

# Called before the Police Disciplinary Tribunal



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When a member is charged with an alleged breach of the code of conduct and is summonsed to appear before the PDT, he or she is served with documents containing the particulars of the regulation/s said to have been breached, and a supporting Commissioner's statement, which is a summary of the evidence against the member.

On the summons is placed a category, A, B or C which denotes the Commissioner's likely attitude toward penalty.

A member may choose, as he or she can in any court, to plead guilty or not guilty. The primary function of the PDT is to determine guilt or innocence.

A matter is usually listed for a pre-trial conference before being listed for trial. If a matter is listed for trial, the prosecution must call witnesses to prove its case, and those witnesses may be cross-examined by defence counsel as they would be in a court of law.

The difference in the PDT is the applicable standard of proof. Unlike a criminal court, the PDT uses the civil standard

of proof, proof on the balance of probabilities.

But if, in the PDT, an allegation is made, and is tantamount to an allegation of criminal wrongdoing, the High Court case of *Brigenshaw - v - Brigenshaw* stands for the proposition that, although the standard of proof is on the balance of probabilities, the more serious the allegation, the more the tribunal will require proof of the alleged wrongdoing approaching the criminal standard of proof.

If a member pleads guilty or is found guilty after a trial, the PDT can fulfil one further function, which is to remark on the seriousness of the conduct. This can assist the Commissioner in ultimately assessing penalty.

The PDT does not itself impose penalty, but remits the matter to the Commissioner or his or her delegate for a penalty hearing after the proceedings before the PDT are concluded.

The penalties for breaches of the code of conduct can be serious and can lead to termination or other penalties, and might adversely affect a member's opportunities for promotion in the future. So it is recommended that any member charged should speak to staff from the Police Association of South Australia, which might in turn refer the member for legal advice and representation.

Members advised by the association and represented by Tindall Gask Bentley have enjoyed considerable success in the PDT, from a reduction or amendment to the breaches with which they are charged,

to the withdrawal of charges altogether.

As happens in the courts, the majority of matters do not reach trial but are resolved successfully by negotiation. But, when there is merit to defending a matter, we have no hesitation in taking it to trial; and we have enjoyed considerable success in that forum.

From a personal perspective, I view the establishment and ongoing existence of the PDT as one of the great achievements of the Police Association.

Unlike employers of any other justice-sector agency, SAPOL members have the right to be tried for alleged breaches of the code of conduct by an independent magistrate applying the rules of evidence and to cross-examine witnesses who might be called by the prosecution to attempt to prove its case.

I throw myself wholly into these matters and I am utterly committed to ensuring a member so accused is dealt with fairly. A combination of the process at the PDT and good legal representation usually leads to fair outcomes for all.

Tindall Gask Bentley provides a free legal service to Police Association members. Appointments can be made through the association to receive free preliminary legal advice covering all areas of law, particularly families and wills.

An appearance before the Police Disciplinary Tribunal (PDT) can be a daunting, even upsetting, experience for any member. It occurs after a member is charged with a breach of the code of conduct (contained in the regulations of the *Police Act*). This conduct is regarded as other than minor misconduct or conduct which is unable to be dealt with by way of managerial guidance.

The PDT operates much like a Magistrates Court, but it is a closed tribunal which is not open to members of the public.

It is presided over by a magistrate, who has all of the usual powers of a magistrate sitting in a Magistrates Court and applies the usual rules of evidence.