

## Senate Standing Committee on Education and Employment

### QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

#### Agency - Fair Work Commission

Department of Employment Question No. EMSQ17-004106

Senator Abetz asked on 30 May 2017 on proof Hansard page 13

#### Question

##### FWC - Ms Wells presiding over anti-bullying cases

Senator ABETZ: . I note that a Mr Darren Harpham alleged that when he was being terminated by the CEPU in 2012 and offered a new job elsewhere at a lower salary, Ms Wells allegedly told him:

You—

expletive deleted—

idiot, you will take the job ... or I will terminate you.

When Mr Harpham then asked for a week's leave to think about it, Ms Wells allegedly slammed her fists on the desk and said again:

You're a—

expletive deleted—

idiot.

In light of the public allegations about Ms Wells, do you or the president have any position on whether she should sit on anti-bullying cases?

Ms O'Neill: I cannot speak for the president, and it is not really appropriate or my role to have a view.

Senator ABETZ: All right. If you could then take that on notice for the president to answer. I accept your answer in relation to your responsibility. Then, if we can ask the president on notice, or remind the president, that a federal court ordered the CEPU to pay Mr Harpham over \$30,000 after he was underpaid his entitlements by the CEPU at the time of his termination, whilst Ms Wells was acting secretary of that union. So I ask on notice whether the president has any concerns that Ms Wells was involved in the underpayment of an employee's entitlements and allegedly involved in paying herself and her partner an unauthorised redundancy overpayment? I will leave that on notice for the president.

Ms O'Neill, I note in the 'guiding principles' of the Fair Work Commission's members' code of conduct that:

The principles applicable to Member conduct have three main objectives:

- to uphold public confidence in the Commission and in the administration of justice
- to enhance public respect for the Commission, and
- to protect the reputation of ... the Commission as a whole.

I ask whether it is believed by the Fair Work Commission or the president that Ms Wells has abided by these guiding principles. I will ask you to take that on notice.

#### Answer

The President of the Fair Work Commission (Commission) understands the 'public allegations about Ms Wells' referred to by Senator Abetz, to be a reported allegation of 'workplace bullying and intimidation' from Darren Harpham in an article in *The Australian* on 4 July 2015.

The President is informed that the Hon. Tracey J made no finding of bullying or intimidation by Ms Wells in his decision in the Federal Court matter concerned, *Harpham v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2016] FCA 1472 (8 December 2016) (*Harpham v CEPU*).

The President noted in the Estimates hearing on 30 March 2017 that it is open to any party to a matter before the Commission to 'make an application to the Member' (to recuse themselves). Such an application was made to Deputy President Wells in an anti-bullying matter on the basis of a reported allegation of bullying by Mr Harpham. In a decision published on 29 October 2015, Deputy President Wells dismissed the recusal application finding it to have no basis.<sup>1</sup> That decision was not appealed or otherwise challenged. A copy of the decision is available at: <https://www.fwc.gov.au/documents/decisionssigned/html/2015fwc1858.htm>

The President is informed that Senator Abetz' statement that Mr Harpham 'was underpaid his entitlements by the CEPU at the time of his termination, whilst Ms Wells was acting secretary of that union', does not appear an accurate characterisation of the findings in *Harpham v CEPU*.

Senator Abetz also states that Ms Wells was 'allegedly involved in paying herself and her partner an unauthorized redundancy overpayment.'

The President expects that whether or not Ms Wells was 'involved in' the making of the payment to herself or to Mr Harkins and whether those payments were 'unauthorised' will be investigated by the Registered Organisations Commission as part of the investigation that it is presently conducting under s.331 of the *Fair Work (Registered Organisations) Act 2009*.

The President notes that, as a code of conduct for Commission Members made pursuant to *Fair Work Act 2009* s.581B, the Commission's Member Code of Conduct does not deal with conduct by a person prior to their appointment to the Commission.

In any case, the President considers that it would be inappropriate to express any view as to whether Ms Wells has 'abided by' the principles in the Member Code of Conduct, on the basis of:

- a reported allegation of bullying on which no finding was made and which the Deputy President found, in an unchallenged Commission decision, not to disqualify her from dealing with an anti-bullying matter;
- an inaccurate characterisation of the findings of the Federal Court; and
- allegations that fall within the scope of an investigation presently being conducted by an independent statutory agency.

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<sup>1</sup> *Ms Rachel Roberts v VIEW Launceston Pty Ltd as trustee for the VIEW Launceston Unit Trust T/A View Launceston; Ms Lisa Bird; Mr James Bird* [2015] FWC 1858