



**CROWN SOLICITOR'S OFFICE**  
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Mr Patrick Saidi  
Barrister at Law  
4 Selborne Chambers  
174 Phillip Street  
SYDNEY NSW 2000

**By Hand**

Dear Mr Saidi

**State of New South Wales ats Biles**

I enclose a copy of a letter dated 15 June 2009 from Women's Legal Services NSW, the solicitors acting for Kathleen Monica Biles and the other 12 plaintiffs that comprise the claim originally known as Biles # 2.

The letter is a response of sorts to the 13 individual requests for particulars in relation to my request for particulars individually in each of the 13 claims which are handled by this firm.

You will note from page 1 of their response that they note that each of the requests was identical in substance, on that basis they conclude that the purpose of the orders for consolidation made by Judge Knox was to avoid "unnecessary duplication". In the circumstances they propose "to provide one answer to the particulars requested of the claims made by our clients which will accommodate all aspects of the various claims".

They then proceed to provide some particulars.

I have not gone through the entirety of their replies, but I have made a perusal of some of the answers in relation to the questions raised in respect of Kathleen Biles. In my view, there is an attempt made to avoid providing particulars that a claimant can be bound to. That raises a question in my mind as to whether each of the 13 claimants was even consulted in relation to the responses which have now been provided.

I reflect on how often at trial, plaintiffs come undone in relation to the particulars they provide in the original request for particulars by the defendant. Counsel might like to consider whether this is an aspect which should be canvassed at this time or whether tactically it would be better to reserve it for trial.

Some of the answers refer to the folder of particulars previously provided, a copy of which has already been briefed to Counsel.

I invite Counsel to look at question and answer number 60. I suspect that the answers provided are non-responsive. I also invite Counsel to note the questions and answers at questions 10 – 17 inclusive. In particular, there is no response to question 12 at all. The question is whether the plaintiff was made a ward of the State. In the particulars previously provided (referred to as "Plaintiff's particulars pursuant to orders of Judge Knox dated 11 May 2009") the plaintiff has provided certain particulars in respect of each claimant as to how they came into Bethcar. It is clear from the examples I have read, that none of them were ever wards of the State. The question itself asks: "Was the plaintiff a ward of the State?". No answer is provided. I suppose we could draw the conclusion that the answer is no.

Whilst reviewing these particulars I had a couple of thoughts that I would like to raise, which are not directly related to particulars. They are as follows:

### **1. Early Resolution**

I had the thought that we might want to consider putting on an offer of compromise now. I appreciate from our discussions that some of the plaintiffs might actually be statute barred. The absolute 30 year bar. Whilst some of the younger claimants might have a better prospect of succeeding.

I get a rough estimate of what the defendant's costs could be if the claim was run at trial and came up with a figure of around \$600,000.00.

I then reasoned the possibility that these claimants, some of whom might reasonably have a very low expectation of ever seeing any money, could be interested in an amount of around \$15,000 - \$25,000.00

As the 15 claims are now consolidated, any offer would need to be made by way of a global offer for all 15 claims and I tinkered with the idea as to whether an offer in the vicinity of \$250,000 - \$400,000.00 plus say costs of \$100,000 might be something that some of the claimants might consider even at this early stage.

Should the matter ever make the media, I cannot imagine any downside to the defendant endeavouring early resolution of the matter by serving an offer of compromise.

Counsel might like to consider this aspect. I note that we are to confer with Mr Arblaster and Ms Young from the Department on 29 June and perhaps this is a matter that could be raised at that time if it was thought appropriate by Counsel.

### **2. Transfer of Proceedings**

There was a global estimate for all 15 claims of about \$4M.

The plaintiff filed its claim in the District Court. Counsel is aware of our attempts to have a separate Statement of Claim filed in respect of each claim. Certainly, each claim in itself would be under the jurisdictional limit of the District Court. However, the 15 claims have now been consolidated into one action.

It would seem to me, therefore, that the action which may have been within the jurisdictional limit of the District Court when filed, has now transformed into one consolidated action which is outside the jurisdictional limit of the District Court. In the circumstances, perhaps consideration could be given to an application to transfer the proceedings to the Supreme Court.

I have considered the possible advantages of having the matter successfully transferred to the Supreme Court, one of them, and indeed the main one, being that the defendant might get a better hearing on the issues in the Supreme Court than it could ever hope to get in the District Court.

Furthermore, in discussion with a colleague, the question arises as to whether the defendant's dismissal motion may have better prospects of success if considered by the Supreme Court rather than the District Court. Counsel will recall that the dismissal motion is now listed for hearing on 21 August. In the circumstances it would seem to me that if there is any advantage in having the matter transferred to the Supreme Court, the transfer application should be made before the District Court considers the defendant's dismissal motion.

Perhaps this is another matter which we can discuss with the Department at conference on 29 June.

I mention that I have not raised either of the two above matters with the Department at this stage. I make the observation about the possibility of proceeding on this basis and would prefer to have the opportunity to discuss them with Counsel before raising them with the Department.

I advise that I have forwarded a copy of this letter to Mr Arblaster, together with the particulars enclosed herein.

At this stage I have only forwarded a copy of the particulars to the Department without reference to any of the matters raised herein.

Yours faithfully

Evangelos G Manollaras  
Solicitor  
**for Crown Solicitor**