

Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry Portfolio
Budget Estimates Hearing 2014-15
2-3 June 2014

AGENCY/DEPARTMENT: CSIRO

TOPIC: Bullying Investigation by Professor Pearce

REFERENCE: Written Question – Senator Wright

QUESTION No.: BI-86

1. Is it the case that Professor Pearce was not empowered to make findings of misconduct?
2. Is bullying classified as misconduct under the agency's Code of Conduct?
3. What is the total amount of money that CSIRO has spent, to date, on the investigation?
4. Will any further costs be incurred?
5. In his Phase 2 'General Findings' report, Professor Pearce made two recommendations that misconduct proceedings should be commenced. Has CSIRO commenced misconduct proceedings in these two cases?
6. What level were these two staff classified at ?
7. Professor Pearce also noted that there were a number of other persons whose behaviour was not 'above reproach'. Is CSIRO aware of who these people are?
8. Will CSIRO hold any managers, supervisors or Human Resources staff accountable for behaviour which Professor Pearce assessed as not 'above reproach'?
9. What process has CSIRO established to obtain feedback from people who participated in the investigation?
10. How many complaints has CSIRO received, regarding how the investigation was conducted?
11. How many current staff who made submissions to the Pearce Investigation are in line for redundancy?
12. Was Professor Pearce empowered, in Phase 2, to investigate allegations relating to the failure of supervisors, executives, managers or HR staff to appropriately address complaints about bullying or unreasonable behaviour?
13. How many supervisors, executives, managers or HR personnel who were employees of CSIRO at the time of the Pearce Investigation were the subject of complaints in Phase 1, but were not investigated in Phase 2?
14. In his Phase 1 'General Findings' report, Professor Pearce stated that '130 discrete allegations were received'. Did that number include all allegations made against supervisors, managers, executives and HR staff for not appropriately acting on complaints, or did it exclude those allegations?
15. How many submissions received in Phase 1 contained allegations about Dr Clarke's conduct?
 - a. How many of these allegations were investigated in Phase 2?
16. Is CSIRO aware of any resignations from the agency, because of unresolved complaints?
17. Are CSIRO or investigators providing participants with their individual reports on the Pearce Investigation?
 - a. Are there any cases where participants have been refused access to their Phase 1 or Phase 2 individual reports?
 - b. If so, why has such access been refused?
18. Professor Pearce submitted a number of reports/documents to CSIRO including a Phase 1 General Findings Report, a Phase 2 General Findings Report, Phase 1 Individual Summary Reports and Phase 2 Individual Summary Reports. Did Professor Pearce submit other documents to the CSIRO board?
19. Does the agency anticipate receiving any further reports from Professor Pearce?

ANSWER

1. Under the provisions of CSIRO's Enterprise Agreement and CSIRO's Misconduct Procedure, any formal finding of misconduct must be made by a CSIRO Senior Manager. As a consequence, noting that Professor Pearce is not an employee of CSIRO, the Terms of Reference for the investigation led by Professor Pearce provided for him to:
 - investigate claims of workplace bullying and unreasonable behaviour by CSIRO staff members and affiliates [where the definition of 'workplace bullying' recommended by the Parliamentary inquiry into workplace bullying in 2012 which is 'workplace bullying is repeated, unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety'; and the definition of 'unreasonable behaviour' is behaviour (other than workplace bullying) that is:
 - (i) directed towards a worker or group of workers; and
 - (ii) unreasonable having regard to the standards of conduct described in the CSIRO Code of Conduct as it applied at the relevant time];
 - to provide reports on each submission which contained an allegation of workplace bullying or unreasonable behaviour that is alleged to have occurred wholly or substantially on or after 1 January 2006 (as well as reports of general findings including lessons to be learnt and recommendations for improvements to CSIRO policies, processes and practices);
 - and for the investigator's findings and recommendations following the investigation of workplace bullying and unreasonable behaviour submissions during Phase 2 of the investigation to be used by CSIRO to determine whether there is evidence of misconduct by any current CSIRO staff members or affiliates and, if so, the appropriate processes to be taken.

The resulting information and recommendations from the work undertaken by Professor Pearce has been used to inform misconduct processes where appropriate.

2. Yes
3. CSIRO has paid HWLE \$4,454,498.09 (including GST) for fees and disbursements, in relation to the Pearce Investigation.
4. No.
5. Yes in relation to one of these cases. In the second case, the appropriate internal processes that precede an Inquiry under CSIRO's Misconduct Procedure are underway.
6. Middle level management.
7. Yes.
8. Yes, CSIRO is committed to implementing the recommendations made to it by Professor Pearce. This will include informing relevant staff of assessments made by Professor Pearce and implementing recommendations for counselling and training.
9. CSIRO has not established a separate process to obtain feedback from people who participated in the investigation, including because due to privacy constraints CSIRO does not have a comprehensive list of people who participated. CSIRO is however open to receive such feedback and has already received from some submission authors feedback about the

Investigation, as well as additional queries. This has occurred either in response to the author receiving a letter from Professor Pearce or following a subsequent letter from CSIRO to advise the author in relation to CSIRO's decisions and actions following Professor Pearce's recommendations to CSIRO in their matter.

10. CSIRO has received comments (including complaints) from 10 people who have indicated that they made submissions to Independent Investigation. These comments have been either directed to the Independent Investigator and copied to CSIRO and/or in correspondence directed specifically to CSIRO. As Professor Pearce noted would be the case in his Final General Findings Report (see Section 2.8.2), it is not unexpected that there are some submission authors who have complaints as it is inherently the case that some persons will consider that the outcome from the Independent Investigator's consideration of the allegation is not the outcome that they sought.
11. It is not possible to be definitive about this answer because submissions were made directly to Professor Pearce and CSIRO is not aware of the identity or content of some of the submissions (see explanation in the final General Findings Report, Section 2). CSIRO is currently responding to the 2014-15 budget and whilst detailed planning is underway in relation to that, it is too early to do meaningful analysis to cross-correlate the names of current staff who made submissions, where that is known, with staff who have been advised as being potentially impacted in order to estimate the answer to the question. The redundancy process is separate from information as to whether the staff members made submissions to the Pearce Investigation and the decision-makers in relation to a redundancy will, in the majority of cases and depending upon the confidentiality under which the submission was made (and depending on any disclosure made by the staff member themselves), not have access to information as to whether a staff member had made a submission to the Pearce Investigation.
12. Yes.
13. For several reasons, it is not possible to give a meaningful numeric answer to this question. Firstly, the Terms of Reference provided that complaints from current staff members against current staff were not in scope for Phase 2 investigations. (The Terms of Reference were set this way as there are existing internal procedures for those matters to be progressed. Current staff members were able to make submissions, in relation to current staff members, in order to inform the General Findings Reports but not for further investigation through the independent investigation process. However several such submissions by authors who were current staff members did, upon recommendation from Professor Pearce, progress to Phase 2 investigations pursuant to the modification of the Terms of Reference made in October 2013). The second reason is that for people who made confidential submissions, CSIRO has only been provided with redacted information in relation to both the personal information of the submission author and the personal information of the persons named within those submissions, and is therefore unable to answer the question in relation to any such cases.
14. CSIRO is informed that the '130 discrete allegations' included all allegations identified by Professor Pearce from the 110 submissions.
15. Three.
 15. a. As one of the submission authors identified for further investigation in Phase 2 declined to provide the necessary privacy approvals required for that investigation to proceed, only two of the allegations involving Dr Clark (amongst other staff members) were investigated during Phase 2. For completeness, it was Professor Pearce's assessment that neither of the allegations against Dr Clark were substantiated.
16. No.

17. Professor Pearce has written to each of the submission authors whose concerns were investigated during Phase 2, outlining the conclusions of those investigations and in general terms the recommendations made to CSIRO. CSIRO has also written to most of the submission authors in relation to CSIRO's decision in response to the recommendations made to CSIRO and any ongoing process. When requested, CSIRO has provided participants with their individual reports subject to privacy obligations owed to third parties.
 - a. No. CSIRO has been willing to provide a copy of the relevant report under a confidentiality agreement and following appropriate redactions to comply with privacy requirements.
 - b. Not applicable.
18. Yes, at the end of Phase 1 Professor Pearce provided three Individual Summary reports to the Chairman of the Board. Professor Pearce also met with the CSIRO Board in person.
19. No.