

Community and Public Sector Union

CPSU (State Public Services Federation Tasmania) Inc. - CPSU (SPSF Group, Tasmanian Branch)

01/03/11

Mr Ted Leeson
Principal Consultant, Strategic Programs
Workplace Standards Tasmania
Level 1, 30 Gordons Hill Rd, Rosny Park

Dear Mr Leeson,

Re: Alleged Breaches of the Workplace Health and Safety Act 1995

I write for and on behalf of members of the LHMU and CPSU to bring to your attention our belief that the Minister administering the State Service Act 2000 (being the employer of Correctional Officers within the Department of Justice, Tasmania Prison Service) has breached the Workplace Health and Safety Act 1995 (the Act). I ask that you refer this within Workplace Standards to the appropriate recipient(s).

We have reasonable grounds to believe that commencing around 0700 hours on Monday 21 February 2011 and continuing until around the same time on Friday 25 February 2011 the employer breached the Act by failing to provide reasonable alternative work to employees who held a belief that there was an immanent risk to their health and safety in a specific area of their employ (S.17 of the Act). We further allege that detrimental action was taken against these employees by way of the employer standing them down without pay purportedly in accordance with S. 50(A) of the Industrial Relations Act 1984. We contend this action is a clear breach of S. 18 of the Act and its preclusion of detrimental actions by the employer. We also have cause to believe that the employer has breached S. 20 of the Act by staffing the

Risdon Prison Complex with untrained staff as a result of the employer's unilateral stand down without pay of some 56 Correctional Officers thereby putting those replacement personnel and inmates of the facility at risk (please note the number of people actually stood down is unclear to this day as is the number of replacement personnel).

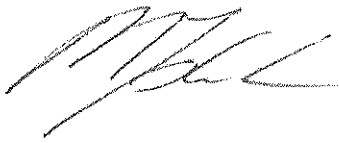
As you are aware there has been a significant level of media coverage of the issues associated with this matter and the level of community interest can be fairly characterised as very high. The alleged breaches presented briefly to you here go to the heart of important sections of the Act and as such there is a distinct, clear and present public interest in their investigation.

In light of the preceding information I formally ask on behalf of the LHMU and CPSU that Workplace Standards Tasmania (or an appropriately delegated authority) commence a comprehensive investigation including but possibly not limited to these alleged breaches of the Act. Members have expressed some concerns about raising these issues with you on an individual basis due to a belief they may face further adverse action from their employer. Our members already feel they have suffered detriment as a result of raising concerns. They have asked that the unions bring the alleged breaches to your attention on their behalf although some may still approach you independently in addition to this. Regardless our members, officials and staff with first hand knowledge of the events in question will cooperate fully with any investigation.

This correspondence is penned to convey to you that there is sufficient cause to investigate and a prima facie case exists but, should you require more information, I can provide as much detail as you need where it is in my reach.

I can be contacted on 62335689 at your convenience and I look forward to news of a decision to investigate these important matters. I am available to meet as mutually convenient to discuss the matter further as required.

Regards,

A handwritten signature in black ink, appearing to read 'Mat Johnston', with a stylized, cursive script.

Mat Johnston
Assistant General Secretary
CPSU (SPSFT) Inc

And for and on behalf of
The LHMU (Tasmania Branch)



9 March 2011

Mat Johnston
Assistant General Secretary
CPSU (SPSFT) Inc
GPO Box 54
Hobart TAS 7001

Dear Mat,

Alleged Breaches of the Workplace Health and Safety Act 1995

I refer to your letter of 1 March 2011 to Ted Leeson and our subsequent discussion this morning concerning the stand down of Correctional Officers at Risdon Prison and the possible breach of Section 18 of the *Workplace Health and Safety Act 1995*.

I particularly noted in our discussions that you have directly received information from at least one officer that prior to being stood down without pay, they specifically advised management of the Prison that they refused to work pursuant to their rights under Section 17 of the Act i.e. they believed that there was an imminent or serious risk to their health or safety due to the operational changes which had been made.

The allegation as put by you suggests that there has been discrimination against at least one employee in breach of Section 18. Paragraph (4)(i) of our Prosecution Policy identifies that prosecution will generally be recommended where there is discrimination against employees who have made a health and safety complaint. In accordance with our Policy, I believe I am obliged to fully investigate whether there has been a breach and if I conclude that there has been, to submit the relevant file/s to the Director of Public Prosecution.

I have noted your comments that officers are reluctant to come forward with complaints of a breach of Section 18. However, I reiterate my comments to you in our meeting that in order to investigate any potential breach, any employee who is subject to such a breach will need to be interviewed and of necessity identified to the employer (when the employer's response is sought).

I am of course, sensitive to the concerns about the issue and accordingly, the course of action I will follow in this matter is as follows:

1. I will seek from the employer the names and contact details of all officers who were stood down.
2. I will contact all such officers and invite them to provide details of the circumstances surrounding their stand down.
3. The Inspector whom I have appointed to lead the investigation will then assess any responses and if necessary, interview relevant persons.
4. Each investigation will be considered on its merits by the Compliance and Enforcement Committee of Workplace Standards (which I chair) and any case where an investigation discloses a breach will be referred to the Director of Public Prosecution for decision whether to prosecute.

Please don't hesitate to contact me if you have any queries on the process.

Yours sincerely

Neale Buchanan
Director, Operations