



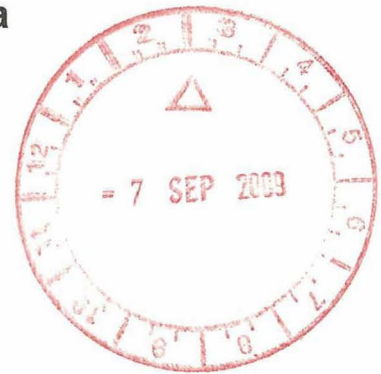
PUBLIC

Premier of Western Australia

Our Ref: 200905869

7 SEP 2009

Hon Giz Watson MLC
Chair
Standing Committee on Estimates and Financial Operations
Legislative Council
Parliament House
PERTH WA 6000



Dear Ms Watson

REPORT 19: FOLLOW-UP TO REPORT 12 BALGA WORKS PROGRAM

I refer to your letter of 27 July 2009 in which you seek the Government's response to recommendation 1 contained in the Standing Committee on Estimates and Financial Operations's *Report No. 19: Follow-up to Report 12 Balga Works Program*.

Recommendation 1 reads as follows:

Recommendation 1: The Committee recommends that the Attorney General investigate the apparent anomaly of public servants resigning and, thereby, avoiding any further penalty for alleged misconduct.

I note that the Attorney General has advised that this issue falls within my portfolio responsibilities rather than his own.

A copy of the Government's response is attached.

Yours sincerely

Colin Barnett MLA
PREMIER

Att.

**GOVERNMENT RESPONSE TO THE
LEGISLATIVE COUNCIL STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS**

SEPTEMBER 2009

Recommendation 1: The Committee recommends that the Attorney General investigate the apparent anomaly of public servants resigning and, thereby, avoiding any further penalty for alleged misconduct.

It is noted that this recommendation relates more closely to the portfolio responsibilities of the Premier to the extent that these relate to public sector management and misconduct by public servants that may fall short of criminal conduct.

The disciplinary provisions that apply to public servants are contained within Part 5 of the *Public Sector Management Act 1994* (the Act). Public Sector employees not covered by Part 5 of the Act are subject to provisions in other legislation, industrial agreements and/or common law.

The disciplinary provisions within the Act require employers to undertake up to a three stage investigative process. A range of sanctions are available to employers should an allegation of a breach of discipline be made out, and include reprimand, fine, transfer, reduction of remuneration or classification and dismissal.

A Public Sector employing authority may undertake disciplinary action when it suspects that a person has committed a breach of discipline whilst serving as an employee in its public sector body. The Act may allow an employing authority to take action against former employees or continue to take action after an employee resigns or retires. However, the departure of the employee is likely to impact on any ability the employing authority has to undertake a disciplinary process and an employer's capacity to impose sanctions should an investigation substantiate the allegations. In addition, an assessment as to whether there was significant public interest in proceeding may be undertaken, with factors including the operational impact on the organisation and resourcing considered.

Disciplinary proceedings generally only have meaning when the employment relationship exists, as the ultimate sanction is termination of the employment relationship. The Office of Police Integrity, Victoria commented in a 2007 report entitled *A Fair and Effective Victoria Police Discipline System* that,

*"In the context of a disciplinary system in which police can be charged with corrupt or other serious misconduct, it may be that resignation is used as a means of avoiding a disciplinary outcome. Accordingly, a refusal to accept a resignation of such an officer would allow disciplinary proceedings to continue. I fail to see what end this might achieve, other than a waste of resources. In any event, if dismissal were the likely outcome of that process, voluntary resignation results in a solution to the problem sooner rather than later."*¹

It is also noted that the findings made by an employing authority as a result of a disciplinary investigation or inquiry reflect the opinion of the employing authority only and do not have authority outside the employment relationship.

The Government is advised that the Public Sector Commission is currently preparing amendments to the disciplinary provisions as part of a range of amendments to the Act. This issue will be examined as part of that process.

¹ A Fair and Effective Victoria Police Discipline System, Office of Police Integrity, Victorian Government Printer, October 2007, p 68.