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Scrutiny of Acts and

05 NOV 2008

Regulations Committee

Mr Carlo Carli MP
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
MELBOURNE VIC 3000

Dear Mr Carli, *Carlo,*

INQUIRY INTO POLICE REGULATION AMENDMENT **BILL** 2008

I note that the Committee is holding an Inquiry concerning this Bill, with particular reference to the amendments to section 68D of the Police Regulation Act 1958 (the Act) effected by clause 18 of the Bill.

The Bill implements the recommendations of the report of the Director of Police Integrity 'A Fair and Effective Victoria Police Discipline System' (the DPI report) that was tabled in Parliament on 31 October 2007. Parts 3 and 4 of the Bill reform the police discipline model in the Act from an extremely formal, slow, charge and inquiry model with numerous sanctions to a model that is focussed on performance development and rehabilitation as favoured in the DPI report.

The key recommendations of the DPI report that have not been adopted by the Bill are:

- the recommendation to repeal the power in section 68 of the Act to dismiss members who are unsuitable to remain in the police force because of their lack of integrity and the potential damage to community confidence in the police force if the member remained; and
- the proposal that the Chief Commissioner have the ability to issue a declaration preventing dismissed police members who successfully appeal their dismissal from being re-instated.

The primary reasons for the DPI recommendation to remove the dismissal power in section 68 of the Act was that it should be unnecessary if streamlined dismissal processes were implemented and the process had the potential for misuse by removing capable but unpopular officers. The report conceded that there was no evidence that any misuse of the power had ever occurred in Victoria and that reviews of police discipline arrangements in Western Australia (Kennedy report 2004) and New South Wales (Wood report 1997) favoured the retention of "no confidence" dismissal powers. Those powers remain in legislation in those States.

The DPI report considered the appeal rights that police members should have against a decision to dismiss them from the force and noted the inconsistency between:

- the need of the Chief Commissioner to have full faith and confidence in police members (a confidence that would be undermined by requiring the Chief Commissioner to reinstate members dismissed for serious misconduct); and
- the need for fairness in giving police appeal rights held by other public sector employees.

The DPI report proposed to reconcile these conflicting objectives by adopting the model in section 40K of the *Australian Federal Police Act 1979* (Cth) (the APP Act), that allows the Commissioner to have the option of issuing a declaration to limit the remedy available to a member who successfully appeals a dismissal decision to financial compensation rather than reinstatement.

The Bill has not adopted the APP Act model because this would allow the Chief Commissioner to issue a notice during an appeal that she would then not be subject to the full implications of the umpire's verdict (that is not subject to scrutiny or accountability) in overturning a dismissal decision.

Instead, the Bill has reconciled these conflicting objectives by allowing the Police Appeals Board to continue to order reinstatement of a member if the decision to dismiss that member on misconduct or underperformance grounds is overturned on review. This will give police members review rights consistent with other public sector employees.

The need for the Chief Commissioner to have absolute confidence in police members and public confidence in the ongoing integrity of the force is achieved by maintaining the section 68 dismissal power. The section 68 power can continue to be used in the relatively rare case where the retention of a police member would have a damaging effect on the public confidence in the force. To ensure the Chief Commissioner's confidence in members of the force, section 68D is amended so that it is only in respect of a dismissal under section 68 that reinstatement cannot be ordered.

Since the introduction of the section 68 dismissal power in 1999, it has been used sparingly - only three police members have been subject to that process.

It should be noted that the robust administrative review jurisdiction of the Supreme Court with respect to dismissal decisions under section 68 of the Act will not be affected. The Court will remain as a safeguard against arbitrary decisions by ensure procedural fairness and that the decision is supported by logically probative evidence. In the limited number of dismissals under section 68 to date, the Court has been the preferred forum to contest section 68 dismissal decisions. The PAB has yet to be required to determine a section 68 dismissal.

I trust that this information is of assistance to the Committee.

Yours sincerely



Bob Cameron MP
Minister for Police & Emergency Services