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POLICE ASSOCIATION OF SOUTH AUSTRALIA

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6 August 2014

The Hon A Piccolo
Minister for Police
GPO Box 668
ADELAIDE SA 5001

Dear Minister

Re: Reform of South Australian Government Boards and Committees

I write in respect of the intended axing of government boards and committees by presumptive abolition as of October 30, 2014.

I note the opportunity for individual ministers to argue for the retention of boards they deem necessary and therefore provide information for your consideration.

1. Police Disciplinary Tribunal

The Police Disciplinary Tribunal (PDT) is a specialist tribunal essential to the functioning of the *Police Act (1998)* and *Police Complaints and Disciplinary Proceedings Act (1995)*.

It is used with considerable frequency and exists because of the unique nature of the police profession.

Presiding officers generally serve lengthy terms and become familiar with all aspects of the police profession, as well as the police commissioner's general orders.

A great deal of legal authority attaches to the office of constable and its accompanying powers, as it does to the interpretation of the *Police Act (1998)* and the *Police Complaints and Disciplinary Proceedings Act (1995)*.

It would be wholly counter-productive to abolish or consolidate the PDT into a general administrative tribunal.

Presently, the PDT acts promptly and resolves many matters after the issuance of proceedings. It sets trial dates expeditiously and its existing processes afford both the prosecution and defence fairness and equity.

By contrast, applicants and parties who appear before overburdened government administrative tribunals suffer constant delays, which compromise justice.

The absence of a stand-alone discipline tribunal would force police into a civil and administrative tribunal which, by definition, deals with a particularly high volume of matters unrelated to police discipline proceedings.

It is therefore alarming to think of a SAPOL member – and his or her discipline proceedings – as subject to the delays of such a tribunal.

Moreover, disbanding the efficacious PDT makes no sense.

Finally, the PDT is – quite rightly – a costs jurisdiction; and the element of costs is of major importance for two compelling reasons:

- (1) It provides adequate deterrence to the employer not to engage in prosecutions for prosecutions' sake.
- (2) The Police Association does not have unlimited reserves to fund the representation of wronged members; and the current SACAT makes it impossible to recover costs against the employer.

The removal of any costs penalties is likely to force police officers to plead guilty to charges which ought to be properly and robustly challenged. This is inherently unfair and runs counter to the interests of justice.

Unlike other public employees, police are compelled to answer questions of their employer in the disciplinary process.

The absence of a costs regime would compromise the disciplinary process and strip a unique employee group – in an equally unique occupation – of procedural fairness.

2. Police Superannuation Board

The Police Superannuation Board has a specific function in its responsibility for the management of the administration of the Police Superannuation Scheme, in accordance with the *Police Superannuation Act (1990)*.

The board's functions include:

- The collection of contributions.
- Payments of defined benefits which include the payment of fortnightly pensions to retired police officers, spouses and children.
- Determinations of police invalidity and death claims.
- Mandated state and Commonwealth legislative reporting and compliance functions.

If the Board is disbanded there will be no lawful means of affecting any of the functions listed above. The membership of the board provides equal representation for the employer (SAPOL) and the members, with Police Association representatives. This accords with the Commonwealth Superannuation Industry (Supervision) legislation.

The majority of the board is made up of both serving and retired police officers who have significant experience, knowledge and understanding of the police occupation and culture.

The value of the Police Superannuation Scheme as of June 30, 2013 was \$1.09b. Total contributions received in 2012-13 totalled \$103.2m and benefit payments equated to \$68.4m.

In contrast, board fees are \$9,000 per annum and the total administration cost including board fees is \$579,000, which is funded from the scheme.

The Police Superannuation board should remain in place and we see no valid argument to the contrary.

3. Police Review Tribunal

The *Police Act (1998)* provides sworn police with a mechanism for the review of certain termination, transfer and promotion decisions.

In respect of termination, a right of review exists and entitles a police or former police officer to the review of a decision to terminate his or her appointment during a period of probation or on any grounds pertinent to physical or mental disability or illness or unsatisfactory performance.

The Police Review Tribunal must give reasons, in writing, for any decision taken in respect of termination reviews, and those decisions may be appealed to the Administrative and Disciplinary Division of the District Court.

The Police Review Tribunal in these instances is constituted of a magistrate appointed by the Governor. The term of office must not exceed three years.

The *Police Act (1998)* affords the Commissioner of Police wide-ranging powers. The capacity of a police officer to seek review of a decision of the Commissioner – by an independent statutory tribunal – in these instances accords with natural justice.

The absence of an independent review would be inconsistent with the general management standards as set out in section 10 (2) of the act.

It is important that, in the employment contract of police, protections exist and are available to a wide range of employees to ensure fair and consistent treatment and provide reasonable avenues of redress.

The importance of the Police Review Tribunal in a decision to terminate a member's appointment – during a period of probation or on the grounds of physical or mental disability or illness, or unsatisfactory performance – is axiomatic.

The Police Review Tribunal also deals with promotional reviews. An integral part of a promotion process includes the right of an unsuccessful applicant for a promotional position to seek a review, by an independent statutory tribunal, of a selection decision.

Much importance attaches to the right to an independent review because selection and promotion processes are highly significant in respect of career advancement, status, self-esteem, salary increases and retirement benefits.

The Police Association recently secured amendments to the *Police Act* so that the Police Review Tribunal, for purposes of proceedings under part 8 division 3, consisted of a person – a legal practitioner of at least five years' standing – appointed by the minister for a term of three years.

This, in large part, was an outcome of the association's submission to the Select Committee of the Legislative Council on the staffing, resourcing and efficiency of South Australia Police in January 2004.

The association considered that the complexity of specialist review processes of an administrative nature, and the requirement that all parties to such processes be afforded natural justice, added to the need to ensure that serious irregularities be detected, demanding in turn that the Police Review Tribunal be presided over by a member with appropriate legal training.

It is crucial to the integrity and reputation of SAPOL that selection processes are transparent, objective and credible, and subject to impartial review.

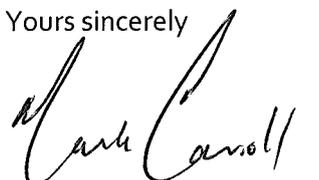
The modern police force is a competitive environment. Under present legislative provisions, advancement within SAPOL depends on merit. Accordingly, SAPOL members place much importance on the existence of a merit selection process for promotional positions, a process which is not only fair but also perceived to be fair.

Much depends on the outcome of the promotion process for individual police officers. If the merit selection process for promotional positions is seen to be unfair, or infected by nepotism and/or cronyism, substantial ramifications for the morale and integrity of the force will result.

It is essential that unsuccessful applicants for a promotional position have the right to a review by an independent arbiter.

The current arrangements have worked particularly well, which is evident from the long history of police-specific review tribunals for promotional grievances. The Police Review Tribunal proceedings under part 8, divisions 1, 2 and 3 should remain.

Yours sincerely



MARK CARROLL
PRESIDENT