



9 January 2017

Our Ref:

Dear

I write in response to your complaint dated 24 August 2016 to express your dissatisfaction with the management of a request for assistance to SafeWork NSW (SWNSW) on 3 June 2016. This Request For Service (RFS) raised multiple issues relating to the _____ to which you had been employed.

While I am aware that you have had regular contact with _____, Business Partner Customer Care, I would nonetheless like to take this opportunity to apologise for the delay in providing you with a formal response to this matter - that I understand had been further delayed as a result of SWNSW conducting a second comprehensive review of the internal policies at the _____.

In addition to your expressed dissatisfaction with the management of the RFS, I also understand that there are specific aspects of your workers compensation claim that have also caused dissatisfaction – responses to which you have also requested be included as part of this formal response.

These issues pertain to allegations that _____:

1. failed to comply with the medical restrictions;
2. failed to follow the internal Bullying Policy;
3. did not provide suitable duties or comply with return to work obligations; and.
4. intentionally caused harm and injury due to an accepted workers compensation claim.

Initially, I would like to respond directly to specific concerns that SWNSW took over 12 months to reply to your complaint.

A review of records confirms that a complaint for alleged bullying was first raised with SWNSW on 16 April 2015 (_____). It is important to note that all RFS requests are actioned in line with the *National Work Health and Safety Compliance and Enforcement Policy*.

By way of explanation, this policy sets out principles that underpin the approach that all work health and safety regulators take in response to complaints. In your specific matter a written communication was issued to _____ and no further action was taken by SWNSW. I also understand this was communicated to you; and separately to _____ on 17 April 2015.

A review of records indicate that the RFS of June 2016 (_____), while detailing examples of alleged bullying, was referred to an Inspector due to the stated return to work issues. As you know, Inspector _____ spoke with you following receipt of this request, where I understand no action was taken with respect to suitable duties because you had advised _____ that you did not have any capacity for work and that you did not regard this as a return to work issue.

However, despite not having capacity for work, Inspector _____ attended the _____ on 27 June 2016, to review the organisation's internal bullying policy. It was near this timeframe that the outcome of your separate request to the FWC to issue a *Stop Bullying* order against the _____ was determined.

I understand that the FWC found no evidence of bullying; and records indicate that SWNSW subsequently relied upon that assessment to determine that no further action was required by the state's work health and safety regulator.

I would like to take this opportunity to acknowledge that this decision was not correct. While a decision made by the FWC may inform matters that fall within the scope of SWNSW and the Work Health Safety Act 2011- it does not take the place of SWNSW as the state's safety regulator. I do apologise on behalf of SWNSW for any distress this initial outcome may have caused.

As you are aware, once this error was identified, a further comprehensive review of the _____'s Bullying Policy was conducted with the guidance of a specialised unit within SWNSW.

I would also like to take the opportunity to respond to those workers compensation matters that remained outstanding.

The allegation that that the _____ failed to comply with medical restrictions on your Certificate of Capacity by having the alleged bully in attendance at a meeting without prior agreement was found to be substantiated. While this issue had not originally been raised with your previous employer at the time, SWNSW has since engaged inspectors to liaise with the _____ to ensure they are aware of their obligations in this matter.

The concerns that the _____ failed to follow their internal bullying policy which you believe resulted in an injury and a workers compensation claim were also highlighted to the _____ by SWNSW. While it could be argued that your previous employer did not follow the Policy because you were on leave at the time the grievance was submitted, SWNSW remains available to advise _____ on any enhancements to its Bullying Policy to prevent a repeat of this occurrence.

As noted earlier and advised at the time - the decision to not take further action in regard to suitable duties was made based on the detail of your medical certificate that stated you had no capacity to work.

While I understand the outcome of the separate matter with Fair Work into allegations of unlawful termination is still pending, I would like to advise that SWNSW will make an Inspector available to you should your employment be reinstated. Please advise [redacted] if your employment becomes reinstated so that [redacted] can arrange this direct contact support.

Although I do acknowledge your view that the [redacted] intentionally caused harm and injury due to an accepted workers compensation claim, the test of 'beyond reasonable doubt' was applied to those allegations. It is evident that decisions made for the purpose of workers compensation claims are not aligned to those for the purpose of work health and safety law.

I do hope this information is of assistance to you in assisting to bring about finalisation to those matters arising from your request for Assistance.

However, if you are dissatisfied with this response you may wish to discuss your concerns with the NSW Ombudsman. The Ombudsman can be contacted by telephone on [redacted], emailing them at [redacted] or searching their website at www.ombo.nsw.gov.au for further information.

Yours sincerely

Manager, Customer Care
SafeWork NSW and State Insurance Regulatory Authority