

IN FAIR WORK AUSTRALIA

FWA Matter No: FWA C2011/3949

Applicant: State of Victoria

And

Respondent: Community and Public Sector Union

STATEMENT OF BRENNAN O'BRIEN

Background

1. My full name is Brennan O'Brien.
2. I make this statement from my own knowledge, save where I indicate otherwise. Where I depose from information and belief, the source of that information and belief is stated, and I believe it to be true.
3. I am employed by the State of Victoria as a Case Support Worker in Child Protection. I have held this position since 1994. My classification is CPW2.
4. I am based in Bendigo, which is part of the Loddon-Mallee Region of the Department of Human Services.
5. I have been employed by the State of Victoria with the adolescent protective team for 16 years. Prior to this I worked for 14 years in the Malmsbury Youth Training Centre.
6. I am a member of the Community and Public Sector Union (**CPSU**). I am a delegate of the CPSU.

My role

7. As a Case Support Worker, I do not have an allocation of cases. However, I do work closely with other employees who are allocated cases.

8. A large part of my work with DHS involves facilitating supervised access between adolescents and their parents or guardian. This involves transporting adolescent clients of DHS to a place where they can meet their parents or guardian.
9. I also supervise the access period, and ensure that the client and the parent act appropriately in their time together. I then transport the adolescent client of DHS home.
10. I also spend some time transporting clients of the DHS to and from secure welfare.
11. My rostered working hours are 8.55 a.m. to 5.01 p.m., Monday to Friday. In practice, these hours often vary substantially from day to day. I do a significant amount of overtime outside my ordinary hours of work.

Union delegate work

12. I have been a delegate of the CPSU for around 20 years.
13. As a delegate of the CPSU, I spend a significant amount of time talking to members of the CPSU in Bendigo, including Child Protection Workers (**CPW**) in my team, and in other teams.
14. My role as a delegate includes:
 - (a) assisting union members with queries about their rights and entitlements;
 - (b) assisting union members with workplace grievances and disputes;
 - (c) attending consultative forums and meetings with representatives of the Department of Human Services.
15. Through my work as a delegate, I have contact with a wide range of DHS employees, and am familiar with the issues facing these workers.

Work at Loddon-Mallee before the industrial action commenced

16. My job forms part of the Adolescent Protection Team (**APT**) of the DHS in Bendigo.
17. In this Team, there is one Unit Manager, two Team Leaders, three at level CPW3 and five at level CPW2. There is currently one vacancy.
18. When a child protection issue arises, it is first referred to the Intake Team. This team makes an assessment as to whether the matter can be resolved in Child Protection, or should be referred to some other Government department. If the report is a matter that Child Protection should deal with, an initial investigation is undertaken.

19. If the issue is regarding an adolescent, then it is highly likely that Intake will refer it to the Adolescent Team.
20. When the matter is referred to the Adolescent Team, it is in the first instance referred to the Team Leader. The Team Leader then assigns a CPW to handle the investigation. The CPW will then investigate the issue, and make the initial contact for the investigation with the client.

Allocating cases

21. After the initial investigation is completed, the adolescents or children involved may be allocated to a CPW. This is often, but not always, the CPW who did the initial investigation.
22. There are always cases that are not allocated to a CPW. This is because there are simply too many cases, and too few CPWs.
23. On average, each CPW in the Family Division is responsible for between 18 and 20 allocated cases at any one time.
24. Each unallocated case nominally sits with the Team Leader. The Team Leader will allocate tasks on these cases to a CPW.
25. There is no formal system for allocating cases. The decision is made by an informal discussion between the Team Leader and the Unit Manager about the urgency of the case.
26. Where a matter is urgent, it is always allocated to a CPW.
27. Even though a particular case might be unallocated, each CPW is expected to make the follow up investigation and assessment on each case that the CPW has responded to. Work is done on unallocated cases as a matter of course and is expected by DHS.
28. This means that CPWs make an assessment of the most urgent cases from the information they have on any given day, and prioritise their work around those urgent cases.
29. For that reason, a nominal 'allocation' to a CPW does not significantly affect the service a particular client receives. This is because, regardless of the nominal allocation, the work will be directed by the urgency of particular cases on any given day.
30. From my experience of observing my colleagues and talking to CPSU members, I can say that, prior to the bans being implemented, it was not possible for CPWs to visit every child allocated to them after the initial assessment phase.
31. This is simply because there are too many cases for CPWs to manage.
32. Reports are made to DHS every day, and CPWs have to adjust their priorities accordingly to ensure the most serious cases receive prompt attention.

33. The practical effect of allocating a case to a CPW when they are under heavy workloads is that 'low priority' clients are rarely if ever seen, and a handful of 'high risk' clients dominate the workloads of CPWs.
34. The only benefit in 'allocating' a case to a CPW is that DHS's statistics improve, as it appears that the client has a CPW.

The effect of the work bans

35. On Friday 11 November 2011, members of the CPSU imposed a number of bans on the number of cases that can be allocated to CPWs. These bans have remained in place since that time, including over the weekend of 12 and 13 November 2011.
36. However, CPWs are not working any fewer hours than prior to the bans commencing. CPWs continue to work as hard as they did prior to the bans taking place.
37. Since the bans commenced, I am not aware of:
 - (a) any case where a client at risk has been turned away due to the industrial action; and
 - (b) any serious negative case outcome for a child or adolescent arising from the bans.
38. Whether a case is allocated or unallocated is not critical to the client's wellbeing. What is important is whether a CPW can attend to the client. If a client is at significant risk, the case is prioritised and that person receives immediate assistance.
39. Since the bans have commenced, the Team Leaders have adopted a process of allocating and de-allocating cases from the 12 (or 6 as the case may be) based on urgency and priority. This means that cases are prioritised on the same basis as before the bans were imposed, and ensures that the most urgent cases are dealt with in priority order.
40. I know of one instance where a particular employee had over 30 clients allocated to them and they had not seen some of their clients for weeks due to workload pressure. In my experience this is not an uncommon scenario. Since the industrial action, the employee has informed me that they are now seeing more clients on a regular basis, providing them better services, whilst still being able to see urgent cases.

The Victorian Ombudsman's reports

41. I am aware of two reports of the Victorian Ombudsman in respect of child protective services at DHS in the last 2 years. Annexed to this statement and marked BB-1 is a copy of the Victorian Ombudsman's Report titled "Investigation Regarding the Department of Human Services Child protection Program (Loddon Mallee Region) October 2011. Annexed to this statement and marked BB-2 is a copy of the Victorian Ombudsman's Report titled "Own Motion Investigation into the Department of Human Services Child Protection Program, November 2009'.

Responses to Sue Jamieson's statement

42. I have read the statement of Sue Jamieson provided to Fair Work Australia in support of DHS's application.
43. In response to paragraph 14 of her statement, in my experience these are not uncommon scenarios, independent of any industrial action. This is due to the workload pressures facing CPWs that precludes them from immediately acting on every notification. All of these issues have been raised previously by the Victorian Ombudsman.
44. In response to paragraph 20 of Ms Jamieson's statement, I do not agree that these children are at higher risk of harm. This is because the mere fact of allocation does not provide a child with any greater protection. If a CPW has such a significant case load that they are unable to visit the child, then the fact of allocation changes nothing.
45. In the case of the children referred to in paragraph 20, they will have tasks in relation to their cases allocated by the Team Leaders on the basis of priority. As such, the most urgent cases will continue to be seen in order of priority.
46. I agree that it is preferable for there to be one CPW allocated to a case of the duration of the investigation phase. It allows a rapport to build between the child and the CWP. However, where a CPW is unable to see a client for weeks at a time due to workload and urgent cases taking priority, this purpose is defeated in any event. Further, cases are regularly allocated and de-allocated in the ordinary course.
47. In response to paragraph 22 of her statement, Ms Jamieson makes reference to children in the Response phase who have not yet had a home visit. Prior to the industrial action commencing, there were in excess of 70 clients in this position due to there being a significantly greater number of clients than available CPWs.
48. In response to paragraph 24 of her statement, Ms Jamieson refers to time limits within which children in the response phase must receive a first home visit. These timelines have not been able to be adhered to by Loddon-Mallee DHS before the industrial action started for a significant period of time. Prior to the bans commencing, the 14 day time limitation for first home visits was not met in many cases. I do not believe that the industrial action will make exacerbate this problem.
49. I do not believe that children are placed at any greater risk now than prior to the bans commencing. Again, this because, regardless of whether or not a child is allocated, there must still be a CPW available to see them. As CPWs are continuing to perform the same hours of work as prior to the ban, and are continuing to see cases on the basis of priority, there is no negative case outcome for a child as a consequence of the ban.
50. In response to paragraph 27 of her statement, Ms Jamieson states that there are 95 clients awaiting allocation. Prior to the industrial action occurring, the Bendigo North Case Management Team had 78 unallocated cases.

51. In response to paragraph 30, there are currently x case workers in that unit. This means that, accordingly to the figures in the statement, prior to the bans commencing, each CPW had x children allocated to them.
52. It is simply not possible for the CPWs to manage each of the children allocated to them in those circumstances. The effect of the ban is that the children are de-allocated. However, it does not follow that the child will automatically miss out on care or attention that would otherwise have been provided. This because cases continue to be prioritised, with CPWs taking on the most urgent cases, and Team Leaders regularly reallocating cases based on priority.

Dated: 19 November 2011

Brennan O'Brien