

Apology specifics

Monday, 4 December 2017

Dear _____,

I have been assisted in writing this document. This document is confidential and restricted to the attempt to reach settlement of the privacy/discrimination matter.

On 3 November 2017 you approached me on behalf of Icare, offering to negotiate an outcome, with talk of a settlement and apology. I want to get into the specifics of the apology.

I have now attended the appointment with Dr _____. I said certain things and gave him certain documents, and I took a support person.

It is nearly two years since I last saw Dr _____, and in that time the bullying and psychological abuse has continued and escalated, and I have got worse and worse.

Approaching me with talk of an apology means:

- 1- You know you have something to apologise for, and
- 2- You know what it is you are apologising for.

So I'm going to cover the specifics of what that is, to make sure that the apologies I receive, because they are about more than one thing, are meaningful and relevant.

You are apologising for:

my workplace being unsafe

my injury was preventable and should have been prevented

the employer having no workplace health and safety policies and procedures for preventing psychological injury

You have not fined the employer, which means you are accepting responsibility. You are the agency responsible

not doing anything about my workplace safety complaints that my workload was a safety risk

Not doing anything when the workload resulted in having panic attacks at work, which were reported, causing me to have to take time off work as a result

Not doing anything about my being bullied in August 2014 after my making safety complaints.

Ignoring that I was at risk after specifically using the EAP due to workplace bullying

Not doing anything about bullying when it was again reported in March 2015.

Allowing the perpetrator to be in control of my workplace bullying complaint, as evidenced by the employers board minutes

Allowing the workplace bullying perpetrator, to push me out of the workplace and onto workers compensation, as evidenced by the employers board minutes.

This was a critical juncture. I had made a report of workplace bullying. I was still being given work to do, and having to work on it from home while on parental leave. I was still being expected to report to the perpetrator when there was an outstanding bullying complaint which was not being investigated, which resulted in further bullying and injury. This was a workload and workplace safety issue in itself. The bullying complaint should have been managed. Instead, as the board chair wrote in their statement, the perpetrator, president and secretary colluded to protect the perpetrator, while I was not contacted in any way except for further bullying by the perpetrator. By any standard, I should have been separated from the perpetrator while the bullying complaint was appropriately resolved. This was a massive failure which resulted in injury.

Allowing the perpetrator to continue the same bullying that had already been complained of, in April 2015, resulting in injury and a workers compensation claim.

The employer minuted that they would do this two days before I made the claim. The board allowed, approved was the word they used, the perpetrator to continue bullying me, while nobody had come to me, weeks after making the bullying complaint, to ask me what happened.

Workcover closing my complaint, without speaking to me, the day after it was received.

This was a critical juncture. Quite clearly the complaint I made on 16 April 2015 to what was then Workcover should still be open. Workcover closed the complaint the next day without talking to me. It is now 959 days later. Workcover should have done something, because now I cant work at all because you have done nothing while my condition has deteriorated, and I am still waiting for an adequate response. There are around 1000 days between making my complaint to Workcover and receiving an apology from Workcover. This is totally unacceptable.

Prejudicing and bullying the victim by allowing the perpetrator to manage the workers compensation claim against themselves and the board, as the employer contact.

Read that again and be clear about it.

Sharing the personal information of the victim with the perpetrator from the start of the claim.

Everything that has gone to and from the insurer, rehab provider, and other involved parties from the employer has gone through the perpetrator. This is unacceptable by any standard. It is also unacceptable by the standard of the employers own bullying policy which sets out that the board chair, not the executive officer is the relevant person when the matter involves the executive officer.

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The perpetrator should not have seen any of this information *In addition to apologising for the privacy breach to the perpetrator, you will provide me copies of all correspondence which went to and from the perpetrator to the insurer, agencies, lawyers, investigators, and other providers. This includes documents, decisions, requests, explanations, emails, notices, reminders, bills, medical reports, letters, notes of any phone conversations, diary entries or related information. As a victim of trauma, I need to see the information.*

Not arranging a meeting with the insurer's investigator.

If you look at this matter you will see that nobody has ever come to me and asked what it was about.

's statement shows the board colluded with the perpetrator and didn't talk to me, and didn't conduct an investigation or shield me from further bullying.

The insurer's investigator never even met me. For all intents and purposes, there was no investigation, by the employer or the insurer.

The investigator not putting to me the claims by the perpetrator before coming to a finding.

I was denied natural justice because a decision was made on things which had not been put to me. *This was a critical juncture.* The argument about what happened should have happened in that investigation. It did not. This resulted in argument becoming protracted. Preventable protracted argument is the opposite of what you are required to do, which is early intervention. Icare will apologise for their negligence. Workcover (now Icare) are the agency responsible for negligence not happening in the workers compensation system they control and regulate. It was made clear in the WIRO seminar youtube videos that psychological injuries are supposedly sensitive, and that Icare have taken these back, so you knew or ought to have known exactly what has been going on.

The failing to conduct an investigation of the employer's board minutes and workplace safety documentation

I had to subpoena the employer's workplace health and safety documentation and board minutes at the fair work commission. A simple examination of the board minutes discloses that the perpetrator briefed the board on " 's workers compensation claim" two days before I actually made one. It is not my responsibility to conduct the investigation, that's your job.

Allowing the perpetrator to contact me at home

After I had made a claim for workers compensation I was repeatedly contacted at home by the perpetrator.

I complained about this to the board president. They wrote back to me saying that the perpetrator was "within their rights" to continue to contact me at home.

Nobody did anything about this, not workcover, not the insurer, not my WIRO lawyer, nobody.

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Right before the workers compensation commission date I was contacted again by the perpetrator demanding that I return my phone, keys and laptop, saying that when I returned to work these would be given back to me.

Workcover allowed the bullying to go on and on. They haven't even returned any of my belongings.

Trying to force me to resign at the workers compensation commission in October 2015

Bullying a victim of bullying to resign at the workers compensation commission was disgraceful behaviour and I refused. You will apologise for bullying me to resign.

Interrupting my workers compensation hearing after the hearing had commenced to try to avoid a hearing which had not been avoided after I had refused to give in to further bullying from your lawyers to resign.

All you cared about at the workers compensation commission was trying to force me to resign. I refused to resign and so it went to a hearing, because you would not make any offer that did not include my resignation. We went into the room and the hearing started. We were in the middle of your lawyer crossing out lines of my statement while I was forced to sit in the room in silence and watch, when your lawyers phone rang.

The hearing was then stopped so that another offer could be made to me. There is no way this should have happened.

I was made an offer by which resignation was off the table, I got to keep my job, so I took it. I had the protections of an injured worker and you had to return me to a safe workplace. I walked out of there having kept my job.

You did not keep your end of that deal. What I agreed to was keeping my job. What I got was never working again ever for the rest of my life.

Creating an artificial settlement of a case in breach of your own guidance to lawyers

I refer you to the youtube video of Session 6 of the Sydney WIRO seminar 2016 by Paul Macken. Here is some of what he had to say.

"..so settlement became ridiculous and yet we still talk about settlement rates in the workers compensation commission. They're impressive solely because of the legal profession. The legal profession has become very very creative in the ways in which they approach the question of settlement, and frankly, in many many situations the concept of referring to a matter as being settled is a mis-statement because often its only a relatively small component of a statutory entitlement that actually is the subject of a settlement in the workers compensation commission.

*Where its something more than that, its because the legal profession has stepped in, **having been specifically discouraged from doing so by the then Workcover authority**, to compromise cases by clever means such as consent orders, from compromising admissions and agreed facts, these types of things to give a type of artificial settlement that at least gets the parties*

*in a position where hopefully they can **say goodbye** to each other for a long period of time, if not for good."*

Refusing to resign, and having resignation explicitly taken off the table, is entirely inconsistent with saying goodbye to the other party.

I saw this on youtube in mid 2017 with the perpetrator still at that time managing my case and personal information. I had no concept in the commission that what was being done to me was weird, tricky or non-standard. I got some money and kept my job. ***This was a critical juncture, and it was critical that my return to work went well.***

Failing to return me to a safe workplace

Having kept my job I then needed to be returned to a safe workplace. I wrote up what I thought that would take, and it was submitted as part of a workcover certificate because my certificate expired the Monday after the hearing. There had been no suggestion that I was no longer covered by a certificate or that anything else had changed that would interrupt Workcover providing a framework for getting injured workers back to work.

Disappearing after the hearing where I kept my job

Workcover disappeared after the hearing. Where were you?

Working hand in glove with the perpetrator to separate me from my employment by any means.

My WIRO lawyer at the time, _____, who I later sacked, explained it to me thus:

- The employer had instructed the lawyer at the commission to get my resignation
- When I refused to resign it went to hearing
- Upon discovering that it had gone to hearing, the Insurer decided to ignore what the employer wants and get a settlement without resignation (the workcover lawyer's phone call)
- The employer don't want me back at work, but now they will have to wear it

I can see why Paul Macken calls it an artificial settlement.

But the bullying to resign made it clear that there would need to be some assistance to return to work. So where was my assistance to return to work? Where was workcover? Why did I have to do my own return to work? I did not do very well at doing my own return to work, I ended up back in the workplace with no protection being immediately bullied and reinjured and, lest there be any doubt about whether the employer were OK with me coming back to work, straight out told to leave. I should have had something, anything, in place when I re-entered that workplace. Workcover allowed the employer to use their own lawyer to strip me of any protection. Obviously, my re-entry to that workplace was a very vulnerable time for me.

You let the perpetrator then be in charge of my return to work. You let the perpetrator hire their own industrial lawyer to start attacking me, and knock out a medical certificate by bullying my doctors.

I was forced back into the workplace with no protection by the employer's lawyer on 11 Nov 2015. The lawyer had knocked out the medical certificate and knowing I no longer had one told me if I didn't have a medical certificate to immediately return to work. When I showed up the next day, they feigned surprise. I did not have my phone, keys or laptop returned to me. I couldn't even get the login to my desktop computer. I was denied any duties, made to sit there doing nothing for five hours, and then the board chair tried to force me into a meeting with the perpetrator, then sent me home. *This was a critical juncture. At that time I had a letter from my doctor clearing me fit to work at my regular duties. Instead, workcover allowed me to be re-injured by the perpetrator who they were allowing to manage my claim. I should have been returned to a safe workplace. Workcover were absent and allowing the perpetrator to continue bullying me. The perpetrator were even using their own lawyers instead of the workcover process. The flow on effect has been that any real hope of ever working again has been lost. Workcover were negligent by being absent and allowing the perpetrator to be in charge of my return to work.* Following that round of bullying I was certified as only fit for suitable duties. Workcover allowed the perpetrator to use their own company lawyer to force me back to work so that I could be re-injured. Workcover facilitated the perpetrator removing me (literally refusing any duties and telling me to leave) from the workplace and onto workers compensation *a second time.*

All you cared about was separating me from my employment. After I refused to resign, Workcover, working hand in glove with the perpetrator who was managing the claim, found other ways to separate me from my employment. Those ways were to continue the psychological abuse, trauma and violence against me.

Sending me an acceptance of liability letter, and then taking it back.

I got an acceptance of liability letter dated 12th November 2015, the day after I had been re-injured in the workplace. But then workcover took it back!! I don't know how that happened, they just never paid weekly benefits.

You get up and say things at WIRO seminars and put them on youtube like people aren't watching. Jeffrey Gabriel, in his famous speech from Sydney 2017 where he describes compliance using a picture of a tumbleweed, he says-

"..that was insufferable then, and when you say something and take it back, its still insufferable".

How can you send me an acceptance of liability letter after I have been re-injured at work, I take it to my return to work meeting where you have allowed the perpetrator to attend, and rely on it in what are critical return to work discussions, and then you try to take it back? *Its not just insufferable, its psychological abuse, and its negligence.*

Allowing the perpetrator to breach the medical certificate

There was another attempt to return to a safe workplace on 23 November 2015. At that time I had a medical certificate saying suitable duties with no contact with the perpetrator, and a letter of acceptance of liability.

The perpetrator was allowed to attend my return to work meeting in breach of the medical certificate (substantiated by Safework NSW a year later, and a year too late). I was bullied by the

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board president. They refused to discuss workplace safety. When showed the letter accepting liability they denied that they were liable, got up and left.

I suffered a complete breakdown and my certificate became no work capacity.

Once again, where was any assistance to return to work?

Hearing my story and then ignoring it

You have done this on a number of occasions. You ignored both report #1 and report #2 of Dr , your own doctor, who said that with support I could return to work.

I even came to an injured workers support network meeting with your directors and told them about the employers board minutes and other documents I had got doing my own investigation because you hadn't done one. *I met from SIRA, someone from Icare and some other people. You listened to my story. You know who I am. You know what is going on. At that point, I even still have a job. You did nothing. You continued to allow the perpetrator to manage my claim.*

Delaying accepting liability until after the stop bullying hearing

You hadn't accepted liability so I couldn't get a stop bullying order, they weren't interested and pretended I had presented no evidence at all. But I had got the employers documents, which got liability accepted on review, but you delayed this until it was too late for me. I was unrepresented and it was hopeless.

Allowing the perpetrator to again attend my return to work meeting with the rehab provider, while I was excluded

Even after liability had been accepted for being re-injured by the perpetrator, you still let the perpetrator attend my return to work meeting around June 2016. I was excluded. This was a cruel betrayal, and it smashed me.

I had questions of how there was going to be a safe workplace, which I was excluded from asking. You answered with straight-out violence by taking the perpetrator to that meeting even after liability had been accepted.

Allowing the employer to discriminate against me on the basis of my disability by threatening to terminate my employment.

You allowed the employer to threaten to terminate me during the period of the current medical certificate if I didn't make my disability go away by a certain date. That was substantiated as disability discrimination by the Australian Human Rights Commission, who offered conciliation. The employer refused to conciliate, and terminated my employment while refusing to conciliate. The law said I could either go to the Federal Court or the Fair Work Commission, but I had to drop one. I could only afford to pay the admission price of the Fair Work Commission.

Allowing my termination to be a fait accompli

I was given until a certain date to respond to the letter threatening to terminate my employment. Before that date arrived the decision was made (it had really been made at the very latest on 14th April 2015), because the decision was made at a board meeting held before that date, so the employer admitted at the fair work commission, to terminate my employment. The bully as the manager of my case got what they had been going for since I first made a bullying complaint which was never investigated.

Allowing the perpetrator to terminate my employer, even while they were being investigated by Safework NSW

This boggles the mind. Liability had been accepted. The AHRC had substantiated. Safework NSW were investigating. I got terminated while the investigation was still happening. Workcover were there, on the ground, working with the perpetrator who was managing my claim, while I was terminated. That's hand in glove.

You didn't just take my job from me, you took away my ability to do anything about it at the relevant time.

Delaying the Safework NSW finding until after the unfair dismissal hearing.

After the unfair dismissal hearing where I was again unrepresented and hopeless, Safework substantiates! Two times there was a hearing and both times you delayed your result where I was vindicated until after the hearing.

Allowing the rehab provider to breach my privacy to the perpetrator

The last straw with allowing the perpetrator to manage my claim happened when the rehab provider sent an email to the perpetrator containing notes from a meeting between myself and my GP. It was sent to the perpetrator with the added comment to the effect "I think this will be helpful".

The perpetrator then submitted this email to the fair work commission as an attachment to their own, not the employer's, statement, hence the marking AR19.

This had been done without my knowledge or consent, and quite obviously any breach of any information of any kind about my claim to the perpetrator is a privacy breach. My complaints about this had been ignored the entire time but this was too much.

You are just piling more psychological abuse to see how high it would get. Eventually I became suicidal. You have, in fact, been trying to kill me.

Having separated me from my employment, trying to separate me from my weekly benefits.

No sooner had you breached your agreement that I keep my job, then the attacks started with sending me to the known abuser Dr . You paid him to separate me from my weekly

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benefits, which he duly did. These were eventually repaid, but with no explanation or apology, the money just showed up in my bank account one day six months later.

Repeatedly breaching guidelines

You breached the IME guidelines for the Dr appointment. I complained so you falsely backdated a letter and said it was an IMC appointment. I complained you were breaching the IMC guidelines too. So you sent a third letter saying it was a work capacity assessment.

I was told there was only ONE IMC in the state who did these appointments. That doesn't make the guidelines go away, you either have guidelines or you don't. You could have got the psychiatrist to travel instead of getting me to travel, for example.

Ignoring my privacy requests

As a victim of trauma, I need to see what was shared with the perpetrator. I need to see what you let the perpetrator do. Getting the correspondence and documents that went to and from the perpetrator is non-negotiable. Especially after they are submitting visits between me and my GP as surprise evidence. You let the perpetrator be the employer contact managing my case until at least August 2017, even after liability was accepted and Safework NSW had investigated, even after you had tried locking me up in a psych ward, even after I had been making privacy complaints for a year you STILL did nothing.

I had complained in my internal reviews and merit reviews that I had made a privacy request and was being ignored. You knew, everyone knew, and you did nothing.

Failing to conduct privacy reviews

Out of desperation I filled out all the privacy forms from scratch after waiting half a year on the forms on the Icare website. I also requested reviews. You failed to conduct these reviews. *You didn't even bother to conduct the reviews and give a perfunctory response, you just ignored it.* You are in breach of your very clear and straightforward obligations.

Failing to inform the NSW Privacy Commissioner of requests for reviews.

Your obligation to conduct requested privacy reviews is clear. You are even required by law to inform the NSW Privacy Commissioner when you receive a request for a review. You failed to do so.

Not consulting me on my injury management plan for two years.

Your obligation that injury management plans are made in consultation with the worker is clear. I complained about my injury management plans for two years before I was consulted. When I finally was consulted all you did was cut off my chiropractor and then come out with another plan which listed the perpetrator as the employer contact, but which didn't mention my treating psychiatrist, so *it is clear that your priority is working hand in glove with the perpetrator, rather than managing my*

injury. My injury had no chance to improve when it was not managed for two years. I still don't have an effective injury management plan, and now it is too late.

Medicating me instead of treating me

I don't want to be on medication, but I am now being medicated because of your negligence.

Dr 's report #1 said I could have been back at work in two months with help. You did not help me, you worked with the perpetrator to smash me with years of psychological abuse. I am now reliant on medication for my mental state.

I was being treated for psychomotor retardation and pain by my chiropractor without medication. You cut off my chiro, so now I'm reliant on pain medication.

Not discussing surveillance

I am clearly under surveillance, and I keep complaining about the cars stopping out the front of my house. This is mental torture. I have been seeking the surveillance information since December 2016. You won't even talk about it. You have not even bothered to deny it.

You will either release the surveillance information to me with an apology for the delay, have it destroyed and apologise, or you will explain how you left a person with massive anxiety and major depression who you tried to put in a psych ward twice, under the impression that you were spying on them for at least a year.

SETTLEMENT.

Accompanying any mere words, you will pay me \$25,000

Settlement is for the privacy/discrimination matter only and does not impact on my ability to make other workers compensation/common law claims.

I am still seeking access to documents, especially all the communication that went to and from the perpetrator and the insurer/workcover/doctors etc. We can talk about that separately, this document is focused on what the apology is about.

FURTHER COMMENT

Even with these apologies and payment, I do not really have a great deal of confidence or expectation that you have learnt much from this experience. But if you were to use some of these examples anonymously in your internal training of staff, I would not object.