



Government of **Western Australia**  
Department of **Justice**  
Office of the Director General

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Our Ref: AD2018/029356

Mr Mark Ritter SC  
Secretariat of the State Industrial Relations Review  
Level 4, Gordon Stephenson House  
140 William Street  
PERTH WA 6000

Dear Mr Ritter

**MINISTERIAL REVIEW OF STATE INDUSTRIAL RELATIONS SYSTEM – FURTHER SUBMISSIONS**

Thank you for your letter of 20 March 2018, inviting the Department of Justice (the Department) to make further submissions in relation to Term of Reference 2 of the Interim Report.

The Department has considered its position in relation to the specific question in relation to whether or not the appeal rights set out in the *Prisons Act 1981 (PA)* and *Young Offenders Act 1994 (YOA)* should be abolished. Secondly, that it be replaced by an entitlement for an employee to make application to the Western Australian Industrial Relations Commission (WAIRC) for a remedy in respect of an alleged unfair dismissal where the same remedies and powers to determine the applicable are the same as private sector employees.

The Department is of the view that given that the provisions regarding loss of confidence in both the PA and YOA are yet to be tested it is difficult to recommend that they be abolished as its operation in practice cannot be measured.

As has been repeatedly observed by the WAIRC in evaluating loss of confidence matters with respect to police officers, the role of the WAIRC is not to place itself in the managerial chair but rather, for the WAIRC to consider objectively, whether the recommendation to remove the appellant, was in all the circumstances harsh and unfair.<sup>1</sup>

The WAIRC therefore, has not taken the view that it is an independent oversight body charged with reviewing the decisions of the employer. Further removal action does not relate to the lawfulness or otherwise of the conduct, rather it is conduct likely to bring discredit to the role or unbecoming of a member in the role.<sup>2</sup>

The Department acknowledges the specific expertise that the WAIRC has adopted with respect to this particular occupational group and given that it is more likely than not that the WAIRC would adopt the same approach in relation to removal action for prison officers and youth custodial officers and this would also reflect the special nature of those roles within the prison estate.

The Department recommends that the removal action provisions contained in both the PA and YOA not be abolished as they, together with WAIRC decisions may provide an effective tool in setting a confidence standard by which the conduct of officers can be measured.

<sup>1</sup> Moran v The Commissioner of Police 2015 WAIRC 00464 at p181

<sup>2</sup> Ferguson v the Commissioner of Police 2017 WAIRC 00238 at p 40 & 42

Where it is found that the removal action has been found to be harsh or oppressive, the appropriate consideration of remedies is provided for in the legislation that takes into account the unique circumstances of these officers.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AT', with a long horizontal line extending to the right.

Dr Adam Tomison  
**DIRECTOR GENERAL**

30 April 2018