

Legislative Council

Thursday, 3 April 2008, Page 2265

WORKCOVER CORPORATION

The Hon. A. BRESSINGTON (14:58): I seek leave to make a brief explanation before asking the minister representing the Attorney-General and the minister responsible for WorkCover and industrial relations a question about WorkCover.

Leave granted.

The Hon. A. BRESSINGTON: I was contacted by a constituent who has been found to have received WorkCover payments by dishonest means. The conviction was secured by using unlawfully obtained evidence to discredit his claim for compensation and, in turn, secure the conviction. Specifically, the injured worker alleges that in 2005, when WorkCover commenced its prosecution case against him in the Magistrates Court, and at the same in the midst of a custody dispute, WorkCover knowingly and unlawfully used that information relating to his personal Family Law Court matter in litigation against him in order to fight his claim for compensation. This use of Family Law Court documents was clearly for a collateral purpose. Chief counsel (litigation) for the Australian Government Solicitor, Tom Howe, in his legal briefing for the Australian government agencies, states:

In the course of litigation before courts and tribunals, government departments and other agencies and the lawyers acting for them may gain access to information recorded in documents made available by the other party or non-parties. If such access is obtained under compulsory court or tribunal process, it will automatically be subject to an implied undertaking prohibiting use or disclosure of the material, except for the purposes of the subject proceedings. My conclusion is that the commonwealth is bound, like any other third party, not to use information which is gained by one party from the other via the court proceedings under the court's compulsory processes for any purpose other than use in those proceedings. To seek to use the documents in deciding whether or not to prosecute, or whether or not to take enforcement action, is a 'collateral or ulterior' use, which requires the leave of the court.

It is evident from this that leave of the court or consent is required before documents are disclosed or used. WorkCover did not seek leave or permission to use the documents in this case, and Magistrate Ackland also made a finding that it was wrong for WorkCover investigators to have used those documents. Despite this finding against WorkCover, the evidence was accepted on the grounds that 'to remove the evidence now is like removing flour from a baked cake'. My questions are:

1. Will the Attorney-General take appropriate action in relation to this matter on the basis that it is against the public interest for there to be any interference with the freedom of a party or an individual to court proceedings to provide information freely to the courts without fear of the use of the document for some other purpose?
2. What efforts will be made to remedy what is clearly a breach of all laws and rules pertaining to the use of documents provided under compulsion in another court's jurisdiction?

3. Will the state Attorney-General refer the matter to the federal Attorney-General with the view of prosecuting WorkCover for contempt of the Family Court?
4. What safeguards will be put in place to ensure that the state government and all its agents will comply with commonwealth laws, rules and legal principles to stop the integrity of the court system being undermined?
5. Why does WorkCover not have to comply with the prosecutorial requirements observed by the DPP when prosecuting cases for alleged fraud?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:02): I will refer that question to the Attorney-General for his response.