Tom Scheffler
Police Association
Assistant Secretary

Disclosure of video interviews

The Police Association has written to the Attorney-General to outline concerns its members have raised about the Director of Public Prosecutions providing copies of videotaped interviews to defendants.

Lying at the heart of this issue is the potential for a defendant to misuse a videotaped interview, particularly the image of the investigating officer.

SAPOL, in a letter to the association last December, explained that it had recently sought clarification on the requirement for investigating officers to disclose and supply copies of videotaped records of interview to accused persons or their legal representatives.

The advice from SAPOL was that:

Where an indictable charge is at a preliminary hearing stage (the committal process) Section 104 of the Summary Procedures Act requires the disclosure and production of a videotaped interview to the accused or his/her legal representative.

It is clear that, for indictable offences, the chief investigator must provide all evidentiary material – including videotaped interviews of defendants – to the DPP.

And, by virtue of section 104(3)(b)(ii) of the *Summary Procedures Act* (SPA), a copy of the videotape or audiotape of the record of interview must accompany the statement filed in the court.

The note to section 104(3)(b)(ii) distinguishes the videotape or audiotape referred to in that part from the videotape or audiotape of an interview with a young child or a person who is illiterate or suffers from an intellectual handicap, as referred to in section 104(4).

The note does indicate, however, the legislative scheme under which a defendant may obtain access to a videotape or audiotape of the record of interview under the SPA. It explains that:

There is no separate provision in this section for access to the recording (although the defendant is entitled to copies of the witness's statement and accompanying documentary material under subsection (1)(b)).

The *Summary Offences Act* (SOA) provides a process to view the videotape and obtain a copy of only the soundtrack of the videotape.

Section 74F of the SOA prohibits a person from playing to another person a videotape or audiotape containing an interview, unless in prescribed circumstances.

Advice to the Police Association is that, under a long-standing practice, the DPP provides a copy of the videotaped record of interview to the defendant, or his or her legal advisor.

Penalty provisions are in place for such misuse. Nonetheless, the expansion of the Internet and the accessibility of video-sharing websites such as YouTube create the perfect environment for the inappropriate use of video images.

The association now awaits a response from the Attorney-General on the whole issue of providing videotaped interviews to defendants.

Maximum tenure for country locations

Association members continue to hold concerns about SAPOL's maximum tenure policy.

Prompted by the article *Wrong to demand justification to extend country tenure* (*Industrial*, February 2010) several country members have contacted the association to express their disquiet and their desire for the removal of aspects of the policy.

And country members continue to receive correspondence requiring them to show cause as to why their tenures should be extended.

SAPOL is now providing two-year extensions in response to members who request extensions to tenure. Members will likely have to complete the task of preparing and providing submissions every two years.

Regardless of this, SAPOL has advised the association that:

There should be no circumstances where members feel threatened or intimidated during the process associated with such an extension.

The reality, however, is that members do feel threatened and intimidated. Indeed, the tenure policy has been – and continues to be – a cause of anxiety for them and a number of their family members.

Difficulties lie in planning for promotional opportunities. And how can members and their partners plan for long-term schooling or employment for their children when they see their tenure as uncertain.

Parts of the policy seem simply illogical, given that SAPOL struggles to fill many country locations. And, in contesting transfers owing to tenure, no members have been transferred out for many years.

Members are compliant by nature. They accept SAPOL policies, processes and procedures in good faith. How many members have simply packed themselves and their families up and left country locations to return to

Adelaide, in the belief that their tenure was to expire?

Many members might have believed, or still do believe, that a submission for an extension would have been fruitless, and therefore gone about organizing a transfer through HR back to Adelaide.

So on how many occasions might HR have believed that the member and his or her family wanted to transfer out rather than remain in their country location?

This tenure imposition on members and their families is neither fair nor reasonable. The association will continue to raise the issue with SAPOL so as to bring about a suitable outcome.

Members should contact the association for assistance if they have concerns regarding maximum tenure.

See Q&A on page 32 for members' views on the supply of videotaped recordings of police interviews to defendants.

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Industrial Officer

Code of practice – working hours

An increase in workloads and staff shortages, as well as the fast pace of today's society, are just a few of the reasons for longer working hours. But excessive work hours can, and do, encroach on employees' work-life balance and create occupational health, safety and welfare concerns owing to fatigue.

Clearly, fatigue will impair the ability of an employee to undertake his or her duties. And this is particularly problematic for police officers, who are compelled to make split-second decisions in life-and-death situations.

Until recently, South Australia did not have an approved code of practice in regard to what constitutes reasonable working hours. Industrial Relations Minister Paul Caica endorsed the *Approved Code of Practice – Working Hours* pursuant to section 63 of the *Occupational Health Safety and Welfare Act* 1986 following the recommendation of the SafeWork SA Advisory Committee. The code will come into effect as of July 1 this year.

Under section 19(1)(a)(ii) of the act, employers are, as far as reasonably practicable, required to provide employees with "safe systems of work". The number of hours an employee is required to work, as well as the scheduling of those hours, is a component of the system of work of an employee.

However, employees also need to take reasonable steps to protect the health and safety of themselves and their co-workers (section 21 of the act). To this end, employees need to comply with any instruction or policy in place to minimize risks associated with working hours.

Part of the foreword in *Approved Code of Practice – Working Hours* explains the intended use of the code:

An approved Code of Practice is designed to be used in addition to the Act and its associated Regulations. In proceedings for an offence against the Act, where it is proved that a person failed to comply with a provision of a relevant approved Code of Practice, the person shall be taken to have failed to exercise the required standard of care, in the absence of any proof to the contrary (section 63A of the Act).

The code highlights preferred methods for achieving a required standard and so provides practical guidance as to best practice. However, it differs from a regulation in that it allows room to show that an equivalent or better standard of health and safety is achieved through another methodology or practice.

The Police Officers Award and the South Australia Police Enterprise Agreement 2007 govern the compulsory minimum requirements regarding regulation of working hours. Under clause 5.1.2 of the award, for example, the number of ordinary hours to be worked, exclusive of passive duty and meal breaks, in any day or shift, is not to exceed eight hours.

There exists a degree of overlap between the regulation of working hours via industrial agreements, such as awards and enterprise agreements, and occupational health safety and welfare. The award and EA 2007 specify ordinary working hours and what happens when overtime needs to be worked.

The award and EA 2007 prevail in the case of any inconsistency between them and the code. But the code is designed to be a complementary instrument in setting guidelines regarding working hours and the identification of hazards and risks as a result of excessive work hours.

The code includes guidance on risk management steps as well as a risk management matrix and fatigue hazards identification checklist.

The checklist includes questions such as: "Does anyone regularly work in excess of 12 hours a day including overtime?" and "Is the break between shifts less than 10 hours?" These are a guide to help ascertain fatigue and the level of risk involved as a result of the degree of fatigue.

According to SafeWork SA, the code was formed "in recognition of the significant risk that excessive working hours, in particular fatigue, may pose to the health, safety and welfare of South Australian workers and their families".

It was developed as part of the work of the SafeWork SA Work Life Balance Strategy in response to South Australia's Strategic Plan target T2.12 to:

Improve the quality of life of all South Australians through the maintenance of a healthy work-life balance.

Go to the SafeWork SA website (www.safework.sa.gov.au) for further information or a copy of the code.