

MR KEN BATES — RETRENCHMENT

**747. Hon LJILJANNA RAVLICH to the parliamentary secretary representing the Attorney General:**

I refer to correspondence between the Attorney General and Mr Robert Cock about the retrenchment of Mr Ken Bates.

- (1) Will the Attorney General table that correspondence?
- (2) If not, why not.

**Hon MICHAEL MISCHIN replied:**

I thank the member for some notice of this question.

- (1)-(2) The Attorney General advises that he is happy for the correspondence to be tabled. I therefore table the correspondence and seek leave to have it tabled and incorporated into *Hansard*.

Leave granted.

[See paper 1039.]

The following material was incorporated —

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Mr Robert Cock QC  
Director of Public Prosecutions  
Level 1  
International House  
26 St Georges Terrace  
PERTH WA 6000

Dr Mr Cock

**EMPLOYMENT OF KEN BATES, DIRECTOR OF LEGAL SERVICES**

Thank you for your letter dated 7 July 2009 concerning the above, the terms of which letter I have noted.

As this matter is an employment issue and is, therefore, dealt with pursuant to and in accordance with the Public Sector Management Act 1994, it is the case, as you are aware, that I have no role in the process. However, given the terms of your letter it appears that you might usefully contact Mr Mal Wauchope, the Commissioner, Public Sector Commission, for his views regarding the course you propose.

Yoursself sincerely

C. Christian Porter MLA.  
ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

14 July 2009

Attorney General

**By Hand Only**

**EMPLOYMENT OF KEN BATES, DIRECTOR LEGAL SERVICES**

On 7 October 2008 the Corruption and Crime Commission presented its report on the enquiry into alleged misconduct by public officers in connection with the investigation of the murder of Mrs Pamela Lawrence, the prosecution and appeals of Mr Andrew Mark Mallard, and other related matters. The acting Commissioner expressed two findings regarding Mr Bates in the following terms “*that Mr Kenneth Bates engaged in misconduct in running the trial on the basis that a wrench as drawn by Andrew Mallard was the murder weapon, but, at the same time, failing to put Andrew Mallard’s drawing to Dr Cooke and asking whether the deceased’s injuries were consistent with the use of such an instrument.*” And further “*that Mr Kenneth Bates engaged in misconduct in failing to disclose to the defence the pig’s head testing of the wrench or ensuring that it had been disclosed by the Police.*”

After expressing the opinions as to misconduct on the part of Mr Bates, the acting Commissioner then recommended “*that the Director of Public Prosecutions give consideration to taking a disciplinary action against Mr Kenneth Paul Bates.*” He also made a recommendation “*that Mr Andrew Mallard give consideration to raising a complaint with the Legal Practitioners Complaints Committee regarding the conduct of the trial by Mr Bates.*”

On the same day that the report was delivered I commenced a *Public Sector Management Act* process which is set out in division 3 of part 5 of the *Public Sector Management Act 1994*.

Mr Bates is currently an employee pursuant to section 64(1)(b) of the *Public Sector Management Act 1994* and is employed pursuant to a contract of employment made 17 February 2006. I **attach** a copy of the contract.

**Extract from *Hansard***  
[COUNCIL - Thursday, 13 August 2009]  
p5890b-5892a  
Hon Ljiljana Ravlich; Hon Michael Mischin

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It is pertinent to observe that Mr Bates is no longer a permanent officer of the Public Service, the contract provides him with no right to return to the Public Service and, unless a contract is extended, his employment ceases on 16 February 2011.

Based on the acting Commissioner's opinions as to misconduct, I wrote to Mr Bates pursuant to section 81(1) of the *Public Sector Management Act 1994* on 7 October 2008 and gave him a short opportunity to submit a written explanation. Mr Bates provided me with a comprehensive written response, which did not alter my position that misconduct may have occurred whilst he was serving as an employee. I was about to direct another person to commence an investigation into this suspected breach of discipline, pursuant to section 81(2)(a) when I read in the newspaper that Mr Quigley had referred on Mr Mallard's behalf, a complaint to the Legal Practitioners Complaints Committee. I wrote to the Committee to enquire as to what they proposed to do and received advice on 19 November 2008 confirming that a complaint had been made against Mr Bates, that an investigation in relation to the complaint was at an early stage and Mr Bates had not by then yet been asked to respond to any allegations of unsatisfactory conduct. I was told that I would be informed when the Committee's enquiries were complete and when the Committee had considered the matter.

Noting that the powers of the Complaints Committee can include, should they regard his conduct as sufficiently serious, an application to the State Administrative Tribunal for an order suspending him from practice, restricting his entitlements as a legal practitioner to practice or submitting a report to the Supreme Court, I determined that I should suspend the public sector disciplinary process until the complaint before the Legal Practitioners Complaints Committee had been finalised. My view in this regard is that the primary thrust of the misconduct opinion found by the acting Commissioner was in respect of Mr Bates' professional conduct. There were no separate issues of misconduct under the *Public Sector Management Act* which would not be considered by the Complaint's Committee. Moreover, as the Complaint's Committee had the right to progress a complaint before a judicial tribunal, the State Administrative Tribunal in this instance, whereas the Public Sector process was an entirely internal one, it seemed to me that the principle of comity necessitated the finalisation of the professional disciplinary process ahead of the Public Sector process. I also at this stage sought the counsel of all other Directors of Public Prosecutions in Australia and canvassed the approach each took in their separate jurisdictions. The unanimous view expressed was that if the misconduct was confined to professional competence, the prosecutor would be managed in the work environment until the professional disciplinary process had concluded before any finalisation of the employment related issues through an internal process.

I have now been waiting nine months and am yet to hear any further information from the Complaint's Committee. I enquired of Mr Bates recently and he told me that he had last month responded to a request to provide information to the Committee, including copies of the High Court appeal books and had been told by the Committee that they had referred aspects of the complaint, together with his response to a senior counsel in the eastern States. Mr Bates was unable to give me any timeframe for any conclusion to the professional disciplinary process.

The critical need to ensure consistency between the approach finally taken by the professional body and the outcome of any internal process continues to prevail and the length of the time for which I have suspended the public service process, whilst frustrating, is beyond my capacity to influence. My limited previous knowledge of the workings of the Complaint's Committee is that should a matter be referred to the State Administrative Tribunal, the hearing could well be a further twelve months away from now. Dependant upon the outcome of any such hearing before the tribunal, there are remedies available before the Court of Appeal for either the Committee or Mr Bates and it would be unrealistic to expect a final resolution of that process within less than two years from now. I note recent publicity by Mr Quigley to the effect that he expects the professional disciplinary process to go for up to five years. Although I think he is pessimistic in that respect, even on my estimate the public professional disciplinary process will not conclude before Mr Bates' contract expires.

In either circumstance, it is unlikely that the position will become clear for the public sector process to proceed to finality before the expiry of Mr Bates' current contract. That is entirely unsatisfactory and frustrating for me. More over, the prospect of the spectre of a very public State Administrative Tribunal hearing into the conduct of Mr Bates will, should that occur, substantially diminish his passion for work and his effectiveness as a prosecutor in my Office. Naturally it will also have a further detrimental effect upon his moral.

Mr Bates was appointed to the position of Director Legal Services on 17 February 2006 and has been totally committed and has worked tirelessly in this very important role in my Office. Earlier this year, in May 2009, for the purpose of achieving some recognition of the separate streams of barrister and solicitor, I revised my organisation by creating the position of Deputy Director of Public Prosecutions and gave that position some of the functions which until then had been performed by the Director Legal Services. This reduced the range of the functions of the Director Legal Services and in response to that, the Salaries and Allowances Tribunal determined that the remuneration for the Director Legal Services should be reduced from \$276,457.00 to \$237,904.00 although the tribunal also determined that the current incumbent should retain his former salary for the term of his contract.

I am presently inclined to negotiate to seek the early cessation of Mr Bates' current contract of employment. For reasons stated above, it is unlikely that the way will become clear to finalise the public service disciplinary process until after his contract expires. At that time, unless Mr Bates is reappointed, he would cease to be an officer amenable to the disciplinary process. Moreover, should the Legal Practitioner's Complaints Committee refer the matter they are presently considering to the State Administrative Tribunal, there will be adverse impacts upon his morale and effectiveness such that it was desirable to avoid those effects by securing his early departure from the Office of the Director of Public Prosecutions. Moreover, in light of my imminent departure from the Office, I am keen to finalise this issue so it does not become an immediate distraction for my successor.

Section 101 of the *Public Sector Management Act 1994* provides that the maximum compensation payable under that Act in respect of the termination of the employment of an employee in the public sector is an amount equal to the amount of remuneration to which the employee is entitled for a period of one year ending immediately before the day in which that employment is terminated. Given that Mr Bates' contract has presently nineteen months to run, there will be a considerable saving to the Office if that contract was terminated earlier with compensation no greater than 12 months remuneration.

Whilst negotiations into terminating Mr Bates' contract do not require your approval, there will no doubt be considerable public interest in the outcome should it be negotiated and potentially some cost pressure on the Office in the financial year in which the payment is made. For these reasons, I feel it appropriate that you be advised of my intentions and your comments sought in that respect. To facilitate your consideration, I *attach* a copy of Mr Bates contract of employment, the recent determination by the Salaries and Allowances Tribunal and the revised organisational structure of my Office together with the new duty statement of the Office of Director Legal Services.

If you have any queries, please do not hesitate to contact me or Yanina Boschini, my Legal Administrator, on 9425 3747.

Robert Cock QC  
DIRECTOR OF PUBLIC PROSECUTIONS

7 July 2009.

