

# Report of investigation into whistle blower treatment within the Ministry of Transport

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## 1. Introduction

This Inquiry was prompted by concerns raised with the State Services Commissioner regarding possible disadvantage to Ministry employees who raised concerns about aspects of Joanne Harrison's behaviour while at the Ministry of Transport. Ms Harrison is currently serving a custodial sentence for defrauding the Ministry of a large sum of money while in her position as General Manager Organisational Development.

This Inquiry was undertaken pursuant to sections 23 and 25 (2) of the State Sector Act 1988 with the requirement to report to the State Services Commissioner on the following matters:

- > Whether or not any current or former employee of the Ministry of Transport (including contractors or secondees) who raised concern about the behaviour of Joanne Harrison was disadvantaged in their employment as a result of raising those concerns;
- > If so the circumstances of any disadvantage that occurred;
- > What, if anything, should occur by way of remedy;
- > Any recommendations on the implementation and management of protected disclosures or complaint mechanisms within the public service.

The State Services Commissioner issued a press statement announcing the Inquiry and the Chief Executive, Ministry of Transport advised all of his staff. Both encouraged those who believed they were disadvantaged or could provide input to the Inquiry to come forward.

At the commencement of the Inquiry I made contact with a number of current and former staff inviting them to provide input. As a result, 18 interviews with current and former Ministry staff occurred and I also met with the former Chief Executive and a representative of the Public Service Association (PSA). I wish to acknowledge my appreciation for their participation and also the assistance and advice provided by Karen Radich (Barrister, Clifton Chambers) and Andrew Royle (Chief Legal Adviser, State Services Commission).

## 2. Approach to the Inquiry

There have been a number of independent investigations since the formal discovery of Ms Harrison's fraud which provide detailed accounts of what occurred and I do not intend to repeat this. It is also not within my Terms of Reference to inquire into Ms Harrison's fraudulent activities and how compliance was managed by the Ministry of Transport. I do however, make some recommendations at the end of this report

about the improvement of complaint processes and 'whistleblowing' in the public sector more generally.

I have taken the approach of first considering what concerns were raised by staff relating to the procurement of services, contracts and invoicing. From there, I have focussed on two particular areas as they directly relate to those staff and the question of possible disadvantage. Those two areas are to do with a restructuring within the Finance area in 2015 and to remuneration decisions made about another staff member in late 2015.

Two other matters were raised with me that are outside my terms of reference as these concerns about Ms Harrison were not raised at the time but there is a belief of disadvantage by decisions made by her. I note these towards the end of this report and have proposed referring them to the Ministry's current Chief Executive.

### **3. Ms Harrison's awareness of staff concerns**

Ms Harrison was initially employed by the Ministry of Transport in 2011 as the Manager Change, People and Development. In the first half of 2013 she was appointed to a second-tier position as General Manager Organisational Development. In that role, she reported to the Chief Executive and was a member of the Ministry's Leadership Team.

The matters raised with me relate to aspects of Ms Harrison's actions when she was in charge of the Organisational Development Group. These are relevant because they were issues raised by staff members who were later disadvantaged (as per my findings below).

The matters that came to the attention of those personnel and were raised directly with either Ms Harrison or their own Manager are as follows:

- a) In the latter half of 2013, a person in the Finance team (Employee 'A') in preparing a spreadsheet matching supplier invoicing to contracts identified a number of instances where services obtained by the Organisational Development area (OD) didn't appear to be in place. These were checked by the Ministry's Legal team with some of the entries found to be innocuous except for a number of payments to Sharp Design without a contract in place. Ms Harrison undertook to follow correct procedure in terms of the Ministry's procurement policy.
- b) In both the 2013/14 and 2014/15 years some non-compliance issues were identified in annual 'Comply With' surveys. The Legal team in reporting the results to the Leadership Team included concerns around procurement processes in the OD area.
- c) In May 2014, when completing answers to estimates questions for Select Committee the same person in the Finance team, Employee A, identified suppliers that did not appear to have contracts and emailed Ms Harrison. Ms

Harrison advised that there were various projects being undertaken, all well under \$100k, and that these suppliers had been discontinued as capability had been brought in-house.

- d) In late July 2014 a travel agent forwarded an email from the Victorian Police Fraud and Extortion Unit seeking information about a person of interest – Ms Harrison. This was received by Employee A, who referred it to a manager. The Chief Executive recalls being told only that the Police were trying to contact Joanne Harrison. He took the matter up directly with her, and subsequently received an explanation that satisfied him.
- e) In late August 2014, Employee A identified that a supplier to OD (Sharp Design) from the previous financial year had submitted invoices which added up to over the GETS threshold without a contract in place. Employee A was instructed to raise it with Ms Harrison and steps were taken to inform the Ministry's auditors of the breach. A member of the Legal team (Employee B) also took this up with Ms Harrison and sought further details directly from Sharp Design. Subsequently, an email was received from Sharp Design and referred to Finance advising that they were closing their Wellington office and moving the business to Sydney.
- f) By the end of August 2014, Employee A (who was aware of the previous issues over contracts and invoices and was aware of the Victorian Police communication) began to have serious misgivings about what appeared to be a pattern of issues involving Ms Harrison's behaviour around the use of tax payer funds. While in their own account they didn't use the word 'wrongdoing' they suspected something wasn't right and was sufficiently concerned about it to raise their serious misgivings with their manager. They together consulted with a senior member of the Legal Team ('Employee B'). This led to Employee A being advised that the issues raised would be treated as a protected disclosure (under the Protected Disclosures Act 2001). Employee B informed the Chief Executive who investigated the matters and came to the view he was dealing with an issue of non-compliance with procurement policy and asked for additional controls to be implemented. Employee B was informed of his decision in December 2014 and they advised Employee A.

I note at this point that in this Inquiry it became clear that these concerns were the only matters treated as a 'protected disclosure' (by Employee A), although other staff also raised issues at times – see (g) below.

- g) Other staff in the Finance team, who worked in the invoice/payments processing area, raised queries during the 2014/15 year about invoices from Sharp Design with blanked out details, about the cost of Ms Harrison's internal travel, and about an overseas trip by Ms Harrison for a course that appeared to have been cancelled. They also had concerns about the quality of invoices from a company called Mazarine.

I have formed the view that Ms Harrison would have known that these staff in the Finance and Legal teams had concerns about her practices – including Employee A, Employee B, as well as the two staff in the invoice/payments processing area. This is because those staff either raised these issues with her directly or with their own line manager and, in some instances, with the Chief Executive who responded as he considered appropriate at the time.

At around that time, Ms Harrison appears to have sought to discredit one person in particular, Employee B, who she infers in a communication to the Chief Executive in October 2014 could not be trusted with confidential information because they had been a PSA delegate. A staff member who worked closely with Ms Harrison recounted her later making a comment which implied a negative view of Finance and Legal.

#### **4. Review of Finance and Introduction of Automated Invoice Processing**

I was informed that the Transport sector under its sector collaboration and shared services initiative had been considering the automation of invoicing for some time. The Ministry did not take a decision to proceed until other transport sector agencies had implemented it. Once this was in place a cost-effective case could be mounted for making the Ministry's invoicing processes more efficient. It was also seen as part of the Ministry improving its BASS benchmarks for corporate related services.

In early 2015 the Finance team undertook preliminary work to explore specifications for Automated Invoice Processing (AIP). I sighted the Ministry's 2015/16 business plan and for Finance it included the goal of automating invoicing. Both the General Manager responsible for the Finance area and the Manager Finance recall that it was a performance expectation upon them to deliver on this. The General Manager expected Ms Harrison to lead Ministry change processes and noted that she was likewise streamlining her own group's corporate related services at that time.

I accept that there was a genuine reason for the Ministry to consider implementing AIP and that it was valid for the OD team to have HR-input into that process. External consultant advice was also obtained by the Finance Manager as the proposal documentation was prepared.

The substantive work on drawing up a change proposal for the restructure of Finance began in September 2015 under the auspices of the General Manager Sector Performance as the senior responsible officer. Staff from the OD team who worked for Ms Harrison assisted with drafting and finalising the proposal. There were also discussions between the responsible managers for Finance and OD staff that included Ms Harrison. These were primarily about the proposal, the impact on staff, and planning for communicating both the proposal and, at a later stage, the announcement of decisions. I don't find the involvement of OD in this situation unusual. In fact it would have been remiss of the managers involved had they not sought advice on the human resource and employment law obligations and

processes for managing a restructuring. In that regard, the consultation document was sent by Ms Harrison to the Ministry's external employment lawyers prior to its release (although the proposal was distributed before their response was received).

In early October 2015, a consultation document was released to the PSA and a few days later to staff that outlined the proposed shift to automated processing, the perceived business benefits and included a proposed new structure for Finance. I note that one staff member who was going on annual leave for a month was confidentially informed about the proposal before it was generally issued.

The invoice processing and payments staffing structure prior to AIP incorporated three positions: a fulltime Senior Systems Accountant, who was also the team leader, a part-time Senior Accounts Officer and a part-time Accounts Officer. They were all long serving well regarded staff who knew the Ministry and its processes well and all were affected by the new proposed structure as set out in the consultation document.

Staff were invited to comment on the proposal and the PSA also made a submission which included concerns over the rationale for the restructuring and the timing of the proposed changes. The proposed new structure disestablished the Senior Systems Accountant, the Senior Accounts Officer and Accounts Officer roles and placed a new role of Adviser Accounts and Financial Systems under an existing Senior Accountant role. Minor changes to other existing roles were also proposed.

In early November 2015 staff were informed of the final decisions which essentially mirrored the consultation document with no substantive changes. The decision document referred to affected staff being able to put in an expression of interest for "new and alternate" positions having regard to there being a match with skills and experience. The document isn't clear whether alternate positions meant across the wider Ministry or just in Finance. As far as I could ascertain affected staff were not offered alternate positions within the wider Ministry. One staff member is on record as having declined the new Finance role as it was full-time.

Ultimately, the Senior Systems Accountant, the Senior Accounts Officer and Accounts Officer were all made redundant with their last day of employment being 10 and one on 11 December 2015.

I conclude that the automating of invoice processing was a planned improvement and the Ministry had a legitimate right to explore and decide to implement an AIP system. This technological change meant that less staff were ultimately going to be required in the accounts processing area, so redundancies would justifiably occur if no other options arose for the affected staff in the meantime.

Having said that, the situation with one of the three positions made redundant is less clear, as the role they played was broader than that relating to accounts processing. It was a position that seems to have been drawn into a restructuring of that discrete function. However the responsible managers for Finance consistently explained the rationale for that redundancy, which arose from their consideration of whether there was an ongoing need for a role at that level.

While the manager making decisions about the restructuring, in their own account to me, relied upon and had total confidence in the advice given by Ms Harrison and her team about the process for implementing those redundancies, it was clearly their own decision to proceed. It was also their decision to proceed with the redundancies at the time that those were implemented.

I have as far as possible explored the timing of the redundancies and particularly have sought to determine why they were made two weeks before Christmas when the Ministry knew it did not have a transition plan or any new technology in place for moving to AIP. The Ministry engaged a Temp a few days before the redundancies came into effect, who was trained in the Ministry's existing invoice processing system by the redundant Accounts Officers and who then continued with their duties after their departure. I was advised that the aim was to hire a Temp to provide a fresh perspective on accounts processing and to advise on the transition to automated processing. I note in that regard that the Temp who was engaged at the time was an overseas-qualified Accountant, rather than having more limited experience in accounts processing.

However, this did not all go to plan for a range of reasons and the anticipated implementation date for AIP of April 2016 then slipped to mid-2016. The relevance of this timing is that the three redundancies in the Finance team, premised on the introduction of AIP, occurred approximately 7.5 months before the AIP system came into effect.

I regard the timing of the redundancies of material significance to the question of whether any disadvantage occurred. This is because this is an area in which I conclude that Ms Harrison's influence played a part. While its content was prepared by a more junior HR staff member, Ms Harrison herself emailed advice to the responsible managers outlining options for the timing of the redundancies to be implemented. In that advice, she canvassed the option of delaying the redundancy of one of the three staff members (who is the Employee A referred to above) as the preferred option by their line manager through to March or April 2016 but noted the risk around the potential for the person to create ongoing work beyond the implementation date and/or becoming disengaged by working on a system that was doing them out of a job. Her advice also included the option of bringing in two contractors, one to oversee AIP implementation and one to fill the new role of Adviser Accounts and Financial Systems to keep the payments running until AIP was implemented. Her recommendation to the responsible manager was to move quickly as (without any apparent basis) she stated that there was a risk of behaviour deteriorating as a result of the decision. Her advice did not mention the readiness of the Ministry to move to AIP and any implications of the AIP system not being implemented for some time yet.

It was decided, based on Ms Harrison's advice, to exit all three staff at the same time (including Employee A), ahead of the AIP system being implemented and just prior to Christmas. When questioned as to why at least 1 or 2 of the existing staff weren't offered delayed redundancy so they could be utilised to assist with getting over the hump of December invoice processing and help with preparing for transition to an

automated system both the managers concerned said that while it wasn't an easy decision they believed a 'clean break' was the best course. This view again seems based on Ms Harrison's advice to them both which may or may not have been made in good faith but which did not also advise that it might have been too early in November/December in 2015 to say that the three roles were 'no longer required' or were superfluous as yet. Whether or not a 'clean break' was desired, that was an important first point to determine. As the decision-makers however, they properly relied on that advice and accordingly acted reasonably.

Making staff redundant isn't something to be taken lightly and for the staff concerned how they are treated over this time is critical to both their self-worth and well-being. In this case these were long serving staff who felt they were being bundled out of the organisation in haste when they knew the Ministry was in no way prepared for the implementation of AIP.

I concluded earlier that the automating of invoice processing was a planned improvement and the Ministry had a legitimate right to explore and ultimately decide to implement an AIP system. I also conclude that Ms Harrison and the OD advisers assisting with the restructuring had a legitimate role in advising on the process of implementing that new structure. While I can see why the Finance staff having raised issues or concerns about Ms Harrison's practices and who then underwent restructuring may believe the two are linked, it is not something that can be explicitly proven and I found no direct evidence that this was the case. I do not therefore find that any Ministry staff in the Finance team (including Employee A) were made redundant *because* they had raised issues about Ms Harrison. The sole remaining question therefore concerns the timing of the redundancies and the apparent haste to conclude matters before Christmas.

I conclude that disadvantage did occur by the manner in which the three staff were treated prior to their exiting the Ministry, particularly with the redundancies occurring so far in advance of the new AIP system being implemented. A sensible and informative HR view ought to have made clear to the decision-makers concerned that positions in a structure are not likely to be genuinely 'redundant' until the new system is introduced, or is about to be introduced, and those positions are no longer needed. Here, the decision by the responsible manager (endorsed by the Chief Executive) to terminate the employment of the three Finance staff before that point in time was made in light of advice from Ms Harrison which included immediate termination as an available option.

## 5. Remuneration decisions

I conclude that a staff member formerly within the Ministry's Legal team who had pursued concerns about Ms Harrison's behaviour through to the Chief Executive and with Ms Harrison directly (Employee B) was subsequently disadvantaged by Ms Harrison's own actions.



This person went on secondment to another agency. After they had been at the organisation for approximately 9 months, the manager of the secondee sought HR advice as to how they could reward this person who they assessed as performing above expectations but being paid at a lower rate of salary. It was suggested that the manager could seek to obtain the Ministry's agreement to a higher duties or extra duties allowance with the organisation to which the person was seconded covering the cost. The proposal was put to the Ministry by the secondment organisation and there was some back and forth until the proposal was declined on the advice of Ms Harrison who claimed the Ministry's policy prevented it from agreeing to such an arrangement, despite there apparently not being a relevant policy at the time. She also communicated, in an email, that the Chief Executive had declined to make an exception to this 'policy'. The former Chief Executive has confirmed to me that it was not a matter raised with him.

There is a clear link between Ms Harrison's involvement and Employee B not being in receipt of a remuneration reward from their host organisation.

## 6. Consideration of Redress

### *Finance team staff members*

The three staff who were made redundant from the Finance team in December 2015 have moved on with their lives. However, there is still for them a sense of injustice arising from the knowledge that they raised concerns around Ms Harrison's behaviour before their employment was terminated.

While redundancy at any time is not an easy thing for staff to accept it became clear to me that there was still the need for manual processing knowledge and expertise at the time the Accounts Officers' employment was ended in December 2015. It would have been possible to delay their redundancies by making a limited time offer of continued employment while the approach to implementation of AIP was landed. In respect of one person, Employee A, it seems that there was initially an offer of ongoing work over the transition period and then that offer was withdrawn.

Given the relative small size of the Ministry it must have been humiliating for these three long-serving staff to have had their redundancies so visible across the organisation especially as colleagues could see that AIP wasn't ready for immediate introduction and yet they were not being retained until that occurred, or to help with the transition process. An additional humiliation for the Accounts Officers occurred in them having to train, as best they could a few days before they were due to leave, a Temp replacement to effectively do their jobs.

While taking a personal grievance would have been open to all three of these staff members at the time none went down this path.

In terms of the redundancy of Employee A's position, I conclude that there was unnecessary hurt and humiliation suffered because it occurred well ahead of the AIP being implemented. As noted above, that decision was taken on the advice of Joanne Harrison. This person was also offered a period of continued employment

prior to redundancy taking effect to help with the AIP transition but had this offer then withdrawn. Employee A should therefore receive an apology for these matters, and, in the circumstances I recommend to the State Services Commissioner that he consider discussing and reaching agreement with this person on appropriate redress.

In order to address the unnecessary hurt and humiliation experienced at the time I conclude that the other two Finance staff who were made redundant in December 2015 should likewise receive an apology. Given the circumstances, I also recommend that the State Services Commissioner consider discussing and reaching agreement with them on some appropriate redress.

*Legal team staff member*

I consider that there should be some redress over Ms Harrison's actions in preventing Employee B from obtaining increased remuneration from their secondment organisation. I propose therefore that the State Services Commissioner refer this matter back to the Chief Executive of the Ministry of Transport for discussion and retrospective resolution with the organisation concerned.

## **7. Other matters**

There were two other matters that were brought to my attention in relation to the perceived treatment by Ms Harrison that the people concerned feel disadvantaged by.

The first concerns an employee who sought to attend a professional development course. His manager approved the course however, as Ms Harrison apparently held the training/development budget, when it was put to her it was declined. The same staff member also expected that when transferring into the Organisation Development Group they would have a more senior role reporting to Ms Harrison however, that didn't eventuate. The person concerned believes they have been disadvantaged, but as they did not raise these concerns at the time they fall outside my remit. However, I propose with the person's consent that these issues (in their more fulsome form, as were reported to me) are referred to the Ministry's Chief Executive

The second matter concerns an employee who occupied a role in Ms Harrison's group. This person on returning from sick leave found that they had been demoted. This person did not pursue the matter at the time as they were still recovering from their illness. Quite a few people I interviewed mentioned this person's treatment without any prompting from me. They reflected that they thought the treatment of this person had been "unfair and cruel". Again, this is outside my remit to deal with, because this employee did not raise issues about Ms Harrison's conduct, but is likewise something that I believe the Ministry's Chief Executive should be made aware of at this time.

## 8. Improving complaint processes

As part of the Terms of Reference for my inquiry I was asked by the State Services Commissioner to provide any recommendation on the implementation and management of protected disclosures or complaint mechanisms within the public service.

I encountered often during my Inquiry the deep sense of betrayal felt by Ms Harrison's actions and how fresh this is in the minds of those who worked more closely with her. Almost without exception they talked about the shock of Ms Harrison's fraud being unmasked and how they have been affected by it, and by the ongoing publicity, as well as untrue implications from others that they must have known something. There was a clear sense of having been let down by managers and the organisation's leadership especially so for staff who raised concerns between 2013 and 2015 which in their minds seemed to go no-where.

The Public Servants I spoke to during this investigation were clear about the need to raise concerns if they had them. Indeed, as I have identified, concerns were raised about the activities of Ms Harrison. However, while all understood that they could raise concerns (for example with their line manager), for some there was a lack of clarity about how these concerns would be treated, or the provisions of the Protected Disclosures Act.

In regard to 'whistleblowing' across the group of people I spoke to in the course of my Inquiry I heard uncertainty and widely varying understanding about what this means or how to go about it. Some individuals described it as the 'nuclear' option and feared the repercussions for someone making a formal disclosure. There was a level of discomfort expressed about taking such a step and there were concerns expressed about being seen as a 'trouble maker'. Several people did not know what the term meant. Those who did understand whistleblowing thought the Protected Disclosures Act seemed a bit outdated and needed to be reviewed.

There were also concerns about who should be designated to take a protected disclosure and the options available if it wasn't satisfactorily resolved within an organisation. While there are avenues in the current Act it was described to me as a "giant step" for most people, particularly being public servants, to go outside their organisation to say the Ombudsman or to a Minister.

I have looked at one particular set of circumstances for one Public Service agency and that is not sufficient to make specific recommendations for the Public Service. However, what I have identified in this context is sufficient for me to suggest that the State Services Commissioner look at the operation of complaints procedures including the operation of the Protected Disclosures Act in relation to the broader Public Service. It may well be that some clarity of expectations on agencies and support for them would be of assistance. It has been some 17 years since the Act came into effect. Given that, in my view, it is timely for the State Services Commissioner to look further at the provisions and process sets out in this Act and at how well they are being administered across the Public Service. It may also be appropriate to consider how well this piece of legislation is meeting its purpose.