



**REPORT OF THE
STANDING COMMITTEE ON ESTIMATES AND FINANCIAL
OPERATIONS**

**IN RELATION TO THE
RESIGNATION OF MR GARY BYRON, DIRECTOR GENERAL,
MINISTRY OF JUSTICE**

Presented by the Hon Mark Nevill (Chairman)

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

The Standing Committee was established on December 21 1989 with the following terms of reference:

1. There is hereby appointed a Standing Committee to be known as the *Estimates and Financial Operations Committee*.
2. The committee consists of 5 members.
3. The functions of the Committee are to consider and report on:
 - (a) the estimates of expenditure laid before the Council each year; and
 - (b) any matter relating to the financial administration of the State.
4. The Committee shall report on the estimates referred under clause 3 by or within one sitting day of the day on which the second reading of the *Appropriation (Consolidated Revenue Fund) Bill* is moved.
5. For the purposes of clause 3(a), the House may appoint not more than 6 members at any stage of its examination.
6. A reference in clause 3 to "estimates of expenditure" includes continuing appropriations, however expressed, that do not require annual appropriations.
7. The Committee may initiate investigations under clause 3(b) without prejudice to the right of the Council to refer any such matter.

Members of the Committee:

Hon Mark Nevill MLC (Chairman)
Hon Muriel Patterson MLC (Deputy Chair)
Hon Edmund Dermer MLC
Hon Simon O'Brien MLC
Hon Bob Thomas MLC

Staff of the Committee:

Ms Penny Griffiths (Advisory/Research Officer)
Mr Jason Agar (Committee Clerk)

Address:

Parliament House, Perth WA 6000, Telephone 222 7222

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Report of the Legislative Council
Estimates and Financial Operations Committee
in relation to the
The Ministry of Justice

1. Introduction

- 1.1 The Standing Committee on Estimates and Financial Operations (“the Committee”) was first appointed on 21 December 1989. Under its Terms of Reference, the Committee is required, *inter alia*, to consider and report on any matter relating to the financial administration of the State.
- 1.2 At its meeting on 2 February 1998, the Committee expressed concern over the then recent resignation of the Director General of the Ministry of Justice, Mr Gary Byron, and the alleged removal of the Executive Director of Offender Management, Mr Kevin Payne. In this regard, the Committee believed that the apparent disruption at the higher echelons of the Ministry of Justice had a clear impact on the financial administration and efficient day to day running of the Ministry of Justice. Accordingly, the Committee resolved to commence an inquiry into the financial administration of the Ministry of Justice.
- 1.3 The Committee’s inquiry initially focused on the resignation of Mr Byron and the alleged removal of Mr Payne. However, it soon became evident to the Committee that the disconcertment within the senior Management levels reflected wider problems within the Ministry of Justice. At this point, the Committee expanded its inquiry to include such issues as prison over crowding, deaths in custody, prison management, availability of medical facilities within prisons, training of prison officers and staff, and rehabilitation services available to prisoners.
- 1.4 The Committee is continuing its inquiry into the further issues raised for consideration and outlined above. However, the Committee has isolated the issue involving the resignation of Mr Byron and alleged removal of Mr Payne and considers it prudent to report on this matter expediently and separately. Accordingly, this Report is simply confined to matters pertaining to, and arising from, Mr Byron’s resignation and the alleged removal of Mr Payne.

2. Background to Inquiry

2.1 Sequence of Events

- 2.1.1 On 19 January 1998, Mr Byron resigned from his position as Director General of the Ministry of Justice. In his letter of resignation, Mr Byron said that the reason for his resignation was the proposal to remove Mr Payne from his position as Executive Director,

Offender Management of the Ministry of Justice. It was Mr Byron's understanding that Mr Payne was being held responsible for the delays in dealing with the issue of prison accommodation including the planning for the construction of a new prison in the State of Western Australia.

2.1.2 Mr Byron said that Mr Payne had endeavoured to understand and implement the Minister's requirements and Government policy to the best of his ability in what had been a very difficult job and that the criticism made against him had been unjust. Furthermore, he said that there was no evidence of neglect nor undue delay on Mr Payne's part and that he believed this to be widely understood. In these circumstances, Mr Byron said that he was unable to support the action being taken against Mr Payne and, therefore, reluctantly tendered his resignation as Director General of the Ministry of Justice.

2.1.3 Following Mr Byron's resignation, there was a great deal of media concern that the Minister for Justice, the Hon Peter Foss ("the Attorney General"), had attempted to direct Mr Byron to remove Mr Payne from his position of employment contrary to section 8(2) of the *Public Sector Management Act*. Furthermore, concern was being expressed about the Premier's involvement in the matter and whether he had endorsed the Attorney General's apparent attempts to remove Mr Payne. On the other hand, the Attorney General and the Premier publicly announced that neither had sought to remove Mr Payne from his position.

2.1.4 In light of the conflicts in accounts, the Committee's initial inquiries attempted to clarify these issues relating to senior management within the Ministry of Justice. In this regard, the Committee conducted a number of public hearings at which it took evidence from the following persons -

- Mr Byron;
- Mr Payne;
- Attorney General;
- Premier's Chief of Staff, Mr Ian Fletcher;
- Attorney General's Chief of Staff, Ms Karry Smith;
- The Hon Peter Jones; and
- Commissioner for Public Sector Standards, Mr Don Saunders.

2.1.5 As part of the inquiry, the Committee also requested a number of documents directly relevant to Mr Byron's resignation and Mr Payne's alleged removal. In particular, the Committee has had access, inter alia, to the following documents -

- Report of the Commissioner for Public Sector Standards;
- Notes taken by Mr Byron;
- Submission prepared by Mr Byron, and forwarded by Hammond Worthington Prevost Lawyers, which primarily responded to Mr Fletcher's evidence to the Committee;
- Notes taken by the Director General, Ministry of the Premier and Cabinet, Mr Mal Wauchope;
- Notes taken by Mr Fletcher;
- Mr Byron's letter of resignation; and

- Documents provided by the Acting Executive Director, Offender Management, Ministry of Justice, Mr Athol Jamieson.

2.1.6 This Report will outline the various witnesses' accounts as provided in evidence to the Committee. The Report will pay particular attention to the documentary evidence produced during the inquiry in reaching the conclusions.

2.2 The Public Sector Management Act

2.2.1 The sections of the *Public Sector Management Act* ("the Act") which were relevant to this inquiry are outlined below -

2.2.2 Section 8(2) of the Act

General principles of human resource management

8. (1) The principles of human resource management that are to be observed in and in relation to the Public Sector are that —

- (a) all selection processes are to be directed towards, and based on, a proper assessment of merit and equity;
- (b) no power with regard to human resource management is to be exercised on the basis of nepotism or patronage;
- (c) employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts;
- (d) there is to be no unlawful discrimination against employees or persons seeking employment in the Public Sector on a ground referred to in the Equal Opportunity Act 1984 or any other ground; and
- (e) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Safety and Health Act 1984.

(2) In matters relating to —

- (a) the selection, appointment, transfer, secondment, classification, remuneration, redeployment, redundancy or termination of employment of an individual employee; or
- (b) the classification of a particular office, post or position,

in its department or organization, an employing authority is not subject to any direction given, whether under any written law or otherwise, by the Minister of the Crown responsible for the department or organization, but shall, subject to this Act, act independently.

2.2.3 Section 10 of the Act

Functions of Minister, and ancillary powers

10. (1) *The functions of the Minister are —*

- (a) *to promote the overall effectiveness and efficiency of the Public Sector, having regard to the principles set out in section 7;*
- (b) *to advise other Ministers of the Crown on —*
 - (i) *structural changes;*
 - (ii) *programmes for management improvement; and*
 - (iii) *policies, practices and procedures relating to any aspect of management,*
which, in the opinion of the Minister, should be implemented in order to improve the effectiveness and efficiency of the whole or any part of the Public Sector;
- (c) *to cause to be carried out planning for the future management and operation of the whole or any part of the Public Sector;*
- (d) *to arrange for reviews to be conducted, on the initiative of the Minister or at the request of another Minister of the Crown, in respect of the functions, management or operations of one or more public sector bodies; and*
- (e) *to perform such other functions as are conferred or imposed on the Minister by this Act.*

(2) *The Minister has power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Minister.*

(3) *A review may be conducted under subsection (1) (d) in respect of —*

- (a) *the functions, management or operations of one public sector body;*
- (b) *a part only of the functions, management or operations of one public sector body; or*
- (c) *the functions, management or operations of more than one public sector body in related matters.*

(4) *For the purpose of the performance of his or her functions under subsection (1) (d), the Minister, or an employee authorized in writing by the Minister, may —*

- (a) *enter the premises of any public sector body;*
- (b) *require the production of and examine any book, document or writing in the custody of any employee of a public sector body; and*
- (c) *require any employee of a public sector body to answer questions,*

and an employee referred to in paragraph (b) or (c) shall comply with a requirement made under that paragraph.

(5) *The powers conferred by subsection (4) are exercisable in relation to a public sector body only after consultation with the employing authority of the public sector body and the Minister of the Crown —*

- (a) *who is responsible for the public sector body; or*
- (b) *to whom the administration of the Act under which the public sector body is established or continued is for the time being committed by the Governor.*

(6) *Despite subsection (4), an employee of a public sector body has the same privileges in relation to —*

- (a) *the production of a book, document or writing;*
- (b) *the furnishing of any information; or*
- (c) *the answering of questions,*

under this section as a witness has in the Supreme Court.

(7) *Nothing in this section takes away from —*

- (a) *any enactment that imposes a prohibition or restriction on —*
 - (i) *the availability of any information; or*
 - (ii) *the production or examination of any book, document or writing;*

or
- (b) *any privilege or immunity existing by custom or convention and relating to the production of books, documents, writings or information of previous Governments of the State.*

2.2.4 Section 42 of the Act

Purposes of Senior Executive Service

42. (1) *The purposes of the Senior Executive Service are —*

(a) *to provide for a group of executive officers who are capable of —*

(i) *furnishing high level policy advice and undertaking managerial responsibilities in agencies; and*

(ii) *being deployed within agencies, and between agencies, so as best to promote the efficiency of the Public Sector;*

and

(b) *to promote the efficiency of individual agencies.*

(2) *The Minister may in writing give to the employing authorities of agencies such directions for the management of the Senior Executive Service as are necessary or desirable for the implementation of the purposes referred to in subsection (1), and an employing authority to which any such direction is given shall comply with that direction.*

2.2.5 Section 74 of the Act

Relationship between ministerial officers, etc. and employees employed in departments or organizations

74. (1) *A Minister of the Crown shall —*

(a) *as soon as practicable after this section commences; or*

(b) *if he or she becomes a Minister of the Crown after this section commences, as soon as practicable after becoming a Minister of the Crown,*

make arrangements in writing in relation to each department or organization for which the Minister of the Crown is responsible setting out the manner in which, and the circumstances in which, dealings are to be had, and communications are to be made, between ministerial officers assisting the Minister of the Crown and the employees in that department or organization.

(2) *Notwithstanding anything in subsection (1), a ministerial officer shall not, otherwise than with the agreement of the employing authority of the department or organization concerned, direct an employee of that department or organization*

in relation to the manner in which that employee is to perform the functions of his or her office, post or position in that department or organization.

(3) *In this section —*

“ministerial officer” includes —

- (a) *person occupying a special office created under section 36 as read with section 75 (1); and*
- (b) *person engaged under a contract for services under section 100 (1) to assist a political office holder.*

2.2.6 Section 105 of the Act

Restriction on communications by members of Parliament, etc.

105. (1) *Subject to this section, a person who is a member of Parliament or ministerial officer shall not interview or communicate with —*

- (a) *an employing authority or its delegate concerning the selection or appointment of any person to an office, post or position in the Public Sector; or*
- (b) *the Commissioner or his or her delegate concerning the selection, appointment or reappointment of a chief executive officer.*

Penalty: \$1 000.

(2) *Nothing in subsection (1) applies to discussions —*

- (a) *between —*
 - (i) *a political office holder; and*
 - (ii) *the Minister, a delegate of the Minister, the chief executive officer of the department principally assisting the Minister in the administration of this Act or the delegate of that chief executive officer,*

concerning a request by the political office holder for the selection and appointment or engagement of a person as a ministerial officer to assist the political office holder; or

- (b) *between —*
 - (i) *the Minister and other Ministers of the Crown; or*

(ii) *the Commissioner and a Minister of the Crown,*

concerning the selection, appointment or reappointment of a chief executive officer.

(3) *A reference in subsection (1) to a member of Parliament or a ministerial officer includes a reference to a person acting on behalf of a member of Parliament or a ministerial officer, as the case requires.*

(4) *In this section —*

“ministerial officer” includes —

(a) *person occupying a special office created under section 36 as read with section 75 (1); and*

(b) *person engaged under section 100 (1) under a contract for services to assist a political office holder.*

3. Mr Byron’s account

3.1 Mr Byron’s account is that, on the morning of Monday 12 January 1998, Mr Payne attended his office and said that Mr Fletcher had blamed him for the delay which had occurred in the development of prison accommodation planning. Mr Payne expressed concern over this allegation and Mr Byron, therefore, suggested that a meeting should be arranged with Fletcher in an attempt to resolve the matter. Mr Byron then telephoned Mr Fletcher and arranged a meeting for Tuesday afternoon on 13 January 1998.

3.2 Mr Byron received a telephone call, mid to late morning on 13 January 1998, from Ms Smith who said that the Attorney General wished to meet with him on Monday 19 January 1998. Ms Smith indicated that the Attorney General intended to discuss prison accommodation, including the planning for the construction of a new prison, and also his dissatisfaction with the information and advice he had obtained from Offender Management. Ms Smith said that the matter had now become urgent and told Mr Byron to “stand by” to receive a telephone call from the Attorney General.

3.3 Following the conversation with Ms Smith, Mr Byron received a telephone call from the Attorney General who said that Justice was not viewed favourably in Cabinet. The Attorney General said that he had been unable to obtain the advice and information he wanted from Offender Management. He also complained about the quality of the material provided to him and, when pressed about this contention, said that he wanted “more analysis and more background”.

3.4 The Attorney General complained that he had been trying for over a year to get what he wanted and sometimes had waited for months to receive a response to his requests. He referred to a presentation made to him “some time ago” but when Mr Byron corrected him and said that it was in fact only “some months ago” the Attorney General replied “it

must have been about a year ago". The Attorney General made reference to what he had seen on his overseas visit to the United States and indicated that he wanted that information included in the relevant submissions.

- 3.5 The Attorney General told Mr Byron that he wanted to discuss these problems with him following the Cabinet meeting on the afternoon of Monday 19 January 1998. At that point, Mr Byron suggested that Mr Payne should attend the meeting as he had been made aware that he was being held responsible for the matters raised. Initially, the Attorney General said that he did not want Mr Payne to attend, however, after further discussion he agreed on the condition that his comments would be directed towards Mr Byron. The Attorney General then made the comment that he wanted Mr Byron to become personally and centrally involved and that he would now hold him responsible for the developments, information and advice.
- 3.6 On the afternoon of 13 January 1998, Mr Byron and Mr Payne attended Mr Fletcher's office to discuss the concerns about the criticism which had been directed towards Mr Payne. At the meeting, Mr Payne outlined his case to Mr Fletcher and produced Offender Management, Ministry of Justice, files to support his position. According to Mr Byron, Mr Fletcher accepted that Mr Payne was not to blame for the delay and that there was no evidence of him being obstructive. At that point, Mr Payne departed and appeared to be satisfied with the outcome of the meeting.
- 3.7 After Mr Payne's departure, Mr Fletcher told Mr Byron that Mr Payne was to be removed from his position of Executive Director, Offender Management and would be transferred to another position in the Premier's Department. Mr Fletcher explained that the position would be one that Mr Payne could "do well and would enjoy". He said that the Attorney General wanted Mr Payne out and had discussions with the Premier about the matter. Mr Fletcher mentioned that the Premier was concerned about the delays in prison accommodation planning and he had told the Attorney General that something had to be done urgently.
- 3.8 Mr Fletcher told Mr Byron that the Attorney General had "dug his toes in and that the Premier would not oppose him". He said that the Premier and the Attorney General had discussed the matter and it had been decided that Dr Paul Schapper would replace Mr Payne. Mr Fletcher commented that the Attorney General was in favour of Dr Schapper because it would give the position the "intellectual grunt" which it does not have now.
- 3.9 Mr Byron queried whether the Premier understood the cause of the delays to which Mr Fletcher responded that the Premier was aware that the Attorney General had been responsible for the delays as he was not making decisions. Mr Byron then asked Mr Fletcher if he was correct in assuming that the course of action had been proposed by the Attorney General and was being delivered on the Premier's behalf to which Mr Fletcher replied "yes". Mr Fletcher explained that he was simply informing Mr Byron what had been agreed between the Attorney General and the Premier. He emphasised the position by saying to Mr Byron that the Attorney General had "dug in his toes and becomes very determined when he digs in his toes". Mr Fletcher also mentioned that a similar situation had occurred when the Attorney General had refused to work with Mr David Grant and the Premier had to go along with him on that occasion.

- 3.10 Mr Byron again asked Mr Fletcher if it was recognised that Mr Payne had done nothing wrong and Mr Fletcher replied “yes”. Mr Byron then asked Mr Fletcher if the Premier understood this and Mr Fletcher replied “yes” and assured Mr Byron that Mr Payne would be “looked after”. At that point, Mr Byron objected and said that the proposed course of action was unjust because Mr Payne was not at fault and had done nothing wrong and, in his view, this was widely recognised. Mr Byron said that, no matter how it was “dressed up”, it would be humiliating for Mr Payne particularly when he had done nothing wrong. He also commented that the proposed course of action would cause serious morale problems in the Ministry of Justice and send out negative messages to staff.
- 3.11 Mr Fletcher told Mr Byron that he would raise his concerns with the Premier but told him that he also needed to be practical about the matter. Mr Fletcher again assured Mr Byron that there was no choice in the matter because the Attorney General was adamant and the Premier would not oppose him. He repeated that Mr Payne would be looked after and that he would be happy with the position offered.
- 3.12 Later that afternoon, Mr Payne attended Mr Byron’s office and asked if anything was wrong to which Mr Byron replied “yes”. Mr Byron told Mr Payne that he was unable to talk about the problem but would speak to him later. Mr Byron said that the conversation was difficult because he was upset and Mr Payne obviously sensed that something was wrong. Mr Byron does recollect Mr Payne making some comment to the effect that he was worried that he was being “shafted”.
- 3.13 On Wednesday 14 January 1998, Mr Byron received a telephone call from Ms Smith who said that the Attorney General did not want Mr Payne to attend the meeting arranged for Monday 19 January. According to Mr Byron, he told Ms Smith that the Attorney General had agreed to allow Mr Payne to attend the meeting on the condition that it was understood that all comments would be directed to him and not to Mr Payne. Ms Smith said that she would speak to the Attorney General and make further contact with Mr Byron if necessary.
- 3.14 During that telephone conversation, Ms Smith also told Mr Byron that the Attorney General becomes “confused” when he obtains information from Offender Management which conflicts with those views expressed to him by prison officers. Ms Smith said that the Attorney General finds it “frustrating” that all the different opinions and ideas are not included in the submissions prepared by the Ministry of Justice. Accordingly, Ms Smith asked Mr Byron to arrange a meeting with all relevant persons so that ideas could be exchanged.
- 3.15 On that same day, Mr Payne attended Mr Byron’s office and told him that a friend of his in the media had contacted him on Tuesday and told him that he had “had it” in the sense that he was going to lose his job. Mr Payne’s friend assured him that he would not use the information until the matter became public. Mr Payne then pressed for further information and Mr Byron told him in general terms his understanding of the situation.
- 3.16 On the afternoon of Thursday 15 January 1998, Mr Byron telephoned Mr Fletcher and was told that his objections had been raised with the Premier but the position remained unchanged and the proposal was still to replace Mr Payne with Dr Schapper. Mr Fletcher

again repeated that the Attorney General would not “budge” and that the Premier would not oppose him. At that point, Mr Byron said that Mr Payne should be informed of the situation but Mr Fletcher said that he should wait until the Premier and the Attorney General met on Monday to discuss the matter and also pointed out that Dr Schapper had not been informed of the proposal. Mr Byron again made it clear that he was “utterly” opposed to the proposed course of action. Mr Fletcher told Mr Byron that he would contact him on Monday to discuss the matter further.

- 3.17 At 11.00am on Monday 19 January 1998, Mr Byron sent his letter of resignation to the Premier and forwarded copies to the Attorney General and Mr Fletcher. Mr Byron also provided a copy of the letter to Mr Payne and told him to present it to his senior officers when they met at 12.00 noon that day. At 11.55am, Mr Byron received a telephone call from Ms Smith who said that she had been instructed by the Attorney General to inform him that he could “refuse the appointment”. Ms Smith explained to Mr Byron that the Attorney General was not aware that anyone had spoken to him concerning Mr Payne’s situation to which Mr Byron replied that he had been dealing with Mr Fletcher over the matter for the last four days. Mr Byron advised that it was his understanding that Mr Fletcher was acting on behalf of the Attorney General and the Premier.
- 3.18 At approximately 12.15pm, Mr Byron received a telephone call from the Attorney General who requested his attendance at a meeting with him and the Premier at 2.30pm in the Premier’s office. On attending the meeting, the Attorney General informed Mr Byron that he had no right to resign without first consulting him and Mr Byron replied that he did not need the Attorney General’s permission. At that point, the conversation became heated and the Premier intervened and assured Mr Byron that the meeting was in an endeavour to ensure that the correct procedure was followed and that no action would be taken against Mr Payne without his consent.
- 3.19 Mr Byron relayed to the Attorney General and the Premier the details of the conversations he had with Mr Fletcher and emphasised that it had been made clear to him that he had no say in the proposed removal of Mr Payne. Mr Byron also commented that he “knew when he was being softened up” despite the assurances from the Premier and Attorney General. In response to Mr Byron’s comments, the Attorney General said that he was unhappy with the advice he had received from Mr Payne concerning prison planning developments and that he intended to discuss these concerns at the meeting which had been arranged for that day.
- 3.20 The Premier said that Mr Fletcher had told him about Mr Byron’s objections concerning Mr Payne being moved from his position. He said that the discussion was in general terms and it was obvious that there had been a misunderstanding concerning the matter. Mr Byron informed the Attorney General that Mr Payne had done nothing wrong and that he would not agree to be party to the proposed course of action. The Attorney General then asked Mr Byron why he had not discussed the matter with him and Mr Byron replied that he had no reason to doubt what he had been told by Mr Fletcher. Mr Byron explained that he had always found Mr Fletcher to be “straight and very supportive” since he had taken up his position and that he had been assured by Mr Fletcher that the Attorney General was adamant and that the Premier had agreed with the proposal.

- 3.21 Mr Byron then asked the Attorney General why he did not raise the matter with him during the course of their telephone conversation on the previous Tuesday. The Attorney General replied that the matter was not raised with him until later during the week at which time he indicated that he would only agree to Dr Schapper replacing Mr Payne if he had the approval of Mr Byron. The Premier then told Mr Byron that he did not want him to resign and that the enquiries he had made revealed that he was “a good operator and was doing a good job”. Furthermore, the Premier said that the job was difficult and that they would have problems finding a suitable replacement. The Premier then left the room to allow Mr Byron and the Attorney General to converse in private.
- 3.22 During the private discussion, Mr Byron told the Attorney General that he was very angry at what had occurred and expressed his disappointment in regard to what appeared to be an expectation that he would simply comply with the proposal. The Attorney General again reiterated that he had not obtained prompt and adequate advice from Mr Payne. Mr Byron disagreed and indicated that the Ministry of Justice’s documentation would not support the Attorney General’s comments. Mr Byron explained that Mr Payne, and senior officers within his division, found it very difficult because the Attorney General “kept moving the goal posts” and that they experienced great difficulty in ascertaining his requests. Mr Byron said that the Ministry staff were intelligent people who wanted to get the job done but the Attorney General was causing difficulties.
- 3.23 The Attorney General responded to the comments by saying that Mr Byron had not attended all the meetings and was not privy to some of the discussions which had taken place, to which Mr Byron agreed. The Attorney General then said that he required “more analysis and background” and Mr Byron responded by saying that it was his understanding that he was never satisfied with the information provided. Mr Byron also commented to the Attorney General that, in his view, the Offender Management Division are confused and intimidated by the Attorney General to the point where communication now appears to have broken down. He told the Attorney General that this view was shared by all of the staff who have been involved in the project and was not only limited to Mr Payne.
- 3.24 Following the discussion, the Premier returned to the room and again asked Mr Byron to reconsider his resignation. The Attorney General and the Premier both told Mr Byron that he was doing a very good job and that the Ministry would go backwards if he were to leave. The Attorney General commented that he did not want to see all of Mr Byron’s hard work wasted and that resigning would not assist Mr Payne’s career. At that point, Mr Byron told that Attorney General and the Premier that Mr Payne was shattered by these developments and that he would be surprised if he wanted anything more to do with the Ministry of Justice and his current position. Mr Byron also informed the Premier and the Attorney General that he had placed Mr Payne on special leave with pay and that he may wish to leave the Ministry of Justice and negotiate a pay out. In response to these comments, the Premier undertook to telephone Mr Payne.
- 3.25 Finally, Mr Byron told the Premier that he had been presented with two different versions and that he did not know whom he could trust. He explained that he would not be confident that there would be no retribution against him in the future if he was to withdraw his resignation. The Premier asked Mr Byron to reconsider his position over

night and that he would summons Mr Fletcher from leave to discuss the matter at a meeting the following morning at 7.30am. Mr Byron and the Attorney General then departed the Premier's office.

- 3.26 According to Mr Byron, the Attorney General commented in the lift that he had previously experienced problems with Mr Fletcher and reiterated that he had never said that he wanted to remove Mr Payne from his position. Mr Byron replied that he was very angry over the matter and the Attorney General said that he was also very angry.
- 3.27 At 7.30am on 20 January 1998, Mr Byron met with the Premier and the Attorney General. Mr Byron informed the meeting that he had spoken to Mr Payne who said that he wanted to leave the Ministry of Justice and would like to negotiate a Management Initiated Retirement Package. Mr Byron then informed the Premier and the Attorney General that he had a very clear understanding of the two versions he had received and had arrived at the conclusion that there had been a misunderstanding between the Premier, the Attorney General and Mr Fletcher. In these circumstances, Mr Byron said that it was not his intention to withdraw his resignation.
- 3.28 The Premier responded to Mr Byron by stating that he would not accept his resignation and that the Attorney General wished him to continue in his current position. The Attorney General then asked Mr Byron to reconsider to which he declined and reaffirmed his determination to maintain his position. The Premier then called Mr Fletcher to the meeting and Mr Byron repeated his recollection of the conversation that had taken place between them the week prior.
- 3.29 The Premier explained to Mr Fletcher that Mr Byron had made up his mind to resign and that he would respect his wishes. At that point, the Attorney General told Mr Byron that he never intended that any pressure should be brought to bear on him and that the intention was that Mr Payne would only be removed with his approval. The Attorney General also said that he was not involved in the proposal to move Mr Payne and that it was first mentioned to him after the telephone conversation with Mr Byron the previous Tuesday.
- 3.30 At the Premier's suggestion, the Attorney General and he left the room and Mr Byron and Mr Fletcher had a general discussion about the matter. During that discussion, Mr Byron said that he regretted the "fuss" but was unable to be a party to the proposed course of action against Mr Payne. According to Mr Byron, Mr Fletcher agreed that it was recognised that Mr Payne was not at fault and that the delay was caused by the Attorney General. Mr Byron then said words to the effect "Ian, just tell me one thing. Is the Attorney General lying to me?" to which Mr Fletcher replied "yes". Mr Byron repeated the question and Mr Fletcher again replied "yes".
- 3.31 The Premier and the Attorney General then returned to the room and the Premier asked Mr Byron whether there was anything personal, such as not living in Perth, which formed part of his decision to resign. Mr Byron replied that he enjoyed living in Perth and that it was always his intention to complete the full five (5) years of his contract. Mr Fletcher then queried whether Mr Byron's remuneration was satisfactory to which Mr Byron

replied that he was happy with his remuneration and that also formed no part of his decision to resign.

- 3.32 Discussion then occurred concerning possible replacements for both Mr Payne's and Mr Byron's positions of employment. Mr Byron informed the meeting that he would organise a replacement for Mr Payne and Jan Shuard was suggested as a possible candidate. It was agreed that a more extensive search would be required to replace Mr Byron.

4. Mr Payne's account

- 4.1 On Monday 12 January 1998, Mr Payne received a telephone call from Ms Smith concerning a woman who had died in the Fremantle Hospital shortly after her release from Bandyup Women's Prison. During the course of that conversation, Ms Smith said that she had attended the Chief of Staff meeting that morning and that Mr Fletcher had accused the Attorney General and her of "following Kevin Payne's agenda in respect of prison matters". Ms Smith said to Mr Payne "Do not tell anyone I told you" and left the conversation on that note.
- 4.2 Immediately after this conversation, Mr Payne attended Mr Byron's office and said to him "I am concerned because we always seem to get the blame for things that are not within our control. Here we are getting told that we made a decision in respect to the additional beds at Canning Vale. We are getting flak about private prisons". According to Mr Payne, he then said to Mr Byron "Lets go on the front foot because we do not want to get any more flak. Lets go and see Ian Fletcher". A meeting was then arranged to meet with Mr Fletcher the following day.
- 4.3 On Tuesday 13 January 1998, Mr Byron and Mr Payne attended Mr Fletcher's office to discuss the perceived problems. Mr Fletcher asked what the issues were and Mr Payne raised the issue of private prisons. Mr Fletcher's response was "Do not worry Kevin. It is not your fault. We know it is the Minister's Office". After a short general discussion, Mr Payne was requested to leave and was confident that the matter had been satisfactorily resolved.
- 4.4 Shortly after the meeting, Mr Byron attended Mr Payne's office and said "You are in a lot of trouble. People want you moved". Mr Byron explained to Mr Payne that the Attorney General and Mr Fletcher had reached the conclusion that Dr Schapper should replace him as Executive Director, Offender Management. Mr Byron told Mr Payne that he had indicated to Mr Fletcher that the decision was clearly wrong and that the Offender Management executive would be devastated and that such a decision would send out the wrong message to Management. Mr Byron told Mr Payne that Mr Fletcher intended to talk to the Premier about these concerns.
- 4.5 On Thursday 15 January 1998, Mr Payne spoke to Mr Byron who said that he had spoken to Mr Fletcher who said that he understood his concerns and would discuss them with the Attorney General but he did not think that he would change his mind. According to Mr Payne, Mr Byron commented "It seems clear to me that you will have to be shifted. I

know it is wrong because I know you have done the things right. I am going to stand by you”.

- 4.6 On Friday 16 January 1998, Mr Byron and Mr Payne had a discussion during which Mr Byron commented “I expect that I will be sacked on Monday”. Mr Payne queried “why” and Mr Byron responded “Because if they do not change their mind, I am the only one who can shift you and I am not going to shift you”. Mr Byron also indicated that he was aware that the Attorney General and the Premier planned to meet on the morning of Monday 19 January 1998 to discuss the matter.
- 4.7 On Monday 19 January 1998, Mr Byron tendered his resignation and placed Mr Payne on special leave. On the following day, the Director General of the Department of the Premier and Cabinet, Mr Mal Wauchope, contacted Mr Payne at home and requested his attendance at a meeting that day with the Premier. At the meeting, a general discussion ensued relating to the circumstances surrounding Mr Byron’s resignation and Mr Payne being placed on special leave. A later discussion also occurred between Mr Wauchope and Mr Payne concerning the options available to Mr Payne and, in particular, the drafting of a Management Initiated Retirement Package.
- 4.8 Following the discussion with the Premier and Mr Wauchope, the Attorney General attended the meeting and Mr Payne expressed his concerns and understanding of the situation. Mr Payne considered that the discussions with the Attorney General were amicable and was quite satisfied with the outcome. According to Mr Payne, he commented to the Attorney General “When I walk out of here, forgetting what we have discussed, I still want to remain friends”. Furthermore, Mr Payne said that when the Attorney General left the room, he said “Good luck with whatever you do from here”.
- 4.9 The Committee has had access to the draft Management Initiated Retirement Package prepared for Mr Payne. At this stage, the Committee notes that a condition of the Package was that the employee agrees that they will "not at any time express to any person criticism or adverse comment regarding the circumstances of the administration of the Ministry of Justice or of a Minister for the Government" (refer to comments at 11.14 and 12.2).

5. Attorney General’s account

- 5.1 On Tuesday 13 January 1998, the Attorney General instructed Ms Smith to arrange an appropriate time with Mr Byron to receive a telephone call from him that day. The Attorney General then telephoned Mr Byron and expressed his concern about a statement made by Mr Fletcher to Ms Smith that she and the Attorney General had been “captured” by Mr Payne on the matter of private prisons. The statement had been made by Mr Fletcher at the Chief of Staff meeting held the previous day and the Attorney General told Mr Byron that the Ministry of Justice had to be prepared to meet any criticism.
- 5.2 The Attorney General said that the problems could be resolved if Mr Byron were take responsibility and specifically said “You’re the bloke. You’re the CEO. You’re the one responsible to me. You must do it”. At that point, the Attorney General and Mr Byron

- disagreed about the nature of the Director General's role with Mr Byron saying that he was initially advised that he was "admiral of the fleet" and not "captain of the ship".
- 5.3 In arguing his case, the Attorney General said to Mr Byron "I want you to take a personal interest in this and make sure that what I want is delivered, whatever that might take". Mr Byron's response was that "They reckon they don't understand what you want" to which the Attorney General replied "That's fine. I'm quite happy to have another meeting which everybody attends and everybody can hear it, discuss it, we can spend two hours discussing the whole problem. Let us get it resolved though so we all know where we are going and we get it done, but you are the person who has to take responsibility for it".
- 5.4 The Attorney General explained to Mr Byron that the reason why he called the meeting for Monday 19 January 1998 was so that he could discuss these concerns. Mr Byron then asked whether Mr Payne could attend and the Attorney General replied "Yes, but keep in mind I'm talking to you. You are not sitting there while I talk to Kevin Payne. I'm talking to you".
- 5.5 Following the conversation with Mr Byron, the Attorney General telephoned Mr Fletcher concerning the remarks he had reportedly made at the Chief of Staff's meeting the week prior. The Attorney General also told Mr Fletcher that he had some concerns about obtaining certain cabinet minutes but had arranged to meet with Mr Byron to discuss these matters on Monday 19 January 1998. In response to the Attorney General's comments, Mr Fletcher commented "I've got possibly some sort of alternative suggestion for you" and mentioned the possibility of Dr Schapper replacing Mr Payne in his position as Executive Director, Offender Management.
- 5.6 Mr Fletcher explained to the Attorney General that Dr Schapper would be without a job as a result of the reorganisation in the Premier's Office. Mr Fletcher suggested that Dr Schapper could then replace Mr Payne if a position could be located for Mr Payne which suited his background. In this regard, Mr Fletcher asked the Attorney General whether he would be happy to have Dr Schapper in that position and the Attorney General replied that he thought Dr Schapper could perform the job. The Attorney General also commented that he would be happy for such a move to take place if Mr Payne was happy with the proposal.
- 5.7 During the course of the hearings, the Committee asked the Attorney General if he believed that Mr Fletcher had acted improperly in discussing Mr Payne's removal with Mr Byron without his authorisation. The Attorney General responded by saying that he considers that Mr Fletcher did consult him when he spoke to him on Tuesday 13 January 1998. The Attorney General explained that the Premier is the Minister for Public Sector Management and in this instance, he could not use the person he normally uses to deal with placements (namely Dr Schapper) as that person happened to be one of the persons within the placement. In this regard, the Attorney General considered it quiet proper and acceptable for Mr Fletcher to "sound" out Mr Byron to ascertain his views on Dr Schapper replacing Mr Payne.
- 5.8 On Monday 19 January 1998, the Attorney General attended Cabinet where he first heard of Mr Byron's resignation. At approximately 10.15am, the Attorney General then

received a message to contact his office. He immediately telephoned Ms Smith and said "Somebody must have been talking to Byron. Ring him up and find out who has been talking to him and tell him, if what has been said in his letter of resignation is what he had been told, that it was without my authority".

- 5.9 At about 2.30pm on 19 January 1998, the Attorney General met with the Premier and Mr Byron and discussion occurred concerning Mr Byron's resignation. At some point during the meeting, the Premier left the room and allowed the Attorney General and Mr Byron to converse in private. After the meeting, the Attorney General and Mr Byron exited in the lift and the Attorney General commented to Mr Byron that he had problems with Mr Fletcher before and that he had never said that he wanted Mr Payne removed. Mr Byron responded by telling the Attorney General that he was very angry about the matter and the Attorney General replied that he was also angry.
- 5.10 A further meeting was arranged for 7.30am on Tuesday 20 January 1998 at which the Premier and Attorney General were in attendance. Mr Fletcher also attended the meeting, at a later stage, and the Premier and Attorney General then left the room and allowed Mr Fletcher to converse in private with Mr Byron. The Attorney General and the Premier then rejoined the meeting and were informed by Mr Byron that he did not intend to withdraw his letter of resignation. According to the Attorney General, it was during the course of these discussions that Mr Fletcher commented to him that he would accept full responsibility for any "miscommunication" which had occurred.

6. Mr Fletcher's account

- 6.1 Prior to 12 January 1998, Mr Fletcher said that he had discussions with the Hon Peter Jones, in his capacity as Chairman of the Core Functions Group Project, about delays in implementing the Project (refer to comment at 8.1 where the Hon Peter Jones recalled that one of the discussions occurred in late 1997 when the Group made a presentation to the Government Management Committee).
- 6.2 On 12 January 1998, Mr Fletcher attended a Principal Private Secretaries meeting at which Ms Smith was in attendance. At that meeting, Mr Fletcher indicated that Mr Jones had expressed concern about delays which he had experienced in handling matters relating to the Offender Management Program. In this regard, Mr Fletcher told the meeting that the Attorney General and Ms Smith were "following Mr Payne's agenda with respect to prison matters" as they related to the Offender Management Core Functions Project.
- 6.3 On Tuesday 13 January 1998, Mr Fletcher received a telephone call from the Attorney General concerning the comments which had been made by Mr Fletcher at the Principal Private Secretaries meeting on 12 January 1998. During the course of the telephone conversation, the Attorney General indicated to Mr Fletcher that he was concerned about delays in the Offender Management Program in dealing with issues and referred to Mr Payne's involvement in the matter. In response to the Attorney General's concerns, Mr Fletcher raised the possibility of Dr Schapper moving to that position and the Attorney

General indicated that he would be prepared to consider it on the basis of the proper process occurring.

- 6.4 During the course of the Committee's public hearings, the Attorney General questioned Mr Fletcher about the nature of their telephone conversation on 13 January 1998. The Attorney General asked Mr Fletcher "Did I suggest to you that I wanted Mr Payne removed" and Mr Fletcher replied "No. It was my interpretation of what you had to say". The Attorney General then put to Mr Fletcher that he in fact suggested what could happen to Mr Payne to which Mr Fletcher replied "I suggested that we had a function within Treasury which was looking at recruitment programs of individual agencies as part of the budget context and we needed someone very senior to manage that process. I indicated to you that Mr Payne may be well qualified to do that position".
- 6.5 Mr Fletcher went on to say that the Attorney General "indicated that the normal process should be followed which involved, basically, the chief executive officer, plus you and, as I understood it, the Premier being appropriate". Mr Fletcher also agreed that the Attorney General said words to the effect that there had to be a substantive job for Mr Payne if he was to be removed from his position.
- 6.6 In response to a request from Mr Byron, a meeting was arranged between Mr Byron, Mr Payne and Mr Fletcher to discuss a number of issues. The meeting was held in Mr Fletcher's Office at 2.30pm on 13 January 1998 during which Mr Payne maintained that he was not responsible for the alleged delays. According to Mr Fletcher, he simply acknowledged the fact that Mr Payne expressed a view that he was not responsible for the delays and said "That may be so. I hear what you say", or words to that effect. Mr Fletcher did not agree that he made a comment to the effect that the Premier understood that the delays had been caused by the Attorney General and that the Attorney General was not making decisions. His understanding was that Mr Byron and Mr Payne made comments to this effect and he simply acknowledged them and did not "express" that view.
- 6.7 The discussion between Mr Payne, Mr Byron and Mr Fletcher continued for about twenty minutes and Mr Payne then left the meeting. After Mr Payne's departure, Mr Fletcher indicated to Mr Byron that there was concern with the Offender Management Program, which involved Mr Payne, and that there was a "process in place to address the matter". Mr Fletcher specifically said that it was his impression that the Attorney General wanted Mr Payne to go and was in favour of Dr Schapper for the position because it would give the position "intellectual grunt".
- 6.8 Mr Fletcher explained to Mr Byron that the Attorney General is a very strong individual and that he had expressed very strong views to him about Offender Management and Mr Payne. He also said that the Premier was concerned about the delays in prison accommodation planning and that he had told the Attorney General that something had to be done urgently. In response to Mr Fletcher's comments, Mr Byron told Mr Fletcher that he had concerns about Mr Payne being removed as he had done nothing wrong and it would have an impact on staff morale. At that point, Mr Fletcher said that he would raise these objections with the Premier and then get back to Mr Byron.

- 6.9 Mr Fletcher emphasised that he would have acknowledged what Mr Byron said to him but would not have expressed a personal opinion. Mr Fletcher specifically said that he was "advising Mr Byron in anticipation that the process would occur on the following Monday". He admitted that these comments were "basically his initiative" and not at the "direction of the Premier " but commented "The Premier's view was that the Offender Management Program was in need of attention and whatever needed to be done should be done. It was my interpretation of that".
- 6.10 Mr Fletcher also agreed that it was his interpretation that the Attorney General had proposed this course of action and that he was relaying it to Mr Byron on behalf of the Attorney General and the Premier. His interpretation was based on discussion which had occurred about the Offender Management Program in a "general sense". Mr Fletcher also acknowledged that he told Mr Byron about the concerns with Mr Payne's performance and the intention to move him without reference to the Attorney General, who was then on leave.
- 6.11 On Wednesday 14 January 1998, Mr Fletcher received a telephone call from Mr Byron during which Mr Fletcher indicated that Mr Payne's situation had not as yet been resolved. Mr Byron again telephoned Mr Fletcher on Thursday 15 January 1998 during which Mr Fletcher advised that "a process must be followed and that a meeting was to take place between the Premier and the Attorney General on the Monday and that nothing further should be done at that stage". According to Mr Fletcher, the removal of Mr Payne was to be taken into consideration as part of the process. Mr Fletcher told Mr Byron that he had raised his objections with the Premier and explained that Mr Byron considered the proposed action to be unjust.
- 6.12 In his evidence to the Committee, Mr Fletcher could not specifically recall informing Mr Byron that there "was no change in plans and that Kevin was to be removed and that Paul Schapper was to be installed." In this regard, Mr Fletcher said that he did not go into this amount of detail and simply said that they were options which needed to be considered. Mr Fletcher also declined to agree that he specifically said to Mr Byron "The Attorney General would not budge and the Premier would not oppose him". He said that his comments were limited to his impression that the Attorney General had strong views on this and wanted to see changes in the Offender Management Division.
- 6.13 In his evidence, Mr Fletcher said that Mr Byron asked whether he could inform Mr Payne of the situation and his response was "Certainly not, a process is in place and the Attorney General and Mr Byron had to meet on Monday before this matter could go any further". He also pointed out that Dr Schapper had not been told anything. Mr Fletcher also agreed that Mr Byron said that he would contact him again on Monday and reiterated that he was utterly opposed to the proposed course of action.
- 6.14 As a result of Mr Byron's resignation, Mr Fletcher was requested to attend a meeting at 7.30am on Tuesday 20 January 1998 at which the Attorney General, Mr Byron and the Premier were in attendance. At the meeting, the Attorney General indicated that he had concerns about Mr Payne and that, if Mr Byron was happy with him being transferred, he would be quite happy for him to go. The Attorney General indicated that he felt that a misinterpretation of his view of the matter had occurred. At the Premier's suggestion, he

and the Attorney General left the room and discussion ensued between Mr Byron and Mr Fletcher as to the recent course of events.

- 6.15 During their discussion, Mr Byron indicated to Mr Fletcher that the matter had gone too far and that the Attorney General might take some action against him later. According to Mr Fletcher, there was a discussion about the degree of involvement the Attorney General had in the process but he could not recall Mr Byron asking "Ian just tell me one thing - is the Attorney General lying?" to which he apparently responded "yes". Mr Fletcher's recollection was that Mr Byron indicated that he was in a position where it had got to a point of no return and that he felt that he should go. He then asked Mr Fletcher whether he supported that view to which he responded "You're probably right".
- 6.16 When the Premier and Attorney General returned, the Premier asked Mr Byron whether he had reconsidered his decision to resign and Mr Byron indicated that "it had gone too far" and that he would be proceeding with his resignation. Mr Fletcher recalls general discussion and the Premier asking Mr Byron whether he liked Perth to which Mr Byron replied "yes".
- 6.17 Midmorning on Tuesday 20 January 1998, Mr Byron and the Attorney General attended Mr Fletcher's Office to collect a radio transcript. Mr Fletcher agrees that it was then that the Attorney General heatedly told him that he did not instigate Mr Payne's removal.
- 6.18 In his evidence, Mr Fletcher told the Committee that he could not recall Mr Byron saying to him "Ian, if you want me to move Payne, I'll need something in writing from the Premier". Furthermore, Mr Fletcher maintained that he never suggested to Mr Byron that a direction from the Premier to move Mr Payne would be forthcoming.

7. Ms Smith's account

- 7.1 On the morning of Monday 12 January 1998, Ms Smith attended a Principal Private Secretaries meeting. At the meeting, Mr Fletcher commented that Ms Smith and the Attorney General had been "captured by Kevin Payne's agenda on private prisons" to which Ms Smith replied "I don't think so. We are dealing with some Cabinet submissions". Mr Fletcher then made a general comment, to the meeting, that private prisons needed addressing.
- 7.2 Shortly after the meeting, Ms Smith received a telephone call from Mr Payne who informed her that a woman had died within 24 hours after release from Bandyup Women's Prison. During that conversation, Ms Smith informed Mr Payne about Mr Fletcher's comment, made at the Principal Private Secretaries meeting, that the Attorney General and she had been captured by his agenda on private prisons. Ms Smith asked Mr Payne to keep the comment confidential.
- 7.3 At about 1.00pm that day, Ms Smith telephoned Mr Byron and asked that he stand by to receive a telephone call from the Attorney General. According to Ms Smith, the purpose of the Attorney General's telephone call was to arrange a meeting with Mr Byron, for the 19 January 1998, to discuss his concerns with cabinet submissions. Ms Smith also said

that the Attorney General wanted to tell Mr Byron that, as Director General, he was accountable for what was happening within the Offender Management Division.

- 7.4 Later that day, Ms Smith telephoned Mr Byron to enquire whether he had spoken to the Attorney General. Mr Byron informed Ms Smith that he had spoken to the Attorney General who had agreed to allow Mr Payne to attend the meeting on 19 January. At that point, Ms Smith said that the Attorney General had told her that he did not want Mr Payne to attend the meeting. Nevertheless, Ms Smith said that the matter should stand unless she contacts Mr Byron to advise otherwise.

8. Hon Peter Jones' account

- 8.1 The Hon Peter Jones informed the Committee that he had dealings with the Offender Management Division in his capacity as Chairman of the Core Functions Project. In this capacity, Mr Jones met with the Cabinet Standing Committee on Management of Government in November 1997 and expressed concern that there needed to be an acceleration of addressing the matter of prisoner accommodation.
- 8.2 On 14 January 1998, Mr Jones and the Director of the Project, Dr Ken Michael, met with Ms Karry Smith to discuss a range of issues including the need for the Ministry of Justice to provide all relevant requested information to the Project. In relation to this matter, Mr Jones specifically told the Committee that he considered that there was significant resistance within elements of the Ministry to the kind of changes that were being examined by the Project.
- 8.3 Mr Jones said that he made it clear to the government on a number of occasions that he was concerned at the fact that there was not always the support for what the work of the Project from the Ministry of Justice. Furthermore, Mr Jones said that he discussed his concerns with Mr Byron and also wrote to him in similar terms.

9. The Premier's account

- 9.1 The Committee did not request the Premier to provide public evidence concerning his involvement in the alleged removal of Mr Payne. However, the Committee had access to a report completed by the Commissioner for Public Sector Standards ("the Commissioner") which contained a statement from the Premier and Minister for Public Sector Management, the Hon Richard Court MLA, concerning this matter. In this regard, the Committee's report is therefore restricted to the Premier's account as provided to the Commissioner.
- 9.2 The Premier's account is that, on Thursday 15 January 1998, he was advised by his Chief of Staff, Mr Ian Fletcher, that he had discussions with the Attorney General concerning the Offender Management Program. According to the Premier, Mr Fletcher indicated that the Attorney General should speak to Mr Byron about the delays in implementing Government policy in the Offender Management Division. In this regard, Mr Fletcher

advised the Premier to speak to the Attorney General and arrangements were then made to discuss this matter at a fifteen minute meeting at 8.45am on Monday 19 January 1998.

- 9.3 On 19 January 1998, the Premier met with the Attorney General and agreed that it would be appropriate to meet with Mr Byron to discuss the issues surrounding the Offender Management Division. The meeting lasted about five (5) minutes and the Premier then attended another meeting arriving at the Cabinet meeting at 10.00am. At about 10.15am, the Attorney General advised the Premier that Mr Byron had resigned.
- 9.4 As the Premier had received no correspondence from Mr Byron, he immediately sent a note to his office to ascertain if they had received any correspondence. The Premier also telephoned the Director General, Mr Mal Wauchope, who advised that he also was not aware of the resignation and indicated that he would inquire as to whether any correspondence had been received by the Ministry of Justice. Prior to the Premier sighting the letter, the Attorney General advised the Premier that the media had a copy of Mr Byron's letter of resignation.
- 9.5 Cabinet adjourned for lunch at 1.00pm and the Premier told the Attorney General that a meeting should be arranged with Mr Byron as soon as possible. A meeting was arranged for 2.30pm at which Mr Byron advised that he had resigned because he believed what had happened was unacceptable. At that point, discussions ensued about the letter of resignation and both the Premier and the Attorney General made it clear that they did not agree with the content of the letter. In particular, the Premier and the Attorney General indicated that they had met that morning, and briefly discussed the issues, but made no decision agreeing that further discussion should take place with Mr Byron and he was the appropriate person to deal with the matter.
- 9.6 The Premier and the Attorney General indicated to Mr Byron their concerns that he had resigned without first consulting them but were unable to obtain an explanation for his actions. The Premier and the Attorney General told Mr Byron that they were happy with his performance and asked him to reconsider his resignation, agreeing to issue a statement to the media which stated that there had been a misunderstanding. At that point, Mr Byron said that he would reconsider his resignation overnight and it was agreed to meet again at 7.30am on Tuesday 20 January 1998.
- 9.7 At the meeting on 20 January 1998, Mr Byron informed the Attorney General and the Premier that he had given the matter consideration and wished to proceed with his resignation. Mr Fletcher then attended the meeting and the Premier and the Attorney General departed to allow a private discussion between Mr Fletcher and Mr Byron. Mr Byron and Mr Fletcher were then joined by Mr Wauchope, and when the Attorney General and the Premier rejoined the meeting, were advised that Mr Byron's decision remained unchanged. During the course of the afternoon on 20 January, the Premier also met with Mr Payne to discuss the issues.

10. Public Sector Standards Report

10.1 The Committee heard evidence from the Commissioner for Public Sector Standards, Mr Don Saunders, concerning the report which he completed relating to the resignation of Mr Byron and alleged removal of Mr Payne.

10.2 In reporting on the matter, the Commissioner pointed out that his functions are confined to the matters set out in section 21 of the *Public Sector Management Act* ("the Act"). This means that the Commissioner was not able to inquire into the activities of a Minister but only those actions of Ministerial Officers.

10.3 In his report, the Commissioner made, inter alia, the following comments -

- Mr Byron did not comply with ministerial pressure to transfer Mr Payne and therefore he was not in breach of either the letter or intent of section 8(2) of the Act.
- Mr Fletcher transmitted the alleged direction to remove Mr Payne orally to Mr Byron. In this regard, the Commissioner commented that it was presumable that the message would be eventually made into a formal written direction under section 42(2) of the Act. In this regard, the Commissioner considered that Mr Byron was justified in believing it bore the imprimatur of the Premier as the Minister for Public Sector Management.
- Mr Fletcher denied that he gave Mr Byron a direction to transfer Mr Payne. According to Mr Fletcher, he made it clear to Mr Byron that some sort of immediate corrective action would have to be taken. However, Mr Fletcher insisted that the suggestion to transfer Mr Payne was a proposal to be discussed and developed by the Premier, Attorney General and Mr Byron at an arranged meeting. Mr Byron was equally firm that Mr Fletcher had given him a clear direction to transfer Mr Payne.
- On instructing Mr Fletcher to raise with Mr Byron the question of transferring Mr Payne, the Premier sought to address an unsatisfactory performance issue. In this regard, the Premier was not motivated by partisan political concerns or nepotism.
- Section 10 of the Act gives the Premier as the Minister for Public Sector Management considerable scope and responsibility to intervene to bring about changes he considers appropriate to further the government's policy objectives and for the betterment of the public sector. The Premier's functions under section 10 are reinforced in section 42 where he is provided with power to give formal directions affecting senior executive service officers.
- Under section 74(2) of the Act, ministerial officers may not give directions to employees of an agency as to how they are to perform their functions, without the CEO's agreement. The Attorney General's Chief of Staff, Ms Karry Smith, over time developed informal working arrangements with senior officers of the Ministry which they would be entitled to regard as directions. This occurred

apparently with sufficient frequency to have become standard practice. Mr Byron did not object to this or attempt to negotiate an arrangement with his Minister to comply with section 74(2). By not doing so, and by not reacting to instances where such directions were given, Mr Byron could be said to have agreed to them by default.

- The negotiations with Mr Byron could have been better handled and Mr Byron could have been given time to correct Mr Payne's perceived performance deficiencies. Mr Byron and Mr Payne ought to have been asked for a formal response to the Attorney General's concerns. However, Mr Byron's resignation preempted such a situation occurring.
- In the Ministry of Justice, there should have been a performance agreement between the Attorney General and Mr Byron and between Mr Byron and Mr Payne. Neither agreement was made. Appraisals of performance for both men therefore could have been subject to non-objective assessment and personal opinion.
- All persons interviewed, with the exception of Ms Smith, expressed serious concerns about administrative and policy deficiencies in the Attorney General's Office. The Ministry of Justice and the Core Functions Project team experienced considerable delays caused, in their view, by tardy responses from that office, poor administration and ad hoc oral instructions. These issues, however, were outside the ambit of the Commissioner's reporting function.

10.4 The Commissioner reached the following conclusions which were noted as follows -

- Mr Payne's performance was not, and could not be, fairly and objectively assessed. His alleged shortcomings, if valid, were not communicated clearly and sufficiently early for Mr Byron to take corrective action.
- Nevertheless, the Attorney General and Premier held genuine concerns about Mr Payne's performance and the Ministry of Justice's commitment to the advancement of the Government's objectives.
- Mr Byron perceived that an oral direction was given to him to transfer Mr Payne.
- The Premier, with the concurrence of the Attorney General and through his chief of staff Mr Fletcher, approached Mr Byron to transfer Mr Payne. This was consistent with the Premier's functions and powers under the Act. No direction of the kind referred to in section 42(2) was or could be made by Mr Fletcher.
- Mr Byron resigned his position because he was not prepared to comply with the proposed transfer of Mr Payne, which he would have been obliged to do had he remained Director General and received a written direction, a direction he believed was inevitable.

- It was open to Mr Byron to see the Attorney General after the Attorney General returned from leave and to negotiate a mutually acceptable solution.
- The administrative and management issues are matters to be addressed by the Premier, Attorney General and Acting Director General, Ministry of Justice.

11. Conclusions

11.1 On the information provided, the Committee has noted that there are clear conflicts between various witnesses concerning the circumstances surrounding the alleged removal of Mr Payne and the resignation of Mr Byron. These conflicts relate to both differences in interpretation and the precise nature of conversations that occurred between the parties. The Committee considers the central conflicts to be as follows -

- **Mr Byron and Mr Fletcher**

Mr Byron maintains that the Premier's Chief of Staff, Mr Ian Fletcher, told him that the Attorney General wanted Mr Payne to be removed from his position as Executive Director of Offender Management and that the proposal had the approval of the Premier. Mr Byron specifically recalls Mr Fletcher saying that the Attorney General has "dug his toes in" and that the Premier would not oppose him on the matter. On the other hand, Mr Fletcher maintains that he simply told Mr Byron that there was a proposal to move Mr Payne from his position which would be further explored at the meeting arranged for Monday 19 January 1998. Mr Fletcher could not recall saying to Mr Byron that the Attorney General had "dug his toes in" and that the "Premier would not oppose him".

- **Mr Fletcher and the Attorney General**

During a telephone conversation on 13 January 1998, the Attorney General said that Mr Fletcher raised the possibility of placing Dr Schapper in the position of Executive Director, Offender Management. According to the Attorney General, he clearly told Mr Fletcher that he would only consider such a proposal if the proper process occurred and if Mr Payne was agreeable. On the other hand, Mr Fletcher's evidence is that his *interpretation* of the conversation was that the Attorney General wanted Mr Payne removed from his position of Executive Director. At that same time, however, Mr Fletcher did say that the Attorney General indicated that the normal process should be followed which involved the Chief Executive Officer, the Attorney General and the Premier.

- **Mr Byron and Mr Fletcher**

In the conversations that occurred prior to the resignation, Mr Byron claims that Mr Fletcher told him that Mr Payne was to be removed while at the same time agreeing that it was widely understood that Mr Payne was not to blame for the delays. On the other hand, Mr Fletcher disagrees that he made such comments to

Mr Byron and said that he simply acknowledged Mr Byron's concerns but did not make any comment on the matter.

Mr Byron and Mr Fletcher

- In relation to the conversation on 20 January 1998, Mr Byron maintains that he asked Mr Fletcher twice whether the Attorney General had lied to which Mr Fletcher responded "yes" on both occasions. On the other hand, Mr Fletcher's recollection was that he made no mention of the Attorney General lying and simply agreed with Mr Byron that the matter had probably "got to a point of no return".
- 11.2 In the light of the above, the Committee is satisfied that the suggestion to remove Mr Payne was initially raised by Mr Fletcher during his conversation with the Attorney General on 13 January 1998. In relation to that conversation, the Committee is also satisfied that the Attorney General specifically said to Mr Fletcher that he would only be happy with Mr Payne's removal if the proper process was followed and if Mr Payne were agreeable to the proposal. Contrary to the Attorney General's comments, Mr Fletcher's interpretation of the conversation was that the Attorney General wanted Mr Payne removed from his position.
- 11.3 What then followed was a conversation between Mr Byron and Mr Fletcher during which a discussion occurred concerning the proposal to remove Mr Payne. At this point, the Committee believes that Mr Fletcher relayed his interpretation of his conversation with the Attorney General to Mr Byron. In particular, the Committee believes that Mr Fletcher failed to emphasise to Mr Byron that the Attorney General had told him that he would only agree to the proposal if Mr Payne was agreeable and in accordance with the proper process. Moreover, the Committee believes that Mr Fletcher's interpretation was that the matter of Mr Payne's removal was not open to negotiation and that this was also indicated to Mr Byron.
- 11.4 The Committee has reservations about the credibility of Mr Fletcher's evidence that he simply acknowledged Mr Byron's remarks, making no personal comments, and his failure to recollect the precise nature of his conversation with Mr Byron on 20 January 1998. In the absence of any independent evidence, however, it is not possible for the Committee to positively resolve these conflicts in accounts. Accordingly, the Committee considers that it is not in a position to make any conclusive findings concerning the inconsistencies between the evidence of the Attorney General and Mr Byron with that of Mr Fletcher.
- 11.5 In his evidence, Mr Fletcher commented that, in hindsight, he may have handled the proposal to remove Mr Payne differently. Acting on behalf of the Premier, the Committee is satisfied that it was not improper for Mr Fletcher to "sound out" Mr Byron as authorised by the Attorney General. However, the Committee believes that Mr Fletcher should have been more circumspect in his discussions with Mr Byron especially given that a meeting had been arranged for 19 January 1998 at which the matter was scheduled to be further discussed. It should be noted, however, that the Committee appreciates the difficulties of Mr Fletcher's position and that he was acting in the course of his duties and should not have been expected to have predicted the sequence of events that followed.

- 11.6 In relation to Mr Byron, the Committee considers that he erred in his responsibilities to the Attorney General and the Premier by not discussing the matter with them prior to tendering his resignation. The Committee believes that, as the Director General of the Ministry of Justice, Mr Byron should have reported his concerns directly to the Attorney General or the Premier. The Committee agrees with Mr Fletcher's comments that Mr Byron should have been aware that Mr Fletcher did not have the required authority to issue a direction concerning Mr Payne's removal. The Committee also considers that Mr Byron was aware that a meeting had been scheduled with the Attorney General for 19 January 1998 and that he should have taken this opportunity to discuss Mr Payne's position and if necessary, defend him, rather than preempt the matter by resigning.
- 11.7 In relation to Mr Byron's resignation, it should be noted that the Committee recognises that it is not uncommon for pressure to be brought to bear on Chief Executive Officers by Government concerning staffing matters. In this regard, the Committee understands Mr Byron's concern that he may suffer some retribution if he did not comply with the changes being suggested by Mr Fletcher.

[Note: Hon Muriel Patterson and Hon Simon O'Brien dissented on paragraph 11.7]

- 11.8 In relation to the Attorney General, the Committee is satisfied that he emphasised to Mr Fletcher that the proper process should be followed if Mr Payne were to be removed. Furthermore, the Committee is satisfied that the Attorney General had scheduled the meeting for 19 January 1998 at which the matter of Mr Payne would be discussed and that there was no evidence that he intended to take any action whatsoever prior to that date. It is clear that the Attorney General issued no instruction to remove Mr Payne, either written or oral, and that he simply authorised Mr Fletcher to make some enquiries on behalf of the Premier. In these circumstances, the Committee is satisfied that the Attorney General acted both properly and appropriately and that his actions in no way breached the Act.
- 11.9 As outlined above, there were concerns that there had been breaches of the Act by the Premier in relation to the alleged removal of Mr Payne and the resignation of Mr Byron. The Committee is satisfied that section 10 of the Act provided the Premier with considerable scope and responsibility to intervene to further Government's policy objectives and to promote the overall effectiveness and efficiency of the Public Sector. The Premier's functions under section 10 are reinforced in section 42 of the Act where he is provided with power to give formal directions affecting senior executive service officers. In this regard, the Committee considers the Premier's actions and involvement to have been both proper and within the terms of section 10 of the Act.
- 11.10 The Committee notes that the Commissioner for Public Sector Standards reported that all the witnesses he interviewed, apart from Ms Smith, expressed concern about the administration of the Attorney General's Office. In particular, the Commissioner for Public Sector Standards expressed concern about the lack of performance agreements and the role of Ms Smith in delivering oral instructions to staff within the Ministry of Justice. As a result of the lack of performance agreements, the Commissioner said that it was difficult to objectively assess Mr Payne's performance in his position as Executive

Director of Offender Management. In this regard, the Committee believes that these matters need urgent consideration by the Attorney General's Office in order to ensure that proper and efficient working relationships can be maintained.

- 11.11 On the information provided, the Committee also believes that there was considerable misunderstanding, and some discontentment, between the Attorney General and Mr Byron concerning the precise allocation of duties between the Director General and the Executive Director of Offender Management of the Ministry of Justice. On the one hand, it is clear that Mr Byron believed that Mr Payne as the Executive Director of Offender Management was essentially the person in charge and that his contribution and involvement in the Division should be limited. On the other hand, the Attorney General believed that Mr Byron should have had more involvement and that, at the end of the day, he was the person who was responsible for the Division.
- 11.12 The Committee is unable to determine whether the Attorney General's and Mr Byron's different views on the role of the position of Director General formed some part of Mr Byron's decision to resign. Nevertheless, the Committee believes that the delineation of the various senior roles within the Ministry requires careful consideration and should be established before the appointment of the appropriate person to the position of Director General of the Ministry of Justice.
- 11.13 The Committee understands that Mr Payne is still on special leave and that his situation has not been fully resolved. At this stage, the Committee is not in a position to comment on the matter of Mr Payne's work performance or his suitability for the position of Executive Director, Offender Management. However, the Committee is concerned with the certain elements of the draft Management Initiated Retirement Package which was prepared for Mr Payne following Mr Byron's resignation.
- 11.14 As indicated at 4.9 above, a condition of the Management Initiated Retirement Package was that Mr Payne agrees that he would "not at any time express to any person criticism or adverse comment regarding the circumstances of the administration of the Ministry of Justice or of a Minister for the Government". The Committee understands that this is a standard condition in regard to retirement packages for senior public servants. Nevertheless, the Committee considers that the condition is unduly oppressive and restrictive on the retiring public servant.
- 11.15 The Committee believes that comment by former senior public servants, regarding the administration of Government Agencies, may be constructive and of assistance after a certain period of time has elapsed. Accordingly, the Committee considers that such conditions should be qualified by a time period in which the employee is required to remain silent. In addition, the restriction should only apply to information acquired during the course of employment.

12. Recommendations

- 12.1 The Committee recommends that the Attorney General's Office implement Performance Agreements between the Attorney General and the Director General of the Ministry of

Justice and the Director General and the Executive Director of Offender Management of the Ministry of Justice.

- 12.2 The Committee recommends that the condition of Management Initiated Retirement Packages, requiring a retiree "not at any time express to any person criticism or adverse comment regarding the circumstances of the administration of the Ministry of Justice or of a Minister for the Government" be amended to only require the retiree (subject to the provisions of any other Act) to not publicly express any criticism in relation to matters relevant to the administration of the Agency (including the performance of the Minister responsible for that Agency) for which he or she worked immediately prior to taking management initiated retirement for a period being the lesser of the life of the Government at the time of retirement of four (4) years.
- 12.3 The Committee is unable to make a recommendation arising out of its reservations concerning parts of Mr Fletcher's evidence, as it is not satisfied beyond a reasonable doubt that in relation to this evidence Mr Fletcher was being untruthful.
- 12.4 The Committee recommends an early review of the *Public Sector Management Act* and, in particular, an examination of the role, responsibility and practice of staff as they relate to the appointment, assignment and re-assignment of public servants.

**HON MARK NEVILL MLC
(CHAIRMAN)**

2 JULY 1998