

Policing, Security and Community Safety Bill 2023: Governance, Oversight and Accountability Mechanisms

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Introduction

The [Policing, Security and Community Safety Bill 2023](#) (the “Bill”) was published on 19 January 2023 [Bill No. 3 of 2023]. According to the [Explanatory Memorandum](#):

“This Bill is an important part of the Government’s policing reform plan – *A Policing Service for Our Future* (APSFF) – developed to implement the recommendations of the 2018 *Report of the Commission on the Future of Policing in Ireland* (CoFPI) and fulfils a commitment in the *Programme for Government: Our Shared Future*.”

Given the length and complexity of the Bill, and the discrete nature of certain aspects thereof, the L&RS has produced three separate *Notes* addressing core themes arising in the Bill. This *Note* provides an overview of proposed changes to the governance, oversight and accountability mechanisms for An Garda Síochána (AGS). Separate L&RS Notes will consider:

1. the proposed establishment of an Independent Examiner of Security Legislation; and
2. community safety.

Each Note provides an overview of the policy and legislative context for the Bill, with particular reference being made to the recommendations of the CoFPI. The Notes also discuss selected provisions in the Bill relevant to the key themes. The L&RS has also produced a [Bill briefing page](#), which provides links to a wide range of sources on the Bill (available internally only).



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Table 1 Glossary and abbreviations

Term	Meaning
AGS	An Garda Síochána
AGSI	Association of Garda Sergeants and Inspectors
CEO	Chief Executive Officer of the Office of the Police Ombudsman
COFPI	Commission on the Future of Policing in Ireland
Department	Department of Justice
DPP	Director of Public Prosecutions
DMP	Dublin Metropolitan Police
DOJE	Department of Justice and Equality
GRA	Garda Representative Association
GSI	Garda Síochána Inspectorate
GSOC	Garda Síochána Ombudsman Commission
ICCL	Irish Council for Civil Liberties
Independent Examiner	Independent Examiner of Security Legislation
Inspectors	Inspectors of policing services appointed by the Policing and Community Safety Authority
Joint Committee	Joint Committee on Justice
LPP	legal professional privilege
PAC	Committee of Public Accounts
PAS	Public Appointments Service
PCSA	Policing and Community Safety Authority (a proposed new body to be established in place of the Policing Authority and GSI)
RIC	Royal Irish Constabulary
The Bill	the Policing, Security and Community Safety Bill 2023
The Board	Board of An Garda Síochána
The Minister	The Minister for Justice
The 2005 Act	<i>Garda Síochána Act 2005 (as amended).</i>
The 2015 Act	<i>Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015</i>

Executive Summary

Introduction and Background

The [Policing, Security and Community Safety Bill 2023](#) (the “Bill”) seeks to give effect to the recommendations of the [Commission on the Future of Policing in Ireland](#) (the “COFPI”) concerning the governance, oversight and accountability mechanisms for An Garda Síochána (AGS).

The [COFPI](#) identified a need for a clearer differentiation between the functions and responsibilities of the various external oversight and accountability bodies, and AGS’s responsibilities for its own internal governance.

The main proposals concerning AGS’s governance, oversight and accountability mechanisms are set out in Parts 2, 4, 5 and 6 of the Bill. As summarised in the [Explanatory Memorandum](#), they include:

- the provision of additional functions to the Garda Commissioner with the aim of empowering the Commissioner to lead AGS as a “true CEO”;
- the creation of a non-executive Board of An Garda Síochána (*Bord an Gharda Síochána*) to support the Garda Commissioner and senior AGS management, and to hold them accountable for their performance;
- the creation of the Policing and Community Safety Authority (PCSA) in place of the Policing Authority and Garda Síochána Inspectorate (GSI);
- the transfer of the Policing Authority’s statutory responsibility for executive functions to either (i) AGS/the Garda Commissioner under the guidance of the Board, (ii) the Board, or (iii) the Minister for Justice (the “Minister”), with the PCSA merely having a consultative role, if any;
- the restructuring of the existing three-person Garda Síochána Ombudsman Commission (GSOC) into a Police Ombudsman/Deputy Police Ombudsman model with a clear and publicly identifiable head and expanded remit;
- the updating and streamlining of the existing system for the handling of allegations of wrongdoing concerning AGS members, and its extension to civilian AGS staff; and
- the creation of a new category of “Garda personnel” comprising AGS members and Garda staff (currently civilian staff).

The Bill also provides for the creation of the statutory position of Independent Examiner of Security Legislation (**Part 7**). The Independent Examiner is empowered under provisions of the Bill to review refusals by the Garda Commissioner and other AGS members to provide certain information and documentation, when requested to do so by the PCSA or the Police Ombudsman, for reasons relating to the security of the State. As noted in the [COFPI Report](#), both GSOC and the Policing Authority have voiced concerns that AGS is invoking its power to refuse to provide information on grounds of state security “more widely than necessary”.

Accountability of the Garda Commissioner

Section 34 (1) of the Bill guarantees the independence of the Garda Commissioner in the performance of his or her functions, albeit subject to the Bill. Indeed, the Bill's provisions render the Commissioner accountable to multiple actors, including:

- the proposed new non-executive Board of AGS (the "Board"), in the performance of the Garda Commissioner's functions (**section 34 (2)**);
- the Government and the Minister, through the Secretary General of the Department of Justice, in relation to matters connected with the provision of policing services and security services (**section 35**);
- the Minister, through the Secretary General of the Department of Justice, in relation to significant developments concerning matters outlined in section 36, including the preservation of peace and public order (**section 36**); and
- the Committee of Public Accounts as accounting officer in relation to the appropriation accounts of AGS (**section 72**).

The Garda Commissioner may also be required to attend before other Oireachtas committees to give account for the general administration of AGS (**section 73**). He or she may also be called upon to cooperate with, and attend before, any special inquiry established by the Minister pursuant to **section 82** into a matter of significant public concern relating to any aspect of the administration or operation of AGS, any practice or procedure of AGS, or the conduct of members of garda personnel. The Bill also imposes statutory duties upon the Garda Commissioner and other members of garda personnel to cooperate with the PCSA and the Police Ombudsman in the performance of their functions (see, for example, **section 33**).

Governance of AGS, strategic planning and priority setting

The Bill affords the Board and the Minister functions in the areas of internal governance of AGS and strategic planning. AGS's strategic plan (**section 63**), annual service plan (**section 65**), capital plan (**section 68**) and annual report (**section 70**) must be submitted by the Garda Commissioner to the Minister for approval, but only having received the prior approval of the Board. The Garda Commissioner must also have regard to any views received from the PCSA concerning aspects of the strategic plan and the annual service plan that relate to policing services prior to submitting same to the Minister. **Section 71** requires the Board to submit a governance framework for AGS to the Minister for approval. Prior to submission, the Board must consult with the Garda Commissioner and have regard to any directives issued by the Minister under **section 37**.

The PCSA is afforded responsibility for determining policing priorities for AGS, albeit subject to the approval of the Minister and following consultation with the Garda Commissioner, the National Office for Community Safety, and such other persons as the PCSA considers appropriate (**section 61**). The Minister is afforded responsibility for determining security priorities and related performance targets for AGS having consulted with the Garda Commissioner and such other persons as the Minister considers appropriate (**section 62**). Subject to relevant provisions concerning state security, the Minister must lay the policing priorities, strategic plan, annual service plan, capital expenditure plan, annual report and any directives issued pursuant to section 37 before the Houses of the Oireachtas.

Oversight of AGS by external, independent oversight bodies

The Bill provides for the creation of the PCSA (Policing and Community Safety Authority) in place of the Policing Authority and GSI, with the PCSA absorbing many of the existing bodies' functions.

Like the Policing Authority, the PCSA's core objective is to "...oversee and assess in an independent and transparent manner the performance by An Garda Síochána of its function relating to policing services" (**section 122 (1)**).

The PCSA's functions in certain areas are curtailed under the Bill relative to those currently enjoyed by the Policing Authority, with the Bill transferring some of the Policing Authority's functions to (i) AGS under the supervision of the Board, (ii) the Board, or (iii) the Minister, with the PCSA merely having a consultative role, if any. Notably, the PCSA's role in the appointment of individuals to senior offices and ranks within AGS has been considerably diluted under the Bill, as has its role in standard setting for the provision of policing services and oversight of strategic planning and corporate governance arrangements for AGS.

The Bill provides for an expansion of the PCSA's functions, relative to the Policing Authority, in other areas, for example, by explicitly affording it responsibility for promoting inter-agency collaboration and community engagement to improve community safety. The PCSA is also afforded enhanced powers of inspection under the Bill, relative to those currently enjoyed by GSI. Notably, the Bill authorises the PCSA to perform unannounced inspections of garda stations and places where garda personnel are assigned, albeit subject to the terms of a memorandum of understanding to be agreed upon by the PCSA and the Garda Commissioner (**section 147**).

Parts 5 and 6 of the Bill concern changes to the structure and powers of GSOC, including:

- the restructuring of the existing three-person Garda Síochána Ombudsman Commission (GSOC) into a Police Ombudsman/Deputy Police Ombudsman model with a clear and publicly identifiable head and expanded remit; and
- the updating of the existing systems for the handling of complaints and conduct of investigations concerning alleged incidents of misconduct by AGS members, and their extension to civilian staff of AGS.

Commentary on the Bill and the General Scheme of the Bill

The proposals included in the [Bill](#) and the [General Scheme](#) of the Bill attracted comments and criticisms from various stakeholders for both converging and diverging reasons.

The power afforded to the PCSA to conduct unannounced visits to garda stations received several comments from stakeholders during the PLS. The Association of Garda Superintendents stated that this power would need to be "clearly defined" whereas the Policing Authority expressed concern that the requirement for a memorandum of understanding between the PCSA and AGS regarding the exercise of this power could "fetter the independence and agility" of the process. (See stakeholder submissions appended to the [Joint Committee's Report on Pre-legislative Scrutiny of the Bill](#).)

The proposed changes to GSOC's powers and the associated systems for handling complaints and conducting investigations into alleged incidents of misconduct by garda personnel have also attracted considerable commentary. AGS and the Association of Garda Sergeants and Inspectors (AGSI) have stressed the need for the reforms to accord with principles of natural justice. (See stakeholder submissions appended to [PLS Report](#).)

Notably, the Bill proposes extending the existing complaints system to what are now known as civilian staff of AGS. It also provides for an associated change in the status of civilian staff from civil servants to garda staff. The Bill proposes that garda staff and sworn AGS members will together comprise a new category of staff known as garda personnel. The proposed change in status of civilian staff and their consequential subjection to the updated complaints system, a central recommendation of the COFPI, has been opposed by garda representative groups, for example, [Fórsa](#). On the other hand, it has been supported by GSI and the Policing Authority. (See stakeholder submissions appended to [PLS Report](#).)

[GSOC](#) has expressed concern that some of the proposed reforms could undermine the Police Ombudsman's institutional independence and lengthen the overall process for conducting investigations by introducing an additional layer of bureaucracy. [GSOC](#) also emphasised that the expansion in the Police Ombudsman's remit would need to be accompanied by a commensurate increase in staff and resources. In addition, [GSOC](#) indicated that the timely and efficient discharge of the Police Ombudsman's functions will be dependent upon the timely and full cooperation of relevant stakeholders, including AGS. [GSOC](#) inferred that the statutory duty currently imposed on AGS under the Bill to assist and cooperate with the Police Ombudsman may not go far enough (see, for example, **sections 33, 146, 208 and 214 (1)**).

Perhaps most notably, during the PLS process, multiple stakeholders, including AGS, Dr. Vicky Conway (a member of the COFPI), AGSI, the Policing Authority and the Irish Council for Civil Liberties, expressed concern that, contrary to the COFPI's intention, the changes proposed in the General Scheme, which are largely reflected in the Bill, would cause confusion for the Garda Commissioner by rendering him accountable to multiple bodies with potentially overlapping remits. (See stakeholder submissions appended to [PLS Report](#).) Some stakeholders, including Conway and the Policing Authority, were also critical of the proposed dilution of the Policing Authority's existing functions, as the independent oversight body, under the Bill. These concerns are largely captured in the Policing Authority's assertion that:

"...reporting lines for the Commissioner are now confused and involve the Minister, the Board, the PCSA and the National Office in an uncoordinated, overlapping manner which in [sic] has the very real potential to reduce public accountability and internalises key issues which should be subject to public scrutiny".¹ [Editorial note: the inclusion of "in" appears to be a typographical error in the Policing Authority's submission. See stakeholder submissions appended to [PLS Report](#).]

Background

This Note provides an overview of the proposals included in the [Policing, Security and Community Safety Bill 2023](#) (the “Bill”) concerning the governance, oversight and accountability framework for An Garda Síochána (AGS). The Bill seeks to implement the recommendations of the Commission on the Future of Policing in Ireland (COFPI), a body comprised of national and international experts who were appointed in 2017 to perform a comprehensive review of policing in Ireland.¹ On 18 September 2018, following an extensive public consultation,² the COFPI published its [Report](#) and [Key Recommendations and Principles](#).

The Government produced a four-year plan for implementing the COFPI’s recommendations in December 2018, [A Policing Service for our Future](#). Further to this plan, the Government approved the drafting, as a matter of priority, of the General Scheme of a Policing and Community Safety Bill.³ The relevant Government Decision also approved, in principle, the establishment of an Independent Examiner of Security Legislation.⁴ Provision was subsequently made for this new position under the Bill. The Programme for Government, ‘[Our Shared Future](#)’ also included a commitment to introduce a Policing and Community Safety Bill.

The [General Scheme](#) of the Bill (the “General Scheme”) was published on 27 April 2021. The Minister for Justice (the “Minister”) forwarded the General Scheme to the Joint Committee on Justice (the “Joint Committee”) for pre-legislative scrutiny (PLS) in April 2021. The Joint Committee invited written submissions from stakeholders, which are included in [Appendix 2](#) of their [PLS Report](#). They also held public engagements with stakeholders on [20 October 2021](#) and [15 February 2022](#). The Joint Committee’s [PLS Report](#) was published in June 2022. Notably, eleven of the twelve recommendations included in the Report concern, directly or indirectly, proposed changes to AGS’s governance, oversight and accountability framework. A traffic light dashboard, assessing the extent to which the Joint Committee’s recommendations have been addressed in the Bill, is included as an Appendix to this Note.⁵

A draft version of the Bill was approved by Government on 22 November 2022, subject to any final drafting or textual changes to be agreed between the Minister and the Attorney General. The [Regulatory Impact Analysis](#) (RIA) for the Bill was also published on 22 November 2022. The final [Bill](#) and the accompanying [Explanatory Memorandum](#) were published on 19 January 2023. The Bill has 10 Parts, comprised of 293 sections, and 7 Schedules. Once enacted, the Bill will repeal the [Garda Síochána Act, 2005 \(as amended\)](#).

¹ Reports of the Disclosures Tribunal, the Policing Authority and the Garda Síochána Inspectorate, and a legislative review undertaken by the Garda Síochána Ombudsman Commission were also taken into account during the drafting of the Bill.

² The submissions received as part of the consultation process are available [here](#) [last accessed 29 November 2022].

³ ‘Regulatory Impact Analysis for the Policing, Security and Community Safety Bill’, p. 10, available [here](#) [last accessed 7 February 2023] (hereinafter “RIA for the Bill”).

⁴ *Ibid*, p. 10.

⁵ The traffic light dashboard indicates whether: (i) the recommendation has been accepted and is reflected in the Bill, (ii) a consistent or unclear approach has been used with regard to the recommendation, or (iii) the recommendation has not been accepted and is not reflected in the Bill. This traffic light approach represents the L&RS’s own, independent analysis of the Bill.

The main proposals concerning AGS's governance, oversight and accountability mechanisms are set out in Parts 2, 4, 5 and 6 of the Bill. As outlined in the [Explanatory Memorandum](#), they include:

- the provision of additional functions to the Garda Commissioner in the areas of workforce planning, human resources, industrial relations and finance with the aim of empowering the Commissioner to lead AGS as a “true CEO”;
- the creation of a non-executive Board of An Garda Síochána (*Bord an Gharda Síochána*) to support the Garda Commissioner and senior AGS management, and to hold them accountable for their performance;
- the creation of a new Policing and Community Safety Authority (PCSA) in place of the existing Policing Authority and Garda Síochána Inspectorate (GSI);
- the transfer of the Policing Authority's statutory responsibility for executive functions to AGS under the guidance of the Board or to the Minister, as appropriate, with the PCSA having a consultative role;
- the restructuring of the existing three-person Garda Síochána Ombudsman Commission (GSOC) into a Police Ombudsman/Deputy Police Ombudsman model with a clear and publicly identifiable head and expanded remit;
- the updating and streamlining of the existing system for the handling of allegations of wrongdoing concerning AGS members, and its extension to civilian AGS staff; and
- the creation of a new category of “Garda personnel” comprising AGS members and Garda staff (currently civilian staff) who will all be subject to the updated complaints system.

Introduction to Governance, Oversight and Accountability

Before discussing AGS's governance, oversight and accountability framework, it is worth considering what is meant by these terms in a policing context. According to the academics,⁶ Professor Dermot Walsh and Dr. Vicky Conway, governance entails “...the procedures and methods aimed at ensuring the efficient discharge of the policing function”.⁷ They assert that it can include “...policy formation and implementation; the determination of priorities and strategies; deployment choices; the allocation of resources; the maintenance of standards; and internal discipline”.⁸ GSI defines governance as:

“...the term used to describe how police services are managed, directed and controlled. It is about developing and putting in place policies and procedures to ensure that a police service operates effectively and meets its objectives. It is also about the ability of a police service to make and enforce internal organisational rules, to ensure the delivery of services and to strengthen how decisions are made and implemented. Governance also provides a framework for holding to account the performance of people and units in a police service.”⁹

According to the academics, Ben Bowling and Janet Foster, accountability “...involves a duty to account for actions taken, to explain them, and for the police to be cooperative with an external,

⁶ Conway and Walsh have engaged in extensive research in the area of policing in Ireland. Conway was also a member of the COFPI.

⁷ Dermot P.J. Walsh and Vicky Conway, ‘(2011) ‘Police governance and accountability: overview of current issues’ 55(2) *Crime, Law and Social Change* 66, pp 61–86.

⁸ Conway citing Walsh and Conway in: Vicky Conway, ‘Policing in a United Ireland: The Intractable Questions of Governance, Oversight and Accountability’ (2022) 33(2) *Irish Studies in International Affairs* 71, pp 77-78.

⁹ GSI, ‘Changing Policing in Ireland’ (2017) p. 181, available [here](#) [last accessed 7 February 2023].

independent authority and ultimately with the wider community”.¹⁰ For Walsh and Conway, it encompasses “...all procedures and methods which can be deployed to render an individual police officer, and the police authority as whole, answerable to another person or body whether that person or body is located inside or outside the police force in question”.¹¹

Conway argues that oversight “...seeks to assess on a day-to-day basis whether policing is abiding by governance requirements ... [through] ... systems that continually check whether procedures are being followed”.¹² She observes that ideally accountability, oversight and governance mechanisms should “...operate together to deliver policing that adheres to effective standards and is transparent”.¹³

Governance, Oversight and Accountability within AGS: the Historic Context

Prior to the establishment of AGS in 1922, policing functions in Ireland were discharged by the Dublin Metropolitan Police (DMP), in respect of Dublin, and the Royal Irish Constabulary (RIC), in respect of the remainder of the country.¹⁴ The RIC was answerable to the British Administration based in Dublin Castle and was strongly opposed by Republicans who viewed its members “as agents of a foreign power”.¹⁵ After the signing of the Anglo-Irish Treaty, the RIC was [disbanded](#). A new police force was formed in 1922, which was initially known as the Civic Guard and later renamed the Garda Síochána na hÉireann (commonly referred to as AGS).¹⁶ The DMP merged with AGS in 1925.¹⁷

AGS was influenced by its emergence from the cinders of colonialism. On the one hand, it inherited from the RIC a very centralised and hierarchical command structure with a Garda Commissioner at its peak.¹⁸ *Section 19* of the [Garda Síochána Act, 1924](#) stipulated that, save for some exceptional provisions, all references to the RIC and officers thereof in existing legislation be construed as references to AGS and officers thereof of equivalent rank. AGS was made accountable to the Government via the Minister for Justice, and the Government was afforded responsibility for appointing the Garda Commissioner and other senior members of AGS.¹⁹ According to the academic, Peter K. Manning, the Commissioner’s powers “...were patterned almost directly by the elected administration of the day”.²⁰ Conway and Walsh observe that, initially at least, there was no involvement by an independent, external body in the governance or

¹⁰ Ben Bowling and Janet Foster, ‘Policing and the police’, in *The Oxford handbook of criminology* (Oxford, 2002) pp 980–1033, at p. 1015.

¹¹ Dermot P.J. Walsh and Vicky Conway, ‘Police governance and accountability: overview of current issues’ (2011) 55(2) *Crime, Law and Social Change* 66, pp 61–86.

¹² Vicky Conway, ‘Policing in a United Ireland: The Intractable Questions of Governance, Oversight and Accountability’ (2022) 33(2) *Irish Studies in International Affairs* 71, p. 78.

¹³ *Ibid.*

¹⁴ The DMP and RIC were established in 1836. For a discussion of the entities which preceded them, see: AGS, ‘Our History’ available [here](#) [last accessed 23 January 2023].

¹⁵ *Ibid.*; and V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, pp 243–244.

¹⁶ AGS, ‘Our History’ available [here](#) [last accessed 23 January 2023].

¹⁷ *Ibid.*

¹⁸ V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, p. 244.

¹⁹ *Ibid.*

²⁰ P.K. Manning, ‘Trust and accountability in Ireland: the case of An Garda Síochána’ (2012) 22(3) *Policing and Society* 346, p. 353

oversight of AGS.²¹ Any complaints received against individual AGS members were handled internally.²²

Notably, AGS was also made the security service for the new State. Indeed, this function was reflected in its title, AGS, which translates into English as “Guardian of the Peace”. AGS was deliberately modelled as a distinctly Irish organisation and indeed most of its original members were young Irish, Roman Catholic, GAA-playing males.²³ According to Walsh and Conway, AGS’s distinctly Republican character and visible role in maintaining peace and security in the embryonic State helped to nurture a “...close identity and bond between gardaí and the community”.²⁴ The academics, Sarah Charman and Donal Corcoran, submit that the fact that AGS’s origins were “...seen to be so intertwined with the birth of the state itself”, meant that for many years, the police service was effectively “shielded from direct and overt critiques”.²⁵

Conway and Walsh observe that it was not until the 1980s that the need for independent oversight of the internal handling of citizens’ complaints against AGS members was formally acknowledged.²⁶ This occurred with the establishment of the Garda Síochána Complaints Board in 1984 in response to criticism of AGS’s handling of the Kerry Babies Case²⁷ and in order to offset the enhanced powers afforded to AGS members under the [Criminal Justice Act, 1984](#).²⁸ However, the Complaints Board suffered from significant resourcing shortages and there were question marks over its independence.²⁹ It was comprised of the Garda Commissioner (or a nominee thereof) and Government appointees.³⁰ Furthermore, it was reliant upon AGS members to investigate complaints made against other AGS members.³¹ It could create tribunals to adjudicate upon possible breaches of AGS’s disciplinary code identified during investigations.³² Nevertheless, Conway and Walsh concluded that it was “gravely inadequate”.³³

During the 1990s and 2000s, a series of high-profile allegations of misconduct were lodged against AGS members culminating in the creation of the [Morris Tribunal](#) in 2002.³⁴ The Morris Tribunal,

²¹ V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, p. 244.

²² *Ibid.*

²³ P.K. Manning, ‘Trust and accountability in Ireland: the case of An Garda Síochána’ (2012) 22(3) *Policing and Society* 346, pp 353-354; and V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, p.244.

²⁴ V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, p. 244.

²⁵ S. Charman and D. Corcoran, ‘Adjusting the police occupational cultural landscape: The case of An Garda Síochána’ (2015) 25(5) *Policing and Society* 484, p. 486. Corcoran is also a member of AGS.

²⁶ V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, p. 245.

²⁷ Regarding the Kerry Babies Case, see, e.g., Nicole Glennon, ‘Kerry babies case re-examined in new episode of RTÉ documentary series’ (*Irish Examiner*, 23 January 2022) available [here](#) [last accessed 23 January 2023].

²⁸ V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, p. 245.

²⁹ *Ibid.*, pp 245-246.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*, p. 246.

³⁴ Conor Lally, ‘Garda scandals: Force dogged by controversy over number of decades’ (*Irish Times*, 6 April 2017) available [here](#) [last accessed 23 January 2023]; and V. Conway and D.P.J. Walsh, ‘Current developments in police governance and accountability in Ireland’ (2011) 55(2/3) *Crime, Law and Social Change* 241, p. 246.

which was established to investigate alleged misconduct in the Donegal division of AGS, found the Garda Síochána Complaints Board to be ineffective.³⁵ Its recommendations gave rise to the [Garda Síochána Act 2005](#) (the “2005 Act”), which provided for the establishment of two independent oversight and accountability bodies for AGS:

- the [Garda Síochána Ombudsman Commission](#) (GSOC) to investigate complaints concerning the conduct of individual AGS members; and
- the [Garda Síochána Inspectorate \(GSI\)](#) to ensure the efficient and effective use of the resources available to AGS as measured against international best standards.

Subsequent investigations and inquiries into allegations surrounding the mistreatment of whistleblowers within AGS, the bugging of GSOC, the quashing of motoring penalty points, and the mis-recording of drink driving tests contributed to the creation of the [Policing Authority](#) under [Part 7](#) of the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act 2015](#) (the “2015 Act”). The Policing Authority oversees the provision of policing services by AGS.³⁶

The *2005 Act* and the *2015 Act* continue to provide the main legislative foundations for AGS’s governance, oversight and accountability mechanisms. They are supplemented by additional legislation, which regulates the exercise of police powers in specific areas.³⁷

As noted by the COFPI in its [Terms of Reference](#), notwithstanding the establishment of a new oversight framework and the implementation of an internal reform programme within AGS, “...concerns remain in relation to the accountability of An Garda Síochána, its leadership and management capacity and its culture and ethos”. These concerns prompted the establishment of the COFPI in 2017.

Current Position in Ireland - the Governance, Oversight and Accountability Framework

In accordance with the COFPI’s [Terms of Reference](#), Parts 4 and 5 of the COFPI Report (Chapters 12-14) examine AGS’s governance, oversight and accountability framework. Two of the COFPI’s Ten [Principles](#) directly relate to this framework:

- Principle 3: Accountability and oversight structures should be clear and effective, and
- Principle 4: Internal governance must be strong and efficient.

The COFPI described the existing framework as confused.³⁸ It identified a need for a clearer differentiation between the functions and responsibilities of the various external oversight and accountability bodies, and AGS’s responsibilities for its own internal governance.³⁹ The absence from the outset of a formalised governance and oversight framework for AGS meant that the

³⁵ Conor Lally, ‘Garda scandals: Force dogged by controversy over number of decades’ (Irish Times, 6 April 2017) available [here](#) [last accessed 23 January 2023].

³⁶ Ibid.

³⁷ For example, the [Criminal Justice \(Surveillance\) Act 2009; as amended](#).

³⁸ COFPI, ‘Final Report: The Future of Policing in Ireland’ (September 2018) p. 39, available [here](#) [last accessed 9 January 2023] (hereinafter “COFPI Report”).

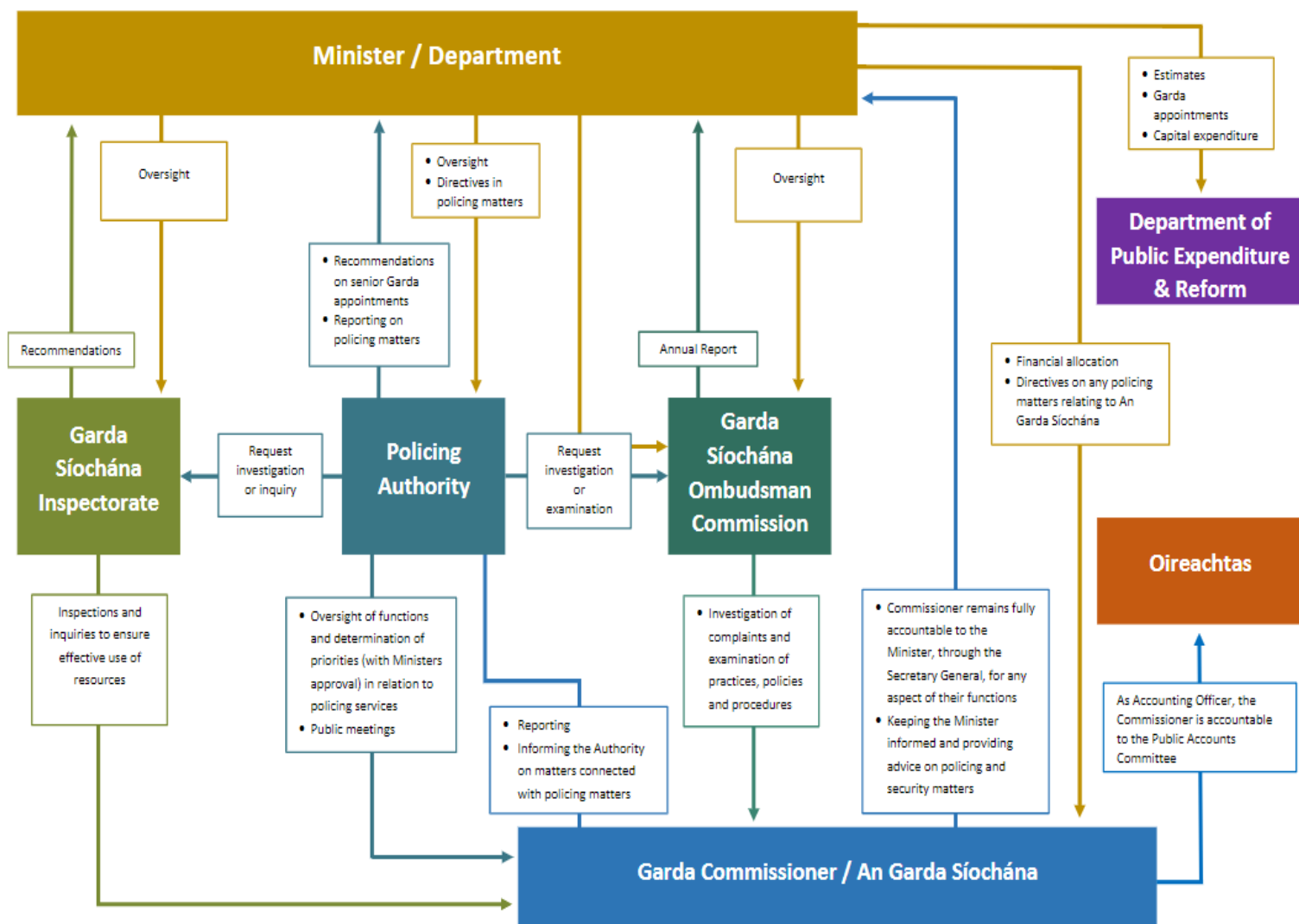
³⁹ Ibid.

infrastructure that did emerge, “...emerged reactively and rapidly in response to various crises”.⁴⁰ The [Effectiveness and Renewal Group for the Department of Justice and Equality](#) surmised in 2018 that the system “seems to have evolved to ensure that the buck stops nowhere”.⁴¹ It observed that this “...can lead to Ministers, Secretaries General, and Garda Commissioners having to resign, step-aside or retire, even for issues not of their own making, simply because accountability cannot be found elsewhere”.⁴²

Table 2: Simplified Garda Oversight Organisational Structure⁴³

Figure I

Simplified Garda Oversight Organisational Structure Chart



⁴⁰ ‘First Report of the Effectiveness and Renewal Group for the Department of Justice and Equality’ (June 2018) p. 33, available [here](#) [last accessed 16 February 2023] (hereinafter “ERG Report”).

⁴¹ Ibid.

⁴² Ibid.

⁴³ Table 2 replicates a table included in Ibid.

The COFPI proposed a new governance, oversight and accountability framework for AGS, which distinguishes between:

- governance, meaning “...internal governance, and day to day management of the police service”, which the COFPI argues should be the responsibility of AGS led by the Garda Commissioner;
- oversight, meaning the “...responsibility of appointed bodies, each with their defined duties to monitor, inspect and investigate the performance of the police”; and
- accountability, meaning the “...democratic accountability of the police to the people through their elected representatives”.⁴⁴

Internal Governance and Accountability of AGS to the Government and Oireachtas

Currently, AGS is accountable to the Government via the Minister whom in turn is politically accountable to the Oireachtas concerning policing matters.⁴⁵ The Garda Commissioner is accountable to the Committee of Public Accounts (PAC) with regard to AGS’s accounts. As a public body, AGS also has a responsibility to engage with relevant Oireachtas Committees concerning policing matters.⁴⁶ However, the COFPI observed that “[i]n practice ... that engagement has been crisis-driven and fragmented rather than deliberative and structured.”⁴⁷ It recommended an enhanced regular programme of engagement between AGS and the Joint Committee on Justice and Equality.⁴⁸

Supporting the findings of the [Effectiveness and Renewal Group for the Department of Justice and Equality](#) in its First Report (June 2018), the COFPI asserted that the Department of Justice should not involve itself in aspects of internal management of AGS, for example, matters regarding pay, and should instead focus on “...transparent and timely communication of information required in the public interest, structural oversight of the police and policing oversight bodies, and the development of policing and security policy”.⁴⁹ It argued that the Minister should continue to hold AGS and other policing bodies to account at the national political level, including by controlling appointments to senior positions and taking the lead in budget negotiations with the Department of Public Expenditure and Reform.⁵⁰

The COFPI noted that the Garda Commissioner ostensibly has the dual role of chief of operations and chief executive officer of AGS. However, it observed that the Garda Commissioner currently lacks the powers to effectively discharge the functions associated with the latter role.⁵¹ It recommended that the Garda Commissioner, supported by a senior management team, be made fully responsible and accountable for the management of AGS’s financial, human and other resources.⁵² It stressed that, in his or her capacity as Chief of Operations, the Garda Commissioner should not be directed by politicians or other actors, and

⁴⁴ COFPI Report, p. 39, available [here](#) [last accessed 9 January 2023].

⁴⁵ Ibid.

⁴⁶ Ibid., p. 40.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., p. 41.

⁵⁰ Ibid., p. 42.

⁵¹ Ibid., p. 54.

⁵² Ibid., pp 54-56.

it recommended that the Commissioner's operational independence be explicitly provided for in legislation.⁵³

The COFPI recommended the establishment of a statutory Board of AGS to strengthen internal governance, management and accountability.⁵⁴ It suggested that the Board be comprised of senior individuals from the business and professional sectors with an independent, non-executive chairperson to be appointed by Government.⁵⁵ It indicated that the Board could both assist the Garda Commissioner and senior AGS management in the performance of their functions, and hold them to account.⁵⁶ It stated that, in line with the Code of Practice for the Governance of State Bodies, the Board should be accountable to the Government.⁵⁷

Two members of the COFPI, Dr. Vicky Conway and Dr. Eddie Molloy, opposed the Board stating that its creation "...and the consequential dilution of the role of the external oversight body (until now the Policing Authority), does not offer the best prospects of achieving the goal of unambiguous, independent, empowered, transparent accountability".⁵⁸

External Oversight and Accountability Bodies

This section discusses the existing external oversight and accountability bodies for AGS, namely, GSOC, GSI and the Policing Authority.

Garda Síochána Ombudsman Commission (GSOC)

[Parts 3](#) and [4](#) of the [2005 Act](#) provided for the establishment of GSOC as an independent statutory body responsible for receiving and investigating complaints concerning the conduct of individual AGS members. GSOC has been operational since 2007 and is comprised of three members who are appointed by the President on the nomination of the Government and subject to the approval of Dáil Éireann and Seanad Éireann.⁵⁹ Subject to Ministerial approval, GSOC may appoint officers in accordance with [section 71](#) of the [2005 Act](#).⁶⁰ Under [section 74](#), GSOC may also enter into arrangements, by contract or otherwise, for the temporary engagement of AGS members, police officers from other police services, and persons from other bodies, to assist with the discharge of its functions. [Section 73](#) permits GSOC to designate officers and persons engaged under section 74 to perform certain of its functions. At the end of 2017, GSOC had 84 staff, as well as a Superintendent seconded to GSOC from AGS, two ICT contractors and an individual contracted to provide media and communications services.⁶¹

⁵³ Ibid., p. 56.

⁵⁴ Ibid., pp 57-59.

⁵⁵ Ibid., p. 57.

⁵⁶ Ibid., p. 58.

⁵⁷ Ibid.

⁵⁸ Ibid., p. 59, footnote 63.

⁵⁹ [Section 65](#), [2005 Act](#).

⁶⁰ [Section 71](#) and, [2005 Act](#).

⁶¹ GSOC, 'About GSOC', available [here](#) [last accessed 9 January 2023].

Members of the public can submit complaints either directly to GSOC or to AGS for onward transmission to GSOC.⁶² Admissible complaints,⁶³ which cannot be resolved by informal means, such as mediation, and which do not appear to concern an alleged offence, may either:

- be referred by GSOC to the Garda Commissioner for investigation by an AGS member, either with or without GSOC supervision, in accordance with AGS's Disciplinary Regulations;⁶⁴ or
- be independently investigated by GSOC.⁶⁵

Complaints that appear to involve a criminal offence are investigated by designated GSOC officers, who are afforded statutory powers to do so, including the power to search a Garda Síochána station subject to certain conditions being satisfied.⁶⁶ Subject to certain conditions being satisfied as outlined in the *2005 Act*, GSOC can also investigate:

- any matter which appears to indicate that the conduct of an AGS member may have resulted in the death of, or serious harm to, a person;⁶⁷
- any matter which appears to indicate that an AGS member may have committed an offence or behaved in a manner that would justify disciplinary proceedings;⁶⁸
- any matter that gives rise to a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct;⁶⁹ and
- protected disclosures made to it as a prescribed person under *section 7* of the *Protected Disclosures Act 2014*.⁷⁰

Parts 3 and 4 of the *2005 Act* provide for a number of offences, for example, offences surrounding the obstruction of designated officers in the performance of their duties.⁷¹ GSOC members and officers and persons engaged by GSOC under contract may be prosecuted for disclosing certain confidential information obtained in the performance of their duties.⁷² Furthermore, [Section 109](#) of the *2005 Act* provides for the performance of judicial inquiries, at the request of the Minister, into the conduct of designated officers in performing certain of their functions.

Since 2018, GSOC, in cooperation with AGS, has also operated a non-statutory "local Intervention" initiative, which seeks to achieve the swift resolution of service-level complaints, for example, complaints concerning poor or inefficient service, without immediate recourse to the statutory complaints procedure.⁷³ Where the complaint is deemed suitable for local intervention and subject

⁶² [Section 83 \(2\)](#), *2005 Act*.

⁶³ For the admissibility criteria, see [section 87](#), *2005 Act*.

⁶⁴ See [sections 92 and 94](#), *2005 Act*.

⁶⁵ See [sections 92 and 95](#), *2005 Act*.

⁶⁶ See [sections 92, 98 and 99](#), *2005 Act*.

⁶⁷ [Section 102 \(1\)-\(3\)](#), *2005 Act*.

⁶⁸ [Section 102 \(4\), \(4A\) and \(5\)](#), *2005 Act*.

⁶⁹ [Sections 102B](#), *2005 Act*.

⁷⁰ [Section 102 \(A\)](#), *2005 Act*.

⁷¹ [Sections 98 \(3\) and 99 \(9\)](#), *2005 Act*.

⁷² [Section 81](#), *2005 Act*.

⁷³ For an overview of the process see, GSOC's Observations on the Policing, Security and Community Safety Bill 2023 (February 2023), pp 18-19, available [here](#) [last accessed 12 February 2023] (hereinafter "GSOC's Observations on the Bill"); and Association of Garda Sergeants (AGSI) submission to the Joint Committee on Justice on the General Scheme of the Policing, Security and Community Safety Bill, 22

to the consent of the complainant, the complaint is referred to the AGS Local Intervention inspector for the relevant AGS division for resolution.⁷⁴ At the end of the local intervention process, the complaint is forwarded to GSOC who will confirm the outcome with the complainant and determine if any further steps are required, for example, the resumption of the statutory admissibility process if local intervention proved unsuccessful.⁷⁵ GSOC has described the local intervention process as “...extremely effective in encouraging local Garda organisational responsibility, and facilitating faster and more effective resolution of service-level complaints”.⁷⁶

Concerns have been voiced by relevant stakeholders, including the Association of Garda Sergeants and Inspectors (AGSI) and the Garda Representative Association (GRA), regarding “excessive delays” in the resolution of complaints and completion of investigations by GSOC.⁷⁷ Some stakeholders have suggested that the delays are due to a lack of resources and/or delays in the secondment of AGS members to GSOC to perform investigations.⁷⁸ GSOC has indicated that factors outside of its control, for example, difficulties in obtaining information from AGS and resource shortages, are significant contributors to delays.⁷⁹

The COFPI identified many problems with the existing complaints system, including resource shortages, limitations in GSOC’s jurisdiction and a restrained, cumbersome and inefficient investigative process.⁸⁰ It observed that, due to a lack of resources, the majority of complaints (excluding those concerning alleged crimes) are investigated by AGS members, and that this in turn compromises GSOC’s independence.⁸¹ It recommended the replacement of GSOC with a new complaints body whose name should highlight its independence (the “complaints body”).⁸² It indicated that there should be enhanced oversight of the complaints body’s work and that it should be required to independently account for its budget via its head.⁸³

The COFPI suggested that the complaints body investigate incidents, as opposed to individuals, with a view to identifying any organisational issues and lessons to be learned, for example, regarding gaps in training.⁸⁴ It indicated that all complaints should be forwarded to the complaints body at first instance to determine the appropriate course of action.⁸⁵ It suggested that the complaints body should refer performance management complaints, for example, complaints concerning customer service, to AGS for resolution.⁸⁶ However, it stressed that complaints, which raise serious issues concerning policing standards and integrity should be independently

October 2021, pp 15-16, appended to the PLS Report, available [here](#) [last accessed 12 February 2023] (hereafter AGSI Submission to PLS).

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ GSOC’s Observations on the Bill 2023, p. 19, available [here](#) [last accessed 12 February 2023].

⁷⁷ Joint Committee on Justice, ‘Report on Pre-legislative Scrutiny of the Policing, Security and Community Safety Bill’ (May 2022) at pp 23-24, available [here](#) [last accessed 12 February 2023] (hereinafter “PLS Report”).

⁷⁸ Ibid., p. 24.

⁷⁹ GSOC’s Observations on the Bill 2023, pp 8-9, available [here](#) [last accessed 12 February 2023].

⁸⁰ COFPI Report, p. 48, available [here](#) [last accessed 9 January 2023].

⁸¹ Ibid.

⁸² Ibid., pp. 48-49.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid., p. 49.

⁸⁶ Ibid., pp. 48-49.

investigated by the complaints body.⁸⁷ It reiterated that the complaints body would need to be adequately resourced to fulfil this role.⁸⁸

The COFPI recommended that the Garda Commissioner be empowered under legislation, in the public interest, to bring matters to the attention of the complaints body which in his or her opinion warrant investigation, for example, allegations concerning past police wrongdoing.⁸⁹ It also proposed that the complaints body be authorised to receive complaints regarding alleged misconduct involving civilian staff of AGS as this would enhance the public perception of AGS as a single organisation with a single workforce that is bound by the same standards of behaviour.⁹⁰

The COFPI suggested that, in order to avoid any potential confusion, the complaints body should not have the power to conduct inspections of AGS, and that this inspection power should instead vest solely with the proposed new Policing and Community Safety body.⁹¹ It also proposed expanding the scope of the existing judicial inquiry process to allow for inquiries into the processes and procedures of the complaints body.⁹²

Garda Síochána Inspectorate (GSI)

Part 5 of the *2005 Act* provides for the establishment of GSI as an independent statutory body whose core objective entails ensuring that the resources available to AGS are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured against the best standards of comparable police services.⁹³ GSI is comprised of three members who are appointed by the Government and who must possess the appropriate experience, qualifications, training or expertise.⁹⁴ Current and former AGS members are ineligible for appointment.⁹⁵ GSI members serve for a term to be determined by the Government and may be eligible for reappointment.⁹⁶ They are supported by approximately 8 support staff.⁹⁷ *Section 117 (2)* of the *2005 Act* provides that GSI's functions include:

- carrying out inspections or inquiries in relation to aspects of the operation and administration of AGS at GSI's instigation or at the request of the Policing Authority or the Minister;
- submitting to the Policing Authority or the Minister, as applicable, reports concerning inspections or inquiries requested; and
- providing advice to the Policing Authority and the Minister concerning best policing practice.

⁸⁷ Ibid., p. 49. The latter would include complaints regarding potential contraventions of the law, human rights violations, corruption and matters that appear to indicate a widespread or systemic problem within AGS.

⁸⁸ Ibid., p. 49. The latter would include complaints regarding potential contraventions of the law, human rights violations, corruption and matters that appear to indicate a widespread or systemic problem within AGS.

⁸⁹ Ibid., p. 50.

⁹⁰ Ibid., pp 49-50.

⁹¹ Ibid., p. 50.

⁹² Ibid.

⁹³ *Section 117 (1), 2005 Act.*

⁹⁴ *Section 115, 2005 Act.*

⁹⁵ *Section 115 (5), 2005 Act.*

⁹⁶ *Section 116, 2005 Act.*

⁹⁷ GSI, 'Members of the Inspectorate', available [here](#) [last accessed 10 January 2023].

GSI, with the approval of the Minister, may enter into arrangements with police services and bodies for the engagement of police officers/persons to provide consultancy or advisory services in connection with the performance of GSI's functions.⁹⁸

The Policing Authority

[Part 7](#) of the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act 2015](#) (the "2015 Act") amended the [2005 Act](#) to provide for the establishment of the [Policing Authority](#) as an independent statutory body to oversee the provision of policing services by AGS. The Policing Authority became operational in 2016.

The Policing Authority is comprised of 9 members, including a chairperson and 8 ordinary members, who are appointed by the Government following a selection process conducted by the Public Appointments Service (PAS).⁹⁹ Members must possess the appropriate experience, qualifications, training or expertise and knowledge in relevant areas, for example, policing, and human rights and equality. Members are appointed for terms of up to four years and are eligible for reappointment; however, they may not hold office for more than 8 years in total.¹⁰⁰

The Policing Authority's core objective involves overseeing the provision of policing services by AGS. Its functions related to this objective include:

- approving AGS's three-year Strategy Statement and Annual Policing Plan subject to the consent of the Minister;
- setting annual Policing Priorities and performance targets for AGS;
- holding monthly meetings with the Garda Commissioner, including at least four public meetings per year;
- overseeing the implementation of AGS's Code of Ethics;
- reporting, and providing advice, to the Minister; and
- reviewing arrangements and mechanisms within AGS concerning:
 - recruitment, training and development,
 - corporate governance,
 - measurement of performance and accountability, and
 - management and deployment of resources.¹⁰¹

The Policing Authority also has responsibilities and functions concerning the selection, appointment, suspension and removal of individuals to/from senior offices/ranks within AGS;¹⁰² awareness raising regarding policing performance, engaging with relevant stakeholders such as joint policing committees, undertaking in-house research, and commissioning research projects in areas concerning the provision of policing services.

The COFPI proposed the establishment of a new Policing and Community Safety Oversight Commission in place of GSI and the Policing Authority, which would absorb most of their existing

⁹⁸ [Section 117 \(6\)](#), 2005 Act.

⁹⁹ [Sections 62 \(C\)](#) and [\(D\)](#), 2005 Act.

¹⁰⁰ [Section 62 \(E\)](#), 2005 Act.

¹⁰¹ Policing Authority, 'What We Do', available [here](#) [last accessed 14 February 2023]. See also [sections 16, 18, 19 and 20](#), 2015 Act, and [section 62H\(2\)\(a\)](#) and [62J](#), 2005 Act.

¹⁰² [Sections 8, 9, 12 and 17](#), 2015 Act; and [Sections 11, 12, 13A and 14\(2\)\(d\)](#), 2005 Act.

functions and responsibilities, whilst also taking on new roles.¹⁰³ It recommended that members of the new body be appointed by Government, having been nominated through an independent process and subject to the approval of the relevant Oireachtas committee.¹⁰⁴ It suggested that the membership include one urban and one rural representative from local community policing groups.¹⁰⁵ In terms of accountability, it indicated that the new body should be required to submit annual reports to the Minister for Justice and Equality and engage with the relevant Oireachtas committees concerning policing and community safety issues.¹⁰⁶

The COFPI suggested that the new body take on new roles including, promoting and monitoring the effectiveness of multi-agency approaches to community safety, and helping to develop the structures for local community policing fora.¹⁰⁷ It proposed that, based on its expertise, the new body be authorised to contribute to the approval process for policing priorities, strategies and annual plans.¹⁰⁸ However, it recommended that, unlike the Policing Authority, the new body “...have no decision-making role in matters of internal governance of the police, such as appointments, promotions and budgetary issues. It should exercise oversight over the integrity of these processes, but not be involved directly in them.”¹⁰⁹ The Policing Authority opposed the proposed curtailment of its role stating: “[t]he impression, apparently held and conveyed by the Commission on the Future of Policing, that the existence and functioning of the Authority under the provisions of the 2015 Act served to limit the capacity of the Commissioner to direct and manage the Garda Síochána was unfounded and not supported by any clear evidence.”¹¹⁰

Regulatory Impact Analysis (RIA)

The [RIA](#) for the Bill indicates that the following policy options were considered regarding the governance and oversight framework for AGS:

1. do nothing;
2. provide for a new coherent governance and oversight framework in line with the COFPI's recommendations replacing the *2005 Act*; or
3. provide for more limited change via the merger of GSI and the Policing Authority, the establishment of an executive board of AGS with some external membership, and the reform GSOC's structures and processes amending the *2005 Act*.¹¹¹

Option two was the preferred option.¹¹²

¹⁰³ COFPI Report, pp 43-47, available [here](#) [last accessed 9 January 2023].

¹⁰⁴ *Ibid.*, p. 46.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, pp 43-44.

¹⁰⁸ *Ibid.*, p. 46.

¹⁰⁹ *Ibid.*, p. 43.

¹¹⁰ Policing Authority, 'Submission to the Joint Oireachtas Committee on Justice Policing, Security and Community Safety Bill', 6 August 2021, p. 3, appended to the PLS Report available [here](#) [last accessed 12 February 2023] (hereinafter "Policing Authority Submission to PLS, 6 August 2021").

¹¹¹ RIA for the Bill, p. 2, available [here](#) [last accessed 11 February 2023].

¹¹² *Ibid.*

Table 3: RIA of options for the Governance and Oversight Framework¹¹³

Governance and Oversight Framework for Policing			
Option No.	Costs	Benefits	Impacts
1.	<ul style="list-style-type: none"> • No direct financial costs to the Exchequer. • Future intangible costs arising from the continuation of an inadequate framework as identified by COFPI. 	<ul style="list-style-type: none"> • No direct financial costs to the Exchequer. • Existing institutions continue to perform functions in a stable environment without the disruption and challenge of planning for transition to a new institutional framework. 	<ul style="list-style-type: none"> • Continuation of inadequate framework with adverse impacts for the delivery of policing services, clear and effective accountability, safety of communities, and public confidence in AGS.
2.	<p><u>Garda Síochána Board</u></p> <ul style="list-style-type: none"> • Remuneration for chairperson and 8 members - €149,592 (Category 1 fees of €29,888 per annum for Chairperson & €14,963 per annum for ordinary members). • Estimated expenses for chairperson/members - €20,000 per annum. • Small secretariat including a Secretary who is to be a senior member of garda staff at principal officer grade - to cost €150,048 per annum. • Number and grade of other secretariat staffing to be determined. • Start-up costs including initial costs for appointment of chair designate /secretary for 2023 - €100,000. • Non-pay running costs of secretariat estimated at €50,000 per annum after start-up. <p><u>Policing and Community Safety Authority:</u></p> <ul style="list-style-type: none"> • Preparatory costs to support transition provided in Budget 2023 - €260,000 (€200,000 start-up costs provided for the Policing Authority & €60,000 for GSI). • Operating cost of body - the combined budgets of 	<ul style="list-style-type: none"> • All parts of the framework have clearly defined roles with necessary powers supporting effective accountability. • Improved governance within AGS aligned with best practice. • AGS empowered to take ownership of future strategies and plans and drive reform. • Better management of resources/reduced waste. • Shortened decision making in relation to executive functions of AGS. • Appropriate framework for relationship between AGS and Minister/ Department in place. • Department enabled to step back from involvement in day to day matters in AGS. • Strengthened independent external oversight. • Reduction in number of oversight bodies by 1. • Public scrutiny maintained. • Independence of GSOC reinforced. • Governance of GSOC streamlined. • GSOC processes streamlined and simplified to support more expedition and transparency while respecting fair procedures and natural justice. 	<ul style="list-style-type: none"> • Better run police service. • Improved delivery of policing services. • Clear and effective accountability for policing • Safer communities. • Public confidence in AGS maintained.

¹¹³ Table 3 is derived almost verbatim from a table included in the RIA. See *ibid.*, pp 3-5.

	<p>the Policing Authority and GSI provide a baseline of €5.53M.</p> <p><u>Office of the Police Ombudsman:</u></p> <ul style="list-style-type: none"> • Extra €2.75M provided in Budget 2023 to support transition. • Operating cost of body for 2023 is €16.2M (an increase of €2.75m on 2022). • Expanded remit and a more complex caseload will require additional personnel and other resources which will be informed by independent business analysis. 		
3.	<ul style="list-style-type: none"> • Similar to (2) with the exception of those associated with the Garda Board. • Limited costs would arise from the establishment of an executive board with some external members including remuneration and expenses. 	<ul style="list-style-type: none"> • Reduction of 1 in the number of oversight bodies. • Additional information available to Policing Authority to inform the performance of its oversight function. • Public scrutiny maintained. • Independence of GSOC reinforced. • Governance of GSOC streamlined. • GSOC processes streamlined and simplified to support more expedition and transparency while respecting fair procedures and natural justice. 	<ul style="list-style-type: none"> • Potential impact on trust and confidence in the inspection function. • Improved public confidence in the system for the handling of complaints and the investigation of allegations of wrongdoing by members of garda personnel. • Overall continuation of inadequate governance and oversight framework with adverse impacts for the delivery of policing services, effective accountability, safer communities and public confidence in AGS.

Proposals set out in the Bill concerning Governance, Oversight and Accountability of AGS

This part of the Note discusses the main provisions in the Bill concerning governance, oversight and accountability of AGS. In so doing, it considers the extent to which the proposed reforms in this area reflect the recommendations of the COFPI. It also endeavours to highlight some of the concerns that have been expressed by relevant stakeholders during the PLS process and in other fora. In addition, it highlights areas where the Bill's provisions converge with, or diverge from, the existing governance, oversight and accountability framework as provided for under the *2005 Act*. It addresses the following core themes:

- governance of AGS and accountability of AGS to the Minister, the Oireachtas and the proposed new Board of AGS;
- the proposed establishment of the Policing and Community Safety Authority (PCSA) in place of the Policing Authority and GSI; and
- the restructuring of GSOC and enhancement of its powers under the renamed Office of the Police Ombudsman.

Governance of AGS and Accountability of AGS to the Minister, the Oireachtas and the Board of AGS

Part 2 of the Bill sets out the main proposals concerning the internal and corporate governance of AGS, and the accountability of AGS to the Government and Oireachtas. It seeks to introduce some significant changes in this area, including through the creation of a non-executive Board of AGS. It also proposes to transfer some of the Policing Authority's existing functions in this area to either (i) AGS/the Garda Commissioner under the supervision of the Board, (ii) the Board, or (iii) the Minister, with the PCSA afforded merely a consultative role or no role whatsoever.

Board of An Garda Síochána

Chapter 2 of Part 2 of the Bill seeks to implement a core recommendation of the COFPI in that it provides for the creation of a non-executive 'Board of An Garda Síochána' (the "Board") or '*Bord an Gharda Síochána*'. The [Explanatory Memorandum](#) states that the Board will facilitate the "...Department in pulling back from involvement in day-to-day management of An Garda Síochána while also providing objective assurance to the Minister in relation to governance standards within An Garda Síochána".¹¹⁴

Section 12 provides that the Board's functions will include:

- overseeing and approving the development of corporate strategy concerning "major plans of action", risk policy, budgets and service plans;¹¹⁵
- promoting high standards of corporate governance;
- monitoring the implementation of organisational performance;
- overseeing major capital expenditure and investment (having regard to section 68);
- ensuring that arrangements for the recruitment, appointment, training and performance management of garda personnel complies with best practice;
- ensuring AGS has the necessary policies in place to comply with its public sector duty;¹¹⁶
- ensuring the integrity of AGS's accounting and financial reporting systems; and
- establishing and implementing arrangements for managing and appraising the performance of the Garda Commissioner.

¹¹⁴ Explanatory Memorandum to the Policing, Security and Community Safety Bill 2023, p. 2, available [here](#) [last accessed 11 February 2023] (hereinafter "Explanatory Memorandum to the Bill").

¹¹⁵ Subsection (4) clarifies that "major plans of action", do not include operational policing, plans concerning the provision of security services or plans relating to major event management.

¹¹⁶ The [public sector duty](#) requires public bodies to promote equality, prevent discrimination and protect the human rights of employees, customers, service users and anyone affected by their policies and plans. See [section 42](#) of the *Irish Human Rights and Equality Commission Act 2014*.

Section 12 (2) provides that the Board shall have all such powers as are necessary or expedient for the performance of its functions.

Section 13 obliges the Garda Commissioner to provide the Board with the information it requires to perform its functions effectively save where disclosure of the information could, in the Commissioner's opinion, be prejudicial to the security of the State.

Section 14 provides that the Board is accountable to the Minister for the performance of its functions and shall inform him or her of any matter that the Board considers to be deserving of his or her attention. As noted previously, the COFPI recommended that the Board be made accountable to the Minister.¹¹⁷

Sections 15 and 16 provide that the Board shall be comprised of 9 members, including the chairperson, who are to be appointed by the Minister from amongst persons recommended by PAS following a competitive appointments process. The Board should have a gender balance and members must have sufficient experience and expertise in relevant areas, for example, organisational governance. **Section 17** provides that Board members will hold office for a maximum of four years and may be reappointed subject to the proviso that they cannot serve for more than eight years in total.¹¹⁸ **Sections 18** excludes from eligibility for appointment: the Police Ombudsman or Deputy Police Ombudsman, and members of garda personnel, the Policing and Community Safety Authority (PCSA), either House of the Oireachtas, the European Parliament, or local authorities.¹¹⁹ **Sections 18 - 20** outline the circumstances in which members of the Board may be disqualified and removed from office by the Minister.

Section 22 (10) permits the Garda Commissioner to attend and speak at meetings of the Board and its committees in accordance with their procedures.

Section 23 provides for the appointment by the Board, following consultation with the Garda Commissioner, of a senior member of garda staff to act as Secretary. **Section 25** requires the Garda Commissioner to assign to the Board such members of garda staff, premises and other resources as the Board reasonably requires for the performance of its functions. In performing their functions, the Secretary and assigned members of garda staff will not be subject to the direction and control of the Garda Commissioner. **Section 24** provides that the Secretary shall be accountable to the Board for the performance of his or her functions.

Appointment/removal of individuals to/from senior offices and ranks within AGS

Chapters 3 and 5 of Part 2 of the Bill contain provisions, which outline the relevant processes concerning the appointment, resignation, suspension and removal of individuals to/from senior offices and ranks within AGS. These provisions provide for a considerable curtailment of the PCSA's role, as compared with the role currently played by the Policing Authority, and the transfer

¹¹⁷ COFPI Report, p. 58, available [here](#) [last accessed 9 January 2023].

¹¹⁸ Section 17 (2) (b) provides that 4 of the ordinary members first appointed under the Bill shall hold office for a period of 3 years.

¹¹⁹ Garda personnel include sworn AGS members (including the Garda Commissioner) and garda staff (what are now known as civilian staff). Part 4 of the Bill provides for the establishment of the PCSA in place of the existing Policing Authority and GSI.

of the Authority's existing functions to either (i) AGS, acting under the supervision of the Board, (ii) the Board, or (iii) the Minister, with the new PCSA only playing a consultative role, if any.

Section 26 provides that the Garda Commissioner will be appointed by the Minister following a selection competition undertaken by PAS at the invitation of the Minister. The selection criteria and the recruitment process are to be agreed between PAS and the Minister, having obtained the views of the Board and the PCSA. Individuals appointed to the office must possess the necessary experience, qualifications and training. The term of office is 5 years although the Government may grant an extension not exceeding 2 years having consulted with the Board and the Authority.¹²⁰ Individuals hold office on such terms and conditions as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform. Subsection (9) allows for the existing office holder, upon the coming into operation of section 26, to continue in office.

In contrast to section 26, currently the Policing Authority nominates individuals for appointment to the offices of Garda Commissioner and Deputy Garda Commissioner, having received recommendations from PAS.¹²¹ The selection criteria and the recruitment process are agreed between the Policing Authority, with the consent of the approval of the Minister, and PAS.¹²² The Government can only reject the Policing Authority's nominee in exceptional circumstances and for stated reasons.¹²³ In such circumstances, the Policing Authority still retains some influence in that it can make representations to the Government or nominate an alternative individual for appointment to the office.¹²⁴ In contrast, under the Bill, the PCSA's role is limited to the provision of views to the Minister. Conway has criticised the proposed change inferring that it could politicise the role of Garda Commissioner.¹²⁵ She observed that the Council of Europe's Group of States against Corruption ([GRECO](#)) recommends that the heads of law enforcement agencies be independently appointed.¹²⁶ The Policing Authority also strongly opposed the dilution of its role arguing that the appointment of an individual to the office of Garda Commissioner by an empowered, independent policing oversight body represents best practice.¹²⁷

Section 27 concerns the appointment of individuals to the office of Deputy Garda Commissioner and applies the same appointments process as is used for the appointment of individuals to the position of Garda Commissioner. Section 27 (7) allows for the existing office holder, upon the coming into operation of section 27, to continue in office.

Section 30 authorises the Minister, acting in the public interest and having consulted with the Board and followed the relevant procedure outlined in the section, to suspend the holder of the office of Garda Commissioner or Deputy Garda Commissioner from duty where the person

¹²⁰ The term of office of the Garda Commissioner is not explicitly provided for under the *2005 Act*. However, the conditions of the 2018 competition for the office conducted by PAS set the term at 5 years. The term of office of the current Garda Commissioner, Drew Harris, was extended for an additional two years, up to 1 June 2025, by way of a Governmental decision on 15 February 2022. See DOJ Press Release: Government extends Garda Commissioner's Term of Appointment to 2025 (15 February 2022) available [here](#) [last accessed 17 February 2023].

¹²¹ [Sections 9](#) and [10](#), 2005 Act.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ Submission of Dr. Vicky Conway, DCU on the General Scheme of the Policing, Security and Community Safety Bill, 14 September 2021, p. 5, appended to the PLS Report, available [here](#) [last accessed 11 February 2023] (hereinafter "Submission of Dr. Vicky Conway").

¹²⁶ *Ibid.*

¹²⁷ Policing Authority Submission to PLS, 6 August 2021, p. 6, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

concerned is the subject of an investigation concerning an alleged offence or alleged serious misconduct. The Board may also recommend suspension to the Minister where the relevant investigation concerns an alleged offence, and the Board is satisfied that the suspension is in the public interest. The suspension may be terminated by the Minister, following consultation with the Board, when the circumstances which led to the suspension no longer apply.

Section 31 provides for the removal by the Government of a person from the office of Garda Commissioner or Deputy Garda Commissioner for stated reasons, including that the person concerned failed to perform the functions of the office with due diligence and effectiveness. The Government must consult the Board prior to removing an individual from office and the Board may recommend the removal of an officeholder to the Government for its consideration for one of the reasons stated in the section.

Sections 30 and 31 of the Bill also curtail the role of the PCSA, relative to the Policing Authority, in the suspension and removal of individuals from the positions of Garda Commissioner and Deputy Garda Commissioner.¹²⁸ Presently, the Policing Authority may recommend to the Government that a person be removed from the office of Garda Commissioner, or Deputy Garda Commissioner where the reasons for removal relate to policing services, and the Government must consider any such recommendation.¹²⁹ However, **section 31** of the Bill permits the Board, as opposed to the PCSA, to recommend to the Minister that an individual be removed from either the office of Garda Commissioner or Deputy Garda Commissioner for one of the stated reasons outlined in the section. Furthermore, [section 11 \(5\)](#) of the *2005 Act* currently permits the Policing Authority to suspend an individual from duty who holds the office of Garda Commissioner or Deputy Garda Commissioner, having notified the individual of their intention to consider removing them from office.

In her submission to the PLS, Conway indicated that the power to remove the Garda Commissioner should vest with the Policing Authority, subject to the consent of the Minister, both in order to avoid any risk of politicisation and because the Policing Authority has the most in depth perspective of the Commissioner's performance as a result of its oversight role.¹³⁰ The Policing Authority argued that where the PCSA identifies a serious performance issue concerning the Garda Commissioner, it should have some form of formal statutory recourse beyond the mere informal expression of views to the Minister.¹³¹

Section 31 of the Bill also permits the Government to request the Chief Justice to invite a judge of the Supreme Court, Court of Appeal or High Court to undertake an inquiry, in accordance with **section 32**, into a matter that gave rise to a proposal to remove an individual from the post of Garda Commissioner or Deputy Garda Commissioner. After an individual is removed from office in accordance with section 31, the Minister must ensure that a statement of the reasons for the removal is laid before each House of the Oireachtas. In her submission to the PLS, Conway asserted that inquiries into the performance of the Garda Commissioner should not be entirely within the Government's control, as is envisaged under **sections 31 and 32** of the Bill, arguing that

¹²⁸ [Sections 11, 12](#) and [13A](#), *2005 Act*.

¹²⁹ [Section 11 \(2\)](#), *2005 Act*.

¹³⁰ Submission of Dr. Vicky Conway, p. 5, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

¹³¹ Policing Authority Submission to PLS, 6 August 2021, p. 7, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

this could give rise to a risk of politicisation.¹³² In contrast to the Bill, both the Government *and* the Policing Authority are currently permitted under [sections 12](#) and [13A](#) of the *2005 Act* respectively, to appoint a person to hold an inquiry into a matter that gave rise to a proposal by the Government or the Policing Authority, as appropriate, to remove an individual from the office of Garda Commissioner or Deputy Garda Commissioner.

Sections 47 and **48** of the Bill also curtail the PCSA's role, as compared with that of the Policing Authority, in the appointment and removal of individuals from the ranks of Assistant Garda Commissioner and chief superintendent. Currently, [section 13](#) of the *2005 Act* authorises the Policing Authority, acting in accordance with applicable regulations and having undertaken a selection competition, to appoint individuals to these ranks. However, **section 47** of the Bill authorises the Garda Commissioner, following a selection competition undertaken by PAS and acting in accordance with applicable regulations and the consent of the Board, to appoint persons to the rank of Assistant Garda Commissioner or chief superintendent. During the PLS process, whilst reiterating its opposition to the proposed change, the Policing Authority argued that the PCSA should at a minimum have a consultative role in the determination of competencies for these positions and be represented on selection boards.¹³³

Currently, the Policing Authority, acting in compliance with the requirements outlined in [section 13A](#) of the *2005 Act*, may remove an individual from the office of Assistant Garda Commissioner, chief superintendent or superintendent for stated reasons related solely to policing services.¹³⁴ However, **section 48** of the Bill does not afford the PCSA an equivalent role. Instead, it affords the Garda Commissioner, acting with the consent of the Board, the power to remove individuals from the ranks of Assistant Garda Commissioner and chief superintendent for stated reasons. In its submission to the PLS process, the Policing Authority argued that the PCSA should be consulted in relation to any proposed suspensions or removals from these positions.¹³⁵

Accountability of the Garda Commissioner of AGS

Chapter 4 of **Part 2** concerns the functions and duties of the Garda Commissioner, but also includes provisions concerning the Garda Commissioner's accountability. As discussed below, it affords the Garda Commissioner enhanced powers in the allocation and deployment of resources probably with a view to implementing the COFPI's recommendation to empower the Commissioner to act as a true Chief Executive.¹³⁶ It also provides for the Garda Commissioner's accountability to the proposed new Board of AGS in accordance with the COFPI's recommendation that the Board hold the Commissioner and senior AGS management to account for the effective performance of their responsibilities.¹³⁷

Section 33 sets out the Garda Commissioner's functions. The Commissioner is made responsible for arranging the recruitment and appointment of members of garda personnel, reflecting the existing position [section 26 of the 2005 Act](#). **Chapter 5** of **Part 2** contains more detailed provisions

¹³² Submission of Dr. Vicky Conway, p. 6, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

¹³³ Ibid., pp 8-9.

¹³⁴ [Section 11 \(3\)](#), *2005 Act*.

¹³⁵ Policing Authority Submission to PLS, 6 August 2021, p. 9, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

¹³⁶ COFPI Report, p. 56, available [here](#) [last accessed 9 January 2023].

¹³⁷ Ibid., p. 58.

concerning garda personnel and affords additional functions and powers to the Garda Commissioner in this area. Unlike [section 26 of the 2005 Act](#), section 33 also affords the Commissioner responsibility for “...the allocation and deployment of resources available to him or her and determining the manner in which members of garda personnel are to be distributed and stationed throughout the State”. This appears to be an attempt to give effect to the COFPI’s recommendation that the Commissioner be made fully responsible and accountable for the management of AGS’s financial, human and other resources.¹³⁸

Section 33 also requires the Garda Commissioner to advise the Minister on policing and security matters.¹³⁹ Furthermore, it requires the Commissioner to assist and cooperate with the PCSA and the Police Ombudsman in order to facilitate them in the performance of their duties. Currently [section 26 \(1\) \(c\) \(ca\)](#) only explicitly requires the Police Commissioner to assist and cooperate with the Policing Authority, without mentioning GSOC.

Section 34 (1) provides that the Garda Commissioner shall be independent in the performance of his or her functions, albeit subject to the Bill. Subsection (2) provides that the Garda Commissioner is accountable to the Board for the performance of his or her functions. According to the Explanatory Memorandum, this reflects the standard CEO/Board relationship.¹⁴⁰

Section 35 (1) requires the Garda Commissioner to account fully to the Government and the Minister, through the Secretary General of the Department of Justice (the “Secretary General”), in relation to matters connected with the provision of policing services and security services. In its Report, the COFPI noted that “An Garda Síochána, and other criminal justice services are, and should be, accountable to the democratically elected government of the State”.¹⁴¹ Commenting on this provision during the PLS process, the DOJ stated that “[t]he Garda Commissioner, as recommended by CoFPI, continues to be accountable to the Minister and the Government for higher level matters concerning the policing and security of the State (head 28).”¹⁴²

Section 35 (2) permits the Secretary General to request the Commissioner to provide any document in the power or control of AGS. A similar power is afforded to the Secretary General under [section 40](#) of the 2005 Act. In their submissions to the PLS process, the Association of Garda Superintendents criticised this provision for encroaching upon the Garda Commissioner’s independence and omitting confidentiality safeguards.¹⁴³ In her submission to the PLS process, Dr. Vicky Conway also criticised the provision for affording the Government too much power.¹⁴⁴ According to the Explanatory Memorandum, the purpose of section 35 is to “...ensure that the Executive is informed or is in a position to inform itself of developments in An Garda Síochána to

¹³⁸ Ibid., pp 54-56, available [here](#) [last accessed 9 January 2023].

¹³⁹ This reflects [section 26 \(1\) \(c\), 2005 Act](#).

¹⁴⁰ Explanatory Memorandum to the Bill, p. 9, available [here](#) [last accessed 11 February 2023].

¹⁴¹ COFPI Report, p. 40, available [here](#) [last accessed 9 January 2023].

¹⁴² Department of Justice Submission to the Joint Committee on the General Scheme of the Policing, Security and Community Safety Bill, 2 December 2021, pp 3-4, appended to PLS Report available [here](#) [last accessed 12 February 2023] (hereinafter “DOJ Submission to PLS”).

¹⁴³ Submission of the Association of Garda Superintendents to the Committee on Justice: General Scheme of the Policing, Security and Community Safety Bill, p. 17, appended to the PLS Report, available [here](#) [last accessed 11 February 2023] (hereinafter “Submission of the Association of Garda Superintendents to the PLS”).

¹⁴⁴ Submission of Dr. Vicky Conway, p. 6, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

support its accountability to the Houses of the Oireachtas and the carrying out of its functions in relation to public safety and the security of the State”.¹⁴⁵

Section 36 requires the Garda Commissioner to keep the Minister and the Secretary General fully informed of significant developments relating to AGS, policing and State security, including matters that might reasonably be expected to adversely affect public confidence in AGS. Section 36 also permits the Minister to request the Garda Commissioner to submit a report to the Minister on matters connected with policing services, security services or any of the Commissioner's other functions.

Section 37 permits the Minister, with the approval of Government, to issue written directives to the Garda Commissioner on matters relating to AGS; however, subject to the proviso that they may not limit the independence of AGS members in investigating or prosecuting offences. Section 37 also permits the PCSA to recommend to the Minister that a directive be issued in relation to policing services. These provisions largely reflect existing provisions under [section 25](#) of the 2005 Act.¹⁴⁶ Where a directive is issued, the Minister must ensure that it is laid before the Houses of the Oireachtas unless to do so might prejudice the security of the State or impede the prevention, investigation or prosecution of an offence. In such circumstances, a written statement indicating that a directive has been issued must be laid.

In her submission to the PLS process, Conway submitted that the Ministerial power to issue directives is too broad and could impinge upon the Garda Commissioner's operational control and independence.¹⁴⁷ Notably, the COFPI stressed that the Commissioner should not be directed by politicians in its operational role.¹⁴⁸ During the PLS process, the Department of Justice remarked that the power has been used sparingly to date with only three directives issued since 2005, which sought to facilitate cooperation between AGS and civil inquests and an inquiry in Northern Ireland.¹⁴⁹ It indicated that the power is “...intended to enable the Minister to respond to important events quickly and decisively, for example, at times of national crisis”.¹⁵⁰

Chapter 6 of Part 2 of the Bill specifically concerns governance and accountability of AGS. It reflects a considerable dilution of the PCSA's role in this area, relative to that currently enjoyed by the Policing Authority, and transfer of some of the Policing Authority's existing functions to the Board or the Minister.

Section 61 authorises the PCSA to determine policing priorities for AGS in performing its functions relating to policing services subject to the approval of the Minister and having consulted with the Garda Commissioner, the National Office for Community Safety, and such other persons as the PCSA considers appropriate.¹⁵¹ To some extent, section 61 restates [section 20](#) of the 2005 Act; however, the latter also authorises the Policing Authority to periodically determine performance targets in relation to the achievement of policing priorities, subject to the approval of the Minister

¹⁴⁵ Explanatory Memorandum to the Bill, p. 9, available [here](#) [last accessed 11 February 2023].

¹⁴⁶ With the Policing Authority currently discharging the role envisaged for the PCSA.

¹⁴⁷ Submission of Dr. Vicky Conway, p. 7 appended to PLS Report, available [here](#) [last accessed 11 February 2023].

¹⁴⁸ COFPI Report, p. 56, available [here](#) [last accessed 9 January 2023].

¹⁴⁹ DOJ Submission to PLS, p. 6, appended to PLS Report available [here](#) [last accessed 12 February 2023].

¹⁵⁰ Ibid.

¹⁵¹ Section 108 of the Bill provides for the creation of the National Office for Community Safety whose functions include supporting public services bodies in the implementation of the national strategy for community safety.

and having consulted with the Garda Commissioner. Section 61 of the Bill does not afford the PCSA an equivalent role nor does it specify which body, if any, should set performance targets for AGS in this regard. Notably, the COFPI recommended that the proposed new Policing and Community Safety body provide input and approval, based on its expertise, to the approval process for policing priorities.¹⁵² However, it didn't make any explicit mention of performance targets. The Policing Authority has criticised the omission of performance targets from the PCSA's remit stating that it "...may reduce the impact of priority setting for the Garda Síochána".¹⁵³

Section 62 authorises the Minister to determine priorities and performance targets for AGS in performing its functions relating to security services, having consulted with the Garda Commissioner and such other persons as the Minister considers appropriate. Section 62 to a large extent restates [section 20A](#) of the 2005 Act.

Section 63 requires the Garda Commissioner, at the request of the Board and subject to its approval, to submit to the Minister on a triannual basis a strategic plan for the following three years. In preparing the plan, the Garda Commissioner must comply with any directions issued by the Minister. He or she must also have regard to any views received from the PCSA concerning aspects of the plan that relate to policing services and relevant policies of the Government or any Minister. Section 63 outlines information that must be included in the plan, including the main objectives of AGS for the relevant period, the strategies that will be pursued to achieve those objectives, and an appraisal of AGS's performance in discharging its functions under the Bill during the previous three years. Having consulted with the Board, the Minister may issue directions to the Board requiring amendments to the draft plan prior to approval.

Section 64 requires the Board, in consultation with the Garda Commissioner, to provide the Minister with reports on the implementation of the strategic plan.

Section 65 requires the Garda Commissioner to submit an annual service plan for the coming 12 months to the Minister for approval (subject to any amendments the Minister may require). Prior to submission, the plan must be adopted by the Board. The plan must include certain information, for example, regarding the type and volume of services to be provided by AGS. In preparing the plan, the Garda Commissioner must comply with any directions issued by the Minister. He or she must also have regard to any views received from the PCSA concerning aspects of the plan that relate to policing services and relevant policies of the Government or any Minister.

Sections 63 to 65 reflect a curtailment of the PCSA's functions, relative to those currently enjoyed by the Policing Authority, in standard setting for the provision of policing services and oversight of strategic planning and corporate governance arrangements for AGS. [Sections 21](#) and [22](#) of the 2005 Act currently require the Garda Commissioner to submit the three-year strategy statement and the annual policing plan to the Policing Authority for approval. The Policing Authority may then make amendments, subject to the consent of the Minister and having consulted with the Garda Commissioner. In contrast, **sections 63, 65 and 122** of the Bill only permit the PCSA to submit views to the Garda Commissioner regarding matters pertaining to policing services included in the strategic plan and annual service plan.

[Section 23](#) of the 2005 Act currently requires the Garda Commissioner to submit a report directly to the Policing Authority every three years reviewing the effectiveness and efficiency of the management and deployment of resources available to AGS for policing services during the three-

¹⁵² COFPI Report, p. 46, available [here](#) [last accessed 9 January 2023].

¹⁵³ See Policing Authority's comments on Head 49 of the General Scheme in: Policing Authority Submission to PLS, 6 August 2021, p. 10, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

year period in question. The Policing Authority in turn must forward the report to the Minister. In contrast, **section 64** of the Bill does not provide for any periodic reporting to the PCSA on the implementation of the strategic plan. Instead, it requires the Board, in consultation with the Garda Commissioner, to provide reports to the Minister on the implementation of the strategic plan.

Section 68 provides that the Minister may, having consulted with the Minister for Public Expenditure and Reform, request the Garda Commissioner to prepare a plan concerning capital expenditure of AGS in such form and relating to such period as the Minister may specify. The plan must be adopted by the Board before being submitted to the Minister for approval. The provision included in the Bill for this capital expenditure plan appears to be a new addition relative to the *2005 Act*.

Section 70 requires the Garda Commissioner to submit an annual report to the Minister within 4 months of year end. The plan must be adopted by the Board prior to submission to the Minister. It should address the performance of AGS during the year under review, including with regard to its implementation of the strategic plan, annual service plan and capital expenditure plan. Again, section 70 reflects a curtailment of the PCSA's functions relative to those currently held by the Policing Authority. Section [46](#) of the *2005 Act* requires the Garda Commissioner to submit the annual report to the Policing Authority on policing services during the year under review. The Policing Authority must forward the report, within 30 days of receipt thereof, to the Minister.

Section 71 requires the Board to submit to the Minister for his or her approval a governance framework for AGS. The framework should outline the managerial, organisational and governance structures of AGS, the processes and guidelines to be followed to ensure compliance with reporting requirements imposed on the Garda Commissioner under legislation, and AGS's internal controls. In preparing the governance framework, the Board must consult with the Garda Commissioner and have regard to any directives issued by the Minister under section 37. The provision included in the Bill for a governance framework appears to be a new addition relative to the *2005 Act*. According to the Explanatory Memorandum, it "...reflects a standard corporate governance requirement for vote-holding bodies under the Corporate Governance Standard for the Civil Service".¹⁵⁴ Conway asserted that "...[a]s an internal matter, the governance framework should be the responsibility of the Commissioner, to be approved by the Authority".¹⁵⁵

The Minister must lay the policing priorities, security priorities, strategic plan, annual service plan, capital expenditure plan, and annual report before the Houses of the Oireachtas. With the exception of the policing priorities, the Minister may exclude from the versions laid before each House of the Oireachtas, any matter that, in his or her opinion, would be prejudicial to the interests of the security of the State; or might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person. Sections 61-71 include provisions requiring the publication of the governance framework, the policing priorities and the versions of the strategic plan, annual service plan, capital expenditure plan and annual report, which are laid before the Houses of the Oireachtas.

The COFPI recommended that the proposed new Policing and Community Safety body be authorised to contribute to the approval process for policing strategies and annual plans.¹⁵⁶ However, as noted previously, the COFPI also recommended that, unlike the Policing Authority,

¹⁵⁴ Explanatory Memorandum to the Bill, p. 16, available [here](#) [last accessed 11 February 2023].

¹⁵⁵ Submission of Dr. Vicky Conway, p. 9, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

¹⁵⁶ COFPI Report, p. 46, available [here](#) [last accessed 9 January 2023].

the new body “...have no decision-making role in matters of internal governance of the police”, including budgetary issues.¹⁵⁷ It recommended that the new body “should exercise oversight over the integrity of these processes, but not be involved directly in them.”¹⁵⁸ However, provisions such as those included in section 64 concerning reporting on the implementation of the strategic plan appear to dilute the PCSA’s oversight, as opposed to decision-making, capabilities. The Policing Authority and Conway, in their submissions to the PLS process were critical of the curtailment of the PCSA’s role in standard setting for the provision of policing services and oversight of strategic planning arrangements for AGS.¹⁵⁹ For example, the Policing Authority observed that the opportunity currently afforded to the Authority to contribute to the Annual Service Plan helps “ensure the Plan is ambitious, addresses concerns of public interest and allows for agility as the operating environment changes”.¹⁶⁰ However, it stated that the requirement imposed on the Garda Commissioner to obtain the PCSA’s views on the Plan “provides little assurance that these views will find expression in the final plan”.¹⁶¹

Section 72 provides that the Garda Commissioner shall be the accounting officer in relation to the appropriation accounts of An Garda Síochána for the purposes of the *Comptroller and Auditor General Acts 1866 to 1998*. It stipulates that the Garda Commissioner may be required to give evidence before PAC in relation to matters outlined in the section upon the request of PAC.¹⁶²

Section 73 provides that the Garda Commissioner may be required to attend before other Oireachtas committees to give account for the general administration of AGS. Subsection (2) provides that the Garda Commissioner may refuse a request which relates to any matter which is, has been, or may at a future time be, the subject of proceedings before a court or tribunal in the State. In such circumstances, the committee in question may apply to the High Court for a determination concerning whether or not subsection (2) applies.

Standards of Ethics and Integrity imposed on AGS

Chapter 7 of Part 2 concerns the standards of ethics and integrity that members of garda personnel, Board members, and certain other persons such as consultants and advisors of the Garda Commissioner and their employees, must adhere to.

Section 78 requires the PCSA, having consulted with actors outlined in the section, to issue a code of ethics in place of the existing [Code of Ethics for AGS](#).¹⁶³ It must include standards of conduct and practice for members of garda personnel, and provisions to encourage and facilitate the internal reporting of wrongdoing. The Garda Commissioner must take the necessary steps to ensure that all members of garda personnel have read and understood the code.

Section 79 provides that, in performing functions under the Bill, Board members and certain other persons, for example, persons engaged by the Garda Commissioner as advisors, shall maintain

¹⁵⁷ *Ibid.*, p. 43.

¹⁵⁸ *Ibid.*

¹⁵⁹ Policing Authority Submission to PLS, 6 August 2021, pp 10-12, appended to PLS Report, available [here](#) [last accessed 12 February 2023]; Submission of Dr. Vicky Conway, pp 8-10, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

¹⁶⁰ Policing Authority Submission to PLS, 6 August 2021, p. 11, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

¹⁶¹ *Ibid.*

¹⁶² This provision maintains the position provided for under [section 43](#) of the 2005 Act.

¹⁶³ This provision largely restates and updates [section 17](#) of the 2005 Act.

proper standards of integrity, conduct and concern for the public interest. It requires the Board to issue a code of ethics to provide guidance in this regard.

Section 80 imposes a duty on certain persons, including individuals who are or were members of garda personnel, members of the Board, or engaged by the Garda Commissioner on contract, not to disclose confidential information obtained in the course of carrying out their duties where the disclosure is likely to have a harmful effect, as defined under the section, and the person knows or believes that the disclosure is likely to have such an effect. A person is presumed, unless the contrary is proved, to know that the disclosure is likely to have a harmful effect if a reasonable person would, in all of the circumstances, be aware that the disclosure could have that effect. A person who contravenes section 80 (1) is guilty of an offence and is liable:

- on summary conviction, to a class C (€2,500) fine and/or imprisonment for a term not exceeding 12 months; or
- on conviction on indictment, to a fine not exceeding €50,000 and/or imprisonment for a term not exceeding 5 years.

A higher penalty applies where a person receives any gift, consideration or advantage as an inducement to disclose the information, or as a reward for, or otherwise on account of, the disclosure.¹⁶⁴ It is not necessary to show that the disclosure had a harmful effect to secure a prosecution under the section. Section 80 provides for a defence where the disclosure was:

- a) made to one of the actors listed in subsection (4) (a) for example, the Minister;
- b) made in the course of, and in accordance with, the person's duties; or
- c) was reasonably believed by the person to be required or permitted by law, duly authorised by the Garda Commissioner in furtherance of his or her functions, or made in accordance with paragraph (a) or (b).

Independent Inquiries into Matters of Significant Public Interest

Chapter 8 of Part 2 permits the Minister to order special inquiries into matters of significant public interest. It largely restates [section 42](#) of the 2005 Act.¹⁶⁵ **Section 82** permits the Minister, having consulted the PCSA and acting in relation to any matter considered by him or her to be of significant public concern, to order an independent inquiry into:

- any aspect of the administration or operation of AGS,
- any practice or procedure of AGS, or
- the conduct of members of garda personnel.

Section 82 (2) authorises the PCSA to request the Minister to order a special inquiry into a matter relating to policing services. Where the Minister declines the request, he or she must provide reasons to the PCSA.

Section 83 permits the Minister to specify the terms of reference of special inquiries having consulted with such persons as he or she thinks fit. The Minister is obliged to consult the PCSA

¹⁶⁴ In such circumstances, the individual is liable: (a) on summary conviction, to a class B (€4,000) fine and/or imprisonment for a term not exceeding 12 months; or (b) on conviction on indictment, to a fine not exceeding €75,000 and/or imprisonment for a term not exceeding 7 years. The Explanatory Memorandum notes that section 80 largely restates [section 62 of the 2005 Act](#). Explanatory Memorandum to the Bill, p. 18, available [here](#) [last accessed 11 February 2023].

¹⁶⁵ Explanatory Memorandum to the General Scheme of the Bill, p. 12, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

before specifying the terms of reference of an inquiry into a matter relating to policing services.

Section 85 outlines the powers of persons appointed to conduct special inquiries. **Section 86** stipulates that special inquiries shall be inquisitorial in nature and conducted in private save where the person conducting the inquiry considers it desirable in the interests of the inquiry and fair procedures to conduct all or part of it in public. **Section 87** permits the Minister to prescribe rules or procedures for the conduct of special inquiries with a view to ensuring that they are conducted in a timely, efficient and effective manner, and in accordance with fair procedures. **Section 87** permits the Minister, having consulted with the person appointed to conduct the inquiry, to publish in whole or in part the final report of the inquiry or any interim reports, as appropriate.

Concerns regarding potentially overlapping mandates and insufficiently clear lines of accountability

During the PLS process, several stakeholders, including the current Garda Commissioner, Drew Harris, Conway, AGSI, the Policing Authority and the Irish Council for Civil Liberties (ICCL) expressed concern that the changes proposed in the General Scheme concerning governance, oversight and accountability, could create confusion for the Garda Commissioner by rendering him accountable to multiple bodies with potentially overlapping remits.¹⁶⁶ GSI stressed that:

“[t]he relationship between the Garda Commissioner, the Garda Board and the Policing and Community Safety Authority (the Authority) should be transparent and easily understood. To avoid confusion in relation to their objectives and functions, clear lines of accountability and oversight should be provided for”.¹⁶⁷

The Policing Authority stated:

“there is a risk that the establishment of the Board as proposed could present a confused pattern of responsibility for the Commissioner, dilute the effectiveness and clarity of the oversight arrangements and, in some circumstances, lead to duplication of effort”.¹⁶⁸

AGS stated that the General Scheme:

“[c]reates overly complex and unmanageable accountability frameworks that will over-burden the Garda Executive, removing them from their core policing functions, Policing Operations, modernisation initiatives and efficiencies and actual leadership of An Garda Síochána.”¹⁶⁹

AGS also asserted that the General Scheme:

¹⁶⁶ For example, see Submission of Dr. Vicky Conway, p. 6, appended to the PLS Report, available [here](#) [last accessed 11 February 2023]; and the comments made by Garda Commissioner, Drew Harris, Bob Collins of the Policing Authority, and Doireann Ansboro of ICCL during the public engagement with stakeholders held on [20 October 2021](#), pp 4-8, 12-13 and 16.

¹⁶⁷ GSI Submission to the House of the Oireachtas Joint Committee on Justice on the General Scheme of the Policing, Security and Community Safety Bill, 13 August 2021, p. 3, appended to PLS Report, available [here](#) [last accessed 12 February 2023] (hereinafter GSI Submission to PLS).

¹⁶⁸ Policing Authority Submission to PLS, 6 August 2021, p. 3, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

¹⁶⁹ AGS submission to the Committee on Justice, p. 1, appended to Joint Committee on Justice, 'Report on Pre-legislative Scrutiny of the Policing, Security and Community Safety Bill' (May 2022) available [here](#) [last accessed 12 February 2023] (hereinafter “AGS Submission to PLS”).

“[i]s drafted with ambiguity in respect of roles and responsibilities for the multiplicity of regulatory and oversight bodies, creating a corporate oversight structure that is unnecessarily complex and unwieldy.”¹⁷⁰

The Department of Justice in its submission to the PLS process sought to clarify the various reporting lines and observed that:

“[i]n view of the unique role performed by police and security services, governance and oversight arrangements put in place by most countries tend to involve multiple reporting and accountability lines, whether to the Minister and Government, parliamentary committees and independent oversight bodies.”¹⁷¹

Two of the Recommendations included in the PLS Report sought to address the above concerns.¹⁷²

PLS Recommendation 1: “The Committee recommends that the accountability structures proposed in the General Scheme be evaluated, particularly in terms of the various bodies to whom the Commissioner must be accountable and the time it will take the Commissioner to account to these different bodies.” ([PLS Report](#), p. 8)

PLS Recommendation 2: “The Committee recommends that the roles of the Board of an Garda Síochána (‘Garda Board’) and the Policing and Community Safety Authority (PCSA) be clarified under Head 11 and Head 104 respectively to avoid any duplication of roles”. ([PLS Report](#), p. 8)

Policing and Community Safety Authority (PCSA)

Part 4 of the **Bill** provides for the establishment and functions of the PCSA (An tÚdarás Póilíneachta agus Sábháilteachta Pobail) in place of the Policing Authority and GSI. It provides for a curtailment of the PCSA’s functions in some areas relative to those currently enjoyed by the Policing Authority, for example, oversight of the corporate governance arrangements for AGS. However, it provides for an expansion of its functions in other areas, for example, by explicitly affording it responsibility for promoting inter-agency collaboration and community engagement to improve community safety.¹⁷³ In addition, **Part 4** provides for an expansion of the PCSA’s inspection powers relative to those currently enjoyed by GSI. Notably, it makes provision for unannounced inspections of garda stations by the PCSA, albeit subject to the terms of a memorandum of understanding to be agreed between the PCSA and AGS.

Objectives, functions and powers of the PCSA

Section 122 sets out the main objectives, functions and powers of the PCSA. Subsection (1) provides that the PCSA’s core objective is to “...oversee and assess in an independent and transparent manner the performance by An Garda Síochána of its function relating to policing

¹⁷⁰ Ibid.

¹⁷¹ DOJ Submission to PLS, p. 2, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

¹⁷² See Appendix 1 for the L&RS assessment concerning the extent to which these recommendations are addressed in the Bill.

¹⁷³ Regarding the PCSA’s role in this regard, see the L&RS Note entitled “Policing, Security and Community Safety Bill 2023: Community Safety”.

services in order to support the effective provision and continuous improvement of such services to the benefit of the safety of the public". Section 122 (2) provides that the PCSA's functions include:

- keeping under review AGS's performance of its function relating to policing services and the arrangements in place to support and enhance AGS in this regard;
- carrying out and providing reports and recommendations on inspections;
- assessing AGS's implementation of recommendations arising from inspections;
- assessing AGS's implementation of recommendations relating to policing services arising from investigations, inspections, inquiries or reviews performed by other bodies;
- promoting the policing principles and professional policing standards;
- promoting public awareness of matters relating to policing services;
- keeping the Minister informed of relevant developments relating to policing services;
- providing advice to the Minister on best policing practice, and making recommendations to assist with policy development;
- keeping itself generally informed of relevant matters as specified in the section (for example, complaints made against garda personnel);
- promoting inter-agency collaboration and community engagement to improve community safety;
- providing views to the Garda Commissioner in relation to AGS's strategic plan and Annual Service Plan in so far as they relate to matters concerning policing services;
- undertaking, commissioning or assisting in research projects; and
- ensuring that the Authority has appropriate policies, plans and actions in place to enable compliance with its public sector duty.

Other provisions of the Bill provide for additional functions and responsibilities of the PCSA. For example, **section 37** permits the PCSA to recommend to the Minister that a written directive be issued to the Garda Commissioner on matters relating to policing services. **Section 61** authorises the PCSA to determine policing priorities for AGS subject to the conditions outlined in the section. **Section 78** requires the PCSA to issue a code of ethics for members of garda personnel.

Sections 82 and **83** require the Minister to consult with the PCSA before ordering or specifying the terms of reference of an independent inquiry into a matter relating to policing services. Section 82 (2) also authorises the PCSA to request the Minister to order a special inquiry into a matter relating to policing services. **Section 138** requires the PCSA to issue a code of ethics for members, staff, the chief executive, advisors and consultants of the PCSA.

Section 122 (3) explicitly provides that the PCSA's functions shall not incorporate management of the performance of the Garda Commissioner. This function is afforded to the Board under section 12 of the Bill.

Section 122 (11) provides for the PCSA's independence in the performance of its functions, albeit subject to the provisions of the Bill. **Section 122 (4)** requires the PCSA, in performing its functions, to have regard to:

- a) policies and objectives of the Government and Ministers that affect or relate to the PCSA's functions;
- b) the functions of the Board concerning the governance of AGS;
- c) the need to cooperate, and coordinate its activities, with public authorities; and
- d) the importance of the function of AGS concerning security services.

Section 130 (5) provides that at least four of the PCSA's meetings each year, which are attended by the Garda Commissioner, be open to the public and representatives of the media.

Section 122 (5) provides that the PCSA shall have all such powers as are necessary or expedient for the performance of its functions. **Section 133** requires the Garda Commissioner to report to the PCSA with regard to policing services in order to facilitate the performance by the PCSA of its functions, including by:

- providing, at the request of the PCSA, any document or information relating to policing services in the power or control of AGS;
- keeping the PCSA fully informed of matters relevant to its functions; and
- providing, at the request of the PCSA, a report on any matters connected with policing services or the performance of the Commissioner's functions relating to such services (which the PCSA may publish in whole or in part).

Section 134 requires the Director of the National Office for Community Safety to provide such assistance to the PCSA as is reasonably required to facilitate the PCSA in performing its functions.

Curtailment of the PCSA's functions relative to the Policing Authority

The PCSA's functions in certain areas are curtailed under the Bill relative to those currently enjoyed by the Policing Authority, with the Bill transferring some of the Authority's functions to AGS under the supervision of the Board, the Board, or the Minister, with the PCSA merely having a consultative role, if any. As discussed previously, the PCSA's role in the appointment of individuals to senior offices and ranks within AGS has been considerably diluted under the Bill as has its role in standard setting for the provision of policing services and oversight of strategic planning and corporate governance arrangements for AGS.

As noted above, the COFPI recommended that the proposed Policing and Community Safety Oversight body have no direct decision-making role in matters of internal governance, such as appointments, and instead solely exercise oversight over the integrity of the processes involved.¹⁷⁴ However, proposals under the Bill also appear to curtail the PCSA's *explicit* role, relative to the Policing Authority, in overseeing AGS's internal governance processes. For example, [Section 62\(H\) \(2\) \(a\)](#) of the 2005 Act currently requires the Policing Authority to keep under review the adequacy of:

- i. the corporate governance arrangements and structures within AGS;
- ii. the arrangements for the recruitment, training and development of AGS members and members of civilian staff of AGS;
- iii. the mechanisms in place within the Garda Síochána for the measurement of performance and accountability of such members and staff; and
- iv. the arrangements for managing and deploying the resources available to the Garda Síochána so as to ensure the most beneficial, effective and efficient use of those resources,

¹⁷⁴ COFPI Report, p. 44, available [here](#) [last accessed 9 January 2023].

In contrast, **section 122** of the Bill only *explicitly* requires the PCSA to keep itself “generally informed” of the matters outlined in paragraphs (ii), (iii) and (iv) above and excludes any reference to corporate governance arrangements.¹⁷⁵

The Bill also provides for a reduction of the PCSA’s role, relevant to that of the Policing Authority, in the initiation of investigations into certain types of alleged police misconduct.

[Section 102 \(4\)](#) of the 2005 Act currently permits GSOC, acting at its own initiative and without having received a complaint, to investigate any matter that gives rise to a concern that an AGS member may have committed an offence or behaved in a manner that would justify the bringing of disciplinary proceedings. [Section 102 \(4A\)](#) and [102 \(5\)](#) also permit the Minister and the Policing Authority, where it appears desirable in the public interest, to request GSOC to investigate any such matter. However, in the case of the Policing Authority, the matter must relate to policing services. In such circumstances, GSOC must investigate the matter concerned upon receipt of such a request. However, **section 201** of the Bill, which concerns the performance of these types of investigations by the proposed new Police Ombudsman, only affords the Minister the equivalent power to request such an investigation, to the exclusion of the PCSA. The PCSA may refer a matter that appears to be a relevant cause of concern to the Police Ombudsman for his or her *consideration*; however, it is up to the Police Ombudsman to decide whether or not to investigate.

[Section 102B](#) of the 2005 Act currently permits GSOC, if it appears desirable in the public interest and subject to the consent of the Minister given with the approval of Government, to investigate any matter that gives rise to a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct. [Section 102B](#) also permits the Minister, acting with the approval of Government, OR the Policing Authority, acting with the consent of the Minister given with the approval of Government, to request GSOC to investigate any such matter in the public interest. However, in the case of the Policing Authority, the matter concerned must relate to the Garda Commissioner’s performance of his or her functions relating to policing services. Upon receipt of such a request from the Policing Authority or the Minister, GSOC must investigate the matter. However, **section 203** of the Bill, which concerns the performance of these types of investigations by the proposed new Police Ombudsman, only affords the Minister the equivalent power to request such an investigation, to the exclusion of the PCSA.

Appointment of the PCSA and its Staff

Section 123 stipulates that the PCSA shall have 8 ordinary members and a chairperson who are to be appointed by the Government, subject to the approval of each House of the Oireachtas, from amongst persons recommended by PAS following a selection competition.¹⁷⁶ Subsection (5) requires the Government to endeavour to ensure a gender balance amongst the PCSA’s members.¹⁷⁷ **Section 124** provides that the Minister shall agree the selection criteria and recruitment process for the PCSA with PAS.¹⁷⁸ It highlights the desirability of experience,

¹⁷⁵ Arguably, keeping these matters under review could be interpreted as falling within the PCSA’s general duty under section 122 (2) (b) and (c) of the Bill to keep under review the performance by AGS of its function relating to policing services, and the arrangements and strategies in place to support and enhance its performance of this function.

¹⁷⁶ This reflects the existing composition of the Policing Authority. See [section 62 \(C\)](#), 2005 Act.

¹⁷⁷ This reflects an existing requirement concerning the composition of the Policing Authority under [section 62 \(C\) \(2\)](#), 2005 Act.

¹⁷⁸ This reflects an existing provision concerning the selection competition for the Policing Authority. See [section 62D \(3\)](#) of the 2005 Act.

qualifications, training or expertise in certain areas, for example, policing services, the criminal justice system, and human rights, equality and diversity.¹⁷⁹ The list is far more extensive than the list of selection criteria currently included in [section 62D \(3\)](#) of the 2005 Act for nominees to the Policing Authority.

Section 125 provides that members shall hold office for a maximum of 4 years and may be reappointed subject to the condition that they do not hold office for more than 8 years in total.¹⁸⁰

Section 126 outlines certain categories of person who are ineligible for appointment, including the Police Ombudsman or Deputy Police Ombudsman, members of garda personnel (including the Garda Commissioner and Deputy Garda Commissioner), members of the Board of AGS, and members of either House of the Oireachtas, the European Parliament, or a local authority.¹⁸¹

Subsection (2) outlines the circumstances in which a person shall be disqualified from holding office or cease to hold office.¹⁸² **Section 127** provides that a member of the PCSA may only be removed from office by the Government with the consent of both Houses of the Oireachtas where one or more of the grounds specified in subsection (2) have been satisfied.¹⁸³

Section 129 provides for the appointment by the PCSA, with the consent of a Minister, of a person to act as chief executive of the PCSA.¹⁸⁴ The chief executive may not be a member of the PCSA. Section 129 (9) states that the chief executive may be removed or suspended from office by the Authority, with the consent of the Minister, for stated reasons. Section 129 (7) provides that the chief executive's functions include implementing the PCSA's policies and decisions and managing the staff, administration and business of the PCSA.

Sections 131 and 132 permit the PCSA, with the consent of the Minister and the Minister for Public Expenditure and Reform, to:

- appoint members of staff of the PCSA, who shall be civil servants; and
- enter into contracts, engage consultants and advisers, and arrange with police services from outside the State for the engagement of police officers from those services.

The Governance and Accountability Framework for the PCSA

Chapter 3 of Part 4 (sections 135-140) explicitly provides for the governance and accountability framework for the PCSA. **Section 122 (9)** is also relevant in that it requires the PCSA to provide

¹⁷⁹ The remaining areas include: (iv) services for victims of crime; (v) healthcare, child and social services; (vi) improving the safety of communities including through inter-agency collaboration and community engagement to promote the prevention of crime and the prevention of harm to individuals, in particular those who are vulnerable or at risk; (vii) public sector administration; (viii) business and innovation; (ix) board management and corporate governance; (x) financial management and, in particular, the allocation, management of and accountability for the effective use of financial resources.

¹⁸⁰ This reflects the existing term of appointment for members of the Policing Authority. See [Section 62 \(E\)](#), 2005 Act.

¹⁸¹ This effectively reflects the existing ineligibility criteria for the Policing Authority save for the addition of members of the Board of AGS and the exclusion of GSI, which is now subsumed within the PCSA. See [section 62 \(F\)](#) of the 2005 Act.

¹⁸² This effectively reflects the disqualification/cessation provisions included in [section 62 \(F\)](#) of the 2005 Act regarding the Policing Authority. However, the Bill also provides that members of the PCSA shall be disqualified where they are sentenced by a court of competent jurisdiction to a term of imprisonment.

¹⁸³ This largely reflects the existing process for removing members of the Policing Authority provided for in [section 62 \(G\)](#) of the 2005 Act. However, one of the stated reasons for removal (incapability of performing functions) is more expansive under the Bill.

¹⁸⁴ The office of chief executive of the Policing Authority is currently provided for under [section 62P](#) of the 2005 Act.

the Minister with information regarding the performance of its functions upon the request of the Minister. **Section 122 (10)** requires the PCSA to keep the Minister informed of matters relevant to the accountability of the Government to the Houses of the Oireachtas.

Section 135 requires the PCSA to submit a governance framework to the Minister, which includes the processes and guidelines it uses to ensure its inspections are carried out in a proportionate, accountable and transparent manner, and reported upon objectively and fairly.

Section 136 requires the PCSA to submit a three-year strategy statement to the Minister on a triannual basis. Before doing so, it must publish a draft of the statement and allow persons 30 days to make representations in writing.

Section 137 requires the PCSA to submit annual reports to the Minister providing information on its activities during the preceding year. Subsection (3) permits the PCSA to submit special reports to the Minister concerning matters which, in its opinion, require his or her attention because of their gravity or other exceptional circumstances. Subsection (4) also permits the Minister to request the PCSA to provide a report in respect of any matter relating to policing services.

Sections 136-137 provide for the laying of the PCSA's strategy statements and annual and other reports before the Houses of the Oireachtas. Sections 135-137 require the PCSA to publish these documents and its governance framework on its website or in another appropriate form.

Section 138 requires members, staff, chief executives, advisors and consultants of the PCSA (and the employees and contractors of advisors and consultants, where relevant), to maintain proper standards of integrity and adhere to a code of ethics to be issued by the PCSA.

Section 139 provides that the chief executive of the PCSA shall be the accounting officer in relation to the appropriation accounts of the PCSA and may be required to give evidence before PAC. **Section 140** provides that the chief executive may be required to attend before other Oireachtas committees to give account for the general administration of AGS.

Chapter 5 of Part 4 provides for offences pertaining to unauthorised disclosures of confidential information. **Section 151 (1)** prohibits persons who are or were: members of the PCSA, members of committees of the PCSA, staff of the PCSA, chief executives of the PCSA, under contract with or engaged by the PCSA, or employees or contractors of persons under contract with or engaged by the PCSA, from intentionally or recklessly disclosing confidential information obtained in the course of carrying out their duties, where such information is not otherwise in the public domain. A person who contravenes subsection (1) is guilty of an offence and is liable:

- on summary conviction, to a class C fine (€2,500) and/or imprisonment for up to 12 months; and
- on conviction on indictment, to a fine not exceeding €50,000 and/or imprisonment for up to five years.

A harsher penalty may be imposed where an individual receives any gift, consideration or advantage as an inducement to make the disclosure or as a reward for the disclosure.¹⁸⁵ Section 151 (3) provides for a defence where the person concerned reasonably believed that they were

¹⁸⁵ In such circumstances, the individual is liable— (a) on summary conviction, to a class B (€4,000) fine and/or imprisonment for a term not exceeding 12 months; or (b) on conviction on indictment, to a fine not exceeding €75,000 and/or imprisonment for a term not exceeding 7 years.

required or permitted by law, or duly authorised by the PCSA in furtherance of its functions, to disclose the information.

Section 152 provides for an offence of harmful disclosure of information. Subsection (1) prohibits persons who are or were: members of the PCSA or the Policing Authority or any of their committees, staff of the PCSA or the Policing Authority, chief executives of the PCSA or the Policing Authority, under contract with or engaged by the PCSA or the Policing Authority, or employees or contractors of persons under contract with or engaged by the PCSA or the Policing Authority, from disclosing information obtained in the course of carrying out their duties where that disclosure is likely to have a harmful effect as defined under the section. Subsection (5) outlines the applicable penalties and subsection (6) allows for the imposition of a harsher penalty where an individual receives any gift, consideration or advantage as an inducement to make the disclosure or as a reward for the disclosure.¹⁸⁶ Subsection (4) provides for defences in certain circumstances, for example, where the person concerned reasonably believed that the disclosure was required or permitted by law, or duly authorised by the PCSA in furtherance of its functions.

Inspections by the PCSA

Chapter 4 of Part 4 provides for inspections by the PSCA of garda stations and places where garda personnel are assigned. Notably, it expands the PSCA's remit, relative to that of GSI, to allow for unannounced inspections of these venues. It seeks to give effect to the COFPI's recommendation that the new policing and community safety body absorb GSI's inspection function, conduct inspections concerning the delivery of policing services, and monitor the implementation of recommendations arising from such inspections.¹⁸⁷

Section 141 provides for the appointment by the PSCA of members of its staff to be inspectors of policing services (inspectors) for the purposes of **Part 4**. Such individuals must be suitable for appointment, for example, by reason of their service with the police service of another state.

Section 142 permits the PSCA to carry out inspections in relation to aspects of the operation and administration of AGS at the request of the Minister or at its own initiative (where the inspection relates to policing services). It stipulates that the PSCA must provide the Garda Commissioner with a notice in writing of the inspection outlining matters, including the scope and terms of the inspection.

Section 142 (3) permits the PSCA, where it considers it appropriate, to conduct joint inspections with one or more prescribed inspection bodies. **Section 143** permits the Minister, having consulted with the PSCA, any relevant Minister¹⁸⁸ and the inspection body concerned, to prescribe inspection bodies for the purposes of Part 4. Section 143 (3) clarifies that "inspection body" means a body established by or under an enactment whose functions include the conduct of inspections, examinations or investigations.

Section 144 permits the PSCA and a prescribed inspection body/bodies to carry out a joint inspection where they believe that a joint inspection is appropriate, and that the functions and

¹⁸⁶ The same penalties apply as are provided for under section 80 concerning harmful disclosures by persons who are or were members of garda personnel, Board members, engaged by the Garda Commissioner on contract, or employees of persons engaged on contract by the Commissioner.

¹⁸⁷ COFPI Report, pp 43-44, available [here](#) [last accessed 9 January 2023].

¹⁸⁸ Section 143 (3) clarifies that "relevant Minister" in this context means the Minister with responsibility for the inspection body and in whom functions as respects the inspection body are vested.

powers of the prescribed inspection body/bodies are suitable for the aspects of the inspection that they will be responsible for. The PSCA and the prescribed inspection body/bodies must prepare a joint inspection plan setting out: the purpose of the joint inspection, the reasons why a joint investigation is appropriate, the division of labour, and the arrangements for the joint inspection, including with regard to the sharing of information or documents and the reporting of results.

Section 145 requires the PSCA to prepare periodic inspection plans setting out: its priorities in terms of inspections to be carried out; the arrangements it has in place to ensure that inspections are conducted in a proportionate, accountable and transparent manner; and the arrangements it has in place to ensure the integrity and objectivity of the findings of inspections. Inspection plans must be submitted to the Minister and published on the PSCA's website or in such other manner as it considers appropriate.

Section 146 outlines the powers afforded to inspectors, including the powers to:

- a) enter a relevant location at any time to inspect any aspect of the administration or operation of AGS in relation to the provision of policing services that is relevant to the inspection,
- b) require any member of garda personnel to:
 - (i) provide any information that the inspector may reasonably require for the purposes of the inspection,
 - (ii) produce documents in their power or control that the inspector may reasonably require for the purposes of the inspection, and
 - (iii) provide an explanation of any document made available pursuant to subparagraph (ii);
- c) examine any document made available to him or her under paragraph (b), and take copies of, or extracts from, such document;
- d) take possession of any document made available to him or her under paragraph (b) that, in the inspector's opinion is relevant to the inspection;
- e) require the personal details of any person in a relevant location where, in the opinion of the inspector, such information is relevant to the inspection, and
- f) be assisted, when exercising a power under this section by PSCA staff members = or persons under contract with or engaged by the PSCA.

Section 146 (8) clarifies that a "relevant location", for the purposes of the section, is "...any garda station or other premises or structure, including a temporary structure, used by An Garda Síochána, whether on a temporary basis or otherwise, where members of garda personnel are assigned in connection with the provision of policing services".

Section 146 (2) permits a member of garda personnel to refuse to provide any information or document requested on the basis that it relates to the security of the State or would endanger the life or safety of any person who has given information in confidence to a public body in relation to the enforcement or administration of the law. In such circumstances, the PSCA may request the Garda Commissioner to provide the information or document concerned. If the Garda Commissioner refuses on the grounds that subsection (2) applies, the PSCA may refer the refusal to the Independent Examiner of Security Legislation (the "Independent Examiner") for a review under **section 240** of the Bill.¹⁸⁹ Having considered the recommendation of the Independent

¹⁸⁹ Section 240 permits the holder of the newly established office of Independent Examiner to review refusals to comply with certain requests under the Bill on specified grounds, including that compliance with the request would be prejudicial to the security of the State. In such circumstances, the Independent Examiner, having conducted his or her review, issues a recommendation to the Minister, which the Minister must take

Examiner, if the Minister is satisfied that subsection (2) does not apply/fully apply, he or she shall issue a direction specifying that all or part, as the case may be, of the document or information be disclosed to the inspector concerned.

Section 147 requires the PCSA and the Garda Commissioner to agree a memorandum of understanding (MOU) concerning the conduct of inspections and the performance of inspectors' powers under section 146 with a view to ensuring that they: are carried out in an efficient and effective manner, do not adversely affect AGS's performance in discharging its functions, do not jeopardise criminal investigations or prosecutions, and do not prejudice the safekeeping of a person in legal custody. Subsection (2) provides that the MoU may make provision in relation to various matters, including, the conduct of unannounced visits by inspectors to relevant locations.

The capacity of the PCSA to conduct unannounced visits to garda stations received several comments from stakeholders during the PLS. In its submission, GSI stated its opinion that "...the power to make unannounced visits at any time to any garda station or other premises or facility where members of garda personnel are assigned in connection with the provision of policing services should be explicitly set out in the General Scheme".¹⁹⁰

In its submission, the Policing Authority recommended that consideration be afforded to whether the requirement for a memorandum of understanding "...risks fettering the independence and agility of the PCSA's inspection processes".¹⁹¹ The Association of Garda Superintendents stated that the power to conduct unannounced visits: "...needs to be clearly defined and set out in respect of exactly what this means, the scope of the visit, entitlements of the visiting personnel in addition to those present when the proposed visit occurs. Including it in a memorandum of understanding alone is not an ideal protection for workers".¹⁹² These stakeholder comments prompted the Joint Committee to include the recommendation below in its PLS Report.¹⁹³

PLS Recommendation 12: "The Committee recommends that the proposals in Head 114, to carry out unannounced visits, be formalised and underpinned by legislation rather than by way of a Memorandum of Understanding (MOU). The Head should also be clearer about what precise information should be provided to the Garda Ombudsman's Office when requested." ([PLS Report](#), p. 9)

Section 148 requires the PCSA to provide reports of inspections conducted at its own initiative to the Garda Commissioner and to the Minister including, where appropriate, recommendations for actions that the PCSA considers necessary. The PCSA must publish these reports on its website or in such other manner as it considers appropriate. It may exclude from the published report any matter which, in its opinion, might facilitate the commission of an offence, prejudice a criminal

into account before deciding upon the appropriate course of action. For more information, see the L&RS Note entitled: "Policing, Security and Community Safety Bill 2023: Independent Examiner of Security Legislation", available [here](#) [last accessed 20 February 2023].

¹⁹⁰ GSI, 'Submission to the Houses of the Oireachtas Joint Committee on Justice on the General Scheme of the Policing, Security and Community Safety Bill' (13 August 2021), p. 17, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

¹⁹¹ Policing Authority Submission to PLS, 6 August 2021, p. 14, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

¹⁹² Submission of the Association of Garda Superintendents to the PLS, p. 30, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

¹⁹³ See Appendix 1 for the L&RS assessment concerning the extent to which this recommendation is addressed in the Bill.

investigation or jeopardise the safety of any person. The PCSA may require the Garda Commissioner to provide a response in writing to a report of an inspection, outlining what actions (if any) he or she proposes to take. The Garda Commissioner's response must be forwarded to the Minister and the PCSA may publish all or part of the response where it considers it appropriate.

Section 149 requires the PCSA to provide to the Minister reports of any inspections performed at the Minister's request, including any recommendations for actions. The PCSA must then provide a copy of the report to the Garda Commissioner. The Minister must lay a copy of the report before each House of the Oireachtas to the exclusion of any matter which, in the Minister's opinion, might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person. The PCSA must publish the version of the report laid before each House of the Oireachtas on its website or in such other manner as it considers appropriate. The Minister may require the Garda Commissioner to provide a written response to the report, setting out any actions he or she proposes to take in relation thereto. If he or she considers it appropriate, the Minister may provide a copy of this response to the PCSA or publish it in whole or in part.

Section 150 provides that the PCSA may monitor and assess the implementation by AGS of any recommendations included in a report of an inspection either at the request of the Minister or where the PCSA considers it appropriate.

Before moving on, it should be noted that the DOJ stated in its submission to the PLS that it is not intended that the PCSA will be the national preventive mechanism for the purposes of the [Optional Protocol to the Convention Against Torture](#) (OPCAT).¹⁹⁴ OPCAT is a multilateral treaty, which requires state parties to establish a national preventive mechanism to undertake visits of places where people are deprived of their liberty with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment. The Inspection of Places of Detention Bill, which seeks to facilitate Ireland's ratification of OPCAT, is included on the list of legislation for priority drafting in the [Spring 2023 legislative programme](#).

Chapters 6 and 7 of Part 4 contain transitional provisions providing for the dissolution of Policing Authority and GSI.

Office of the Police Ombudsman

Parts 5 and 6 of the Bill concern proposed changes to GSOC's name and structure, and proposals concerning the system for handling complaints and conducting investigations concerning alleged misconduct by members of garda personnel. The proposed reforms seek to enhance the powers and responsibilities of the new Police Ombudsman relative to those currently afforded to GSOC. They have generated some concerns amongst key stakeholders. In its observations on the Bill, GSOC expressed concern that:

the draft legislation has not fully embraced the principle of institutional independence that should underpin an Ombudsman institution. GSOC is concerned that while institutional independence has been enhanced in the Bill, it still imposes a degree of Ministerial, and occasionally Garda, involvement in the governance and operations of the Police Ombudsman that is not consistent with the independence envisioned in the report of the Commission on the Future of Policing or with the Council of Europe's [Venice Principles](#).¹⁹⁵

¹⁹⁴ DOJ Submission to PLS, p. 8, appended to PLS Report available [here](#) [last accessed 12 February 2023].

¹⁹⁵ GSOC's Observations on the Bill, p. 4, available [here](#) [last accessed 12 February 2023].

During the PLS process, AGS and AGSI raised concerns regarding the compatibility of the proposed reforms to the system for handling complaints and conducting investigations with principles of natural justice.¹⁹⁶

Office of the Police Ombudsman: Name, Structure, Staff and Functions

Section 167 provides for the continuation of GSOC under the new name of *Oifig an Ombudsman Póilíneachta* or the Office of the Police Ombudsman. The change in name gives effect to COFPI's recommendation that the complaints body have a name, which highlights its independence from AGS.¹⁹⁷

Section 168 provides that the President shall, subject to Part 5, appoint individuals to hold the office of *An tOmbudsman Póilíneachta* (Police Ombudsman) and the office of *An Leas-Ombudsman Póilíneachta* (Deputy Police Ombudsman). According to the Explanatory Memorandum, the Ombudsman/Deputy Ombudsman model is aimed at ensuring that the complaints body has a publicly identifiable head.¹⁹⁸ Appointments are made upon the nomination of the Government, subject to the approval of Dáil Éireann and Seanad Éireann. PAS must undertake a selection competition at the invitation of the Minister for the purpose of identifying nominees using selection criteria and a recruitment process agreed with the Minister.¹⁹⁹ Present and former members of garda personnel, and members of either House of the Oireachtas, the European Parliament, local authorities and the PCSA are ineligible for nomination.²⁰⁰ The General Scheme had also excluded individuals who had been reappointed as members of GSOC; however, this requirement is omitted from the Bill.²⁰¹

Section 170 provides, that subject to **Part 5** of the **Bill**, individuals are appointed to the office of Police Ombudsman and Deputy Police Ombudsman for a 6 year term and may be reappointed once.²⁰² The Minister, with the consent of the Minister for Public Expenditure and Reform, determines the terms and conditions of office.²⁰³ Subsections (5), (6) and (7) concern the resignation, removal and disqualification of holders of the office of Police Ombudsman or Deputy Police Ombudsman. They largely reflect the equivalent provisions in [section 68](#) of the 2005 Act concerning the resignation, removal and disqualification of GSOC members.

Section 169 provides that the objectives of the Police Ombudsman are:

- a. to promote public confidence in the processes for resolving complaints and conducting investigations;

¹⁹⁶ See, e.g., Joint Committee on Justice, 'Report on Pre-legislative Scrutiny of the Policing, Security and Community Safety Bill' (May 2022) p. 58, available [here](#) [last accessed 12 February 2023]; and AGS Submission to PLS, pp 5-6, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

¹⁹⁷ COFPI Report, p. 49, available [here](#) [last accessed 9 January 2023].

¹⁹⁸ Explanatory Memorandum to the Bill, p. 3, available [here](#) [last accessed 11 February 2023].

¹⁹⁹ This reflects an additional requirement as compared with the existing process for appointing members to GSOC. See [section 65](#), 2005 Act.

²⁰⁰ This reflects a change to the eligibility criteria for GSOC membership under [section 65 \(7\)](#) of the 2005 Act insofar as the Bill will explicitly exclude what are now referred as civilian garda staff and members of the PCSA (i.e. the merged Policing Authority and GSI) from eligibility.

²⁰¹ General Scheme of the Policing, Security and Community Safety Bill, 27 April 2021, Head 140 (6), p. 217, available [here](#) [last accessed 14 February 2023] (hereinafter "General Scheme").

²⁰² This largely reflects the existing situation for GSOC members who are appointed for a term of between three and six years and may be reappointed for a second term. See [section 66 \(1\) and \(2\)](#) of the 2005 Act.

²⁰³ Currently, the Government determines the terms and conditions relating to the remuneration of GSOC members. See [section 66 \(3\)](#) of the 2005 Act.

- b. to improve public understanding of the Police Ombudsman's role and functions; and
- c. to ensure that the Police Ombudsman's functions are performed in a timely, efficient and effective manner, and in accordance with fair procedures.

Paragraphs (a) and (c) largely reflect equivalent provisions concerning GSOC's objectives.²⁰⁴

Paragraph (b) replaces the objective of promoting and encouraging the use of informal means (for example, mediation) to resolve complaints, where possible. The removal of any reference to mediation and other informal means of resolution was criticised by AGS during the PLS process.²⁰⁵

The word "timely" in paragraph (c) is a new addition, which may reflect an attempt to address concerns voiced by stakeholders, including AGSI and AGS, regarding delays in the existing complaints system.²⁰⁶ The Joint Committee recommended that a comprehensive review of GSOC be undertaken with a view to establishing the causes of delays.²⁰⁷ In its submissions on the Bill, GSOC submitted that placing a statutory obligation concerning timeliness on the Police Ombudsman without: clarifying how the duty is to be interpreted, ensuring that the Ombudsman is adequately resourced, and imposing corresponding statutory obligations on other key actors, risks undermining the Ombudsman's ability to achieve its objectives with negative ramifications for public confidence in the body.²⁰⁸

Section 169 (2) provides that the Police Ombudsman's functions shall include:

- a. receipt of:
 - i. complaints from members of the public concerning garda personnel;
 - ii. referrals from the Garda Commissioner of complaints under section 198 (3), which due to their nature or gravity are unsuitable for resolution by AGS;
 - iii. referrals from the Garda Commissioner under section 199 (1) of matters that appear to indicate that the act or omission of a member of garda personnel may have resulted in the death of, or serious harm to, a person;²⁰⁹
 - iv. referrals from the Garda Commissioner under section 201 (7) of matters that appear to be a relevant cause of concern;²¹⁰
 - v. notifications from the Garda Commissioner under section 200 (1), of incidents of concern in relation to members of garda personnel;
 - vi. requests from the Minister under section 201 (2) to investigate matters that appear to be a relevant cause of concern;
 - vii. referrals from the Minister under section 201 (3) of matters that appear to be a relevant cause of concern
 - viii. referrals from the PCSA under section 201 (5) of matters that appear to be a relevant cause of concern, and
 - i. disclosures of relevant wrongdoing referred to section 202 (1) (a) or (b);
- b. reporting the results of investigations under Part 6 along with any recommendations to the Garda Commissioner, the Minister or the PCSA, as appropriate;

²⁰⁴ See [Section 67 \(1\)](#) of the 2005 Act.

²⁰⁵ AGS submission to PLS, p. 5, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

²⁰⁶ See, for example, AGSI submission to PLS, pp 17-18, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

²⁰⁷ Recommendation 7 in PLS Report, pp 8-9, available [here](#) [last accessed 12 February 2023].

²⁰⁸ GSOC's Observations on the Bill, pp 8-9, available [here](#) [last accessed 12 February 2023].

²⁰⁹ "Serious harm" is defined under section 189 (1) of the Bill, as discussed below.

²¹⁰ "Relevant cause of concern" is defined under section 201 of the Bill, as discussed below.

- c. reporting to the Director of Public Prosecutions (DPP), in accordance with section 211, the results of investigations, which appear to disclose acts or omissions that may constitute an offence;
- d. preparing, in accordance with section 196 (1), a draft list of categories of complaints suitable for resolution by AGS;
- e. agreeing protocols with the Garda Commissioner concerning matters referred to section 220 (1), for example, the conduct of joint investigations with AGS;
- f. undertaking research and analysis in order to identify trends and patterns arising from the performance of the Police Ombudsman's functions under Part 6;
- g. ensuring that the Office of the Police Ombudsman has appropriate policies, plans and actions in place to enable compliance with its public sector duty; and
- h. entering into agreements to exchange information, subject to the consent of the Government and applicable GDPR legislation, with law enforcement agencies and bodies performing functions, which are equivalent to those performed by the Police Ombudsman, in other jurisdictions.²¹¹

Section 169 (7) requires the Police Ombudsman to keep the Minister informed of matters relevant to the accountability of the Government to the Houses of the Oireachtas. Section 169 (3) provides that the Police Ombudsman shall have all such powers as are necessary or expedient for the performance of his or her functions. Section 169 (8) provides for the independence of the Police Ombudsman in the performance of his or her functions albeit subject to the provisions of the Bill.

During the PLS process, AGS and AGSI questioned whether the proposed reforms to the system for handling complaints and conducting investigations were compatible with principles of natural justice.²¹² In a letter to the Joint Committee, Garda Commissioner, Drew Harris, asserted that the proposed reforms "...fail to offer a process which safeguards due process and fair procedures for all concerned".²¹³ In its submission to the PLS process, AGS asserted that there was insufficient clarity regarding the timeframes for the processing of complaints.²¹⁴

In response, the Department of Justice stated that the proposed reforms would "...not involve any trade off with fair procedures and natural justice".²¹⁵ It observed that the Police Ombudsman would be statutorily required to ensure that the functions of the Office were "...performed in an efficient and effective manner and with full fairness to all persons involved in complaints and investigations."²¹⁶ This requirement is largely reflected in subparagraph (5) of **section 169**, which requires the Police Ombudsman, in establishing and maintaining systems and procedures for the handling of complaints and the conduct of investigations under Part 6, to have regard to the need to perform his or her functions in a timely, efficient and effective manner and in accordance with fair procedures.

Section 172 authorises the Police Ombudsman, with the consent of the Minister and the Minister for Public Expenditure and Reform, to appoint persons as officers of the Police Ombudsman. Like

²¹¹ See section 178 of the Bill.

²¹² See, e.g., Joint Committee on Justice, 'Report on Pre-legislative Scrutiny of the Policing, Security and Community Safety Bill' (May 2022) p. 58, available [here](#) [last accessed 12 February 2023]; and AGS Submission to PLS, pp 5-6, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

²¹³ 'Letter from Garda Commissioner Drew Harris regarding invitation to make a written submission to the Joint Committee on Justice', dated 31 August 2021, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

²¹⁴ AGS Submission to PLS, p. 5, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

²¹⁵ DOJ Submission to PLS, p. 6, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

²¹⁶ *Ibid.*

officers of GSOC,²¹⁷ these officers shall be civil servants in the Civil Service of the State. Section 172 (5) is a transitional provision, which permits existing officers of GSOC to act as officers of the Police Ombudsman on terms and conditions of service that are at least as favourable as their existing terms and conditions.

Section 173 permits the Police Ombudsman to appoint officers and persons engaged by the Police Ombudsman under section 177 to be designated officers with authority to perform certain functions outlined in Part 6.²¹⁸ Unlike GSOC, the Police Ombudsman is also authorised to appoint designated officers to be senior designated officers.

Section 174 provides that the Police Ombudsman shall, with the consent of the Minister and following a selection process conducted by PAS, appoint a person to be the chief executive officer of the Office of the Police Ombudsman (CEO) for a period to be specified under contract. The appointment of a CEO represents a change relative to the existing management structure for GSOC.²¹⁹ The CEO may only be removed or suspended from office by the Police Ombudsman for stated reasons and subject to the Minister's consent. The CEO's functions include implementing the Police Ombudsman's policies and decisions; and managing the staff, administration and business of the Office. The CEO will be paid out of monies at the disposal of the Office.

Section 175 provides for the delegation by the Police Ombudsman of his or her functions to the Deputy Police Ombudsman, the CEO, an officer of the Police Ombudsman, or a person engaged under section 177, subject to some exceptions.²²⁰

Section 176 authorises the Police Ombudsman, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, to engage consultants or advisers to assist in the performance of his or her functions. **Section 177** permits the Police Ombudsman to enter into arrangements with AGS, other law enforcement agencies, and other bodies for the temporary engagement of their officers and personnel, under contract or otherwise. During a period of temporary service with the Police Ombudsman, a member of AGS personnel shall not be subject to the direction or control of the Garda Commissioner. However, they shall continue to be paid as a member of garda personnel and their service with the Police Ombudsman shall be regarded as service with AGS for pension, seniority and promotion purposes.²²¹

In her submission to the PLS process, Conway asserted that the engagement of AGS members and members of other law enforcement agencies to perform investigations would encroach upon the Police Ombudsman's independence.²²² Indeed, the COFPI recommended that the new Ombudsman investigate all complaints that raise serious issues about standards of policing and

²¹⁷ See [section 71](#) of the 2005 Act regarding the appointment of officers of GSOC.

²¹⁸ This reflects GSOC's power to appoint designated officers under [section 73](#) of the 2005 Act.

²¹⁹ Head 147 of the General Scheme had proposed the appointment of a Chief Administrative Officer (CAO), as opposed to a CEO; however, the CAO's functions were substantially the same as those of the CEO. See General Scheme, Head 147, pp 228-229, available [here](#) [last accessed 14 February 2023].

²²⁰ For example, the Police Ombudsman's power under section 207 to authorise a designated officer to apply to the District Court for a warrant to search a Garda Síochána premises cannot be delegated.

²²¹ Section 177 reflects [section 74](#) of the 2005 Act to some extent although the latter permits GSOC to enter into arrangements to engage AGS members (whereas section 177 provides for the engagement of garda personnel thereby also including what are currently known as civilian garda staff).

²²² Submission of Dr. Vicky Conway, p. 14, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

police integrity itself without recourse to Garda investigators.²²³ In its PLS Report, the Joint Committee also recommended that consideration be afforded to this issue.²²⁴

PLS Recommendation 10: “The Committee recommends that consideration be given to re-organising the process of the Garda Ombudsman’s investigations so that serving Garda members would no longer be seconded to assist with the investigation.” ([PLS Report](#), p. 9)

Governance, oversight and accountability of the Police Ombudsman

Section 169 (6), 179-185, 221 and 222 pertain to governance, oversight and accountability of the Police Ombudsman. They appear to be an attempt to give effect to the COFPI’s call for enhanced oversight of the complaints body’s work.²²⁵ In its PLS Report, the Joint Committee also requested clarity concerning aspects of GSOC’s accountability.²²⁶

PLS Recommendation 6: “The Committee recommends that the General Scheme provide clarity regarding the accountability of the Garda Síochána Ombudsman Commission (GSOC), as a body under the aegis of the Department of Justice, in terms of its performance and other function”. ([PLS Report](#), p. 8)

Section 169 (6) obliges the Police Ombudsman to provide the Minister with information regarding the performance of his or her functions upon request.

Section 179 requires the Police Ombudsman to submit to the Minister a governance framework, which should include an outline of the processes and guidelines he or she will implement to ensure compliance with the Police Ombudsman’s reporting obligations under legislation. The Police Ombudsman is required to periodically review the governance framework and publish it, and any revisions thereto, on the website of the Police Ombudsman or in such other manner as the Police Ombudsman considers appropriate. GSOC opposes this requirement observing that the Police Ombudsman will be required to adhere to the Civil Service Corporate Governance Code, which GSOC submits offers a comprehensive and sufficient framework for governance.²²⁷

Section 180 requires the Police Ombudsman to submit a 3-year strategy statement to the Minister on a triannual basis, which should include key objectives, outputs and related strategies, as well as an evaluation of the Police Ombudsman’s performance during the preceding three years. The Police Ombudsman must publish a draft version of the strategy statement and allow persons 30 days to make representations in writing. Once finalised, the strategy statement must be submitted to the Minister whom in turn must lay it before each House of the Oireachtas. Following this, the strategy statement must be published on the website of the Office of the Police Ombudsman or in such other manner as the Police Ombudsman considers appropriate. The requirements

²²³ COFPI Report, p. 49, available [here](#) [last accessed 12 February 2023].

²²⁴ See Appendix 1 for the L&RS assessment concerning the extent to which this recommendation is addressed in the Bill.

²²⁵ Ibid., pp 48-49.

²²⁶ See Appendix 1 for the L&RS assessment concerning the extent to which this recommendation is addressed in the Bill.

²²⁷ GSOC’s Observations on the Bill, p. 11, available [here](#) [last accessed 12 February 2023].

surrounding the 3-year strategy are more onerous than the equivalent medium-term reporting requirements currently imposed on GSOC.²²⁸

Section 181 requires the Police Ombudsman to prepare and submit to the Minister an annual report of his or her activities within 3 months of year end, which must include a statement concerning adherence to the governance framework.²²⁹ Subsection (3) requires the Police Ombudsman to submit special reports to the Minister concerning matters which he or she considers, due to their gravity or other exceptional circumstances, require the Minister's special attention. The Minister shall cause a copy of such special reports to be laid before each House of the Oireachtas. However, the Minister may exclude any matter which, in his or her opinion, would be prejudicial to the interests of the security of the State, or might facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person. The versions of annual and special reports, as laid before each House of the Oireachtas, must be published on a website of the Office of the Police Ombudsman or in such other manner as the Police Ombudsman considers appropriate.

GSOC argued that, in order to maintain institutional independence, the Police Ombudsman, as opposed to the Minister, should lay the strategy statements and annual reports provided for in sections 180 and 181 directly before the Houses of the Oireachtas.²³⁰ GSOC asserted that having the Minister lay these documents before Parliament was not consistent with the practices of other Ombudsman institutions or the provisions regarding annual and special reporting by the Office of the Ombudsman for the Defence Forces.²³¹ It stated sections 180 and 181 set the Police Ombudsman apart from similar institutions in the State with detrimental ramifications for its institutional independence.²³²

Section 182 requires relevant persons identified in the section, in performing functions under the Bill, to maintain proper standards of integrity, conduct and concern for the public interest.²³³

Section 183 provides that the CEO shall be the accounting officer in relation to the appropriation accounts of the Office of the Police Ombudsman for the purposes of the *Comptroller and Auditor General Acts 1866 to 1998*, and may be required to provide relevant evidence to PAC upon request.²³⁴ **Section 184** provides that the Police Ombudsman or CEO may be required to attend before an Oireachtas committee, at the committee's request, to give account for the general administration of the Office of the Police Ombudsman.²³⁵

²²⁸ [Section 80 \(4\) of the 2005 Act](#) requires GSOC to submit a report to the Minister reviewing the general performance of its functions every five years for the preceding 5 years.

²²⁹ The requirement to include this statement is an additional reporting requirement that is not currently imposed on GSOC. See [section 80](#) of the 2005 Act.

²³⁰ GSOC's Observations on the Bill, pp 11-12, available [here](#) [last accessed 12 February 2023].

²³¹ Ibid.

²³² Ibid.

²³³ Relevant persons include the Police Ombudsman, the Deputy Police Ombudsman, the CEO, officers of the Police Ombudsman, persons engaged by the Police Ombudsman as consultants or advisers under section 176 and their employees (where performing relevant functions), and members of garda personnel and other persons engaged by the Police Ombudsman under section 177.

²³⁴ Currently GSOC members may be required to give evidence to PAC regarding certain matters, including the economy and efficiency of GSOC in the use of its resources. See [section 78](#) of the 2005 Act.

²³⁵ Section 184 (2) provides for an exception in respect of any matter which is, has been, or may at a future time be, the subject of proceedings before a court or tribunal in the State. Where a request to attend is declined for this reason, the committee may apply to the High Court for a determination as to whether subsection (2) applies to the matter concerned. Section 184 largely reflects [section 79](#) of the 2005 Act concerning GSOC's accountability to other Oireachtas committees.

Section 185 provides that individuals who hold or held the office of Police Ombudsman or Deputy Police Ombudsman and individuals who are or were officers of the Police Ombudsman shall not be liable in damages in respect of any acts or omissions relating to the performance or purported performance of their functions under the Bill unless the act or omission arose in bad faith.

Section 186 provides that statements made without malice during meetings of the Police Ombudsman either by the Police Ombudsman, the Deputy Police Ombudsman, an officer of the Police Ombudsman or a person to whom a function(s) of the Police Ombudsman have been delegated (where the statement is connected with the performance of the delegated function(s)), shall be privileged for the purposes of the law of defamation. Section 186 largely reflects [section 112](#) of the 2005 Act. However, unlike [section 112](#), it also extends qualified privilege to statements made at meetings of the Police Ombudsman by persons invited to attend by the Police Ombudsman, the Deputy Police Ombudsman or an officer of the Police Ombudsman.

Section 187 (1) prohibits the disclosure of confidential information by: former members or officers of GSOC; persons who hold or held the office of Police Ombudsman or Deputy Police Ombudsman, acting and former CEOs and officers of the Police Ombudsman; individuals who are or were contracted or engaged by GSOC or the Police Ombudsman; and employees and former employees of persons contracted or engaged by GSOC or the Police Ombudsman. The prohibition applies to the disclosure of information obtained by any of these persons whilst performing their duties where the disclosure is likely to have a harmful effect and the person knows or believes that the disclosure is likely to have such an effect. Subsection (4) provides for defences, for example, where the individual reasonably believed that the disclosure was required or permitted by law, or was duly authorised by the Police Ombudsman in the furtherance of his or her functions. Subsection (2) outlines the circumstances in which a disclosure will be considered likely to have a harmful effect. The list is more comprehensive than the equivalent list included under [section 81](#) of the 2005 Act concerning the confidentiality of information obtained by GSOC. Subsection (5) outlines the applicable penalties and subsection (6) allows for the imposition of a harsher penalty where an individual receives any gift, consideration or advantage as an inducement to make the disclosure or as a reward for the disclosure.²³⁶

Section 221 provides for a review procedure where a complainant is notified that their complaint has been determined inadmissible under [section 194 \(10\) \(a\)](#) or that the investigation of their complaint has been discontinued under [section 210 \(3\)\(a\)](#). Upon receipt of the notification, the complainant has 28 days to request the Police Ombudsman to review the determination/direction, or such extended period as the Police Ombudsman may authorise where he or she considers that a good reason exists for granting an extension.²³⁷ As soon as practicable after the review, the Police Ombudsman must notify the complainant of the outcome. GSOC has argued that the section should explicitly provide for an independent review of its decisions in order to maintain public confidence and ensure alignment with [section 10](#) of the *Criminal Justice (Victims of Crime Act) 2017* (concerning decisions by AGS or the DPP not to prosecute).²³⁸ Furthermore, Conway has argued that provision should also be made for internal reviews of the *outcomes of*

²³⁶ The same penalties apply as are provided for under section 80 concerning harmful disclosures by persons who are or were members of garda personnel, Board members, engaged by the Garda Commissioner on contract, or employees of persons engaged by the Garda Commissioner on contract.

²³⁷ This reflects a longer period than that provided for under Head 182 of the General Scheme of the Bill, which had required that a request for a review be submitted within 21 days of the decision being issued. General Scheme, Head 182, p. 287, available [here](#) [last accessed 14 February 2023].

²³⁸ GSOC's Observations on the Bill, pp 25-26, available [here](#) [last accessed 12 February 2023].

investigations asserting that this would alleviate the need for judicial inquiries in some circumstances.²³⁹

Section 222 provides that the Minister may, having consulted with the Police Ombudsman, and where he or she considers it to be in the public interest, request the Chief Justice to invite a judge of the Supreme Court, Court of Appeal or High Court to inquire into:

- a. the conduct of the Police Ombudsman, Deputy Police Ombudsman, CEO or an officer/designated officer of the Police Ombudsman; and/or
- b. the policies, practices or procedures of the Police Ombudsman

either in respect of a particular occasion in undertaking an investigation under section 204 or an investigation under section 224, or in general in undertaking investigations under section 224.²⁴⁰ The appointed judge must report their findings and any recommendations to the Minister who must forward a copy of the report to the Police Ombudsman for such action as the latter considers appropriate. The scope of the judicial inquiry procedure provided for under section 222 is broader than the existing judicial inquiry procedure provided for under *section 109 of the 2005 Act*. The latter is limited to inquiries into the conduct of designated officers of GSOC, either on a particular occasion or in general, in investigating complaints that appear to involve offences (*section 98*) and conducting searches of garda stations (*section 99*) in connection with same.²⁴¹ The provision included under section 222 for inquiries into the policies, practices or procedures of the Police Ombudsman in undertaking an investigation appears to be attempt to give effect to the COFPI's recommendation to expand the scope of the judicial inquiry process to allow for inquiries into the processes and procedures of the complaints body.²⁴²

Proposed change in status of civilian staff of AGS

Section 44 provides for the creation of a new category of AGS staff known as 'members of garda personnel', which includes AGS members and members of garda staff. **Section 54 (5)** provides for members of what are now known as civilian staff of AGS to be designated by order of the Minister to become members of garda staff. These provisions will have a significant impact on existing civilian staff of AGS. According to the AGS website, as of 31 December 2022, there were 14,133 AGS members and 3,332 civilian staff (the wholetime equivalent being 3,125.6).²⁴³

Notably, the Bill provides that the complaints system, subject to some exceptions, will apply to all members of garda personnel. This seeks to give effect to the COFPI's recommendation that the complaints body be authorised to receive complaints regarding alleged misconduct involving civilian staff of AGS.²⁴⁴ This is a significant change to the existing complaints system, which currently only extends to sworn AGS members. **Section 190 (1)** provides that a member of garda staff shall not be subject to a complaint or investigation under Part 6 until such time as the Minister has made an order under **section 54 (5)** designating members of civilian staff to become members

²³⁹ Submission of Dr. Vicky Conway, p. 17 appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

²⁴⁰ Section 224 provides that the Police Ombudsman shall have jurisdiction to investigate an offence under Part 6 of the Bill and may appoint a designated officer for this purpose.

²⁴¹ (searches of garda stations in connection with investigations under section 98) in relation to investigations under *Part 4 of the 2005 Act*.

²⁴² COFPI Report, p. 50, available [here](#) [last accessed 9 January 2023].

²⁴³ AGS, 'Garda HR Directorate: Garda and Staff Numbers as on 31 December 2022', available [here](#) [last accessed 9 February 2023].

²⁴⁴ COFPI Report, pp 49-50, available [here](#) [last accessed 9 January 2023].

of garda staff. Before making such an order, the Minister must notify in writing any recognised trade union or staff association concerned of his intention to make the order and consider their representations.

The proposed change has generated considerable opposition from civilian staff of AGS and garda representative groups.²⁴⁵ During the PLS process, [Fórsa](#) (a trade union that represents individuals employed in the Irish civil and public service) argued that the proposed change in status of civilian staff of AGS from civil servants to public servants was “neither appropriate nor warranted”.²⁴⁶ It expressed concern that civilian staff would be subject to the same complaints system as AGS members despite not having the same powers.²⁴⁷ AGS in turn reportedly asserted that “...treating Garda staff who undertake administrative duties differently than their counterparts in other Departments or Public Bodies may impact negatively on AGS as an employer.”²⁴⁸ The Association of Garda Superintendents queried whether the proposal “was within the terms of employment of current Garda staff members, as such staff are not bound by the same disciplinary measures or have the same role as Garda members”.²⁴⁹

On the other hand, the Policing Authority argued that there “...should be a similar standard of accountability for the entire garda workforce”.²⁵⁰ GSI called for trainee Gardaí to be treated in the same manner as Garda staff noting that they had been “deployed to operation prior to commencing their training during the COVID-19 pandemic”.²⁵¹ The Explanatory Memorandum to the General Scheme stipulates that the proposed change seeks to “...avoid overlap with the existing disciplinary processes that apply to the Civil Service”.²⁵² The controversy surrounding the change in status of civilian staff prompted the Joint Committee to make the recommendation below.²⁵³

PLS Recommendation 11: “The Committee acknowledges the statutory obligation within the General Scheme which requires consultation with relevant staff representative bodies and trade unions before any change to the status of Garda staff occurs. The Committee also encourages that ongoing dialogue take place between the Department and these bodies in relation to the impact of any proposed changes on their members.” ([PLS Report](#), p. 9)

Proposed changes to the process for the handling of complaints

According to the Explanatory Memorandum, **Part 6** of the **Bill** affords the Police Ombudsman an expanded remit and “...streamlines the processes and procedures for the handling of complaints

²⁴⁵ ‘More than 3,000 Garda civilian workers object to draft law that means they would lose their status as civil servants’ (*Irish Independent*, 23 November 2022) available [here](#) [last accessed 11 February 2023].

²⁴⁶ Fórsa Submission to the Oireachtas Committee on Justice on the General Scheme of the Policing, Security and Community Safety Bill, pp 3-4, appended to the PLS Report, available [here](#) [last accessed 12 February 2023].

²⁴⁷ *Ibid.*, p. 3.

²⁴⁸ PLS Report, p. 44, available [here](#) [last accessed 11 February 2023].

²⁴⁹ *Ibid.*, p. 55.

²⁵⁰ *Ibid.*, p. 48.

²⁵¹ GSI Submission to PLS, p. 20, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

²⁵² Explanatory Memorandum to the General Scheme of the Bill, p. 18, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

²⁵³ See Appendix 1 for the L&RS assessment concerning the extent to which this recommendation is addressed in the Bill.

and the conduct of investigations to support timely, more transparent and effective resolution while safeguarding due process for all concerned”.²⁵⁴

Section 189 includes definitions for several important terms for the purposes of Part 6. It should be read alongside section 2, which contains definitions for some relevant terms for the purposes of the entire Bill, which are omitted from section 189 (1). For example, **section 2** provides that “complaint” means a complaint made orally, in writing or electronically under section 192 (1). Section 189 (1) clarifies that for the purposes of Part 6 ‘members of garda personnel’ includes members of AGS and members of garda staff but does not include the serving Garda Commissioner.

Section 191 concerns complaints involving alleged incidents of misconduct by members of Garda personnel submitted by:

- a. a relevant member of the public who has been directly affected by, or who has witnessed, the act or omission that is the subject of the complaint;²⁵⁵ or
- b. a person acting on their behalf and with their verbal or written consent.

The requirement to obtain consent under paragraph (b) may not apply where the person making the complaint believes that the person on behalf of whom they are acting is incapable of giving consent because of their age or a physical or mental condition. The Police Ombudsman must also satisfy themselves that the person making the complaint is a suitable person to do so.²⁵⁶ Section 191 (3) provides that the consent of a parent or guardian is not required for complaints submitted by children aged 16 and above.

Section 192 provides that, subject to section 194, complaints by relevant members of the public may be made to the Police Ombudsman or AGS. Outside of a Garda Síochána station, complaints may only be made to the Garda Commissioner or a member of garda personnel not below the rank of superintendent (or the equivalent grade for garda staff).²⁵⁷ Complaints made to AGS must be referred to the Police Ombudsman without delay. Subsections (6) and (7) require the Minister, in consultation with the Police Ombudsman, the Garda Commissioner and the Authority, to review this requirement within three years of the coming into operation of the section and periodically thereafter. Following such a review and subject to section 249 (2),²⁵⁸ subsection (8) permits the Minister to specify by order a category or categories of complaints that do not need to be referred with a view to enhancing the efficiency and effectiveness of the complaints process and public confidence therein.

In its submissions on the Bill, GSOC stated its opposition to subsections (6) and (8) in very strong terms. GSOC indicated that it “...is extremely concerned that these provisions place a three-year

²⁵⁴ Explanatory Memorandum to the Bill, p. 36, available [here](#) [last accessed 11 February 2023].

²⁵⁵ Subsection (4) clarifies that the following persons are not relevant members of the public for the purposes of the section: (i) the serving Garda Commissioner, (ii) an AGS member, or (iii) a member of garda staff, in so far as the act or omission that is the subject of a complaint is connected with his or her employment as such a member.

²⁵⁶ This requirement doesn’t appear to be included in the existing complaints system. See [section 83 \(1\)](#) of the *2005 Act*. Under section 191, a person will be deemed a suitable person because of their relationship with the person who was directly affected by the act or omission and because of their interest in that person’s rights and welfare.

²⁵⁷ In comparison, [section 83 \(2\)](#) of the *2005 Act* had provided that, outside of a police station, complaints could only be made to an AGS member not below the rank of chief superintendent.

²⁵⁸ Section 249 (2) prohibits the Minister from making regulations or orders under certain sections of the Bill listed in the subsection without the approval of Government.

lifespan on what should be a fundamental and permanent reform - a statutory obligation on the Garda Commissioner to refer all complaints to the Police Ombudsman.”²⁵⁹ It stated its belief that they “...will fundamentally undermine the enhancement of independent police oversight and limit the body’s oversight of complaints from members of the public”.²⁶⁰

Section 194 concerns the admissibility criteria for complaints by members of the public. In order to be admissible, the complaint must:

- be made by a person who was directly affected by, or witnessed, the relevant act or omission or by a person acting on their behalf in accordance with section 191(1);
- be made within 12 months of the relevant act or omission or within any such extended period as may be authorised by the Police Ombudsman for a good reason;²⁶¹
- concern an act or omission by a person who was, at the time of the act or omission concerned, a member of garda personnel;
- be such that it is reasonably practical to take further action under Part 6;
- not be frivolous, vexatious or made in bad faith;²⁶²
- not lack substance or sufficient information to warrant further action under Part 6;
- not relate to the general direction and control of AGS by the Garda Commissioner;²⁶³
- not relate to an act or omission, which is the same or substantially the same as one that was the subject matter of a previous complaint/investigation;
- not relate to alleged acts or omissions of AGS members whilst off duty, unless the act or omission alleged would, if proved, be likely to bring discredit on AGS; and
- not relate to an alleged act or omission of a member of garda staff while off duty.

GSOC recommended that provision be allowed for complaints to be investigated where they raise matters of public interest even where the admissibility criteria are not entirely satisfied.²⁶⁴ GSOC also raised concerns that by requiring an admissibility determination by GSOC, section 194, when read together with section 192, could impede the operation of the local intervention initiative.²⁶⁵ As discussed previously, the local intervention initiative currently allows for the swift resolution of service-level complaints by AGS without immediate recourse to the statutory complaints procedure.²⁶⁶ GSOC, AGS and AGSI have all expressed support for the local intervention initiative,²⁶⁷ and GSOC has indicated that it is in discussions with AGS regarding how best to accommodate its continuation in the context of the new legislation.²⁶⁸

²⁵⁹ GSOC’s Observations on the Bill, p. 16, available [here](#) [last accessed 12 February 2023].

²⁶⁰ *Ibid.*

²⁶¹ This reflects the existing time limit for submitting complaints to GSOC provided for under *sections 84 and 87 (2) (c) of the 2005 Act*.

²⁶² This preclusion of frivolous or vexatious complaints reflects an existing admissibility requirement in respect of complaints submitted to GSOC under [section 87 \(2\) \(d\)](#) of the *2005 Act*. GSOC recommended that the Bill include a definition of “bad faith” to enhance clarity surrounding the admissibility criteria. See: GSOC’s Observations on the Bill, p. 11, available [here](#) [last accessed 12 February 2023].

²⁶³ This reflects an existing admissibility requirement for complaints submitted to GSOC under [section 87 \(3\) \(a\)](#) of the *2005 Act*.

²⁶⁴ GSOC’s Observations on the Bill, p. 11, available [here](#) [last accessed 12 February 2023].

²⁶⁵ *Ibid.*, pp 18-19.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*; AGSI submission to PLS, pp 15-16, appended to the PLS Report, available [here](#) [last accessed 12 February 2023]; and AGS submission to PLS, appended to PLS Report, pp 46-47 and 49, available [here](#) [last accessed 12 February 2023].

²⁶⁸ GSOC’s Observations on the Bill, p. 19, available [here](#) [last accessed 12 February 2023].

Notably, the admissibility criteria provided for in the Bill maintains a distinction in treatment between garda staff (civilian staff) and AGS members in that complaints may never be submitted against garda staff whilst they are off duty. However, reflecting the status quo under [section 87 \(3\) \(b\) of the 2005 Act](#), they may be submitted against AGS members albeit only where their alleged act or omission would, if proven, be likely to bring discredit on AGS. GSOC has recommended that these provisions be amended to permit complaints against off-duty garda staff in certain situations, for example, where the off-duty garda staff member's conduct "...relates significantly to misconduct alleged against a Garda member or on-duty staff member".²⁶⁹

Section 194 (7) clarifies that complaints can be submitted against former members of garda personnel and can be dealt with even where the member retires or resigns after the complaint is submitted.²⁷⁰ Section 194 (6) provides that a complaint may be admissible even if it does not identify the member of garda personnel who is the subject of the complaint.

Section 195 provides that having determined that a complaint is admissible, the Police Ombudsman must then determine whether it is suitable for resolution by AGS or warrants an independent investigation by the Police Ombudsman. In making this determination, the Police Ombudsman may make such inquiries as he or she considers appropriate. Section 195 (2) indicates that a complaint will be considered suitable for resolution by AGS where it falls within a category of complaints included in a list approved by the Minister under section 196 and where no special circumstances exist that would warrant an investigation. Unlike the current complaints process, section 195 doesn't make provision for the resolution of complaints by informal means.²⁷¹

Upon determining that a complaint is suitable for resolution by AGS, section 195 (4) requires the Police Ombudsman, as soon as is practicable, to notify the complainant of his or her determination and refer the complaint to AGS. Where the Police Ombudsman determines that a complaint warrants an investigation, he or she must notify the complainant and the Garda Commissioner. Section 195 also obliges the Police Ombudsman to notify the member of garda personnel who is the subject of the complaint where they are known to the Police Ombudsman or upon becoming them becoming so known. The Police Ombudsman must specify in this notification: the nature of the complaint, the name of the complainant and, where applicable, the name of the person on whose behalf the complaint was made. Section 195 permits the Police Ombudsman to postpone notifying the member concerned for so long as a good reason exists for the postponement.

The provisions included in section 195 regarding the notification of the member of garda personnel who is the subject of the complaint do not appear to have changed significantly as compared with the equivalent notification provisions included in Head 160 of the General Scheme.²⁷² During the PLS process, AGSI argued that the Bill should clarify when the subject of a complaint will be notified in situations where a complaint has been made against them.²⁷³ The Joint Committee recommended in its PLS Report that "...in accordance with natural justice, further guidance should be set out and agreed as to what point it would be required to put a Garda member on notice that they are under investigation by the Garda Ombudsman".²⁷⁴

²⁶⁹ Ibid., p. 17.

²⁷⁰ This reflects an existing provision under [section 87 \(4\)](#) of the 2005 Act to the extent that it applies to complaints against sworn AGS staff.

²⁷¹ Under [section 90](#) of the 2005 Act, upon determining that a complaint is admissible, if suitable and subject to the consent of the complainant and the AGS member whose conduct is the subject matter of the complaint, GSOC may refer the complaint for resolution by informal means.

²⁷² General Scheme, Head 160, pp 249-251, available [here](#) [last accessed 14 February 2023].

²⁷³ PLS Report, p. 58, available [here](#) [last accessed 11 February 2023].

²⁷⁴ Ibid., p. 9, Recommendation 8.

Section 196 requires the Police Ombudsman, having consulted with the Garda Commissioner, to prepare and submit to the Minister a draft list of categories of complaints suitable for resolution by AGS under Part 6. The categories included may not concern:

- the investigation of the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of AGS; or
- an act or omission which, if proven, would constitute a criminal offence or a sufficiently serious breach of the standards of professional behaviour that it would render the member of garda personnel concerned liable to dismissal from AGS.

Subsection (3) permits the Minister to modify the draft list, as he or she deems appropriate, prior to approval. Subsection (8) requires the Police Ombudsman to publish the approved list on the website of the Office of the Police Ombudsman or in such other manner as the Police Ombudsman considers appropriate. In her submission to the PLS process, Conway observed that the COFPI had recommended that only “performance management” matters be resolved by AGS.²⁷⁵ She argued that the categories of complaints to be resolved by AGS should be explicitly provided for by law and not privately determined between the Police Ombudsman and the Garda Commissioner.²⁷⁶

Section 197 requires the Garda Commissioner, having consulted with the Police Ombudsman and such other persons as he or she thinks appropriate, to establish efficient and effective arrangements for handling complaints suitable for resolution by AGS. Subsection 3 outlines certain requirements that the relevant arrangements must adhere to. In its observations on the Bill, GSOC recommended that this subsection explicitly stipulate that the arrangements must provide for a review/appeal of the manner in which a complaint was dealt with by AGS.²⁷⁷ It argued that the subsection should also impose an explicit obligation on the Garda Commissioner to notify the Police Ombudsman of the outcome of all complaints handled by AGS under the relevant arrangements, and afford it access to a database outlining the remedial actions taken.²⁷⁸

Section 197 requires the Garda Commissioner to publish the arrangements on an AGS website or in such other manner as he or she considers appropriate. The Police Ombudsman may require the Garda Commissioner to provide reports to the Police Ombudsman concerning any matters connected with the operation of the relevant arrangements, which the Police Ombudsman may publish in whole or in part. Conway argued that in order to ensure full transparency and certainty for all stakeholders concerned, the manner in which AGS is to investigate complaints should be provided for in Regulations rather than determined by the Garda Commissioner in consultation with the Police Ombudsman.²⁷⁹

Section 198 (3) incorporates a safeguard in that it provides that if, when handling a complaint in accordance with the relevant arrangements, it becomes apparent to the Garda Commissioner that the complaint is not suitable for resolution by AGS by reason of its nature or gravity, the Garda Commissioner shall consult with the Police Ombudsman and, with the approval of the Police Ombudsman, refer the complaint to the Police Ombudsman for investigation.

²⁷⁵ Submission of Dr. Vicky Conway, p. 15, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

²⁷⁶ Ibid.

²⁷⁷ GSOC's Observations on the Bill, p. 18, available [here](#) [last accessed 12 February 2023].

²⁷⁸ Ibid.

²⁷⁹ Submission of Dr. Vicky Conway, p. 15, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

Referral of matters by the Garda Commissioner

Section 199 requires the Garda Commissioner to refer to the Police Ombudsman without delay any matter that appears to the Garda Commissioner to indicate that the act or omission of a member of garda personnel may have resulted in the death of, or serious harm to, a person. Section 189 (1) clarifies that “serious harm”, in relation to a person, means—

- a. an injury to the person that—
 - i. creates a substantial risk of death,
 - ii. causes serious disfigurement, or
 - iii. causes substantial loss or impairment of mobility of the body as a whole or of the function of any particular bodily member or organ,
- b. he or she is the victim of a sexual offence,²⁸⁰ or
- c. he or she is the victim of an abuse of power for a sexual purpose”.²⁸¹

Notably, [section 102 \(1\)](#) of the 2005 Act currently imposes a similar reporting obligation on the Garda Commissioner. However, the definition of serious harm for the purposes of [section 102 \(1\)](#) is narrower and omits harm caused as a result of sexual offences and abuses of power for a sexual purpose.²⁸² Furthermore, the reporting obligation only extends to the acts and omissions of AGS members. During the PLS process, GSI recommended that, in order to satisfy the State’s obligations under international law, the Garda Commissioner should be required to refer to the Ombudsman situations “...where a member of the garda workforce is suspected of sexual violence or abuse of power for sexual gain against a member of the public or another garda employee”.²⁸³ Section 199 of the Bill, when read together with section 189 (1), largely gives effect to this recommendation. However, the obligation to refer such situations only arises in respect of acts or omissions of Garda staff (civilian staff) when they are “on duty” whereas it applies in respect of AGS members whether on duty or off duty (**section 199 (2)**).

Section 200 (1) requires the Garda Commissioner, subject to subsection 6, to notify the Police Ombudsman of any incident of concern in relation to a member of garda personnel as soon as practicable upon becoming aware of said incident. The definition of “incident of concern” is discussed in more detail below. **Section 200 (2)** provides that upon receipt of such a notification, and having consulted with the Garda Commissioner and acting in accordance with Protocols agreed under section 220, the Police Ombudsman may:

- a. decide that no further action is required by the Police Ombudsman;
- b. require the Garda Commissioner to notify him or her of the outcome of any investigation of the incident of concern undertaken by AGS;
- c. require the Garda Commissioner to keep him or her informed of the progress of

²⁸⁰ Section 189 (1) provides that ‘sexual offence’ has the equivalent meaning as it has under the [Sex Offenders Act 2001](#).

²⁸¹ Section 189 (1) provides that ‘abuse of power for a sexual purpose’ means “any behaviour by a member of garda personnel which takes advantage of his or her position as such a member to misuse his or her position, authority or powers for a sexual purpose or an improper emotional relationship with any other person”. The inclusion of a definition for ‘abuse of power for a sexual purpose’ remedies an omission in Head 157 the General Scheme. See: General Scheme, Head 157, pp 243-244, available [here](#) [last accessed 14 February 2023].

²⁸² [Section 82](#) of the 2005 Act.

²⁸³ GSI Submission to PLS, p. 20, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

- any investigation undertaken by AGS and/or submit reports; and/or
- d. where the incident of concern relates to the commission of an alleged offence—
 - i. establish a joint investigation under section 205 (1), or
 - ii. determine that the matter warrants an investigation by the Police Ombudsman.

In its observations on the Bill, GSOC argued that the requirement to consult with the Garda Commissioner under subsection (2) encroaches upon the institutional independence of the Police Ombudsman.²⁸⁴ GSOC asserted that it should be up to the Police Ombudsman to determine whether consultation with the Garda Commissioner was necessary.²⁸⁵ An equivalent requirement to consult with the Garda Commissioner is not included in [section 102](#) of the *2005 Act* concerning referrals by the Garda Commissioner to GSOC of any matter that appears to the Garda Commissioner to indicate that the conduct of an AGS member may have resulted in the death of, or serious harm to, a person.

Section 200 (6) provides that the Garda Commissioner may not have to notify all of the details of an incident of concern to the Police Ombudsman where to do so would be prejudicial to the security of the State or would endanger the life or safety of any person who has given information in confidence to a public body in relation to the enforcement or administration of the law. Where subsection (6) applies, the Garda Commissioner must, as soon as practicable, notify the Independent Examiner and the Police Ombudsman. GSOC has expressed concern that subsection (6) affords AGS “...extensive scope ... to claim legitimate exclusion of matters which may not be security related” and recommended that its use be subject to periodic review by the Independent Examiner.²⁸⁶

Section 189 (1) stipulates that, for the purposes of Part 6, “incident of concern” in relation to a member of garda personnel, means any act or omission—

- a. that is not and has not been the subject of a complaint or a referral under section 199(1), and
- b. in relation to which there is an allegation that the person who—
 - i. is a serving member of garda personnel, or
 - ii. at the time of the act or omission concerned, was a member of garda personnel,

may have—

- I. committed an offence, or
- II. behaved in a manner that constitutes notifiable misconduct.

Section 189 (1) provides that, for the purposes of Part 6, “notifiable misconduct” means misconduct, which would justify the bringing of conduct proceedings and is of a type prescribed by the Minister as notifiable misconduct under **section 189 (2)**. In prescribing types of notifiable misconduct, section 189 (2) requires the Minister, subject to section 249 (2), to have reference to certain factors, including the nature or gravity of the misconduct.²⁸⁷

During the PLS process, several stakeholders, including AGSI and GSI inferred that more clarity was required surrounding the threshold for determining whether an incident of concern should be

²⁸⁴ GSOC’s Observations on the Bill, p. 19, available [here](#) [last accessed 12 February 2023].

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*, p. 20.

²⁸⁷ Section 249 (2) prohibits the Minister from making regulations or orders under certain sections of the Bill listed in the subsection without the approval of Government.

referred to the Ombudsman.²⁸⁸ AGS expressed concern that the threshold could be low depending on what the Minister prescribes as “notifiable misconduct”.²⁸⁹ The Department of Justice clarified during the PLS process that incidents of concern “...do not include matters that are appropriate to the garda performance management system”.²⁹⁰ GSOC has argued that all allegations of misconduct, which could amount to a breach of discipline, and not just incidents of notifiable misconduct, should be notified.²⁹¹ The Joint Committee recommended in its PLS Report that “...‘incidents of concern’ be defined more clearly”.²⁹² However, the definition of incident of concern does not appear to have been significantly altered under the Bill as compared with the General Scheme.

Further clarity regarding the threshold for notification may be provided under Protocols to be agreed pursuant to section 220 of the Bill. **Section 220** requires the Police Ombudsman and the Garda Commissioner to make arrangements by written protocols concerning numerous matters, including the circumstances and procedures relating to notifications under section 200 (1).

Investigations

Section 201 provides for investigations in the public interest. Subsections (1) and (2) permit the Police Ombudsman to investigate any matter either at his or her own instigation, subject to section 202 (1), or at the request of the Minister where the matter appears to be a relevant cause of concern and where an investigation appears to be in the public interest. Subsection (10) clarifies that “relevant cause of concern” means a concern that a member of garda personnel may have committed an offence or behaved in a manner that constitutes misconduct, which would justify the bringing of conduct proceedings.²⁹³

Subsections (3), (5) and (7) of section 201 provide that the Minister, the PCSA or the Garda Commissioner may refer any matter to the Police Ombudsman which appears to them to be a relevant cause for concern. However, the Police Ombudsman may decline to investigate the matter referred if he or she decides that an investigation is not in the public interest.

Section 202 authorises the Police Ombudsman to investigate any protected disclosure of relevant wrongdoing relating to AGS provided to him or her in accordance with relevant provisions of the [Protected Disclosures Act 2014](#).²⁹⁴

Section 203 provides for investigations by the Police Ombudsman into any matters that give rise to a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct either:

- at the Police Ombudsman's own instigation, where it appears to be in the public interest, and subject to the consent of the Minister given with the approval of the Government; or

²⁸⁸ GSI Submission to PLS, p. 19, appended to PLS Report, available [here](#) [last accessed 11 February 2023].

²⁸⁹ AGS Submission to PLS, pp 43-44, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

²⁹⁰ DOJ Submission to PLS, p. 9, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

²⁹¹ GSOC's Observations on the Bill, p. 14, available [here](#) [last accessed 12 February 2023].

²⁹² Recommendation 9 in PLS Report, p. 9, available [here](#) [last accessed 11 February 2023].

²⁹³ In so far as they relate to AGS members, section 201 (1) and (2) reflect to some extent [section 102 \(1\) and \(2\) of the 2005 Act](#). However, the latter allows for referrals concerning alleged conduct that could justify disciplinary proceedings (as opposed to conduct proceedings).

²⁹⁴ See [section 102A of the 2005 Act](#) for the existing provisions concerning protected disclosures.

- at the request of the Minister where it appears to him or her to be in the public interest and subject to the approval of the Government.

In its observations on the Bill, GSOC requested that further consideration be afforded to the inclusion of the requirement for Ministerial or government approval in this section, in light of the Police Ombudsman's independence. It observed that:

"[t]here is no analogous requirement for Ministerial approval of investigations in to police leadership in neighbouring jurisdictions such as Northern Ireland or London, where the Chief Constable of the PSNI and the Commissioner of Police of the Metropolis, respectively, also exercise a significant state security brief."²⁹⁵

Section 204 (1) provides for the appointment by the Police Ombudsman of a designated officer to undertake an investigation in accordance with Part 6 into:

- a complaint received from the public under section 195 (1) (b);
- a matter referred by AGS under section 199 (1) concerning the death of, or serious harm to, a person;
- a matter which appears to the Police Ombudsman to indicate that the conduct of an AGS member or a member of garda staff whilst on duty may have resulted in the death of, or serious harm to, a person;
- an incident of concern relating to the commission of an offence under section 200;
- a matter that appears to the Police Ombudsman or the Minister to be a relevant cause of concern under section 201; or
- a matter that gives rise to a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct in accordance with section 203.

Subsection (5) outlines the persons that the Police Ombudsman must notify of the appointment of a designated officer to perform an investigation. Subsections (6) and (7) permit the Police Ombudsman to delay notifying the individual who is the subject of the complaint, where known, but only for so long as a good reason exists for the postponement.

Subsection (9) outlines the circumstances in which the Police Ombudsman may suspend an investigation, for example, where the subject matter of the investigation is under investigation by another public body.

Section 205 permits the Police Ombudsman to establish, in conjunction with the Garda Commissioner, a joint investigation with AGS for the purpose of investigating an incident of concern in respect of a member of garda personnel, which relates to the commission of an alleged offence. AGS, in its submission to the PLS process, expressed serious concerns that the provision for joint investigation teams could cause confusion regarding the roles and responsibilities of investigators and regarding the lead agency in investigations.²⁹⁶ AGS inferred that joint investigations could also undermine public confidence in the independence of the Police Ombudsman.²⁹⁷

Section 206 provides that, subject to any modifications provided for in subsection 2, where a designated officer is appointed under section 204 (1) to undertake an investigation, they shall, for

²⁹⁵ GSOC's Observations on the Bill, p. 22, available [here](#) [last accessed 12 February 2023].

²⁹⁶ AGS Submission to PLS, p. 50, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

²⁹⁷ Ibid.

the purposes of undertaking, or assisting in, the investigation concerned and any matters ancillary or consequential thereto, have all the powers, immunities, privileges and duties conferred or imposed on any AGS member under applicable law as outlined in the section, for example, powers relating to the arrest, with or without a warrant, of a person.²⁹⁸

Subsection (3) provides that any person who delays, obstructs or interferes with a designated officer in the exercise/performance of their powers/duties under subsection (1) is guilty of an offence and is liable on summary conviction to a class B fine (€4,000) and/or imprisonment for a term not exceeding 12 months.²⁹⁹

Section 210 permits the Police Ombudsman to direct that an investigation of a complaint or of any matter under Part 6 be discontinued for reasons outlined in the section. Subsection (3) requires the Police Ombudsman to notify certain persons, as he or she considers appropriate, of any direction to discontinue an investigation and of the reasons for same.

Having completed the investigation, the designated officer submits a report to the Police Ombudsman. **Section 211** provides that where the Police Ombudsman believes that a report received from an officer designated to perform an investigation under section 204 (10) or (11) discloses an act or omission that may constitute an offence by a member of garda personnel, he or she must send a copy of the report and the investigation file to the DPP.

Section 212 (1) provides for the provision of copies of reports of investigations performed by designated officers under section 204 (10) or (11), along with any recommendations of the Police Ombudsman, to the Garda Commissioner, the Minister or the PCSA, as appropriate, where the report discloses:

- a) a matter that should be dealt with by way of conduct proceedings, performance proceedings, or other arrangements for dealing with unsatisfactory performance of AGS members by AGS; or
- b) a concern in relation to the practices, policies or procedures of AGS or any other issue of a general or systemic nature in relation to AGS.

It is notable, with regard to paragraph (b), that the COFPI recommended that investigations focus on incidents, as opposed to individuals with a view to identifying any organisational issues or problems.³⁰⁰ Subsections (2) and (3) of section 212 require the Garda Commissioner, in accordance with protocols agreed under section 220, to provide the Police Ombudsman with information regarding the actions, if any, undertaken in response to the Police Ombudsman's recommendations and the reasons for same.

Section 213 obliges the Police Ombudsman to keep relevant stakeholders, as outlined in the section, updated on the progress and results of an investigation, either on his or her own initiative or upon a request from such persons. The stakeholders identified include the member of garda personnel concerned, where the subject matter of the investigation relates to the conduct or performance of a known member of garda personnel. However, section 213 (2) provides that the Police Ombudsman is not required to disclose information which would, in his or her opinion:

- a. prejudice a criminal investigation or prosecution;

²⁹⁸ This provision seems to reflect [section 98 \(1\)](#) of the 2005 Act.

²⁹⁹ This allows for the imposition of a slightly higher maximum fine on summary conviction (the maximum fine imposable upon summary conviction for the equivalent offence under [section 98 \(3\)](#) of the 2005 Act is €3,000.

³⁰⁰ COFPI Report, pp 43-47, available [here](#) [last accessed 9 January 2023].

- b. jeopardise the safety of any person;
- c. be contrary to [section 16](#) or 16A of the *Protected Disclosures Act 2014* (relating to the need to protect the identity of whistleblowers and other persons concerned); or
- d. for any other reason not be in the public interest.

Searches of Garda Síochána premises for the purposes of an investigation

Section 207 provides for a change to the existing authorisation process for obtaining a warrant to search a Garda Síochána station/premises in connection with an investigation. Section 207 permits a designated officer who is appointed under section 204 (1) to undertake an investigation to apply to the District Court for a warrant to search a Garda Síochána premises. Before doing so, the designated officer must acquire the authorisation of the Police Ombudsman. Prior to providing such authorisation, the Police Ombudsman must consult with the Garda Commissioner in order to determine whether the latter objects to the search for reasons relating to the security of the State. Subsection (3) of section 207 provides for the confidentiality of the consultation and it obliges the Garda Commissioner to ensure that the consultation doesn't impair the integrity of the investigation. Subsection (4) provides that the Police Ombudsman may authorise a designated officer to apply to the District Court for a warrant to search a Garda Síochána premises:

- where the Garda Commissioner does not object for state security reasons, or
- where the Police Ombudsman have received a direction under subsection (15).

Subsection (14) provides that where the Garda Commissioner objects to a search for State security reasons, he or she must notify the Police Ombudsman and the Independent Examiner without delay. The Independent Examiner must then perform a review of the objection in accordance with section 240 of the Bill.³⁰¹ Subsection (15) provides that if the Minister is satisfied, having had regard to the Independent Examiner's recommendation, that the search—

- a. would not be prejudicial to the security of the State, or
- b. is proportionate and necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of AGS,

he or she shall issue a direction specifying the Garda Síochána premises that may be the subject of an application to the District Court. The Minister may attach conditions and restrictions to the direction in the interests of the security of the State. Subsection (7) provides that the District Court judge may issue the search warrant in accordance with the direction where he or she is satisfied, upon hearing evidence under oath from the designated officer, that:

- there is reasonable cause to suspect that a member of garda personnel who is the subject of an investigation is guilty of an offence, and
- there are reasonable grounds for suspecting that evidence of, or relating to, the commission of the offence is to be found on the Garda Síochána premises concerned or in the possession of any person to be found there.

Subsections (8) to (12) afford certain powers to designated officers who have been issued a search warrant under subsection (7). Subsection (8) permits the designated officer, accompanied by such other designated officers and/or persons as he or she considers necessary, to:

³⁰¹ L&RS Note entitled: "Policing, Security and Community Safety Bill 2023: Independent Examiner of Security Legislation", available [here](#) [last accessed 20 February 2023].

- enter the Garda Síochána premises within a week of the date on the warrant;
- search the premises and any persons found there;
- seize anything found on the premises or in the possession of a person on the premises that the designated officer or person accompanying them reasonably believes to be evidence of, or relating to, the commission of the offence concerned; and
- take any other steps which appear to the designated officer or person accompanying them to be necessary for the purpose of preserving any such thing.

During the PLS process, concerns were raised by AGS and AGSI regarding the powers afforded to designated officers under Head 170 to search *any* person found at a Garda premises pursuant to an authorisation to search the premises, including persons unconnected with the investigation.³⁰² Despite these concerns, section 207 (8) retains this power for designated officers.

Subsection (9) provides that the authority conferred by subsection (8) (c) to seize any thing includes an authority to make and retain a copy of a document or record and, where necessary, to seize and, for as long as necessary, retain any computer or other storage medium in which any document or record is kept. Subsection (10) authorises the designated officer to operate any computer at the Garda Síochána premises, which, according to subsection (18) “...includes any other computer, whether at that premises or at any other place, which is lawfully accessible by means of that computer”.³⁰³

During the PLS process some stakeholders argued that Head 170, which allowed for potential searches of all or part of data storage facilities on garda premises, raised data protection concerns.³⁰⁴

Subsection (11) authorises the designated officer to seize material at the premises, which is likely to be of substantial value to the investigation concerned (to the exclusion of materials that are subject to legal privilege).³⁰⁵ Subsection (12) authorises the designated officer to:

- require any person present at the relevant Garda Síochána premises to provide their name and address, and
- arrest without warrant any person who—
 - fails to do so, or who gives a name or address that the officer has reasonable cause for believing is false or misleading; or
 - who obstructs or attempts to obstruct the officer, or any other designated officer or person accompanying them, in carrying out his or her duties.³⁰⁶

Subsection (13) provides that a person who:

- obstructs or attempts to obstruct a designated officer, or any other designated officer or person accompanying them;

³⁰² AGS Submission to PLS, p. 41, appended to PLS Report, available [here](#) [last accessed 12 February 2023]; and AGSI submission to the PLS, pp 21-22, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

³⁰³ The powers provided for in section 207 (10) concerning access to computers appear to be additional to those provided for under [section 99](#) of the 2005 Act concerning searches of Garda Síochána stations.

³⁰⁴ PLS Report, p. 60, available [here](#) [last accessed 12 February 2023].

³⁰⁵ In contrast, [section 99 \(7\) \(c\)](#) of the 2005 Act authorises the relevant designated officer to “seize anything found in that station, or found in the possession of a person present in the station at the time of the search, that the designated officer reasonably believes to be evidence of, or relating to, the commission of the offence in question”.

³⁰⁶ Subsection (12) largely restates [section 99 \(8\)](#) of the 2005 Act.

- fails to comply with a requirement to provide their name and address to the designated officer under subsection (12); or
- gives a false name or address in response to a requirement under subsection (12)

is guilty of an offence and is liable, on summary conviction, to a class C fine (€2,500) and/or imprisonment for a term not exceeding 6 months.³⁰⁷

Proposed changes to existing processes concerning searches of Garda premises

Section 207 marks a change to the existing regime concerning searches of garda stations performed by designated officers of GSOC in the context of investigations in a number of respects.

First, section 207 provides for searches of “Garda Síochána premises” whereas [section 99](#) of the *2005 Act* provides for searches of a ‘Garda Síochána station’, which is defined as “any premises where a member of the Garda Síochána is stationed”. ‘Garda Síochána premises’ was similarly defined under Head 170 of the General Scheme as any premises where a member of garda personnel is stationed or assigned.³⁰⁸ During the PLS process, GSOC requested that the definition of “Garda Síochána premises” for the purposes of Head 170 include the curtilage of a Garda station and Garda vehicles.³⁰⁹ This recommendation appears to have been implemented in that “Garda Síochána premises” is afforded a much more comprehensive definition under **section 189 (1)** of the Bill, which includes the curtilage to such premises and vehicles used by garda personnel in the course of their work.³¹⁰ In addition, **section 207 (18)** clarifies that vehicles located on a “Garda Síochána premises”, which are privately owned by members of garda personnel, may be searched and anything found in such vehicles may be seized.

Notably, **section 207** represents a change to the process for obtaining authorisations to search Garda Síochána stations/premises. Currently, of the *2005 Act* permits the relevant designated officer to search a Garda Síochána station pursuant to an authorisation issued directly by GSOC where GSOC is satisfied that the designated officer—

- a) with reasonable cause, suspects the member under investigation to be guilty of an offence, and
- b) has reasonable grounds for suspecting that evidence of, or relating to, the commission of the offence is to be found in the station or in the possession of any person to be found there.³¹¹

[Section 99](#) of the *2005 Act* provides for special procedures where an authorisation is sought to search a Garda Síochána station, which has been designated by regulation under section 126 of the *2005 Act* as one that, for reasons relating to the security of the State, may only be searched to

³⁰⁷ Subsection (13) largely restates [section 99 \(9\)](#) of the *2005 Act* although subsection (13) extends the offence of obstruction/attempted obstruction to persons accompanying the designated officer.

³⁰⁸ General Scheme, p, 269, available [here](#) [last accessed 14 February 2023].

³⁰⁹ GSOC, ‘Submission to the Oireachtas Committee on Justice on the General Scheme of the Policing, Security and Community Safety Bill’, 27 October 2021, p. 15, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

³¹⁰ “Garda Síochána premises” is defined under section 189 (1) as “any premises, or part thereof, where a member of garda personnel is stationed or assigned, including— (a) the curtilage to such premises, and (b) any of the following that is used by such a member in the course of carrying out his or her duties— (i) a vehicle, whether mechanically propelled or not, (ii) a vessel, whether sea-going or not, (iii) an aircraft, whether capable of operation or not, or (iv) a hovercraft”. “Curtilage” is defined separately under section 189 (1).

³¹¹ [Section 99 \(1\), 2005 Act.](#)

the extent specified in a direction of the Minister. In such circumstances, GSOC must notify the Garda Commissioner and the Minister of its intention to issue the authorisation. Where the Garda Commissioner objects to the search on State security grounds, he or she must immediately request the Minister to consider the objection. If the Minister decides that the search would not be prejudicial to State security or is necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of AGS, the Minister must issue directions specifying the part of the station (or the document storage facility) that may be searched.

The authorisation process for searches of garda premises proposed under Head 170 of the General Scheme of the Bill was closer to the existing process provided for under *section 99* of the 2005 Act. Under Head 170, it was envisaged that authorisations would be provided directly by the proposed new ‘Garda Ombudsman’, having consulted with the Garda Commissioner. Where the Garda Commissioner objected to the search on State security grounds, he or she was required to notify the Garda Ombudsman and the Independent Examiner without delay. The latter was then required to perform a review and provide a recommendation to the Minister who could then issue a direction specifying the part of the premises, if any, that may be searched.

The change to the authorisation process provided for in the Bill may reflect concerns voiced by some stakeholders during the PLS process, including the Association of Garda Superintendents,³¹² regarding the compatibility of Head 170 with the principles outlined by the Supreme Court in the *Damache* judgment.³¹³ The *Damache* judgment, which concerned the issuance of a search warrant for a dwelling, outlined fundamental requirements that must be satisfied for the authorisation procedure to be valid, including the use of an independent adjudicator and the existence of reasonable cause.³¹⁴ During the PLS process, ICCL submitted that Head 170 was not contrary to the principles outlined in *Damache* given that: (i) applications would have to be submitted to the Police Ombudsman who would not themselves be directly involved in the investigation; (ii) the Police Ombudsperson would have to satisfy themselves that reasonable cause exists that an AGS member has committed an offence; and (iii) the Ombudsperson would have to identify reasonable grounds that evidence of the offence may be found at the garda premises.³¹⁵ Furthermore, ICCL observed that the *Damache* case concerned a search of a constitutionally protected dwelling as opposed to a police station, which does not enjoy the same status under the Constitution.³¹⁶

In its submissions, GSOC indicated that it did not oppose the requirement to obtain the authorisation of the District Court for the search.³¹⁷ However, it stressed its “strong opposition” to the requirement imposed on the Police Ombudsman to consult the Garda Commissioner prior to affording the requisite authorisation to the designated officer to apply to the District Court.³¹⁸ It

³¹² PLS Report, p. 60, available [here](#) [last accessed 12 February 2023].

³¹³ *Damache v. DPP* (2012) IESC 11.

³¹⁴ *Ibid.*; and ICCL Submission to PLS, p. 8. appended to PLS Report, available [here](#) [last accessed 12 February 2023].

³¹⁵ ICCL Submission to PLS, p. 8. appended to PLS Report, available [here](#) [last accessed 12 February 2023].

³¹⁶ *Ibid.* [Article 40.5](#) of the Constitution provides that “[t]he dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.”

³¹⁷ GSOC’s Observations on the Bill, pp 22-23, available [here](#) [last accessed 12 February 2023].

³¹⁸ *Ibid.*

argued that this undermined the Police Ombudsman's institutional independence and was incompatible with his or her duty to seek out and preserve evidence.³¹⁹

Additional powers of designated officers and legal professional privilege (LPP)

Section 208 confers additional powers on designated officers for the purpose of performing an investigation, including a power to:

- a. require any person to provide the designated officer with any information in their possession, or any document or thing in their power or control, that the designated officer considers to be relevant to, and required for, the purposes of, the investigation; and
- b. where appropriate, require a person to attend before the designated officer and fully and truthfully answer their questions.

A person may refuse to comply with such a requirement for reasons related to the security of the State. In such circumstances, the designated officer must inform the Police Ombudsman whom in turn may refer the refusal to the Independent Examiner for review in accordance with section 240.³²⁰ Having received the Independent Examiner's recommendation, the Minister may issue a direction specifying that all or part of the document, information or thing be disclosed, or that the question posed be answered.

Subsection (11) provides that a person who fails or refuses to comply with a requirement or direction under section 208, without reasonable excuse, is guilty of an offence and is liable, on summary conviction, to a class C (€2,500) fine and/or imprisonment for a term not exceeding 6 months.

Subsection (12) concerns legal professional privilege (LPP) and should be read in conjunction with section 209. It provides that nothing in section 208 shall be taken to compel a person, in complying with a relevant requirement or direction under the section, to provide any information, document or thing that would be exempt from production in proceedings in a court on the ground of LPP. LPP seeks to protect "privileged" communications between a client and their solicitor that may otherwise require disclosure. According to the Law Society of Ireland's Code of Conduct for Solicitors: "[w]hen privileged communications pass between a solicitor and their client or a prospective client, the privilege is that of the client, and the solicitor cannot be compelled to disclose those communications unless ordered to do so by a court."³²¹

Communications between solicitors and clients containing legal advice, both oral and written, qualify as privileged communications.³²² Communications "...made for the dominant purpose of preparing for litigation or anticipated litigation, or in an attempt to agree matters so as to avoid litigation" also qualify albeit only in so far as the communications pertain "...to the scope of the relevant proceedings, unless closely related proceedings ensue".³²³ LPP may be waived by the client, overridden by statute, or lost or forfeited, for example, where the communication was made for a fraudulent or illegal purpose, or where the communication was made by a client to a solicitor

³¹⁹ Ibid.

³²⁰ See the L&RS Note entitled: "Policing, Security and Community Safety Bill 2023: Independent Examiner of Security Legislation", available [here](#) [last accessed 20 February 2023].

³²¹ Law Society of Ireland, *Solicitor's Guide to Professional Conduct* (4th edn., Guidance & Ethics Committee of the Law Society 2022) p. 49, available [here](#) [last accessed 27 January 2023].

³²² Ibid.

³²³ Ibid., p. 50.

prior to the commission of a crime for the purpose of receiving guidance or assistance in the commission of that crime.³²⁴

Section 209 pertains to situations where a person refuses to:

- provide information, a document or a thing requested under section 208 (1);
- answer a question posed under section 208 (4); or
- comply with a direction issued under section 208 (8),

on the grounds that section 208 (12) concerning LPP purportedly applies. In such circumstances, the Police Ombudsman or the person subject to a direction or requirement under section 208, may apply to the District Court for a determination as to whether section 208 (12) applies. The judge may direct that the application be held otherwise than in public (i.e. *in camera*).³²⁵ The person refusing to comply with the requirement/direction must preserve the document or thing concerned pending the determination of the application. Subsection (5) allows for a right of appeal against the determination of the District Court to the Circuit Court whose decision shall be final.

Reporting of potential offences to the DPP

Section 211 provides that where the Police Ombudsman believes that a report received from an officer designated to perform an investigation under section 204 (10) or (11) discloses an act or omission that may constitute an offence by a member of garda personnel, he or she must:

- a. send a copy of the report and the investigation file to the DPP together with any recommendations that appear to the Police Ombudsman to be appropriate, and
- b. at the DPP's request, provide him or her with any other information, document or thing relating to the investigation that appears to the DPP to be necessary for performing their functions under the *Prosecution of Offences Act 1974*.

Section 211 obliges the DPP to inform the Police Ombudsman of their decision regarding whether or not to institute a prosecution and, where applicable, to keep the Police Ombudsman updated on the progress and results of the prosecution. The mere fact that a member of garda personnel was convicted or acquitted of an offence in respect of a matter reported to the DPP under section 211 does not preclude the institution or continuation of conduct proceedings or dismissal proceedings in relation to the same matter. Section 211 also provides that the fact that the DPP declined to pursue a prosecution in relation to a matter referred shall also not serve to preclude the institution or continuation of conduct proceedings or dismissal proceedings in relation to the same matter.

Section 218 (1) provides that the time limit for instituting summary proceedings in respect of a matter relating to an offence reported to the DPP under Part 6 is 18 months from the date of the offence.³²⁶

Section 219 provides that an AGS member is not precluded from charging a member of garda personnel with an offence simply because the act or omission to which the offence relates could be

³²⁴ Ibid., p. 51.

³²⁵ Proceedings convened *in camera* are not open to the general public. Individuals permitted to attend include the officers of the court, the parties to the case and their legal representatives, witnesses and such other people as are permitted to attend by law and the presiding judge. Restrictions on publications concerning the proceedings may also apply.

³²⁶ This reflects [section 104](#) of the 2005 Act, which provides that summary proceedings in respect of a matter relating to an offence reported to the DPP under the Act may be instituted within 18 months of the date of the offence.

the subject matter of a complaint or investigation under Part 6. However, where a complaint has been made or a matter has been notified or referred to the Police Ombudsman under Part 6, the DPP's consent is required before the member may be charged.³²⁷

Section 224 provides that the Police Ombudsman shall have jurisdiction to investigate an offence under Part 6 of the Bill and may appoint a designated officer for this purpose. Where the Police Ombudsman is of the opinion that the report of the investigation discloses that an offence may have been committed, he or she must send a copy of the report and the investigation file to the DPP. Subsection (6) obliges the DPP to advise the Police Ombudsman as to whether or not they decide to institute proceedings and of the progress and outcome of a prosecution, where relevant.

Obligations imposed on AGS to assist and cooperate with the Police Ombudsman

Section 214 (1) requires the Garda Commissioner to, as soon as practicable, provide the Police Ombudsman with such information and documents as the latter may request for the purposes of, or in connection with, the performance of his or her functions.³²⁸ Subsection (2) permits the Garda Commissioner to refuse to comply with a request for reasons relating to the security of the State. In such circumstances, the Police Ombudsman may refer the refusal to the Independent Examiner for review. Having considered the recommendation of the Independent Examiner, the Minister may decide to issue a Direction requiring the Garda Commissioner to provide all or part, as the case may be, of the information or document requested where provision of:

- would not be prejudicial to the security of the State; or
- is necessary for the proper investigation of a matter concerning the death of, or serious harm to, a person as a result of Garda operations or while in the care or custody of An Garda Síochána.

GSOC has argued that the obligation imposed on the Garda Commissioner under section 214 (1) "remains too weak" and has called for the imposition of an explicit obligation on AGS to cooperate with the Police Ombudsman in a prompt and timely manner.³²⁹ **Section 33 (1) (f)** also requires the Garda Commissioner to assist and cooperate with the Police Ombudsman (and the PCSA) in order to facilitate them in the performance of their duties. As mentioned previously, [section 26 \(1\) \(c\) \(ca\)](#) of the 2005 Act only requires the Police Commissioner to assist and cooperate with the Policing Authority, without explicitly mentioning GSOC.

Section 216 requires the Garda Commissioner to ensure that members of garda personnel, upon becoming aware of a complaint or any matter notified or referred to the Police Ombudsman under Part 6, take any lawful measures, which appear to them to be necessary or expedient, for the purpose of obtaining and preserving evidence relating to the complaint or matter.

Section 217 requires a member of garda personnel, if directed to do so by a designated officer, to account for any their acts and omissions, while on duty. Subsection (2) provides that a failure to do so will result in disciplinary action in accordance with the Conduct Regulations or the conduct

³²⁷ In so far as it relates to alleged offences by AGS members, this provision largely reflects [section 105](#) of the 2005 Act.

³²⁸ [Section 103A](#) of the 2005 Act currently obliges the Garda Commissioner to ensure that any information to be provided by AGS to GSOC for the purposes of performing an investigation into a complaint, an investigation into the conduct of the Garda Commissioner under [section 102B](#), or any investigation under [section 102](#), be provided as soon as practicable.

³²⁹ GSOC's Observations on the Bill, p. 24, available [here](#) [last accessed 12 February 2023].

code. Subsection (3) requires the designated officer, when giving the direction, to inform the relevant member of garda personnel that:

- a failure to comply with the direction may lead to dismissal from AGS; and
- any statement or admission made by the member pursuant to the direction will not be admissible as evidence in any criminal proceedings brought against the member.

Section 223 (1) provides that a person who, in relation to a complaint, an investigation, a joint investigation or an investigation under section 224, knowingly provides to the Police Ombudsman or an AGS member information that is false or misleading, is guilty of an offence and is liable, on summary conviction, to a class C (€2,500) fine and/or imprisonment for a term not exceeding 6 months. Subsection (2) clarifies that a prosecution for an offence under this section can only be instituted with the DPP's consent following the referral of the matter to the DPP by the Police Ombudsman.³³⁰

Conclusion

AGS's governance, oversight and accountability framework was influenced by its emergence from the ashes of colonialism. AGS inherited from the Royal Irish Constabulary a highly centralised and hierarchical command structure. AGS was made accountable to the Government via the Minister for Justice and the Government acquired a role in the internal governance of AGS, including the power to appoint the Garda Commissioner. AGS was also made the State's security service. For many years, AGS's Republican character and responsibility for maintaining security in the embryonic state helped to shield it from overt critique.³³¹

The absence from the outset of a formalised governance and oversight framework meant that the mechanisms that did emerge "...emerged reactively and rapidly in response to various crises".³³² The Garda Síochána Complaints Board, the first ostensibly independent body established to oversee the internal handling of complaints against AGS members, was ultimately deemed ineffective. The creation of GSOC, GSI and the Policing Authority during the 2000s and 2010s gave rise to procedural changes. For example, the Policing Authority was afforded responsibility for nominating individuals for appointment by the Government to the offices of Garda Commissioner and Deputy Garda Commissioner. Nevertheless, problems remained, including insufficiently clear lines of accountability giving rise to a sense that "the buck stops nowhere".³³³

Shortcomings in AGS's governance, oversight and accountability framework contributed to the establishment of the COFPI in 2017. The COFPI identified a need for a clearer differentiation between the functions and responsibilities of the various external oversight and accountability bodies, and AGS's responsibilities for its own internal governance.³³⁴ The Bill seeks to implement the COFPI's recommendations, including through:

- the provision of additional functions to the Garda Commissioner with the aim of empowering the Commissioner to lead AGS as a "true CEO";

³³⁰ Section 223 largely reflects [section 110](#) of the 2005 Act.

³³¹ S. Charman and D. Corcoran, 'Adjusting the police occupational cultural landscape: The case of An Garda Síochána' (2015) 25(5) *Policing and Society* 484, p. 486.

³³² ERG Report, p. 33, available [here](#) [last accessed 16 February 2023].

³³³ Ibid.

³³⁴ COFPI Report, p. 39, available [here](#) [last accessed 9 January 2023].

- the creation of the PCSA in place of the Policing Authority and GSI;
- the creation of a non-executive Board of AGS to support the Garda Commissioner and senior AGS management, and to hold them accountable for their performance;
- the transfer of some of the Policing Authority's statutory responsibility for executive functions to AGS under the guidance of the Board, the Board, or the Minister, with the PCSA having a consultative role, if any;
- the restructuring of GSOC into a Police Ombudsman/Deputy Police Ombudsman model with an expanded remit;
- the updating and streamlining of the existing system for the handling of allegations of wrongdoing concerning AGS members, and its extension to civilian AGS staff; and
- the creation of a new category of "garda personnel" comprising AGS members and garda staff (currently civilian staff).

Significantly, one of the COFPI's core recommendations surrounding the establishment of a non-executive Board of AGS and the related dilution of the Policing Authority's functions did not enjoy the support of the entirety of its membership.

As discussed, the Bill also provides for the creation of the statutory position of Independent Examiner of Security Legislation (**Part 7**). The Independent Examiner is empowered under a number of provisions in the Bill to review refusals by the Garda Commissioner and other AGS members to provide certain information and documentation, when requested to do so by the PCSA or the Police Ombudsman, for reasons relating to the security of the State. Notably, both GSOC and the Policing Authority have voiced concerns that in the past AGS has invoked its power to refuse to provide information on grounds of state security "more widely than necessary"³³⁵ with a resulting detrimental impact on their ability to effectively discharge their respective mandates.

Section 34 (1) guarantees the independence of the Garda Commissioner in the performance of his or her functions, albeit subject to the Bill. Indeed, the Bill's provisions render the Commissioner accountable to multiple entities, including:

- the new Board of AGS, in the performance of his or her functions (**section 34 (2)**);
- the Government and the Minister, through the Secretary General of the Department of Justice, in relation to matters connected with the provision of policing services and security services (**section 35**);
- the Minister, through the Secretary General of the Department of Justice, in relation to significant developments concerning matters outlined section 36, including the preservation of peace and public order (**section 36**); and
- the Committee of Public Accounts as accounting officer in relation to the appropriation accounts for AGS (**section 72**).

The Garda Commissioner may also be required to attend before other Oireachtas committees to give account for the general administration of AGS (**section 73**). Furthermore, he or she may be called upon to cooperate with, and attend before, any special inquiry established by the Minister pursuant to **section 82**, into a matter of significant public concern relating to any aspect of the administration or operation of AGS, any practice or procedure of AGS, or the conduct of members of garda personnel.

³³⁵ Ibid., p. 38.

The Bill affords the Board and the Minister functions in the areas of internal governance of AGS and strategic planning. AGS's strategic plan (**section 63**), annual service plan (**section 65**), capital expenditure plan (**section 68**) and annual report (**section 70**) must be submitted by the Garda Commissioner to the Minister for approval, but only having received the prior approval of the Board. The Garda Commissioner must also have regard to any views received from the PCSA concerning aspects of the strategic plan and the annual service plan that relate to policing services prior to submitting same to the Minister. **Section 71** requires the Board to submit a governance framework for AGS to the Minister for approval. Prior to submission, the Board must consult with the Garda Commissioner and have regard to any directives issued by the Minister under **section 37**.

The PCSA is afforded responsibility for determining policing priorities for AGS albeit subject to the approval of the Minister and following consultation with the Garda Commissioner, the National Office for Community Safety, and such other persons as the PCSA considers appropriate (**section 61**). The Minister in turn is afforded responsibility for determining security priorities and related performance targets for AGS having consulted with the Garda Commissioner and such other persons as the Minister considers appropriate (**section 62**). Subject to relevant provisions concerning state security, the Minister must lay the policing priorities, strategic plan, annual service plan, capital expenditure plan, annual report and any directives issued pursuant to section 37 before the Houses of the Oireachtas.

The Bill imposes statutory duties upon the Garda Commissioner and members of garda personnel to cooperate with the PCSA and the Police Ombudsman in the performance of their functions as the two independent, external oversight bodies (see, for example, **sections 33, 146, 208 and 214 (1)**). Like the Policing Authority, the PCSA's core objective is to "...oversee and assess in an independent and transparent manner the performance by An Garda Síochána of its function relating to policing services" (**section 122 (1)**). In addition, the PCSA acquires GSI's inspection function. Notably, the Bill also authorises the PCSA to perform unannounced inspections of garda stations and places where garda personnel are assigned, albeit subject to the terms of a memorandum of understanding to be agreed upon by the PCSA and the Garda Commissioner (**section 147**).

Parts 5 and 6 of the Bill provide for the restructuring and renaming of GSOC as the Office of the Police Ombudsman, and for the expansion of its powers.

The proposals included in the Bill have attracted comments and criticisms from various stakeholders for both converging and diverging reasons. As noted previously, the power afforded to the PCSA to conduct unannounced visits to garda stations received several comments from stakeholders during the PLS. The Association of Garda Superintendents stated that this power would need to be "clearly defined"³³⁶ whereas the Policing Authority expressed concern that the requirement for a memorandum of understanding between the PCSA and AGS regarding the exercise of the power could "fetter the independence and agility" of the process.³³⁷

³³⁶ Submission of the Association of Garda Superintendents to the PLS, p. 30, appended to the PLS Report, available [here](#) [last accessed 11 February 2023].

³³⁷ Policing Authority Submission to PLS, 6 August 2021, p. 14, appended to PLS Report, available [here](#) [last accessed 12 February 2023].

The proposed changes to GSOC's powers and the associated systems for handling complaints and conducting investigations into alleged incidents of misconduct by garda personnel have also attracted considerable commentary. AGS and AGSI stressed the need for the reforms to accord with principles of natural justice.³³⁸ The proposed change in the status of civilian staff of AGS and their consequential subjection to the updated complaints system, a central recommendation of the COFPI, has been strongly opposed by many existing members of civilian staff and garda representative groups.³³⁹ On the other hand, it has been supported by GSI and the Policing Authority. GSOC has expressed concern that some of the proposed reforms could undermine the Police Ombudsman's institutional independence and lengthen the overall process for conducting investigations by introducing an additional layer of bureaucracy.³⁴⁰ Along with other commentators such as ICCL, GSOC emphasised that the expansion in the Police Ombudsman's remit would need to be accompanied by a commensurate increase in staff and resources.³⁴¹ In addition, GSOC indicated that the timely and efficient discharge of the Police Ombudsman's functions will be dependent upon the timely and full cooperation of relevant stakeholders, including AGS.³⁴² [GSOC](#) inferred that the statutory duty imposed on AGS under the Bill to assist and cooperate with the Police Ombudsman may not go far enough in this regard (see, for example, **sections 33, 146, 208 and 214 (1)**).

Perhaps most notably, during the PLS process, multiple stakeholders, including AGS, Conway, AGSI, the Policing Authority and ICCL, expressed concern that, contrary to the COFPI's intention, the changes proposed in the General Scheme, which are largely reflected in the Bill, would cause confusion for the Garda Commissioner by rendering him accountable to multiple bodies with potentially overlapping remits. Some stakeholders such as Conway and the Policing Authority were also critical of the proposed transfer of some of the Policing Authority's functions, as the independent external oversight body, to AGS under the supervision of the Board, the Board, or the Minister with the new PCSA only playing a consultative, if any, role. These concerns are largely captured in the Policing Authority's assertion that:

“...reporting lines for the Commissioner are now confused and involve the Minister, the Board, the PCSA and the National Office in an uncoordinated, overlapping manner which in [sic] has the very real potential to reduce public accountability and internalises key issues which should be subject to public scrutiny”.³⁴³ [Editorial note: the inclusion of “in” appears to be a typographical error in the Policing Authority's submission].

³³⁸ See, e.g., Joint Committee on Justice, 'Report on Pre-legislative Scrutiny of the Policing, Security and Community Safety Bill' (May 2022) p. 58, available [here](#) [last accessed 12 February 2023]; and AGS Submission to PLS, pp 5-6, appended to PLS Report, available [here](#) [last accessed 12 February 2023]

³³⁹ 'More than 3,000 Garda civilian workers object to draft law that means they would lose their status as civil servants' (*Irish Independent*, 23 November 2022) available [here](#) [last accessed 11 February 2023].

³⁴⁰ GSOC's Observations on the Bill, pp 4-5, available [here](#) [last accessed 12 February 2023].

³⁴¹ *Ibid.*, p. 5; and ICCL Submission to PLS, pp 9-10. appended to PLS Report, available [here](#) [last accessed 12 February 2023].

³⁴² GSOC's Observations on the Bill, pp 5-6, available [here](#) [last accessed 12 February 2023].

³⁴³ Policing Authority Submission to PLS, p. 3, appended to the PLS Report available [here](#) [last accessed 12 February 2023].

Appendix 1: PLS Recommendations

This Appendix seeks to assess the extent to which the recommendations of the Joint Committee on Justice have been addressed in the Bill, as presented for Second Stage. To do this, a traffic light system is used by the L&RS as outlined in the table below. This traffic light approach represents the L&RS' own, independent analysis of the Bill.

A key setting out the traffic light dashboard is provided in Table 1 below. The L&RS is grateful to the Departmental officials for providing their assessment of the actions taken and their comments in relation to the PLS recommendations. These are replicated in the right-hand column of the table and were derived from a separate analysis provided by the Department.

Table 1 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.







L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Error! Reference source not found. to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Recommendation has not been implemented in the Bill, but additional considerations are present.	
Key issue has not been accepted or implemented in the Bill.	


Table 2 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
1. The Committee recommends that the accountability structures proposed in the General Scheme be evaluated,	 <p>1. The manner in which the Garda Commissioner's accountability is set out in the General Scheme has been reviewed and changes made in the Bill. While the changes made ensure that the Commissioner's relationship with, and obligations towards, the various</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
<p>particularly in terms of the various bodies to whom the Commissioner must be accountable and the time it will take the Commissioner to account to these different bodies.</p>	<p>elements of the governance and oversight framework are clear, they remain complex and multi-faceted. This is unavoidable as the unique role performed by police and security services means that the governance and oversight arrangements put in place by most countries tend to involve multiple reporting and accountability lines, whether to the Minister and Government, parliamentary committees and independent oversight bodies.</p> <p>In terms of the changes made, the approach in head 27 to making the Commissioner's operational independence explicit was reviewed and a new approach set out in section 34 of the Bill. Section 34 includes a clear statement that the Commissioner, subject to the Act and the regulations, shall be independent in the performance of his or her functions. This is the standard approach on the statute book to setting out the functional independence of an office holder and removes any confusion around the Commissioner's accountability that may have been caused by the wording of head 27.</p> <p>In summary under the accountability framework the Commissioner is:</p> <ul style="list-style-type: none"> • subject to the Act, independent in the performance of his/her functions (section 34(1)); • accountable to the Board for the performance of his/her functions as recommended by CoFPI (section 34(2)). The Board is accountable to the Minister for its performance as is standard (section 14). In line with good corporate governance, the Board is required to establish and implement arrangements for the management of the performance of the Commissioner and implement the necessary development and appraisal processes (section 12(1)(h)). The power to remove the Commissioner remains with the Government (sections 31-32); • under an obligation, as is the case currently, to fully account to the Minister and the Government for higher level matters concerning the policing and security of the State as recommended by CoFPI (section 35). This aligns with the Minister and the Government's overall responsibility for public safety and the security of the State and their accountability to the Houses; • as accounting officer for the Garda Vote, accountable to the Committee on Public Accounts (section 72); • required to attend before other Oireachtas Committees (section 73).

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>In considering the above it is useful to recall that the only change from the current statutory accountability framework is that the Commissioner is accountable to the Board for his/her performance rather than directly to the Minister. This is considered a more appropriate framework of governance between the Minister's Department and An Garda Síochána as it will enable the Department to pull back from any perception of involvement in the day to day management of An Garda Síochána while providing reassurance to the Minister in relation to governance standards. The input of the Board is expected to reduce the extent to which the Garda authorities will need to deal directly with the Minister's Department on administrative approvals and other matters more proper to Board level oversight in common with the norms for large public sector bodies.</p> <p>As regards the bodies established to provide independent oversight - the Policing and Community Safety Authority and the Police Ombudsman – the Commissioner is statutorily obliged to assist and cooperate with those bodies (section 33). In the case of the Authority, the Commissioner is required to report and to attend meetings, including in public, to facilitate that body in discharging its independent oversight mandate (also the case with the Policing Authority currently)(section 133). In the case of the Police Ombudsman the Commissioner is required to provide information requested by the Ombudsman to facilitate the performance of his or her functions (also the case with GSOC currently)(section 214).</p> <p>The accountability and independent oversight framework and the nature of the relationship between the Commissioner and the independent oversight bodies is consistent with the constitutional requirement that the Government retains ultimate control in relation to matters of fundamental importance to the exercise of its executive powers in this area while allowing for the delegation of appropriate policing matters.</p> <p>In terms of the formal draw on the Commissioner's time, the Bill provides for a minimum of 6 meetings of the Board annually which the Commissioner may attend (section 22(1)). Some of the work of the Board will, of course, be done through its committees and, having regard to the functions of the Board, it is expected that members of the wider garda executive team will have significant engagement with the Board.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>With regard to the Authority it is required (as is the case with the Policing Authority) to have a minimum of 4 meetings in public annually with the Commissioner (section 130(5)).</p> <p>In considering the Commissioner's time it is important to recall that the Board, in addition to holding the Commissioner to account, is to provide support to the Commissioner and the senior leadership team in running the organisation and in that regard the nature of the engagement is to be distinguished from the nature of the engagement with that of a body charged with independently scrutinising policing performance.</p> <p>It is also important to note that the changes made to the respective functions of the Board and the Authority to minimise the risk of duplication (see response to recommendation 2) are relevant to this matter.</p> <p>Having regard to the importance of ensuring the effectiveness of the Board and also ensuring robust independent oversight with a strong public dimension as required by CoFPI and the Programme for Government no changes were made to the minimum formal meeting requirements.</p>
<p>2. The Committee recommends that the roles of the Board of an Garda Síochána ('Garda Board') and the Policing and Community Safety Authority (PCSA) be clarified under Head 11 and Head 104 respectively to avoid any duplication of roles.</p>		<p>2. The respective roles of the Board and the Policing and Community Safety Authority were reviewed to ensure that they are appropriately focused on where they are intended to add value and that the risk of duplication is minimised. On foot of that review a number of refinements were made to the Bill to reflect the policy objective that with the Board added to the governance landscape and focused on providing reassurance on governance matters the Policing and Community Safety Authority should be enabled to focus on providing independent scrutiny of policing performance and outcomes utilising its inspection and research functions to drive improvements in the interests of the public. In particular, section 122 which sets out the objectives, functions and powers of the Authority has been the subject of a number of refinements:</p> <ul style="list-style-type: none"> the function of keeping under review the corporate governance arrangements and structures within An Garda Síochána has been removed as this is a matter appropriate to the Board; the Authority is required to keep itself generally informed of matters relating to recruitment, training &

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>development, management of performance, and management of resources rather than keeping them under review – this will support its work in scrutinising policing performance and in the event that that work identifies issues in relation to these matters it may, for example utilise its inspection powers;</p> <ul style="list-style-type: none"> the Authority, amongst other matters is, when performing its functions, required to have regard to the functions of the Board a “for the avoidance of doubt” provision has been inserted to make clear that the performance by the Authority of its functions does not incorporate the management of the performance of the Garda Commissioner – it is matter for the Board to put in place performance management arrangements for the Garda Commissioner. In tandem with this the consultative role for the Authority in relation to the proposed removal of the Commissioner has been removed to avoid blurred lines between the governance of An Garda Síochána and independent oversight – a fundamental principle underpinning the new governance and oversight framework provided for in the Bill having regard to the CoFPI Report. The Authority’s assessments relating to the policing performance of the organisation will, of course, be available and may be relevant inputs to the Board’s or the Government’s consideration of any matter that may give rise to concern around an individual office holder’s performance.
<p>3. The Committee recommends that the Garda Board should have a role in the development of the annual service plan.</p>		<p>3. The Bill requires the Garda Commissioner to prepare the annual service plan for submission to the Minister for approval with or without amendment. The plan is required to be adopted by the Board prior to its submission. This specific process set out in section 65 is to be understood in the context of the Board’s general functions as set out in section 12 and which include at subsection (1)(a) overseeing and approving “the development of corporate strategy for An Garda Síochána in relation to major plans of action, risk policy, annual budgets and service plans.” As is the case with bodies with a CEO/Board structure the Commissioner and the executive team will prepare the plan under the direction and guidance of the Board.</p> <p>Any views provided by the Policing and Community Safety Authority under section 122(2)(q) will be required to be given due regard (section 65(4)). As conceived this role for the Authority will enable it to bring the insights</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>gained from its community outreach work to the attention of An Garda Síochána.</p>
<p>4. The Committee acknowledges the need, in Head 9, for the inclusion of powers of prosecution currently available to Gardaí pursuant to the Garda Síochána Act 2005 but recommends that progress be prioritised to bring about the re-assigning of these powers to a national prosecution service.</p>	<div data-bbox="531 533 598 600"></div> <p>4. CoFPI recommended that the Gardaí should no longer have a role in prosecutions and this recommendation was accepted in principle by Government, subject to further evaluation on the implications, including resource implications, how best it might be achieved, and the timing of implementation. The High Level Review Group on the Role of An Garda Síochána in the Public Prosecution System (HLRG) was established in September 2020 to conduct this evaluation and to recommend a preferred option for consideration by Government. It is understood that the work of the HLRG is nearing completion.</p> <p>Pending the publication and consideration of its final report it remains necessary to restate in section 10 of the Bill the existing law as set out in section 8 of the Garda Síochána Act 2005.</p>
<p>5. The Committee recommends that Part 6 of the General Scheme be re-examined, to ensure that the investigative powers of the Office of the Garda Síochána Ombudsman ('Garda Ombudsman'), are fully compliant with the human rights and constitutional rights of Garda members.</p>	<div data-bbox="531 1180 598 1247"></div> <p>5. Part 6 of the Bill has been drafted with the advice of the Office of the Attorney General and is considered to be fully compliant with the Constitution and the law. Any person involved in an investigation being undertaken by the Police Ombudsman will, as they must in accordance with the Constitution, be accorded fair procedures and natural justice.</p> <p>In order, however, to provide further reassurance express reference has been made to the requirement for fair procedures in Part 6. The statutory objectives of the Police Ombudsman include "ensuring that his or her functions are performed in a timely, efficient and effective manner and in accordance with fair procedures" (section 169(1)(c)), and the Ombudsman is required when establishing and maintaining systems and procedures for the receipt and handling of complaints and the conduct of investigations to "have regard to the need for him or her to perform his or her functions in a timely, efficient and effective manner and in accordance with fair procedures" (section 169(5)).</p> <p>In addition the provisions governing the search of garda premises now require a search to be carried out under a District Court warrant (section 207).</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>In relation to the availability of powers equivalent to a member of An Garda Síochána (see section 206) such powers may, of course, be lawfully exercised only where the threshold for the exercise of the particular power concerned is met. In relation to the additional powers provided for under section 208 (which are similar to those provided for under section 96 of the 2005 Act) a number of safeguards are expressly provided for including the prohibition on the admissibility of any statement or admission made in any proceedings brought against the person for an offence.</p>
<p>6. The Committee recommends that the General Scheme provide clarity regarding the accountability of the Garda Síochána Ombudsman Commission (GSOC), as a body under the aegis of the Department of Justice, in terms of its performance and other functions.</p>	<div data-bbox="531 846 598 913" data-label="Image"> </div> <p>6. The Police Ombudsman is necessarily independent in the performance of his or her functions (see section 169(8)). This functional independence is subject to the Act which contains a number of provisions to support the Police Ombudsman's accountability for the performance of those functions and to support the Minister's oversight of the body as a body within the justice sector. The Minister exercises his or her responsibility in accordance with the statutory framework and the Code of Practice for the Governance of State Bodies which includes a requirement to agree an annual performance delivery agreement which is published. Similar statutory and Code provisions apply, for example, to the Policing and Community Safety Authority (provided for in Part 4 of the Bill). The provisions in the Bill are as follows:</p> <ul style="list-style-type: none"> • as a vote holding body for the first time its CEO, as accounting officer, is accountable to the Committee of Public Accounts (section 183); • the Police Ombudsman/CEO is required to attend before other Oireachtas committees (section 184); • the Police Ombudsman is required to prepare and submit a governance framework document in relation to the Office to the Minister (section 179) (inserted since the Scheme); • the Police Ombudsman is required to prepare and submit a three year strategy statement to the Minister which, with the exception of the first such statement, is to include an evaluation of the work of the Office (section 180) – provision is made for consultation on a draft of the statement; • the Police Ombudsman is required to report annually and may make special reports to the Minister (section 181); • the Police Ombudsman, the Deputy, the CEO, the officers of the Police Ombudsman, and consultants

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>and others engaged by the Ombudsman are required to act in accordance with codes of ethics to be prepared by the Ombudsman (section 182) (inserted since the Scheme);</p> <ul style="list-style-type: none"> the Police Ombudsman is required to furnish the Minister with such information regarding the performance of his or her functions as the Minister may from time to time require (section 169(6)); the Police Ombudsman is required to inform the Minister of relevant to the accountability of the Government to the Houses (section 169(7)) (inserted since the Scheme). <p>These provisions are accompanied by obligations to lay the various documents before the Houses and to make arrangements for their publication where appropriate.</p> <p>The Bill also for the first time gives complainants a right to seek a review of certain decisions of the Police Ombudsman -see section 221 which supports the performance and accountability of the Police Ombudsman.</p> <p>In addition, the Bill expands the judicial inquiry mechanism contained in section 109 of the Garda Síochána Act 2005 to enable inquiries into the conduct not only of all officers of the Police Ombudsman, but also the conduct of the Police Ombudsman, the Deputy Police Ombudsman and the policies and procedures of the office (section 222).</p> <p>The actions of the Police Ombudsman and his/her officers are also, of course, subject to the Courts.</p>
<p>7. The Committee recommends that a comprehensive review of GSOC be undertaken, to establish the precise factors that are causing some investigations to take an extended period of time to resolve. The results of this review should help to inform the legislation and to avoid such delays from occurring in the operation of the Garda Ombudsman.</p>	<div data-bbox="531 1529 598 1597"> </div> <p>7. The proposals in the Bill are designed to address challenges arising from the existing statutory framework in the Garda Síochána Act 2005 which were recognised by GSOC itself in its 2017 proposals for legislative change. CoFPI which consulted widely also found the complaints regime as a whole to be clearly unsatisfactory from all perspectives (garda members, complainants and GSOC) and in need of an “urgent overhaul”. CoFPI noted limitations on GSOC’s jurisdiction, constraints on its investigative process which makes it “cumbersome and inefficient”, and resource constraints which result in serious complaints being referred to An Garda Síochána for investigation impacting GSOC’s independence.</p> <p>Of particular note as regards ensuring greater expedition in the conduct of investigations are the proposals in Part</p>


Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>6 to streamline and simplify the investigation process in two key respects:</p> <ul style="list-style-type: none"> • firstly, the current dual investigation process is replaced with a new single investigation process under which the designated officer has powers equivalent to a member of An Garda Síochána and other appropriate powers (section 204 and the related sections 205-209). Unlike the current process, this new approach allows the Police Ombudsman to launch an investigation without having to decide at the outset on the basis of limited information and analysis whether or not that investigation is to be criminal or non-criminal in nature. Such a single investigation process is standard in other regulatory type bodies. • secondly, the new process dispenses with the existing statutory approach which requires criminal and non-criminal matters to be investigated sequentially and which has the effect of prolonging the resolution of complaints and other matters for years in some cases. <p>On completion of an investigation a designated officer submits a report to the Police Ombudsman who forms an opinion as to whether any matter should be referred to the DPP or the Garda Commissioner as the case may be (see sections 211, 212). Of particular note in relation to timeliness is that a designated officer may submit a report or reports to the Police Ombudsman at any stage prior to the completion of the investigation if the investigation of a particular aspect of the investigation or of a particular member's role has been completed (see section 204(11)).</p> <p>Also of note is that the Bill gives the Police Ombudsman a new power to conduct preliminary inquiries to support decision making (sections 194(9) and 195(3)); strengthens the obligation on the Garda Commissioner to provide information requested by the Police Ombudsman in the performance of his or her functions (section 214); and gives the Police Ombudsman a basis for reciprocal sharing of information with other relevant bodies in accordance with law and to the extent necessary and proportionate for the performance of their respective functions and (section 260).</p> <p>Beyond the reforms to the procedures the Bill places an obligation on the Police Ombudsman in relation to timeliness: the statutory objectives of the Police Ombudsman include "ensuring that his or her functions</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>are performed in a timely, efficient and effective manner and in accordance with fair procedures” (section 169(1)(c)); and the Ombudsman is required when establishing and maintaining systems and procedures for the receipt and handling of complaints and the conduct of investigations to “have regard to the need for him or her to performance his or her functions in a timely, efficient and effective manner and in accordance with fair procedures” (section 169(5)). Similarly the arrangements required to be established by the Garda Commissioner for the handling of complaints suitable for resolution by An Garda Síochána are statutorily required to provide for complaints to be dealt with a “timely” manner (section 197(3)).</p> <p>In addition to the new statutory procedures it is recognised that the Police Ombudsman must be adequately resourced to undertake the expanded remit of the Office and supported by an effective business operating model. In the context of planning for the implementation of the Bill an independent business analysis provider has been contracted to prepare and furnish a report assessing the projected size and make-up of its future caseload and recommending an operational business model to meet the body’s future needs across all areas of its operations and containing a roadmap for implementation including estimated costs. This work is aligned to the Minister’s Implementation Programme for the Bill and is the subject of a dedicated project workstream involving representatives from GSOC and the Minister’s Department. The additional funds of €2.75M provided in Estimates 2023 includes provision for preparatory costs for the implementation of the new structures and procedures.</p>
<p>8. The Committee recommends that, in accordance with natural justice, further guidance should be set out and agreed as to what point it would be required to put a Garda member on notice that they are under investigation by the Garda Ombudsman.</p>		<p>8. This matter is addressed by the Bill. Where the Police Ombudsman decides that an investigation is warranted on foot of a complaint he/she is required to notify the member of garda personnel who is the subject of the complaint. This obligation applies where the member is known at the outset or becomes known to the Ombudsman in the course of the investigation (section 195(5)).</p> <p>In addition where the Police Ombudsman appoints a designated officer to carry out an investigation for any other reason as set out in section 204 he/she is required to notify the member of garda personnel who is the subject of the investigation. Again this obligation applies</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>where the member is known at the outset or becomes known to the Ombudsman (section 204(5)).</p> <p>In both instances provision is made for the Police Ombudsman to postpone this notification to the member where he/she has good reason to do so (section 195(6) and section 204(6)). This aligns with the practice of investigating bodies generally whereby persons may not be put on notice that they are the subject of an investigation in order to, for example, minimise the risk that relevant evidence may be destroyed. Express provision is made to ensure that any such postponement applies only so long as a good reason exists. Where the good reason ceases to exist the notification must be made as soon as practicable (section 195(7) and section 204(7)). Where a notification is postponed the Garda Commissioner is to be informed of same and the reason and also of its cessation (section 195(8) and section 204(8)).</p> <p>More generally, having regard to the obligation on the Police Ombudsman to ensure that his or her functions are performed in accordance with fair procedures (section 169(1)(c) and (5)) it will be made clear to any person (including any member of garda personnel) prior to being interviewed by the Police Ombudsman as part of an investigation the basis on which that interview is taking place.</p>
<p>9. The Committee recommends that 'incidents of concern' be defined more clearly under Head 165.</p>	<div data-bbox="531 1384 598 1456"></div> <p>9. Having regard to CoFPI, section 200 requires the Garda Commissioner to notify the Police Ombudsman of certain allegations of wrong doing on the part of members of garda personnel - referred to in the Bill as "incidents of concern" - that come to light other than by way of a complaint from a member of the public or a referral of a matter concerning the "death of, or serious harm to, a person." The Police Ombudsman will decide what action to take including, in the case of an allegation of a criminal nature, whether he or she should launch an independent investigation. At present such matters are investigated by An Garda Síochána itself.</p> <p>The definition of "incident of concern" (section 189) has been drafted so as to ensure that only those allegations that warrant independent oversight are included and required to be notified. It has also been drafted to ensure that matters that are appropriate to performance management processes within An Garda Síochána and allegations of minor misconduct are outside its scope.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>As defined it encompasses allegations that a member of garda personnel may have committed an offence or behaved in a manner that constitutes “notifiable misconduct”. In order for misconduct to constitute “notifiable misconduct” two criteria must be met. Firstly the misconduct must be such that would justify the bringing of conduct proceedings, and secondly, be of a type prescribed by the Minister. Section 189(2) sets out the factors by reference to which the Minister may prescribe misconduct for this purpose. They include the nature or gravity of the misconduct, the seniority in rank or grade of a member of garda personnel, the nature of the duties which a member of garda personnel is assigned to undertake, or the importance of maintaining public confidence in the arrangements for the investigation of allegations of misconduct by a member of garda personnel.</p> <p>Of note is that the definition of misconduct (see section 189(1)) and conduct proceedings (see section 2) are linked to the suite of regulations to be made to replace the existing garda discipline system, in particular the Conduct Regulations and the Standards of Professional Behaviour Regulations to be made under Part 8 of the Bill. These regulations are required to be in place for the coming into operation of the Act and will be developed in parallel with the passage of the Bill as part of the Implementation Programme referred to below. Relevant stakeholders including the Garda Commissioner, the policing oversight bodies and the garda representative associations will be consulted on the regulations.</p> <p>An implementation programme involving partner agencies has been established in the Minister’s Department to drive planning for implementation of the Bill. This work will support a shared understanding of the proposals.</p>
<p>10. The Committee recommends that consideration be given to re-organising the process of the Garda Ombudsman’s investigations so that serving Garda members would no longer be</p>	<div data-bbox="531 1720 598 1787"></div> <p>10. This recommendation is understood to refer to section 92 of the Garda Síochána Act 2005 under which GSOC may refer certain types of complaints to the Garda Commissioner for investigation. Where such a complaint is referred the Commissioner is required under section 94 of that Act to appoint a member of An Garda Síochána to investigate the complaint under the Disciplinary Regulations. Such investigations may be supervised by GSOC or unsupervised. This “outsourcing of investigations” to the Commissioner did not form part of</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
seconded to assist with the investigation.	<p>the proposals in the Scheme of the Bill and is not provided for in the Bill. In line with the recommendations of the CoFPI report, the Bill provides for all admissible complaints to be investigated by the Police Ombudsman under section 204 with the exception of service level type complaints (referred to in the Bill as “complaints suitable for resolution by An Garda Síochána”) which may be referred by the Police Ombudsman to the Garda Commissioner under section 195(2) for resolution in accordance with the arrangements to be established by the Commissioner under section 197.</p>
<p>11. The Committee acknowledges the statutory obligation within the General Scheme which requires consultation with relevant staff representative bodies and trade unions before any change to the status of Garda staff occurs. The Committee also encourages that ongoing dialogue take place between the Department and these bodies in relation to the impact of any proposed changes on their members.</p>	<p></p> <p>11. Having regard to section 54(6) the Minister’s Department and garda management have had preliminary dialogue with trade unions/ staff associations representing garda staff. This engagement will continue in the context of planning for the implementation of the Bill in tandem with the passage of the Bill through the Houses.</p> <p>In addition, there will be consultation as is customary with garda representative associations in the course of the preparation of regulations concerning matters of relevance to their members including the suite of regulations to replace the existing garda discipline system (the Performance Regulations, Conduct Regulations and Standards of Professional Behaviour Regulations to be prepared under Part 8) and selection and appointment processes (also to be prepared under Part 8). These regulations are required to be in place for the coming into operation of the Act and will be developed in parallel with the passage of the Bill.</p>
<p>12. The Committee recommends that the proposals in Head 114, to carry out unannounced visits, be formalised and underpinned by legislation rather than by way of a Memorandum of Understanding (MOU).</p>	<p></p> <p>(In respect of the first half of the recommendation regarding the requirement for the proposals in Head 114, to carry out unannounced visits, to be</p> <p>12. The powers that may be exercised by an inspector of policing services who has been authorised to carry out an inspection are now set out in section 146. In particular section 146(1)(a) empowers such an inspector to enter a relevant location (defined in subsection (8)) “<i>at any time</i> to inspect any aspect of the administration or operation of An Garda Síochána in relation to the provision of policing services that is relevant to the inspection.” “at any time” encompasses announced or unannounced inspections. It is a matter for the inspector to determine what he or she considers necessary or expedient for the purposes of carrying out the inspection.</p> <p>Section 147 maintains the requirement for the Authority and the Garda Commissioner to agree a memorandum of understanding concerning the conduct of inspections,</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
<p>The Head should also be clearer about what precise information should be provided to the Garda Ombudsman's Office when requested.</p>	<p>formalised and underpinned by legislation rather than by way of a MOU).</p> <p></p> <p>(In respect of the second half of the recommendation regarding the requirement that the Head should also be clearer about what precise information should be provided to the Garda Ombudsman's Office when requested).</p>	<p>including the manner in which the powers of an inspector of policing services under section 146 may be exercised. This requirement is intended to ensure that inspections are carried out in an efficient and effective manner, do not adversely affect the performance by An Garda Síochána of its functions, do not jeopardise criminal investigations or prosecutions, and do not prejudice the safekeeping of a person in legal custody. It is intended to support the conduct of inspections in the context of the functions of An Garda Síochána and does not limit the powers of the Authority to conduct inspections nor the powers of its inspectors of policing services.</p> <p>The reference to the “<i>Garda Ombudsman's Office</i>” in the recommendation would seem to be a typographical error. It is likely intended to be a reference to the Authority and its inspectors of policing services.</p> <p>Of relevance to the provision of information to the Authority or its inspectors are the following sections of the Bill:</p> <ul style="list-style-type: none"> • section 33 which provides at subsection (1)(f) that the functions of the Garda Commissioner include assisting and cooperating with the Authority; • section 133, and in particular subsection (2), which makes clear that the duty on the Garda Commissioner to report to the Authority with regard to policing services includes the duty to provide on request by the Authority any document or information relating to policing services in the power of control of An Garda Síochána; • section 146(1) which empowers an inspector of policing services to require any member of garda personnel to provide any information that the inspector may reasonably require for the purposes of the inspection, to produce any documents in that person's power or control that the inspector may reasonably require for the purposes of the inspection, and to provide any explanation of any document provided. <p>An inspector is also empowered to examine documents, take copies, or take possession of documents.</p> <p>The terms “information” and “document” are defined in section 2. “document” is broadly defined to include e.g. audio recordings and to ensure that it is future proofed against technological developments.</p>

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