

Australian Parliament House

By email:

## **Submission into Workplace Bullying and Harrassement**

Dear Ms

I refer to our conversation of this afternoon and I thank you for providing me with an opportunity to present information about my case to the above enquiry.

### **Background**

In August 2001, I joined the department of XXXXXX in their Finance division as an Executive Level 1 (EL 1) officer having transferred at level from the then ACT Department of XXXXXXXXXXXX. Immediately after joining XXXXX, my career was progressing very well so much so that within two years of joining, I was selected to act in various EL 2 Director positions.

1. In February 2006, A conducted an EL 2 selection process for the positions of XXX and XXXXXXX. As I had prior experience, I applied for both these positions. I do not know the background to the selection exercise, but do believe that only limited people applied for these two positions and that A appointed two of his closest allies into these positions. I also believe that the selection process was rigged as it was not based on merit and this led to the HR Area eventually annulling the whole process. Upon my subsequent enquiries and request for information from the HR about this process, I was advised that this particular selection file had been misplaced and could not be located.
2. In September 2006, A re-convened the above selection exercise for the same two positions. Once the chairperson was announced, I became suspicious about the independence of the process so I promptly advised B of HR about my strong belief of yet another compromised process because of the apparent close acquaintances between the chairperson, A and A's then supervisor, C. B undertook to investigate the matter urgently but I believe no action was taken because the chairperson remained same. As I was short-listed for interview this time, I attended under duress. After the interviews, I was not advised of the outcome and this remained so until April 2009 (some two and half years later). Please note that neither A nor HR have been able to confirm that they had advised me of the outcome of this process either formally or otherwise until April 2009. I April 2009, when I was eventually provided a copy of my assessment outcome of some two and half years prior, I literally felt decimated and sick of such vitriolic and defective behavior that had been concealed under cover all this while. While I vividly remember my application was very well written and good, I believe the panel's (A and the chairperson)'s comments about my interview performance fell nothing short of an act of direct victimization. Prior to April 2009, I was too scared to ask about the outcome for fear of further victimization and reprisals which had always gone unchecked.
3. On 8 December 2006, A wrote a "File Note" to himself about an alleged meeting he had with me on that day. This file note was not provided to me until some two years later, so

I could not validate nor respond to his allegations in any meaningful manner at the time. In January 2008 (some 14 months later), A used this file note to allege my underperformance. I impute with great concern that during the intervening period, he approved my performance as an EL 1 as 'satisfactory'. So, to use this file note in support of his allegations of my underperformance some 14 months later while personally approving my performance as 'satisfactory' in the intervening period highly suggested that his actions were highly contrived. In my defense, I note that I am a qualified Accountant with a Master of Professional Accountancy and a Master of Public Policy Degrees from two reputable Australian Universities.

4. On XX December 2006, I contacted the HR area about my belief of feeling victimized and stressed about A's behavior.
5. On 22 March 2007, A requested through an Expression of Interest (EOI) to fill an EL 2 position within his branch. I applied via email on that same day and was rejected within 18 minutes of applying. I applied at 11.51am and I received an unsuccessful response at 12.09pm that same day. In April 2009, A used this email to allege that he had discussed this EOI with me on 22 March 2007. I confirm there was no discussion except the email exchange and submit that to discuss and then provide a written response within 18 minutes of advertising would seem highly inconceivable and misleading as implied by A's deceptive allegations.
6. On 31 October 2007, A advertised another EOI for an EL 2 position. In the advertisement, he indicated that if anyone wanted to discuss the position, he was happy to meet and discuss. Accordingly, I took up the offer. During my meeting, A advised me of his refusal to consider my application if I applied, so to me this meant 'not to bother applying'. Despite my persistence and in outlining my experiences and achievements under his tutelage, A indicated he was not willing to accept my application. As I was keen to advance my career in further, I persisted in trying to seek out information so that I could address any perceived issues for a successful advancement to an EL 2 Officer. A was unwilling to provide me any specific concerns or issues and his evasive and non-cooperative attitude led me to allege that his actions amounted to an act of discrimination. His File Note of 31 October 2007 again written to self which is provided as XXX reflects the discussion that ensued at this meeting. Again I was not provided with a copy of this File Note at the time, so I could not validate it or respond to any allegations in any factual manner, but I note with great concern that this File Note was provided to B on that same day (31 October 2007). This indicated A's discreet and deceptive conduct in planning my career demolition in association with B and this conduct went against 'no-surprises' policy. Most importantly, in this File Note, A submits that I was operating within the EL 1 standard. Therefore, to use this file note to advance his allegations of my underperformance appears deceptive, unethical, and contradictory.
7. Between 31 October 2007 and 1 November 2007, A sought and was provided advice by B on 'how to manage my case' part of which was to avoid interacting with me on a one-on-one basis without another officer being present. As a result and quite remarkably, my basic right of access to my SES Officer was denied from this time on until 23 April 2008 as outlined in item 9 below. I note with deep concern that by November 2007, word was going around in my division that A (systemically dubbed the 'smiling assassin') was going to get me through whatever means possible and he even remarked to my fellow

officers at the time that I could only get back my EL 1 position 'over his dead body'. From 31 October 2007, A became extremely hostile towards me. He even confirmed during the primary review that he was deliberately disassociating and avoiding meeting me. This action had made me feel unwelcome and uncomfortable. A disturbing factor to note is that in October 2007 and then again in early November 2007, A halted my transfer to other branches within . These actions, I submit were therefore, morally deceptive, unethical and inappropriate as on one hand he was unwilling to collaboratively associate and/or facilitate my career advancement or transfer to another area, while on the other he contemplating my demotion. Also, by pre-empting my demotion as early as October 2007 when the actual performance management process had not kicked in until some three months later in January 2008 and B's decision to demote me not handed down until 23 December 2008, A had evidently corrupted, tainted and coloured the minds of others and the processes since October 2007. Through his actions, A embarked on a defiant act of aggression which went against policy and the Codes of Conduct.

8. In December 2007, A hastily recalled D pre-maturely from her extended 1 years leave without pay. I am not complaining that D's appointment was discriminatory, rather what followed from after D's appointment were highly suggestive of a pre-conceived and tainted view (without my knowledge) and this was a significant departure from 'no-surprises' policy and severe breach of the code of conduct.
9. On 16 January 2008, A met with B to discuss about my future, before embarking on a performance process in association with D. This action highly suggested a willful restriction, exclusion and my freedom in breach of the code of conduct. I was stunned, horrified and amazed that no-one in would want to listen to my side of the story, not even my division head or HR.
10. On 23 April 2008, A invited me to his office where he offered me a Voluntary Redundancy (VR) package. There was no one else present at this meeting. By this own action, A defied his own undertaking with B of November 2007 to avoid interacting with me on a one-on-one basis without someone else present, and this to me indicated his pre-conceived bad faith desire to rid me by any possible means because under policy, it is highly improper to offer an officer a VR while that officer is undergoing performance management process. To illustrate his unethical and unprofessional desires further, A had secretly arranged with HR to calculate my VR pay-out figures before this meeting. This conduct can only be summed up as a desperate attempt by A. I also note with deep concern that during the internal review in April 2009, A indicated to E that this meeting of 23 April 2008 was intended as a face saving'' device for me to depart pre-maturely. This suggestion of a face-saving'' measure was neither discussed with me at this meeting nor was it reflected in his File Note provided as Attachment 3
11. On 16 May 2008, A provided a misleading minute to B about my alleged underperformance eg in his minute provided as Attachment 4, he noted that a performance discussion between me and took place on 7 May 2007. This was incorrect because there was no such meeting on 7 May 2007 as ceased to be my Director from 4 December 2006. To contradict himself further, A

personally approved my performance as 'satisfactory' for an EL 1 during the intervening period on 22 December 2006. I note that A's allegation of my 7 May 2007 meeting with [redacted] was later abandoned by [redacted] in April 2009 for lack of veracity. This misleading statement by A to B of 16 May 2008 directly contributed to B initiating a formal performance process against me and this action by A therefore constituted a willful act of deceptive misconduct.

12. Between 16 May and 26 May 2008, while HR were contemplating a formal process, A actively pursued in corrupting the process further by coloring the minds of HR and B by actions such as prejudging B's decision, pre-emptively nominating his close allies as independent assessors and directly placing himself in D's shoes to arrive at his own desired interpretation of my assessment. To actively influence and corrupt a supposedly independent process that had left his sphere of responsibility through any means possible was highly improper and an act of willful misconduct.
13. On 3 June 2008, A pre-empted my 'fitness for duty assessment' discussion with HR despite me being diagnosed sick by a qualified medical practitioner. As I was diagnosed medically unfit for work, A's actions were inappropriate indicating his relentless pursuit of me. I note I had approximately 120 days Sick Leave entitlement to my credit.
14. Between June 2008 and December 2008, A engaged in a series of conducts which amongst other things included receiving blind copies of my supposedly independent formal assessment reports from Assessor, [redacted] and providing HR with misleading and contradictory statements. His impropriety in this regards highly suggested his continued vested interest and an actual bias against me indicating an attitude of intolerance and willful misconduct.
15. In October 2008, A restricted me from attending a CPA Australia Annual Conference/Training. It is rather unfortunate that on one hand he had accused me of not having the requisite accounting skills and on the other he deliberately blocked me from attending such relevant training. This action was highly suggestive of his discriminatory work practices because on one hand he gave permission to other non-accountants to attend while on the other hand part of my CPA professional development program required me to attend such workshops. To me this was an abuse of his power and authority and indicated his restrictive approach towards my career development.
16. On 19 November 2008, A prematurely enquired progress of my performance case from B. This, I feel was an inappropriate interference/enquiry in a process that had long left his sphere of responsibility. It suggested of his continued vested interest without letting an independent process run its course.
17. On 19 December 2008, HR attempted to seek reconfirmation about my assessment and A once again side-stepped answering direct questions and again circumvented independent assessment to arrive at his own desired interpretation.

18. On 16 January 2009, A persisted in condemning my career further (despite my demotion) by sending a fabricated email to HR about an acting EL 1 position. Attachment 5. This was a completely untruthful statement because by that time I was so fed up with his attitude towards me that I did not express any interest in any acting EL 1 positions under him. A major part of the reason was that by this time, I totally lacked confidence in his selection methodology. For the record, this acting opportunity was again provided to one of his close allies without proper process.
19. During the primary review process, A provided incorrect and misleading statements to the reviewer eg: he stated that he had at least 'five' performance discussions. Attachment 6, yet in January 2008, at the start of the performance process, he advised D that he had 'two' performance discussions with me. His behavior was therefore, nothing short of an attempt that by and large was against the APS Values and Codes of Conduct. Even with five alleged discussions as he suggested, he then failed to explain why out of this five (later changed to 'four' by the reviewer for lack of veracity), 'three' specifically related to EL 2 EOI or selection rounds. I submit that my concern was always about his discriminatory, biased, non-transparent and non-merit based selection methodologies that smacked of double standards, and an improper behavior as required under APS Code of Conduct.

In summary, I impute that A's actions to recall evidences of some years prior (most written to self, and others misleading) without providing me with opportunity to respond have constituted an act of 'bad faith' and defies the rules of natural justice and procedural fairness. I submit that there is a lot of shame when someone says these things without evidence about someone's loyalty and dedication and I should have been allowed to respond to his allegations as it was my name and my reputation that got trashed in the process. By not corroborating his own allegations in any factual manner and avoiding answering factual questions from HR and the Internal Reviewer, A acted with intentions that fall nothing short of unprofessional and unethical behaviour against the APS Code of Conduct. He indirectly assumed a delicate role in such a heavy handed manner and acted in a manner either collusively and/or cohesively which took away my freedom, dignity, respect and integrity and restricted my ambition for further career advancements. His comments such as 'over my dead body' complimented by his actions allowed him to achieve his desired outcome under the banner of corporate veil. He was neither checked, nor stopped from his relentless pursuit. Staffs in my division know him as the 'smiling assassin' and he has a systemic legacy of such misdemeanour in the department, which can be easily verified. His vested interest in my career advancement which instead resulted in my demotion indicated some serious concerns of his biasness. As his recruitment processes have contradicted policies and procedures, this is one opportunity that the department is been availed to get to the bottom of, so that the silent sufferers who are not able to voice concerns for fear of A's vitriolic reprisals are not treated in the same demeaning manner as I have been. If is unwilling to investigate these allegations, then this will be an unfortunate indictment of CA and the APS legislation which by its very nature is intended to protect and address exactly such behaviour in the workplace. In trying to expose some serious concerns about A's behaviour through an open, transparent and accountable process, I was destroyed myself and this cannot be classified as justice.

#### **Alleged suspected breaches by D**

I submit that D's actions have breached the requirements of the CA, Policy and the Codes of Conduct by:

1. On 19 July 2007, D entered into a dispute with me via email regarding XXXXs. There were 10 email exchanges between me and D within a span of 3 hours. I offered to meet her personally to explain the process but she refused. During this conversation with your tone towards him was exceptionally aggressive, you were shouting and your behavior towards him was offensive, demeaning and embarrassing and occurred in front of other employees. This amounted to an act of harassment with intent to treat me without respect and dignity. I note that I was her direct supervisor for some eight months when I was acting as an EL 2, Director of Corporate in 2004.
2. On 15 January 2008, D met me about a project manager role. In that meeting, she raised an alleged underperformance issue raised by A. I felt very surprised and raised my objections about these unsubstantiated allegations. D emailed A about our meeting and my reaction to his allegations. The content of D's email is indicated her pre-judged assessment about my performance which subsequently resulted in her denying me the opportunity for a certain role. In the same email D acknowledged that as she was not my prior supervisor, she could not make an educated judgment about my performance. Despite this, she initiated a performance process basing her judgment on A's version of events (even A was not my supervisor for the preceding 7 months). This action failed to follow the requirements outlined in CA and Performance Management Policy. Despite my objections that this was the first time my performance was raised and that the allegations lacked evidence, D failed to inquire into this matter of dispute. I note that my performance was never rated as 'improvement required' which was according to policy was a fundamental requirement before any initiation of underperformance. This caused a fatal flaw in the performance process and she was not checked or cautioned as she relentlessly assumed pursued her actions in close association with A. I note with greatest concern that she disregarded my previous assessment of 'satisfactory performance of some 3 weeks prior (in December 2007). D failed to attempt to informally resolve the issue through informal meeting, regular feedback, counseling and discussions and failed to provide appropriate strategies to address underperformance. She failed to document and provide a written record of any informal discussions which is a significant and basic requirement of managing underperformance and her actions have breached 'no-surprises policy.
3. On 16 January 2008, D exchanged emails with A and F about some alleged 'racially motivated remarks' supposedly made by me. That same day, A discussed and advised B that my 'performance issue was likely to develop into a formal process'. These discussions and actions and the inclusion of B in all of these without my knowledge and input is highly indicative of an actual bias of a pre-judged process that subsequently led to a prejudiced outcome (as B eventually demoted me to an APS 6 Officer). On that

evening of the 16<sup>th</sup> January 2008, A advised D in an email that he had ‘two’ extensive performance discussions’ with me. A contradicted his own statement when he E that he had had at least ‘five’ performance discussions with me. On that same day D discreetly fabricated a false email exchange about my cultural background of Hindi conversations. She failed to provide procedural fairness to me so that I could respond in any meaningful manner, deny her allegations or provide evidence that disapproved her allegations.

4. On 21 January 2008, D emailed me an invitation to discuss my performance and develop a Performance Improvement Plan. To a reasonable person, this meant that a decision had already been made to put me on a PIP despite obtaining a ‘satisfactory’ work performance for the preceding 6 months noted in Item 29 above. These actions defied the requirements of policy. HR’s advice at the time was that a performance management process was already in motion and nothing could be done. This left me with a feeling of helplessness and sick.
5. On 23 January 2008, D conducted a meeting intended to ‘to discuss a development of a PIP’ thus indicating a decision had already been made by that time to put me under performance management. This indicated her pre-conceived attitude about my performance in association with A. As this was the first time my performance issue was raised and this was confirmed by her own paperwork, her actions fell short of the requirements of policy and code of conduct. Despite my disagreement and my argument that I was rated satisfactorily in the preceding 7 months, no written records of the meeting were provided to me for comment, so I was not accorded an opportunity to deny the allegations or provide evidence which disproved those allegations. Her apparent defiance of policy resulted in her being biased, and not supporting her decision based on evidence. She complicated the matter further by not inquiring the matter in dispute despite my vehement objections. She therefore did not act with honesty and/or integrity neither she acted with care nor diligence. In the process, D pre-emptively organized with HR to cease my AWA allowance without letting the performance management process run its course despite legal advise against it.
6. On 6 February 2008, D emailed me with a draft performance plan seeking my feedback. On 7 February 2008, I provided my comments. On that same day, D advised via return email that she was happy with the proposed iterations. On 12 February 2008, D unilaterally changed my performance tasks significantly without consultation and without due regard to my skills and experience. Despite my reluctance to take on additional work that was totally foreign as I lacked the relevant skills, D threatened to escalate the matter to HR if I did not sign. As such, D conducted herself in an intimidating and inappropriate manner and I contend that her intentions fell nothing short of setting me up for failure. Her dictatorial attitude led her to a significant departure from policy requirements and against the APS Values and Code of Conduct.
7. On 13 March 2008, D transferred my tasks to be under her tutelage while she undertook a special project role. I believe this was a rather unusual decision because the

Note preparation had always been overlooked by the because of its very nature. On the same day but in another email, she advised me of the approach she would adopt to assess my PIP given my objection to take on the Note task without proper handover and/or training. Amongst other things she advised me 'I do not expect that the Note to be perfect'. Despite this undertaking, she failed in her consideration as was later evidenced in her assessment report of 8 May 2008.

8. D dragged my 'informal performance process' under her tutelage despite being transferred to another role and this was only for the duration of my assessment period. After my assessment process, the tasks were transferred back to its rightful area. These actions indicated her aggressive hostility towards me in defiance of APS values. In the process, she breached her 'Duty of Care' obligations by indulging in such a heavy handed fashion indicating 'punitive' actions and denying me a cooperative or supportive supervisory support required by policy. Her actions therefore were harsh, unjust and unreasonable.
9. During the course of the informal performance management, D departed from the performance tasks and allocated me additional tasks that I had no prior experience in and which were outside the scope of the process without my agreement or consultation. This behaviour further re-enforced my belief that D in association with A had an agenda to set me up for failure. Despite all these adversities and demeaning behaviour from D, I maintained a composed and cooperative attitude in accordance with the APS Values and Code of Conduct during the entire process. Unfortunately I cannot state the same for D.
10. On 8 May 2008, D assessed my performance as **requires further development**. Unfortunately, there was no such rating scale in CA or Policy at the time. In an email to A, D noted that my performance was **unsatisfactory**. Again there was no such rating scale in CA or Policy. To further compromise the process, her assessment of my performance against tasks that were outside the scope of the process highly indicated her improper use of her power and authority which was blatantly wrong and a miscarriage of justice from a supervisor who was expected to take a joint and collaborative responsibility according to policy requirements. I submit that she should have provided me with any guidance and support required to carry out new tasks for which there was no hand-over, no training and where I was virtually left to sink or swim. I also note with concern that her advice to A of this assessment noted that I needed to work in a position that matched my skills set and experience. I submit that as my supervisor she failed in her 'duty of care' obligations to arrange my relocation to a position that more appropriately suited to my skills and experience.
11. After her assessment, on 20 May 2008, she pre-empted B's decision by enquiring where I was to be placed during the 'second stage' of the performance management process. I note that B did not exercise his delegation to put me through the second stage until 25 May 2008. D continued to frustrate my efforts during the 'second stage' by withholding



delicate information that would have permitted me to perform my assessment tasks more meaningfully. This was despite my repeated requests and reminders.

12. During the primary review in April 2009, D provided false and misleading statements to [redacted] and selectively omitted relevant facts like stating her interactions with me of July 2007 when she was not even my supervisor. Of great concern to me was her statement to [redacted] alleging that I was the main 'dissenter' about her sudden return from [redacted] in December 2007. I request this enquiry to consider whether voicing an opinion when asked by A at a section meeting before D's resumption amount to dissent and whether such actions should lead to such adverse repercussions and whether A should have undermined his own undertaking of maintaining confidentiality by revealing to D as to who said what.

I submit that I was very cooperative right from the beginning of the process as I was very keen to find out where I was lacking for my future EL 2 roles for career progression. It appeared from D's conduct that she had heavily relied on A's version of events and this portrayed her conduct as implicit recognition of the [redacted] behavior. This belief is further confirmed from the evidence she had submitted to [redacted] during the primary review process. The documents obtained through FOI strongly indicated that my allegations of impropriety by D as highly probable which culminated from a secretly contemplated and hastily planned and executed process that led to such a disastrous outcome, further complicating a process that was already legally and procedurally flawed in nature.

### **Alleged suspected breaches by G**

G's 'formal assessment' process did not follow the requirements outlined in [redacted] CA and Policy as follows:

1. G's performance measures were very vague and un-particularized. As no measurable KPIs were identified for the process either in volume of work, priority setting mechanisms or problem solving methodologies against which an 'objective' measure and 'evidence' based assessment of my performance could be reported, I was heavily penalized despite my excellent efforts from 26/6/08 until 24/9/08. This meant that only one incidence of slippage because of my urgent absence on approved leave ruined my whole 3 months of good work performance.
2. On 25 June 2008, G was advised by HR: *'It is important the duties [redacted] performs during the assessment period are sufficiently similar to the duties he usually performs and against which his performance was assessed, particularly in relation to the areas he has been criticized about'*. Regrettably I was again assigned a totally new set of tasks as part of this process and was expected to quickly learn, develop, improve and deliver an almost undeliverable set of requirements. This once again illustrated a passage of natural injustice. G was provided specific instructions by HR to align the tasks with my then Personal Development Agreement (PDA) and this was regrettably not followed through

by him. He was also advised by HR to advise me that: *'the process was not designed to set me up for failure'*. On 27 June 2008, G advised me that: *'the process was not designed to set me up for failure'*. These actions suggested lack of independence and undue interference in a supposedly independent process.

3. During the process, G sent inappropriate email to E copying A. This indicated A's continued interference to influence in assessor G's independent process. Also, HR effectively advised G to deny me any basic rights to comment eg by saying [redacted] has limited opportunity to comment.
4. The following weekly assessment comments were provided to me via email by G:
  - On 15/7/08, G assessed my performance as 'task completed as required within performance expectations' against all the criteria and no issues were raised or discussed;
  - On 29/7/08, [redacted] assessed my performance as "task completed as required within performance expectations' against two criteria, and 'pending final changes' against last criteria which was to prepare a draft project plan;
  - On 7/8/08, G assessed my performance as "*no issues raised with quality or timeliness*' against 1st criteria, and '*pending*' against 2nd criteria and '*pending final changes*' against last criteria'. I provided evidence of the completed tasks against 2<sup>nd</sup> criteria but was not acknowledge. I note that in this report, G added an additional criteria of '*staff management*' and since that time, his assessment was 'deliberately and sufficiently progressed' against this extra criteria
  - On 11/8/08 (barely 2 working days after the previous assessment), G assessed my performance adversely against all 4 criteria. This was despite my contention that I was on Sick Leave for 3 days and that the nature of the tasks required daily and consistent work, and that the 3 days sick leave had impacted on my deliverables on an already very tight and busy work schedule. Despite this, G failed to take this into account as a mitigating factor
  - On 15/8/08 (4 working days after my previous assessment) assessor G favorably assessed my performance against all four criteria.
  - After this, I had to urgently fly to Fiji and organize my father's emergency medical trip in Australia after his massive heart attack. It appeared that G failed to take this anxious and highly stressful absence into consideration as another mitigating factor. I also note that [redacted] has a policy that promotes family and work life balance but regrettably this was evidently lacking in my case. As my total absence was 13

working days, the assessment period was extended by only 10 working days and this denied me a further opportunity to complete my tasks in accordance with the requirements of procedural fairness.

- On 26/9/08, G adversely assessed my performance against 3 criteria and noted my completion of the tasks against 1 criterion.
- On 10/10/08 (last meeting), assessor G favorably assessed my performance against 2 criteria and was critical of the other 2 criteria. I again noted my absence on approved leave to be with my father at the Canberra Hospital who had just undergone open-heart surgery (and who had very little English communication skills). I also note that this was the 1<sup>st</sup> time that my then Director, advanced an adverse comment about my performance. I submit it would have been more appropriate collegiate for (despite him being new to the role) to mentor and support me throughout the process as required under CA and Policy. To advance an adversarial comment at the last juncture without giving me an opportunity to rectify the situation indicated a bad faith and punitive attitude and against the rules of natural justice. These remarks at the last assessment meeting coming from a new Director who could not even offer one piece of helpful and strategic support as required under policy indicated a collusive ‘bad faith’ approach to penalize and discredit me by any possible means.
- G’s final assessment report of 23/10/08 had a no. of flaws eg. his brief was to assess me against:
  - WLS 1- Contributes to Strategic Thinking;
  - WLS 2 Achieves Results; and
  - WLS 6 – Demonstrates professional and technical proficiency.

His final report, however on pp 13 noted his particular concerns about:

- WLS 2 - Achieves Results;
- WLS 3 - Cultivates Productive Working Relationships;, and WLS 6 – Demonstrates professional and technical proficiency.

His inclusion of WLS 3 therefore, was a major departure from his brief and a significant legal flaw in the ‘formal’ process. Also G’s final assessment failed to note the number of changes to my supervisors (Directors) who had very limited or no knowledge of the work area and who had different work expectations apart from G’s requirements. These changes coupled with my family crisis frustrated my efforts and I submit that G’s failed to appropriately consider these mitigating factors.

5. On 24/11/08, G advised HR (upon their request) that he had no issues about my commitment to work and my desire to meaningfully contribute to the divisions and the department's goals and objectives.
  
6. Assessor G's final report was different from his individual weekly assessments and a departure from his own weekly assessments. His weekly assessments were not reflected in his final report. His final report referred to four WLS assessments when in actual fact he was supposed to assess me for only three WLS. I believe G's final report was not fair or an accurate summation of his weekly assessments nor did he take into account any mitigating circumstances like the nature of the new tasks, changes in supervisors or my family crisis. Also, he added his own extra criteria during the process and heavily penalized me against this extra criterion in his final report.

G embarked on his own broad and at times subjective assessment of a totally new set of tasks for the formal process. This was against policy. In the process, he failed to acknowledge a no. of mitigating factors like:

- I was undertaking another new set of foreign tasks;
- Halving the no of staff (to three) that I was to lead for the same tasks that were previously performed by six FTEs;
- The increase of workload because of increased departmental activities; and
- In addition to workload, I was required to document all procedures, bring about systems improvements, design a new project plan and identify key risks none of which were performed by the previous team.

By blind copying A in his weekly assessment reports without my knowledge, G either maliciously or willfully betrayed my trust at the highest order by acting in such an undignified manner. This was a very disturbing discovery from the FOI documents and highly suggested impropriety by G in association with others. This was quite concerning and jointly and/or severally a severe breach of the APS Values and Code of Conduct. This also raised important integrity questions about G's statement to during the primary review that apart from my directors at the time, he did not discuss my assessment with anyone else and that he was not subjected to any undue influence by others. This act of impropriety of the highest order can be regarded as a blatant disregard for natural justice and my right to privacy. I find this quite intriguing and disturbing because HR's records strongly suggest that G emailed his final report to HR on 21/10/08. However, his final signed report was not signed until 23/10/08. These findings are contradictory and indicate the obvious lack of integrity and independence of the process in defiance of policy.

### **Alleged suspected breaches by B**

B breached the APS Values and Codes of Conduct and the rules of 'natural justice' and 'procedural fairness' by:

1. Not enquiring into my allegations of non-merit based and unethical EL 2 selection/promotion processes conducted by A some of which were reported to him in August/September 2006.
2. A's email to B of 31/10/07 strongly suggested that B had input into A's File Note of 31/10/07, indicating a breach of the rules of natural justice and procedural fairness. By acting in such a manner on such a delicate issue in which he was the sole adjudicator suggested an actual bias and a conflict of interest as he was heavily involved in the planning of my performance management process since October 2007 and it's subsequent execution until his final decision to demote me on 23 December 2008.
3. In each of my detailed submissions to B dated 16/5/08; 2/6/08; 27/11/08; 11/12/08; and 5/1/09, I outlined to B about my deep concerns about A's adversarial attitude towards me and his influence across the Finance division and that his actions were defying CA and policy. These submissions can be provided upon request. Regrettably, no inquiry or action was taken by B indicating his ignorance of the importance of my allegations which effectively resulted in a denial of my natural justice and procedural fairness.
4. On 16 May 2008, B failed to provide me with a copy of A's minute of my alleged underperformance, so effectively I could not deny nor provide evidence that disproved his allegations. This would have accorded me procedural fairness. B failed to investigate the disconnect between the assessment ratings of D's and A and relied on A's interpretation. This was an example of a brutal denial of natural justice as this process could have been halted by B for lack of credible evidence because unreliable and non-evidence based allegations submitted by A.
5. During my performance process, B being the independent arbiter and decision maker asserted that there was nothing in my statements that convinced him eg. on or about 17/6/08, A nominated XXXX and others to be independent assessors which I objected and suggested some other officers, which unfortunately included G as I had no knowledge at the time of their association. On 21/6/08, B wrote 'ok I will advise my decision by 25/6/08. In the meantime, A was briefed about these developments on 23/6/08. By seeking A's concurrence for an independent assessor indicated the selection lacked independence, vigor and integrity. I contend that B knew that none of the supposedly independent assessors were independent because of A's influence and he was provided with another opportunity to consider A's 'apprehended bias' but regrettably he failed.
6. Also, during the process, I pleaded with B to hear my side of the story as I strongly believed that due process in accordance with certain fundamental requirements of CA and policy were not followed. Sadly my requests for numerous meetings were declined and hence my right to a 'fair hearing'.
7. Throughout the process B failed to provide advice on my review rights and the time limits thereby effectively protracting the process so that the subsequent reviews deemed

out of time. He therefore, denied me 'natural justice' and failed to err on the side of caution as required by the rules of natural justice. He also failed to consider my father's critical situation and the impact that had on me as any mitigating factor.

8. B noted that performance concerns were raised with me by A on 8/12/06 and in May 2007. This misleading and untruthful allegations were provided at the last stage so I could neither rebut nor provide disproving evidence for consideration. I note that the alleged May 2007 meeting was discredited by \_\_\_\_\_ after his enquires. I submit that B should have made similar inquiries as \_\_\_\_\_ as both submissions were provided with similar evidences. I note that the 1<sup>st</sup> time my performance concerns were raised with me were by D on 15/1/2008 and this was later re-confirmed paperwork of my stage one process.
9. I believe B relied heavily on his own pre-conceived outcomes despite the evident misrepresentation and inconsistencies in G's weekly assessment reports and his final report. I believe that B failed to seek appropriate clarifications from assessor G about this disconnect. In my submission, I noted with clarity that my absence on leave to attend to my father's serious illness had a profound effect on my performance during the last stages of the 'formal' assessment. B selectively failed to either acknowledge or take into account and any mitigating factor.
10. B stated that he was "satisfied that the process has been conducted in accordance with the \_\_\_\_\_ Managing Underperformance Policy'. I submit that this statement was ingenuous as these very requirements of policy were not followed and whenever I provided factual and rebutting evidence, he would fail to consider or selectively omit my allegations in his responses. eg. I reminded him on a no. of occasions that the requirements of the process were explicitly stated in the policy like, requirement that the employee was to be rated as 'improvement needed', there should have been no surprises, the allegations were unsubstantiated as it lacked evidence etc and I do not think B took this into account. To me, this denied me of my basic rights of justice and fairness as it strongly suggested that the process was driven in only one direction without due regard to anything.
11. B indicated that G took due care to ensure I was not disadvantaged in any material way by variations in supervisors or work tasks. I submit that the continuous change in Directors resulted in me receiving very limited meaningful direction and support. I also noted the changes in my job role during the assessment process which was unjustifiably imposed upon me. As I had no prior knowledge and experience in these tasks, to assess my performance on different roles during the process defied the rules of natural justice and B failed to take into account. I submit that the changes in my Directors, job roles and expectations seriously affected this phase of the process.
12. B stated he considered all possible actions, including terminating my employment. Out of the 4 main possible outcomes, B reminded me of only the worst one. This to me defied any possible leniency and an indication that the process was always driven towards one outcome. Despite my assertions to B that priorities kept changing, high rate

of staff turnover, staff were absent due to sick leave and the volume of work was unmanageable with reduced staffing levels, I contended that I was still able to document 90 to 95 per cent of all processes, completed the project plan on time, and delivered a comprehensive Risk Assessment Plan to assessor G by the due date and all these were achieved despite such a stressful and emotional period of my father being seriously ill. Regrettably, delegate failed to take all these factors into consideration.

13. I reminded B of my strong work ethics and my then Acting Assistant Secretary's comments like "I realize you have been working very hard and there is no doubt whatsoever of your strong work ethics." And I also offered him my willingness to undertake any further training to support any identified development required to fulfill my duties more meaningfully in accordance with the intent of the CA and Policy. Regrettably B failed to consider this. I also submitted to him that given my previously unblemished and proven track record of my performance not only at an EL 1 level but also at an EL 2 level, I was willing to undergo another assessment as I honestly felt that prior to my father's illness, I had performed and met the required standards for my position. B again denied me that opportunity effectively shutting all avenues of 'natural justice' and 'procedural fairness'
14. In my submission to B of 7 December 2008, I noted that both the CPSU and my solicitors had expressed their grave concerns about this legally flawed process. My solicitors even followed this up with B in their letter dated 12/1/08 requesting an urgent meeting to resolve the matter. Despite undertaking to contact them after perusing some documents, such contacts were made until after his final decision to demote me. To me this indicated his punitive intentions without due regard to the rules of natural justice and procedural fairness from a fatally flawed and hushed up process.
15. B stated that he gave me opportunities to challenge, but whenever I provided those arguments and my allegations of serious misconducts, they were either overlooked or not investigated.
16. B used deliberately misleading facts to justify his actions during primary review eg stating that my review application had nothing new of any consequence, defending the offer of VR during a performance process as appropriate and believing that the process was in accordance with the CA and Policy without actually testing. I submit that there were significant departures from these policy requirements and I highlighted the various clauses and sections of the CA and Policy that were violated to delegate throughout the process and there is no mention of these departures his report.
17. I had submitted to B that the entire process had been contrary to section 10(1)(j) of the Public Service Act 1999 which provides a fair, flexible, safe and rewarding workplace. He failed to inquire into these serious allegations.
18. In response to my email of 5/1/09, B wrote amongst other things "I have carefully considered your submissions and the issues you have raised and I have also explored options across the Division before arriving at the decision to reduce your classification to

the APS 6 level.” To me this indicated that his decision to demote me was inconclusive as he still had doubts. I submit that if that were the case, he should have more appropriately given me another chance to prove my capabilities as an EL 1 or otherwise. In the same email, he wrote “...should you wish to pursue employment opportunities across other divisions, there is no impediment to you doing so...”. To me this indicated his decisions were incoherent because he failed to act on my previous requests for urgent transfer because of the victimization, bullying, intimidation and harassment that I was put through by A in association with D. To me this also indicated that my transfers were deliberately blocked just to penalize me.

19. In his response to reviewer \_\_\_\_\_, delegate \_\_\_\_\_ provided what I believe were illogical and unreasonable reasoning indicating his apparent ignorance and lack of due respect to such an important process. He also started following up with \_\_\_\_\_ from 01/06/09 for an update of the primary review process and I submit that this was undue interference by B.

In summary, I submit that B had a vested interest in my performance management process from before its initiation until his final decision to demote me. By such actions, B appeared to have brought a biased and/or prejudiced mind in the process which effectively tainted his ultimate decision. This was despite my numerous unsuccessful attempts to submit my concerns to delegate \_\_\_\_\_ and be heard about my allegations of misconducts, apparent procedural failures and departures from CA and Policy at various stages of the process, I became very distraught and disillusioned and resolved to the fact that no-one was going to listen to me about the gross injustices no matter how much I complained. I submit that the decision of B to demote me lacked merit and vigor. My family crises were beyond my control and delegate \_\_\_\_\_ failed to appropriately consider this significant factor appropriately.

Overall, B’s decisions were by and large unfair, unreasonable, excessive and punitive in nature. His actual and perceived bias denied me of my right to be heard and denied me any form of ‘natural justice’ and ‘procedural fairness’.

### **Alleged suspected breaches by H**

H’s breaches can be summarized as follows:

- 1 In September and October 2007, s H was made aware of the breakdown in relations between myself and A and A’s hostile attitude towards me. Despite this knowledge, my numerous requests for her to intervene and/or facilitate my urgent transfer was not acted upon. I do concede that in early October 2007, s H was able to secure my transfer to Is branch, but for some odd reasons, A objected to this transfer.
- 2 Proving factually incorrect and misleading statement to \_\_\_\_\_ during the primary review process in May 2009. These were readily rebutted by credible evidences indicating s H’s desire to implicitly recognize A’s behaviour.



- 3 On 12 August 2009, s H indicated she was now willing to support my transfer. I submit that she should have acted from September 2007 when I was crying out for help and foul play by A.

### **Alleged suspected breaches by J et al - HR**

Some systemic failures by HR area are as follows:

- 1 In December 2006 and then again in February 2007, K failed to investigate my allegations about my mistreatment vilification and victimization by A.
- 2 On 13 February, K willfully provided wrong advise to me as it indicated that a underperformance process was already set in motion. This guidance lacked clarity, did not provide me with my review rights and heavily indicated that the process was already directed towards only one outcome.
- 3 J on a no. of occasions pre-empted B's decision which were yet to be made and highly indicated that the process was driven in one direction only. On a no. of occasions, it highly suggested that J was placing herself in B's shoes so the decisions were not B's but hers.
- 4 On 6 June 2008, the CPSU delegate highlighted the strong perception of pre-conceived outcomes to HR.
- 5 On 20 June 2008, J wrote to B stating: "I intend to recommend that you initiate the formal process". To me this appeared that it was Ms J's view not B's to initiate formal process. This decision therefore was not exercised through proper use of Secretary's delegations and is legally flawed. On the same day, Ms J accused me of trying to de-rail the process indicating my genuine concerns were secondary to their pre-conceived outcome and this seriously raises the integrity issues of the process.
- 6 FOI documents reveal that on 21/10/08, G emailed his final assessment report to Ms J some two days before finalizing it on 23/10/08 with evident iterations. The concern I am trying to grapple with is who else saw this document before being finalized and how much input did others have in that supposedly independent document.
- 7 On 21 November 2008, Ms J sought urgent advice from the APSC in which the ASPC advised that *'.. the decision to reduce the employee's classification that you describe is being based on an assessment that their performance at their current level is unsatisfactory, presumably concluding that remedial action undertaken has not been*

*successful in overcoming the identified problems, and that reduction in classification is an appropriate action”* I implore this inquiry to consider whether the action taken to demote me was remedial or punitive in nature. I note that CA and Policy also advance similar sentiments and this was quite remarkably and regrettably denied to me.

- 8 On 28 November 2008, Ms J emailed to B of 28/11/08 suggesting that he took 20 days to consider an important matter. To me, this indicated that B did not consider over 20 days otherwise he would not have been reminded of this. So, effectively, Ms J was placing herself in an important role and driving the process from HR’s end.
- 9 On 8 December 2008, Ms J pre-empted the steps of the review process indicating a decision was already made by then and not on 23 December 2008 as otherwise stated and that she was effectively was putting herself in the shoes of B and Secretary

The above flaws suggest Ms J conducted herself as a lead role in the process and by making decisions on behalf of B may have adversely affected the merits of the process which further deprived me of ‘**natural justice**’ and ‘**procedural fairness**’.

#### **Alleged suspected breaches by K**

**K** findings as the report indicated lacked veracity, impartiality and therefore compromised its integrity and it was equally legally flawed.

#### **Summary of breaches**

Based on my submission outlined above, I evidently press that the following provisions of the APS Values and and the APS Codes of Conduct have potentially been breached by their corresponding officers:

#### **10 APS Values**

1. the APS is a public service in which employment decisions are based on merit; A and D
2. the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves; A and D
3. the APS has the highest ethical standards; A, D, G, B, H and Ms J
4. the APS has leadership of the highest quality; A, D, G, B and s H
5. the APS establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace; A and B

6. the APS provides a fair, flexible, safe and rewarding workplace; D, , s H and B
7. the APS promotes equity in employment; D, A and B
8. the APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government; D, A and B
9. the APS provides a fair system of review of decisions taken in respect of APS employees. D, A, s H and B

### **The APS Code of Conduct – section 13**

1. An APS employee must behave honestly and with integrity in the course of APS employment. D, A, J and B
2. An APS employee must act with care and diligence in the course of APS employment. Ms D, A and B
3. An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment. Ms D and A
4. An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:
  - (a) any Act (including this Act), or any instrument made under an Act; or D, A, G, B, Ms J, s H and K
5. An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment. D, A, G, B, s H and Ms J
6. An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment. D, A, B and s H
7. An APS employee must not make improper use of:
  - (a) inside information;
  - (b) the employee's duties, status, power or authority;
 in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person. D and A
8. An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS. D, A, G, B, s H and Ms J

9. An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia: D, A and B

I have been in a very desperate situation since January 2008, am extremely distressed and have been extremely traumatised and persecuted by the above officer's behaviour. It has been like being sentenced to life imprisonment without even having been charged, tried and convicted. I believe the process was misled and have no doubt that the appropriate level of inquiry will be initiated.

While acknowledging that FM XXX sympathised at the outset appears to fly in the face of damning findings. I note that in my statement to the FMC, I have asserted that this process has anything but destroyed the credibility of a fair and just behaviour.

It is very clear from the specific allegations outlined above and their corresponding evidences that I have in my possession that reasonable level of inquiries did not take place, because if the appropriate officers did, they would have found a lot of the material that supported my allegations.

I submit that too much time has not passed to take any action as these events appear to be as fresh in my mind and it would in my alleged perpetrators. It is now time to give a full explanation about the parties involvement because if we consider the documents that have been lodged in the FMC, what they show is extraordinary levels of contact prior to and during the process. This has been an exemplary case of a kind of stitch-up by A and there is only one issue here and that is did or did not A pre-plan and pre-conceive my demolition outcome.

To maintain integrity in XXXXs processes, an independent Code of Conduct investigation is evidently warranted.

### **Recommendations**

1. HR should be removed from handling complaints
2. Delegate's powers should be scrutinised by higher management
3. Corrupt Officers should be removed from responsible positions of trust and be held personally liable other than being hiding under Corporate Veil
4. Zero tolerance for workplace bullying
5. Complainants to be protected and not vilified or further ostracised