

Date: 06.03.2022

Nicole Stokes
Senior Educator



Urgent

Matter: Nicole Stokes- Show Cause Response

Dear Mr



For the avoidance of doubt, I write to you in good faith and have had assistance in preparing my response to **show cause** by my trade union. I apologise for the templated format of this letter and refer to your letter dated March 2nd, 2022 regarding the potential termination of my employment.

I continue to assert that I am ready, willing and able to work, and refute any allegations of serious misconduct under laws relevant to my employment, such as *Regulation 1.07 of the Fair Work Regulations 2009 (Cth)* or any relevant State industrial relations legislation. I kindly request that you remove termination as an option and engage with myself and my appointed representatives with respect to the below.

I am a loyal employee of [redacted] as a Senior Educator, I have worked here for 9 years, and this is my last 'throw of the dice' attempt to urge restraint, to stop this process and destruction of my career and ability to make a living while I exercise my workplace rights.

I assert that I have previously sought consultation from you. I have expressed my right to make a complaint or inquiry, specifically regarding occupational health and safety by making multiple requests to obtain a risk assessment relevant to my specific circumstances.

1. [redacted] acts for [redacted], and all of the following trade unions / industrial associations, including myself as a respective members and have advised you directly of the same to protect and advance my industrial interests:
 - a. [redacted]
 - b. [redacted]

c.
d.
e.
f.
g.

2. This generic correspondence is regrettable, but is unavoidable given the time frames and volume of members impacted.
3. I have attended meetings and have responded to communication in good faith. To the extent it is being characterised as a discipline, show cause or in relation to any refusal to follow a lawful order meeting, this is strongly disputed as being entirely unfair and unreasonable, as there is no proper basis for that conclusion.
4. I would have been grateful for the opportunity to consult regarding COVID-19 Risk Controls and the COVID-19 vaccine requirements, within the workplace, at a departmental level. I was willing to share with you many relevant discussion points and questions regarding this complex and time pressing matter.
5. I wish to express my dismay, and convey to you that I have not yet had an opportunity to engage in a meaningful degree of consultation with you, to an extent that my concerns have been satisfied.
6. As I am in essence '*flying blind*' to your position and the reasons you are compelled to present me a show cause, when I have not yet been afforded an opportunity to reach a conclusive decision about the vaccine due to the lack of consultation.
7. I cannot see fit to make a decision about the COVID-19 vaccine, based on your belief that consultation has been afforded. I do not believe that consultation has satisfactorily been provided by merely providing me information in the form of surveys, Q&A's, bulletins, emails, letters, and other content of like.
8. Any prompts or invitations to attend consultation meetings at this late stage in the dispute, particularly where no agenda has been stipulated, will undoubtedly generate unnecessary feelings of fear, anxiety, and/or duress to me. It cannot be contemplated by you that consultation will now be effective, unless the show cause process is completely revoked.
9. But for Victoria, I note that the public health orders are still only temporary, meaning that an end to the public health order may be near.

10. The mandate simply stipulates that employers must collect vaccination data from employees who fall under this mandate, and ensure that no unvaccinated employees access the workplace in person.
11. In light of the above points, should it not be feasible to offer me alternative workplace arrangements until such time as the public health order ceases to exist, offer me the opportunity to be stood down with access to my employee entitlements, or offer me an extended period of non-paid leave thus generating no greater a burden to you.
12. It is my belief that an employer is bound by a hierarchy of controls when assessing and mitigating risks. This assessment can only be performed once a risk assessment has been completed in accordance with relevant OH&S/WH&S laws and there has been satisfactory consultation in line with my EBA and award with regard to this.
13. Any claim that a request for risk assessment and/or consultation has not and will not influence the outcome of your decision regarding my ongoing employment cannot be sustained. This assumes that the process of risk assessment, and the opportunity to gather a deeper and more meaningful understanding of the risk to myself, will not create a change in my view of the COVID-19 vaccine. In fact, this could completely satisfy my needs and concerns as an employee.
14. Finally, it has already been determined in Australia that an employer cannot refuse to satisfy an employee's need for consultation. I ask you to consider the following case:
 - a. *CFMMEU & Matthew Howard v Mt Arthur Coal Pty Ltd T/A Mt Arthur Coal* [2021] FWCFB 6059.

Finally, I ask you to reconsider acting with such speed to make disciplinary findings as there is no requirement under any PH Direction to terminate my employment and other options do exist.

Please urgently confirm that the show cause process is stayed, and that I may continue to exercise my industrial rights surrounding dispute resolution until I can contemplate reaching a sound and secure decision about the COVID-19 vaccine. I will continue to engage with my Industrial representatives on the matter and will hope that you feel likewise inclined to involve them in further and ongoing correspondence on the matter.

Kind regards,

Nicole Stokes

Please include the following email in all further correspondence:

[REDACTED]

(A central email of [REDACTED] and [REDACTED])