

CORRECTED VERSION

CLOSED PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION COMMITTEE

Review of protected disclosures

Melbourne — 20 February, 2017

Members

Mr Kim Wells — Chair

Mr Simon Ramsay

Ms Marsha Thomson — Deputy Chair

Mr Tim Richardson

Mr Sam Hibbins

Ms Jaclyn Symes

Mr Danny O'Brien

Witness

Ms Karen Burgess.

The CHAIR — I will open the meeting. Thanks for your attendance. Karen Burgess, thanks very much for your time. We really appreciate it. I need to read a statement for the benefit of Hansard. This is a closed hearing, and we understand that part of it will go into camera. So if you just notify us, we will work out the process for that to happen.

Welcome to the closed hearing of the Independent Broad-based Anti-corruption Commission Committee. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in other Australian states and territories.

This hearing is closed to the public; however, it will be transcribed by Hansard and the transcripts will be published when the committee tables its report in Parliament. However, it is important that you note that any comments you make outside the hearing, including effective repetition of what you have said in evidence, may not be afforded such privilege. Have you received and read the guide for witnesses presenting evidence to parliamentary committees?

Ms BURGESS — Yes.

The CHAIR — It is also important to note that any action which seeks to impede or hinder a witness or threaten a witness or the evidence that they would give or have given may constitute and be punishable as contempt of Parliament. We are recording the evidence, and we will provide a proof version of the Hansard transcript at the earliest opportunity so you can correct it as appropriate. I would like you, if you are able, to make a verbal submission or comment, and then we can ask you questions after that. Once again, we really appreciate your being here.

Ms BURGESS — My name is Karen Burgess. I have been deemed the Aspect whistleblower on account of reporting issues that were happening at a disability worksite in Victoria. Following that there are a number of departments that I went to to seek help. One of the departments that I went to was IBAC. I am here today to basically talk about my experience in that process and what happened in trying to get some assistance with what I believed was criminal activity that was occurring at the worksite. Shall I just move on to the questions?

The CHAIR — Yes, absolutely.

Ms BURGESS — Do you want me to read the question out?

The CHAIR — You could just say, ‘question 1’. Has everyone got their questions?

Ms BURGESS — In relation to question 1 and how I went about reporting the wrongdoing, I extensively raised issues internally with the organisation I was working for. I had a long history of working in disability services, which included many years working for the department of human services as a manager in their accommodation services, so I was well aware of the current legislation and the current practices that should be operating in the disability industry.

When it came to the worksite, what I was seeing I knew should not have been happening. I took all measures I could within that role to go straight to the executive team and the CEO of the company to ensure that they were aware of or made aware of what was happening.

The CHAIR — Is it appropriate to talk about what you actually saw?

Ms BURGESS — I think what I actually saw is really heavily documented in other submissions. I put in a submission to the autism services, and I have detailed the events that occurred. It was anything from the abuse of clients to the Disability Services Act in Victoria not being fulfilled to restrictive interventions not being appropriately applied. There were huge questions over the accounts that I was seeing. What I saw was that there was not one part of the organisation that was functioning effectively, and I was questioning those systems.

I reported and spoke to each department internally within the organisation as well, trying to seek help — for example, work health and safety. I spoke with HR. I spoke with the Victorian manager. There was not one person that did not know within the organisation that I was very concerned about what was happening at this site.

In relation to whether or not there was a whistleblowers policy, I do not believe there was a whistleblowers policy. But I think the issue too is that, even had there been, the question I had was, would they have really followed it, because even the internal policies and procedures of the organisation I did not see being effectively managed or implemented. So I am not sure even if they had a whistleblowers policy that it would actually have been implemented appropriately, because I did not see the systems of this organisation being effectively policed or effectively monitored.

There was a paper format about how operations needed to occur, but practically what was happening was far different from what was actually happening. Until bodies that are responsible for overseeing that come in and effectively target why that is occurring, I guess you can write whatever policy you want. Until people are made accountable for these policies and what is happening, you are not going to get change. I think underlying all of what has happened in my story, that has been a huge theme that kept repeating itself. It did not matter what area I was discussing — whether it was work health and safety and the rights of workers or whether it was the abuse of clients — people knew what was meant to be happening. They just were not performing to the standard.

Just on question 1 too, for the points of the processes that I went through to complain internally, my points of claim highlighted all the legal complaints that I made, and they were extensive. That is from the unlawful termination that I went through. There were a number of points that the lawyers could point out specifically that I made lawful complaints to this organisation that were not followed up on and were not actioned appropriately.

At the time when I suspected the wrongdoing was I aware of any external channels? Yes, I was, and before I went to the disability commissioner I wanted to be assured that I did everything I could internally to get a response and get action taken internally — before I went to the disability commissioner. I decided to go to the disability commissioner when I felt that the organisation was not taking appropriate corrective action.

The CHAIR — So did you notify the organisation that you were going to the disability commissioner?

Ms BURGESS — I had a discussion with the counsellor from EAP. I had a discussion with my manager about the next steps if the CEO was not going to take action, because there were a few conversations that I had had with my manager suggesting that reports were not getting made. In particular the report about the box, the structure of the box and the containment of people in this box. It was the responsibility of the CEO to report that to the disability commissioner himself. As I understand it, and from the feedback I got, that had not happened. When I went through my manager and asked him why had that not happened and said we needed to now action it if that action is not going to be taken, I think I made my intentions very clear about where we should be heading with this. I do not think anyone was under any illusion that I was not prepared to take it further if the organisation was not going to do it themselves.

Mr RAMSAY — I presume it is a not-for-profit organisation?

Ms BURGESS — Yes.

Mr RAMSAY — Has that had a history of complaints from other staff members in relation to work practice?

Ms BURGESS — Yes. I will talk about the reporting processes that were happening. As far as I understand it was well known of the practices of this particular worksite. This particular worksite was originally Alpha Autism. Then Autism Spectrum had taken it over, and as I understand it there was a long history of complaints regarding this service and the Department of Health and Human Services was aware of that and had had multiple conversations with the incoming service provider, Autism Spectrum, about their concerns about this service and how they would manage it in the future.

Mr RAMSAY — So have there been others who have been terminated on the basis of agitation, I guess?

Ms BURGESS — Yes. Right. So at the same time that I was making complaints about what was happening, there was another worker who was also making complaints about what was happening at the workplace, and she was terminated as well. So it was not just me. I think I have just continued to raise my concerns, whereas the other person who was terminated decided to stop. That is all.

I started working at Autism Spectrum on 7 April, and it was very clear to me the worksite was not performing to the standard that it was meant to be meeting. Fourteen days later I started raising my concerns with my then

manager. The issues that were occurring at the worksite were blatant. As I said, I believe the state government was already made aware of it, and in my discussions with the government and its representatives there was a long history of this worksite having ongoing issues.

The system is unable to investigate itself, so when you have so many people involved in a system which is perpetuating wrongdoing or is being involved in practices which are harmful — in this case it was the harming of people with a disability — people need to protect themselves professionally, and I think that becomes groupthink in relation to how to protect themselves. What I saw between the department of human services and this organisation was a type of protectionism between the staff who were involved and the government.

I do not believe that you can even set up a body within the state government that looks at really investigating these types of wrongdoings, because they ultimately will want to protect themselves at the end of the day. It is almost like you need a federal system to investigate state governments and a state government to be allowed to investigate federal systems, because there is a conflict of interest between the departments. I guess relationships get formed and people need to be protected. Certainly the reputation of people becomes greater than the protection of the people who ultimately need it.

Ms SYMES — Can I just ask: do you put the public advocate and the community visitor program under the government umbrella when you are explaining your view there?

Ms BURGESS — The public advocate system in disability actually does not go into day services; it is only residential services. So it is not like that was even an avenue I could take in getting assistance for the people who attended the day service.

Ms SYMES — Okay. Sorry; I am clear now. I thought it was residential.

Ms BURGESS — There is not that additional service there for people. But having said that, there have been times when I know that residential workers have relied on the assistance of the public advocate and they have not felt like they have got the support that they have needed. Staff take great measures in coming forward. In the disability sector in particular it is common that employment is lost. People cannot get re-employed in the disability sector and often have to leave it, which is a shame because it is the staff who are making the complaints about their concerns about the care and welfare of people with a disability who are the staff you want to keep. You have got a problem when you are getting rid of the people who are actually acting protectively for the people and who are the people we really need.

The other thing is that when you also have companies, groups and bodies like the department and like the organisation, they have a huge platform where they can control the information, whereas someone like me does not have that same platform, except in avenues like this. My concern about the reporting of the wrongdoing is the response to that wrongdoing. The information that was shared was sometimes misinformation, and there is no avenue for me, as the person who knows that, to tell people about this misinformation. I think that is a failing. While we go through a process of me standing up and saying, 'There's something wrong here. We need to look at it; people need to draw their attention to it', the organisation is allowed to respond. If they provide information that is wrong, I do not get to respond to that information, and sometimes this information gets preferred over what I am saying. I think that is a real failing in what is happening because I do not get to address this as well.

Question 3 regarding the resistance and reprisals — —

The CHAIR — Karen, we have got 10 minutes left; we are on question 3. Will we get to the main points as we go through?

Ms BURGESS — Yes, of course.

The CHAIR — Thanks. Keep going.

Ms BURGESS — So I will speed it up, basically. On question 3, I have faced many of the things that whistleblowers face. I was threatened. I was followed. I was harassed. My work performance was not actually criticised until I started to make it clear that I had concerns with how the organisation was operating.

The CHAIR — So up to that point you were completely fine?

Ms BURGESS — Right. Correct. And then the work performance, and the complaints about my work performance were never validated. They were highly vexatious, and none of them were ever found to be plausible. That is why we reached a settlement at the end of my case. That is something I understand keeps coming up: I was vexatious — you know how organisations operate.

The other thing is I lost my job and my entitlements. I was threatened with costly litigation. I was stalked by members of the organisation. When I raised this with authorities, the response was — for example, they are following my Facebook page. When I raised this type of thing with the authorities, their response was, ‘They’re watching you’, to make sure I do not say anything against them, which I think is a really odd way of looking at it, because I am not the one saying anything wrong. I am not the one saying anything untruthful. I have made a complaint about wrongdoing. I am not sure why my ex-employer would be following me.

The CHAIR — Karen, in regard to welfare support, on question 4, were you offered welfare support within the organisation?

Ms BURGESS — No.

The CHAIR — So that was not an option?

Ms BURGESS — No.

The CHAIR — In regard to confidentiality, were you happy with the way that was dealt with?

Ms BURGESS — No.

The CHAIR — Can you explain that part?

Ms BURGESS — I do not believe there was a lot of confidentiality. I think from what I have seen, the way that departments and systems are operating is they use the Privacy Act in order to not share information freely, to protect their own interests, and I certainly felt that information was being shared but in many cases not to benefit me. So I do not feel that confidentiality and the Privacy Act were really upheld as well as they could have been.

Mr HIBBINS — In your submission you say that you were not protected or that you were not covered under the Protected Disclosure Act because it does not cover NGOs or your organisation.

Ms BURGESS — Yes.

Mr HIBBINS — Did that come as a surprise to you, or were you operating — I mean, were you sort of making these complaints under, I guess, the assumption that if reprisals did occur against you, you would have some protection under the law?

Ms BURGESS — Yes. Can I answer that question off camera — privately?

The CHAIR — Sure. We will go in camera.

Proceedings in camera follow.

Closed hearing resumed.

The CHAIR — Are there any last-minute questions that we need to ask Karen before the session finishes?

Mr D. O'BRIEN — We could ask a lot but not in the time we have got today.

The CHAIR — Karen, before we conclude, can we have a copy of your answers to the questions?

Ms BURGESS — Yes, of course.

The CHAIR — That would help us put things in context. Are there any last-minute comments you need to make?

Ms BURGESS — Just in doing a lot of research in the system that we need in Australia, I think we do need a False Claims Act like they have in America so when people like me come forward there is actually an accompanier and a group of people where I get supported, I get the legal expertise, I am not having to pay for legal expertise to see about getting this addressed and I am also in a position to seek damages and be rewarded for what I do. And I think until you have a system that rewards people like me you are not going to change how wrongdoing is dealt with.

The CHAIR — So on that point, I guess that is one of the issues the committee is grappling with: whether you reward people or whether you compensate people — that is, that you cover for their legal costs but you do not actually financially reward them. On your experience, where do you stand?

Ms BURGESS — I think we need to reward people at this stage because there is such an undercurrent of whistleblowing being a negative part of Australian culture, and especially in the workplace in community services, where people are relying on people for their own safety. We need to change how wrongdoing is addressed and that when staff see it, know that it is wrong and come forward, not only will they know that they will be supported and compensated for doing so, especially in the event that they lose their job, but that they will be acknowledged for what they did in stepping above what is seen as everyday culture in not coming forward with this information. Maybe until we socially change that mindset I really think you need to start putting in a reward system at the moment, and once we change it, maybe it goes to a compensation system.

The CHAIR — Karen Burgess, we thank you very much for your time.

Committee adjourned.