



Australia's National Workplace
Relations Tribunal

24 June 2015

Michael Lawler
Vice President
Fair Work Commission

The Honourable
Justice Iain Ross AO
President

by email:

Dear Michael,

Absence due to illness

Thank you for your email of 16 June 2015, responding to my letter of 29 May 2015.

I note your agreement that, should your doctor advise you to take a further period of sick leave at your consultation on 26 July 2015, you will provide me with a report from him regarding your prognosis, including when you might be expected to return to work on an on-going basis and whether you may require any transitional workload management arrangements when you return to work.

There are some points that I wish to make in response to your email.

Firstly, I note your description of the sustained stress that you have been subject to and I reiterate my genuine concern for your wellbeing.

In relation to Members' sick leave generally, I reject the suggestion that I made any statement to you to the effect that you had an unlimited entitlement to sick leave. I do not consider that any Member has an unlimited entitlement to sick leave. As President, my approach has been to deal with requests for sick leave on a case by case basis, on their merits. That said, I certainly encourage any Member who is unable to properly perform his or her duties due to illness, to request sick leave or other forms of leave that are available. I will continue to consider such requests on a case by case basis.

I also need to comment on your involvement in the litigation involving your partner, Ms Jackson. I appreciate that you have not sought media attention and that you do not wish the Commission to be damaged by public controversy.

Importantly, I note your repeated assurance that you ceased to have any involvement in your official capacity with matters involving your partner, the HSU or the health industry long before there was any controversy surrounding the HSU.

In relation to you assisting your partner with the litigation, I reiterate the point I have made to you on previous occasions, a clear separation must be maintained between your position as a Member and your family commitments.

I note that on 7 July 2014 I wrote to you following your participation in Federal Court proceedings involving your partner, informing you of my view that further participation in those proceedings or in other proceedings involving your partner would not be consistent with the principle that Members should avoid involvement in matters of public controversy. At that time you explained the exceptional circumstances that led to your attendance at the Federal Court on 20 June 2014 and provided me with an assurance that you would not participate further in those proceedings or in other proceedings involving your partner. You also confirmed that you had not utilised and would not utilise Commission facilities or resources in assisting your partner.

You have suggested that merely accompanying your partner to a hearing is not newsworthy and ought not to be something that could cause damage to the reputation of the Commission. However, that clearly is not the case. Rightly or wrongly, your involvement in these proceedings will continue to attract significant media attention and raise questions for the general public about the propriety of your involvement, particularly if you remain involved whilst on paid sick leave from the Commission.

In my view the reputation of the Commission, and your own standing as a Member, is being damaged by your continuing public involvement in the proceedings involving your partner. Your attendance at these proceedings is inconsistent with the principle that Members should avoid involvement in matters of public controversy and accordingly you should cease attending the proceedings in any capacity.

Finally, you asked about my response to the complaint about your conduct of a s.372 matter. I have not raised this matter with you while you have been on sick leave, in

accordance with your expressed wishes. You will recall our telephone conversation last year in which you made it clear that any contact by me while you were on sick leave exacerbated your illness and you asked that I cease all contact. In deference to your wishes, I have not sought to contact you about this complaint while you are on sick leave. Whilst I have exchanged some correspondence with the complainant, I have not yet provided a substantive response. Given that details of the complaint and of my correspondence with the complainant have now been published in the media, I am making arrangements for an external complaint handler independent of the Commission to investigate the complaint and report to me.

You may recall that the procedure to be followed by an external complaint handler is set out in the *Procedure for Dealing for Dealing with Complaints about Members*, published on our website at:

<https://www.fwc.gov.au/about-us/contact-us/complaints-feedback/procedure-dealing-with-complaints-about-members>

I will write to you with further details once the arrangements with the external complaint handler are in place.

Yours sincerely

JUSTICE IAIN ROSS AO
President