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Hon Robyn McSweeney MLC
Chair
Standing Committee on Legislation
Legislative Council
Parliament House
PERTH WA 6000


Dear Ms McSweeney

INQUIRY INTO THE CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

Thank you for your correspondence dated 12 September 2014 inviting WA Police to provide a written submission on matters relating to the *Custodial Legislation (Officers Discipline) Amendment Bill 2013*.

The *Police Amendment Bill 2002* was introduced into the Western Australian Parliament on Wednesday, 13 November 2002. Historically, section 8 of the *Police Act 1892* was highly controversial and the subject of litigation and industrial dispute. The amendments clarified the circumstances in which police officers may be removed from office and afforded those officers with an independent right of appeal to the Western Australian Industrial Relations Commission (WAIRC).

The amendments to section 8 of the *Police Act* introduced a requirement that before a member can be removed from office the Commissioner must have lost confidence in the member's suitability to continue as a member, having regard to the officer's integrity, honesty, competence, performance or conduct. The Commissioner retains a broad managerial right of removal of unsuitable members in whom he has lost confidence, which is consistent with a need identified by Justice Wood following the NSW Police Royal Commission and supported in the Codd report. In the absence of such authority, the community would understandably have grave concerns about the risk to the integrity of and public confidence in the Police Force due to the inability of the Commissioner to efficiently and effectively remove those officers.

The legislation recognised the importance of individual officers having a right of independent review to ensure such decisions are made fairly. The aim was to achieve a balance between ensuring the Commissioner is able to remove officers in whom he has

lost confidence and recognising individual rights to ensure such decisions are made fairly and are reviewable.

The legislation also introduced a number of measures to protect the interests of police officers, such as:

- Providing an officer with a notice setting out the grounds of the loss of confidence before taking action to remove the police officer;
- Provide a fair opportunity to respond to the concerns raised by generally entitling the officer to 21 days to respond to the process.

The appeal process requires the WAIRC to review the Commissioner's decision to remove an officer and determine whether an officer has established that their removal was harsh, oppressive or unfair. The right of review was based on the legislative scheme in NSW and provisions introduced clearly set out the circumstances in which new evidence may be adduced before the WAIRC and the process to be followed. The WAIRC in making its decision must pay particular regard to the public interest in maintaining public confidence in the Police Force and the special nature of the relationship between the Commissioner and police officers. Police officers are empowered to serve the community and special measures are required for the maintenance of high standards within the Police Service.

The decision to allow a police officer to resign instead of being removed from office was intended to encourage officers not to lodge frivolous appeals. It also reflects the recognition that the removal of a police officer for loss of confidence involves a managerial decision rather than a finding of guilt. As was recognised by Justice Wood following the Wood Royal Commission, the public interest is best served by the prompt departure of unsuitable police officers from the Police Service, irrespective of whether it occurs by their formal removal or resignation.

The legislation also afforded officers beneficial salary entitlements, such as the removal of the power to suspend their pay during the removal process. A member removed from office now receives a maintenance payment for 28 days after being removed. During this period the officer may resign, appeal to the WAIRC or take no further action.

Thank you once again for the opportunity to make a submission.

Yours sincerely



KARL J O'CALLAGHAN APM
COMMISSIONER OF POLICE

29 September 2014