

Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry, Innovation, Science, Research and Tertiary Education Portfolio
Additional Estimates Hearing 2012-13
13 February 2013

AGENCY/DEPARTMENT: COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION (CSIRO)

TOPIC: Workplace Bullying

REFERENCE: Written Question –Senator Bushby

QUESTION No: AI-156

1. At the Estimates hearing of 13 February, Dr Clark stated that she had sought to have the findings in the Administrative Appeals Tribunal case involving former CSIRO employee, Martin Williams, reviewed internally by CSIRO's Acting General Counsel. Did this review confirm to Dr Clark that Justice Constance had found that the senior CSIRO officers, Calum Drummond and Damien Thomas, had been unreliable witnesses? Did this review also confirm to Dr Clark the findings by Justice Constance that none of the evidence of any of the CSIRO witnesses in the case was factual, except where it agreed with the evidence of Mr Williams?
2. At the hearing of 13 February, Mr Whelan also implied that CSIRO was not a major player in the case in that it was a matter between "Mr Williams and Comcare and the AAT". How many separate witnesses from CSIRO appeared in the case? How many witnesses in the case provided evidence against Mr Williams, and how many of these were CSIRO employees?
3. Did any CSIRO employee provide a false affidavit in this case at any time? Did any CSIRO employee provide false evidence under oath during cross examination at any time?
4. If the implication of Mr Whelan's statement – that CSIRO is essentially not bound by the findings of this case – is to be accepted, then wouldn't this have further, more far-reaching implications for Comcare's relationship with the organisation? Isn't this effectively saying that the basis of the agreement under which CSIRO is insured will now have to be revisited given that Comcare spent hundreds of thousands of dollars on this case in relation to incidents that occurred purely within CSIRO?
5. Have there been any other occasions on which Dr Clark has ultimately preferred internal CSIRO opinions to adverse findings made about CSIRO employees by a court or tribunal? If so, when and why? If not, why did she specifically decide to take such an approach on this occasion?
6. And, if Dr Clark wanted another opinion on the full implications of the case for CSIRO, why did she not seek external, independent legal advice?
7. On what date(s) did Dr Clark brief the CSIRO Board on the findings of this case? Did any member of the Board suggest that she should seek external, independent legal advice on the implications of the case for CSIRO?

8. Was it Chris Gibson who was the Acting General Counsel to whom Dr Clark was referring in her answers on this issue on 13 February? If not, what is the name of the person to whom she was referring?
9. If this person was acting as General Counsel, then presumably they normally occupy another position at CSIRO? In what position (and in what specific area of CSIRO) were they employed immediately prior to acting as General Counsel? And to what position (and in what specific area of CSIRO) did they return once their duties acting as General Counsel concluded?
10. Under which Group Executive's direction does this person work in their normal day-to-day duties?
11. What is the nature of this person's legal background, what are their specific legal qualifications and career experience, and are they a specialist in Australian administrative appeals actions?
12. Has this person – who recommended to Dr Clark that no misconduct cases should be commenced against Mr Drummond and Mr Thomas – also been involved in establishing the structure of the inquiry to be headed by Professor Pearce? If so, what specific role have they played in this process?
13. Between what dates did this person act as General Counsel? And why were they acting in that position – was Mr Walker on leave and, if so, between what dates was he on leave?
14. During December 2012, January 2013 and February 2013, in which area of CSIRO has Damien Thomas been employed?
15. Mr Whelan made reference, at the hearing of 13 February, to the activities of a group called 'Victims of CSIRO'. Included in his criticisms of that group was a comment that CSIRO has had to take legal action in respect of that group's activities. What specific legal action has been taken against that group, what is the legal basis for it, how has the 'Victims of CSIRO' group been notified of such action and when, and what has been the outcome?

ANSWER

1. Yes. The review did not focus on the second part of this question.
2. The CSIRO does not agree that Mr Whelan implied that the CSIRO "was not a major player in the case". Seven witnesses from the CSIRO appeared in this case. It is not correct to categorise testimony in such hearings as being for or against any particular party, as the duty of a witness is to give honest testimony based on their recollection of events. Therefore the CSIRO's response to the second part of this question is none.
3. The CSIRO is not aware that any CSIRO employee provided a false affidavit in this case. However, the CSIRO is aware that one CSIRO officer, Mr Nigel Poole, made one statement in his affidavit which he conceded under cross examination he was not in a position to have made. The CSIRO is not aware that any CSIRO employee provided false evidence under oath during cross examination.
4. The CSIRO was not a party in these proceedings before the AAT. The proceedings before the AAT were against Comcare and were pursued in relation to a decision Comcare had taken

regarding a compensation claim made by a person who had been employed at the CSIRO. Any matters arising with respect to insurance arising from this decision are matters for Comcare.

5. No. Not applicable. Dr Clark's standard practice is to seek internal advice regarding the implications of findings of courts or tribunals relevant to the CSIRO. On this occasion, Dr Clark was not satisfied that the Tribunal's findings warranted the commencement of misconduct proceedings.
6. Dr Clark sought advice from the Acting General Counsel and other relevant senior officers. Dr Clark was satisfied that she had obtained appropriate advice.
7. Dr Clark did not brief the CSIRO Board on the findings of this case. A briefing was provided to the CSIRO Board People Health and Safety Committee meeting on 14 January 2013 by Mr Mike Whelan. No Board members advised Dr Clark that external, independent legal advice should be sought by the CSIRO in relation to this matter.
8. Yes.
9. Prior to acting as General Counsel, Mr Gibson was employed in the CSIRO's legal function, in the role of Team Leader – Manufacturing, Materials and Minerals. When his duties as acting General Counsel concluded, he returned to a role as a Senior Legal Counsel in the CSIRO's legal function.
10. Mr Gibson does not report to a Group Executive. He reports through the General Counsel to Mr Mike Whelan, Deputy Chief Executive, Operations.
11. Mr Gibson was admitted as a legal practitioner in Victoria and has significant experience in a number of areas of practice including senior legal positions at two major banks and a substantial period of service with the CSIRO. To the extent that the CSIRO General Counsel requires specialist advice in particular areas of law (for example, administrative law), he or she has the ability to seek internal or external specialist advice or input as appropriate.
12. Yes. Mr Gibson is part of the CSIRO team that has worked with Professor Pearce and HWL Ebsworth on the legal aspects of the establishment of the structure of the Independent Investigation.
13. Mr Gibson acted as General Counsel between 16 July 2012 and 28 January 2013. Mr Walker was acting in the role of Executive Director, Operations between 16 July 2012 and 9 November 2012, and was in another role and on various forms of leave between 12 November 2012 and 27 January 2013.
14. During December 2012, January 2013 and February 2013, Mr Thomas has been employed in the Manufacturing, Materials and Minerals Group.
15. The CSIRO has not taken any legal action against the group called 'Victims of CSIRO'. Mr Whelan was referring to a step taken in connection with an existing Federal Court case, to request that a party in that case cease posting comments on the 'Victims of the CSIRO' website which in the CSIRO's view are seeking to intimidate witnesses. This request was made by solicitors acting for Comcover. Comcover is managing the defence of that case on the CSIRO's behalf.