, is reportable as misconduct.

1.10 Desktop Managerial Resolution

A member who receives a disciplinary complaint relating to a member of the Service, or detects conduct which is appropriate to be addressed by Local Management Resolution (LMR) and is a ground for discipline other than misconduct (is minor in nature, unlikely to be repeated, is not part of an existing course of conduct, and is suited to expeditious LMR) is to:

(i) in the case of detection/receipt by a senior member, take immediate action; or

(ii) in all other cases, immediately notify the subject member's supervisor/manager, who is to take immediate

action to correct the subject member's conduct using appropriate Professional Development Strategy (PDS) or Management Action Plan (MAP).

PDS/MAP are to be recorded on an LMR Plan and uploaded onto the subject member's Ignite record (for further instruction refer to chapter 3: 'LMR' of these guidelines).

The member who detected or received information in relation to the conduct, or the subject member's supervisor/manager is to ensure:

(i) a QP465 – Desktop Managerial Resolution form, is completed (located at ESC's SharePoint site located on the QPS Intranet);

(ii) a copy of the completed LMR Plan is submitted with the QP465;

(iii) the complainant is advised of the action to be taken and a brief explanation of the reasoning for the decision; and

(iv) the complainant is provided with contact details of a senior member if dissatisfied with the explanation offered or other measure(s) taken to resolve the issue.

A copy of the complaint form is not to be given to a member of the public; however, a receipt may be generated electronically and provided to the complainant if the matter has been finalised immediately.

1.11 Complaints involving the Commissioner and/or Deputy Commissioners

Pursuant to s. 48A 'Commission's monitoring role for corrupt conduct' of the *Crime and Corruption Act*, the Assistant Commissioner, ESC is nominated to notify the Crime and Corruption Commission (CCC) if they reasonably suspect a complaint, information or matter involves corruption of the Commissioner.

If a complaint, information or matter is received involving misconduct or corrupt conduct committed by the Commissioner and/or a deputy commissioner a complaint may be made directly to the CCC or Assistant Commissioner, ESC.

Whereby the complaint is made to a member of the QPS it should be reported to the Assistant Commissioner, ESC in accordance with standard procedures. On receipt of a complaint, the Assistant Commissioner, ESC will consult with the CCC before commencing any investigation or deciding how the matter will be investigated.

1.12 Complaints from persons with a disability

The term disability covers all types of impairments including physical, psychiatric, sensory or other conditions. If approached by a member of the community with a disability, a member of the Service should provide additional assistance to ensure the person is able to effectively communicate their complaint.

Members should ensure any contact with a person who is disabled or who, because of any condition or circumstance, has a reduced capacity to look after or manage their own interests, is conducted in a manner which is fair and does not place the person at a disadvantage.

Chapter 6: 'Special Needs' of the Operational Procedures Manual provides further guidance on dealing with people who have a disability or who have special needs.

2. Assessment and Management of Complaints

2.1 Purpose

To provide instruction on the process used by ESC to assess complaints about the conduct of members of the Service or provision of its services.

2.2 Background

The Assistant Commissioner, ESC, Chief Superintendent, Internal Investigations Group (IIG), Detective Superintendent IIG and the State Coordinator, IIG (authorised officers) are delegated (see delegation D67.1) the Commissioner's powers, functions and duties under Chapter 2, Part 3 'Corruption' of the *Crime and Corruption Act.* This delegation relates specifically to discipline, referring complaints to the CCC and providing direction on any matter of discipline or complaint against a member.

The authorised officers have overall responsibility for complaint management and determining what action is warranted regarding allegations of misconduct. Allegations within disciplinary complaints can be determined to require:

1. **No further action:**
   - the alleged conduct cannot be proven on the balance of probabilities;
   - it is an unproductive use of police resources to conduct any further examination of the complaint;
   - the alleged conduct did not in fact occur;
   - the alleged subject member could not have been responsible for the alleged conduct;
   - the complaint is frivolous or vexatious;
   - the complaint relates to conduct which was lawful and/or in accordance with Service policy and procedures.
2. **Local Management Resolution (LMR):**
   - There is some evidence the alleged conduct occurred, however the matter can be adequately addressed through PDS/MAP and a disciplinary sanction is not required; or
   - it is determined the alleged conduct, whilst lawful, was not optimal in the circumstances.
3. **Investigation:** the alleged conduct is:
   - serious and/or repeated behaviour which, if proven, requires the imposition of a sanction; and
   - the matter cannot be resolved by LMR.
4. **Disciplinary proceeding:** the alleged conduct:
   - Cannot be adequately dealt with through LMR and requires the imposition of a sanction; and
   - there is sufficient evidence available to prove the allegations to the required standard.

Before determining what action is warranted, the authorised officer may also cause 'assessment inquiries' to be made. Members who are responsible for conducting assessment inquiries are to ensure their inquiries are conducted in compliance with Chapter 4: 'Investigative Processes' and Chapter 5: 'Investigative Issues' of these Guidelines, including providing a direction before obtaining a version from a member.

The authorised officer may also direct an investigation or other action (such as overview by ESC) be undertaken for alleged conduct arising from significant incidents or events. Such conduct may be identified through the Significant Event Message System (SEMS), Use of Force reporting or other notifications about serious injury or death during police incidents or operations.

The authorised officer may utilise the Complaint Assessment Committee (CAC) to assist in the assessment of complaint matters.

All complaints about members are managed through the State Coordinator, who supervises the Complaint Management Unit (CMU) and administers Police Integrity and Professional Standards (PIPS) system.

2.3 Receipt of Complaints

Complaints about members of the Service are received by ESC through a variety of mechanisms including:

- submissions from Service members (QP464A; QP464B; QP465 and QP466);
- written correspondence directly to the Service, ESC or the State Coordinator;
- referral from other agencies, such as the CCC, Crime Stoppers, Office of the Information Commissioner, and the Ombudsman;
- Service Online Complaint Forms; or
- Grievances assessed as disciplinary complaints.

2.4 Initial Review

An initial review of matters is undertaken by the CMU under the supervision of the State Coordinator. The purpose of this review is to record the information and ensure sufficient information is available to allow for the matter to be placed before the CAC.

The steps of this initial review involve the following:

(i) It must be confirmed the matter can be dealt with under the Service Discipline Policy and these guidelines. Matters which are determined not to be about conduct or discipline of a Service member are referred to the appropriate Service work unit or government departments for their attention. Complaints made through the Service website or Policelink are referred to the responsible Professional Practice Manager (PPM) for resolution in accordance with s. 1.6: 'Complaints received by Policelink' of these guidelines.

(ii) **Staff members**: for disciplinary complaints, where the conduct is alleged to have occurred 'off-duty', the State Coordinator should be satisfied there is sufficient nexus between the alleged conduct and the duties of the staff member before further assessment. Such considerations may include whether there is any criminality; the role, responsibilities and job description of the staff member; and whether the inappropriate or improper conduct in a private capacity reflects seriously and adversely on the Service.

- Public Service directive 14/20 Discipline requires, prior to commencing a staff member investigation, all appropriate management action, alternative dispute resolution, or performance management strategies must be exhausted. Evidence of compliance with the directive is required prior to an investigation being considered.
- This requirement does not replace, modify or revoke any legislative requirements which apply to the management of particular types of complaints, such as corrupt conduct under the *Crime and Corruption Act*, public interest disclosures under the *Public Interest Disclosure Act 2010* (Qld), or complaints under the *Human Rights Act*.

(iii) For matters arising from sensitive data calls; intelligence reports; or Crime Stoppers, the Risk Analysis Intelligence Section (RAIS), ESC is to conduct preliminary intelligence-based inquiries. The Officer in Charge (OIC), RAIS is responsible for determining whether, after conducting preliminary intelligence-based inquiries, there is a reasonable suspicion a ground for discipline has occurred. If the matter does not meet the threshold for reporting, the OIC, RAIS is to determine whether the matter is to be recorded on PIPS as a General File; a QPRIME record or another recording mechanism as deemed appropriate.

(iv) For complaints which are not already recorded in PIPS which are determined to be disciplinary complaints, a record of the complaint should be made in PIPS, ensuring all allegations and involved persons are identified and linked appropriately.

(v) The allegations will be classified based on the conduct or grounds for discipline as defined under the *Police Service Administration Act* or *Public Service Act 2008*.

(vi) For complaints where a limitation of a Human Right outlined in the *Human Rights Act* is alleged, or a limitation is identified from a complaint, notwithstanding a reference was not made to Human Rights, the CMU will record a Human Rights limitation within the complaint for consideration by CAC.

(vii) Reporting requirements under ss. 37 'Duty to notify commission of police misconduct', s. 38 'Duty to notify commission of corrupt conduct' and s. 40 'Commission may issue directions about notifications' of the *Crime and Corruption Act* are to be identified. Disciplinary complaints involving misconduct, for police officers and corrupt conduct for staff members must be reported to the CCC. Immediate reporting requirements exist in accordance with the QPS/CCC s. 40 Agreement for matters defined in Schedule A of the Agreement (located at ESC's SharePoint site located on the QPS Intranet). A determination may be made not to refer a disciplinary complaint to the CCC if the matter does not raise a suspicion of corrupt conduct or misconduct.

(viii) The disciplinary complaint should be given a security classification of 'Official'; 'Sensitive'; or 'Protected' in accordance with s. 2.5 of these guidelines.

(ix) The 'PIPS Summary' document is prepared with supporting documents and an initial 'Complaint Evaluation' sheet (green sheet) for presentation at the CAC.

(x) The CMU should have all internal disciplinary complaints tabled before the CAC within two business days of receipt and five business days of receipt for all other sources of complaints.

2.5 Security Classifications

All PIPS matters carry the default security classification of 'Official'. The State Coordinator, IIG is responsible for determining if a PIPS file requires a higher security classification of 'Sensitive' or 'Protected'. The State Coordinator may take into consideration any relevant factor, including:

- any implications due to the rank of the subject member;
- the need to maintain stricter confidentiality because the allegations involve drugs offences and/or contain a named informant or subject member;
- there is a need to maintain operational or investigative integrities;
- allegations are of a sexual nature and contain a named informant or subject member; or
- the involvement of a Public Interest Disclosure.

PIPS files should be given the highest security classification of 'Protected' when:

- the file identifies a 'law enforcement participant'; a 'human source' or contains 'lawfully intercepted telecommunications' materials;
- investigations involve elected state or federal representatives; documents are subject to 'parliamentary privilege' or pertain to a 'Commission of Inquiry'; or
- the subject member is attached to ESC or CCC (Police Group).

Confirmation of the security classification is decided by the Complaint Assessment Committee (see 2.6). Where it is necessary for a review of the security classification to occur (e.g. the complaint is closed), authority is required from the State Coordinator, the Chief Superintendent or Detective Superintendent.

All documents which are contained within a disciplinary complaint file are confidential. Information from disciplinary complaint files may only be released for official purposes. Information can be released for ensuring the effective and efficient functioning of the discipline system, as long as the integrity of individual investigations is protected. Examples of permitted information release include:

- updating a subject member or their representative (legal or union) on the status of an investigation;
- providing general statistics to the CCC;
- providing information on a particular complaint to the CCC for their overviewing role;
- providing details to Employee Relations to allow an informed decision in WorkCover matters;
- providing details to the Right to Information (RTI) Unit to assist their response to RTI applications; or
- any other external release authorised by the Assistant Commissioner ESC, or internal release of information with the approval of the Chief Superintendent or Detective Superintendent IIG or State Coordinator CMU.

2.6 Complaint Assessment Committee

The Complaint Assessment Committee (CAC) is a decision-making committee chaired by an authorised officer who are responsible for making initial determinations concerning the progress of disciplinary complaints involving misconduct (or other grounds for discipline by exception). CAC also have authority to require disciplinary complaints to be returned for further consideration at any time.

2.6.1 When held

Ordinarily the CAC meeting convenes every business day. The Chief Superintendent, IIG may convene meetings more or less frequently as necessary.

2.6.2 Attendance

The CAC is comprised of:

- Chief Superintendent, IIG (authorised officer); and/or
- Detective Superintendent, IIG (authorised officer); and/or
- Detective Inspector, State Coordinator IIG (authorised officer);
- Detective Inspector, Professional Practices Manager (PPM) Coordinator;
- Senior Sergeant, CMU;
- Sergeant, RAIS.

An authorised officer may invite any other person at their discretion. Internal Witness Support and Executive Manager, Integrity & Ethics (AO8) have standing invitations to attend CAC meetings. The latter may be requested to attend for consultation and advice on staff member complaints. An administration officer may be present at CAC meetings to assist in recording decision making but will not form part of the decision-making committee.

2.6.3 Individual roles of members of the Complaint Assessment Committee

Members have the following specific responsibilities during the meeting:

Chief Superintendent, IIG:

- Prescribed decision maker responsible for determining what action is warranted for each allegation of misconduct.

Detective Superintendent, IIG:

- Collaboratively assists Chief Superintendent to determine what action is warranted for each allegation of misconduct.
- Provide advice about the allocation of matters to IIG Investigation Teams.
- Brief the CAC on incidents managed by on-call investigators when necessary.
- In the absence of the Chief Superintendent, may convene a meeting to decide on all complaint matters.

Detective Inspector, State Coordinator:

- Provide advice about any prior liaison with CCC in relation to complaint matters.
- Provides advice on any prior discussions with members initially recording or assessing the complaint.
- In the absence of the Chief Superintendent and Detective Superintendent, may convene a CAC meeting to decide on all complaint matters.

Detective Inspector, Professional Practices Manager Coordinator:

- Provide advice on the direction of complaint files, where there are multiple subject members from various owning and hosting units, to improve efficiency and resolution of the complaint.

- Act as the first point of contact for PPMs who may have queries regarding a matter tasked from the CAC meeting.

Senior Sergeant, CMU:

- Prepare and disseminate the agenda.
- Provide a briefing about each matter to the committee, highlighting relevant decision- making points such as initial assessment classification, including whether the matter is Category A or B, Level 1, 2 or 3 (s. 40 'Commission may issue directions about notifications' of the *Crime and Corruption Act* requirements), CCC reporting requirements and any linked complaint matters.

Sergeant, RAIS:

- Provide an intelligence assessment about each matter.
- Make recommendations about Early Invention Risk Management Strategies.

Administration Officer, CMU:

- Provide administrative support and advice for the meeting, and contemporaneously update PIPS with the CAC attendees; decision, rationale for decision and any specific instructions for the case officer.

2.6.4 Matters considered by the Complaint Assessment Committee

The CAC considers the following types of matters:

- all matters initially assessed by the CMU as involving allegations of 'misconduct';
- all matters reported directly to the CCC and referred to the Service as Police Misconduct, Corrupt Conduct or Staff Member Misconduct;
- by exception, significant incidents or events reported via a Significant Event Message or to ESC On-Call Officers;
- by exception, grounds for discipline other than misconduct;
- by exception, s.40 matters referred back from the CCC after assessment;
- by exception, matters returned after the completion of assessment inquiries; and
- the progress of disciplinary complaints which may require a disciplinary proceeding to ensure timeframes are being met to comply with the Limitation Expiry Date (LED).

2.6.5 Assessment Decision Making

The CAC determination involves the following decisions:

- confirmation of the classification of the conduct or grounds for discipline as defined under s. 7.4 'Grounds for disciplinary action' of the *Police Service Administration Act* or s. 187 of the *Public Service Act*;
- confirmation of reporting requirements under s. 40 'Commission may issue directions about notifications' of the *Crime and Corruption Act*;
- in relation to staff members, confirmation the requirements of Public Service Directive 17/20 have been complied with, prior to assignment for investigation or assessment inquiries;
- Human Rights;
- ensuring the matter has been assigned the correct security classification;
- confirmation of the LED and the Final Due Date (FDD) for investigation timeframes;
- consideration as to whether the information provided requires timely advice between ESC and the subject member's District Officer/Commander for the consideration of 'suspension' or 'stand-down' actions under s. 6.1 of the *Police Service Administration Act* or s. 137 'Suspension' of the *Public Service Act*;
- consideration of the complaint history of the subject member and whether an initiation of Early

Invention Risk Management Strategies is necessary;

- a determination as to what action is necessary to resolve the matter, including identifying any potential criminal offences which are to be considered;
- in the event 'assessment inquiries' are required, any specific inquiries should be recorded and communicated to the relevant PPM via PIPS, including whether the matter is required to be returned to the CAC for further consideration at the completion of those inquiries;
- determining case management responsibilities for each matter. This will ordinarily be the District/Command owning the subject member or a Team Leader, IIG. Where the subject members are from a combination of owning and hosting units, the CAC will, in consultation with the PPM Coordinator, determine the most efficient manner to resolve the complaint;
- determining the level of engagement for each matter. IIG will retain sole investigative responsibility for Level 1 matters; Level 2 matters will be a joint IIG/District investigation; carriage of Level 3 matters will be held by the allocated District/Command with guidance from IIG where required;
- providing any additional direction necessary to deal with any matter involving discipline or a complaint. This could include for example, referring the matter for resolution under another Service policy, holding the matter in abeyance pending the completion of criminal investigations, targeted drug testing, submission of a declarable association, an internal audit or risk management strategies or development of a PDS/MAP;
- determining and recording the time limitation for the commencement of any discipline proceedings:
  - for police officers, pursuant to the *Police Service Administration Act*;
  - for staff members, pursuant to Public Service Directive 17/20 Workplace investigations;
- Governance of disciplinary complaints approaching the FDD and/or LED where a disciplinary proceeding may be necessary. CAC will identify and action a response to disciplinary complaints which present a risk of not being finalised within required time frames.

2.6.6 Assessment of Grounds for Discipline other than Misconduct and Client Service matters

The relevant case manager is responsible for resolving complaints involving grounds for discipline other than misconduct and client service matters.

The State Coordinator is responsible for confirming the initial assessment of any matter reported to ESC classified as:

- a ground for discipline other than misconduct;
- Desktop Managerial Resolution;
- Client Service Matter; or
- plagiarism.

A Senior Sergeant, CMU:

- in the first instance, has the authority to determine these matters are correctly assessed;
- may cause any reasonable inquiry to be undertaken to obtain sufficient material in order to confirm the initial assessment or upgrade the matter to misconduct;
- is to meet with the State Coordinator to discuss any complaint where there is ambiguity concerning the initial assessment;
- by exception, may take any matter to the CAC to confirm the assessment and classification of the complaint;
- if satisfied the complaint has been correctly assessed, task the complaint to the District/Command to resolve.

The relevant PPM is responsible for ensuring if further material becomes apparent which would elevate the substance of the alleged conduct to misconduct (police officers) or corrupt conduct (staff members) and invoke requirements under s. 37 'Duty to notify commission of police misconduct', s. 38 'Duty to notify commission of corrupt conduct' and s. 40 'Commission may issue directions about notifications' of the *Crime and Corruption Act*, such advice is provided to the State Coordinator.

Complaints which are reported as plagiarism will be dealt with in this forum despite having a classification recorded as misconduct.

In circumstances where the CCC refer a complaint to the QPS pursuant to s. 46 of the *Crime and Corruption Act* as Police Misconduct, the complaint will be assessed as either misconduct or another ground for discipline as defined within the *Police Service Administration Act* by staff from CMU and dealt with in accordance with these guidelines. Notwithstanding the determination by CMU, the allegations will be recorded within PIPS as police misconduct as referred from the CCC.

2.7 Post Complaint Assessment Committee Responsibilities

2.7.1 Responsibilities of members of Complaint Assessment Committee

Chief Superintendent, IIG

- To provide a briefing as necessary on specific matters or emerging discipline issues to the AC, ESC.

Detective Superintendent, IIG

- To provide a briefing as necessary to internal investigators assigned a matter for investigation.

Detective Inspector, State Coordinator

- Ensure all other matters of police misconduct (s. 37 'Duty to notify commission of police misconduct') and corrupt conduct by staff members (s. 38 'Duty to notify commission of corrupt conduct') are reported to the CCC in accordance with the QPS/CCC s. 40 'Commission may issue directions about notifications' of the *Crime and Corruption Act* Agreement.

Detective Inspector, Professional Practices Manager

- Where necessary, contact any relevant PPM to provide additional guidance or advice on particular matters arising from the CAC meeting.

Senior Sergeant, Complaint Management Unit

- Where a decision to take 'no further action' is made, prepare outcome letters to the complainant and subject members unless substantial inquiries have already been undertaken by the District/Command PPM in which case the relevant PPM will be tasked to prepare outcome letters;
- Ensure the Complaint Evaluation cover sheet and the decision recorded in PIPS by the Administration Officer are consistent;
- Where necessary, assist/advise administration staff responsible for tasking the matter to a Team Leader, IIG or the respective PPM;

Ensure tasking of complaint matters occurs the same business day as the CAC decision or where exceptional circumstances exist, no later than the next business day.

Executive Manager, Integrity & Ethics (AO8)

- As invited provide advice and guidance on the complaint and compliance with Public Service directives.
- Assess complaints received and ensure pre-investigation matters have been addressed or advise on return of complaint for further managerial action.

2.7.2 Recording the Complaint Assessment Committee decision in PIPS

The record of the decision is made as a 'status entry' in PIPS and includes the following information:

- date of the meeting;
- names of all staff and visitors present at the meeting;
- whether the committee confirmed or changed the complaint classification;
- for staff members, whether the committee determined the conduct met the threshold of corrupt conduct for referral to the CCC;
- what decision was made about the action necessary to resolve the matter (Investigation, Assessment Inquiries with view to LMR, No Further Action, Assessment Inquiries, Police Related Incident Review);
- any specific instructions provided by the CAC to the case officer;
- the LED;
- in circumstances where an amendment is recommended for an LED, authority to change the existing date requires the approval of:
    - The Chief Superintendent, IIG; or
    - The Detective Superintendent, IIG; or
    - The State Coordinator, IIG;
    - For staff members:
        - at 6 months, the appointed Level 3 delegation (Superintendent, Chief Superintendent, or equivalent);
        - at 9 months, the Governance and Monitoring Committee (GAMC), ESC; or
        - at 12 months and thereafter, Commission Chief Executive, Public Service Commission

2.8 Management of Complaint Assessment Committee decisions

2.8.1 Management of Assessment Inquiries

If preliminary inquiries, otherwise known as pre-assessment inquiries, are requested by CAC the PPM will facilitate the undertaking of those and respond to CAC as requested. At the completion of formally assigned assessment inquiries, the PPM is to overview the inquiries undertaken and, with the approval of the case manager, determine the most appropriate course of action to resolve the disciplinary complaint. If there is no direction for the matter to be returned to CAC before finalisation, the PPM may resolve the disciplinary complaint.

Where no further action is recommended, the PPM is to record the decision and rationale for the decision in PIPS. The PPM is to provide an outcome letter to all relevant parties.

Where an LMR strategy should be implemented to address the conduct, the PPM is to record the decision and rationale for the decision in PIPS. The PPM is to detail the disciplinary complaint to the relevant OIC to complete the LMR and update PIPS once the LMR plan has been implemented. The LMR plan serves as the outcome letter for the subject member. The PPM is to provide a separate outcome letter to all other relevant parties.

Where the PPM determines the matter should be upgraded to investigation, the PPM is to record the decision and rationale for the decision in PIPS. The PPM is to promptly advise the State Coordinator via PIPS. The State Coordinator is responsible for ensuring reporting obligations under s. 40'Commission may issue directions about notifications' of the *Crime and Corruption Act* are fulfilled.

If the CAC determine the matter is required to be re-tabled at a CAC meeting following the completion of assessment inquiries, the PPM must return the matter to the State Coordinator via PIPS. Any such

direction and advice will be recorded on PIPS. Irrespective of any prior determination, there is nothing to prevent a disciplinary complaint returning for further assessment and consideration before the CAC.

2.8.2 Notification to complainants

When a disciplinary complaint is detailed to a case officer for investigation, they are responsible for contacting the complainant within 7 days and providing contact details and advice concerning how the complaint is to be resolved. Details of the contact are to be included on PIPS. At the end of the investigation or LMR process, the case manager is responsible for providing an outcome letter to the complainant.

A member of the Service who reports misconduct should also be provided an outcome letter. However, a member who is merely recording a complaint on PIPS as part of their duties is not entitled to receive an outcome letter.

2.9 The role of the Joint Assessment and Moderation Committee (JAMC)

The JAMC is comprised of representatives from the CCC and the Service. Its role is to:

- consider and assess complaints to consistently determine the appropriate process for resolution;
- consider and examine new disciplinary complaint investigations. These may be disciplinary complaints which are subject to CCC review or disciplinary complaints which otherwise require the assessment of the committee, to identify any issues of concern or public interest to focus the investigation and reduce disagreements and unnecessary delays; and
- promote professionalism and best practice through guidance and education within each organisation.

The Investigation Consultation Process (ICP) is the second tier of the JAMC process. Topics for discussion may include opportunities for collaboration between the QPS and the CCC on contemporary investigative methodologies. Additionally, the QPS can raise issues arising during an investigation which are contentious or impact on resources and the CCC can make clear its expectations regarding investigations and outcomes.

All CCC matters subject to monitoring are tabled at JAMC (Tier 1) but not all matters are discussed at the ICP as many are not contentious or require further examination by decision makers representing the CCC and the QPS.

For additional information, refer to the JAMC Statement of Purpose, on the ESC's SharePoint site on the QPS Intranet.

2.10 Conduct and Performance Excellence Assessment

Conduct and Performance Excellence (CaPE) cases relate to complaints about Queensland public service employees (for further information refer to the CaPE section of the Public Service Commission website). All public sector agencies have reporting requirements to the Public Service Commission on a quarterly basis. CaPE cases are categorised as 1, 2 or 3 matters.

Category 1 matters are minor in nature. Category 2 may include ongoing repeated Category 1 behaviour or minor misconduct (contravention of the Code of Conduct) which is not wilful or malicious. Category 3 includes serious misconduct, criminal offences and serious neglect of performance of duties.

The Service reports to the Public Service Commissioner quarterly. To meet CaPE reporting requirements, the Research Support Officer, RAIS is responsible for extracting the relevant data for public service employees from PIPS and manually assessing the CaPE category. If ambiguity exists regarding the categorisation of a CaPE matter, the State Coordinator is responsible for the determination of the category.

2.11 Management of disciplinary complaints where members separate from the Service

This section applies when a member of the Service separates from the Service with an open disciplinary complaint. When notification is received that a member is separating from the Service:

(i) a member of the CMU is to complete searches to ascertain if the separating member has any open disciplinary complaints;

(ii) if any open disciplinary complaints are identified, a task is to be sent to the Case Manager who is responsible for resolving the complaints;

(iii) the case manager should task a PPM/Team Leader to conduct enquiries and provide advice concerning whether a disciplinary investigation should be started/continued with a view to making a Post Separation Disciplinary Declaration under Part 7A of the PSAA or section 188A of the PS Act (advice may be sought from the Office Manager, Discipline Support Unit to assist in the decision-making process; section 7A.1(3A) of the PSAA also provides matters to be considered for former police officers);

(iv) upon receipt of advice from the PPM/Team Leader, the case manager is to determine whether an investigation is to be started/continued with a view to commencing a post separation disciplinary proceeding or to finalise the complaints;

(v) where a decision is made to finalise the complaints and not commence a post separation disciplinary proceeding, the case manager is to forward advice of this decision to the CMU (**for police officers, advice must also be forwarded to the C&CC on the appropriate notice to allow them to consider their right of review**);

(vi) where a determination is made to start/continue an investigation, that investigation is continued pursuant to Chapters four and five of these guidelines.

Where the C&CC has expressed an interest in a matter, advice should be sought from them before making a determination. In relation to separation approval for police officers, when less than three months' notice is given, HR Delegation 285 requires prior consultation with ESC and the C&CC by a delegated officer.

2.12 Consideration of Implementing a Professional Development Strategy or Management Action Plan on Receipt of Disciplinary Complaints

Before a Professional Development Strategy (PDS) or Management Action Plan (MAP) is imposed, the contents of the relevant documents should be explained to the subject member. Where possible, the subject member should also be provided with an opportunity to have input into the contents of the PDS Document (PDSD) or MAP before it is imposed.

2.12.1 Police

The term 'Professional Development Strategy' is defined in s. 7.3 'Definitions for part' of the *Police Service Administration Act*. Pursuant to s. 7.9 'Implementation of professional development strategies by commissioner' of the *Police Service Administration Act*, when a disciplinary complaint is received the Commissioner must consider whether to impose a PDS on the subject officer. The authority to consider whether to impose a PDS has been delegated to Level 3 (including District Officers and Assistant District Officers) within the Human Resource Delegations and Approval Authorities Schedule.

When a disciplinary complaint is detailed to a case manager by the CMU, the case manager is to promptly consider whether it is desirable to implement a PDS in order to manage the member, the risk and reputational harm to the Service during the conduct of a disciplinary investigation and or court proceedings. The case manager may consult with the PPM, the subject member's OIC/supervisor or any other relevant person to determine whether a PDS should be implemented or to determine the type of PDS required. The decision concerning whether to implement a PDS should be recorded on PIPS.

At any time after a complaint has been received but before the matter is finalised, a senior member may impose a PDS on a subject member. The purpose of imposing any PDS must be to protect the reputation of the Service by mitigating risk and/or providing development or training to the subject member. As such, the imposition of any PDS does not involve a finding in relation to the allegation/s and should not cause a subject member any financial determent. The PDS should be included in a PDSD. A PDSD is to be used to record any strategies imposed upon a subject member. A copy of the PDSD template is available on the ESC's SharePoint site on the QPS Intranet.

When a matter is detailed for consideration of LMR by the CMU, the LMR Plan will be used to record the PDS. The decision to refer a matter for LMR will satisfy the requirement imposed by s. 7.9 'Implementation of professional development strategies by commissioner' of the *Police Service Administration Act*.

See Chapter 3, s. 3.3 of these guidelines for further direction on formulating a PDS.

2.12.2 Staff members

For staff members requiring development, a Management Action Plan (MAP) is used. A MAP is not to be used for reassignment but is to only address development objectives and tasks. A MAP is not to be used punitively.

If a staff member requires reassignment, while an investigation is undertaken, a written direction, addressing the reassignment is to be provided.

3. Local Management Resolution

3.1 Purpose

The purpose of this Chapter is to provide guidance for resolving disciplinary complaints through Local Management Resolution (LMR).

The intention of resolving disciplinary complaints through LMR is to provide a remedial approach to improve the conduct of members as an outcome to a complaint.

The process does not involve a finding a ground for discipline has been substantiated but identifies areas for improvement. An LMR will:

- preferably be developed and implemented by the Supervisor/Officer in Charge (OIC) in consultation with the subject member who may seek advice from a union representative;
- include an LMR Plan which includes one or more Professional Development Strategies (PDS) or Management Action Plan (MAP) to address the conduct;
- be generally finalised within 28 days;
- not be more onerous than necessary to improve performance and is not to be used as a means of punishing a subject member;
- be recorded on the subject member's Performance Development Assessment by way of a performance log using the Ignite system; and
- be recorded on the Police Integrity and Professional Standards (PIPS) system as the outcome for the complaint.

* For further information concerning appropriate types of management action concerning staff members, refer to the Conduct and Performance Excellence (CaPE) section of the Public Service Commission website.

3.2 General Information

LMR refers to one or more PDS or MAP implemented to address inappropriate conduct. The purpose of implementing an LMR Plan is to improve performance by providing appropriate training and guidance to the member whose conduct has come into question due to an identified underlying issue or issues.

LMR is a remedial approach which recognises members will make genuine mistakes and provides a learning and development approach aimed to improve performance and align the member's behaviour with the organisation's principles.

LMR should not merely default to the delivery of managerial guidance or chastisement as a tool to address behaviour. Rather, it should involve genuine engagement by a supervisor with the member, where a raft of management options is explored.

Any LMR Plan should be simple, effective, transparent, fair, provide measurable outcomes for, and attempt to engage, subject members.

There are several methods for referring disciplinary complaints for finalisation using LMR, including:

- directly from State Co-Ordinator, ESC;
- as an outcome from the Complaint Assessment Committee (CAC);
- as an outcome of assessment inquiries; or
- as an outcome of an investigation.

OIC/supervisors who are detailed disciplinary complaints to resolve through LMR should first ensure sufficient assessment inquiries have been completed to identify the conduct of the subject member which requires improvement.

Several factors could affect the suitability of a matter to be resolved by LMR, including the seriousness of the matter, level of insight on the part of the subject member and willingness to engage in the process. The OIC/supervisor should consult with the Professional Practice Manager (PPM) if there is doubt about the suitability of the disciplinary complaint to be resolved by LMR. If, after consulting with the PPM, the OIC/Supervisor believes the complaint is not suitable to be resolved by LMR and should be finalised with no further action, they are to forward written correspondence to the case manager detailing the reasons and requesting the matter be re-considered. If the case manager maintains the determination of LMR and the OIC/supervisor still disagrees with the decision, they may forward written correspondence to the Assistant Commissioner, ESC asking for a final determination.

3.3 Formulating Professional Development Strategies or Management Action Plans

If a disciplinary complaint is assessed as suitable for LMR, the subject member's OIC/supervisor is primarily responsible for formulating appropriate PDS/MAP to address the member's conduct. Wherever possible these strategies should be developed in consultation with the subject member by including them in the decision-making process to correct their behaviour. Involvement from the subject member's union representative may also be appropriate.

The subject member is entitled to have a union representative or support person present during meetings to formulate the PDS/MAP; however, it should be emphasised LMR is not a legal or adversarial process. The object is to identify and address any areas for improvement. Any recommendations provided by the PPM must be considered by the OIC/supervisor when formulating PDS.

For central function units, where PDS/MAP are being considered by an owning area, the owning area should consult with the hosting area. A hosting area may have responsibility for the management of a PDS/MAP. The CAC may detail disciplinary complaints for consideration of LMR to the owning or hosting area after considering the circumstances of the matter.

PDS/MAP to address the identified conduct of a member may comprise one or more options selected from the indicative list available on the ESC's webpage on the Service Intranet. The options listed are suggestions and not intended to be an exhaustive list. The OIC/supervisor is encouraged to be flexible in customising strategies to effectively address particular behaviour/conduct, to prevent it recurring and improve overall performance. If appropriate, the complainant's concerns should also be considered while formulating the strategies. A subject member should be encouraged to participate and self-identify improvement strategies. An LMR Plan must be tailored to the individual subject member's circumstances; what may be suitable for one member may not be suitable for another.

3.4 Local Management Resolution Plan

After developing appropriate PDS/MAP, the implementation of an LMR Plan will be required. This Plan is to be developed by the OIC/supervisor in consultation with the subject member. The plan is to include the type of disciplinary complaint, identified areas where improvement can be achieved, the PDS/MAP to address the conduct and a proposed completion date. The PDS/MAP in the LMR Plan should address each area for improvement.

The plan is to be signed by the subject member and the OIC/supervisor and is the formal advice to the member on the outcome of the disciplinary complaint. The PPM or case manager may review an LMR Plan and provide general or specific feedback to the OIC/supervisor concerning expectations for LMR Plans.

Where a subject member declines to consent to an LMR Plan, the OIC/supervisor may direct the member to participate in the LMR Plan. The subject member is then required to sign the plan acknowledging they have been directed to participate.

3.5 Implementing a Local Management Resolution Plan

The OIC/supervisor is to ensure the LMR Plan is uploaded onto the member's Ignite record.

While owning areas will generally have the overarching responsibility for central function units, hosting areas have a role to provide support to give effect to the implementation of an LMR Plan.

The relevant OIC/supervisor is to, where appropriate, progressively monitor and evaluate the success of the LMR Plan in terms of achieving identified improvement(s) in the conduct of the subject member. This includes ensuring the successful completion of training or other development activities required of the member as part of the LMR Plan.

Upon completion of the PDS/MAP included in the LMR Plan, the relevant OIC/supervisor is to make a performance log entry on the subject member's PDA to record the completion of the Plan and any relevant comments about the member's performance relating to the identified area for improvement.

Each PDS/MAP should be finalised in a timely manner (generally within 28 days).

3.6 Modification of the Local Management Resolution Plan

Once a disciplinary complaint has been resolved through LMR, the LMR Plan is to be managed through the subject member's PDA. While the OIC/supervisor should endeavour to formulate an optimal LMR Plan:

(i) if at any time during or at the conclusion of implementation, any aspect of the Plan is assessed as being ineffectual, the relevant OIC/supervisor may, after consulting the subject member, modify the PDS/MAP in order to achieve the desired objective (any changes are to be recorded on the subject member's PDA); or

(ii) if at any time during implementation of the LMR Plan, a fresh disciplinary complaint of a similar nature is made or further facts are identified, which deem the matter more serious or contain a criminal element against the subject member, the relevant OIC/supervisor is to consult with the PPM to determine if any modification is required to the LMR Plan.

The OIC/supervisor will advise their PPM of any changes to an LMR Plan.

3.7 Recording the Local Management Resolution Process

The preference of the Service is conversations and meetings during LMR will not be electronically recorded. An OIC/supervisor responsible for LMR is not obliged to electronically record any conversations between the complainant, witnesses or the subject member.

Except for mediation/conciliation, there is no objection to a subject member recording the LMR process, provided the OIC/supervisor responsible for the LMR is advised prior to the commencement of the recording. Similarly, there is no objection to a complainant recording any such conversations they are involved in.

3.8 Effect of Local Management Resolution on a Subject Member's Personal Record

The LMR Plan and the associated PDS/MAP form part of the subject member's employment and disciplinary history and are recorded on the subject member's PDA. The LMR Plan is recorded on the complaint management database and may be used in any future disciplinary decisions in assessing whether disciplinary proceedings should be instigated for any future alleged misconduct or other ground for discipline.

Subject to the meaning of 'employee record' within s. 15 'Meaning of employee record' of the *Public Service Regulation 2018* (Qld), a staff member may have the right to respond to an LMR Plan in writing as provided by s. 17 'Dealing with employee record if detrimental to employee's interests' of the *Public Service Regulation*.

3.9 Failure of member to complete strategies agreed to in LMR Plan

Subject members must complete all PDS/MAP within the timeframes agreed to in an LMR Plan. Any failure to complete a PDS/MAP is to be treated as a performance issue by the subject member's supervisor. A subject member who fails to cooperate with their supervisor to resolve any incomplete PDS/MAP, without reasonable excuse, may be subject to another disciplinary complaint.

4. Investigative Processes

4.1 Purpose

This chapter provides guidance for disciplinary complaints which are referred for investigation regarding police. The purpose of a disciplinary investigation is to identify sufficient material to allow a determination to be made concerning the liability of a member to be disciplined. The investigation should also provide information concerning why any inappropriate conduct occurred to enable a holistic response which addresses any underlying issues, as well as the actual conduct.

A disciplinary investigation is only undertaken when a disciplinary complaint cannot be resolved through Local Management Resolution (LMR).

Staff members: a disciplinary investigation is only undertaken when a complaint cannot be resolved through any other management action, in line with Public Service Directive 14/20 Discipline.

Achieving the purpose of discipline can be undermined by undue delays. As such, case officers should complete disciplinary investigations promptly, and within legislated and policy time frames. Once reasonable enquiries have been completed to determine if the alleged conduct occurred, and the contributing factors of any ground for discipline have been established, there is no requirement to 'search down every rabbit hole', to detect previously unidentified grounds for discipline.

Case officers should also consider limiting investigations where there is clear evidence, such as admissions from the subject member relating to the disciplinary complaint and/or alleged conduct. Case officers are to provide regular updates to Professional Practice Managers (PPMs) including advice of any matter which will affect their ability to finalise an investigation within required timeframes.

If criminal allegations form part of the complaint, this aspect of the investigation should be conducted pursuant to normal Service procedures. All case officers are to be cognisant of the need to silo information which is obtained using legislative powers (e.g. evidence obtained during a *Police Powers and Responsibilities Act 2000* (Qld) warrant cannot be used in the discipline investigation; the directed interview of a subject member cannot be used as evidence in the criminal investigation). The case officer must be able to show a separation of relevant information in their decision making. Where criminal charges are being considered, it is vital to ensure the arresting officer has not been tainted by any information obtained using coercive powers pursuant to the *Police Service Administration Act* (e.g. directed interviews).

It is noted that Part 5 of the PSAA outlines the unique employment conditions for Recruits (section 5.11) and First Year Constables (Section 5.12). The Service recognises that members employed under this part may also be subject to processes outside of the discipline process as contained in Part 7 of the PSAA. Matters relevant to consideration under Part 5 of the PSAA may be referred to the Command responsible for Recruits and First Year Constables at any time. This is independent of the disciplinary process set out in these Guidelines.

4.2 Authority to Investigate

The authority to commence an investigation is enlivened in the first instance by the instructions of the Complaint Assessment Committee (CAC). Any decision to change the investigation status of a disciplinary complaint is to be endorsed by the case manager. Case managers are to ensure they comply with any specific directions from CAC or the CCC (Public Interest Review, Merit & Compliance).

Staff members: Public Service Directive 14/20 Discipline requires before an investigation can be commenced, there must be evidence of all management action, alternative dispute resolution, or performance management strategies having been exhausted, prior to commencing an investigation. CAC will consider these provisions before allocating a file and the matter will not be assigned for investigation unless this requirement is met.

The case manager is responsible for appointing case officers to conduct discipline investigations. Case managers should avoid appointing case officers where an actual or potential conflict of interest exists or where they have direct supervisory responsibility over the subject member.

For matters not being investigated by the Internal Investigation Group (IIG) the case officer, where practicable, should be senior in rank to the subject member. Consideration may be given to detailing the investigation to a member who is not senior in rank to the subject member and allocating a more senior member to overview the investigation (e.g. an experienced detective or member may be allocated the investigation under the supervision of a member who is senior to the subject member).

Where the subject member is attached to a central function unit, the State Coordinator will determine whether the hosting or owning area will be the responsible case manager.

Staff members: where possible, an investigation of a staff member should be conducted by a member of the Service, unless it is reasonably necessary or expeditious to use an external investigator.

4.3 Scope and Purpose of the Investigation

The scope and purpose (sometimes called the terms of reference) will dictate:

- what is to be investigated;
- the legislative powers needed to investigate the complaint;
- the resources needed;
- the period of time which the investigation will cover (i.e. incident only; events leading up to, or following the incident; a course of conduct over a specific period of time);
- the outcomes required (e.g. conduct criminal investigation and report to CCC before proceeding); and
- the criminal or discipline aspects of the complaint to be investigated.

The scope and purpose will assist the case officer to determine the extent of the investigation. Case officers should consult with their case manager before extending an investigation outside the stated scope and purpose. Similarly, if investigations in relation to a certain aspect were not done, case officers should articulate what aspect was not investigated and the reasons why (e.g. organisational issues may be referred to another more appropriate unit).

Staff members: Public Service Commission Directive 17/20 Discipline requires every investigation of a staff member must be commenced with the development of a 'terms of reference' document (TOR). A staff member investigation cannot go beyond the scope of these terms. The TOR will be developed and signed off by the PPM, or Team Leader within IIG. A staff member's investigation time frame commences when the TOR are signed off and issued.

See proformas on the ESC's SharePoint site:

- *ESC Terms of Reference document*

4.4 Extent of the investigation

For a discipline system to be effective, the resources expended should be relative to the gravity/seriousness of the matter under investigation. The case officer is to make a reasoned decision as to the extent of the investigation, taking into account:

(i) instructions of the CAC;

(ii) CCC directions and/or requirements;

(iii) any criminal aspects of the conduct;

(iv) the seriousness of the alleged conduct;

(v) procedural fairness and natural justice;

(vi) availability of evidence with a significant probative value;

(vii) subject members admitting to all or some of the allegations;

(viii) suitability of the matter to be resolved by Abbreviated Discipline Proceeding (ADP); and

(ix) the applicable standard of proof (criminal-beyond reasonable doubt, discipline-balance of probabilities).

4.5 Timeliness - Alternatives to Full Investigation

Case officers should complete investigations in a timely manner, focussing on the scope of the investigation.

Case officers should provide interim reports to the PPM every four weeks until the matter is finalised. To prevent overdue investigations, the PPM is to play an active role in ensuring the timely completion of investigations. In any event all investigations should be completed by the FDD.

Case officers should be aware investigations have legislated and policy driven time frames which must be complied with. Case officers should liaise with their PPM as soon as they determine they may not be able to meet these timeframes.

During investigations, case officers may consider alternate strategies to expedite the resolution of a disciplinary complaint. Alternate strategies include:

- **Local Management Resolution:** Disciplinary complaints are detailed for investigation when the seriousness indicates a sanction may be necessary to resolve the matter. If it becomes clear during an investigation the disciplinary complaint is suitable for LMR, the matter can be referred to the PPM for consideration. The PPM may consult with the case manager, who may authorise changing how the complaint is resolved. Before changing the complaint to LMR, the PPM will ensure the decision is not in conflict with any CAC direction or overview by the CC (PIR or M&C). Factors which could make a disciplinary complaint suitable for LMR include: insight by the subject member, organisational issues leading to the grounds for discipline, or medical issues suffered by the subject member.
- **Abbreviated Discipline Proceeding (Police only):** Resolving a matter through ADP can significantly reduce the amount of investigation and time required to finalise a disciplinary complaint. A disciplinary complaint may be suitable for ADP when the details of the ground for discipline are clear, and the subject member has shown insight into their conduct. Whenever a subject member admits to the alleged conduct an ADP should beconsidered.
- **Multiple subject members:** Some disciplinary complaints will involve multiple subject members who may have differing levels of culpability. If it becomes clear the conduct of one or more of the listed subject members is less serious than the main subject member, the case officer should consider completing an interim report recommending LMR for the relevant subject members prior to the completion of the investigation report.

  Where subject members include both sworn officer and staff members, case officers need to be mindful of the time frame for investigation completion, for each member, and understand these time frames need to be complied with.
- **Circumstances of allegations clear:** Where the circumstances surrounding the allegations are clear and there is sufficient evidence to show this (CCTV footage, subject member admissions), the case officer can consider limiting the extent of the investigation. The case officer should still ensure sufficient investigation has been completed to determine what happened, why it happened and how the conduct should be addressed. For example, where video footage is available which clearly shows the incident, there is usually no need to interview every witness.

Case officers should consult with the PPM before recommending an alternate strategy to investigation. An interim report is to be completed to recommend an alternate strategy to resolve the disciplinary complaint.

4.6 Criminal Allegations

A disciplinary complaint may include criminal allegations as well as discipline allegations. Any criminal investigation will take precedence over the discipline investigation and a decision will need to be made concerning criminal charges before the discipline investigation is conducted (usually the directed interview of the subject member).

With the approval of the Superintendent, IIG, where circumstances indicate a need and sufficient resources are available, both investigations can be undertaken simultaneously. Where criminal and discipline investigations are conducted simultaneously, overt steps are to be taken to ensure no inadmissible material influences either investigation. This may involve appointing separate discipline and criminal investigators or quarantining an investigator from certain aspects.

If information which identifies another criminal allegation is discovered during a discipline investigation, the criminal allegation is to again take precedence over the discipline investigation. Refer to s. 5.2 of the Investigative Issues chapter of these guidelines (Criminal/Discipline Investigations) and the included case studies for further guidance on this issue. If information arose out of a directed interview with the member who would be the suspect for the new criminal allegation, the content of the interview cannot be used to commence or progress a criminal investigation.

Further advice should be obtained from a PPM if necessary.

4.7 The Investigation

The role of the case officer is to investigate all aspects of the allegation/s and any possible defences or exculpations raised. The Service requires an objective, impartial, timely and fair investigation, which is guided by the principles of natural justice and procedural fairness, to establish whether the alleged conduct occurred.

The disciplinary investigation is to go beyond just finding out what happened. If the evidence indicates the alleged conduct occurred, the case officer should attempt to establish reasons why the alleged conduct occurred. Ideally, a case officer will identify any organisational, supervisory or member shortcomings which require improvement.

The aim is to ensure a holistic and remedial response to the incident can be implemented. If the case officer determines there is sufficient evidence to refer any matter to a disciplinary proceeding, the case officer is required to provide a recommendation to the case manager, along with all the evidence, to allow a prescribed officer or decision maker to decide on substantiation and sanction (including professional development strategies which may be appropriate).

Upon receipt of an internal investigation file, the case officer should:

- review the file and identify all the allegations to be addressed in the investigation report;
- identify any requirements for the investigation imposed by CAC or CCC;
- identify any criminal aspects to the allegations;
- contact the complainant and obtain their full version of events (if not already obtained);
- formulate an investigation plan after considering the scope and purpose (or terms of reference) of the investigation (investigators should liaise with the PPM if unsure on this point);
- obtain versions from relevant witnesses;
- obtain subject member versions (consider interviewing subject member at earliest opportunity as this may alleviate the need to obtain further evidence);
- obtain all relevant and necessary evidence;
- once sufficient information has been obtained, complete an investigation report, with a recommendation as to the action to be taken

4.8 Witness/subject member versions

Timeliness is a key factor in determining the effectiveness of a discipline system. Arranging in-person interviews can be time consuming and create additional tasks, such as the need to complete an interview synopsis and a transcript. While in-person interviews are preferable for the most serious allegations, case officers should first consider other formats to assist in expediting the investigation. For example:

- email versions;
- telephone interviews;
- Skype or other electronic means;
- written statement (including via union or legal representative).

A case officer may decide to interview a crucial witness but rely on email versions from all other witnesses. A decision may also be made to initially obtain email versions from all witnesses, and conduct follow up inquiries if deemed necessary. The follow up enquiries could be in the form of interview, statement or additional email version.

All in-person interviews are to be electronically recorded. Upon request, a copy of the recording should be provided to the interviewee as soon as practicable.

Unless special circumstances exist, the case officer is to provide reasonable notice (in writing) of the intention to interview the witness/subject member, so mutually suitable arrangements for the interview can be made. The nature of the allegations, including whether they are criminal or discipline, is to be stated in the notice. It is appropriate to identify the incident including date, time and place to enable the witness/subject member to be prepared for an

interview and obtain any relevant documentation.

A witness/subject member may request a third party, such as a support person, union representative or legal representative, to be present during an interview. The witness/subject member will be responsible for organising the attendance of a third party and any costs involved. The case officer conducting the interview has the discretion to decide whether a particular third party is permitted to be present during an interview. Any decision to decline such a request must be justifiable and comply with the principles of natural justice and procedural fairness (e.g. the nominated support person is a subject member for the matter).

Any third party attending an interview must understand their role is to support the interviewee (and in the case of a legal or union representative, to provide advice) and not to take any direct part in the interview, unless permitted by the interviewer. A legal or union representative should be allowed to ask reasonable and/or clarifying questions during the interview.

However, a third party who is hindering or unduly interfering with an interview may be required to leave, with the interview continued in their absence. Before this occurs, the third party should be warned and given an opportunity to stop any interfering behaviour. Once again, any decision to exclude a third party from an interview must be justifiable and comply with the principles of natural justice and procedural fairness.

For further information on the role of the support person see the Public Service Commission webpage (printable 'Role of a Support Person' document located on the ESC webpage on the Service Intranet).

4.8.1 Complainant

The complainant should be contacted, and a version obtained in all investigations, to clarify the allegations and to also determine their expectations as to the resolution of the disciplinary complaint. However, case officers should not unnecessarily delay investigations where there are difficulties contacting the complainant. In some cases, there may already be enough information obtained from the complainant to allow the case officer to conduct the investigation without further interview. Any in-person interview with the complainant is to be electronically recorded. The case officer is to ensure reasonable enquiries are conducted to obtain full details of the complainant's version of the allegations (e.g. emailed questions, statement).

When a complaint is withdrawn, the case officer should establish the reason for the withdrawal from the complainant and confirm no other person coerced them into withdrawing the complaint. If possible, the withdrawal should be recorded electronically or in writing. Where the criminal and/or discipline aspects of a complaint is withdrawn, the case officer should continue with an investigation until it becomes clear there is insufficient evidence to proceed.

The withdrawal or absence of a complaint by the complainant does not alleviate the need to investigate the alleged conduct.

4.8.2 Subject member

Subject members should be interviewed in person, unless exceptional circumstances exist (e.g. medical condition would be aggravated by face to face contact with investigators). Case officers who are considering an alternative to an in-person interview with the subject member, should first consult their PPM for advice.

Subject to any investigative constraints, consideration should be given to conducting a discipline interview with the subject member at the earliest opportunity. This strategy may limit the need for further avenues of enquiry, as the subject member may make full admissions to the alleged conduct. If necessary, there is nothing to prohibit further interviews or enquiries of the subject member to clarify any issues raised by other witnesses.

In all matters involving allegations of criminal offences, a *Police Powers and Responsibilities Act* interview will be offered, and if accepted, conducted before any directed discipline interview. If the case officer is planning to pursue criminal charges, consideration of the subject member's *Police Powers and Responsibilities Act* rights (including right to silence and the right to a friend/relative or lawyer) is to be had. After the *Police Powers and Responsibilities Act* interview is conducted (or offer declined), the case officer is to consider whether criminal charges will be preferred before conducting a directed discipline interview. Where criminal charges are being considered, it will be necessary to delay a disciplinary interview. Where criminal charges have been ruled out, the case officer is to provide a status update to the PPM (or for IIG investigations the team leader). The PPM/team leader is to review the decision and ensure there are no reporting requirements from the CCC. The PPM/team leader is to provide advice to

the case officer when the discipline interview can proceed.

Any admissions or information supplied during a directed interview cannot be used against the member making the admission, in a criminal proceeding. Further, they cannot be used to inform a criminal investigation and must be isolated from any criminal investigators.

In exceptional circumstances (e.g. extended leave), consideration may be given to progressing a matter to disciplinary proceedings without interviewing the subject member. Natural justice and the opportunity to provide a version, will be provided to the subject member during the disciplinary proceeding. Case officers should consult with their PPM if considering this course of action.

4.8.3 Interviewing members on extended sick or other leave

The case manager is to be consulted before attempting to arrange an interview with a member who is on extended sick leave. If possible, contact with the member on sick leave should be initiated through the injury management coordinator or the member's legal or union representative. If the member or their representative indicate an interview is not possible due to a medical condition, a medical certificate should be requested. The member's medical practitioner should be asked to comment on the member's ability to participate in an interview, rather than whether they are fit for full duties. Usual investigate practices should be considered when investigating criminal offences.

For lengthy absences, case officers should make regular enquiries on the status of the member on sick leave to ensure matters are progressed diligently.

4.8.4 Transcripts

A summary of the evidence provided by each witness is to be included in an investigation report. For serious matters, or for key witnesses, it may be necessary to include an interview synopsis, as an attachment to the investigation report.

For matters which subject of disciplinary proceedings, full transcripts may be required. As part of preparation for disciplinary proceedings, the member assisting a prescribed officer or decision maker (the PPM) will consult as to if any transcripts are required. The responsibility for completing transcripts remains with the case manager, unless determined otherwise by the Chief Superintendent or Superintendent, IIG.

The necessity for completing transcripts can also be addressed during any conferencing conducted as part of the discipline proceeding. Transcripts will not be required for matters to be resolved by ADP.

4.9 Additional Allegations

Where new allegations are identified during an investigation, details must be included in the investigation report.

If the new allegations relate to members who are not listed as subject members, advice must be provided to the PPM as soon as practicable. The PPM should also be advised if additional, more serious allegations are identified relating to the existing subject member/s.

Staff members: If new allegations are identified during the investigation of a staff member, but prior to interviewing the staff member, the case officer must advise the PPM, who will consider the matter and, if required, update the terms of reference for the investigation, prior to the interview.

If new allegations are identified during a staff member interview, the case officer should continue to question the staff member, but immediately notify the PPM after the interview, so the terms of reference can be considered and updated if necessary.

The PPM is responsible for entering additional allegations on the PIPS system and advising the State Coordinator, for consideration of notifying the CCC in accordance with the Service's reporting requirements under the provisions of the *Crime and Corruption Act*.

4.10 Commissioner's direction concerning disciplinary investigation

Pursuant to s. 4.9 of the Police Service Administration Act 1990, all members of the police service are directed to:

- *Truthfully, completely and promptly answer all questions directed to them by a member responsible*

for conducting an enquiry or investigation on behalf of the Commissioner.

- *Comply with any reasonable direction to assist a member responsible for conducting an enquiry or investigation on behalf of the Commissioner.*
- *Participate in any disciplinary proceeding honestly and in good faith.*

The preceding direction applies to administrative and disciplinary matters but does not apply to criminal matters. Any material obtained in compliance with the above direction is not admissible in criminal proceedings against the person subject of the direction but can be used in subsequent discipline proceedings. Such information cannot be used to inform a criminal investigation and should be siloed from any criminal investigators.

A member who is conducting an enquiry or investigation on behalf of the Commissioner should reinforce the Commissioner's direction before interviewing or directing a member to assist an investigation. Suggested wording:

For interview:

The Commissioner has directed all members of the Service to truthfully, completely and promptly answer all questions directed to them by a member responsible for conducting an enquiry or investigation on behalf of the Commissioner. Should you fail to comply with this direction, you may be liable to disciplinary action.

To assist investigation:

The Commissioner has directed all members of the Service to comply with any reasonable direction to assist a member responsible for conducting an enquiry or investigation on behalf of the Commissioner. Should you fail to comply with this direction, you may be liable to disciplinary action.

Case officers can also give other lawful directions to members of the service as part of the investigation. This would include a direction not to discuss the matter with any person other than a legal representative, Senior Human Services Officer, medical practitioner or union representative, not involved in the matter.

A reminder of the direction may also be given during assessment enquires or when ascertaining details from police witnesses at critical incidents.

4.11 Management response during investigation

Case officers conducting investigations are not to use LMR to resolve a disciplinary complaint they are investigating, during the investigation. If an allegation against a subject member is suitable for LMR, an interim report is to be submitted making a recommendation.

Supervisors and managers, however, retain responsibility for appropriately managing a subject member during an investigation, including providing any necessary support. As such, supervisors and managers should ensure management action is taken to prevent the repetition of any inappropriate behaviour and manage the work performance of the subject member. Such action may include PDS, temporary redeployment or modification of duties while the matter is being investigated. These steps must be documented (Professional Development Strategy Document – PDSD for police or MAP and written direction for staff members) and can be considered when determining whether to instigate disciplinary proceedings and determining an appropriate outcome of any proceedings. Any action taken must be reasonable and designed to address risk, prevent inappropriate conduct or improve performance. The action must not be more onerous than necessary to achieve these purposes and are not to be used as a form of punishment.

Staff members: note a MAP should not be used to temporarily redeploy a staff member, to mitigate risk. If redeployment is required, a written direction should be given. A MAP is only to be used to provide development and learning objectives for staff members – they are not for risk management action.

For serious matters, if a manager is unable to address the risk posed by the alleged conduct of the subject member, consideration should be given to the legislative authorities to suspend or stand down provided by s. 6 'Standing down and suspension' of the *Police Service Administration Act* and s.137 'Suspension' of the *Public Service Act*.

4.12 Investigation reports

Investigation reports are to be submitted to the PPM promptly, once all necessary enquiries are conducted. The detail provided in an investigation report is to be directly proportionate to the extent of the investigation determined appropriate. See investigation report proforma and guide for further details.

Case officers should not state any outcome as a 'finding' in the investigation report. Their role is to gather and assess evidence, with a view to providing a recommendation to the case manager on any proposed action.

4.13 Overview of investigation

The case manager is to overview the investigation and, where satisfied all reasonable enquiries have been undertaken:

- If the conduct is not capable of being substantiated, complete all necessary outcome notices and finalise the matter.
- If a disciplinary sanction is not considered necessary, arrange for LMR or other action to be undertaken.
- If a disciplinary sanction is considered necessary, appoint a prescribed officer/decision maker to deal with the matter.
    - In deciding whether to refer a complaint involving a police officer to a prescribed officer, the case manager must have regard to the following matters pursuant to s. 7.10 of the *Police Service Administration Act*:
        - any professional development strategy, or other management action, implemented in relation to the subject officer;
        - whether implementation of any other professional development strategy would be sufficient to achieve the purposes mentioned in s. 7.1(b) 'Main purposes of part' of the *Police Service Administration Act*;
        - the subject officer's disciplinary history and service history;
        - the seriousness of the conduct to which the complaint relates; and
        - whether it is necessary to take disciplinary action against the subject officer to achieve the purposes mentioned in s. 7.1(b).
    - If a matter is to be referred to a prescribed officer, consider the level of prescribed officer required, and keep in mind the subject matter, which may be subject to a Commissioner's direction as to where the matter is to be heard (for example, the Office of State Discipline).

The case manager must comply with any directions from ESC concerning the resolution of the disciplinary complaint. For disciplinary complaints which are subject to CCC review, the case manager is to forward the overview report to ESC. ESC will retain responsibility for consultation between the Service and the CCC.

4.14 Client and Subject Member feedback

A member responsible for resolving or investigating a disciplinary complaint should update the complainant on the progress of the matter at least every eight weeks. Once a subject member is aware they are under investigation, they should also be updated on the status of the investigation at least every eight weeks.

Consideration should also be given to updating the complainant and subject member whenever there is a significant development in the investigation.

A PPM may provide updates on the status of an investigation on the request of a subject member, however, advice should be first sought from the case officer, to ensure the integrity of an investigation is not compromised. In many matters it may be desirable to provide status only advice to a subject member or their representative (e.g. awaiting assessment, being overviewed; investigation in- progress).

5. Investigative Issues

5.1 Conflicts of Interest

Where a case officer is assigned a matter for investigation and an actual or perceived conflict of interest is identified between the case officer and the subject member, or the complainant, the case officer is to notify the case manager at the earliest opportunity. The case manager is to consider the circumstances of the conflict and whether an alternate case officer should be appointed. Where practicable, case officers should not be appointed to investigate subject members who they supervise (does not apply to assessment inquiries).

Staff members: Public Service Directive 17/20 Workplace investigations, requires all conflicts of interest to be declared, monitored and appropriately managed. This process should be documented by the case manager/PPM as a part of the investigation process.

5.2 Criminal/Discipline Investigations

A disciplinary complaint may involve allegations of both grounds for disciplinary action and criminal offences. The criminal investigation will take precedence over the disciplinary investigation and a decision is to be made concerning criminal charges before the discipline investigation is conducted (usually just the directed interview of the subject member).

With the approval of the Superintendent, Internal Investigations Group (IIG), where circumstances indicate a need and sufficient resources are available, both investigations can be undertaken simultaneously. Where criminal and discipline investigations are conducted simultaneously, overt steps are to be taken to ensure no inadmissible material influences either investigation. This may involve appointing separate discipline and criminal investigators or quarantining an investigator from certain aspects.

If information which identifies another criminal allegation is discovered during a discipline investigation, the criminal allegation must again take precedence over the discipline investigation. However, where the information comes from a directed interview with the 'criminal suspect', then it cannot be used to commence, or further, a criminal investigation.

All case officers are to be cognisant of the need to silo information obtained using statutory powers from disciplinary investigations. Case officers should be aware of the legal principle, information or material obtained by utilising legislative powers conferred for one purpose cannot lawfully be used for other purposes (including discipline), unless authority is expressly provided by legislation.

If a search warrant is issued under a statute (e.g. *Police Powers and Responsibilities Act*) to authorise the search of premises for evidence of the commission of a criminal offence, any evidence found may only be used in the prosecution of a criminal offence. Any evidence obtained as a result of executing the search warrant cannot be used as evidence for disciplinary matters and is to be siloed from a disciplinary investigator, however, it may be admissible as a consequence of a disclosure or production within a court process. An investigator must be able to show a separation of relevant information in their decision making.

During an investigation involving both criminal and discipline allegations, a case officer should be aware:

- evidence obtained in criminal investigation which was obtained by the exercise of a power under a legislative authority cannot be used in a discipline interview. The exception is if the subject member introduces it, or the evidence has been produced and referred to in evidence in a criminal proceeding.
- evidence from the criminal investigation can be used to determine there is insufficient evidence to support a disciplinary or criminal allegation.
- statements made, and information provided, during a *Police Powers and Responsibilities Act* interview with a subject member are admissible in disciplinary proceedings. This is because any evidence is voluntary (provided the subject member does not invoke their right to silence).
- statements and information obtained using coercive powers pursuant to the *Police Service Administration Act*, such as a directed disciplinary interview, or direction to provide information, are not admissible in criminal proceedings against the member who was subject of the direction.
- information and interviews obtained from witnesses during a disciplinary investigation, except for the member subject of the allegation, are admissible in criminal proceedings and may be disclosable, pursuant to s. 590 'Bringing accused to trial' of the Criminal Code.

- it is also not permitted to make derivative use of information obtained by direction pursuant to the *Police Service Administration Act*. For example, if a subject member raises a defence during a discipline interview which leads to a discipline investigator making enquiries to negate the defence, neither interview nor further enquiries are admissible in criminal proceedings. Both are to be quarantined from the criminal investigation.
- there may be circumstances where information obtained during a discipline investigation is relevant to a decision not to commence or discontinue criminal proceedings. In these circumstances, the information is provided to the Professional Practice Manager (PPM). The PPM or case manager may use the information to discontinue or not commence criminal proceedings as appropriate.

See the decisions of the Supreme Court and District Court of Queensland in *Flori v Commissioner of Police & another* [2014] QSC 284 and *R v Wellington* [2018] QDC for further information.

Case study 1: Case officer starts an investigation focussing on the criminal aspect until it is determined not to proceed with criminal charges. This decision will usually be made after offering a *Police Powers and Responsibilities Act* interview to the subject member. When deciding whether to proceed with criminal charges, the case officer should refer to ss. 3.4.2 'The decision to institute proceedings' and 3.4.3 'Factors to consider when deciding to prosecute' of Chapter 3, Prosecution Process, Operational Procedures Manual concerning sufficiency of evidence and public interest tests.

This decision should be recorded on a status update report and provided to the PPM (or IIG team leader). The PPM/team leader is to review the decision and ensure there are no reporting requirements from the CCC. The PPM/team leader is to provide advice to the case officer when the discipline interview can proceed. The case officer then continues with the discipline investigation, ensuring no material obtained pursuant to *Police Powers and Responsibilities Act* powers is used for the discipline investigation. If a case officer has obtained evidence using *Police Powers and Responsibilities Act* powers, it is unlikely they would be suitable to continue a disciplinary investigation without the informed consent of the subject member.

At the start of any subsequent discipline interview, the case officer should advise the subject member:

- they have decided not to pursue criminal charges;
- of the enquiries conducted (any results of enquiries where *Police Powers and Responsibilities Act* powers are used should not be introduced by the case officer) and witnesses interviewed during the criminal investigation; and
- the interview is for the purposes of a discipline investigation.

Case study 2: Case officer starts a criminal/discipline investigation focussing on the criminal investigation until the subject member is offered a *Police Powers and Responsibilities Act* interview. After the interview, if the case officer decides to pursue criminal charges, no discipline interview should be conducted. If it is desirable to commence a discipline investigation prior to the finalisation of any criminal proceedings, the Superintendent IIG, is to appoint a case officer who must ensure no material obtained pursuant to *Police Powers and Responsibilities Act* powers is used for the discipline investigation.

Case study 3: Case officer is conducting a discipline investigation (after criminal charges have been ruled out) and discovers information which indicates criminal charges should be pursued in relation to the original allegation or a fresh allegation:

- If the information has been obtained during, or as a result of, a directed interview with the subject member, it is not admissible in criminal proceedings and the discipline investigation should continue. The case officer should consult with the PPM, if necessary, to clarify this issue.
- If the information is obtained prior to, or independent of a directed interview with the subject member, the case officer should stop the discipline investigation and consider whether the investigation should be put on hold while a criminal investigation is conducted. The case officer should consult with the PPM to discuss and ensure it is not necessary to appoint a new investigator to conduct the criminal investigation.

5.3 Double Jeopardy/Res Judicata

A single act may have more than one aspect and it may give rise to more than one legal consequence. A disciplinary matter is neither a criminal prosecution nor a civil action and the law recognises criminal and disciplinary proceedings

are mutually exclusive. The two proceedings are essentially different in character, purpose and result:

- *criminal issues* are matters between the accused and the State dealt with in a criminal court;
- *disciplinary issues* are between employer and employee.

The doctrine of 'double jeopardy' is part of common law and provides no person shall be punished twice for the same matter There is no bar, under the principle of *'res judicata'*, to disciplinary action being taken on the same facts as a conviction or acquittal by a Court for a criminal offence. The Court's verdict does not prevent a review of the issues related to the alleged conduct from a disciplinary perspective.

The rule against 'double jeopardy' would apply if two or more disciplinary proceedings were initiated against a member based upon the same set of circumstances.

5.4 Order of Proceedings

Criminal proceedings should proceed before disciplinary proceedings.

Nevertheless, there may be exceptional cases where disciplinary proceedings should not await the outcome of criminal proceedings.

Before deciding to commence a disciplinary proceeding before related criminal matters are finalised, consideration should be given to:

- any adverse effect on the criminal prosecution;
- any issues which may be raised in a criminal prosecution which need to be considered by the disciplinary proceeding; and
- the subject member's right to a fair trial, including their right to silence and to conduct their defence.

5.5 Onus of Proof

The Service has the onus of proof in disciplinary proceedings to prove any allegation against a subject member to the required standard of proof (balance of probabilities).

Further, disciplinary action must be necessary to address the member's conduct, for the purposes of discipline.

5.6 Standard of Proof

The criminal standard of 'beyond reasonable doubt' applies to criminal matters.

The standard for disciplinary matters is 'on the balance of probabilities' (it is more likely than not the alleged conduct occurred).

The standard applies to disciplinary matters and is further clarified in the matter of *Briginshaw v Briginshaw* (referred to as the Briginshaw principle).

In *Briginshaw v Briginshaw* (1938) 60 CLR 336 Justice Dixon of the High Court of Australia enunciated the principles to be considered in this case when His Honour said:

> *"The standard of proof to be applied is the balance of probabilities. Whether the allegations are to be held proved to the reasonable satisfaction of the delegate will depend upon the seriousness of the allegations made, the inherent unlikelihood of an occurrence of a given description, and the gravity of the consequences flowing from a particular finding and should not be reached by inexact proofs, indefinite testimony or indirect references".*

The purpose of a discipline investigation is to determine whether alleged events occurred. To do this, the investigator needs to determine whether there is sufficient evidence to support the allegations, on the balance of probabilities. The Briginshaw principle requires, depending on the nature of the allegation, the strength of the evidence required to meet the standard of proof in civil cases may change; that is, the more serious the allegation and the more significant the potential penalty or unlikelihood of the occurrence of the matter, the more probative or stronger the evidence needs to be.

Investigators should therefore be cognisant of this principle, particularly in relation to matters which are likely to be

considered by a Prescribed Officer/Decision Maker where demotion or dismissal are possible sanctions.

5.7 Natural Justice/Procedural Fairness Principles

Natural justice during a discipline proceeding includes the right of the subject member to:

(i) receive notice of the disciplinary charge/s;

(ii) an opportunity to answer the charge; and

(iii) an unbiased decision maker.

Natural justice governs not only the process of determining whether a matter is substantiated or not, but also applies to the question of an appropriate sanction.

The principles of natural justice and procedural fairness also apply during the investigative process.

5.8 Timelines for commencing a Disciplinary Proceeding

Case officers should be mindful an effective discipline system requires the timely resolution of disciplinary complaints. Disciplinary investigations should be conducted to a reasonable standard necessary to properly determine the substance of a disciplinary complaint and any underlying causes or contributing factors for inappropriate behaviour.

Investigators who conduct a reasonable investigation will not be criticised for failing to 'go down every rabbit hole', or not investigating every minute aspect of a disciplinary complaint. For example, where video footage of an incident is available, an investigator may obtain versions from only the most senior member present and the subject member. There is no need to obtain versions from other witnesses, unless the investigator believes there is a reasonable necessity to do so to fully ascertain what occurred.

5.8.1 Police officers

The *Police Service Administration Act* provides a statutory time limitation for the commencement of disciplinary proceedings against police officers.

If it is determined a sanction may be necessary to resolve a disciplinary complaint, then:

- disciplinary proceedings must be commenced within one year of the date of the alleged ground for discipline or within six months of the complaint being made, whichever is the latter. In effect, if the complaint is made on the day of the alleged ground for discipline, or up to six months after the alleged ground for discipline, the Service will have one year from the actual date of the alleged ground for discipline to commence proceedings. If the complaint is made six months or longer after the alleged ground for discipline occurred, the Service will have six months from the date of the complaint to commence proceedings. In any event the investigation should be completed by the FDD which is 3 months from the LED.
- where a criminal prosecution is commenced disciplinary proceedings may be commenced up to six months after the criminal matter is finally dealt with. The matter is said to be finally dealt with after the criminal proceeding has ended and any review or appeal, or review or appeal period, has ended.
    - Notwithstanding the provisions of Part 7 of the PSAA, from 1 July 2021 the Service will apply an LED which is 6 months from the time the criminal proceeding ends unless there is an actual appeal or review commenced. When an appeal or review is commenced, the LED will be applied to a date 6 months after the end of the review or appeal;
    - Bearing in mind the delay where criminal proceedings have been commenced, the Service will make all reasonable efforts to commence a disciplinary proceeding as soon as possible after a criminal proceeding has ended.
- any absence of the subject member after a complaint is made, can extend the limitation of time for commencing disciplinary proceedings, but only if the absence contributes to the delay (to extend the time limitation, it will be necessary to obtain evidence of how the subject member's absence

contributed to the delay). The decision to extend the limitation of time can be made by either the State Coordinator, the Superintendent or Chief Superintendent, IIG within the Governance and Monitoring Committee (GAMC) meetings. Correspondence is to be sent to the subject member and the member's legal representative advising of the extension of the time limitation.

If the alleged ground for discipline comes to the notice of the CCC or the Service during the course of a controlled operation; controlled activity; specific CCC intelligence operation; or any CCC investigation, **and** a relevant officer overviewing the operation or activity reasonably believes commencing a discipline investigation may compromise the operation, the date the operation ends is taken to be the day the ground for discipline occurred. Consequently, the Service will have 12 months from the day the operations ends to commence disciplinary proceedings. The Commissioner or Chairman of the CCC must issue a report in compliance with s. 7.13 'When ground for disciplinary action arises' of the *Police Service Administration Act* for this extension to apply.

Where the statutory limitations of time provided under the *Police Service Administration Act* have expired, a disciplinary proceeding to consider the implementation of a disciplinary sanction, can no longer be commenced.

The time limitations do not apply to appropriate professional development strategies, which can be applied at any time.

For complaints which were made prior to the commencement of the amendments to the *Police Service Administration Act*, the Service will have at least 6 months from 30 October 2019 to commence disciplinary proceedings. Where the alleged ground for discipline occurred less than 6 months before 30 October 2019, the Service will have 12 months from the actual date of the alleged ground for discipline.

For serious matters, proceedings for corrupt conduct can still be considered pursuant to the *Crime and Corruption Act.*

5.8.2 Staff members

The Public Service Commission has mandated specific time frames for investigations initiated against staff members.

An investigation of a staff member commences when the PPM issues the terms of reference for the investigation. Once commenced, the investigation should be completed within 6 months.

If required, an investigation can be extended under the following authorities:

(a) At 6 months, Level 3 delegation (Superintendent, Chief Superintendent, or equivalent);

(b) At 9 months, by the Governance and Monitoring Committee (GAMC), ESC;

(c) At 12 months by the Public Service Commission Chief Executive (CCE);

(d) at 18 months by the CCE, and every three months thereafter.

5.9 Monitoring of Timelines for commencing a Disciplinary Proceeding

If it is determined a sanction may be necessary to resolve a disciplinary complaint, the Complaint Assessment Committee will assign a LED to advise relevant members of the statutory time limitation for the commencement of disciplinary proceedings.

Relevant members will also be advised of the FDD for the investigation to be completed and the investigation report to be submitted. The FDD is the date three months before the LED and allows time for oversight of the investigation through internal and external processes and for the preparation of disciplinary proceeding documents.

Where approval is sought to amend an LED, a request is to be submitted to the State Coordinator for consideration by the delegated authority (ie. Chief Supt, D/Supt IIG or State Coordinator), normally via a request from a PPM with reasons for any delay due to legislative exceptions (e.g. criminal matter or absence causing delay). Where an LED is extended due to an absence of a subject officer causing a delay, correspondence is to be sent to the officer and their legal representative advising of the extension of the time limitation.

Governance for monitoring timeframes will be provided by ESC through the PPM network and the ESC monthly Governance and Monitoring Committee meetings.

6. Discipline Process

6.1 Discipline Proceeding

6.1.1 Purpose

A disciplinary proceeding is commenced when a subject member's conduct is serious or ongoing and requires a sanction to be imposed to achieve the purpose of discipline. As a general rule, a disciplinary process should not be commenced where the subject member's conduct can be addressed through managerial and/or remedial actions.

For police, the case manager is to regard the matters listed in s. 7.10(2) 'Referral of complaint to prescribed officer' of the *Police Service Administration Act* before referring a disciplinary complaint to a Prescribed Officer.

A reminder, for staff members, of the requirements of the Public Service Directive 14/20 Discipline - all alternative processes must be complied with and exhausting prior to a disciplinary proceedings commencing.

A disciplinary process is not a substitute for management action. In any case, managers are responsible for addressing the behaviour of their staff and taking initial action to correct any inappropriate conduct and minimise any risks involved.

It should be noted the prime objective of a discipline proceeding is to fulfil the purpose of discipline rather than the neutral arbitration of differences, which is the purpose of a court of law. It is a proceeding between an employer and employee and legal technicalities should not be permitted to defeat the achievement of this objective. A subject member is required to participate in a disciplinary proceeding and any submissions made are subject to the provisions of s. 4.10 of these guidelines.

The purpose of any sanctions imposed should be to ensure the appropriate standards of discipline within the Service are maintained, to protect the public, uphold ethical standards within the Service and to promote and maintain public and member confidence in the Service. Sanctions are not to be punitive; and detrimental aspects of a sanction can only be implemented to achieve the purpose of discipline.

The principles of natural justice and procedural fairness apply to all disciplinary proceedings. Natural justice includes the right of a subject member to:

- receive notice of any disciplinary allegations;
- have access to all the material considered by a Prescribed Officer/Decision Maker;
- make submissions before any decision is made; and
- an unbiased decision maker.

6.1.2 Process

Step 1: Preparation

A Prescribed Officer/Decision Maker who has been allocated a matter is to first ensure they are in possession of all relevant material required to make a determination concerning substantiation.

If further information is required, the matter should be returned to the Professional Practice Manager (PPM) for further inquiries. A Prescribed Officer/Decision Maker is not to conduct their own enquiries into a matter they are determining.

If a Prescribed Officer is aware a subject officer is represented by a lawyer, any notices for service must also be served on their legal representative.

Step 2: Commencement of proceeding

Where the Prescribed Officer/Decision Maker reasonably believes there is a disciplinary ground to be answered and decides to commence disciplinary proceedings, the subject member is to be given written

details of each allegation.

The details are to include the disciplinary ground (refer to s. 7.4 'Grounds for disciplinary action' of the *Police Service Administration Act* or s. 187 'Grounds for discipline' of the *Public Service Act,* the governing rule breached, and the particulars relied upon to support the allegations. All the material considered by the Prescribed Officer/Decision Maker must be given to the subject member.

The subject member is to be given at least 28 days to provide submissions concerning substantiation of the allegations. The subject member may provide submissions before the expiration of 28 days, allowing the Prescribed Officer/Decision Maker to make a determination earlier.

See proformas on the ESC website.

Step 2a: Conferencing

The conferencing step is a voluntary option for a subject officer. As such, the subject officer may decline to take part without any negative inferences being drawn.

Approximately seven days after the Disciplinary Proceeding Notice is issued, conferencing should be attempted with the subject officer. The Prescribed Officer is to be represented by the PPM and the officer can be represented by a union or legal representative. An unrepresented officer may participate in person and is entitled to bring a support person.

The purpose of the conferencing includes clarifying any matters from the disciplinary proceeding notice, establishing any agreed facts, whether there will be acceptance of the allegations and the likely sanction range. The discussions between the PPM and officer's representative are without prejudice, unless an agreement, signed by both the subject officer (or their union or legal representative) and the PPM, is completed for the consideration of the Prescribed Officer. The PPM is not the decision maker and cannot make any determinations on behalf of the Prescribed Officer.

The conference can consider all aspects of the proceeding, including the allegation and particulars. Minor amendments to the matter may be suggested for the consideration of the Prescribed Officer.

Step 3: Determining whether allegation is substantiated

When determining whether a disciplinary allegation is substantiated, the Prescribed Officer/Decision Maker must consider all the material and submissions made by the subject member. To substantiate a disciplinary allegation, the Prescribed Officer/Decision Maker is to be reasonably satisfied on the balance of probabilities the conduct occurred.

When determining the strength of the evidence required to be reasonably satisfied, the Prescribed Officer/Decision Maker is to have regard to:

- the seriousness of the allegations;
- the inherent likelihood (or improbability) of the conduct alleged; and
- the severity of the consequences which may follow if the allegation is substantiated.

A determination in a disciplinary proceeding is always to be made to the reasonable satisfaction of the decision maker on a civil standard. However, the more serious the allegation, the more unlikely the conduct occurred or the more serious the consequences, the more reliable the evidence must be.

The Prescribed Officer/Decision Maker should advise the subject member of their finding in relation to each allegation, explaining their findings and the evidence relied upon to reach the finding. Where a subject member accepts liability for an allegation, the Prescribed Officer/Decision Maker may rely on the admission and limit the explanation required. The ground for discipline which is substantiated by the subject member's conduct should also be included in the advice.

If the allegation/s are found to be substantiated, the subject member should be advised of the sanction

or range of sanctions being considered and given 21 days to provide submissions on sanction. If there are no allegations substantiated, the Prescribed Officer/Decision Maker should consider whether any management action is necessary and advise the subject member's OIC/manager accordingly.

See proformas on the ESC website.

Step 4: Determining sanction

When determining an appropriate sanction, the Prescribed Officer/Decision Maker is to consider all the material and any submissions made by the subject member. The sanctions available to a Prescribed Officer to discipline a police officer are listed in s. 7.34 of the *Police Service Administration Act*. The sanctions available to a Prescribed Officer at a particular rank are further defined by s. 7.35 'Power of prescribed officer to impose disciplinary sanction' of the *Police Service Administration Act*.

Disciplinary actions which may be taken against staff members by a Decision Maker are listed in s. 188 'Disciplinary action that may be taken against a public service employee' of the *Public Service Act*, subject to the Human Resource Delegations and Approval Authorities Schedule.

In determining the appropriate sanction, a Prescribed Officer/Decision Maker should refer to Chapter 7, Sanction Guidelines. Any guidelines or precedents referred to are indicative only and the Prescribed Officer/Decision Maker is required to make an independent decision based on all the circumstances of each individual matter.

It is also appropriate for the Prescribed Officer/Decision Maker to request references from the subject member's Officer in Charge (OIC)/supervisor and/or inspector/manager. The references should address the subject member's general performance and any PDS/MAP undertaken or proposed to address the alleged conduct.

A subject member may also provide references. Any references obtained by or for the Prescribed Officer/Decision Maker must be provided to the subject member. Information contained within a member's Ignite performance or conduct history may also be considered.

A Prescribed Officer/Decision Maker must give consideration to any PDS/MAP which have been successfully undertaken by the subject member (regardless of whether the PDS/MAP were part of a Local Management Resolution Plan).

In the event an error is identified in a disciplinary finding and proposed sanction document which requires correction, natural justice is to be provided to the subject member before any changes are made.

Step 5: Finalising a proceeding

Once a Prescribed Officer/Decision Maker has determined an appropriate sanction, the subject member is to be advised of the decision. The advice should include reasons for the decision including their consideration of any submissions made and how the sanction fulfils the purpose of discipline.

The Prescribed Officer/Decision Maker should also consider whether any PDS are necessary in conjunction with the sanction and advise the subject member's OIC/manager accordingly. A copy of the Decision on Disciplinary Action form is to be provided to the subject member's OIC/manager for information and to action any PDS.

The subject member's OIC/manager is responsible for completing a document containing any PDS/MAP ordered by the Prescribed Officer/Decision Maker and uploading the plan onto the subject member's PDA.

A copy of the Disciplinary Notice: Decision on Disciplinary Action is to be provided to the subject member. For decisions relating to allegations against police officers, copies of all disciplinary notices must be provided to the CCC as soon as possible after the determination on sanction is made. Any PDS imposed on a police officer in conjunction with a sanction is also to be provided to the CCC.

See proforma on the ESC website.

Appeal entitlements

Police officers who are aggrieved by the finding of a prescribed officer may apply to the Queensland Civil and Administrative Tribunal (QCAT) to review the decision.

The CCC may also apply to review decisions. Further details are contained on the *Decision on Disciplinary Action* notice and the QCAT website.

Staff members who are aggrieved by the finding of a decision maker may apply to the Queensland Industrial Relations Commission (QIRC) to review the decision. Further details are contained on the *Decision on Disciplinary Action* notice and the QIRC website, as well as the Public Service Commission website.

The appeal is made pursuant to Chapter 7, Appeals and reviews, of the PS Act. Staff members who require further information should refer to the Public Service Commission Directive 03/17 (Appeals) and the Appeals Guide. Both documents are available on the Public Service Commission website.

Notes:

- If necessary, a Prescribed Officer/Decision Maker can make amendments to a disciplinary proceeding notice, provided they advise the subject member in writing of the change and allow a reasonable extension of the time given for a response to the notice.
- Where it is necessary to change the Prescribed Officer/Decision Maker after a disciplinary proceeding notice has been served, the notice should be repealed, and a new proceeding commenced by a new Prescribed Officer/Decision Maker. The subject member is to be advised in writing of the repeal of the original notice before being served with another disciplinary proceeding notice.

  In exceptional cases, consideration can be given to appointing a different Prescribed Officer/Decision Maker to continue a disciplinary proceeding if the original Prescribed Officer/Decision Maker is unable to complete the proceeding. Advice should be sought from the Discipline Support Unit, ESC before taking this course of action. Informed consent must be obtained in writing from the subject member before continuing a disciplinary proceeding with a different decision maker.
- A Prescribed Officer/Decision Maker may require the attendance of a subject member during a disciplinary proceeding to hear verbal submissions or to provide advice of the outcome of the matter. The subject member may also apply to the Prescribed Officer/Decision Maker to appear in person during a proceeding. A subject member is entitled to have a third party accompany them during a disciplinary proceeding (legal or union representative, support person). In circumstances where the subject member appears in person, the meeting must be electronically recorded.

6.2 Abbreviated Discipline Process

6.2.1 Purpose

The Abbreviated Discipline Process (ADP) has been developed in conjunction with the police unions and the CCC. The process is available for police officers only and consequently, staff members are not able to participate in an ADP. An ADP enables a subject officer to take responsibility for their actions and receive a sanction knowing there will be no review. The ADP should be completed as quickly and simply as possible, having regard to the seriousness of the allegation.

An ADP is a consensual process requiring agreement between the Service, the CCC and the subject

officer on an appropriate outcome (sanction and professional development strategies) for an allegation.

~~An ADP should be considered where it is necessary to impose a disciplinary sanction, and:~~

- there are indications the subject officer is willing to accept the conduct;
- there have been sufficient investigations conducted to identify the main aspects of the ground for discipline; and
- there is sufficient information to enable a prescribed officer to adequately address the ground for discipline.

Not all matters will be suitable for ADP. Indicators a matter may not be suitable for ADP include:

- the alleged conduct is complex and requires consideration of all the available material to make a determination on sanction;
- there are substantial and/or complex mitigating factors to be considered; or
- there are indications the subject officer will not accept a sanction within the range indicated by a matrix, guideline or previous sanctions for similar conduct.

An ADP can be commenced, with the authority of the case manager, any time after a disciplinary complaint has been considered by the Complaint Assessment Committee (CAC) and a version has been obtained from the subject officer. It is not necessary to finalise a discipline investigation before commencing an ADP. For example, where the alleged ground for discipline of a subject officer has been captured on CCTV footage, an ADP could be commenced relying solely on the footage and a discipline interview with the subject officer. An ADP could also be commenced after an officer pleaded guilty to a drink driving offence subject based solely on the facts of the plea and a discipline interview with the subject officer.

Any directions from the CAC or the CCC must be considered before commencing an ADP.

6.2.2 Process

Step 1:

Case manager approves ADP process.

Step 2:

The relevant PPM conducts a conference (see notes) with the subject officer or their legal representative to discuss whether the matter is suitable to be resolved through the ADP process. Discussions should include:

- likelihood of subject officer accepting conduct;
- likelihood on an agreed set of facts or allegation;
- acknowledgement of the realistic range of a proposed sanction, having regard to any precedents, guidelines or matrixes which are available and any mitigating circumstances; and
- any appropriate professional development strategies (PDS).

Step 3:

After confirming the matter is suitable to be resolved through an ADP, the PPM briefs a Prescribed Officer concerning the matter. If the Prescribed Officer reasonably believes there is a ground for discipline against the subject officer, the Prescribed Officer may prepare a written notice (*ADP Invitation to participate*) to be forwarded to the subject officer inviting them to take part in an ADP.

The invitation is to include:

- the date and details of the disciplinary complaint and alleged ground/s for disciplinary action;
- any further particulars necessary to identify the conduct alleged to constitute the ground for

disciplinary action; and

- a summary of investigations completed to date.

A subject officer may apply to initiate an ADP without an invitation being issued. The application should comply with the requirements of Step 4.

Step 4:

An officer who receives an invitation to take part in an ADP may decide to take part in the ADP or decline the offer.

In accepting the invitation, the subject officer's reply is to indicate a willingness to accept responsibility for the alleged conduct and may also provide information concerning:

- details surrounding the allegation;
- any mitigating factors;
- any relevant medical information;
- references; or
- a disciplinary sanction and/or PDS the subject officer would accept.

A subject officer is to reply to an ADP invitation within 21 days of receiving the notice. If the subject officer fails to reply within 21 days, the prescribed officer may grant an extension to reply to the invitation or determine the officer is declining to take part in the ADP.

Step 4a:

Upon receipt of an acceptance from a subject officer, a Prescribed Officer may issue a written notice to the subject officer requiring further information reasonably required to decide whether to issue a *ADP Form A* or the sanction to be offered. The subject officer is to reply to the request for further information within 14 days. (e.g. Further information in the form of medical reports may be requested where the subject officer's initial response indicated a mental health condition).

Step 5:

If a subject officer accepts the invitation to take part in an ADP process, a Prescribed Officer may complete an *ADP Form A (Proposed Outcome)*. The form is to contain:

- the date and details of the disciplinary complaint and alleged ground for disciplinary action;
- any further particulars necessary to identify the conduct alleged particulars of the ground for discipline alleged to constitute the ground for disciplinary action;
- references to the policy or rule breached by the subject officer;
- a summary of the facts surrounding the matter;
- a summary of the investigations completed (with any relevant material attached); and
- the proposed sanction and/or PDS.

Step 6:

The completed ADP Form A is forwarded to the CCC. Any material provided by the subject officer is also to be provided to the CCC.

The CCC must either endorse the proposed action or determine the matter is not suitable for ADP (usually within 14 days of receiving the form).

It is appropriate for the CCC to consult with the Prescribed Officer's PPM to clarify any issues surrounding the ADP.

Step 7:

The endorsed ADP Form A is forwarded to the subject officer for consideration. Within 21 days of receiving the form, the subject officer must either accept or decline the offer. The subject officer may also make submissions to the prescribed officer with their acceptance of the offer.

If the subject officer declines the offer, the process ends.

Step 8:

On receipt of an acceptance, and after considering any submissions, the Prescribed Officer may impose a sanction and any appropriate PDS. The sanction imposed by the Prescribed Officer must not differ from the proposed sanction without the consent of the CCC.

An *ADP Form B (Notice of Determination)* is to be completed by the Prescribed Officer and must contain:

- The sanction and PDS imposed; and
- A brief statement of reasons for the decision.

The notice is to be served on the subject officer with a copy also provided to the CCC. A copy of the *ADP Form B (Notice of Determination)* is to be provided to the subject officer's OIC/manager for information and to action any PDS.

The subject member's OIC/manager is responsible for completing a document containing any PDS ordered by the Prescribed Officer/Decision Maker and uploading the plan onto the subject officer's PDA.

Notes:

- To clarify any issues surrounding the invitation or acceptance of an ADP, conferencing may be conducted between the relevant parties. The Service is to be represented by the PPM and the officer by a union or legal representative (an unrepresented officer may participate in person).

  The discussions between the PPM and officer's representative are without prejudice unless a signed agreement is completed for the consideration of the prescribed officer. The PPM is not the decision maker and cannot make any determinations on behalf of the prescribed officer.

- If the ADP is declined at any stage by either the subject officer or the CCC, consideration will be given to conducting a disciplinary proceeding.

- The ADP form A should contain dot points relevant to sanction (mitigating and aggravating circumstances). There is no need to provide any reasoning at this stage.

- Where an ADP offer is declined by the subject officer, any submissions provided by the subject officer during the process are not admissible against the subject officer in any proceedings, including discipline proceedings.

- If a Prescribed Officer is aware a subject officer is represented by a lawyer, any notices for service must also be served on their legal representative.

6.3 Post Separation Disciplinary Declarations

Post separation disciplinary declarations may be made pursuant to Part 7A of the *Police Service Administration Act* or s. 188A 'Disciplinary action that may be taken against a former public service employee' of the *Public Service Act* (see chapter 2, s. 2.11). The purpose of a post separation disciplinary declaration is to provide a warning to prospective state government employers where members commit grounds for discipline but separate from the Service before a disciplinary proceeding is finalised. The factors contained in section 7A.1 'Power to conduct disciplinary investigation against a former officer' of the *Police Service Administration Act* provide a guide for deciding whether to continue or start an investigation involving a former employee.

Before making a post separation disciplinary declaration, the former member must be provided natural justice and procedural fairness including being given the opportunity to respond to the allegation.

7. Sanction Guidelines

The Prescribed Officer/Decision Maker is to ensure any disciplinary sanction imposed complies with:

- section 7.34 'Disciplinary sanctions' and s. 7.35 'Power of prescribed officer to impose disciplinary sanction' of the *Police Service Administration Act* for police officers; and
- section 188 'Disciplinary action that may be taken against a public service employee' of the *Public Service Act* for staff members.

In determining an appropriate sanction, consideration is to be given to the purpose of discipline and the overall circumstances, including:

(i) seriousness of the substantiated allegation;

(ii) circumstances in mitigation or extenuation;

(iii) circumstances of aggravation;

(iv) recency of the actions substantiated;

(v) the member's overall work record including previous good work, management interventions and/or disciplinary proceedings;

(vi) where the sanction relates to loss of or damage to Service property - efforts by the subject member to make reparation;

(vii) length of service and experience;

(viii) current rank or position;

(ix) PDS completed by the subject member in response to the allegations; and

(x) any other matter the Prescribed Officer/Decision Maker considers relevant.

The depth and timing of any insight and/or remorse demonstrated by a subject member is fundamental to determining an appropriate resolution to any discipline matter. A Prescribed Officer/Decision Maker should specifically consider how early the subject member acknowledged any shortcomings with their conduct (e.g. more mitigation should be given when insight is demonstrated by the subject member when first approached about a matter compared to only showing remorse after a finding of substantiation during a disciplinary proceeding).

Sanctions can be imposed for misconduct or any other ground for discipline. Findings on sanction should interlink with the purpose of discipline.

PDS/MAP may also be imposed in conjunction with or in lieu of sanctions. Where PDS/MAP have already been completed, a Prescribed Officer/Decision Maker must take them into consideration when determining sanction.

The Service has a responsibility to set standards of behaviour and conduct for members in order to maintain public confidence and organisational reputation. To supplement existing policies, the Commissioner may release Service wide reminders to all police on particular matters.

When determining sanction on matters which were subject of a Commissioner's release before the conduct occurred, a Prescribed Officer/Decision Maker should consider the release in their decision making. Any sanctions imposed by the Service or the Queensland Civil Administrative Tribunal for similar conduct before the release can be distinguished from those imposed after the release.

The Service may provide indicative sanctions for various disciplinary matters. These sanctions are an indication from the Commissioner of the appropriate sanction to be imposed to address certain grounds for discipline.

Before providing a list of indicative sanctions, the Service will actively consult with all appropriate stakeholders.

A Prescribed Officer/Decision Maker should refer to any relevant indicative sanction when determining a matter, however, a Prescribed Officer/Decision Maker is required to make an independent determination have regard to all

circumstances of the matter including mitigating and aggravating circumstances of the individual case before implementing any sanction.

7.1 Specific decisions/subject matter

The following specific decisions and directions have been made by the Commissioner:

1. Direction to all staff on access of information on QPS computer systems contained in emails dated 30/03/2016, 31/12/2018, 6/11/2019, 20/07/2020 and 6/5/2021 (see ESC's SharePoint site on the QPS Intranet).

The following areas are currently subject to indicative sanction guidelines:

1. circumstances where the subject officer was or could potentially have been charged with a drink driving offence under s. 79 'Vehicle offences involving liquor or drugs' of the *Transport Operations (Road Use Management) Act 1995* (Qld) or similar legislation in another jurisdiction;
2. information misuse - police officers;[1] and
3. information misuse - staff members.[2]

   (refer ESC's SharePoint site on the QPS Intranet for full documents)

[1] After appropriate consideration of legislated requirements (s.7.9 & 7.10 PSAA or s.186 & 187 PSA), where a Case Manager determines that an information misuse matter should be referred to a Prescribed Officer for consideration, those matters are to be referred to the Office of State Discipline in the first instance.

[2] Ibid.

8. Dictionary

Assessment inquiries:

The purpose of assessment inquiries is to obtain further information to determine, or confirm, how a disciplinary complaint should be resolved. Assessment inquiries have a short timeframe for completion (usually 14 days). At the completion of assessment inquiries, the Professional Practice Manager (PPM) is to overview the inquiries undertaken and, provide advice to the case manager to determine the most appropriate course of action to resolve the disciplinary complaint.

In some cases, the Case Assessment Committee (CAC) may stipulate a matter is to be returned, in order for the course of action to be determined by CAC.

While undertaking assessment inquiries, all relevant sections of these guidelines are to be followed, such as recording any interviews and giving warnings as appropriate.

Breach of discipline:

Means a disciplinary ground as defined in s. 7.4 'Grounds for disciplinary action' of the *Police Service Administration Act* or s.187 'Grounds for discipline' of the *Public Service Act* but does not include misconduct. The term is no longer defined in legislation but may be used to differentiate between disciplinary complaints involving misconduct and disciplinary complaints involving grounds for discipline other than misconduct.

Case Manager:

The case manager is the member responsible for determining how a complaint is resolved after the matter is considered by the CAC. Generally, the case manager is the member performing the role of District Officer or equivalent. The case manager determines the level of case officer and approves the proposed outcome of a disciplinary complaint. A case manager may delegate the role of responsible officer to an Assistant District Officer. Where a disciplinary complaint involves a subject member from a central function unit, the owning area will have the overarching responsibility unless determined otherwise by the CAC.

The Detective Superintendent, Internal Investigations Group (IIG), ESC, is the Case Manager for disciplinary complaints referred to IIG. A Detective Inspector performing duty within IIG can perform the role of a Case Manager and approve investigations including:

- Police Related Incident/s;
- Interim Reports;
- Case File Notes;
- Overviews of investigations;
- Assessment Inquiries;
- No outcome required including Outcome Notices and recommending Local Management Resolution;
- Investigations where no misconduct or disciplinable conduct is identified.

Additionally, Detective Inspectors of IIG in addition to delegates including the Assistant Commissioner, ESC; Chief Superintendent, ESC, Detective Superintendent, IIG and State Coordinator, IIG will possess the authority under s. 42(3) 'Dealing with complaints – commissioner of police' of the Crime and Corruption Commission Act 2001 to:

- If the Detective Inspector is satisfied a complaint is frivolous or vexatious or lacks substance or credibility or dealing with the complaint would be an unjustifiable use of resources, may take no action or discontinue action taken to deal with the complaint.

Case Officer:

The term case officer refers to a member (police officer or staff member) appointed to conduct inquiries or investigate a disciplinary complaint file.

Concerned Party:

Includes Complainant, Informant, Notifier and Witness.

Complaint Assessment Committee:

CAC is a committee chaired by an authorised officer whose role is to overview all disciplinary complaints. The committee determines what action is warranted for all allegations of misconduct.

Corrupt conduct:

Corrupt conduct is defined in s. 15 'Meaning of corrupt conduct' of the *Crime and Corruption Act.*

Decision Maker:

The term 'Decision Maker' means a member of the Service who can take 'disciplinary action' against a staff member pursuant to s. 187 'Grounds for discipline' of the *Public Service Act*. Decision Makers must have successfully completed an approved 'discipline resolution' training course and are only authorised to impose sanctions in compliance with Human Resource Delegations and Approval Authorities Schedule.

Directed interview:

A directed interview is an interview conducted pursuant to the direction provided in s. 4.10 of these guidelines. Directed interviews are conducted as part of the disciplinary investigation process. Importantly, during a directed interview, the interviewer is acting in their role as a representative of the employer (the commissioner) and not in the role of a police officer.

Disciplinary complaint:

A disciplinary complaint is a complaint relating to an employee of the Service which raises a reasonable suspicion the member has committed a ground for discipline.

Employment warning (Police only):

Employment warnings can be used where a member's performance or conduct is significantly unsatisfactory. Employment warnings are in line with precedents established in employment law which advocate employees be counselled so they understand the standards expected of them and are offered assistance and guidance in achieving the expected standards.

Employment warnings could be used to complement Professional Development strategies (PDS) contained in a Local Management Resolution (LMR) plan. Employment warnings will be issued by the case manager in written form. An employment warning will clearly communicate the member's identified shortcomings and the consequences of non-compliance with accepted practice in the future.

Exonerated:

The subject member may be considered for exoneration if:

a) there is sufficient evidence to prove a charge of wilfully making a false complaint under the *Police Service Administration Act* or the *Crime and Corruption Act*;

b) it is proven the member complained about was not in fact the relevant member;

c) the incident complained of did not in fact occur; or

d) the actions of the subject member were lawful and reasonable.

Ground for discipline:

The grounds for disciplinary action (including misconduct) are listed in s. 7.4 'Grounds for disciplinary action' of the *Police Service Administration Act* for police officers and s. 187 'Grounds for discipline' of the *Public Service Act* for staff members.

Initial Assessing Officer:

The term 'initial assessing officer' refers to a member of the Service who is responsible for the initial assessment of a complaint and is a:

- Police Officer at rank of Senior Sergeant or higher; or
- Staff member at AO7/PO5 level or higher.

Joint Assessment and Moderation Committee (JAMC):

A committee consisting of representatives of ESC and the CCC to facilitate the joint assessment of complaints with a view to identifying matters which should be dealt with by way of criminal investigation, or via the LMR process, or through the discipline process. JAMC draws on a variety of information sources to ensure committee decisions are sound and consistent.

Local Management Resolution:

LMR refers to a resolution process where PDS are formulated and implemented to address inappropriate conduct. The purpose of implementing an LMR plan will be to improve performance by providing appropriate training and guidance to the member whose conduct has come into question due to an identified underlying issue.

LMR is a remedial approach which recognises members will make genuine mistakes and provides a learning and development approach to improve performance and align the member's behaviour with the organisation's principles.

LMR should not merely default to the delivery of managerial guidance or chastisement as a tool to address behaviour, but rather genuine engagement by a supervisor with the member or complainant, where a raft of management options are explored.

Management Action Plan (MAP):

A document containing one or more PDS which is drafted and served on a staff member as an interim measure after a disciplinary complaint is received. The purpose of a MAP includes reducing the risk of the recurrence of similar conduct and to improve the subject member's performance. (for police officers, see PDSD).

Matters Assessed Report (MAR):

The CCC conducts its own assessment of matters which it receives or are referred to them by the Service. This assessment is recorded on a MAR. The MAR is provided back to the Service and is attached to Police Integrity and Professional Standards (PIPS) The CCC nominates any requirements of the Service on the MAR. Commonly used requirements are Public Interest Review, Merit and Compliance Review and No Outcome Required:

Merit and compliance review: Strict reporting regime with mandatory progress reports at three-month intervals. The CCC may give directions about the conduct of the investigation. On finalisation of the investigation and resolution the CCC will review the investigation.

Public interest review: Strict reporting regime and monitoring of the investigation. Progress reports are required at six weeks as well as at three-month intervals. The CCC may give directions about the investigation and will conduct a review before the Service takes any action (LMR, disciplinary proceeding or otherwise).

Referred no further advice: CCC refer the matter to the Service to deal with to deal with as appropriate. No review is conducted by the CCC.

Member:

Means a police officer, police recruit or staff member.

Misconduct:

In the case of police officers and police recruits (see s. 1.4 'Definitions' of the *Police Service Administration*

Act) conduct which is:

a) is disgraceful, improper or unbecoming an officer; or

b) shows unfitness to be or continue as an officer; or

c) does not meet the standard of conduct the community reasonably expects of a police officer.

In the case of staff members (see s. 187 'Grounds for discipline' *Public Service Act*) conduct which is:

a) disgraceful or improper conduct in an official capacity; or

b) disgraceful or improper conduct in a private capacity which reflects seriously and adversely on the Public Service.

Notifier:

A member who reports a disciplinary complaint in compliance with their statutory duty under Part 6A of the *Police Service Administration Act*.

Police misconduct:

Police misconduct is defined in Schedule 2 of the *Crime and Corruption Act*. The definition is the same as the *Police Service Administration Act* definition of misconduct.

Policelink complaint:

A complaint received via Policelink or other police communications centre.

Prescribed Officer:

The term 'Prescribed Officer' means a police officer mentioned in s. 2.2(2)(a), (b), or (c) 'Membership of service' of the *Police Service Administration Act* (commissioned officer and above) who holds a rank above the rank of the subject officer. A Prescribed Officer must:

- have completed an approved Prescribed Officer training course and been authorised by the Assistant Commissioner, ESC to take disciplinary action;
- be senior in rank to the subject member; and
- be a member who has not been part of the investigation process.

Professional Development Strategy:

The term, PDS, is defined in s. 7.3 'Definitions for part' of the *Police Service Administration Act*. PDS are strategies designed to improve the conduct of members and prevent future inappropriate conduct.

While the *Police Service Administration Act* only applies to police officers, for simplicity, the term may also apply to management action to be taken concerning staff members.

For further information concerning appropriate types of management action, refer to the Conduct and Performance Excellence (CaPE) section of the Public Service Commission website.

Professional Development Strategy Document (PDSD):

A document containing one or more PDS which is drafted and served on a police officer as an interim measure after a disciplinary complaint is received. The purpose of a PDSD includes reducing the risk of the recurrence of similar conduct and to improve the subject officer's performance. (for staff members, see MAP)

Reasonable suspicion:

For a suspicion to be 'reasonable', there needs to be more than bare or idle speculation (*George v Rockett* (1990) 170 CLR 104). In essence, there must be some evidence sufficient for a reasonable person to suspect misconduct or another ground for discipline.

Members do not have to believe the alleged conduct is misconduct or another ground for discipline, or the conduct has actually occurred. Reasonable suspicion must be based on an objective assessment of the

information at hand. It is not sufficient for members to subjectively decide someone is or is not capable of the alleged conduct.

Members do not have to have sufficient evidence to prove the misconduct or other ground for discipline allegation, but the available facts, evidence or other information must suggest the allegation occurred and, if proven, would amount to misconduct or another ground for discipline. The suspicion may be based on hearsay and other inadmissible material which nevertheless is relevant (*George v Rockett*).

The member does not have to report the matter if they do not hold a reasonable suspicion. For example, there is no need to report a matter if there is something about the allegation — including any direct knowledge which shows beyond doubt it is not correct.

Members should consider if it is appropriate to record the allegation and their inquiries to document the matter.

Receiving Member:

A member who receives a complaint.

Region:

The term 'Region' includes a Region, Command, Division, the CCC Police Group and organisational units reporting directly to a deputy commissioner or the Commissioner.

Sanction:

The term sanction includes a disciplinary sanction pursuant to s. 7.34 'Disciplinary sanctions' of the *Police Service Administration Act* and disciplinary action pursuant to s. 188 'Disciplinary action that may be taken against a public service employee' of the *Public Service Act*.

Senior Officer/Senior Member:

A member who holds, or is acting in, a higher rank or classification than the relevant member. For police officers, see s. 1.4 'Definitions' of the *Police Service Administration Act*.

Staff Member:

Staff members are:

a) officers of the public service assigned to perform duties in the police service; and

b) persons appointed as staff members by the Commissioner under-

   i. s. 8.3(5) 'Unfitness for duty on medical grounds' of the *Police Service Administration Act*; or

   ii. chapter 5, part 5 'General, fixed term temporary and casual employees' of the *Public Service Act*.

   * Police liaison officers, Torres Strait Island Police Officers and watch-house officers are staff members.

   ** Staff members appointed under s. 8.3(5) are not currently subject to the specific disciplinary provisions of the *Police Service Administration Act* or the *Public Service Act*. Such members are still subject to the provisions of these guidelines.

Subject Member:

The term 'subject member' means a member of the Service (police officer or staff member) who is the subject of a complaint.

Suppressed:

Details of a concerned party which have been concealed by the CCC.

Threshold for reporting:

The term 'threshold for reporting' refers to the duty concerning misconduct and other grounds for discipline contained in Part 6A 'Reporting obligations of officers and staff members' of the *Police Service Administration*

Act. If there is a reasonable suspicion an allegation of misconduct by a police officer has occurred, then the threshold for reporting is met and the matter must be reported pursuant to these guidelines.