

**Principals**

Vincent Goldrick B.Leg.S FANZCN  
David Farrell B.Com (Hons) LL.B



**GOLDRICK FARRELL MULLAN  
LAWYERS**

**Consultants**

Barry Mullan B.Ec. LL.B  
Gail Sherlock LLB (Hon) GradDip AusLaw

**Special Counsel**

Janet Lazzaro BAppSc BA LL.B. LL.M  
Christina Dawson B.A. (Psychology) LLB (Hon)

**Associate**

Kayla Johnstone B.Com LL.B

**Reply to Sydney Office**

12 April 2024

Our Ref:  
Your Ref PER/25040690

Gina Finocchiaro  
Director Workforce & Corporate Operations  
Sydney Local Health District  
Level 11 North, King George V Building  
83 Missenden Road

By Email: [REDACTED]

**CC Nathan Rudd  
Juliette Rex**

Dear Dr Finocchiaro ,

**RE: DR WINSTON CHEUNG**

We are lawyers instructed by Dr Winston Cheung. Your letter dated 27 February 2024 has been referred to us.

**Background**

1. Dr Cheung received a letter from Juliette Rex dated 10 November 2023 containing vague allegations concerning a CRGH Medical Staff Council meeting on 12 October 2013 and allegations concerning a meeting on 4 August 2023.
2. Dr Cheung responded by letter dated 21 November 2023 in which he:
  - A. Noted that Juliette Rex failed to identify each of the following:
    1. The policy under which the allegations were made.
    2. The policy which entitled Juliette Rex to "review" the allegations.

**HEAD OFFICE:**

Suite 1203/370 Pitt St  
SYDNEY NSW 2000

Tel: 61 2 9267 7311

Freecall: 1300 732 887

**NORTH SHORE BRANCH:**

Suite 19, 25-29 Hunter Street  
HORNSBY NSW 2077

Tel: 61 2 9477 6800

Email: [info@ufm.com.au](mailto:info@ufm.com.au)

**NORTH SHORE INTERVIEWS:**

Ground Floor, 465 Victoria Avenue  
CHATSWOOD NSW 2067  
(By Appointment Only)

Tel: 61 2 9413 2600

Website: [www.ufm.com.au](http://www.ufm.com.au)

**CENTRAL COAST BRANCH:**

53 Renwick Street  
WYOMING NSW 2250

Tel: 61 2 4328 4240

**GFM Law Pty Ltd t/as Goldrick Farrell Mullan ABN 72 003 962 150**

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3. The part of the relevant policy which Juliette Rex relied on to make the allegations.
  - B. Noted that Juliette Rex's failure to identify the policy meant she had commenced a clearly unfair procedure which denied Dr Cheung natural justice.
  - C. Requested that Juliette Rex comply with her obligation to follow a fair process and identify both the policy and the relevant parts of the policy she claimed to act under.
  - D. Noted that Juliette Rex's letter made it clear that she had already made conclusions about Dr Cheung's alleged conduct without reading the minutes or speaking to any witnesses which was a clear example of an unfair process and denial of natural justice.
3. Juliette Rex by letter dated 3 January 2024 advised that the policy she relied on was NSW Policy Directive *Resolving Workplace Grievances*.
  4. Dr Cheung by letter dated 9 February 2024 responded to Juliette Rex and made the following points :
    - A. Her failure to identify the policy in her first letter is a clear failure to act with fairness and denied our client natural justice.
    - B. It is clear that her conduct did not conform to the policy.
    - C. Her letters did not identify grievances as defined by the policy but made a series of allegations about two meetings and the minutes of the meetings.
    - D. The NSW Policy Directive *Resolving Workplace Grievances* sets out a procedure which she had not followed, and Dr Cheung stated that the vague allegations are clearly matters which could be resolved under clause 2.2.- Self Resolution.
    - E. Dr Cheung stated he was available to resolve the issues raised in your letters in person with the individuals who had grievances. Further it was clear that this is the first step that she should have taken under the policy, and Dr Cheung asked that she explain why she failed to follow clause 2.2.
    - F. Dr Cheung stated that the alternative approach under the policy is an Assisted Resolution. Dr Cheung stated that he was prepared to participate in a facilitated discussion or a mediation.
    - G. Dr Cheung stated he did not understand why HR was controlling the process. He stated that Clause 4.3 states that his immediate manager should take the lead in dealing with workplace issues. HR's role is to provide support for the manager and provide advice.

- H. Dr Cheung stated that the policy makes it clear that the adversarial investigatory process Juliette Rex had commenced is not available under the policy. He referred her to clause 2.3.4

**2.3.4 Issue resolution**

*The focus of resolution should be to repair any negative impact caused by the issue or*

*behaviour through communication, openness to others' views, cooperation and reasonableness. The aim is to repair the professional working relationship. The manager*

*should attempt to resolve the issue within 20 working days.*

*Techniques used may include:*

- *Facilitated discussion*
- *Mediation*
- *Observation and feedback*
- *Team communication and development*
- *Coaching*

**Gina Finocchiaro letter dated 27 February 2024**

Her letter does not comply with NSW Policy Directive *Resolving Workplace Grievances*. She correctly identifies that the allegations made by Dr Hallahan did not meet the threshold for bullying. She fails to make the same comment with respect to the allegations concerning Dr Alicja Smiech and Dr Teresa Anderson, but it is clear that they could not meet the threshold for bullying.

She then purports to make findings about “allegations” as a “decision maker” under the following policies

- NSW Health Managing Misconduct
- Prevention and Management of Bullying in NSW Health
- NSW Health Code of Conduct (PD2015\_049)

We refer to the following two paragraphs in her letter:

*By way of information, I advise the Initial Assessment substantiated the allegations raised but that your behaviour did not meet the threshold of misconduct or that of bullying and harassment as defined in the NSW Health Managing Misconduct (PD2018\_031) and Prevention and Management of Bullying in NSW Health (PD2021\_030) Policies.*

*However, due to the nature of the substantiated behaviour towards Dr Hallahan, it was found to be contrary to the NSW Health CORE Values and your obligations under the NSW Health Code of Conduct (PD2015\_049), in particular section 4.1 Promote a positive work environment.*

Our client was advised by Juliette Rex that the only policy that he needed to address was NSW Policy Directive *Resolving Workplace Grievances*. She stated:

*The allegations as set out in my letter to you dated 10 November 2023, are being reviewed pursuant to the NSW Health Policy Directive (PD2016\_046) Resolving Workplace Grievances (Policy). A copy of this Policy is **attached** for your reference.*

It is obviously an unfair process to make findings under the NSW Health Managing Misconduct and Prevention and Management of Bullying in NSW Health and NSW Health Code of Conduct without providing notice to Dr Cheung that these were policies he had to consider.

If you were at all times investigating under these policies, then Julette Rex's letter dated 3 January 2024 made deliberately false and misleading representations.

**We require within 14 days**

1. An explanation on why SLHD provided deliberately false and misleading representations to Dr Cheung.
2. If your claim is that you did not provide deliberate false and misleading representations to Dr Cheung then provide an explanation for making findings under the NSW Health Managing Misconduct and Prevention and Management of Bullying in NSW Health and NSW Health Code of Conduct policies without informing Dr Cheung that these were policies, he should address.
3. A withdrawal of the improper "findings".

**Mediation**

As you have found that the allegations do not reach the threshold for bullying, we do not understand the basis on which the mediation clause in NSW Policy Directive *Resolving Workplace Grievances* can apply. Please advise within 14 days the basis on which you assert that a mediation is required under the policy.

We are assuming that as you have not referred to Dr Alicja Smiech and Dr Teresa Anderson you are not suggesting a mediation with these doctors.

Once we have your response to both the false and misleading representations and the basis on which the policy requires a mediation, we will then consider your responses and then if appropriate, we will liaise with our client with respect to the proposed mediation with Dr Hallahan.

Our client reserves his right to refer your letters and his responses to your letters, and our letters to the NSW Ombudsman, the Special Commission of Inquiry, and any other investigations or inquiries.

Yours faithfully

**GOLDRICK FABRELL MULLAN**

