



# **Public Service Association of SA Inc**

**Community and Public Sector Union · SA Branch · SPSF Group**

18 March 2009

Hon Jay Weatherill, LLB, BEc, GDLP, MP  
Minister Assisting the Premier in Cabinet Business  
& Public Sector Management  
GPO Box 1047  
ADELAIDE SA 5001

Dear Minister,

**Re: Public Sector Bill 2008**

I refer to your letter of 17 March 2009 regarding the Public Sector Bill 2008.

The PSA continues to have significant concerns about the general direction of the Bill and has identified the areas of key concern.

Your letter deals with some of these concerns and identifies those areas of difference between us. The areas of difference, however, are absolutely fundamental to why the PSA cannot support the Legislation in its current form.

I will address each of those areas referred to in your letter below.

### **Termination Powers of Chief Executives**

The PSA will vigorously oppose your provision to allow Chief Executives to terminate employment. Despite Government assertions that this will make Chief Executives more accountable, the proposed change will create significant difficulties across the whole of Government. Currently, Chief Executives apply existing whole of Government Human Resource Guidelines differently and inconsistently with little regard for common standards. A similar outcome would be expected should the unfettered termination power be given to Chief Executives. While some Chief Executives are highly regarded, this power would create a climate of intimidation and fear with others. The Opposition amendment to give the authority to terminate to the Commissioner of Public Employment upon the recommendation of a Chief Executive is sound, is good governance and will provide for a uniformity of application across the Public Sector.

### **Power of the Commissioner to Investigate on Own Initiative**

The Government has not agreed to allow a proposed amendment that investigations can occur at the Commissioner's own initiative. The PSA will continue to have this amended in the interests of good Corporate Governance. A Chief Executive whose Agency has, for example, inappropriate Human Resource processes is hardly likely to invite the Commissioner to investigate. In the interests of proper management the PSA reiterates the view that the Commissioner should be able to self initiate investigations.

### **Term Employment, Probation**

Government has not agreed to the proposal that people should have certainty in their employment and probation. The PSA's view is that if limitations are not contained in an employment contract, that employee cannot subsequently be expected to have known about those conditions. It is a simple matter to agree that if a probationary period is not notified in writing then the employee is in fact not on probation. An employee should not suffer as a result of a mistake on the part of their Manager. The PSA notes your stated position is that the employer should not suffer because of the mistake on the part of a manager. The PSA disagrees.

### **Public Sector Grievance Review Commission – Panels and Appointment**

The PSA recognises that your amendment to provide that a person appointed as a Commissioner should have appropriate knowledge and experience is helpful. However, the Government continues to oppose the establishment of peer review Panels similar to existing peer review Tribunals. The composition of a Panel provides significant advantages which could speed up an Appeal process, particularly with the two additional Nominees who bring relevant knowledge to the proceedings. The PSA will continue to pursue the amendment to establish peer review Panels rather than a single Commissioner.

### **Suspension During an Investigation**

The PSA welcomes your suggested amendment.

### **Reclassification**

The PSA welcomes your amendments which will now allow Reclassification Appeals to be heard by the Public Sector Grievance Review Commission. The PSA stresses, however, its view that this Commission should comprise of a peer review Panel rather than an individual Commissioner.

### **Code of Conduct**

The inclusion of the Code of Conduct into the Bill is a welcome first step. In view of the other elements of the Legislation the PSA will still pursue an amendment aimed at ensuring that the Code does not restrict participation in community activities by Public Sector workers where such activity is unrelated to their employment. The issue of course, will be the establishment of effective monitoring and enforcement of compliance with the Code.

### **Public Sector Representative Organisation**

The PSA believes that the current PSM Act provisions requiring consultation with Public Sector Representative Organisations representing a significant number of Public Sector employees is the proper form of wording rather than the more general provisions of the Bill.

**Other Matters**

In addition to the above, while not referred to in your letter, but for the sake of completeness the PSA notes your undertaking to the House of Assembly that the Government will accept the Opposition amendment to delete Clause 53 (1)(f) i.e. to remove the provision in the Bill that allows for termination on 'any other ground prescribed by the Regulations.'

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J McMahon', written in a cursive style.

**JAN McMAHON  
GENERAL SECRETARY**