

## ENTRY REPORT

WorkSafe Victoria is a division of  
the Victorian WorkCover Authority

Date: 06/02/2009 Visit Number: V01010300466L  
Issued by Inspector: Maria Cati  
Phone: 9485 4555  
Service Method: Left for a person  
Entry Time: 12:45 PM Departure Time: 02:15 PM

### PLACE ENTERED

THE CROWN IN RIGHT OF THE STATE OF VICTORIA (DHS)  
DEPARTMENT OF HUMAN SERVICES - PRESTON OFFICE  
679-685 HIGH STREET  
PRESTON 3072

This report given to: Position:  
Libby Dyer Employer Representative  
Copies to: Position:  
Craig Barry Health and Safety Representative

Other people who attended as part of the inspection:

WorkSafe Staff: Ken Neal  
Other Persons: Jean Cromie, Campbell Atkinson, Greg Cole, Sergio Pirisi, Mark  
Tipping

### Purpose for entry:

I entered this place to respond to a disputed provisional improvement notice.

Under section 98(1) of the Occupational Health and Safety Act 2004, I entered your  
workplace during working hours.

### Observations and Actions of the Inspector

1. I attended your workplace at 51 Moreland St, Footscray with Inspector Ken Neal to  
follow up on enquiries pertaining to the PIN that was issued on 19/12/08 for  
; by Mr Craig Barry HSR for DWG Children's Residential Care  
Services

In accordance with section 63 (3) of the Occupational Health and Safety Act 2004 I  
attended at the workplace to enquire into the circumstances of the Provisional  
Improvement Notice (PIN). I met with the following on 15/1/09 at the Preston Office to  
enquire into the disputed PIN.  
Kevin Hanson - Supervisor  
Greg Cole - Residential Support Services Acting Unit Manager

See Review and Offence provisions below

#### **Internal Review**

As the person to whom this PIN enquiry outcome notice has been issued, you or another eligible person can apply to the Authority for internal review of this reviewable decision. Your application must be in the approved form and must be received by the Authority's Internal Review Unit within 14 days after the day on which the decision first came to your notice or came to the eligible person's notice. The Authority may however allow a longer period of time within which the application has to be lodged in appropriate cases. The applicant may also request a stay of the operation of the reviewable decision pending the outcome of the internal review. The request for a stay must accompany the application for internal review. The Authority must make a decision to grant a stay with or without conditions or not to grant a stay and communicate that decision within 24 hours of receipt of the request for a stay. If no decision is made, the Authority is considered to have granted a stay. If no request for a stay is made the operation of this PIN enquiry outcome notice remains in force. The application for internal review must be made to the Internal Review Unit, Victorian WorkCover Authority, Ground Floor, 222 Exhibition Street, Melbourne 3000.

You can contact the Internal Review Unit on telephone (03) 8663 5450, fax (03) 8663 5451 or by email at [internalreviewunit@workcover.vic.gov.au](mailto:internalreviewunit@workcover.vic.gov.au).

If you have lodged an application for internal review and you do not receive a decision within the required time frame (which is taken to be a decision to affirm the reviewable decision) or you receive a decision that you are not happy with you can apply to Victorian Civil and Administrative Tribunal for external review within 14 days of the date the decision or non-decision came to the attention of the applicant. Applicants seeking external review must be an eligible person.

#### **Offence**

A person to whom a provisional improvement notice was issued that is affirmed by an inspector must comply with the provisional improvement notice otherwise the person shall be guilty of an indictable offence against the Act. In the case of a natural person, the indictable offence carries a penalty of not more than \$56,710. In the case of a body corporate, the indictable offence carries a penalty of not more than \$283,550.

The issue, variation or cancellation of this notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

**COMPLIANCE WITH THIS NOTICE DOES NOT** indicate that the person to whom it is issued complies with all health and safety requirements, NOR does it affect the continuing obligation to ensure workplace health and safety.

Camille Munro - WorkHealth  
Jean Cromie - WorkHealth Manager  
Lida Franc - HSR Team Leader Office Support and Placement  
Sergio Pirisi - CPSU support officer  
Craig Barry - HSR  
Mark Tipping - Industrial Organiser  
Kirsten Gillard - WorkSafe Inspector

During my enquiries with both parties, I advised that further enquiries will be made to obtain information before making a decision.

During my enquiries, it was revealed that Mr Craig Barry is the duly elected HSR for the DWG Children's Residential Care Services. Mr Barry is acting on behalf of the employees in the DWG.

2. I have inquired into the circumstances relating to a Provisional Improvement Notice (PIN) issued by Craig Barry on 19/12/08 that alleges workplace violence, bullying, emotional and physical abuse and failing to provide and maintain a safe system of work. I affirm this Notice with modifications in accordance with section 63(3)(b) of the Occupational Health and Safety Act 2004.

The workplace is residential unit for children between the ages 0 to 12 years. The facility is an average suburban home that provides residential support and a safe and stable home environment for its clients. The stay can be short or long term depending on the circumstances of the client. The facility provides residential support for clients with special needs and challenging behaviours.

3. The reasons for my decision are:

On the verbal and documented evidence provided to me, it was revealed that since a client was admitted in July 2008 there have been numerous incidents reports (91) and DINMAS (18) reported to management. The reports indicate alleged verbal, physical and sexual abuse to both staff and clients sharing the facility, alleged property damage, alleged dangerous behaviour and absconding.

The employer has attempted to implement lower level controls such as training for staff in crisis management and issue resolution, consultation for staff with a psychologist, extra staffing during 5-10pm and review of response plan which is in draft.

I obtained the draft response plan and observed that it does not include clinical assessments which would provide treatment specific to the clients' needs. I have sighted behavioural management strategy plans or equivalent in other Community Residential Units (CRUs) under the management and control of the employer where these plans include clinical assessments for each client. Additionally the employer was unable to provide any care plans or equivalent for other clients residing at this facility. I was informed by management and HSR that there are no formal assessments completed prior to clients entering the facility.

As stated in Section 4 of the OHS Act 2008, the principles of health and safety protection, employees, other persons must be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.

With the evidence provided to me via interviews, documents and discussions with

- \* to clarify any matter that is covered by the Entry Report and any associated Notices or Directions contact the Issuing Inspector, whose name and contact details appear at the top of this Entry Report.
- \* to make comment about any aspect of how this inspection was conducted, contact the inspector's senior management on telephone 9565 4565, fax 9485 4501 or by writing to P.O. Box 181, Preston 3172
- \* to provide feedback in relation to WorkSafe Victoria activities or the legislation we administer, contact our Executive Director WorkSafe Victoria, Victorian WorkCover Authority, GPO Box 4306 Melbourne Victoria 3001, by fax 9641 1711 or e-mail to [executivedirector@workcover.vic.gov.au](mailto:executivedirector@workcover.vic.gov.au)

#### **PRIVACY COLLECTION STATEMENT**

The Victorian WorkCover Authority (VWA) collects, uses, discloses and stores information in accordance with the Occupational Health and Safety Act 2004, other legislation administered by the VWA and all applicable privacy laws. This includes information collected by WorkSafe Victoria inspectors or authorised officers. Note that non-compliance with privacy laws is permissible to the extent that those laws conflict with other legislative provisions allowing or requiring the collection of information. Note also that privacy laws do not apply to the collection of information by the VWA to the extent that it is exercising its law enforcement functions and non-compliance with privacy legislation is deemed necessary to fulfil those functions.

The VWA's Privacy Policy is on our website at [www.workcover.vic.gov.au](http://www.workcover.vic.gov.au)

#### **FURTHER INFORMATION**

WorkSafe has a range of publications to explain your legal responsibilities and help you make your premises/site safer. To inquire about these publications, telephone (03) 9641 1333 or 1800 136089, or visit [www.workcover.vic.gov.au](http://www.workcover.vic.gov.au).

employees, the child protection unit case manager, HSR, union and management, in my opinion the employer has not maintained a system of work that is so far as is reasonably practicable, safe and without risks to health, when dealing with clients that have challenging behaviours.

This matter will be referred to WorkSafe's Legal Services and Investigation Division for a comprehensive investigation.

Under Section 63(3) of the Occupational Health and Safety Act 2004, I issued PIN Enquiry Outcome Notice V010103004661/63-01.

4. Under section 23 of the OHS Act 2004, the employer has an obligation to ensure that other persons other than employees are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer. This includes other clients residing at the facility.
5. You are hereby notified that under Section 99(a) of the Occupational Health and Safety Act 2004, during an inspection at 679-685 HIGH STREET PRESTON 3072, I inspected, examined and made enquiries.

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#### **INTERNAL REVIEW OF CERTAIN INSPECTOR DECISIONS**

If you want to apply for internal review of a decision made by an inspector during this visit, you must lodge the approved application form with the Internal Review Unit within 14 days of the date the decision came to your notice. The Authority must conduct the internal review within legislated time frame of either 7 or 14 days depending on the category of reviewable decision. If the Authority does not notify you of the internal review decision within the required time, the Authority is taken to have made a decision to affirm the reviewable decision. Not all decisions can be internally reviewed and in order to seek internal review of a decision you must be an eligible person.

Application forms for internal review, a list of reviewable decisions and a list of eligible persons are available upon request from a WorkSafe Inspector, WorkCover Advisory Service on 1800 136089 or they can be downloaded from the website [www.workcover.vic.gov.au](http://www.workcover.vic.gov.au).

All applications are to be in approved form and must be received by the Authority's Internal Review Unit, Ground Floor, 222 Exhibition Street, Melbourne 3000 in order to be considered.

If you lodge an application for internal review and you do not receive a decision within the required time frame or you receive an Internal Review decision that you are not happy with, you can then apply to Victorian Civil and Administrative Tribunal for external review within 14 days of the date the Internal Review decision or non-decision first came to your attention. Applicants seeking external review must be an eligible person.

You can contact the Internal Review Unit on telephone (03) 8663 5450, fax (03) 8663 5451 or by email at [internalreviewunit@workcover.vic.gov.au](mailto:internalreviewunit@workcover.vic.gov.au).

#### **OFFENCE**

The following Acts, including any regulations made under them carry varying offences such as failure to meet duties and obligations, non compliance with a notice or direction issued or made by an inspector and hindering or obstructing an inspector in the exercise of their powers:

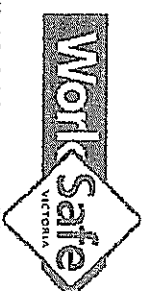
- \* Occupational Health and Safety Act 2004
- \* Dangerous Goods Act 1985
- \* Equipment (Public Safety) Act 1994
- \* Road Transport Reform (Dangerous Goods) Act 1995

For specific details about offences and subsequent penalties refer to the specific Act or regulation.

#### **FEEDBACK**

If you want to contact WorkSafe Victoria in relation to this entry by our Inspector other than for Internal Review purposes (see above), please use the following guide:

Occupational Health and Safety Act 2004  
**PIN ENQUIRY OUTCOME NOTICE**



WorkSafe Victoria is a division of  
the Victorian WorkCover Authority

This notice is issued under Section 63 of the Occupational Health and Safety Act 2004. If this notice records the Inspector's decision as "Provisional Improvement Notice Affirmed" or "Provisional Improvement Notice Affirmed with Modifications", you must remedy the identical contravention of the Act or its regulations. If this Notice records the Inspector's decision as "Provisional Improvement Notice Cancelled", you can disregard the original Provisional Improvement Notice (PIN) as issued by the Health & Safety Representative (HSR).

**Inspector** *Maria Catt*, an Inspector appointed under the Occupational Health  
**conducting enquiry:** and Safety Act 2004.

**Signature:** *Maria Catt*

**Date of issue:** 06/02/2009

**Notice issued to:** THE CROWN IN RIGHT OF THE STATE OF VICTORIA (DHS)  
679-685 HIGH STREET  
PRESTON 3072

**Attendance** *Libby Dyer*  
**requested by:**

**Service method to** *Left for a person*  
**person to whom the**  
**PIN was issued:**

**Date of request:** 23/01/2009

**Service method to** *Left for a person*  
**HSR who issued the**  
**PIN:**

**PIN issue date:** 19/12/2008

**PIN issued by:** Craig Barry

**PIN issued to:** THE CROWN IN RIGHT OF THE STATE OF VICTORIA (DHS)  
679-685 HIGH STREET  
PRESTON  
3072

**PIN contravention:** Workplace violence, workplace bullying, Psychological torment,  
emotional abuse physical assault

**Grounds for HSR's** Section 21(2)(A) Failure to provide or maintain plant or safe  
**belief:** systems at work that are so far as reasonably practicable, safe and  
without risk to health

**PIN directions:** Removal of hazard

**PIN remedy date:** 28/01/2009

**Inspector's decision:** Provisional Improvement Notice Affirmed with Modifications

**Basis(s) for  
Inspector's decision:**

I have inquired into the circumstances relating to a Provisional Improvement Notice (PIN) issued by Craig Barry on 19/12/08 that alleges workplace violence, bullying, emotional and physical abuse and failing to provide and maintain a safe system of work. I affirm this Notice with modifications in accordance with section 63(3)(b) of the Occupational Health and Safety Act 2004.

The reasons for my decision are:

On the verbal and documented evidence provided to me, it was revealed that since a client was admitted in July 2008 there have been numerous incidents reports (91) and DINIMAS (18 ) reported to management. The reports indicate alleged verbal, physical and sexual abuse to both staff and clients sharing the facility, alleged property damage, alleged dangerous behaviour and absconding.

The employer has attempted to implement lower level controls such as training for staff in crisis management and issue resolution, consultation for staff with a psychologist, extra staffing during 5-10pm and review of response plan which is in draft.

I obtained the draft response plan and observed that it does not include clinical assessments which would provide treatment specific to the clients' needs. I have sighted behavioural management strategy plans or equivalent in other Community Residential Units (CRUs) under the management and control of the employer where these plans include clinical assessments for each client. Additionally the employer was unable to provide any care plans or equivalent for other clients residing at this facility. I was informed by management and HSR that there are no formal assessments completed prior to clients entering the facility.

As stated in Section 4 of the OHS Act 2008, the principles of health and safety protection, employees, other persons must be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.

With the evidence provided to me via interviews, documents and discussions with employees, the child protection unit case manager, HSR, union and management, in my opinion the employer has not maintained a system of work that is so far as is reasonably practicable, safe and without risks to health, when dealing with clients that have challenging behaviours.

**Provisional  
Improvement Notice  
Modifications:**

The employer must maintain a system of work that is so far as is reasonably practicable, safe and without risks to health, when dealing with clients that have challenging behaviours. This could include suitability assessments prior to a client entering the facility, adequate supervision to the client to ensure the health and safety of employees and others, behavioural management plan or equivalent undertaken by suitably qualified persons for each client.

**Remedy date: 30/03/2009.**