



POLICE UNION

639 Murray Street
West Perth WA 6005

P (08) 9321 2155

F (08) 9321 2177

E admin@wapu.org.au

Twitter [@WAPoliceUnion](https://twitter.com/WAPoliceUnion)

www.wapu.org.au

ABN 11 005 082 386

1 May 2018

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



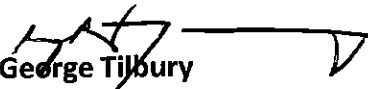
Dear Mr Ritter

SUPPLEMENTARY SUBMISSION TO THE MINISTERIAL REVIEW OF THE STATE INDUSTRIAL RELATIONS SYSTEM

Please find enclosed a copy of our written supplementary submission to the Interim Report of the Ministerial Review of the State industrial relations system.

If you have any further queries in relation to this matter, please do not hesitate to contact me.

Yours sincerely,


George Tilbury
President

Encl.

Ministerial Review of the State Industrial Relations System – Interim Report

Prepared by the WA Police Union

May 2018

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Introduction

On 22 September 2017, the State Government (“the Government”) announced a Ministerial review (“the review”) was to be conducted into the State industrial relations system. Mr Mark Ritter SC is responsible for overseeing the review process.

The WA Police Union (WAPU) made a submission to the review acknowledged in a letter from Mr Ritter dated 21 December 2017.

The interim report (“the report”) of the review was released on 20 March 2018. Section 3.55 of the report noted WAPU’s submission argued that clause 2(3) to Schedule 3 of the Industrial Relations Act 1979 (“the IR Act”) ought to be removed to allow police officers full access to the WA Industrial Relations Commission (WAIRC) on matters that are covered by public sector standards.

The report preliminarily opined there was no reason ‘less operational or dynamic matters’ relating to police officers ought not to be referable to the WAIRC to deal with¹. However, the difficulty was in determining what these matters were without further input from stakeholders. The report’s position was reflected in Recommendations 24 and 29 of the report²:

Recommendation 24

- (a) Subject to (b), the 2018 IR Act include a single system for public sector employers and employees to refer matters to the WAIRC so that all employees subject to the jurisdiction of the Public Sector Arbitrator (PSA) and the Public Sector Appeal Board (PSAB) will now be subject to the ordinary jurisdiction of the WAIRC.
- (b) The recommendation in (a) is subject to the prospect of there being a more limited jurisdiction for the referral of industrial matters involving a police officer, police auxiliary officer, Aboriginal police liaison officer or special constable in circumstances to be recommended following the receipt of additional submissions as requested below

Recommendation 29

Whether, and if so to what extent, a police officer, police auxiliary officer, Aboriginal police liaison officer or a special constable and/or WA Police Union on their behalf ought to be entitled to refer to the WAIRC an industrial matter of the type described in Schedule 3 clause 2(3) of the IR Act.

¹ Ministerial Review of the State Industrial Relations System (2018), *Interim Report*: p 228.

² *Ibid*: pp 232 to 233.

WAPU welcomes the opportunity to further assist the review on this matter. As stated in our submission, WAPU's position is its Members deserve the same access to WAIRC as enjoyed by other emergency service workers including firefighters and paramedics.

Section 14 of the *Police Act 1892* ("the Police Act") requires officers to obey all lawful commands from their superior. The requirement effectively prevents officers from engaging in strike action. Such a requirement is necessary for the purposes of community safety. WAPU argues this makes it all the more important that both it and its Members can access a formal and independent umpire to mediate, conciliate and/or arbitrate management decisions that are harsh, oppressive or unfair.

In response to Recommendation 29, WAPU advocates the deletion of clause 2(3) of Schedule 3 of the IR Act, which excludes access to the WAIRC on a number of critical issues. Three issues are of particular importance to Members:

- **Transfers** – Transfer decisions that ignore or insufficiently weigh the impact upon the individual circumstances of police officers and their dependants;
- **Demotion and Promotion** – Demotion and promotion decisions are not able to be independently reviewed; and
- **Cancellation of Appointment for PAOs** – A Police Auxiliary Officer (PAO) currently has no avenue of appeal should their appointment be cancelled.

Transfers

WAPU recognises that its Members may be required to serve anywhere in WA. It also acknowledges the Commissioner of Police needs the authority to deploy police officers in a manner that best serves and protects the wider community. However, nor should any transfer system just ignore the personal circumstances of each police officer.

In its original submission, WAPU argued transfers can involve significant ramifications at an individual, family and community level:

- Placing pressure on the partners of officers who must move in tandem with management and policy edicts;
- Creating a financial impost for families who must sell homes in depressed markets or who lose income as the non-police partner leaves one job to find another;
- Uprooting children from their schooling, sporting and social commitments;
- Generating unnecessary emotional costs which arise from frequently packing up and unpacking a home as well as loss of support networks;
- Negating the time and effort police officers take in building relationships with disaffected youth, Indigenous elders, business and community leaders, particularly in regional WA; and
- Weaken levels of police knowledge about local offender patterns and networks.

Of particular concern are transfers effected in circumstances where there is no real operational need. Cases WAPU has fielded from Members include:

- Where an officer has met minimum tenure and is requested to seek a transfer despite the fact no maximum tenure is set for his or her position;
- Officers who have sought to reduce their hours of work to part-time status and their applications have been rejected on the basis that the position cannot be undertaken on a part-time basis forcing the officer to seek a transfer where a part-time position can be facilitated;
- Transfers being affected due to perceived or actual substandard performance; and
- Officers successfully applying for vacancies (selected by station OIC) only to discover the position being re-advertised with no explanation provided.

Debate in the Legislative Assembly from 16 November 2000 suggests the inclusion of transfers in clause 2(3) was far from settled. Inclusion was more about expediting the IR Act's coverage to WAPU and police officers³:

MR KOBELKE [Nollamara]: *"Therefore, in accepting this amendment, we are not saying that in principle we accept that transfers should not go to the commission. Our position is that we wish to expedite the Bill and not get involved in technical debate on what appears to be a fairly minor matter."*

WAPU believes the ongoing inclusion of transfers in clause 2(3) represents something of a prolonged stopgap rather than the outcome of informed debate. Allowing police officers to access the WAIRC on transfer decisions would arguably be more in line with what Parliament originally intended.

It is highly unlikely that the WA Police Force would ever accept the WAIRC having the power to override transfer decisions. But the IR Act can be amended to ensure such decisions are more transparent and consistent than present.

WAPU Recommendations

1. That 'transfer' is removed from clause 2(3) of Schedule 3 of the IR Act.
2. That WAPU and/or police officers can refer any transfer decision to the WAIRC to determine if it meets the criteria of 'harsh, oppressive or unfair'.
3. That the impact of a transfer decision on a police officer's family, health, and finances be included in any harsh, oppressive or unfair assessment.
4. If WAIRC determines a transfer to be harsh, oppressive or unfair, it can ask the Commissioner of Police to review the decision.

³ Legislative Assembly Hansard, 16 November 2000, p 3340b

Demotion and Promotion

Similar to transfers, WA police officers currently lack an independent review process in relation to demotion and promotion decisions.

Various positions within the WA Police Force attract differing financial benefits. Some positions offer regular overtime, acting OIC or travel opportunities, as well as paying salary loadings between 10 and 55 per cent. In total, some positions can attract more than \$100,000 in addition to the normal salary each year. WAPU argues it is then critical that demotion/promotion decisions are made in a fair, consistent and transparent manner. However, this is not currently the case within the WA Police Force.

WA Police Force policy HR-14.03 governs promotion and selection within the Force. However, policy HR-14.09 also gives senior management considerable discretion to transfer police officers between roles. This means promotion decisions within the WA Police Force are far from consistent. The filling of vacancies for Detective Sergeants is one notable example.

Member feedback advises that management are filling vacancies for Detective Sergeants from a 'pool' of select candidates. This in turn has led to:

- Vacancies constantly not advertised in accordance with HR-14.03;
- Vacancies being filled by select candidates from the 'pool' before being filled through normal methods; and
- Substantive Sergeants transferring out of regional locations due to maximum tenure being effectively prevented from applying for Detective Sergeant positions.

Managerial discretion over positions might be important to meet operational requirements. WAPU argues though this discretion is only meant for exceptional circumstances where all other methods of filling a position have been exhausted and the filling of the vacancy is critical to maintain an appropriate policing service. Numerous vacancies for Detective Sergeant have been filled by select candidates from the Sergeant pool when there was no urgent need to do so.

The 2017 WAPU Annual Conference passed a motion calling on the promotional process to be changed to place greater recognition to officer experience and allow greater significance on a district office report compiled as part of an officer's promotion application. The motion reflects Member views the current system is lacking in accountability. Allowing promotion decisions to be reviewed by the WAIRC would greatly assist in improving transparency and fairness.

Section 23(2a) of the IR Act limits WAIRC jurisdiction in relation to breaches of Public Sector Standards. Unlike other public sector employees though, police officers have no avenue of

appeal to the Office of the Public Sector Standards Commissioner. Amending clause 2(3) of the IR Act would remedy the situation by allowing police officers (or WAPU on their behalf) to appeal to the WAIRC to review promotion-related decisions. Except for extraordinary operational requirements, WA Police Force decisions should be required to meet the equity and merit principles for proper assessment in the Public Sector Commissioner's Instruction⁴:

- The extent to which the person has the skills, knowledge and abilities relevant to the work related requirements and outcomes sought by the public sector body;
- If relevant, the way in which the person carried out any previous employment or occupational duties; and
- Employment decisions are to be impartial and free from bias, nepotism and patronage.

WAPU Recommendations

1. That 'transfer' and 'demotion' is removed from clause 2(3) of Schedule 3 of the IR Act.
2. That WAPU and/or police officers can refer any promotion-related decision to the WAIRC to determine if it breaches Public Sector Standard equity and merit principles.
3. If WAIRC determines a breach has occurred, it can ask the Commissioner of Police to review the decision.

⁴ WA Public Sector Commission (21 February 2012), *Commissioner's Instruction – Employment Standard*: p 2.

Cancellation of Appointment for PAOs

More than 330 PAOs were employed in the WA Police Force at the end of 2017. PAOs perform a vital role within the WA Police Force including custodial duties at Perth Watch House. However, unlike their sworn counterparts, PAOs have no avenue of appeal over dismissal.

Section 23(4)(f) of the Police Act gives the Commissioner power to remove a police officer from the Force either by dismissal (for sworn officers) or by cancellation of appointment (for PAOs). Under Section 33P, sworn officers have the right to appeal their removal to the WAIRC on the grounds of it being harsh, oppressive or unreasonable. No similar avenue is available to PAOs making them far more vulnerable to unfair dismissal.

Being able to appeal against unfair dismissal is a fundamental legal right of nearly all public and private sector employees. WAPU believes it a denial of natural justice that PAOs are not legally recognised to have this right. The rights granted to sworn officers under Section 33P makes that denial particularly inequitable. If PAOs can be subject to removal by the Commissioner, it is only fair that have the same protections as their sworn counterparts.

WAPU Recommendations

1. That Section 33P of the Police Act be amended to allow PAOs to appeal to the WAIRC about removal actions deemed to be harsh, oppressive or unfair.