

Opening Statement

This statement addresses two matters:

1. issues relating to my personal health that have recently been aired publicly; and
2. a speech delivered by Senator Cameron on the evening of Tuesday, 2 February 2016.

I feel that I should place a response on the record.

On Thursday, 12 November 2015, I was diagnosed with a medical condition which regrettably did not improve and I suffered a relapse on Friday, 4 December. Over the course of that weekend, I felt it best for the agency and my ongoing health that I retire as Director, Fair Work Building and Construction (FWBC). Accordingly, it was my intention to write to the Minister and provide four weeks' notice of my intention to retire. I drafted a letter to that effect which, at that time, I had full intention of sending it to the Minister.

At 7.07 am on Monday, 7 December 2015, I informed staff via email sent from my home that I had been dealing with a health issue and intended to retire in order to concentrate upon my health. I did not submit my resignation to the Minister.

Upon arrival at the office, and speaking with colleagues, I decided to take an extended period of personal leave to focus on getting better.

Later that morning, I had a conversation with the Minister's Office. I explained that I had become aware I might be able to take a period of personal leave with the Minister's agreement. As an alternative to retirement, I asked that consideration be given to taking some extended leave. I felt that it would afford an opportunity to assist my recovery and also determine whether I would be fit to work. At 1.51 pm that day, I sent an email to the Minister's Office to that effect.

At 2.34 pm that day, I received an email from the Minister's Office informing me that the Minister had indicated she would agree to such an arrangement. Never, at any time, did I speak with the Minister about this matter.

At 3.38 pm that day, I informed FWBC staff that I had prepared a letter expressing an intention to retire but, as an alternative, I had decided to take a period of extended personal leave with the Minister's agreement.

As a result, I did not tender my resignation to the Minister. The Acting Secretary Sandra Parker approved my personal leave (with medical certificate) from 4 January to 31 January 2016.

At 8.55 pm on Tuesday, 2 February 2016, Senator Cameron addressed the Senate about Fair Work Building and Construction (FWBC), under my leadership. He stated it was mired in administrative incompetence, cronyism, bias and partiality in the exercise of the agency's functions. Senator Cameron also stated that FWBC operates under a culture of bullying and harassment.

I now propose to respond to Senator Cameron's allegations.

In terms of **bullying and harassment**, I can state that in February 2015, I informed this Committee that a survey of FWBC staff was conducted following my appointment in October

2013. This survey was not the APSC's annual *State of the Service Survey*. Rather, it was a survey carried out, at my instigation, by an independent consultancy. The purpose of the survey was to take a 'snapshot' of FWBC culture prevailing at the time of my taking over as Director.

As a result of the survey's results, I directed that an independent review into bullying and harassment be carried out. Following the Review, a Bullying and Harassment Plan was developed. Every month, FWBC's Executive Team reviews progress against this plan.

From November 2014 to January last year, face-to-face Bullying and Harassment Awareness Training was delivered to all staff including management and the SES.

An online module has been developed which all staff are required to complete annually.

Leadership development and performance management training was delivered between April and August last year to all staff with managerial responsibilities to help deal with people issues, including bullying and harassment.

FWBC's HR Unit now regularly publishes Intranet articles about bullying and harassment including myths and facts, practical scenarios, reporting requirements and raising general awareness.

I have regularly updated staff on how the agency is progressing with bullying and harassment issues. Updates are carried out at staff meetings and through the distribution of minutes of the monthly Executive Team meetings.

In the October 2015 Estimates hearing I informed the Committee that bullying and harassment had come down 50% in the previous 12 months. I based that figure on the APSC Annual Surveys. FWBC now experiences a much lower record of bullying and harassment than the APSC average – 12% for FWBC compared with 17% for the APS. Moreover, the figure for 2014-15 was reduced by almost 50% when compared with the 2013-14 Survey.

Senator Cameron went onto allege that I am currently seeking to cover up whether improper payments have been made to a former **APS SES officer**. Senator Cameron asserts:

1. the officer's employment was terminated after an APS Code of Conduct investigation conducted by the agency found he had engaged in "corrupt behavior". Senator Cameron later retracted this particular allegation and said that this was not his characterisation of the officer's conduct; and
2. FWBC reported to the Australian Public Service Commission that the officer had behaved corruptly. The definition of "corruption" in that survey included "theft or misappropriation of official assets".

FWBC reported to the APSC in the State of the Service Report of one investigation for corrupt behavior.

The facts are that the officer resigned before a Code of Conduct investigation into an allegation of theft from workmates/colleagues could be completed. As a result, there was no determination of a Code of Conduct breach or finding made against the officer in the investigation. Furthermore, there was no ex gratia payment made to the officer. In light of these issues, I am also mindful that any further substantive comments about this officer, now a private citizen, may adversely affect their reputation and employability.

On Tuesday, 2 February 2016, Senator Cameron went on to tell the Senate that since I was appointed Director of Fair Work Building and Construction, **sick leave and unscheduled**

absences per employee have doubled to levels that are amongst the highest in the APS. This claim is factually incorrect.

I can say that as a small agency, FWBC can be affected by the circumstances of a few people, for example, experiencing chronic illness or injury, including workers compensation. In 2013-14 and again in 2014-15, FWBC had a number of individuals who had long periods of absences with serious illnesses. As a result, the average number of days of unscheduled absence per employee was between 71 and 73% higher than the previous two years. It was not, contrary to what Senator Cameron told the Senate, double the levels. Regardless, FWBC has implemented a number of initiatives to address unscheduled absences, including:

1. raising awareness by posting a suite of Intranet articles about unscheduled absences;
2. improving absence management metrics provided to the Executive Team to provide more accountability;
3. distributing ongoing reports to Team Leaders that outlines absenteeism data;
4. training Team Leaders about the cost of unscheduled absenteeism and how to manage absences, including their responsibilities; and
5. managing workplace attendance more proactively, particularly when participating in APSC's centralised monthly data collection and reporting process.

I am pleased to report that APSC's latest, newly revised monthly reporting regime shows that FWBC's annualised 2015-16 personal and miscellaneous leave rate has gone down from 14.3 days in 2014-15 to 12.9 days. The 12.9 days compares reasonably favourably with the overall APS average of 12.2 days.

In addition to the improvement in absences just mentioned, I dispute that there is anything deeply wrong in FWBC's workplace. For instance, in the latest APSC survey of staff, FWBC was found to have:

1. high levels of satisfaction with agency and team engagement, both levels being above overall APS averages;
2. improvement in employee understanding of APS Values and Code of Conduct;
3. high levels of satisfaction with colleagues, supervisors and the agency acting in accordance with APS Values. All of those categories were above overall APS averages. For example, in the category of Senior Leaders acting in accordance with APS Values, FWBC rated 76%. The overall APS average is 69%;
4. an average increase of 14% in employee perceptions of their managers' behaviours.

Senator Cameron claimed that FWBC "operates under a culture of bullying and harassment... a culture in which complaints are ignored, perpetrators are protected and victims are punished."

I have provided evidence that FWBC does not have a culture of bullying and harassment.

As for the contention that complaints are ignored, I say as follows:

- In 2013-14 there were 2 complaints alleging bullying and harassment. One was investigated and found to be unsubstantiated. The second was resolved by mediation.

- In 2014-15, there was one complaint alleging bullying and harassment. Mediation took place at the Fair Work Commission on 7 August 2015 and 5 days later, on 12 August, the person withdrew their application.
- In 2015-16, there have been two complaints alleging bullying and harassment. Both matters were investigated and found to be unsubstantiated.

I totally refute Senator Cameron's assertion that perpetrators are protected and victims are punished. I take all claims of bullying and harassment or improper behaviour extremely seriously and would like to ensure that these allegations are investigated.

Following the Bullying and Harassment Review conducted in early 2014, there has been an increased emphasis on employees' adherence to APS values. FWBC makes no apology for upholding the APS Code of Conduct, particularly as we are an agency that enforces workplace laws. Consequently, all alleged breaches are taken seriously and addressed in line with FWBC policy and the *Public Service Act*.

Suspected breaches are closely assessed to clarify whether the suspected conduct warrants further review, or whether it is appropriate to be addressed through informal mechanisms, in order to ensure consistency in the treatment of matters across the agency.

In most cases, the employee who investigates suspected Code of Conduct breaches will be from FWBC's Professional Standards Unit. This small team is ordinarily involved in Quality Assurance Reviews and internal audits.

Senator Cameron cites a case of employees being dealt with for **unauthorised parking of cars** at Fair Work's Sydney office.

I can state that four employees were the subject of a Code of Conduct investigation for alleged breaches of the APS Code of Conduct, in that they had failed to:

1. behave honestly and with integrity in the course of their employment;
2. comply with a lawful and reasonable direction; and
3. behave in a way that upholds the APS Values and employment principles, and the integrity and good reputation of FWBC and the APS.

As a result of the investigation, the allegations against two employees were not substantiated. Investigations into the other two employees were substantiated. Owing to the serious and persistent nature of the breaches by one of the individuals, that person was dismissed.

Senator Cameron made reference to one employee having made and passed on multiple bullying complaints to management. This is correct. They were dealt with, as are all complaints within FWBC. An SES officer from another FWBC office investigated these complaints and they were found to be unsubstantiated.

Senator Cameron has spoken of two current **proceedings in the Federal Circuit Court** to which the Director of Fair Work Building and Construction is the respondent. This is correct although the actions are in my capacity as CEO and not me personally.

Senator Cameron states that he is "led to believe bullying and harassment are significant issues". This is not correct. Both cases involve administrative law and are applications for judicial review.

Senator Cameron concludes by stating that I am '*spending tens of thousands of dollars of taxpayers' money on expensive private lawyers to defend these matters and prevent public*

disclosure of the facts behind these cases.' It is true that money is being expended in vigorously defending these matters. The law firm is engaged from the whole of Government legal panel as are all law firms engaged by the agency.

Senator Cameron sought access to documents filed in respect of one matter. This was not granted by the Judge hearing the matter. In summary, the Judge noted that:

- it was difficult to understand the applicant's documentation;
- release may disclose other employees' personal information;
- the employee applicant opposed publicly naming themselves and the person who was the subject of the applicant's conduct;
- the documentation contained much that was not admissible as evidence or relevant for judicial review proceedings;
- it was unclear whether persons would be safe from defamation; and
- court process was not to be used for "hyperbole or wild allegation".

Consequently, access was denied by His Honour.

In summary, I categorically reject the assertions made by Senator Cameron. In this statement I have provided an evidence based response, much of which is supported by independent data supplied by the APSC. To highlight, since 2013 I have instigated initiatives that:

- have driven down bullying and harassment by 50% to levels that are now significantly better (29%) than the broader APSC;
- reduced unscheduled absences to a current 12.9 days more in line with a slightly lower 12.2 days for the overall APS; and
- ensure the FWBC investigates and acts on conduct that is contrary to APS values.

We will continue to uphold the APS values. I make no apology for taking that stance. In the meantime, the abovementioned indicators highlight an agency that has paid significant attention to culture and professional administration under my leadership since October 2013.