

General Purpose Standing Committee No. 1

# **Allegations of bullying in WorkCover NSW**

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## Terms of reference

That General Purpose Standing Committee No. 1 inquire into and report on allegations of bullying in WorkCover, and in particular:

- a. the culture of WorkCover,
- b. WorkCover's role as the State Regulator of occupational health and safety as it relates to bullying in the workplace,
- c. appropriate recommendations to address issues raised; and
- d. any other related matter.<sup>1</sup>

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<sup>1</sup> *Minutes*, Legislative Council, 27 June 2013, p 1874.

## Committee membership

<b>Revd the Hon Fred Nile MLC</b>	Christian Democratic Party	<i>Chairman</i>
<b>The Hon Melinda Pavey MLC</b>	The Nationals	<i>Deputy Chair</i>
<b>The Hon Catherine Cusack MLC</b>	Liberal Party	
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<sup>3</sup> Member substituted for Hon Walt Secord MLC from 26 August 2013.

<sup>4</sup> Member substituted for Dr John Kaye MLC from 27 June 2013.

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## Chairman's foreword

I am very pleased to present the report of the General Purpose Standing Committee No. 1 inquiry into allegations of bullying in WorkCover NSW.

It is very clear to us, on the basis of the evidence before us, most particularly the very many personal accounts of bullying from past and present employees, that WorkCover has a significant organisational problem with bullying. This problem is a longstanding one and operates at a cultural level.

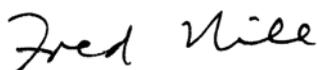
In conducting our inquiry we have not only sought to understand and document the problems that exist in WorkCover, but more importantly, to provide a constructive pathway forward. I note with satisfaction that our inquiry has already been the catalyst for progress: it has spurred WorkCover itself into action in certain areas, and has informed the Public Service Commission's work to address bullying across the public sector.

Notwithstanding progress to date, this report makes thirteen recommendations that will assist WorkCover to truly move forward in addressing its problem of bullying. Most importantly, more effective leadership and governance are essential. WorkCover's leadership team must once and for all recognise the extent of the problem and take responsibility for addressing it; and the Safety, Return to Work and Support Board must exercise greater accountability over the organisation.

This has been a challenging inquiry in several respects. First, the issues raised in the submissions required painstaking procedures to protect both individuals who alleged bullying and those against whom allegations were made. Second, both the written and oral evidence before the committee attested to complex systemic issues that demanded thoughtful analysis, to enable us to offer a positive way forward. Third, the committee encountered resistance from government agencies as we sought information essential to the inquiry. This demanded carefully informed actions on our part, and elongated the inquiry process, but we are satisfied that our endeavours resulted in a more robust report which will make a difference not only for WorkCover, but across the public sector.

I thank my committee colleagues for their work throughout this very demanding inquiry. Each member executed their duties with dedication, working towards the common goal of a constructive report. I also thank the committee secretariat for their hard work and professionalism. In particular, we are very grateful to our many inquiry participants, especially those who shared their personal experiences of bullying. We appreciate their courage in sending us their illuminating accounts.

Finally, I note that in spite of its significant complexity, this inquiry was always about two key things: first, the profound personal impact that bullying has on people; and second, the imperative for WorkCover and indeed all NSW public sector workplaces to become as safe, effective and productive as possible.



Hon Fred Nile MLC  
**Committee Chairman**

## Key issues

As the work health and safety regulator for New South Wales, WorkCover's role is to ensure that all employees work in an environment that is safe and free from physical and psychological harm. As part of this, WorkCover responds to bullying in workplaces across the state. Despite its role, WorkCover has for many years been the subject of media and parliamentary scrutiny in relation to alleged bullying and harassment within the organisation itself. As numerous inquiry participants suggested, WorkCover's inability to deal with bullying in its own back yard creates a credibility issue in relation to its capacity to act as the state regulator of work health and safety.

The catalyst for this inquiry occurred in June 2013, when the Industrial Relations Commission (IRC) handed down its findings in relation to the unfair dismissal claim of a WorkCover employee, Mr Wayne Butler. The findings included that WorkCover's treatment of Mr Butler was 'harsh, unreasonable and unjust' and had the 'characterisation of institutional bullying'. The IRC described the investigation of Mr Butler as a 'witch hunt' and speculated that it was motivated by 'malicious intent'.

As our inquiry proceeded, time and again submissions attested to bullying in WorkCover, either at the individual or institutional level. Many individuals detailed their own accounts of alleged bullying in WorkCover, while others spoke of bullying that they had witnessed. The substantial volume of personal accounts received by the committee was very concerning, as was the fact that so many submissions sought confidentiality, largely due to fear of reprisals. Moreso, the content of submissions was very disturbing, highlighting the profound impact that workplace bullying has on people's mental health, self worth and job performance.

While it was not the committee's role to investigate individual allegations, there was one personal account of bullying that the committee determined it would examine, on the basis that it was in the public interest to do so. This arose from a submission from an individual alleging that they were the victim of bullying by a former senior officer of WorkCover, and that they had witnessed the senior officer bullying others. The committee explored the matter extensively to inform our conclusions about systemic issues relating to the management of bullying allegations within WorkCover and the broader public sector. Many of the issues raised by this case resonated with issues taken up in the various chapters of this report.

The personal accounts before the committee were corroborated by a very sizeable volume of oral and written evidence about the culture of WorkCover. It appears that an organisational culture has come to exist whereby managers, including senior managers, not only exhibit unreasonable behaviour towards staff, but tacitly permit these behaviours to occur. The committee was deeply concerned by evidence that alleged widespread use of punitive processes, poor management practices, authoritarianism among senior managers, and denial by senior management that a significant problem of bullying exists within the organisation. The lack of trust between management and staff was very apparent to the committee.

The committee believes that part of the explanation for this situation lies in the constant organisational change that WorkCover has undergone, including the move of head office to Gosford in 2002 and the numerous large scale restructures that have occurred in recent years. This has led to significant turmoil for staff, creating an environment conducive to workplace bullying.

The evidence shows that WorkCover executives and the Safety, Return to Work and Support Board have not yet grasped the extent of the problem, nor the factors contributing to it. While WorkCover has been working on various fronts to address bullying, this has obviously not been sufficient.

We consider that the most important of a number of actions that WorkCover can take to truly move forward is for senior management to genuinely accept that the organisation has a significant problem with bullying and to take ownership of it on behalf of the organisation. This is reflected in our first recommendation, which is directed not just to the executive team, but also to the board, which is ultimately responsible for the governance of WorkCover.

We welcomed the news that WorkCover has given an undertaking to engage with the Public Service Association (PSA) to address workplace bullying. It is pleasing that this inquiry has helped to facilitate this shift. We strongly encourage the new Minister for Finance and Services, the Hon Dominic Perrottet MP, to make action in this area a high priority.

Mindful of the many deeply sad accounts of bullying that people relayed to us, we see real value in a public apology to staff for past wrongs. This will be an important first step in rebuilding trust between WorkCover and its staff. We consider that an important element of this would be a specific apology to Mr Butler, as well as to the rest of the organisation, for the way he was treated by WorkCover.

The committee also considers that more effective governance is essential if the organisation is to move forward and truly address bullying. It is clear to the committee, and understandable, that the board's priority since its formation has been the solvency of the workers compensation scheme and the structural changes to the Safety, Return to Work and Support Division necessitated by the 2012 scheme reforms. We are encouraged by the board's greater focus on bullying since our inquiry commenced, and exhort it to continue this focus.

Nevertheless, greater leadership and accountability are required from the board, to ensure a safe work environment for WorkCover staff, to help rebuild trust between management and staff, and to restore WorkCover's moral authority over other workplaces. In addition, addressing the problem of bullying can only enhance the organisation's productivity and performance. To these ends, we recommend a review of the structure and functions of the board, to consider whether they are expansive enough to cover the board's obligations under the *Work Health and Safety Act 2011*, including in respect of WorkCover's own organisational problem of bullying. The review should also consider whether it is feasible for all these functions to be carried out by the existing board.

In addition, we believe that the establishment of an independent workplace bullying steering panel, separate to the board, will provide greater impetus and accountability in addressing the organisation's entrenched culture of bullying, and in turn, lead to more effective change over time. We consider that this panel should also oversee WorkCover's actions to address bullying in workplaces across New South Wales.

In addition, the committee believes that we should continue to oversee WorkCover's implementation of the recommendations in our report, via a further review in late 2014.

The committee has identified three particular areas where WorkCover needs to prioritise its efforts: cultural change and building trust; complaints and investigations, and independent inspections.

WorkCover must build a respectful culture at all levels of the organisation, with a new commitment to addressing bullying owned and communicated at every level of management, particularly at senior

levels. We highlight the need for the organisation to abandon its culture of denial and cover up, and to embrace transparency and accountability in order to build trust. As a starting point, WorkCover must report to the board on its progress in implementing the recommendations of this report. In addition, it is imperative to collect and publish reliable data on bullying to enable sound conclusions on the extent of the problem, effective monitoring over time.

The absence of trust in relation to the handing of bullying complaints and investigations is also very apparent. We are encouraged that WorkCover has indicated a shift towards an 'early intervention' approach that treats bullying first as a work health and safety issue, rather than always a grievance or misconduct issue. Not only does WorkCover require a better framework here, it also requires cultural change around the framework's application. Together the two will facilitate a shift away from a punitive approach to a constructive one. WorkCover must also ensure that all investigations of bullying complaints within WorkCover are investigated independently.

It is encouraging to note that WorkCover is endeavouring to ensure that performance related matters are dealt with early by managers so that they do not escalate into industrial matters. The Butler case stands as a beacon as to how damaging this process can be. For those matters that actually warrant going down a disciplinary path, WorkCover must adopt a best practice approach. In addition, we recommend that WorkCover examine what other actions it must take to address the punitive use of process within the organisation, especially in relation to human resources matters.

We are also pleased that WorkCover has recognised the potential conflict of interest that exists in investigating its own compliance with work health and safety legislation. This conflict must be avoided to ensure the integrity of the inspection system. It will be important to evaluate the new reciprocal arrangements that WorkCover has negotiated with the Department of Trade and Investment, Regional Infrastructure and Services. Should these arrangements not prove achievable in the near future, it is essential that another independent mechanism be established.

This inquiry has shone a spotlight on WorkCover's credibility as the regulator. Just as it must recognise and respond effectively to bullying in its own ranks, WorkCover must perform its regulatory roles in respect of NSW workplaces and the workers compensation scheme, with commitment and integrity. The committee is very concerned by participants' accounts of ineffective action by WorkCover in relation to complaints of bullying in workplaces across NSW. Just as WorkCover has not grasped the seriousness of bullying within its own organisation, it appears not to have recognised the seriousness of this issue in other workplaces, nor to have taken a sufficiently active role in promoting compliance. We are also very concerned by reports that WorkCover presides over a workers compensation system in which scheme agents and its own staff treat injured workers with disrespect.

We were pleased to hear of the strategies that WorkCover is pursuing to improve its customer service, and that it is instituting a code of conduct for its own staff and that of scheme agents. The committee considers that WorkCover must ensure that the code of conduct is enforceable, and that financial penalties should be included as a remedy for breaches of the code. Further, complaints against WorkCover staff by injured workers must be investigated independently, and investigations of scheme agent or WorkCover staff must be reviewable by an independent body.

In relation to workplaces across the state, the committee believes that there needs to be specific legislative provisions ensuring that all workers in New South Wales, including injured workers, are protected from workplace bullying.

Finally, this inquiry also focused on work led by the Public Service Commission to improve prevention of and responses to bullying across the NSW public sector. The committee agrees with the Public Service Commissioner that present processes are in need of a significant overhaul to enable better prevention of bullying, earlier resolution of complaints, and fair and consistent investigations. We are pleased that our inquiry has assisted this work to take a high priority through the Commission's establishment of the Bullying Roundtable. We welcome the development of a new framework to address bullying, and the way that it is progressing in partnership with key stakeholders. This work will be of direct benefit to WorkCover as it grapples with its culture and processes and puts in place the changes that need to occur as it moves forward.

## Recommendations

### Recommendation 1

76

That the WorkCover NSW Executive Team and the Safety, Return to Work and Support Board make a public statement that genuinely:

- accepts that WorkCover, as an organisation, has a significant problem with workplace bullying
- apologises to employees for past wrongs, including in respect of Mr Wayne Butler
- accepts the findings of the NSW Industrial Relations Commission in respect of Mr Butler
- commits to addressing at an organisational level the problem of bullying.

### Recommendation 2

76

That the WorkCover NSW Executive Team sincerely apologise to Mr Wayne Butler for how he was treated during his investigation, for his dismissal, and for their failure to accept the findings of the NSW Industrial Relations Commission.

### Recommendation 3

76

That WorkCover NSW report to the Safety, Return to Work and Support Board on actions to be taken to address the punitive use of process within the organisation, especially in human resources matters.

### Recommendation 4

82

That the Minister for Finance and Services review the structure and functions of the Safety, Return to Work and Support Board to determine whether they are appropriate or expansive enough to cover the board's obligations under the *Work Health and Safety Act 2011*, including its obligation to ensure that WorkCover is addressing its organisational problem with bullying. Further, that in undertaking this review, the Minister consider whether it is feasible for all these functions to be undertaken by the existing board.

### Recommendation 5

95

That WorkCover NSW report to the Safety, Return to Work and Support Board on the progress of all actions arising from the recommendations of this inquiry, at intervals of at least six months, and that these reports be published on WorkCover's website.

### Recommendation 6

96

That WorkCover NSW formally review, in liaison with the Public Service Association of NSW, the findings of the 2013 People at Work Survey and other measures of workplace bullying, with a view to collecting, monitoring and publicly reporting reliable data on workplace bullying within the organisation on an annual basis.

### Recommendation 7

102

That WorkCover NSW ensure that all investigations of bullying complaints within WorkCover are investigated independently.

**Recommendation 8****105**

That WorkCover NSW undertake a formal evaluation of the arrangements with the Department of Trade and Investment, Regional Infrastructure and Services for referral of work health and safety matters for investigation, including allegations of workplace bullying, within two years of the commencement of the arrangements. The review, which must be published, is to:

- include formal input from employees and the Public Service Association of NSW
- be formally considered by the Safety, Return to Work and Support Board and the independent workplace bullying steering panel (see recommendation 12).

**Recommendation 9****116**

That WorkCover NSW ensure that the code of conduct for WorkCover and scheme agent staff is enforceable by individual workers and their representatives, and that financial penalties are included as one of the remedies where breaches of the code are established.

**Recommendation 10****116**

That the Minister for Finance and Services take the necessary steps to ensure that complaints against WorkCover NSW staff by injured workers are investigated independently, and that investigations of complaints against scheme agent or WorkCover staff are reviewable by an independent body.

**Recommendation 11****117**

That the Parliament of New South Wales enact laws which protect all workers in the state, including injured workers, from workplace bullying, and that such laws be based on the National Occupational Health and Safety Commission's Draft National Code of Practice.

**Recommendation 12****118**

That the Minister for Finance and Services and the Safety, Return to Work and Support Board establish an independent workplace bullying steering panel to oversee the actions of WorkCover NSW in addressing workplace bullying, both within its own organisation and in other workplaces as the state regulator of work health and safety. The panel must be empowered to require action on its recommendations and sufficiently resourced to perform its role.

**Recommendation 13****118**

That General Purpose Standing Committee No. 1 conduct a review in late 2014 of the implementation of the recommendations of its 2014 report into allegations of bullying in WorkCover NSW.

## Acronyms

AMWU	Australian Manufacturing Workers Union
CASD	Compensation Authorities Staff Division
DPC	Department of Premier and Cabinet
DTIRIS	Department of Trade and Investment, Regional Infrastructure and Services
EAP	Employee Assistance Program
GIPA	<i>Government Information (Public Access) Act 2009</i>
IAB	Internal Audit Bureau
ICAC	Independent Commission Against Corruption
IRC	Industrial Relations Commission
IT	Information Technology
IWSN	Injured Workers Support Network
JCC	Joint Consultative Committee
PCBU	Person conducting business or undertaking
PPIP Act	<i>Privacy and Personal Information Protection Act 1998</i>
PSA	Public Service Association of NSW
PwC	PricewaterhouseCoopers
SRWS	Safety, Return to Work and Support
SRWSD	Safety, Return to Work and Support Division
WHS Act	<i>Work Health and Safety Act 2011</i>



# Chapter 1 Introduction

This chapter provides an overview of how the inquiry came to be established and how it was conducted, as well as noting significant procedural issues that arose during the inquiry. The chapter concludes with an outline of the report structure.

## Background to the inquiry

- 1.1 The role of WorkCover NSW is to ensure that all NSW employees work in an environment that is safe and free from physical and psychological harm.<sup>5</sup> WorkCover, in its role as work health and safety regulator, responds to bullying in workplaces across New South Wales.
- 1.2 Despite its statutory role as the work health and safety regulator, WorkCover has for many years been the subject of media and parliamentary scrutiny in relation to alleged bullying and harassment within WorkCover itself.
- 1.3 Several witnesses suggested that WorkCover's inability to effectively address bullying among its own employees creates 'a credibility issue' in relation to its capacity to act as the state regulator of work health and safety.<sup>6</sup> The Public Service Association of NSW (PSA) stated, 'It is in the Government's interest for any of its organisations to clear up these issues; but it is especially in the Government's interest when we are talking about the regulator of workplace health and safety.'<sup>7</sup>
- 1.4 Part of WorkCover's mission as the workplace regulator is to be an 'exemplar organisation' in relation to workplace health and safety. According to Dr Carlo Caponecchia, Senior Lecturer, Faculty of Science, University of New South Wales, 'This underscores the importance of having workplace bullying managed in an exemplary manner in this organisation, and being transparent about how this is done now and into the future.'<sup>8</sup>
- 1.5 Similarly, Unions NSW contended that 'WorkCover should have the highest standards and set the benchmark with regard to implementing effective risk management and pre-emptive procedures within its own organisation.'<sup>9</sup>
- 1.6 Other witnesses voiced fears that WorkCover's ability to address bullying in workplaces across the state has been jeopardised by its failure to deal with its own bullying issues. The Workers Health Centre, for example, questioned whether workers would be deterred from lodging bullying complaints:

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<sup>5</sup> *Work Health and Safety Act 2011*, div 3.

<sup>6</sup> Evidence, Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, 6 November 2013, p 16.

<sup>7</sup> Evidence, Mr Steve Turner, Assistant General Secretary, Public Service Association of NSW, 6 November 2013, p 23.

<sup>8</sup> Submission 24, Dr Carlo Caponecchia, p 3.

<sup>9</sup> Evidence, Mr Mark Morey, Deputy Assistant Secretary, Unions NSW, 11 November 2013, p 2.

With a public perception that the WorkCover Authority ... [has] a poor public record themselves regarding bullying, the majority of injured workers won't waste their time reporting the behaviour to the Authority.<sup>10</sup>

**1.7** Another inquiry participant summed up how the loss of public faith in WorkCover could undermine efforts to address bullying in workplaces across the state:

If WorkCover staff have no faith in the ability of their employer to keep them safe from bullying, how can the general public have any faith that the bullying in their workplace will be taken seriously? ...

As the regulator of bullying in NSW, this is a terribly sad situation. WorkCover is falling so short of the health and safety standards we demand from all other employers in NSW. An organisation that cannot stamp out bullying in its own backyard should not be charged with the responsibility of regulating the issue state wide.<sup>11</sup>

**1.8** As a result of public consternation over allegations of bullying and harassment in WorkCover, and doubts over its capacity to perform its role as the workplace regulator, in 2010 the then Minister for Finance, the Hon Michael Daley MP, initiated an external review of bullying and harassment in WorkCover by PricewaterhouseCoopers (PwC). The report of the PwC review was published early the following year and the Minister undertook to accept and implement all the report's recommendations. Despite the Minister's undertaking, questions have been raised about whether the PwC recommendations were implemented in full (see chapter 4). The committee notes that, due to a change of government in March 2011, Minister Daley was not given the opportunity to implement the PwC recommendations.

**1.9** A more recent event again called into question WorkCover's ability to deal with bullying within its own workplaces. In June 2013, more than two years after the PwC report was released, WorkCover was publically chastised for its treatment of an employee.<sup>12</sup> This time, the Industrial Relations Commission (IRC) made a number of highly critical findings in relation to the unfair dismissal claim of a WorkCover employee, Mr Wayne Butler. The findings included that WorkCover's dismissal of Mr Butler was 'harsh, unreasonable and unjust'<sup>13</sup> and had the 'characterisation of institutional bullying'.<sup>14</sup> Further, the IRC described the investigation as a 'witch hunt'<sup>15</sup> and speculated that it was motivated by 'malicious intent'.<sup>16</sup>

**1.10** The IRC findings in relation to Mr Butler's case were the catalyst for this inquiry.

**1.11** The circumstances of Mr Butler's case and the IRC decision, as well as the conclusions of the PwC report, are detailed in chapter 4.

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<sup>10</sup> Submission 23, Industrial Health and Research Foundation t/as Workers Health Centre, p 4.

<sup>11</sup> Submission 80, Ms Jodie Miller, pp 5-6.

<sup>12</sup> *Wayne Butler and Safety Return to Work Support Division* [2013] NSW Industrial Relations Commission 45, 21 June 2013.

<sup>13</sup> *Butler* (2013) NSWIRComm 45, [113].

<sup>14</sup> *Butler* (2013) NSWIRComm 45, [316].

<sup>15</sup> *Butler* (2013) NSWIRComm 45, [318].

<sup>16</sup> *Butler* (2013) NSWIRComm 45, [293].

## Conduct of the inquiry

### Terms of reference

- 1.12** The inquiry terms of reference were referred by the House on Thursday 27 June 2013 and required the committee to inquire into and report on allegations of bullying in the WorkCover Authority of New South Wales, in particular: the culture of WorkCover; WorkCover's role as the state regulator of occupational health and safety as it relates to bullying in the workplace; and appropriate recommendations to address these issues raised.<sup>17</sup> The terms of reference can be found on page iv of this report.

### Submissions

- 1.13** The committee called for submissions through advertisements in the *Sydney Morning Herald* and *Daily Telegraph* on 10 July 2013. A media release announcing the inquiry was sent to all media outlets in New South Wales. In addition, the committee wrote to a range of stakeholders inviting them to participate in the inquiry.
- 1.14** The committee received 98 submissions and six supplementary submissions. A large number were received from past or present employees of WorkCover who detailed their experiences of bullying in the organisation. Most submissions were kept partially or fully confidential to protect the identities of the submission authors and other persons named in the submissions.
- 1.15** It was not within the remit of the inquiry to investigate individual allegations. However, the personal accounts of bullying detailed by submission authors were essential for the committee to examine the broader issues articulated in the terms of reference.
- 1.16** Of the 98 submissions received, 41 were partially confidential with certain information redacted, such as the authors' names, personal information and information about third parties; 45 were completely confidential; and the remainder were public.
- 1.17** The committee values highly each of the personal accounts that we received as they informed us of people's actual experiences as well as their perceptions, and together built a picture of WorkCover as a workplace. We thank submission authors for their courage in sending us their stories and acknowledge that this has been a painful process for many.
- 1.18** The public and partially confidential submissions are published on the inquiry's website [www.parliament.nsw.gov.au/gpsc1](http://www.parliament.nsw.gov.au/gpsc1). A list of submissions is available in **Appendix 1**.

### Hearings

- 1.19** The committee held two public hearings at Parliament House on 6 and 11 November 2013.
- 1.20** The committee took evidence from WorkCover, the PSA, Unions NSW, the Injured Workers Support Network, the Australian Manufacturing Workers' Union, the Workers Health Centre,

<sup>17</sup> *Minutes*, Legislative Council, 27 June 2013, p 1874.

Dr Carlo Caponecchia, and Mr Michael Carapiet, Chair of the Safety, Return to Work and Support Board.

- 1.21** In addition, the committee held four *in camera* hearings to pursue a number of sensitive matters that arose during the inquiry. The witnesses included current WorkCover employees who wished to give evidence in private.
- 1.22** A list of witnesses who appeared before the committee is reproduced in **Appendix 2**. A list of documents tabled by witnesses is found in **Appendix 3**, and a list of witnesses who provided answers to questions taken on notice is available in **Appendix 4**.
- 1.23** Transcripts of the hearings are available on the inquiry website, including partial transcripts of *in camera* evidence that were subsequently published by the committee.
- 1.24** Minutes of committee meetings are compiled in **Appendix 6**.

### **Procedural issues**

- 1.25** The committee grappled with a number of procedural issues during the inquiry. The most challenging of these concerned the committee's repeated attempts to secure from the Public Service Commissioner and WorkCover material essential for it to thoroughly examine its terms of reference.
- 1.26** The Legislative Council's position on these matters is set out in documents reproduced in Appendix 5. This includes correspondence from the chairman to Ms Julie Newman PSM, Chief Executive Officer, WorkCover, on 27 March 2014, and a memorandum from Mr David Blunt, Clerk of the Parliaments, to the committee, dated 23 May 2014.

### **Orders for papers and disputed claim of privilege**

- 1.27** The most significant procedural issue to arise during the inquiry concerned the committee's attempts to secure access to certain documents relating to the investigation of a particular allegation of bullying.
- 1.28** The Legislative Council has a common law power to order the production of state papers from the executive government.<sup>18</sup> The existence of this power was affirmed by the High Court in *Egan vs Willis*.<sup>19</sup> The position of the Council is that committees also have the power to order the production of state papers, if this is necessary in the context of a particular inquiry.<sup>20</sup>
- 1.29** The committee received a submission in which the submission author alleged that they had been bullied by a former senior employee of WorkCover, and that they had witnessed the senior officer bullying others. The submission author revealed that an investigation into these allegations was conducted by the Internal Audit Bureau at the instigation of Mr Graeme Head,

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<sup>18</sup> Lynn Lovelock and John Evans, *New South Wales Legislative Council Practice* (Federation Press, 2008), pp 473-485.

<sup>19</sup> (1998) 195 CLR 424.

<sup>20</sup> Lovelock and Evans (2008), pp 538-542.

Public Service Commissioner. The allegations raised in the submission are discussed in chapter 4.

- 1.30** The committee decided to examine the matters raised in the submission on the grounds that it was in the public interest to do so; this was the impetus for the committee's attempts to secure the documentation regarding the investigation.

***Request for voluntary cooperation***

- 1.31** The committee wrote to the Public Service Commissioner on 1 October 2013 asking him to provide the documents voluntarily. The confidential submission containing the allegations was provided to the Commissioner for his reference, with a request that he limit the dissemination of the submission to the 'extent that was practicable'.<sup>21</sup>

- 1.32** On 21 October 2013, the Public Service Commissioner responded, declining to provide the documents on the basis of privacy concerns. In his letter to the committee, the Commissioner suggested that the documents contained personal information relating to several individuals and it would not be 'open to him to disclose that information voluntarily without the consent of each person'.<sup>22</sup> Furthermore, the Commissioner stated that he had not sought consent from the individuals concerned, as the committee had requested him to 'limit the dissemination' of the confidential submission.<sup>23</sup>

***Order for state papers by the committee***

- 1.33** The committee then proceeded to order the production of the papers by the Public Service Commissioner under Standing Order 208(c).<sup>24</sup> The committee's order of 6 November 2013 required that the documents be provided by 8 November 2013, in order for the committee to have access to the documents at its second hearing on 11 November 2013.<sup>25</sup>

- 1.34** The Commissioner responded on 8 November 2013, again declining to provide the documents, this time citing Crown Solicitor's advice which called into question the power of committees to order the production of documents. The Commissioner advised that the Crown Solicitor's advice led him to conclude that he was not subject to a 'lawful requirement' to provide the documents.<sup>26</sup> The correspondence from the Commissioner is reproduced in Appendix 5.

<sup>21</sup> Correspondence from Chairman to Mr Graeme Head, Public Service Commissioner, 1 October 2013.

<sup>22</sup> Correspondence from Mr Graeme Head, Public Service Commissioner, to Chairman, 21 October 2013.

<sup>23</sup> Correspondence from Mr Head to Chairman, 21 October 2013.

<sup>24</sup> NSW Legislative Council, *Standing Rules and Orders*, May 2004, SO208(c): 'A committee has power to send for and examine persons, papers, records and things.'

<sup>25</sup> *General Purpose Standing Committee No. 1*, NSW Legislative Council, *Minutes No 31*, 6 November 2013, Item 3.8.

<sup>26</sup> Correspondence from Mr Graeme Head, Public Service Commissioner, to Chairman, 8 November 2013.

***Order for state papers by the House***

- 1.35** After the Commissioner had twice declined to provide the documents, first on a voluntary basis and then in accordance with an order of the committee, the committee resolved to seek a resolution of the House to order the production of the documents, under Standing Order 52. The motion moved by the Chairman, Revd the Hon Fred Nile MLC, is reproduced below.

That, under standing order 52, there be laid upon the table of the House within 7 days of the date of the passing of this resolution, the following documents in the possession, custody or control of the Public Service Commission, the Department of Premier and Cabinet or the Premier, created since 1 January 2011:

Any report arising from or connected to an investigation conducted by Ms Linda Pettersson, Investigator, Internal Audit Bureau, or any other person, in relation to alleged bullying or harassment by a former employee of WorkCover NSW, together with copies of any annexures or appendices connected to any such report.

Any document which records or refers to the production of documents as a result of this order of the House.<sup>27</sup>

- 1.36** This motion was agreed to by the House on 13 November 2013. The Premier directed the Public Service Commissioner to provide the documents to him, and the Department of Premier and Cabinet then provided the documents to the Council on 20 November 2013.

***Claim of privilege***

- 1.37** The key component of the return to order was entitled 'Report – 20 June 2012' (the Report), over which a claim of privilege was made. Privilege was claimed on the basis that the Report 'contains personal information of the person the subject of the investigation, the person who made a public interest disclosure and other people'.<sup>28</sup>

- 1.38** As a privileged document, the Report was available for viewing only by members of the Legislative Council, and could not be published or copied without an order of the House.<sup>29</sup>

***First in camera hearing***

- 1.39** The committee met to consider the matters revealed in the return to order and determined to hold an *in camera* hearing on 10 December 2013 to question the Public Service Commissioner and another person named in the privileged documents.

- 1.40** The committee also resolved to recall Ms Newman and Mr Greg Barnier, Chief Human Resources Officer, People and Culture Group, Safety Return to Work and Support Division, to give further evidence at this *in camera* hearing, although not specifically in relation to the

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<sup>27</sup> *Minutes*, Legislative Council, 13 November 2013, p 2172.

<sup>28</sup> Return to order, Schedule of documents, 20 November 2013, Report on actions of former WorkCover NSW Employee, Department of Premier and Cabinet, to Chairman, Annexure C.

<sup>29</sup> NSW Legislative Council, *Standing Rules and Orders*, May 2004, SO52(5)(i)-(ii).

privileged material.<sup>30</sup> Mr Mark Lennon also appeared *in camera* regarding his role as a member of the Safety, Return to Work and Support Board.

- 1.41 While it was imperative for the committee to further examine the matters revealed in the privileged documents, the questioning of witnesses during the *in camera* hearing posed significant procedural challenges. In order to avoid disclosing any privileged information to witnesses who may have been unaware of the matters, the committee was advised to first ascertain whether each witness was aware of the matters canvassed in the privileged documents, and to exercise extra caution in relation to the framing of questions relating to the privileged documents.
- 1.42 Portions of the *in camera* transcript are published on the committee's website.

### *Dispute of claim of privilege*

- 1.43 It became apparent to the committee that the privileged status of the documents provided in response to the order for papers was an impediment to the committee's ability to fully examine important issues in relation to its inquiry. For example:
- The claim of privilege meant that the committee would have to keep confidential any portions of the *in camera* transcript from 10 December 2013 (and any other subsequent *in camera* hearings on this matter) that could reveal either the existence or the contents of the privileged documents. The committee would also be prevented from relying on this evidence in its report.
  - The claim of privilege would prevent a copy of the documents being made available for members to refer to when questioning the *in camera* witnesses.
- 1.44 Accordingly the committee resolved to request that the Chairman, on behalf of the committee, dispute the validity of the claim of privilege.
- 1.45 The Chairman wrote to the Clerk of the Parliaments on 3 February 2014 requesting that the privileged documents (the Report) be released to an independent legal arbiter to evaluate and report on the validity on the claim of privilege, as per the procedure under Standing Order 52. The Chairman's letter stated that:

While I am mindful of the privacy concerns raised by the Government, there is a significant public interest in conducting a thorough examination of the matters raised. The Committee does not intend to canvass the details of the bullying allegation investigation in the Report, but rather, to identify the broader lessons that can be learned from the matters arising from the Report, and to highlight any systemic issues.

Our objective is for the Committee to be able to access the material freely, so we can give it full consideration during the course of our Inquiry and thoroughly examine the matters raised. It is not our intention for the Report to enter into the public domain, even if the arbiter finds that the claim of privilege is not valid. The Committee is aware of the sensitivity of the information contained in the Report, particularly

<sup>30</sup> *General Purpose Standing Committee No. 1*, NSW Legislative Council, *Minutes No 34*, 26 November 2013, Item 4.3.

regarding the person who raised the allegations of bullying and the person who was the subject of the subsequent investigation.<sup>31</sup>

- 1.46** While the committee believed the claim of privilege to be invalid, the intention was not for the privileged documents to be made public. In his letter to the Clerk of the Parliaments disputing the claim of privilege, the Chairman suggested that should the claim of privilege not be upheld, the preferable course of action was for the privileged documents to be 'kept confidential to the Committee and that the Committee take all reasonable steps to safeguard the privacy of the persons named in the Report.'<sup>32</sup>

***Report of the independent legal arbiter***

- 1.47** The Honourable Keith Mason AC QC was appointed by the President of the Legislative Council as the independent legal arbiter, and he provided his report on 25 February 2014. Mr Mason reported that the claim of privilege should not be upheld because the 'privacy concerns that have been advanced [did] not establish a relevant privilege known to law'.<sup>33</sup>

- 1.48** Mr Mason's report was tabled in the House on 5 March 2014 on the motion of the Chairman.<sup>34</sup> The following day, a committee member on behalf of the Chairman moved a motion to enable a copy of the privileged documents to be provided to the committee for the purposes of its inquiry. The motion is set out below.

- 1) That this House notes:
  - (a) the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 25 February 2014, on the disputed claim of privilege on documents relating to the actions of a former WorkCover NSW employee, including the finding that the documents the subject of the dispute do not give rise to a legally valid claim of privilege;
  - (b) that General Purpose Standing Committee No. 1 is conducting an inquiry into allegations of bullying in WorkCover NSW; and
  - (c) that the documents the subject of the dispute are directly relevant to the subject matter of the committee's inquiry and essential to the conduct of the inquiry.
- 2) That, notwithstanding the provisions of Standing Order 52:
  - (a) a copy of the documents considered by the legal arbiter to be not privileged be provided to General Purpose Standing Committee No. 1 for the purposes of its inquiry into allegations of bullying in WorkCover NSW;
  - (b) subject to paragraph 3 of this resolution, the committee have the power to authorise publication of the documents in whole or in part; and

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<sup>31</sup> Correspondence from Revd the Hon Nile MLC to Mr Blunt, 3 February 2014.

<sup>32</sup> Correspondence from Revd the Hon Nile MLC to Mr Blunt, 3 February 2014.

<sup>33</sup> Honourable K Mason AC QC, Disputed claim of privilege on the report regarding a former WorkCover NSW employee: Report of the Independent Legal Arbiter, 5 March 2014, p 2, *Minutes*, Legislative Council, 5 March 2014, p 2333.

<sup>34</sup> *Minutes*, Legislative Council, 5 March 2014, pp 2333 and 2336.

- (c) the Committee Clerk be authorised to make copies for the use of members during the inquiry.
- 3) That, in accordance with Standing Order 224:
- (a) the documents provided to the committee may not, unless authorised by the committee, be disclosed to any person other than a member or officer of the committee; and
- (b) in considering whether to make the documents public, the committee take into consideration the report of the Independent Legal Arbitrator.<sup>35</sup>

### ***Second in camera hearing***

- 1.49** The decision of the House to provide a copy of the documents to the committee empowered members to more freely question witnesses in relation to the matters revealed in the return to order. The committee proceeded to hold a second *in camera* hearing on 8 April 2014 and recalled the Public Service Commissioner. The committee also invited a second *in camera* witness, Mr Stephen Horne, Managing Director and Chief Executive Officer, Internal Audit Bureau.
- 1.50** The committee took the unusual step of inviting both witnesses to appear together at the same time, as the committee intended to question each witness on similar matters, and this would allow the committee to test each witness's evidence against the other's. Parts of the *in camera* transcript are published on the committee's website.

### **WorkCover's failure to cooperate fully with requests for information**

- 1.51** The second significant procedural issue to arise during the inquiry concerned WorkCover's failure to cooperate fully with the committee, in particular by inappropriately: withholding certain documents; redacting key information; and requesting that the committee keep certain information confidential.
- 1.52** WorkCover's uncooperative approach to the inquiry is exemplified in two examples, discussed in the following section:
- redactions of specific allegations against Mr Butler in a letter referring the matters for investigation
  - refusal to provide a copy of the six volume investigation report into Mr Butler (the Madden report).
- 1.53** As noted previously, the catalyst for this inquiry was the IRC decision in relation to the unfair dismissal claim of WorkCover employee Mr Wayne Butler. The IRC decision described the

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<sup>35</sup> *Minutes*, Legislative Council, 6 March 2014, p 2347. On the motion being agreed to, a ministerial statement was made by the Hon Duncan Gay MLC, then Deputy Leader of the Government in the Legislative Council, commenting on broader issues in relation to the role of the independent legal arbitrator but not disputing his recommendation in this particular matter. <<http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/V3Key/LC20140306007?open&refNavID=undefined>>.

investigation of Mr Butler as a ‘witch hunt’<sup>36</sup> and speculated that it was motivated by ‘malicious intent’.<sup>37</sup> The IRC decision was highly critical of the way the investigation was conducted, observing that the conclusions reached by the investigator were not supported by the facts.<sup>38</sup>

- 1.54** An examination of WorkCover’s reasons for conducting an investigation into Mr Butler, and scrutiny of the Madden report, were therefore essential for the committee to thoroughly explore its terms of reference (see paragraph 4.24).

***Letter of referral from ICAC – redactions and confidentiality requests***

- 1.55** The investigation of Mr Butler was initiated by WorkCover in February 2012. In March 2012 its Chief Executive Officer, Ms Newman, wrote to the Independent Commission Against Corruption (ICAC) raising matters of concerns regarding Mr Butler. ICAC replied and referred the allegations to WorkCover for further investigation. To clearly understand WorkCover’s motivation for instigating the investigation, the committee asked WorkCover to provide a copy of the letter of referral from ICAC, which outlined the specific allegations against him.
- 1.56** WorkCover responded to the committee’s request by providing a copy of the letter from ICAC, but redacted a key allegation against Mr Butler. WorkCover requested that the letter be kept confidential on the grounds that it contained ‘information relating to a current employee of WorkCover’ and claimed that the redacted allegation was not in the public domain. This rationale implied that the redaction had been made to prevent the disclosure of information embarrassing to Mr Butler.
- 1.57** WorkCover further justified the redaction of the allegation on the grounds that it had not relied on this information in its decision to terminate Mr Butler’s employment, nor in the IRC case regarding Mr Butler’s unfair dismissal claim.
- 1.58** WorkCover also made it clear that ICAC secrecy provisions did not prevent it from disclosing the redacted allegation. In fact, WorkCover noted that ICAC did not consider WorkCover to be under any obligation to maintain confidentiality regarding the letter.
- 1.59** The committee wrote again to WorkCover, stressing that it was essential for WorkCover to cooperate with the committee, and for a second time requested an unredacted copy of the letter of referral from ICAC.
- 1.60** WorkCover responded to the committee and provided a full copy of the letter, including the previously redacted allegation. WorkCover acknowledged its erroneous belief that the redacted allegation was not in the public domain.

***Madden report on investigation of Mr Butler – withholding information***

- 1.61** The committee also asked WorkCover to provide a copy of the six volume Madden report of the investigation into Mr Butler. WorkCover declined to provide a copy of Madden report on

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<sup>36</sup> *Butler* (2013) NSWIRComm 45, [318].

<sup>37</sup> *Butler* (2013) NSWIRComm 45, [293].

<sup>38</sup> *Butler* (2013) NSWIRComm 45, [55].

the grounds that it contained ‘personal information which is not publicly available’ about current and former WorkCover staff and members of the public.<sup>39</sup> WorkCover asserted that without the consent of the individuals concerned, it could not voluntarily provide the Madden report to the committee due to WorkCover’s obligations under privacy legislation.

- 1.62** At the same time, the committee also wrote to ICAC in similar terms requesting that ICAC provide the committee with a copy of the Madden report, as had been requested from WorkCover. ICAC provided the committee with the Madden report and other documents on the basis that it was ‘in the public interest for the Commission to provide this material.’<sup>40</sup>
- 1.63** The committee then responded to WorkCover and noted that as ICAC had provided the Madden report on public interest grounds, the committee had decided not to press WorkCover to provide the material, notwithstanding its undoubted power to do so.<sup>41</sup>

### ***WorkCover’s rationale for non-cooperation***

- 1.64** WorkCover put forward two key arguments for its reluctance to cooperate with the committee’s requests for sensitive information, including the letter from ICAC referring the Wayne Butler matter to WorkCover for investigation and the Madden report:
- first, WorkCover’s obligations under the *Privacy and Personal Information Protection Act 1998* (PPIP Act)
  - second, advice from the Crown Solicitor disputing the power of Legislative Council committees to order the production of state papers.
- 1.65** Some statutes, including the PPIP Act, include secrecy provisions which make the disclosure of certain information an offence. However, the Legislative Council strongly asserts that parliamentary privilege is not affected by a statutory provision unless the provision alters that law (that is, the law of parliamentary privilege) by express words. As the Parliament’s powers are not expressly excluded by the PPIP Act, the Council does not accept that the non-disclosure provisions in the PPIP Act precluded WorkCover from providing certain information as requested.
- 1.66** In relation to the second issue, WorkCover cited advice from the Crown Solicitor disputing the power of parliamentary committees to compel the production of state papers. The Legislative Council, however, rejects the Crown Solicitor’s position and strongly asserts that committees possess a common law power to order the production of documents, if it is necessary in the context of a particular inquiry. A comprehensive discussion of the power of committees to order state papers can be found in *New South Wales Legislative Council Practice*.<sup>42</sup>

<sup>39</sup> Correspondence from Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, to Chairman, 12 March 2014.

<sup>40</sup> Correspondence from Hon Megan Latham, Commissioner, Independent Commission Against Corruption, to Chairman, 3 March 2014.

<sup>41</sup> Correspondence from Chairman to Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 27 March 2014.

<sup>42</sup> Lovelock and Evans (2008), pp 538-542.

**Committee comment**

- 1.67** We are disappointed that despite indicating eagerness to assist the committee with our important work, WorkCover took a legalistic approach to the inquiry, when a more open and cooperative approach would have been more appropriate and constructive. By relying almost exclusively on legal advice, WorkCover made it more difficult for the committee to access information necessary for its inquiry. Moreover, we consider that WorkCover's response demonstrates a serious disregard for the Legislative Council's role in scrutinising the executive.
- 1.68** As the Chief Executive of WorkCover has subsequently acknowledged, in retrospect she should have checked the public record of Mr Butler's case in the IRC before responding to the committee's requests for certain information.<sup>43</sup> We are disappointed that this check was not done as soon as WorkCover received the release from ICAC in December 2013, which permitted WorkCover to provide a copy of the letter of referral to the committee. Indeed, we would have expected senior WorkCover staff to have already been very familiar with the details of the IRC decision.
- 1.69** In relation to the Madden report, we note our disappointment that while ICAC concluded that it was in the public interest to provide this information to the committee, WorkCover did not reach the same conclusion.
- 1.70** However, we also note Ms Newman's repeated assurances that she wished to cooperate fully with the inquiry<sup>44</sup> and acknowledge the following statement, which Ms Newman requested be recorded in the report:

I reject the assertion that I have been 'withholding certain information inappropriately'. There is no basis to assert that I acted inappropriately in circumstances where, as a public servant, I acted in accordance with legal advice from the Crown Solicitor that it was not lawful for me to disclose certain information.<sup>45</sup>

**Deeds of release**

- 1.71** Another procedural issue to arise, this time at the outset of the inquiry, was the legal position of potential inquiry participants who had signed a deed of release as part of a dispute settlement or unfair dismissal claim. A deed of release is a signed agreement that brings a legal matter to a close.
- 1.72** The committee received correspondence from the PSA on 12 August 2013 seeking advice on the legal position of its members who wished to make a submission to the inquiry but were bound by a detailed deed of release that they had signed with WorkCover or the Safety Return to Work Support Division.

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<sup>43</sup> Correspondence from Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, to Chairman, 10 April 2014.

<sup>44</sup> Correspondence from Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, to Chairman, 10 July 2013; 12 March 2014.

<sup>45</sup> Correspondence from Ms Newman to Chairman, 10 April 2014.

- 1.73** The Association was concerned that the broad confidentiality and non-disparagement clauses in these deeds may prohibit the signatories from disclosing relevant information to the committee.<sup>46</sup>
- 1.74** In his response to the Association, Mr David Blunt, Clerk of the Parliaments, having conferred with Mr Bret Walker SC, advised the Association that:

The question you have asked raises a number of complex issues. On the one hand, no action can be taken against current or former employees who have signed a deed of release in relation to any disclosure they make in a submission or oral evidence to the inquiry, unless, for example, their submission or evidence is circulated by them without the authority of the Committee. This protection is afforded by virtue of Article 9 of the *Bill of Rights 1689* and section 12 of the *Parliamentary Evidence Act 1901*.<sup>47</sup> ...

However, notwithstanding the protections provided to inquiry witnesses, any decision to breach the terms of a deed of release is a serious matter and any individual considering doing so should seek their own legal advice so that they are fully apprised of the possible risks that may flow in relation to their individual circumstances.<sup>48</sup>

## Report structure

- 1.75** The following chapter provides background information about WorkCover, including its role, organisational structure and governance arrangements.
- 1.76** Chapter 3 provides contextual information on workplace bullying.
- 1.77** Chapter 4 focuses on allegations about bullying in WorkCover, commencing with an overview of the 2011 PwC report on bullying and harassment in WorkCover, and a discussion of the IRC decision in the Wayne Butler matter. It then provides a number of personal accounts of bullying by inquiry participants, before briefly documenting the committee's examination of a specific allegation of bullying by a former senior employee.
- 1.78** In chapter 5 we shift our focus to the organisational level, or the culture of WorkCover. Here we examine participants' evidence that bullying is a longstanding problem for WorkCover, that a punitive approach is present in many organisational processes, that poor management practices are widespread, and that there is a culture of denial and cover up in relation to bullying.

<sup>46</sup> Correspondence from Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, to Secretariat, 12 August 2013.

<sup>47</sup> Lovelock and Evans (2008), p 519. Article 9 of the *Bill of Rights Act 1689* UK (implemented in NSW by s6 of schedule 2 of the *Imperial Acts Applications Act 1969* (NSW)) confers on "proceedings in Parliament" protection from being "impeached or questioned" in any "court or place out of Parliament". Section 12 of the *Parliamentary Evidence Act 1901* provides that 'No action shall be maintained against any witness who has given evidence ... under the authority of this Act for or in respect of any defamatory words spoken by the witness while giving such evidence.'

<sup>48</sup> Correspondence from Mr David Blunt, Clerk of the Parliaments, NSW Parliament, to Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, 26 August 2013.

- 1.79** Chapters 6 and 7 consider how WorkCover can move forward to address bullying within the organisation. Chapter 6 looks closely at issues of leadership and governance. In particular, we examine whether WorkCover's leadership team acknowledges the organisation's problem with bullying and accepts the findings in relation to the Wayne Butler matter. We also explore the governance role of the Safety, Return to Work and Support Board in relation to bullying, and consider how better oversight can be achieved.
- 1.80** Chapter 7 focuses on other ways for WorkCover to move forward. It documents WorkCover's current strategies to address bullying and then examines three particular areas requiring further action, namely strategies to bring about cultural change, better systems for complaints and investigations, and independent inspections of bullying complaints within WorkCover.
- 1.81** In chapter 8 we turn to the important issue of WorkCover's effectiveness in meeting its statutory role with regard to workplace bullying. Here, we consider how well WorkCover is fulfilling its compliance role in respect of bullying in workplaces across New South Wales, and its oversight of the workers compensation scheme.
- 1.82** The final chapter, chapter 9, shifts focus to efforts to address bullying across the public sector, and the work led by the Public Service Commission to improve prevention of and responses to bullying in state government agencies.

## Chapter 2 WorkCover's role and structure

This chapter provides background information about WorkCover NSW. It describes WorkCover's role, organisational structure and governance arrangements.

### Role

- 2.1** WorkCover is an agency within the Safety, Return to Work and Support Division of NSW Government Services and reports to the Minister for Finance and Services.<sup>49</sup> As the statutory body that promotes compliance with work health and safety legislation,<sup>50</sup> WorkCover is established under the *Workplace Injury Management and Workers Compensation Act 1998*.<sup>51</sup> It monitors and regulates the workers compensation system in New South Wales and administers the work health and safety legislative and regulatory framework.<sup>52</sup> More specifically, WorkCover's role is to:
- promote compliance with the *Work Health and Safety Act 2011* (WHS Act)
  - assist businesses to improve their workplace safety and management of the return to work of injured workers
  - act as the Nominal Insurer for the NSW Workers Compensation Scheme and perform the insurer's operational functions.<sup>53</sup>
- 2.2** As part of its compliance role, WorkCover has the power to investigate suspected breaches of the WHS Act.<sup>54</sup> Where non-compliance is found, WorkCover can prosecute the offender or accept enforceable undertakings from the offender.<sup>55</sup>
- 2.3** WorkCover investigates allegations made against all public and private organisations in New South Wales including complaints made about WorkCover itself.
- 2.4** In its role as the Nominal Insurer, WorkCover issues insurance policies and manages workers compensation claims through contracted companies known as scheme agents.<sup>56</sup> All funds received are contributed to the Workers Compensation Insurance Fund. The Fund is managed

<sup>49</sup> Submission 32, WorkCover NSW, p 3.

<sup>50</sup> WorkCover NSW, *Annual report 2012-13*, p 4.

<sup>51</sup> Submission 32, WorkCover NSW, p 3.

<sup>52</sup> Submission 32, WorkCover NSW, p 4.

<sup>53</sup> WorkCover NSW, *Annual report 2012-13*, p 4.

<sup>54</sup> WorkCover NSW, *Power to obtain information*, accessed 2 August 2013, <<http://www.workcover.nsw.gov.au/newlegislation2012/whs-compliance-and-inforcement/Pages/powertoobtaininformation.aspx>>.

<sup>55</sup> WorkCover NSW, *WHS compliance and enforcement*, accessed 2 August 2013, <<http://www.workcover.nsw.gov.au/newlegislation2012/whs-compliance-and-enforcement/Pages/default.aspx>>.

<sup>56</sup> WorkCover NSW, *Scheme agents*, accessed 11 February 2014, <<http://www.workcover.nsw.gov.au/insurancepremiums/schemeagents/Pages/default.aspx>>.

by WorkCover and used to pay for the claims and administration costs of the Workers Compensation Scheme.<sup>57</sup>

### **WorkCover's role in respect of workplace bullying**

- 2.5** WorkCover's role in promoting compliance with the WHS Act is in respect of workers' physical and psychological health.<sup>58</sup> WorkCover defines bullying as a 'psychological hazard' whereby associated risks need to be managed like any other hazard in the workplace.<sup>59</sup>
- 2.6** WorkCover states that, 'All businesses, regardless of size, must have systems that manage the risk of workplace bullying and reports of bullying must be responded to in an appropriate and timely manner'.<sup>60</sup> As with other workplace hazards, WorkCover can visit the workplace in question to make enquiries about alleged bullying and to ensure compliance.<sup>61</sup>
- 2.7** In enforcing bullying related legislation, WorkCover does not have the authority to order the employer to discipline the alleged bully or terminate their employment, or to provide legal advice about civil proceedings or claims.<sup>62</sup>
- 2.8** WorkCover's approach to its compliance role is driven by a nationally harmonised legislative framework for improving work health and safety. The legislative framework is supported by a draft model national Code of Practice for Preventing and Responding to Bullying, along with a Guide for Workers. Both were developed by Safe Work Australia, in consultation with all jurisdictions, industry and unions.<sup>63</sup>

### **Organisational structure**

- 2.9** As noted above, WorkCover is an agency within the Safety, Return to Work and Support Division (the Division).<sup>64</sup> The Division also consists of the Lifetime Care and Support Authority, Motor Accidents Authority and Workers' Compensation (Dust Diseases) Board (see Figure 1 on the following page).<sup>65</sup>

<sup>57</sup> WorkCover NSW, *Annual report 2012-13*, p 7.

<sup>58</sup> *Work Health and Safety Act 2011*, div 3.

<sup>59</sup> WorkCover NSW, *Bullying*, accessed 3 February 2013, <<http://www.workcover.nsw.gov.au/newlegislation2012/health-and-safety-topics/human-behaviour/Pages/bullying.aspx>>.

<sup>60</sup> WorkCover NSW, *Bullying*, accessed 3 February 2013, <<http://www.workcover.nsw.gov.au/newlegislation2012/health-and-safety-topics/human-behaviour/Pages/bullying.aspx>>.

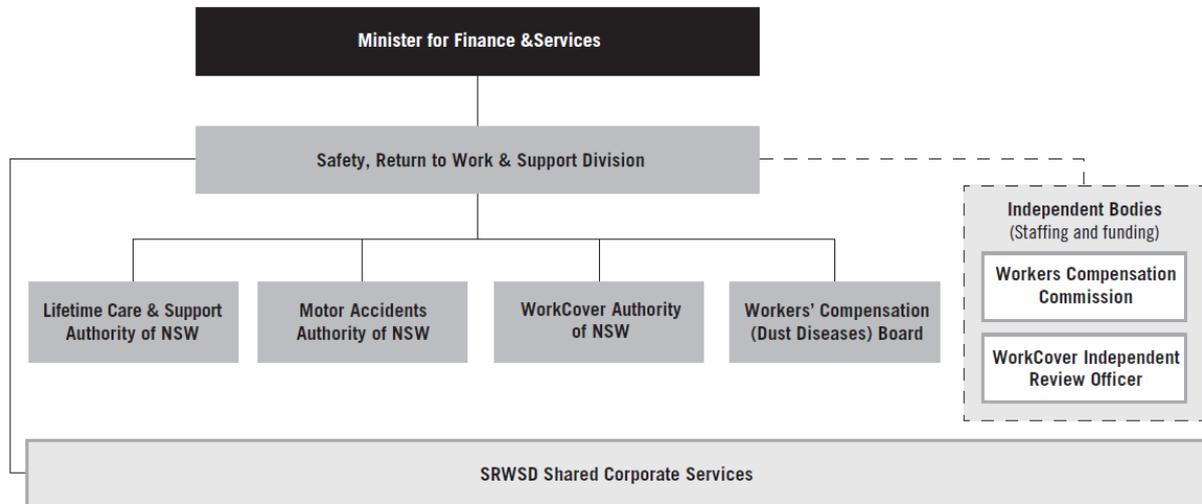
<sup>61</sup> WorkCover NSW, *Bullying*, accessed 3 February 2013, <<http://www.workcover.nsw.gov.au/newlegislation2012/health-and-safety-topics/human-behaviour/Pages/bullying.aspx>>.

<sup>62</sup> WorkCover NSW, *Bullying*, accessed 3 February 2013, <<http://www.workcover.nsw.gov.au/newlegislation2012/health-and-safety-topics/human-behaviour/Pages/bullying.aspx>>.

<sup>63</sup> Submission 32, WorkCover NSW, p 21.

<sup>64</sup> Submission 32, WorkCover NSW, p 3.

<sup>65</sup> Note: Apart from investment and staffing responsibilities, the Workers' Compensation (Dust Diseases) Board is governed by its own Board; WorkCover NSW, *About us*, accessed 13 February 2014, <<http://www.workcover.nsw.gov.au/aboutus/Pages/default.aspx>>.

**Figure 1 Safety, Return to Work and Support Division organisational chart**

**2.10** In turn, WorkCover's functions are undertaken by three divisions:

- Workers Compensation Insurance Division
- Work Health and Safety Division
- Investment Division.<sup>66</sup>

**2.11** The Division operates a shared services model hosted by WorkCover NSW. Under this model, the Division employs staff for all relevant agencies.<sup>67</sup>

**2.12** As at August 2013, the Division employed a total of 1,355 permanent employees, of which WorkCover alone employed 1,083.<sup>68</sup>

## Governance

**2.13** Under the *Safety, Return to Work and Support Board Act 2012*, the boards of WorkCover, the Motor Accidents Authority, the Lifetime Care and Support Authority and the Sporting Injuries Committee were replaced with a single governing board to oversee the schemes the authorities administer.<sup>69</sup>

**2.14** The board has the following functions, as set out in this Act:

- (a) To determine the general policies and strategic direction of each relevant authority

<sup>66</sup> Submission 32, WorkCover NSW, pp 4-5.

<sup>67</sup> Submission 32, WorkCover NSW, p 4.

<sup>68</sup> Submission 32, WorkCover NSW, p 4.

<sup>69</sup> Submission 32, WorkCover NSW, p 3.

- (b) To oversee the performance of each relevant authority
- (c) To advise the Minister and the Chief Executive Officer on any matter relating to the relevant authorities or arising under the compensation and other related legislation, at the request of the Minister or the Chief Executive Officer or on its own initiative
- (d) Such other functions as are conferred or imposed on it by or under this or any other Act.<sup>70</sup>

**2.15** The board also determines investment policies for each of the funds administered by the authorities, including the Workers Compensation Insurance Fund.<sup>71</sup>

**2.16** The board consists of seven members, including the chief executive officer of the division and six members appointed on the recommendation of the Minister for Finance and Services.<sup>72</sup> The chief executive officer manages operational and administrative matters within the division.<sup>73</sup> He or she does not report to the chair of the board, but instead reports directly to the minister.<sup>74</sup>

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<sup>70</sup> *Safety, Return to Work and Support Board Act 2012*, pt 2, div 1, s 5(1).

<sup>71</sup> Answers to questions on notice, WorkCover NSW, 5 December 2013, p 6.

<sup>72</sup> *Safety, Return to Work and Support Board Act 2012*, pt 2, div 1, s 4(2).

<sup>73</sup> *Safety, Return to Work and Support Board Act 2012*, pt 2, div 2, sec 9; Evidence, Ms Julie Newman PSM, Chief Executive Officer, and Mr John Watson, General Manager, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 11 November 2013, pp 24-27.

<sup>74</sup> Evidence, Mr Michael Carapiet, Chair, Safety, Return to Work and Support Board, 11 November 2013, p 46.

## Chapter 3 Workplace bullying

This chapter provides contextual information for this report, this time on workplace bullying. First, it defines workplace bullying, then notes the personal, workplace and economic impacts of this behavior. It then explains the role of organisational culture in contributing to bullying, and sets out the legislative framework to address bullying in this state. The chapter concludes by briefly discussing figures on the prevalence of bullying in WorkCover NSW.

### Definition

- 3.1** For the purpose of its role as the regulator of work health and safety laws in New South Wales, WorkCover defines workplace bullying as ‘repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety’.<sup>75</sup> This definition is also used at the national level, having been adopted by Safe Work Australia.
- 3.2** Safe Work Australia’s Draft Code of Practice recognises that bullying can operate downwards from managers to workers, sideways between workers and upwards from workers to supervisors or managers.<sup>76</sup>
- 3.3** Caponecchia and Wyatt note that the main criteria for behaviour to be called workplace bullying are that the behaviours are repeated, unreasonable and cause harm, or have the potential to cause harm.<sup>77</sup>
- 3.4** Dr Carlo Caponecchia, Senior Lecturer in the Faculty of Science at the University of New South Wales, explained in evidence to the committee that the definition of what is ‘unreasonable’ relies on the ‘reasonable person test’ applied in a court of law. This test is whether a hypothetical reasonable person, taking account of the relevant circumstances, would consider the behaviour to be reasonable or otherwise.<sup>78</sup>
- 3.5** Caponecchia and Wyatt identify a number of unreasonable behaviours that may constitute bullying:
- undue public criticism
  - name calling, insults, intimidation
  - social or physical isolation, including withholding information or preventing access to opportunities
  - overwork, such as impossible deadlines and undue disruptions

<sup>75</sup> Submission 32, WorkCover NSW, p 22.

<sup>76</sup> Submission 32, WorkCover NSW, p 23.

<sup>77</sup> Carlo Caponecchia and Anne Wyatt, *Preventing workplace bullying: An evidence-based guide for managers and employees* (Allen and Unwin, 2011), p 3.

<sup>78</sup> Evidence, Dr Carlo Caponecchia, Senior Lecturer, Faculty of Science, University of New South Wales, 6 November 2013, p 9; see also Carlo Caponecchia and Anne Wyatt, *Preventing workplace bullying: An evidence-based guide for managers and employees* (Allen and Unwin, 2011), p 5.

- destabilisation and undermining, such as failure to give credit, assigning meaningless tasks, setting up to fail, reminding others of their mistakes and withholding responsibility without cause
- yelling and shouting
- spreading gossip and malicious rumours
- repeated unreasonable assignment of duties that are obviously unfavourable to a person
- withholding or denying access to necessary information, resources or consultation.<sup>79</sup>

**3.6** To provide further context, the WorkCover submission identified a number of behaviours that are not bullying, but rather, reasonable actions by management:

- setting reasonable performance goals, standards and deadlines
- allocating work
- rostering and allocating reasonable working hours
- transferring a worker for operational reasons
- failing to promote someone after a proper, documented selection process
- informing a worker that their performance is unsatisfactory, after following established performance management guidelines
- informing a worker, objectively and confidentially, that their behaviour is inappropriate
- organisational restructure.<sup>80</sup>

**3.7** In his evidence to the committee, Dr Caponecchia explored a number of issues associated with determining whether bullying has occurred. He advised that, following a recognition that greater clarity is required around the ‘reasonable person test’, a tool is being developed for Safe Work Australia that will help workers to determine whether what they feel they have been exposed to actually does meet the criteria for bullying.<sup>81</sup>

**3.8** Dr Caponecchia agreed with a suggestion that it is harder to gain evidence of psychological injury compared with physical injury, but advised that progress is being made to provide better guidance around this.<sup>82</sup>

## Impacts

**3.9** Caponecchia and Wyatt note that people exposed to workplace bullying have been found to experience a range of symptoms or health effects including:

- post-traumatic stress disorder symptoms

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<sup>79</sup> Caponecchia and Wyatt (2011), p 3.

<sup>80</sup> Safe Work Australia, cited in Submission 32, WorkCover NSW, p 23.

<sup>81</sup> Evidence, Dr Caponecchia, 6 November 2013, p 6.

<sup>82</sup> Evidence, Dr Caponecchia, 6 November 2013, p 11.

- depression, anxiety, sleep disturbance
- irritability, anger
- suicidal thoughts
- chronic fatigue, burnout
- headaches, nausea
- feelings of anger, irritability and victimisation
- social withdrawal.<sup>83</sup>

**3.10** In addition to these health effects, bullying can impact on people in other ways including:

- reduced productivity
- reduced job satisfaction
- dreading going to work
- decreased concentration, problem solving abilities and rational judgement
- reduced self confidence and self worth
- increased propensity to leave the workplace or thoughts of leaving the workplace.<sup>84</sup>

**3.11** For employers, the costs include:

- production losses, including overhead costs while production is reduced, absenteeism, ‘presenteeism’ and loss of skills, experience and institutional knowledge when the person leaves
- wage losses including costs of replacing staff, redundancy payouts and work interruption
- associated costs such as those for investigations, implementing report recommendations, supporting bystanders, training new staff, legal costs arising from prosecution or common law claims, and fines imposed by health and safety authorities
- insurance costs including increased premiums due to claims experience
- intangibles including lowered employee commitment and poorer performance, reduced morale, loss of goodwill and loss of reputation.<sup>85</sup>

**3.12** In its submission, Unions NSW highlighted both the personal effects of bullying and the costs to the broader community and economy:

Unions NSW believes bullying is not just about individuals or isolated workplaces. It is a community issue, which has significant health and economic implications. We are only just beginning to understand the significant impact that workplace bullying has on our economy, as a recent report by the Productivity Commission demonstrates. This report estimates the cost of bullying to employers to be in the billions of dollars.

<sup>83</sup> Caponecchia and Wyatt (2011), pp 41-42.

<sup>84</sup> Caponecchia and Wyatt (2011), p 55.

<sup>85</sup> Caponecchia and Wyatt (2011), pp 39-40.

The productivity of workplaces is destroyed and in extreme cases significant restructure and closure are often the only means to remedy toxic environments as a result of bullying and harassment. What we say is most important is the resultant negative health effects on workers when combined with the unfair financial burdens they suffer. This causes not only family breakdown and enormous psychological injury but also the deaths of workers.<sup>86</sup>

- 3.13** Unions NSW also underscored the importance of early intervention to address problematic behaviour before it escalates and causes injury, or force the victim to move to another job:

Most of the time bullying issues are not an injury, but the longer it takes, the more chance there is going to be an injury to someone's physical, psychological and financial health as well as for a lot of people ... Before someone gets injured you are trying to nip it in the bud so that they do not end up being bigger than they are and that people get injured and people leave the workplace. The majority of people do not actually get injured; they just leave the workplace or transfer to another job somewhere else. It is about being proactive.<sup>87</sup>

## The role of organisational culture

- 3.14** According to Caponecchia and Wyatt, organisations can encourage or discourage bullying not only in their explicit responses to workplace bullying, but also in implicit ways via their culture. Organisational culture refers to the shared norms, values and assumptions that are held unconsciously, but which characterise how the organisation views itself and its environment, and can be summed up as 'the way we do things around here'.<sup>88</sup> The authors explain how organisational culture can affect bullying:

Aspects of organisational culture can affect bullying in several ways. For example, cultural values and practices may 'permit' or encourage acts of bullying, prevent a target from reporting the behaviour ... or expect that they will endure it, or make it acceptable for management to ignore reports ... The demonstrated values of the organisation are fundamental in preventing and managing workplace bullying. The development of a culture where reports of unacceptable behaviour are taken seriously, dealt with confidentially, fairly and in a timely manner is intrinsic to eradicating workplace bullying and all its negative consequences.<sup>89</sup>

## Legislative framework

- 3.15** At the state level, protections against bullying operate via the *Work Health and Safety Act 2011* (WHS Act) and the *Work Health and Safety Regulation 2011*.<sup>90</sup> This legislation does not specifically proscribe workplace bullying or address bullying directly; rather, it imposes a general duty to protect health and safety at work so far as it is reasonably practical.<sup>91</sup> Section

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<sup>86</sup> Evidence, Mr Mark Morey, Deputy Assistant Secretary, Unions NSW, 11 November 2013, p 2.

<sup>87</sup> Evidence, Mr Shay Deguara, Industrial Officer, Unions NSW, 11 November 2013, p 7; see also p 9.

<sup>88</sup> Caponecchia and Wyatt (2011), p 55.

<sup>89</sup> Caponecchia and Wyatt (2011), p 55.

<sup>90</sup> Submission 32, WorkCover NSW, p 21.

<sup>91</sup> Submission 49, Morris Blackburn Pty Limited, pp 1-2.

19 of the WHS Act establishes a primary duty of care on a person conducting a business or undertaking to, as far as reasonably possible, ensure:

- that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking
- the provision and management of a work environment without risk to health and safety.<sup>92</sup>

**3.16** As noted in chapter 2, the WHS Act operates in respect of both psychological and physical health, with bullying regarded as a psychological hazard.<sup>93</sup>

**3.17** Certain anti-bullying provisions are now enshrined in Commonwealth law. New provisions within the *Fair Work Act 2009 (Cth)* that came into operation in January 2014 provide an early intervention mechanism for victims of alleged bullying to seek orders to stop bullying via an application to the Fair Work Commission. These provisions only apply to employees of constitutional corporations and Commonwealth and Territory entities and thus do not apply to employees of partnerships, unincorporated associations, non-constitutional corporations (such as some local councils and universities) and state government employees.<sup>94</sup> As such, they do not apply to WorkCover employees.

**3.18** Some protection is also provided under anti-discrimination law at both the state and Commonwealth levels, where bullying is found to be motivated because of an attribute protected by the legislation.<sup>95</sup>

### **Extending the *Fair Work Act* protections to all employees**

**3.19** While the committee received limited evidence on this issue, it is important to note that a number of inquiry participants sought for those employees excluded from the provisions of the Commonwealth's *Fair Work Act* to be given access to those protections. The legal firm Maurice Blackburn argued that by not having the early intervention mechanism available to them, these employees may experience more prolonged exposure to bullying and therefore more serious harm:

The difficulty with having numerous employees within New South Wales not afforded the protection of the new anti-bullying laws under the *Fair Work Act* is that these employees may have no early response mechanism for bullying. This in turn this will prolong their exposure to workplace bullying and result in more serious traumatisation, injury and absence from the workplace.<sup>96</sup>

**3.20** Similarly, Unions NSW underscored a number of positive aspects to the new Commonwealth law, including that it addresses the alleged bullying quickly, efficiently and independently.

<sup>92</sup> Submission 32, WorkCover NSW, p 21.

<sup>93</sup> WorkCover NSW, *Bullying*, accessed 3 February 2013, <<http://www.workcover.nsw.gov.au/newlegislation2012/health-and-safety-topics/human-behaviour/Pages/bullying.aspx>>.

<sup>94</sup> Submission 49, Maurice Blackburn Pty Limited, pp 1-2.

<sup>95</sup> Submission 49, Maurice Blackburn Pty Limited, p 3.

<sup>96</sup> Submission 49, Maurice Blackburn Pty Limited, p 3.

Unions NSW went on to recommend that comparable provisions be introduced in New South Wales:

Unions NSW would like the Committee to consider making a recommendation to provide for a similar legal mechanism for employees, who are currently excluded from accessing the legal mechanism through the *Fair Work Act*. We do not necessarily believe that it has to allow those workers to access the Fair Work Commission, but there should be at least a parallel system operating within the New South Wales jurisdiction.<sup>97</sup>

### Prevalence of bullying in WorkCover

- 3.21** During the inquiry, four key sources were referred to as providing some indication of the prevalence of bullying in WorkCover.
- 3.22** First, representatives of the Public Service Association of NSW (PSA) cited the results of a survey conducted as part of the 2011 PricewaterhouseCoopers (PwC) report on workplace bullying and harassment in WorkCover. The report found that, among the 60 per cent of WorkCover employees who completed the PwC online survey, 40 per cent reported that they had been bullied and/or harassed in the workplace in the previous 12 months. Of these, 52 per cent reported that they were bullied and/or harassed by a manager or supervisor, 29 per cent by another employee and 18 per cent by both a manager or supervisor and another employee.<sup>98</sup> We explore WorkCover executives' interpretation of these figures in chapter 6, along with other participant's views about the reliability of this data.
- 3.23** Second, the PSA also cited the findings of the Public Service Commission's *People Matter Employee Survey 2012* for the Compensation Authorities Staff Division (CASD), of which WorkCover is part. That survey found that 44 per cent of CASD respondents reported having witnessed bullying at work in the last 12 months. In addition, 19 per cent reported personally experiencing bullying within the last 12 months (but not currently), while a further 8 per cent reported currently experiencing bullying at work.<sup>99</sup>
- 3.24** By way of comparison, the *People Matter Employee Survey 2012* found that across the public sector as a whole, 48 per cent of respondents indicated that they had witnessed bullying at work in the last 12 months, while 29 per cent reported having personally experienced bullying during that period. Of those who indicated that they had been bullied, 40 per cent reported that they were bullied by a fellow worker; 38 per cent by their immediate manager or supervisor; 35 per cent by a senior manager; 24 per cent by a group of fellow workers; and 8 per cent by a subordinate. Of those who indicated that they had been bullied, 21 per cent had submitted a formal complaint, while 79 per cent had not.<sup>100</sup>

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<sup>97</sup> Evidence, Mr Morey, 11 November 2013, pp 2-3 and 7; see also submission 90, Name suppressed, p 5.

<sup>98</sup> Department of Premier and Cabinet and PricewaterhouseCoopers, *WorkCover (NSW) Review: Independent inquiry into workplace bullying and harassment*, February 2011, p 4, cited in Evidence, Mr Ian Tuit, Delegate, Public Service Association of NSW, 6 November 2013, p 21.

<sup>99</sup> Public Service Commission, *People Matter Employee Survey 2012: Agency report for Compensation Authorities Staff Division*, 2012, p 12, cited in Evidence, Mr Ian Tuit, Delegate, Public Service Association of NSW, 6 November 2013, p 21.

<sup>100</sup> Public Service Commission, *People Matter Employee Survey 2012: Main findings report*, 2012, pp 24-25.

- 3.25** Third, the PSA referred to the 2012 Safety, Return to Work and Support Division (SRWSD) *Employee Engagement Survey*, in which 54 per cent of staff agreed with the statement, ‘Bullying and abusive behaviours are prevented and discouraged’ in their workplace. Within WorkCover itself, only 50 per cent of staff agreed with the statement.<sup>101</sup>
- 3.26** Fourth, WorkCover presented workers compensation figures as another measure of bullying within the organisation:
- In WorkCover, there was a 59 per cent decrease in injury claims between 2011/12 and 2012/13 with the number of injury claims falling from 54 in 2011/12 to 22 in 2012/13. Injuries specifically involving psychological injury decreased by 84 per cent between 2010/11 and 2012/13 with 21 reported cases in 2010/11; 10 in 2011/12 and 4 in 2012/13.<sup>102</sup>
- 3.27** In addition, WorkCover advised that within the organisation there were 11 reported bullying claims in 2011/12 compared to 2 in 2012/13.<sup>103</sup>
- 3.28** We note that the figures need to be seen in light of participants’ evidence concerning barriers to reporting, which are documented in paragraphs 6.10 and 6.11.

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<sup>101</sup> Evidence, Mr Ian Tuit, Delegate, Public Service Association of NSW, 6 November 2013, p 22.

<sup>102</sup> Submission 32, WorkCover NSW, p 12.

<sup>103</sup> Submission 32, WorkCover NSW, p 12.



## Chapter 4 Allegations about bullying in WorkCover

The Industrial Relations Commission (IRC) findings in relation to the Wayne Butler case, closely followed by the establishment of this inquiry, prompted an outpouring to the committee of personal accounts of bullying. Many individuals, primarily via partially or fully confidential submissions, detailed their experiences of bullying in WorkCover.

This chapter focuses on these allegations. It commences with an overview of the genesis, findings and recommendations of the 2011 PricewaterhouseCoopers (PwC) report on bullying and harassment in WorkCover. It then documents the background to the IRC's decision in the Wayne Butler matter, and the various criticisms of WorkCover contained in that decision, in which Deputy President Harrison described the actions of WorkCover as having 'the characterisation of institutional bullying'.<sup>104</sup>

The bulk of the chapter provides a sample of inquiry participants' accounts of their personal experience of bullying in WorkCover, along with the psychological distress that this has caused. We then turn to a brief account of the committee's examination of a specific allegation of bullying by a former senior employee of WorkCover, identifying a number of lessons to be learned from the handling of that complaint.

The personal accounts set out here complement the views documented in the following chapter, about the culture of WorkCover.

### PricewaterhouseCoopers report

**4.1** The PwC inquiry into bullying and harassment in WorkCover, auspiced by the Department of Premier and Cabinet, commenced in September 2010. It was initiated at the request of the then Minister for Finance, the Hon Michael Daley MP, after a number of media articles relating to allegations of bullying and harassment within WorkCover, along with questioning in the NSW Legislative Council about these allegations.<sup>105</sup>

**4.2** Its terms of reference were to:

1. Review all relevant background material and actions previously/currently being taken to resolve allegations of workplace bullying and harassment in WorkCover.
2. Investigate actions taken to address previous allegations of bullying in the WorkCover Licence Processing Unit, and appropriateness of the responses taken.
3. Analyse whether bullying and/or harassment is in any way supported or reinforced in the workplace culture within WorkCover at large or in any particular Branch or unit.
4. Identify risk factors which lead to inappropriate workplace conduct, the adequacy of WorkCover's current workplace behaviour strategies, and the need for any additional measures.

<sup>104</sup> *Wayne Butler and Safety Return to Work Support Division* [2013] NSW Industrial Relations Commission 45, 21 June 2013, [316].

<sup>105</sup> Department of Premier and Cabinet and PricewaterhouseCoopers, *WorkCover (NSW) Review: Independent inquiry into workplace bullying and harassment*, February 2011, p 3.

5. Provide recommendations on any changes with respect to the future management of, or policies relating to, workplace bullying and harassment in WorkCover that are required to address any deficiencies identified by the inquiry to achieve a strong workplace culture that is free from bullying and harassment.<sup>106</sup>
- 4.3** The inquiry was established to examine bullying and harassment at an organisational level; while many individuals were interviewed, individual cases were not investigated.<sup>107</sup>
- 4.4** In February 2011, the PwC final report entitled *WorkCover (NSW) Review: Independent inquiry into workplace bullying and harassment* was published by the Department of Premier and Cabinet.
- 4.5** The report identified a number of risk factors which interviewees and survey respondents believed contributed to the prevailing environment within WorkCover, including:
- historical management style
  - poor management skills and leadership
  - a high level of awareness among WorkCover employees of what constitutes bullying and harassment
  - a lack of trust in management's handling of grievances, bullying and harassment
  - questions about the appropriateness of WorkCover, as the regulator of the *Work Health and Safety Act 2011* (WHS Act), investigating its own alleged breaches of the WHS Act
  - a perception of unfair recruitment processes such as appointments based on personal relationships rather than on merit
  - a large number of temporary appointments at both junior and senior management levels, creating uncertainty among staff and a reluctance to report inappropriate work behaviours
  - general employee concerns regarding a lack of communication, inability to question management decisions, lack of consultation and poor maintenance of confidentiality regarding some complaints.<sup>108</sup>
- 4.6** The PwC report underscored the need for cultural change, noting that to achieve this, 'long-term commitment and a concerted focus on culture is required.'<sup>109</sup> The report made six recommendations.
- Continue the process of providing clarity on the corporate vision, values and strategic direction to all employees. Improve communication with employees and engage them and the union in cultural change.
  - Develop a revised and consolidated bullying and harassment policy, including changes to internal and external support mechanisms. Communicate and provide training in that policy to employees, managers and other key stakeholders including unions.

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<sup>106</sup> Department of Premier and Cabinet and PricewaterhouseCoopers (2011), p 3.

<sup>107</sup> Department of Premier and Cabinet and PricewaterhouseCoopers (2011), p 3.

<sup>108</sup> Department of Premier and Cabinet and PricewaterhouseCoopers (2011), p 5.

<sup>109</sup> Department of Premier and Cabinet and PricewaterhouseCoopers (2011), p 7.

- Review the structure, capabilities and roles organisation-wide, and more specifically the roles and capabilities of all leaders and the People and Culture and occupational health and safety teams.
- Cascade the clear organisational direction to team and individual goals and implement a system for clear guidelines for performance management. Communicate this to employees, managers and other key stakeholders including unions.
- Enhance the rigour and transparency of all recruitment and selection processes. Communicate this to employees, managers and other key stakeholders including unions.
- Establish and embed measures to assess the success of cultural change following the PwC inquiry. Share outcomes with management and employees, celebrating successes and identifying areas for improvement.<sup>110</sup>

### **WorkCover's response**

**4.7** Following the release of the PwC report, the then Minister stated in March 2011 that WorkCover 'ha[d] accepted and w[ould] implement all these recommendations.'<sup>111</sup> In the following section we explore the extent to which the recommendations were implemented.

**4.8** In its submission to the committee's inquiry, WorkCover summarised the PwC report as outlining the need for more work to be done on:

- clearer internal communication and engagement strategies
- transparent recruitment processes
- robust performance management
- effective grievance handling framework and
- strengthened leadership capability.<sup>112</sup>

**4.9** WorkCover reported that it had implemented a multifaceted approach to address both the report findings and some long term cultural issues within the agency. The approach included:

- The introduction of the GROW cultural framework which underpins a variety of positive initiatives to improve communication, engagement and leadership to support cultural change. The GROW program is outlined in further detail in this submission
- New business rules to provide consistency and greater transparency in recruitment processes
- An enhanced performance management framework, which facilitates and enables authentic conversations between employees and supervisors
- Increasing the capability of the People and Culture team

<sup>110</sup> Department of Premier and Cabinet and PricewaterhouseCoopers (2011), pp 9-11.

<sup>111</sup> Media Release, Hon Michael Daley MP, Minister for Finance, 'Statement on WorkCover Bullying Report', 3 March 2011.

<sup>112</sup> Submission 32, WorkCover NSW, p 9.

- Improving grievance handling procedures and support for employees with workplace concerns
- Building leadership capability across the [Safety Return to Work and Support Division].<sup>113</sup>

**4.10** According to WorkCover, ‘The approach is reinforcing to all employees, including all levels of management, that there is no tolerance for bullying behaviours or misconduct of any kind.’<sup>114</sup> The various elements of this work are examined in greater detail in chapter 7.

### **Participants’ views on WorkCover’s response**

**4.11** A number of inquiry participants commented on the findings and recommendations of the PwC report and on subsequent action by WorkCover. One submission author, for example, considered that the response of senior management to the report and its findings did not convey genuine commitment to addressing the issue of bullying.<sup>115</sup>

**4.12** Witness A reported that while the experience of telling their story of bullying was highly valuable to those employees who took up the opportunity, many were very disappointed that their experiences were not reflected in the final report.<sup>116</sup>

**4.13** The Public Service Association of NSW (PSA) asserted that an undertaking was not honoured to refer allegations outside the scope of the inquiry to the Department of Premier and Cabinet for investigation; the Association saw this as a ‘fundamental breach of trust’ for those who had taken the painful step of speaking up.<sup>117</sup>

**4.14** Witness A, who is also the author of submission 90, considered that a more detailed report about what was going wrong and where would have provided WorkCover with greater insight into what action it needed to take.<sup>118</sup> This participant contended that, ‘There was a disconnect between the facts on the ground, the report, and the corporate response’, and suggested that the main action, the Leadership Challenge program, bore little relationship to the problem of bullying.<sup>119</sup> Instead, the submission went on to suggest that an analysis of WorkCover’s compliance with work health and safety requirements might have led to greater improvements to the bullying culture in WorkCover.<sup>120</sup>

**4.15** In his submission, Dr Carlo Caponecchia, Senior Lecturer at the University of New South Wales whose expertise is in workplace bullying, noted that it was valuable that the PwC report was made public, but disappointing that there appears not to have been any public reporting

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<sup>113</sup> Submission 32, WorkCover NSW, pp 9-10.

<sup>114</sup> Submission 32, WorkCover NSW, p 10.

<sup>115</sup> Submission 75, Mr William Steenson, p 3.

<sup>116</sup> *In camera* evidence, Witness A, 6 November 2013, p 49. Evidence published by resolution of the Committee.

<sup>117</sup> Submission 20, Public Service Association of NSW, p 29.

<sup>118</sup> *In camera* evidence, Witness A, 6 November 2013, pp 56-57; Submission 90, Name suppressed, p 9.

<sup>119</sup> Submission 90, Name suppressed, p 9.

<sup>120</sup> Submission 90, Name suppressed, p 9.

by WorkCover on follow up.<sup>121</sup> He went on to underscore the importance of examining the extent to which the report's recommendations had been implemented:

Has an amended bullying policy been developed, communicated internally and training been offered, along with all other tasks outlined in Recommendation 2?

How do the plans to reform the People and Culture functions ... ensure that bullying is dealt with as a [workplace health and safety] issue, rather than as an issue resolution or grievance matter? (see Recommendation 3)

Have performance measures and development plans for staff included responsibilities related to managing workplace bullying, and how does this relate to any new training that has been offered or planned? (Recommendation 4, though this recommendation does not seem to make reference to workplace bullying).<sup>122</sup>

**4.16** According to the PSA, the results of the PwC inquiry were 'deeply unsatisfactory',<sup>123</sup> and most of its recommendations (as set out in paragraph 4.6) were not implemented:

The extent to which these recommendations were embraced and implemented by WorkCover could be taken as an indication of a preparedness to improve in this area. Sadly, despite public statements made by the CEO of WorkCover that all recommendations had been accepted, the vast majority of recommendations were not fully implemented.<sup>124</sup>

**4.17** More fundamentally, representatives of the PSA suggested that rather than publicly accepting that there was a problem with bullying in WorkCover and working to improve it, senior management's scant communication with staff about the report's findings and recommendations seemed to indicate an attempt to cover up the problem or not recognise its existence.<sup>125</sup>

**4.18** Ms Jann Jeffries, Industrial Officer with the PSA, also reported that despite some initial indications by WorkCover that they would take a collaborative and open approach with the union to implementing the PwC recommendations, this did not occur.<sup>126</sup> Finally, Mr Steve Turner, Assistant Secretary of the PSA, questioned whether, once an outside organisation was brought in to conduct the inquiry, WorkCover should have been left to rectify the issues without greater involvement from the Department of Premier and Cabinet.<sup>127</sup>

**4.19** On the other hand, WorkCover reported to the committee that it continues to build on the recommendations of the PwC report to address the culture of the organisation. In evidence, Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW, advised:

<sup>121</sup> Submission 24, Dr Carlo Caponecchia, p 10.

<sup>122</sup> Submission 24, Dr Carlo Caponecchia, p 9.

<sup>123</sup> Submission 20, Public Service Association of NSW, p 35.

<sup>124</sup> Submission 20, Public Service Association of NSW, p 30.

<sup>125</sup> Evidence, Mr Steve Turner, Assistant Secretary, Public Service Association of NSW, 6 November 2013, p 14.

<sup>126</sup> Evidence, Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, 6 November 2013, p 14.

<sup>127</sup> Evidence, Mr Turner, 6 November 2013, p 14.

WorkCover continues to build on the PricewaterhouseCoopers recommendations to achieve cultural change. Since the release of the PricewaterhouseCoopers report the way WorkCover responds to this issue has moved from a tactical to a more strategic approach. Strategic in the sense of a more holistic approach that promotes a positive, healthy, capable and engaged workforce. This approach incorporates the PricewaterhouseCoopers recommendations. As the journey progresses we continue to build a proactive, agile and sustainable approach to managing and supporting our staff. We remain focussed on fostering our workforce's whole well-being and building its capability and resilience. In this environment there is no tolerance for workplace bullying.<sup>128</sup>

## The Wayne Butler matter

- 4.20** It is against the backdrop of the implementation of the PwC recommendations that in June 2013, two years after the PwC report was released, bullying in WorkCover was again the subject of media scrutiny. This time reports focused on the extremely adverse decision of the Deputy President of the IRC, Mr Rod Harrison, in relation to the unfair dismissal claim of Mr Wayne Butler. The circumstances of the case and the IRC decision are briefly set out below.
- 4.21** In November 2012, the Safety, Return to Work and Support Division (SRWSD) dismissed Mr Butler, a WorkCover employee for twelve years, on the basis that he had engaged in misconduct. In correspondence, Mr John Watson, General Manager, Work Health and Safety Division, SRWSD, advised Mr Butler that he had considered eight misconduct allegations and had formed a view that the allegations were all sustained. 'Based upon the evidence available', Mr Watson stated that there was 'no alternative' but to terminate Mr Butler's employment.<sup>129</sup>
- 4.22** Following the termination advice, Mr Butler lodged an appeal with the IRC challenging the validity of the dismissal. After reviewing all the evidence, Deputy President Harrison ruled that the dismissal was 'harsh, unreasonable and unjust'<sup>130</sup> and had 'the characterisation of institutional bullying'.<sup>131</sup> He ordered the SRWSD to reinstate Mr Butler to his former position.<sup>132</sup>

## The allegations

- 4.23** The eight misconduct allegations against Mr Butler were as follows:
- misusing his position in the Information Technology (IT) Services Branch by seeking to procure IT equipment at a discounted commercial rate for personal use and/or associated with his role in the Shared Parenting Council of Australia

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<sup>128</sup> Evidence, Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 11 November 2013, pp 13-14.

<sup>129</sup> *Butler* (2013) NSWIRComm 45, [2].

<sup>130</sup> *Butler* (2013) NSWIRComm 45, [113].

<sup>131</sup> *Butler* (2013) NSWIRComm 45, [316].

<sup>132</sup> *Butler* (2013) NSWIRComm 45, [321].

- misusing his position in the IT Services Branch by seeking to procure gifts in the form of T shirts from a company Dimensions Data, which at the time was in a contractual arrangement as a supplier to WorkCover
- misusing his WorkCover mobile telephone
- engaging in unauthorised secondary employment contrary to the code of conduct
- failing to maintain information security in relation to WorkCover documents and records by forwarding them to other un-secure commercial sites
- failing to comply with policy and procedure in relation to working hours and flex time by not submitting his completed flex sheet at the end of each period
- failing to comply with the code of conduct and the need to carry out his duties responsibly and ethically by failing to accurately record his working hours in the correct manner
- failing to comply with the code of conduct and the need to carry out his duties responsibly and ethically by failing to report and record gifts and benefits received as part of his employment in the appropriate register.<sup>133</sup>

#### **Industrial Relations Commission decision**

**4.24** In arriving at his decision, Deputy President Harrison made a number of strong criticisms, mainly regarding the insufficient or inaccurate evidence produced by the SRWSD and flaws in the investigation process. These criticisms are set out below.

#### ***Insufficient or inaccurate evidence***

- 4.25** Deputy President Harrison found that some evidence produced by the SRWSD was either insufficient or inaccurate. For example, the SRWSD did not provide any phone bills or time sheets to substantiate the allegations regarding Mr Butler's mobile phone and flex sheets.<sup>134</sup> In addition, the evidence produced by the SRWSD in relation to the gifts and benefits allegation was incorrect and the gift in question was not expensive enough to warrant a report in the register.<sup>135</sup>
- 4.26** Notably, the six volumes of evidence collected by the investigator engaged by WorkCover to conduct the investigation into Mr Butler were not tendered in the IRC proceedings.<sup>136</sup>
- 4.27** In his decision, Deputy President Harrison remarked that 'the conclusions reached [by the SRWSD] and the logic behind them convey an attitude of premeditation and witch hunt, not a process grounded in fairness or objective, evidence based decision making'.<sup>137</sup>

<sup>133</sup> *Butler* (2013) NSWIRComm 45, [73] – [214].

<sup>134</sup> *Butler* (2013) NSWIRComm 45, [307] – [308].

<sup>135</sup> *Butler* (2013) NSWIRComm 45, [258] – [280].

<sup>136</sup> *Butler* (2013) NSWIRComm 45, [35].

<sup>137</sup> *Butler* (2013) NSWIRComm 45, [318].

***Flaws in the investigation process***

- 4.28** Deputy President Harrison was also very critical of the investigation process applied to Mr Butler, describing it as ‘deplorable’.<sup>138</sup> For example, when the SRWSD became aware that Mr Butler listed his work phone number as his contact number on the webpage of the Shared Parenting Council, for whom he volunteered, it immediately launched a preliminary investigation into his conduct, followed by a referral to the Independent Commission Against Corruption and a full independent investigation.<sup>139</sup> In addition, throughout the course of the preliminary investigation, the SRWSD did not inform Mr Butler that he was being investigated.<sup>140</sup> Mr Harrison regarded SRWSD’s decision here as denying Mr Butler natural justice, which rendered the investigation process ‘unfair’ and ‘fundamentally flawed’.<sup>141</sup>
- 4.29** Deputy President Harrison further observed that the investigation conclusions were not supported by the facts,<sup>142</sup> and stated, ‘It is evident that the investigator arrived at more sinister conclusions not detailed here but which also infected the process and misled Mr Watson as the decision maker.’<sup>143</sup>

***Findings***

- 4.30** The Deputy President found no substance to any of the allegations.<sup>144</sup> He was not convinced that the SRWSD’s action to terminate Mr Butler’s employment was justified, and asserted that:

In many ways Mr Butler is served up as a scapegoat for systemic management failure and as a sacrifice to an application of policy and procedure in a draconian way which countenances no innocent explanation.<sup>145</sup>

- 4.31** As well as ordering WorkCover to reinstate Mr Butler to his former position, Deputy President Harrison ordered WorkCover to pay Mr Butler the remuneration that he would otherwise have received if his employment was not interrupted by the dismissal.<sup>146</sup>
- 4.32** WorkCover’s response to the IRC findings, including the response of the senior executive, is examined at length in chapter 6, which focuses on the organisation’s leadership and governance.
- 4.33** At this point the committee turns to the many allegations that were made by inquiry participants about bullying.

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<sup>138</sup> *Butler* (2013) NSWIRComm 45, [318].

<sup>139</sup> *Butler* (2013) NSWIRComm 45, [31] – [42].

<sup>140</sup> *Butler* (2013) NSWIRComm 45, [42].

<sup>141</sup> *Butler* (2013) NSWIRComm 45, [55] – [62].

<sup>142</sup> *Butler* (2013) NSWIRComm 45, [55].

<sup>143</sup> *Butler* (2013) NSWIRComm 45, [54].

<sup>144</sup> *Butler* (2013) NSWIRComm 45, [293].

<sup>145</sup> *Butler* (2013) NSWIRComm 45, [303].

<sup>146</sup> *Butler* (2013) NSWIRComm 45, [321].

## Personal accounts of bullying

**4.34** Time and again, submissions to the inquiry attested to bullying in WorkCover, either at the individual or institutional level. Many individuals, primarily via partially or fully confidential submissions, detailed their own experiences of alleged bullying in WorkCover, while others spoke of bullying that they had witnessed. In this section, the committee documents some of the non-confidential accounts presented to us.

**4.35** Set out below are a sample of the many accounts that the committee received.

**4.36** Dr Howard Bell, a principal lawyer and chair of the PSA delegates' committee at WorkCover, told the committee that he has supported numerous colleagues over the years 'in circumstances where they felt bullied, harassed, overwhelmed or not supported by managers and leaders in various parts of WorkCover.'<sup>147</sup> He argued that these instances reflect very poorly on WorkCover's management of and care for staff:

The bullying of which I have become aware has involved a range of business units across WorkCover including, but not limited to, the Legal Group in which I work. I am deeply troubled by the number of people who have, over the years, approached me in a state of severe distress over the manner in which they have been spoken to by their managers or supervisors at WorkCover ... Regrettably, [the instances of which I am aware] evidence serious organisational incompetence when it comes to managing people, caring for staff and their well-being and bringing out the best in them.<sup>148</sup>

**4.37** Mr Phillip Cantrell, a Senior Project Officer in WorkCover's Work Health and Safety Division, argued that the Butler matter is by no means isolated:

The bullying and discrimination that pervades WorkCover is due, in my opinion, to its management whose ineptitude, arrogance, viciousness and paranoid behaviour was manifested against Mr Wayne Butler and there have been others who have not fought back as well or at all.<sup>149</sup>

**4.38** Ms Deborah Martens, a former compliance officer with WorkCover who says she took a 'voluntary' redundancy in May 2013, spoke of bullying behaviour and 'cover up right to the top' of the organisation. Her experience was that those from whom she sought help seemed more supportive of the alleged perpetrators than concerned for her; rather, they side stepped the issue and sought to avoid the problem.<sup>150</sup>

**4.39** The author of submission 61, a former WorkCover employee, identified a number of 'strategies' used to bully her including 'performance management', giving her a larger and more complex workload compared with other colleagues, assigning work below her skill level, being told she is not working well as a team member, and being directed to stop work on certain tasks then taken over by someone else, and being given no credit for the work.<sup>151</sup>

<sup>147</sup> Submission 27, Dr Howard Bell, p 2.

<sup>148</sup> Submission 27, Dr Howard Bell, p 2.

<sup>149</sup> Submission 73, Mr Phillip Cantrell, p 9.

<sup>150</sup> Submission 83, Mrs Deborah Martens, pp 1-2.

<sup>151</sup> Submission 61, Name suppressed, p 2.

- 4.40** The author of submission 58, a supervisor in WorkCover, pointed to very dysfunctional management practices that, like those in the previous paragraph, left her disempowered and unable to perform core aspects of her role:

I have been excluded from conversations and decisions in relation to the staff I supervise. I was not advised of when my own staff were finishing their employment by management who were responsible for their working contracts. I would obtain this information second hand from staff personally. All consultations in relation to my staff ceased with me. I was not allowed to make decisions in relation to work allocations.<sup>152</sup>

- 4.41** The author of submission 5, a SRWSD employee, alleged bullying by the People and Culture team to withdraw an application for sick leave prior to maternity leave, despite the sick leave being recommended by her doctor and supported by her manager and general manager. She subsequently had an emergency caesarean due to high blood pressure and wonders whether this behaviour, which made her very anxious, contributed to her health problems.<sup>153</sup> This individual went on to report that she saw similar instances of bullying where the perpetrators were not held to account:

I have witnessed other instances of similar bullying scenarios where senior or influential staff have shown no regard towards other people, usually less powerful than them and where this incompetence and abuse has been ignored and there have been no consequences. These are too numerous to describe case by case.<sup>154</sup>

- 4.42** Mr Russell Ashley, a recently retired WorkCover employee whose role was in Testsafe within the Work Health and Safety Division, spoke of poorly handled organisational change. He also claimed to have witnessed bullying and abusive behaviour by senior staff, including speaking in a degrading way about individuals in front of others. He went on to recount an incident involving the unnecessary escalation of a minor matter to a senior officer:

Two [employees] were directed to a meeting without due notice and contrary to the *Public Service Management Act*. This incident had profound and lasting effects on the two staff involved. It was simply a case of bullying. One of the staff said “I feel like walking under a bus on the way home.” He was advised to seek medical help on the way home. His supervisor provided no help whatsoever. It was his work colleagues and PSA delegate who checked in on him until the matter was concluded. I have never seen anyone the colour of one of the staff before he went into his interview. All for no avail, simply a witch hunt.<sup>155</sup>

- 4.43** Ms Jodie Miller, another WorkCover employee, alleged bullying and discrimination against her because of a workplace injury. She reported that prior to her injury, she was merit selected for a temporary promotion and received very positive feedback on her performance. However, after she notified WorkCover of her injury she was suddenly deemed not experienced enough for promotion. She went on to contend that, ‘After our recent restructure, almost every employee in my branch who had previously made a bullying claim, sustained a workplace

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<sup>152</sup> Submission 58, Name suppressed, p 2.

<sup>153</sup> Submission 5, Name suppressed, p 2.

<sup>154</sup> Submission 5, Name suppressed, p 3.

<sup>155</sup> Submission 74, Mr Russell Ashley, pp 2-3.

injury, worked part time, or had small kids to look after was made redundant. Unfortunately, intimidation is also common.<sup>156</sup>

- 4.44** The case studies below from the authors of submissions 46, 84 and 88, one a current employee, and the others former employees, give personal accounts of bullying within WorkCover. The authors requested that their identities be kept confidential. Others who reported that they had been bullied in the organisation included the authors of submission 33, 61, 64, 80, 81, and 88.<sup>157</sup>

**Case study based on a submission - Priya<sup>158</sup>**

I have been bullied on a number of occasions at WorkCover and have observed others in my office being bullied. My supervisor has yelled at me and undermined my work efforts.

I have also been bullied by being denied opportunities to further my career. When I was pregnant and when I worked part time, I was told that I was not a part of the team and could not perform more challenging roles. When I requested to be allocated more work, this was denied. When I requested training to help me with a new role, these opportunities were also denied with no explanation. I was also excluded from staff meetings.

My supervisor gave me conflicting directions. When I asked if I needed to attend meetings on my days off, the response was that I had to come in as it was part of my job and he didn't care what my reasons were, so I had better be there. When I clarified this conversation in writing, the response was it would be appreciated if I could attend, but was not compulsory. The goal posts continually changed.

The impact was that I did not want to come to work. It affected my health, causing poor sleep, an inability to relax, severe migraines and stomach complaints. I took leave from the workplace as it became an uncomfortable place to be.

The bullying by my supervisor also affected my working relationships with other staff, creating a 'me versus him' mentality, with colleagues taking sides.

<sup>156</sup> Submission 80, Ms Jodie Miller, pp 1-2.

<sup>157</sup> Submission 64, Name suppressed, p 1; Submission 80, Ms Jodie Miller, p 1.

<sup>158</sup> Submission 46, Name suppressed, pp 1-2. This case study is not taken verbatim from the submission, but is an accurate reflection of its contents.

**Case study based on a submission - Emma<sup>159</sup>**

In my time at WorkCover, I have experienced exclusion and felt bullied. I have been denied career opportunities and had a manager criticise me to others behind my back.

When I went to lodge a grievance regarding these issues my then manager told me that putting in a grievance was career suicide, so I should rethink it. I have never lodged a complaint or grievance about the bullying.

I once lodged a grievance after recruitment was unethically performed; however the grievance was never actioned. From this I lost faith in the ability to question or appeal misconduct.

Three separate issues have caused me anguish at WorkCover:

- exclusion from branch and team meetings
- exclusion from advertised job opportunities
- breach of my return to work plan, following an injury.

It is concerning that WorkCover, which is meant to help injured people return to work and protect NSW workers, is not helping me but actually hindering my return to work.

**Case study based on a submission - Irina<sup>160</sup>**

Irina commenced her career in the mid 1980s, transferring into WorkCover when it was established in 1987. From 1991 her role involved coordinating a team that advised on rehabilitation and compensation matters. Within a few years, her highly specialised role was restructured into a Principal Inspector position with recognised specialist expertise in workers compensation and rehabilitation. In 2000 she became a Regional Inspector, based on her technical expertise. According to Irina, the failure of some other staff to achieve this competency level created petty jealousies, and led to bullying and isolation by colleagues.

Shortly afterwards, Irina was advised that because other staff objected to her achieving this level of competency, she was to be transferred out of her specialist role and into generalist inspector duties. She did not feel equipped to perform the role as she had never received full inspector training, and she felt victimised and bullied. Rather than assisting her to deal with the unreasonable behaviour of her colleagues, her managers supported them by isolating her further and placing her in an untenable position. The transfer also caused significant hardship as it required a 100 km commute each day.

The team into which Irina was transferred was very busy. Due to her lack of training and practical awareness of the work health and safety aspects of the role, each workplace visit filled her with fear and trepidation. To find herself in this situation was soul destroying as she had previously been a highly competent, professional, well respected and recognised specialist officer with nearly 20 years'

<sup>159</sup> Submission 84, Name suppressed, pp 1-2. This case study is not taken verbatim from the submission, but is an accurate reflection of its contents.

<sup>160</sup> Submission 88, Name suppressed, pp 1-7. This case study is not taken verbatim from the submission, but is an accurate reflection of its contents.

experience. She found herself under attack from her new colleagues as she couldn't undertake the full range of duties. While she understood their need for a fully functioning generalist inspector, it was not her fault that she was put in a role for which she did not possess the skills.

This very stressful situation continued for six years, flowing on to Irina's private life, in which she became increasingly isolated. Matters came to a head in 2006, when her supervisors insisted she undergo training and continue her generalist duties or else face disciplinary action. She found herself unable to cope and took sick leave. When she returned she was humiliated by a manager in front of her colleagues.

After gaining a temporary secondment within WorkCover, Irina was located in the regional office from which she had transferred six years earlier. She thoroughly enjoyed the work but again found that her colleagues undermined her, this time to her supervisor off site. She believes that her secondment was not renewed because of the negative profile that their behaviour gave her, as it simply became too hard for her manager to deal with the 'constant interference'.

Irina was advised that she was required to return to generalist duties and undergo training. When she asked for 7 weeks recreation leave, the supervisor became furious. That afternoon, after symptoms of memory loss and pain in her arm and chest, Irina went to hospital, where she was diagnosed with stress related angina. She never resumed her work as her cardiologist advised her that if she returned to the same stressful situation, she was likely to have a heart attack and die.

She used up all her sick leave, recreation leave and long service leave. As her supervisor did not document that she had called to say she had symptoms and was going to hospital, she was not eligible for workers compensation. She eventually left WorkCover with no alternative but early retirement, with much less superannuation than she would have planned.

During her sick leave she was told that the use of her work vehicle would be charged at full cost recovery. She later received a letter telling her she had a debt to be repaid, and questioning the validity of her sick leave on the basis that WorkCover had discovered she had registered for a charity horse ride. The letter caused her distress and chest pain to recur; again she felt bullied and harassed. Her planned horse ride was in keeping with her doctor's advice. She remains unaware of what kind of investigation was undertaken by WorkCover that allowed it to look into her social activities. A subsequent *Government Information (Public Access) Act* application revealed that management had documented that they knew sending her the letter would cause her distress. She does not believe that they showed her any duty of care or basic human concern at this time, 'in fact the opposite.'

### Psychological impact

**4.45** A powerful theme running throughout the submissions is the psychological distress caused by bullying.

**4.46** The author of submission 67, a former manager, asserted that they had been the victim of bullying, harassment and discrimination, and went on to describe the personal impact of that experience:

As a result of everything that had happened I had an emotional breakdown and could not attend the workplace. I sought counselling assistance and in consultation with my doctor, I was told not to return until I was well enough to deal with the situation. On

[date] I received a letter ... stating I was declared excess and I had two weeks to decide if I would take voluntary redundancy or ask for redeployment ... I was completely in shock that I could be treated this way and that no-one from WorkCover cared about my welfare ... To say I was completely shattered at the way I was treated is an understatement. Even now, 12 months down the track I still suffer from anxiety issues and have found it very difficult to interact with people in certain situations ... The culture of WorkCover is deplorable and what has occurred to me and many others needs to stop. I hope through this parliamentary inquiry that the situation will change and no-one has to go through what I went through again.<sup>161</sup>

- 4.47** A present manager in WorkCover described how their workplace had led them to experience anxiety, depression and loss of confidence:

Over the years I have been personally subjected to situations which have finally made me [so] depressed and anxious that I had to seek formal counselling. I have witnessed a lot ... During this time the culture ... has markedly deteriorated. I am now a worker who suffers from anxiety and depression. I have a loss of self-esteem and lack the confidence to apply for other jobs.<sup>162</sup>

- 4.48** Ms Martens reported that she is unable to move forward because of the anxiety that had resulted from WorkCover's 'toxic atmosphere':

I have been so angry, upset and mentally unable to "fight" to appeal my workers comp claim and other issues since then, now that I am no longer in the toxic atmosphere of WorkCover, I am just coming around to being able to think to get all this unresolved issues out, as I can't even move forward with my life for the anxiety that place put me through. This is even after attending sessions with psychologists etc.<sup>163</sup>

- 4.49** Dr Bell told the committee of a colleague 'psychologically destroyed' by his treatment in WorkCover,<sup>164</sup> of the fear of reprisals that stops many from speaking out, and of how individual staff members' anxiety recently increased after senior managers spoke about reducing staff:

A number of people whom I have advised, assisted or supported in their experiences of bullying have since left the organisation. Some of those who remain here, have lost confidence in themselves, and in their judgment. The common theme I have observed is an intense lack of trust and confidence in the leadership and management within the organisation. In some cases people appear paralysed with fear of reprisals and are therefore reluctant to speak out about bullying at WorkCover or to otherwise be critical of the organisation. These fears, in some measure, appear to have been compounded in recent times by statements made by senior leaders within the organisation about having a mission to get rid of some people and having the budget and resources to do so.<sup>165</sup>

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<sup>161</sup> Submission 67, Name suppressed, pp 2-3.

<sup>162</sup> Submission 58, Name suppressed, p 1.

<sup>163</sup> Submission 83, Mrs Deborah Martens, p 1.

<sup>164</sup> *In camera* evidence, Dr Howard Bell, 6 November 2013, p 63. Evidence published by resolution of the Committee.

<sup>165</sup> Submission 27, Dr Howard Bell, p 2.

**4.50** Notably, Dr Bell observed that bullying behaviour also impacts vicariously on bystanders:

Managers have to stop shouting, panicking and intimidating staff. Others in the workplace are left to pick up the pieces. This leaves others feeling traumatised and unable to focus on their own work, which in turn leads to greater stress and reduced productivity. Managers appear to have no idea, or if they do have an idea they seem untroubled by it, how much direct and vicarious trauma caused by dramatic, overbearing and aggressive behaviour towards staff.<sup>166</sup>

### **Committee view**

**4.51** This chapter has a number of disturbing aspects that attest to a problem of bullying in WorkCover.

**4.52** The substantial volume of submissions received by the committee that contained personal accounts of bullying was in itself troubling to the committee. In addition, the fact that so many submission authors sought confidentiality, largely due to fear of reprisals, was of significant concern. Moreso, the content of the submissions was very disturbing: the sample of accounts in this chapter highlights the reality of people's experience and the profound impact that bullying has on people's mental health, self worth and job performance. These same experiences and impacts are writ large in the confidential submissions to the inquiry that cannot be included in our report.

**4.53** These personal accounts are corroborated by a very sizeable volume of oral and written evidence from inquiry participants about the culture of WorkCover. This issue is examined in the following chapter, while the extent to which senior officers have taken on board Deputy President Harrison's findings in the IRC, and set about learning those lessons, is explored in detail in chapter 6.

## **Investigation of a former senior employee of WorkCover**

**4.54** There was one personal account of bullying that the committee determined it would examine, on the basis that it was in the public interest to do so.

### **Matters raised by a submission author**

**4.55** The committee received a submission from an individual alleging that they were the victim of bullying by a former senior employee of WorkCover, and that they had witnessed the senior officer bullying others.<sup>167</sup> The committee resolved that the submission remain confidential to protect the identities and privacy of the parties concerned.

**4.56** The submission author informed the committee that they had made a workers compensation claim for psychological injury. The insurer accepted that the submission author had sustained a psychological injury as a result of their employment with WorkCover, but did not accept that the injury was caused by bullying and harassment.

<sup>166</sup> Submission 27, Dr Howard Bell, p 6.

<sup>167</sup> Submission 85, Confidential.

- 4.57 The submission author advised that there was a subsequent investigation into the allegations by the Internal Audit Bureau (IAB) on behalf of the Public Service Commissioner.
- 4.58 The submission author expressed ‘disappointment and betrayal’ at the handling of the allegations, and made the following claims.
- WorkCover’s senior management team, who allegedly witnessed the senior officer’s behaviour, took no action to address the bullying.
  - There was a ‘culture of acceptance of bullying and harassment’ at WorkCover including among the senior management team.
  - The submission author did not report her complaint of bullying to WorkCover due to mistrust of the complaints process and concern about possible repercussions.
  - The Public Service Commissioner did not contact the submission author to relay the findings of the investigation conducted by IAB, and the submission author was denied access to the investigation report.
- 4.59 As the committee’s examination progressed, it became clear that the submission author was unaware that the investigation of the bullying allegations was triggered by another person. For the purposes of the IAB investigation, the submission author was a ‘witness’ rather than the complainant; as such they were not informed of the investigation outcome, consistent with the Ombudsman’s guidelines relating to public interest disclosures.<sup>168</sup> The failure by the Public Service Commission to make this clear to the submission author is most regrettable. It contributed to further angst suffered by the submission author, which could have been easily avoided.

### **Committee’s examination of the matters raised**

- 4.60 While it was not within the committee’s remit to investigate individual allegations, it determined that it was in the public interest to conduct a thorough examination of the issues raised in this submission. The committee considered that the submission potentially pointed to important lessons on how claims of bullying should be dealt with in future. In undertaking its investigations, the committee was mindful of the need to protect the privacy of those involved, particularly the submission author, the subject of the complaint (the former senior officer), and the individual who made the public interest disclosure.

### **Investigation auspiced by the Public Service Commission**

- 4.61 The committee learned that the investigation by IAB commenced after a public interest disclosure, which was referred by the Ombudsman to the Public Service Commission.<sup>169</sup>
- 4.62 The Public Service Commissioner, Mr Graeme Head, advised the committee that he subsequently initiated an independent review of the IAB investigation. This review concluded

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<sup>168</sup> *In camera* evidence, Mr Graeme Head, Public Service Commissioner, 8 April 2013, p 1. Evidence published by resolution of the committee.

<sup>169</sup> *In camera* evidence, Mr Graeme Head, Public Service Commissioner, 10 December 2014, p 19. Evidence published by resolution of the committee.

that the initial IAB investigation report was not able to be acted upon and recommended that it be set aside. The Commissioner determined, under the particular circumstances, that reinvestigating the matter would have been logistically challenging and was very unlikely to change the outcome.<sup>170</sup>

### Lessons learned

- 4.63** The Commissioner acknowledged that he was not satisfied with the outcome of this investigation, noting that the matter had been referred only days after the Commission was established. He advised that a number of lessons had been learned from the process.<sup>171</sup>
- A framework is required that provides much greater clarity for agencies about how complaints of bullying are to be investigated. This work, which is already underway, will ensure that investigations are conducted in a way that is consistent with guidelines and provide robust conclusions upon which action can be taken. This will assist all parties to have faith in the process.<sup>172</sup>
  - The lack of communication with individuals in this instance was not ideal. This has informed new guidelines in relation to investigations auspiced by the Public Service Commission, including on who is to be communicated with, and about what, at different points in the investigation process.<sup>173</sup>
- 4.64** The evidence before the committee was that there was significant discussion between the IAB and the Public Service Commissioner regarding the quality of the report. Much of this evidence was in direct conflict. The committee is not in the position to determine the validity of the concerns with respect to the report, in part due to the absence of a clear paper trail regarding the discussions between the IAB and the Commission. We note that since this matter, the Commission has not used the services of the IAB for such investigations again.

### Committee view

- 4.65** It is not the role of the committee to reinvestigate the allegations of bullying against the former senior officer in WorkCover and come to a definitive conclusion about the complaint or the investigation. However, we have explored the matter extensively in order to inform our conclusions about certain systemic issues relating to the management of bullying allegations within WorkCover and the broader public sector.
- 4.66** Many of the issues raised by this case resonated with other similar issues put before us in oral evidence and submissions. The case suggests important lessons for how allegations of bullying should be dealt with in future.
- 4.67** We support the Public Service Commissioner's development of new guidelines, in part responding to the failures in the way that this matter was handled, that will set the highest standards for bullying investigations; it will be vitally important to ensure these are complied

<sup>170</sup> *In camera* evidence, Mr Head, 10 December 2014, pp 19-20.

<sup>171</sup> *In camera* evidence, Mr Head, 8 April 2013, p 27.

<sup>172</sup> *In camera* evidence, Mr Head, 10 December 2014, pp 19 and 22.

<sup>173</sup> *In camera* evidence, Mr Head, 8 April 2013, pp 2-3.

with. An effective investigations framework will enable complaints to be determined. Ideally, such a framework will also deliver justice to complainants and those who stand accused, and maintain faith in the complaints handling process (see chapter 7 on ways that WorkCover can move forward and chapter 9 on public sector wide measures).

- 4.68** Those who make complaints of bullying, those who stand accused of bullying, and in certain circumstances, other affected parties, should be informed of the outcomes of any investigations, including findings and actions taken. This is very important to providing a resolution to bullying claims and can occur while still being careful of privacy. It is also important that there be appropriate communication with senior management about the outcomes of investigations, so that the organisation can learn all that it needs to from investigations, and act on this learning. This underscores the need for appropriate guidelines on communication (see chapter 9 on public sector wide measures).
- 4.69** The submission author alleged that WorkCover has a ‘culture of acceptance’ of bullying and a reluctance to address bullying issues. While we cannot determine whether there is a culture of bullying based on a single case, the allegations resonate strongly with the evidence of many witnesses and submission authors (see chapters 4 and 5). Any such culture would not be in keeping with the high standards expected of the state workplace safety regulator.
- 4.70** The Safety, Return to Work and Support Board should be better informed about bullying issues including complaints of bullying against senior officers. There is a need for greater accountability of management to the board and greater governance by the board on bullying and other human resource matters (see chapter 6 on the board’s governance role).
- 4.71** No matter how effective investigation guidelines are, it is critical that these be matched with a wholesale effort focusing on prevention of bullying and early action to address it, so that in many cases, investigations will not be necessary. Essential to this focus on prevention will be the building of a culture of mutual respect (see chapter 6 on leadership and governance and chapter 9 on public sector wide responses).
- 4.72** These issues are taken up in the remaining chapters of this report.

## Chapter 5 The culture of WorkCover

The previous chapter focused on participants' accounts of bullying at the individual level; this chapter focuses on the organisational level, or the culture of WorkCover. In chapter 3 we noted the way that aspects of organisational culture can affect bullying by 'permitting' or encouraging these acts, by stopping a target from reporting the behaviour, or by making it acceptable for management to ignore reports. Similarly, we noted that an organisation's demonstrated values are core to preventing and addressing workplace bullying; developing a culture where reports of bullying are taken seriously, acted on confidentially, fairly and in a timely way, is essential to eradicating bullying and its negative impacts.

The issue of culture was the focus of much evidence to the inquiry, with many participants commenting that this is a longstanding problem in WorkCover. Inquiry participants also referred to the presence of a punitive approach in many organisational processes, along with widespread poor management practices, and management 'denial and cover up' in relation to the problem of bullying. Each of these aspects of organisational culture is examined in turn below.

### Development of a bullying culture

**5.1** Participants such as the Public Service Association of NSW (PSA) argued that the culture of bullying is both a longstanding and substantial problem in WorkCover.<sup>174</sup> Mr Steve Turner, Assistant Secretary, expressed consternation that despite the then Minister's intervention to address bullying in WorkCover by instigating the PricewaterhouseCoopers (PwC) inquiry, followed by the adoption of the inquiry recommendations, some two years later the Wayne Butler matter occurred. He argued that this indicates that a culture of bullying still exists within WorkCover and is perpetuated through many internal processes:

The PSA has been concerned about bullying in WorkCover since 2004. The fact that it is now 2013 and there must be an inquiry is shocking, we believe. Nine years later we are still trying to address this issue within WorkCover ... I have personally met with several CEOs now over those years, but [the Wayne Butler decision] ... highlights that this culture still exists and is perpetrated through many processes, including work performance, disciplinary processes, et cetera that exist within WorkCover.<sup>175</sup>

**5.2** The Association went on to highlight the systemic nature of the problem, such that, in its view, bullying has become entrenched.<sup>176</sup> According to the PSA submission, bullying has for many years been one of the greatest causes of requests for the Association's help among WorkCover staff,<sup>177</sup> and the union's attempts over the years to have the problem addressed have met with 'considerable resistance' from WorkCover management.<sup>178</sup>

<sup>174</sup> Submission 20, Public Service Association of NSW, p 9.

<sup>175</sup> Evidence, Mr Steve Turner, Assistant Secretary, Public Service Association of NSW, 6 November 2013, pp 13 and 20.

<sup>176</sup> Evidence, Mr Turner, 6 November 2013, p 13.

<sup>177</sup> Submission 20, Public Service Association of NSW, p 6.

<sup>178</sup> Submission 20, Public Service Association of NSW, p 10.

**5.3** In evidence, Dr Howard Bell, a principal lawyer and chair of the union delegates' committee at WorkCover, agreed with the proposition that there is a long term culture of bullying within WorkCover, and spoke of it having reached a toxic level:

I contend that we are dealing with an organisation that is intrinsically a bullying organisation—it is not necessarily an intentionally intrinsically bullying organisation but its culture has grown to that toxic level.<sup>179</sup>

**5.4** Another WorkCover employee was similarly scathing, suggesting that in fact, the problem of bullying in WorkCover is worse than ever:

Even putting aside my personal experiences, this is a toxic and unsafe work environment with a broken culture, and as a government department and especially as the regulator, WorkCover must do better ... Although you are likely to receive a submission from our CEO maintaining that WorkCover is 'committed to creating a safe and respectful workplace' and has 'made significant progress' and implemented numerous policies to address the issue – unfortunately at a cultural level nothing has changed. In fact, many employees feel the situation has worsened.<sup>180</sup>

**5.5** The views of WorkCover representatives as to whether there is a culture of bullying are explored fully in chapter 6.

### **Contributing factors**

**5.6** Participants identified several factors that have contributed to instances of bullying, to the present organisational culture that tacitly accepts it, or to the perception among staff that the problem of bullying is substantial. At the very least these factors have generated significant stress among employees and contributed to mistrust between staff and management. These are summarised briefly as follows:

- the large scale restructuring that has taken place over many years, accompanied by workplace change, and job role uncertainty<sup>181</sup>
- the methods used to recruit to positions that flow from the new structures<sup>182</sup>
- changes in the role of the organisation, including shift away from an enforcement role in relation to workplace safety towards a more educational approach<sup>183</sup>
- historical recruitment of managers having valued technical ability rather than management and interpersonal skills.<sup>184</sup>

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<sup>179</sup> *In camera* evidence, Dr Howard Bell, 6 November 2013, p 64. Evidence published by resolution of the committee.

<sup>180</sup> Submission 80, Ms Jodie Miller, p 1.

<sup>181</sup> Evidence, Mr Turner and Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, 6 November 2013, p 32; Evidence, Mr Shay Deguara, Industrial Officer, Unions NSW, 11 November 2013, p 5; *In camera* evidence, Witness A, 6 November 2013, pp 54-55. Evidence published by resolution of the Committee; *In camera* evidence, Mr Mark Lennon, Board Member, Safety, Return to Work and Support Board, 10 December 2013, p 38. Evidence published by resolution of the committee.

<sup>182</sup> *In camera* evidence, Witness A, 6 November 2013, pp 54-55.

<sup>183</sup> Submission 66, Unions NSW, p 8.

- 5.7** The committee particularly notes the evidence of a number of participants that continuous and significant organisational change, including the shift of WorkCover's head office from Sydney to Gosford in 2002, along with numerous large scale restructures, has left the organisation and its staff more vulnerable to bullying. For example, PSA representatives highlighted the 'angst' that the move to Gosford caused for many employees,<sup>185</sup> while Witness A estimated that the organisation had undergone three restructures in the previous 18 months and six in recent years.<sup>186</sup> In addition, Unions NSW highlighted workplace change and job role uncertainty at WorkCover, noting that these are recognised in the literature as risk factors for workplace bullying.<sup>187</sup>
- 5.8** While there was some discussion as to whether the multiple functions of WorkCover within a single body contribute to the organisation's problematic culture, the PSA did not consider this to be the case.<sup>188</sup>

### **Punitive use of process**

- 5.9** Many participants attested to the punitive use of process within WorkCover, especially in relation to human resources matters.
- 5.10** The PSA argued that at the heart of the issue lies a 'punitive culture', where the focus of management and human resources activity is to find fault rather than work constructively to facilitate improvement. The Association advised that despite it having highlighted this issue during the PwC inquiry, the problem has continued.<sup>189</sup> It suggested that having taken hold in the human resources area, this approach has emanated to other managerial positions:

After many years of trying to specifically identify the underlying causes of bullying within WorkCover and [the Safety, Return to Work and Support Division], we have identified that the systemic problem is one of a punitive culture. In general, matters are approached from a negative perspective rather than a helpful and positive perspective. A number of factors ... we believe led to this punitive culture but it is obvious that once this approach becomes entrenched in the human resources area, [it] then becomes encouraged throughout all managerial positions. That is not to say that there are no managers who approach things from a helpful perspective, but as they are in the minority they tend to simply manage things quietly and they go unnoticed.<sup>190</sup>

- 5.11** The PSA argued that the People and Culture Unit respond to employee related matters which arise by producing 'ever more restrictive' practices and policies. This means that employees

<sup>184</sup> Evidence, Mr Deguara, 11 November 2013, p 9; Submission 73, Mr Phillip Cantrell, pp 10-11; *In camera* evidence, Witness A, 6 November 2013, p 47; *In camera* evidence, Dr Bell, 6 November 2013, p 64; Submission 58, Name suppressed, p 1.

<sup>185</sup> Evidence, Mr Turner and Ms Jeffries, 6 November 2012, p 32.

<sup>186</sup> *In camera* evidence, Witness A, 6 November 2013, pp 54-55. Evidence published by resolution of the Committee.

<sup>187</sup> Submission 66, Unions NSW, p 7.

<sup>188</sup> Answers to questions on notice, Public Service Association of NSW, 20 January 2014, Attachment 4, p 1.

<sup>189</sup> Submission 20, Public Service Association of NSW, p 13.

<sup>190</sup> Submission 20, Public Service Association of NSW, p 7; see also pp 13 and 17.

trip up more often, with the policies themselves becoming a ‘blunt instrument’ that can be used to bully somebody by being applied disproportionately.<sup>191</sup> It also sends a clear message to managers and supervisors that the ‘letter of the law’ is all prevailing.<sup>192</sup> According to the PSA:

This organisational response disempowers good managers by discouraging them from exercising discretion and properly managing matters themselves. Instead they become concerned that they too will be disciplined if they allow flexibility and do not impose the strictest interpretation of all policies. This also empowers potential bullies as it creates another tool for favouritism. Managers who wish to do so can allow a more flexible approach to some but apply a more restrictive and punitive approach to others. They are confident that when the employee complains, they will be backed up by the People and Culture Unit for applying the strictest possible interpretation of policy.<sup>193</sup>

**5.12** The PSA submission documented two systemic examples of punitive use of process: first in relation to the policy surrounding staff reporting absences from work; and the second, the policy regarding secondary employment.<sup>194</sup> On the basis of these observations, the PSA recommended that People and Culture staff, and managers and supervisors throughout the organisation, receive training on how to deal with employee related matters in a constructive and supportive way.<sup>195</sup>

**5.13** The PSA went on to argue that the punitive use of process was exemplified in WorkCover’s treatment of Mr Wayne Butler:

From the outset the Association raised objections to the way the matter was being unnecessarily escalated to a misconduct investigation when all of the allegations would have been more appropriately handled, and if necessary easily corrected, as simple performance matters. The People and Culture Unit were responsible for making initial inquiries and recommendations on how to proceed. The person responsible in this unit was adamant that the matter was serious and must proceed as a disciplinary investigation.

The matter proceeded and despite Mr Butler providing quite sound explanations for each of his actions he was ultimately dismissed by [the Safety, Return to Work and Support Division]. In the Association’s view Mr Butler’s termination defied understanding. As a result we assisted Mr Butler with an unfair dismissal application ... This case is a perfect illustration of ... the existence of a punitive fault-finding culture which focusses on negatives and apportioning blame instead of positive, co-operative resolution of issues ... Deputy President Harrison’s decision offers some useful insights into the source of the problem in this case as he is deeply critical of the actions taken by the People and Culture Unit and of the General Manager who was the decision maker.<sup>196</sup>

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<sup>191</sup> Evidence, Ms Jeffries, 6 November 2014, p 22.

<sup>192</sup> Submission 20, Public Service Association of NSW, p 13.

<sup>193</sup> Submission 20, Public Service Association of NSW, p 13.

<sup>194</sup> Submission 20, Public Service Association of NSW, pp 13-15.

<sup>195</sup> Submission 20, Public Service Association of NSW, p 13.

<sup>196</sup> Submission 20, Public Service Association of NSW, pp 20-21; see also Submission 75, Mr William Steenson, p 2.

- 5.14** The PSA further asserted that the comments of Deputy President Harrison ‘were an independent confirmation of a long held belief of the Association, that the Safety, Return to Work and Support Division (SRWSD) often applies the disciplinary procedures in an overly punitive way, targeting some individuals but not others, resulting in unfair outcomes.’<sup>197</sup>
- 5.15** Numerous other inquiry participants echoed these views about the widespread punitive use of process. The author of submission 9 (a manager in WorkCover), for example, contended that ‘bullying is inherent in processes due to adversarial application of policy’ within WorkCover, suggesting that such processes are also unclear and able to be manipulated to suit what appears to be predefined outcomes.<sup>198</sup> This manager emphasised the way in which these procedures facilitate bullying, and are not counteracted by processes of independent review:
- Thus, I acknowledge that overt bullies exist, but make the point that processes and procedures actually facilitate bullies’ unfortunate behaviour and the lack of an impartial external review mechanism means that these issues fester and cause increased levels of angst amongst colleagues ... Unfortunately every change to process has resulted in the processes becoming more convoluted, less clear, and more amenable to creative application. Indeed it is impossible to determine what are appropriate processes without ‘expert’ guidance, and as such it is often that advice cannot be provided by a single individual, and ... decisions end up being made by some form of informal committee where group think results in a lowest-common-denominator solution without any accountability for the outcome or for the process and its impact on people.<sup>199</sup>
- 5.16** Like others, Mr Colin Fraser, a PSA delegate and WorkCover employee, highlighted the selective application of procedure that seems designed to catch people out, and suggested that there is a growing number of cases like that of Mr Butler.<sup>200</sup> A case study setting out Mr Fraser’s own experience, in which he alleges he was investigated on ‘trumped up charges’ is provided below.

**Case study based on a submission - Colin Fraser<sup>201</sup>**

Mr Fraser, a principal inspector in WorkCover, alleges ‘institutionalised’ bullying by a number of senior managers.

Mr Fraser had without proper explanation been removed from investigations of both the Roads and Traffic Authority and the South Eastern Sydney Illawarra Area Health Service after ‘covert dealings between WorkCover managers and the managers of those government bodies.’ He alleges most other inspectors dealing with government departments have also had their work undermined by senior managers. Mr Fraser repeatedly raised this issue with senior managers at WorkCover’s Joint Consultative Committee.

<sup>197</sup> Submission 20, Public Service Association of NSW, p 21.

<sup>198</sup> Submission 9, Name suppressed, p 1.

<sup>199</sup> Submission 9, Name suppressed, p 2.

<sup>200</sup> Submission 15, Mr Colin Fraser, p 6.

<sup>201</sup> Submission 15, Mr Colin Fraser, pp 1-2 and 13. This case study is not taken verbatim from the submission, but is an accurate reflection of its contents.

He alleges that there were two attempts to have him investigated and disciplined on ‘trumped up charges’. Even after he was found not to have breached any policies or procedures, a senior officer decided to put Mr Fraser on a performance improvement plan. Mr Fraser alleges that a clique of managers then attempted to restructure him out of his job under the guise of government cut backs.

- 5.17** The author of submission 48 spoke of an ‘out to get you mentality’ among WorkCover managers, whilst reporting that they have also witnessed bullying of managers by their staff. This individual called for a charter to facilitate cooperation between managers and employees:

My experience has shown me that management does take a very adversarial stance with employees. There is always an out to get you mentality, particularly if you do not agree with management. A charter is needed to give the rights of employees and management and a process of co-operation for dealing with issues is needed as I have seen staff bully managers as much as the other way around.<sup>202</sup>

- 5.18** In her submission, a former manager in WorkCover’s inspectorate, Ms Heather Jackson, who left WorkCover a couple of years ago ‘due to the detrimental effects on [her] psychological health as a result of the management style’, described a ‘culture of intimidation and fear’ specifically within the inspectorate, in tandem with the human resources area:

Rather than managing people through supportive supervision, performance management became a regular management feature. In some cases performance management may have been justified but issues were often escalated unnecessarily to disciplinary action. A lack of good leadership together with the heavy handed investigative approach applied in an inconsistent manner created a culture of intimidation and fear. In this environment there was an assumption of misconduct before establishing the facts. This preoccupation with misconduct became a focus for HR. There was an expectation on supervisors to investigate matters with the purpose of allocating blame.<sup>203</sup>

- 5.19** Pointing to the way that this punitive mentality has come to influence investigations, the author of submission 64 observed a significant parallel between Mr Butler’s treatment and his own:

Reading the findings from Wayne Butler’s case reminded me of what a terrible job the investigator did in my case. Deputy President Harrison’s words to describe Mr Butler’s investigation also perfectly matched mine. Any evidence tendered that mitigated my ‘crime’ was ignored or dismissed by the investigator, and any evidence that pointed to my possible guilt was amplified.

I believe that in both Wayne Butler’s case and my own the investigator was either given instructions by HR to find us guilty, or the investigator decided that the best way to guarantee further work from WorkCover was to supply them with a verdict or opinion that seemed to support their actions in suspending us.<sup>204</sup>

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<sup>202</sup> Submission 48, Name suppressed, p 1.

<sup>203</sup> Submission 87, Ms Heather Jackson, p 2.

<sup>204</sup> Submission 64, Name suppressed, p 2.

## Poor management practices

- 5.20** A large number of participants highlighted poor management practices as a characteristic of the culture of WorkCover.
- 5.21** Dr Bell reported that there is a preoccupation among managers with key performance indicators and statistics, ‘a production line mentality and a failure to acknowledge workplace stress and psycho-social hazards’.<sup>205</sup> His submission goes on to suggest that there is a tendency within the organisation to play down serious complaints of overbearing managerial behaviour, and a poor understanding about managerial failures to communicate ‘authentically’ with staff. He suggested that widespread unreasonable time-based demands lead to mistakes, undermine enthusiasm and create a tense and hostile working environment. Instead, he called for the creation of a culture of support and empowerment of staff.<sup>206</sup>
- 5.22** Witness A spoke of the absence of trust between staff and senior management, which he said is reflected in staff surveys. He emphasised that this is not simply the result of staff reacting to legitimate performance feedback, despite WorkCover management offering this explanation, arguing instead that it reflects poor management practices generally and poor safety practices in relation to staff wellbeing.<sup>207</sup>
- 5.23** The author of submission 34, a current employee, identified a number of aspects to poor management practices in WorkCover.
- WorkCover has an inadequate management capability, and this contributes to unfair treatment and even overt mistreatment of some staff.
  - It lacks effective means to ensure that managers at all levels and staff are trained in management and dispute resolution techniques, and are held accountable for their conduct towards subordinates and peers.
  - WorkCover lacks effective methods for ensuring proper management of grievances.
  - Managers and staff sometimes display high-handed, disrespectful and hostile behaviours towards staff.<sup>208</sup>
- 5.24** This submission author described some very troubling behaviours among managers:
- The difficulties ... are combined with, and exacerbated by, a range of negative and socially maladroit behaviours by SRWSD management, which are sometimes mirrored by SRWSD staff. For example, in a work context, SRWSD managers (even at senior level) are often high-handed, dismissive and intimidating towards staff in interpersonal dealings or meetings. I have witnessed situations in which SRWSD managers have dismissed, ridiculed and even become abusive towards officers in front of colleagues.
- There is a general lack of professional respect and collegiate attitudes by SRWSD managers towards staff (though, to be even-handed, it should be acknowledged these behaviours can be expressed among staff or even by staff towards managers). This

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<sup>205</sup> Submission 27, Dr Howard Bell, p 4.

<sup>206</sup> Submission 27, Dr Howard Bell, p 5.

<sup>207</sup> *In camera* evidence, Witness A, 6 November 2013, p 47.

<sup>208</sup> Submission 34, Name suppressed, pp 9-10.

negative behaviour is particularly pronounced among senior managers of the Workers Compensation Insurance Division of WorkCover, whose behaviour can be markedly hostile, petulant, immature and downright rude towards staff. The effect of this behaviour towards staff can be quite upsetting and degrading, and contributes to low feelings of morale and cohesion.

There can often be an approach of what I would call 'subtle intimidation' from managers towards staff, in which it is made clear that questioning a manager's views or wishes (eg. a particular deadline, or way of doing a particular task) is not welcome and may result in adverse action for the staff member.<sup>209</sup>

- 5.25** The submission goes on to argue that these deficits can be addressed through better compliance with SRWSD policies (for example with regard to leave, part-time work and grievances), better systems of accountability, ongoing people management and dispute resolution training, and a more communicative and approachable interface by management with staff. The submission emphasised that managers at all levels particularly need to gain proficiency in addressing staff complaints and generally handling staff in a fair and constructive way.<sup>210</sup> In addition, it stated that, 'SRWSD managers (whether senior or not) need to show more skill in communicating regularly and clearly with staff about SRWSD's activities, aims and goals, and the identification of problems in staff management and how they are to be addressed.'<sup>211</sup>
- 5.26** Mr Fraser contended that senior managers practice favouritism and recruit followers rather than leaders, and these people 'lack the vision, knowhow and commitment to lead the business to really meaningful results.'<sup>212</sup>
- 5.27** Mr William Steenson, an acting principal lawyer with WorkCover, recounted a number of instances of poor management behaviour that he had witnessed:
- a supervisor complaining about leave taken by a staff member who had recently had surgery
  - an unwell staff member, despite having indicated his level of sickness at a meeting, being formally notified in the same meeting that he would be subject to an escalated underperformance process
  - another staff member going off sick as a result of the way she felt belittled by her managers
  - staff members brought to tears in their interactions with particular managers and directors.<sup>213</sup>

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<sup>209</sup> Submission 34, Name suppressed, p 9.

<sup>210</sup> Submission 34, Name suppressed, pp2-3 and 9-10.

<sup>211</sup> Submission 34, Name suppressed, p 11.

<sup>212</sup> Submission 15, Mr Colin Fraser, p 5.

<sup>213</sup> Submission 75, Mr William Steenson, p 4.

- 5.28 The PSA described a dysfunctional dynamic whereby poorly performing managers seek to cover up their poor performance and silence those who seek to hold them accountable:

Another repetitive theme arising from employee surveys is a lack of managerial or leadership skills in manager and senior manager positions. Poor managers exercise favouritism to surround themselves with followers rather than leaders. Many of these favoured managers/supervisors lack the skills or expertise to properly perform in the role. The resulting under-performance is then reported or resented by less senior staff. This creates the simultaneous need to cover up the under-performance of the managers and to silence those who hold them accountable. This is the perfect recipe for systemic bullying in an organisation.<sup>214</sup>

- 5.29 The case study below from Ms Jackson, points to a culture created through poor leadership and management.<sup>215</sup>

**Case study based on a submission - Heather Jackson<sup>216</sup>**

I believe I was recruited to be a change agent and I understood that the organisation was trying to deal with some performance issues within the inspectorate. I believe that there were valid performance issues and the inspectors as a group were quite powerful. Having acknowledged this, as time progressed, I believed the approach to managing the performance issues was coercive rather than collaborative. A prevailing management style developed which favoured the command and control approach, where supervisors were expected to take almost unilateral action against identified 'poor performers' regardless of the person's skills and the relative complexity of the issues being addressed by them. I believe that this reflected a lack of leadership skills amongst the management team.

***The predominant style***

During my employment with WorkCover I observed several cases of bullying, most of which were systematic actions taken by management under the guise of performance management. Consistent supervision or coaching would have been more appropriate management tools. Peer bullying however, was also a feature. The predominant operating style favoured traits that could easily translate to bullying and intimidation. To some degree the bullies and were rewarded and the inspectors who adopted a more collaborative approach to their work and were viewed to be inefficient or poor performers.

Some of the inspectors I observed being 'performance managed' were often allocated complaints and incidents involving multi-factorial hazards such as bullying, client violence, fatigue and manual handling and workers compensation and return to work. Some of these inspectors, in my opinion were highly skilled in particular areas of practice but didn't fit the predominant style. These issues were often not recognised as valid health and safety issues and managers and colleagues alike believed that all that was required was to check if a policy was in place and if not issue a notice to develop one and close the matter. I understood the complex nature of these issues and the inadequacy of the advocated approach.

<sup>214</sup> Submission 20, Public Service Association of NSW, p 12.

<sup>215</sup> Submission 87, Ms Heather Jackson, p 1.

<sup>216</sup> Submission 87, Ms Heather Jackson, pp 1-2. This case study is not taken verbatim from the submission, but is an accurate reflection of its contents.

- 5.30** In its submission, the PSA also attested that staff perceive problems in relation to recruitment processes, as well as lack of leadership skills in managerial positions:

Employee surveys have been helpful in identifying some of the systemic problems in the organisation. The various surveys have repeatedly indicated that employees do not have faith that the best person for the job is always appointed. The view that favouritism is routinely displayed continues to be held very broadly across the organisation. It is acknowledged that considerable effort has been put towards improving the integrity of recruitment processes however it must be conceded that even the best merit selection process is open to some level of interpretation or manipulation by the convenor or recruitment panel. The Association made some recommendations regarding recruitment processes in our submission to the PwC inquiry ... The majority of these recommendations remain valid today if sometimes to a lesser degree.<sup>217</sup>

### **Authoritarianism**

- 5.31** One particular aspect of poor management underscored by a number of participants was authoritarianism.

- 5.32** Like others, Ms Jackson noted that she observed a pattern that appeared to emanate from the top of the organisation, of intolerance to any point of view that diverged from the prevailing management line, and an unwillingness to listen to different perspectives. She said that this 'command and control' management style has shut down diversity and perpetuated itself through the recruitment of less competent people who conform to the prevailing management view:

Internal recruitment practices for acting in higher duties positions often favoured those who were prepared to adopt the prevailing management view without question. I began to form an opinion that the merit selection process was used merely to maintain a perception of transparency and a fair go. Rather than embracing diversity as an opportunity to ensure that different perspectives were considered and as a protection against group think and decision bias, diversity was viewed as a threat. People promoted into management positions often had limited people management skills and in order to advance themselves and please management they adopted the preferred command and control management style.<sup>218</sup>

- 5.33** Similarly, the author of submission 9 highlighted a lack of tolerance for alternative views, noting that independence and honesty is the core of the 'frank and fearless advice' that is part of the role of public service. This individual then asserted that such independence is not valued in WorkCover, and that 'causing disruption at any level is a definite career limiting move.'<sup>219</sup>

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<sup>217</sup> Submission 20, Public Service Association of NSW, pp 11-12.

<sup>218</sup> Submission 87, Ms Heather Jackson, p 2.

<sup>219</sup> Submission 9, Name suppressed, p 2.

- 5.34** Ms Jodie Miller, a current WorkCover employee, reported that communication from management regularly shuts people down, to the detriment of the organisation's performance:

Unfortunately the current style of communication from management is impacting very poorly on staff morale. We do not feel that we actually have the chance to contribute to the conversation and we do not trust management to tell us all relevant and truthful information ... Staff are regularly interrupted or cut off when they raise an 'undesirable issue'. Most people have now become so discouraged that they don't even try to contribute and as a result, we lose valuable input and ideas.<sup>220</sup>

- 5.35** The PSA went so far as to allege aggression, threats and reprisals towards delegates:

Once challenged about an issue the frequent managerial response is to become aggressive and attack the messenger, with attack being preferred over constructive issues resolution. Over time numerous delegates of the Association have been threatened or had some action taken against them, believed to be in response to their actions to resolve industrial and safety issues, including bullying.<sup>221</sup>

- 5.36** The author of submission 90 spoke of the culture of the safety inspectorate as a factor influencing the broader culture of the whole organisation, contending that the culture of the inspectorate tends to be authoritarian:

The senior leadership group of the [Workplace Health and Safety Division] has been dominated by staff from the inspectorate. These people are fairly clearly selected on the basis of their liege loyalty and some [work health and safety] technical skills, rather than their people leadership skills and corporate governance skills. Their management style is therefore typically autocratic and authoritarian rather than persuasive and empowering.<sup>222</sup>

### **Positive views on management practices**

- 5.37** By contrast, several submission authors attested to effective and supportive management practices within WorkCover. For example, the WorkCover employee who wrote submission 76 emphasised the support that they had received from managers, and went on to allege bullying on the part of PSA officials and delegates:

During my time I have been in positions across the organisation ... I have always been proud to say that I work for WorkCover NSW ... I have received a significant amount of mentoring and support from all the managers with which I have been proud to perform for and not experienced any level of bullying or harassment, nor have I had a problem with the directions or guidance provided to me in order to perform my duties. In fact the management team and particularly senior management have gone above and beyond to ensure my health, safety and wellbeing at all times. My concerns and experiences relating to bullying and harassment within WorkCover, [Compensation Authorities Staff Division] and SRWSD are related to my experiences

<sup>220</sup> Submission 80, Ms Jodie Miller, pp 2-3.

<sup>221</sup> Submission 20, Public Service Association of NSW, p 8.

<sup>222</sup> Submission 90, Name suppressed, p 11.

and dealings with the Public Service Association, both paid officials and their delegates.<sup>223</sup>

- 5.38** In contrast to other inquiry participants, this submission author argued that the culture of WorkCover employees is one of entitlement where individuals can be quick to allege bullying where it does not exist, such that ‘employees have stripped management of their ability to manage them without fear of retribution.’<sup>224</sup> The author went on to allege inappropriate and intimidating behaviour by a PSA officer and inappropriate behaviour by union delegates such as forwarding information gained as part of their role in WorkCover to the PSA, speaking disrespectfully to other delegates in a meeting, and taking up issues on behalf of individual staff without their permission.<sup>225</sup> The submission concludes by arguing that employees must be accountable and the PSA needs to be more cooperative and forward looking.<sup>226</sup>
- 5.39** Another submission author argued that WorkCover does not have a culture of bullying; rather, its problems lie in the management of poor performers. This individual contended that within WorkCover there has been an apparent unwillingness or inability to address employees whose work was unsatisfactory. The author said that poor performance (including among some supervisors) has built up over time to the situation that when a middle manager attempts to correct it, they are perceived as bullying the employee because they are trying to correct behaviour that the employee regards as normal. The author suggested that, ‘The problem is further compounded by the fact that the inspectors think they are a protected species and in most cases at the first sniff of somebody being performance managed the union jumps on board and alleges bullying tactics.’<sup>227</sup>
- 5.40** The submission author went on to make a number of recommendations including:
- ‘spill and fill’ the whole inspectorate and recruit new inspectors with private industry experience and work ethic
  - then ‘spill and fill’ the first level of management and team coordinators to ‘weed out’ those not actively committed to better performance management
  - provide immediate training to middle and senior managers on how to manage employees and on the NSW capability framework, making them accountable for poor performers
  - ensure the People and Culture Unit takes an active role in supporting management in relation to poor performance.<sup>228</sup>
- 5.41** Similarly, Mr Garry Fuchs, a senior manager in Information Services within the Finance and Services Division of WorkCover, contended that the term ‘bullying’ ‘is used inappropriately at times to meet the agenda of individuals’.<sup>229</sup> He claimed that respect for managers ‘did not exist’ in WorkCover until very recently:

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<sup>223</sup> Submission 76, Name suppressed, p 1.

<sup>224</sup> Submission 76, Name suppressed, p 1.

<sup>225</sup> Submission 76, Name suppressed, p 2.

<sup>226</sup> Submission 76, Name suppressed, p 3.

<sup>227</sup> Submission 10, Name suppressed, p 2.

<sup>228</sup> Submission 10, Name suppressed, pp 3-4.

<sup>229</sup> Submission 26, Mr Garry Fuchs, p 2.

Generally up until approximately eighteen months ago this did not exist in WorkCover. There was a lack of respect for managers and the positions they hold. There was a sense of entitlement, by a lot of staff, no matter their rank or position which translated into them wanting to debate decisions made that had no impact on them personally or professionally. There was no consequence for comments made or communications sent. There was a sense that consultation equated to agreement and if staff did not agree and were made to follow through on the decision then it was seen as bullying. This is beginning to change but there is still some resistance.

Currently WorkCover is trying to address this and I am sure staff feel they are mistreated or in today's language "bullied". It was amazing the kaffuffle a simple statement like "No we won't be doing that" would take on. I think bullying is a term that is bandied quite freely in the workplace to discredit or delay decisions to achieve legitimate outcomes.<sup>230</sup>

- 5.42** Mr Fuchs went on to report that he has witnessed bullying at WorkCover, but has seen bullying decrease as the culture of the organisation begins to change and the values of respect, decency and work ethic begin to re-emerge. He acknowledged that structural change has been hard for staff, but argued that the changes have been managed fairly:

Sure, staff are disgruntled by changes in direction, structure and in some cases redundancies. While it is not pleasant I think the changes have been managed in the most respectful manner to both the staff and the organisation. I have heard that this is considered bullying it is not. In my opinion, it a business decision to change the direction to reflect government policy.<sup>231</sup>

- 5.43** Another manager, the author of submission 31, agreed that at times 'an over sensitivity to bullying has made it difficult to have a respectful honest adult conversation about performance' and has made providing feedback, developing capability and coaching staff very challenging. This individual suggested that managers are not always given an opportunity to resolve issues before they are escalated by staff, and that while management is transparent about organisational change, at times rumours and gossip create stress and undermine progress. They also expressed concern that allegations of bullying have affected staff morale, impeded cultural improvements, and damaged the reputation and effectiveness of WorkCover.<sup>232</sup>

- 5.44** Finally, the author of submission 22 gave a very positive account of their experience as an employee of WorkCover:

My experience with WorkCover NSW over the past 7 years has been an extremely positive one. I have encountered very supportive and encouraging people, ranging from senior management through to colleagues within the business...I have always encountered positive responses from my managers, whether it is commending me for my work and initiative or providing constructive feedback. Career progression through learning development has always been encouraged and supported.

Opportunities for acting in higher duties or merely skill development has also been made available to staff. I support the organisation for taking progressive steps to

<sup>230</sup> Submission 26, Mr Garry Fuchs, p 1.

<sup>231</sup> Submission 26, Mr Garry Fuchs, p 1.

<sup>232</sup> Submission 31, Name suppressed, pp 1-2.

discourage inappropriate behaviour through performance management ... I have not witnessed any bullying within WorkCover NSW in the course of my employment.<sup>233</sup>

## Denial and cover up

**5.45** A final aspect of WorkCover's organisational culture raised by a number of participants concerned the extent to which senior management were prepared to accept that a problem with bullying exists.

**5.46** The PSA argued in its submission and oral evidence that there is an historical pattern of denial by senior management in relation to bullying. Its submission asserted that, "There also seems to be a general culture of denial and cover up in WorkCover."<sup>234</sup>

**5.47** The Association further advised that after some initial traction implementing the PwC report's recommendations, now its endeavours to re-progress that work are being met with hostility:

There was a significant hiatus in momentum during this period and now only 2 years later the Association is viewed with open suspicion, resistance and sometimes aggression, whenever we continue to mention the need to address outcomes from the PwC report. It has been clearly stated by senior managers that this was in the past and the Association needs to move on, as significant improvements have been made. Such an attitude ensures that the lessons which could have been learnt are lost forever. The suggestion that significant improvement has been made is not supported by employee surveys which continue to indicate an unhealthy working environment for a large number of employees.<sup>235</sup>

**5.48** As noted in the previous chapter, one of the PSA's criticisms of the outcomes of the PwC inquiry was that the failure to publicly acknowledge and accept that a problem of bullying existed seemed to indicate a level of cover-up and denial.<sup>236</sup>

**5.49** The PSA argued that this denial of the problem of bullying continues today, with a reluctance to investigate complaints.<sup>237</sup> PSA representatives gave evidence to the committee that after refusing for some time to act on complaints forwarded by Mr Fraser in his role as PSA delegate, the Association was advised by WorkCover on the day prior to their evidence before the committee that some cases would now be looked into.<sup>238</sup>

**5.50** Mr Turner of the PSA argued that WorkCover's denial of the problem of bullying has actually perpetuated the issue, and that open acceptance of the problem by senior management and throughout the organisation must occur if change is to be achieved:

We have found a culture of bullying in other organisations but other organisations when issues have been raised have looked at it and moved forward with it ... WorkCover has been quite extraordinary in how it talks to its own minister and to us,

<sup>233</sup> Submission 22, Name suppressed, pp 1-2.

<sup>234</sup> Submission 20, Public Service Association of NSW, p 7.

<sup>235</sup> Submission 20, Public Service Association of NSW, p 11.

<sup>236</sup> Evidence, Mr Turner, 6 November 2013, pp 13-14.

<sup>237</sup> Evidence, Mr Colin Fraser, Delegate, Public Service Association of NSW, 6 November 2013, p 15.

<sup>238</sup> Evidence, Mr Fraser and Ms Jeffries, 6 November 2013, p 21.

and it does not seem to want to recognise that the issue is occurring within the organisation ... You need an organisational commitment to work to implement something if you want it to be properly implemented within an organisation, and that is what is needed in WorkCover.<sup>239</sup>

- 5.51** The author of submission 90 also spoke of an entrenched culture of denial in relation to bullying, and argued that WorkCover cannot move forward without owning the problem:

There are particular issues of accountability and transparency for WorkCover in dealing with bullying risk factors and instances of bullying behaviour. Given that it is the workplace safety regulator, there is an understandable reluctance for WorkCover's leadership to admit when things go wrong ... This means a culture of denial has entrenched itself in the senior and executive ranks where obvious problems are covered up, sometimes to an extraordinary degree. This attitude is a substantial obstacle to organisational improvement. Without accepting and reconciling its history with its staff, I believe it will be virtually impossible for the organisation to move forward.<sup>240</sup>

- 5.52** This participant also proposed that management's decision not to conduct the 2013 WorkCover Employee Engagement Survey, a key mechanism for employee feedback, has been widely interpreted as covering up internal problems.<sup>241</sup>

- 5.53** Ms Jodie Miller, a WorkCover employee, also echoed the PSA's view that management is in denial about bullying in WorkCover:

We need management who openly acknowledge that we need a culture change. But to do so would be tantamount to admitting that mistakes have been made. Unfortunately, WorkCover avoids this at all costs, and as a result, our culture never changes. The usual practice when an issue is raised about bullying is for management to deny, deny, deny until eventually they go into damage control - meaning a perfunctory survey is conducted, a policy is distributed, the problem is declared to be taken seriously, and then management continues to act in exactly the same manner as before, with zero consequences. In short, mistakes are not acknowledged and are never learnt from ... But ... They could actually listen to staff and act on their concerns. Even acknowledging their concerns would be a step in the right direction. These are basic things that WorkCover requires of all other employers.<sup>242</sup>

- 5.54** Very closely linked to the issue of denial is that of organisational transparency and accountability. The PSA told the committee that because certain policy documents had not been reasonably provided by WorkCover, the Association had resorted to accessing them via a *Government Information (Public Access) Act* (GIPA) application, and was subsequently advised by WorkCover that their request for information was placed on hold. In its submission, the PSA argued, 'A refusal to process our GIPA application is a deliberate and calculated attempt to prevent the Association accessing information which could be used for other purposes, such

<sup>239</sup> Evidence, Mr Turner, 6 November 2013, p 21; See also p 29.

<sup>240</sup> Submission 90, Name suppressed, p 3.

<sup>241</sup> Submission 90, Name suppressed, pp 8-9.

<sup>242</sup> Submission 80, Ms Jodie Miller, pp 4-5.

as providing evidence to this inquiry.<sup>243</sup> Again, however, the day prior to the PSA's hearing, WorkCover had written to apologise for the delay in processing the application.<sup>244</sup>

- 5.55** Finally, Dr Bell reported that the JCC would normally be the main mechanism by which union representatives would engage with senior management. Dr Bell stated that while it works very well in other government agencies, WorkCover's JCC does not meet.<sup>245</sup> Interestingly, Witness A advised the committee that in the week prior to their first appearance before the committee, WorkCover had set a date for the first meeting in two years.<sup>246</sup>

## Committee view

- 5.56** The views documented in this chapter concerning various aspects of the culture of WorkCover, together with personal accounts documented in the previous chapter, build a very troubling picture of the nature and extent of bullying in WorkCover.
- 5.57** The committee believes that part of the explanation for this situation lies in the constant organisational change that WorkCover has undergone, including the move to Gosford in 2002 and the numerous large scale restructures that have occurred in recent years. This has led to significant turmoil for staff, creating an environment conducive to workplace bullying.
- 5.58** It appears that an organisational culture as described by Caponecchia and Wyatt has come to exist, whereby managers, including senior managers, not only exhibit unreasonable behaviour towards staff, but tacitly permit these behaviours to occur. The committee was deeply concerned by the evidence documented in this chapter (provided not only by employees and the PSA, but also by some managers), including allegations of widespread use of punitive processes, poor management practices, authoritarianism from senior managers and others that shuts down different viewpoints, a command and control approach, and denial by senior management that a significant problem of bullying exists within the organisation. The lack of trust between employees and staff is very apparent to the committee.
- 5.59** While the committee acknowledges the valuable perspective of those managers who defended the integrity of the organisation, the sheer volume and content of the negative reports received by us leads us to conclude that there is indeed a serious problem with various aspects of WorkCover's organisational culture.
- 5.60** It is perhaps the case that this culture has slowly built up over a significant period, influenced by multiple factors, such that it seems normal and acceptable to many inside the organisation, especially those in management. Noting the potential contributing factors set out in paragraph 5.6, we believe it probable that two factors have contributed in no small way to the current culture: the predominance of technical over interpersonal skills among many managers; and the pressure on managers at all levels of the organisation to focus their efforts on assisting WorkCover out of its financial difficulties. This is explored in greater detail in the following chapter.

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<sup>243</sup> Submission 20, Public Service Association of NSW, p 33.

<sup>244</sup> Evidence, Mr Turner and Ms Jeffries, 6 November 2013, p 18.

<sup>245</sup> *In camera* evidence, Dr Bell, 6 November 2013, p 65.

<sup>246</sup> *In camera* evidence, Witness A, 6 November 2013, p 56.

- 5.61** The role of senior managers in leading the process of recognising and owning the problematic culture, and taking action to address it, cannot be underestimated. This is perhaps the most important lesson to be learned from the inquiry. We pursue our examination of this issue in chapter 6, on leadership and governance.
- 5.62** At this stage we also highlight three further issues documented in this chapter. The first is the worrying power and destructive approach that appears to be emanating from the People and Culture Unit, which we note played a central role in the Wayne Butler matter, and which has apparently adopted a punitive approach to many aspects of its work. The second is the issue of performance management, which appears to be a significant point of conflict between management and staff and an area where distrust is clearly exhibited, and which is reported to be poorly supported by the People and Culture Unit. The third issue concerns recruitment: numerous participants pointed to the recruitment or promotion of poorly skilled managers; others spoke of recruitment decisions themselves being used to bully and punish those who speak out or otherwise do not conform. Each of these issues is very complex; they also point to areas where significant action is required.
- 5.63** On the positive side, the committee notes the overtures by WorkCover management to the PSA in relation to taking action on particular cases, processing the Association's GIPA application, and recommencing meetings of the JCC. We sincerely hope that these positive steps indicate a new preparedness to move forward in a constructive way to begin to address the problem of bullying.
- 5.64** The extent to which WorkCover senior managers are now recognising and responding to the problem of bullying is explored in detail in the following chapter.



## Chapter 6 Leadership and governance

In the previous two chapters the committee documented many of the personal accounts of bullying that current and former WorkCover NSW employees submitted to us, and explored the various aspects of WorkCover's culture. Together these two areas of evidence built a troubling picture of the nature and extent of bullying in WorkCover, and the organisational culture that contributes to it. In the next two chapters the committee turns to a deeper analysis of these problems, matched with recommendations for how WorkCover can move forward to address its workplace bullying.

This chapter considers how leadership and governance should improve in order for WorkCover to address bullying. First it examines the extent to which the WorkCover leadership team recognises the problem, and whether they accept the findings of the Industrial Relations Commission (IRC) in relation to WorkCover employee Mr Wayne Butler's unfair dismissal. Next, we consider the issue of governance, exploring the Safety, Return to Work and Support Board's engagement on the issue of bullying, and how better oversight can be achieved. We conclude by exploring the issue of effective leadership, cascading down through all levels of the organisation.

### Leadership

- 6.1** In its public and *in camera* hearings with WorkCover executives, the committee pursued two key, interrelated issues: whether they accepted that WorkCover has a culture of bullying; and whether they accepted the findings of the IRC in the Wayne Butler matter. The committee did this because it considered that WorkCover executives' views and actions on these two fronts were emblematic of their understanding of the extent of the problem of bullying in WorkCover, and their commitment to addressing it.
- 6.2** This questioning also reflected the advice of Dr Carlo Caponecchia, Senior Lecturer in the Faculty of Science, University of New South Wales, that the most important of several things that WorkCover can do to move forward in addressing bullying is for senior management to take ownership of the problem on an organisational level:

First among these [actions that WorkCover can take] is a genuine acceptance of the observation that there is a bullying problem in WorkCover NSW, and ownership of responsibility for this problem. These would need to be demonstrated by senior management. This kind of ownership, and acceptance that bullying is an organisational problem, rather than an individual problem, has recently been emphasised in other inquiries ... Related to this, there seems to be disagreement over the extent of bullying in WorkCover, or an unwillingness to admit the scope of the problem.<sup>247</sup>

- 6.3** Similarly, Mr Steve Turner, Assistant Secretary of the Public Service Association of NSW (PSA) argued that the executive team must exercise leadership for any change to be achieved:

If the very senior managers are not themselves, by their deeds and actions, learning from it and correcting themselves, and if they are not assisting the managers below them who are doing the implementation of many of the processes to change, learn

<sup>247</sup> Answers to questions on notice, Dr Carlo Caponecchia, Senior Lecturer, Faculty of Science, University of New South Wales, 3 December 2013, p 2.

and develop then we are not going to see change. It is that that needs to be removed and changed.<sup>248</sup>

### **Does WorkCover accept that it has a culture of bullying?**

**6.4** The committee explored with WorkCover representatives the extent to which they accepted that bullying is a significant problem for the organisation.

**6.5** In WorkCover's public hearing, Ms Julie Newman PSM, Chief Executive Officer of WorkCover and the Safety, Return to Work Support Division (SRWSD), was clear that she took the matter of bullying seriously, and expressed concern that inquiry participants believed that they were being bullied:

[T]he WorkCover executive and I take workplace bullying seriously and we do not tolerate bullying. We have the same legal and work health and safety obligations as any employer. We are required to apply the work health and safety legislation in the same manner as all New South Wales employers. I understand the profound impact bullying has on people and both the executive and I regret that there are people who believe they have experienced bullying or feel that they have been bullied by WorkCover or WorkCover's service providers. Having reviewed the submissions and having considered the evidence that has already been publicly given I am concerned at what I am hearing.<sup>249</sup>

**6.6** In her subsequent *in camera* hearing, Ms Newman acknowledged the need to take further action and to continue to rebuild trust with employees:

I acknowledge that as long as individuals are raising concerns about bullying we have more work to do to address the issues of bullying. I also acknowledge that there will be instances where, although we have not received reports of bullying, employees may feel that they have been subjected to unreasonable behaviour or that they have been bullied. We need to continue to build our employees' trust.<sup>250</sup>

**6.7** Nevertheless, Ms Newman denied that a culture of bullying exists in the organisation, asserting, 'I do not believe that there is a systemic culture of bullying. There are isolated cases which come to our attention but, no, I do not believe that there is a culture of bullying.'<sup>251</sup>

**6.8** Both Ms Newman and Mr Greg Barnier, Chief Human Resources Officer of the SRWSD, explained that they formed this opinion based on the data available to them, including reports of bullying, workers compensation claims and sick leave, all of which do not indicate a

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<sup>248</sup> Evidence, Mr Steve Turner, Assistant Secretary, Public Service Association of NSW, 6 November 2013, p 31.

<sup>249</sup> Evidence, Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 11 November 2013, p 13.

<sup>250</sup> *In camera* evidence, Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 10 December 2013, p 51. Evidence published by resolution of the committee.

<sup>251</sup> Evidence, Ms Newman, 11 November 2013, p 29.

widespread problem.<sup>252</sup> The workers compensation claims of WorkCover staff for psychological injury, for example, have fallen from 21 claims in 2010-11 to four claims in 2012-13, representing a reduction of 81 per cent.<sup>253</sup> Mr Barnier reported that the data ‘does not suggest large numbers, but rather, a ‘couple of hotspots’, and stated that these appear to be primarily about management style, going on to note the public sector wide issue of many managers having been promoted on technical expertise, with insufficient training in management skills and relating effectively to people.<sup>254</sup>

- 6.9** Mr Barnier acknowledged that more needs to be done to address the problem of bullying and make sure people feel safe.<sup>255</sup> He also noted that the new style of management may build trust and make employees feel safe to report bullying:

On the face of it you look at all these indicators and you think that it must be working because these indicators are not revealing anything but clearly this inquiry is hearing other reports of people who have got concerns or saying they do not want to report. We need to work out a way to address that. I think some of that comes down to a trust relationship between a different style of management from the past versus what we are trying to take us through today.<sup>256</sup>

- 6.10** Both Unions NSW and the author of submission 90 made criticisms of the available data. The former pointed out that workers compensation statistics are heavily skewed against recognition of workplace bullying because psychological injury claims are often not accepted, if made at all.<sup>257</sup> Similarly, the author of submission 90 contended that the data on bullying complaints, workers compensation claims and support services usage are unreliable due to ‘widespread hesitation and fear about reporting bullying within the organisation.’<sup>258</sup>
- 6.11** Dr Caponecchia lent weight to these criticisms, suggesting that one reason why bullying has not been recognised as a problem in WorkCover may be that the data or reporting systems lack integrity, for example, due to employees’ lack of trust, fear of payback or breach of confidentiality, or job insecurity. He questioned why better systems were not put in place after the PricewaterhouseCoopers (PwC) inquiry, and went on to underscore the imperative to improve data and transparent reporting as a way to build trust with employees.<sup>259</sup>
- 6.12** The Chair of the Safety, Return to Work and Support Board, Mr Michael Carapiet, also said he does not believe there is a systemic problem, ascribing any dissatisfaction among staff to the extent of structural change that WorkCover has recently undergone. He acknowledged that such change can be very hard and requires skilful management:

<sup>252</sup> Evidence, Ms Newman, 11 November 2013, p 30; Evidence, Mr Greg Barnier, Chief Human Resources Officer, Safety, Return to Work and Support Division, NSW Government Service, 11 November 2013, p 30.

<sup>253</sup> Evidence, Ms Newman, 11 November 2013, p 30; see also submission 32, WorkCover NSW, p 12.

<sup>254</sup> Evidence, Mr Barnier, 11 November 2011, p 41.

<sup>255</sup> Evidence, Mr Barnier, 11 November 2011, p 30.

<sup>256</sup> Evidence, Mr Barnier, 11 November 2011, p 31.

<sup>257</sup> Submission 66, Unions NSW, p 16.

<sup>258</sup> Submission 90, Name suppressed, p 6.

<sup>259</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 2.

Honestly, I have not seen any systemic problem. Any organisation of 1,400 people that has undergone so much change will have people who are not happy because there has not been attrition either. I can well understand that there might be a hotbed of discontent with change. Sadly, change is inevitable. The key is how you manage it. That is the biggest challenge: being able to manage it in a sensitive and understanding way rather than dictating to people how it will be. That is probably where a bit of skill is required.<sup>260</sup>

**6.13** Similarly, Mr Mark Lennon, a member of the board, denied that WorkCover has a culture of bullying. He conceded that he understands that pockets of bullying exist there, but went on to propose that, 'this would be no different to any other organisation that has a thousand or 1,100 employees and is undergoing constant change.'<sup>261</sup>

**6.14** Ms Newman reported that morale is improving among staff as a result of changes that have been taking place, whilst noting that cultural change takes time:

I believe morale has improved considerably, not necessarily only under my stewardship. It has been a journey that WorkCover has been on for some time and it still has a way to go. Cultural change does not happen quickly; it takes years.<sup>262</sup>

#### **Does WorkCover accept the findings on the Wayne Butler matter?**

**6.15** A number of participants claimed that WorkCover's leadership team has not accepted the IRC findings in relation to the organisation's treatment of Mr Butler (which were summarised in chapter 4).

**6.16** Dr Howard Bell, a principal lawyer and chair of the PSA delegates' committee at WorkCover, told the committee that there had been no communication on the part of WorkCover executives to staff about the findings of the IRC, and that under the circumstances, this had left staff 'traumatised':

Traumatised is how it left the workforce, because we are supposed to be the custodians of people at work. The Butler case demonstrated quite clearly that we were not very good at that.<sup>263</sup>

**6.17** In his submission to the inquiry, Mr Butler proposed that the leadership team's actions since Deputy President Harrison handed down his decision indicate that they have learned nothing from the findings. He further advised that he had received no apology for his treatment:

To date the WorkCover Chief Executive has not apologised to me for the spiteful investigation she commissioned against me. This is not acceptable behaviour from a senior figure in the service of the NSW Government.<sup>264</sup>

<sup>260</sup> *In camera* evidence, Mr Michael Carapiet, Chair, Safety, Return to Work and Support Board, 11 November 2013, p 60. Evidence published by resolution of the committee.

<sup>261</sup> *In camera* evidence, Mr Mark Lennon, Member, Safety, Return to Work and Support Board, 10 December 2013, p 39; see also p 37. Evidence published by resolution of the committee.

<sup>262</sup> Evidence, Ms Newman, 11 November 2013, pp 40-41.

<sup>263</sup> *In camera* evidence, Dr Howard Bell, 6 November 2013, p 62. Evidence published by resolution of the committee.

<sup>264</sup> Submission 98, Mr Wayne Butler, p 2.

**6.18** Representatives of the PSA reported that the Association's attempts to engage with senior management about the case have been met with 'absolute refusal'.<sup>265</sup> Asked whether the PSA was suggesting that management was in denial about any wrongdoing, Mr Turner contended that, 'No action has been taken to identify the issues raised in that decision and correct any mistakes made or address in any way the wrong actions undertaken by individuals that are identified in that decision, and that is a failing.'<sup>266</sup>

**6.19** However, Mr Turner also informed the committee that at a meeting with the then Minister for Finance and Services, the Hon Andrew Constance MP, the week prior to the Association's evidence to the committee, both the minister and chief executive had committed to moving forward with the PSA to address bullying:

We met with the minister last Wednesday about this very issue—not the Butler case specifically but bullying and the lack of engagement with the Public Service Association. Arising from that meeting, he has given a commitment to oversee that we move forward with it. The Chief Executive Officer was present and she has invited us to arrange meetings to address the issues and move forward. We hope that will lead to some movement within WorkCover.<sup>267</sup>

**6.20** Another witness alleged that the decision maker in the Butler matter, Mr John Watson, General Manager, Work Health and Safety in the SRWSD, told a meeting of managers that WorkCover and the IRC have a difference of opinion on the decision handed down by Deputy President Harrison.<sup>268</sup> Further, the committee was advised in a submission that Mr Peter Devine, the Manager of Employee Relations who commenced Mr Butler's investigation and was strongly criticised in the Deputy President's decision, has since been promoted.<sup>269</sup>

**6.21** Alarmed by these reports, and concerned that they reflect the broader pattern of 'denial and cover up' of bullying of which WorkCover was accused by a number of participants (see paragraphs 5.45 to 5.55 in the previous chapter on organisational culture) the committee pursued this issue with WorkCover executives.

**6.22** At WorkCover's first appearance before the committee, Ms Newman and Mr Barnier acknowledged that WorkCover had made no specific public communication to staff about the IRC's decision on Mr Butler's dismissal.<sup>270</sup> Mr Barnier advised the committee that there was no need to communicate with staff because the decision was publicly available:

The communication around that case was in public documentation, and that was fine. We did not intend to get into a public debate about the decision. We accepted the

<sup>265</sup> Evidence, Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, 6 November 2013, p 30.

<sup>266</sup> Evidence, Mr Turner, 6 November 2013, p 30.

<sup>267</sup> Evidence, Mr Turner, 6 November 2013, p 17.

<sup>268</sup> *In camera* evidence, Witness A, 6 November 2013, p 57. Evidence published by resolution of the committee; see also Submission 98, Mr Wayne Butler, p 2.

<sup>269</sup> Submission 92, Name suppressed, p 1; see also *In camera* evidence, Mr Greg Barnier, Chief Human Resources Officer, Safety, Return to Work and Support Division, NSW Government Service, 10 December 2013, p 65. Evidence published by resolution of the committee.

<sup>270</sup> Evidence, Ms Newman, 11 November 2013, p 15; Evidence, Mr Barnier, 11 November 2013, p 16.

decision; we did not appeal. I did not want to interfere with Mr Butler's privacy by making any other statements.<sup>271</sup>

**6.23** Asked whether she accepted the IRC's findings, Ms Newman stated that she accepted 'the conclusions of the IRC that there are a number of administrative issues that we need to look at which includes how we manage investigations.'<sup>272</sup> She indicated that immediately after the IRC decision was handed down, she engaged the Internal Audit Bureau (IAB), an independent investigations body, to undertake a review of the investigation used in relation to Mr Butler, along with numerous grievance cases.<sup>273</sup>

**6.24** When asked about the IRC's most damning conclusion, that WorkCover had engaged in a 'witch hunt' against Mr Butler, Ms Newman defended the actions of the officers involved and again noted the work being done to improve systems:

The officers acted in accordance with chapter 9 of the *Public Sector Management Act*. I have asked to have the investigation procedure looked at. We are also looking at how we manage compliance with flex sheets, what the People and Culture operating model is in order to support persons going through an investigation process or any process, and we have also looked at, and have already, put staff into an accredited training course with regard to investigations.<sup>274</sup>

**6.25** Pushed further, Ms Newman told the committee that she accepted the IRC's finding that the dismissal was unfair, but not that there was 'malicious intent', nor that the matter was a 'witch hunt'.<sup>275</sup>

**6.26** Similarly, in response to the finding of 'malicious intent', Mr Barnier indicated that he did not believe that the investigation was initiated with 'malicious intent', and that the manager concerned had followed public sector requirements in managing the allegation of misconduct and the subsequent investigation.<sup>276</sup>

**6.27** Mr Watson, the decision maker in the Butler matter, also gave evidence at WorkCover's first appearance. He told the committee, 'I accept that ... the commission has decided that the decision I made was too robust'.<sup>277</sup> Asked whether he accepted that the IRC decision called into question his judgement, he asserted:

I do not believe it calls into question my judgement ... I accept that the commission did not agree with me and I say there is more than one allegation here. I looked at the allegations as a whole and it was my view at the time that the appropriate penalty was a dismissal, with the exception of one of the allegations.<sup>278</sup>

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<sup>271</sup> Evidence, Mr Barnier, 11 November 2013, p 16.

<sup>272</sup> Evidence, Ms Newman, 11 November 2013, p 14.

<sup>273</sup> Evidence, Ms Newman, 11 November 2013, p 14.

<sup>274</sup> Evidence, Ms Newman, 11 November 2013, pp 14-15; see also Evidence, Mr Barnier, 11 November 2013, p 15.

<sup>275</sup> Evidence, Ms Newman, 11 November 2013, p 34.

<sup>276</sup> Evidence, Mr Barnier, 11 November 2013, p 21.

<sup>277</sup> Evidence, Mr John Watson, General Manager, Work Health and Safety Division, WorkCover NSW, 11 November 2013, p 23.

<sup>278</sup> Evidence, Mr Watson, 11 December 2013, pp 36-37.

- 6.28** Ms Newman and Mr Watson went on to imply that there were other pertinent matters that influenced the decision to investigate Mr Butler that were not on the public record and not put to the IRC.<sup>279</sup>
- 6.29** Disturbed and dissatisfied by WorkCover’s evidence set out above, the committee pursued the issue of their acceptance of the IRC findings, including the implied other matters not put before the IRC, via an *in camera* hearing, two sets of questions on notice, and correspondence.
- 6.30** Despite repeated questioning in public and in private, in both oral and written evidence, at no time did WorkCover put forward evidence of any other matters relating to Mr Butler’s dismissal that were not on the public record.
- 6.31** We further note Mr Butler’s response to Ms Newman and Mr Watson’s evidence, as set out in his submission to the inquiry:

I was quite disheartened to hear of further public allegations made against my good character during evidence given to the inquiry by Ms Newman and Mr Watson.

Ms Newman made a statement to the committee that a disciplinary investigation of my behaviour was necessary “because there were a number of other issues” not raised during my unfair dismissal case in the Industrial Relations Commission.

Ms Newman declined to say what these were “because there are other regulations that I need to consider. I will be happy to take it on notice.” Her written answer has been suppressed by the committee at WorkCover’s request.

These are unspecified insinuations of wrongdoing by me that will remain on the public record for all time. I am left in the unenviable position of being unable to know what these other issues are and respond to them accordingly. You will appreciate that this situation is damaging to my reputation and hurtful to myself and my family.

These sorts of insinuations have the potential to significantly impact my career not only in government employment, volunteer service, professional legal work, as well as any future ambition to stand for any public office.<sup>280</sup>

- 6.32** During WorkCover’s *in camera* hearing, Mr Barnier was asked to explain why WorkCover did not accept the findings of witch hunt and malicious intent, and he responded:

It is not that we do not accept it. In fact, in the cool of the evening after the last time we all met I had yet another read of the decision to go through that piece by piece ... In looking at that I can well understand on the information provided to the commission exactly why he came to those conclusions and I do accept that ... The conclusion I had was around whether there was a purposeful witch hunt. From my observations of the process—what we had was external legal advice ... and we thought we had a first class investigator coming in being a former deputy police commissioner. Following all of those things you would hope to do to make sure you

<sup>279</sup> Evidence, Ms Newman, 11 November 2013, pp 37-38.

<sup>280</sup> Submission 98, Mr Wayne Butler, p 1. Ms Newman’s written answer to the committee about the reasons for Mr Butler’s investigation has subsequently been published by the committee and is available on the inquiry website.

do it right, on the advice that we were running on we thought we were doing it right. I do accept Deputy President Harrison had another view of that.<sup>281</sup>

- 6.33** Mr Carapiet candidly commented on WorkCover's reluctance to accept the IRC findings in his *in camera* hearing, proposing that time will enable the leadership team to accept the findings:

Time will lead to growing acceptance that they could have made better decisions throughout this process. It is still a bit raw. They made these calls and they have been obviously and publicly damned. It is pretty clear that [the Deputy President] had no doubt in his examination what the answers were. They are going to need time to get their heads around that. We will need to change the way we do things.<sup>282</sup>

- 6.34** Mr Carapiet went on to argue that what has happened needs to be seen in the broader context of massive work and change within the organisation:

I am looking at this holistically. They have been under huge pressure over the past 15 months to change ... [The organisation] was in a \$4 billion hole. They had to change a lot of management practices and attitudes. You have to give them a bit of credit for having done a huge job in turning around this organisation. In the middle they screwed up a few things, and this is the most obvious case where the judgement could have been much better in hindsight.<sup>283</sup>

### **Independent review of Wayne Butler and other investigation processes**

- 6.35** As noted above, Ms Newman indicated that immediately after the IRC decision was handed down, the IAB was engaged by WorkCover to undertake an independent review of the investigation process used for Mr Butler and a number of grievance matters. A draft report was provided to WorkCover in October 2013, and the final report in December 2013. The IAB also provided training to staff in WorkCover's People and Culture section, based on the report's interim advice.<sup>284</sup> At the committee's request, WorkCover provided us with a copy of the report, for which it initially sought confidentiality on the basis that the content could potentially lead to the identification of the employees concerned, causing them distress. This request was later withdrawn.

- 6.36** The review had two components. The first was a detailed examination of the investigation of Mr Butler, specifically whether it complied with chapter 9 of the *Personnel Handbook* for public sector employment, which deals with the management of conduct and performance. The review found 'general compliance with procedural fairness across the investigation and decision making processes.'<sup>285</sup> The report also noted that the specifics of the investigation were not reviewed, nor the specific actions of the investigator, but rather the application of process by the investigator and SRWSD personnel.

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<sup>281</sup> *In camera* evidence, Mr Barnier, 10 December 2014, pp 56-57.

<sup>282</sup> *In camera* evidence, Mr Carapiet, 11 November 2013, p 60.

<sup>283</sup> *In camera* evidence, Mr Carapiet, 11 November 2013, p 60.

<sup>284</sup> Answers to questions on notice, WorkCover NSW, 6 December 2013, p 13.

<sup>285</sup> Answers to questions on notice, WorkCover NSW, 6 December 2013 – Attachment M, WorkCover and Internal Audit Bureau, *Safety, Return to Work Support Division: Review of Investigation Process*, December 2013, p13.

**6.37** The review made two recommendations:

1. That SRWSD adopts a practice of using two (independent) investigators when a preliminary (fact finding) investigation is undertaken. One investigator for the preliminary investigation and another independent investigator for the final investigation.

...

2. That SRWSD develop an information “package” to provide to persons nominated as a Delegate. This package is to address all the requirements of Section 9A-12 (Initial Decision Stage) of the procedural guidelines. The “package” should incorporate a checklist to enable the Delegate to cross-reference all requirements of the procedural guidelines.<sup>286</sup>

**6.38** The first part of the review also made a number of findings, outlined below:

- External investigators need to be fully conversant with and comply with Public Service Commission investigation requirements.<sup>287</sup>
- External investigators need to be comprehensively briefed, including on the scope of the investigation.<sup>288</sup>
- SRWSD staff may need to seek regular progress reports on the investigation.<sup>289</sup>
- Suitably qualified staff should review the investigator’s final report before it is sent to the delegate for consideration.<sup>290</sup>
- The IRC findings in the Butler matter ‘reflect on the need for SRWSD to move forward and adopt a best practice approach to the discipline process.’<sup>291</sup>

**6.39** The second component involved a review of the investigation processes used for 17 staff disciplinary matters since August 2012. Again, the review concluded that the investigation procedures generally complied with requirements as outlined in chapter 9 of the *Personnel Handbook*. In addition, 12 areas were identified that needed to be addressed to ensure ‘total compliance’ with the guidelines.<sup>292</sup> The review found that these matters, which are outlined below, could be addressed through training and the establishment of set protocols.<sup>293</sup>

- **Appointment of delegate** – All files are to include formal advice that a delegate has been appointed in accordance with the *Public Sector Employment Management Act 2002*.
- **Advice to respondent** – Natural justice requires the respondent to receive all material relating to the allegations, so that they can prepare their response. In some instances no supporting material was provided to substantiate alleged misconduct, such as copies of

<sup>286</sup> WorkCover and Internal Audit Bureau, Attachment 4, p 3.

<sup>287</sup> WorkCover and Internal Audit Bureau, p 12.

<sup>288</sup> WorkCover and Internal Audit Bureau, p 12.

<sup>289</sup> WorkCover and Internal Audit Bureau, p 12.

<sup>290</sup> WorkCover and Internal Audit Bureau, p 13.

<sup>291</sup> WorkCover and Internal Audit Bureau, Attachment 4, p 2.

<sup>292</sup> WorkCover and Internal Audit Bureau, Attachment 1, pp 3-6.

<sup>293</sup> WorkCover and Internal Audit Bureau, Attachment 1, p 6.

the offensive material. In addition, the respondent must be formally advised of the names of the delegate and the investigator, and the investigation process to be followed. In some instances the file did not record whether this advice was given.

- **Use of language** – Emotive language should not be used by the delegate as it can indicate bias against the respondent, whereas the role of delegate is to be a neutral decision maker. In one matter the language used in an advice letter referred to ‘a pattern of unsatisfactory workplace behaviour’ by the person and stated that their behaviour ‘repeatedly and consistently offends’. However only four instances were referred to. The assertions in the advice letter were not warranted.
- **Preliminary investigation process** – The preliminary investigation process appears to comply with the procedural guidelines. In some instances this process was not applied.
- **Advice to witnesses** – A witness must be advised that his or her statement will be attached to the final investigation report and if the matter proceeds to disciplinary action, it may be provided to the respondent. There was no evidence of this having occurred in the files under review.
- **Minute to delegate** – The delegate is required to make an independent decision based on the material provided. In some instances the Human Resources section, in the minute provided to the delegate on the content of the investigation report, recommended acceptance of the report’s recommendations.
- **Appointment of delegate** – A decision maker should not have any actual or perceived bias. In one matter the same delegate was appointed on two occasions relating to separate matters for the same respondent. This is not appropriate as the delegate may be influenced by the previous matter.
- **Protected disclosure** – Matters must be dealt with in the manner required for public interest disclosures. One matter should have been treated as a public interest disclosure in accordance with the *Public Interest Disclosures Act 1994*, but was not. Another file was not clearly marked as a public interested disclosure and was not secured appropriately, which could have led to the identification of the source of the disclosure.
- **Methods of investigation** – A report template should be provided to external investigators to ensure consistency in investigation reports. In one matter an investigator gave incorrect advice to a respondent regarding the statement of their interview.
- **Application of penalty** – Delegates must know what penalties are applicable and under what circumstances. In one matter the proposed penalty was outside the scope of the delegate.
- **Use of surveillance** – The agency must approve surveillance in writing before it occurs. In one matter an external agency was contracted by an independent investigator to conduct surveillance at the respondent’s home address. The respondent was followed home and photographs were taken of the home address. There was no indication of any approval from the agency to conduct surveillance, which was not justified by the allegations.
- **Supply of material to the respondent** – The respondent should not be provided with material such as the investigation report unless there is a requirement to do so. In one instance the allegations against the respondent were not sustained, yet the respondent

was still provided with the investigation report which included particulars of witnesses. This could have led to disruption in the workplace for those involved.<sup>294</sup>

- 6.40** Mr Barnier advised the committee that WorkCover has been working to improve its investigations processes for personnel matters, informed by this review, including in relation to ‘triaging’ these matters and dealing with them as performance issues where appropriate:

[W]e have been working since January to change the way we do our investigations. Certainly I have been doing a lot of work with my team in understanding the definition of misconduct and ... then whether we triage the matters a lot more carefully and how we would do that. How I would keep a lot of these matters away from the industrial side and have a look at it is to have a chat with the manager and say is this a performance management issue and how do we manage that situation a lot better before we leap into it?<sup>295</sup>

### **The board’s governance role since the Industrial Relations Commission’s decision**

- 6.41** The committee was also motivated to examine the board’s level of engagement on, and awareness of, the Butler matter and the IRC findings. We explore the broader issue of governance in the following section.
- 6.42** Ms Newman advised the committee that the board was apprised of the unfair dismissal claim before it went to the IRC.<sup>296</sup> In addition, after the IRC decision, the board discussed how the Butler matter was conducted at two meetings; these discussions included reporting by executives on the implementation of the PwC report. At a third meeting on 9 December 2013, the IAB report was discussed again in detail, with executives required to report to the board in February 2014 on the actions taken with regard to the report’s recommendations. Ms Newman further indicated that she had charged the Director, Corporate Governance, with responsibility for reporting back, instead of the People and Culture Unit.<sup>297</sup>
- 6.43** Mr Carapiet advised the committee that the board was seeking from the IAB report, first, an understanding of whether proper processes were followed in the Butler matter – as the executive believed they had been – and if they were, whether they were the correct processes for the organisation.<sup>298</sup> He emphasised that he was eager to find out whether the processes were wrong or the people implementing them were wrong, or both.<sup>299</sup>
- 6.44** Later, WorkCover informed the committee that at its 9 December 2013 meeting, the board had resolved that an independent review of the Butler file (as distinct from the review of the investigation process) be undertaken with regard to the IRC findings and that IAB be engaged to conduct the review. Subsequent to that meeting, the board accepted the executives’ recommendation not to proceed with the review of the Butler file until the board considered

<sup>294</sup> WorkCover and Internal Audit Bureau, Attachment 1, pp 3-6.

<sup>295</sup> *In camera* evidence, Mr Barnier, 10 December 2013, p 66.

<sup>296</sup> Evidence, Ms Newman, 11 November 2013, p 18.

<sup>297</sup> *In camera* evidence, Ms Newman, 10 December 2013, p 52.

<sup>298</sup> Evidence, Mr Michael Carapiet, Chair, Safety, Return to Work and Support Board, 11 November 2013, p 53.

<sup>299</sup> Evidence, Mr Carapiet, 11 November 2013, p 51.

this committee's report and recommendations. At that time the board will determine whether it wishes to proceed with the review of the Butler file.<sup>300</sup>

### **Committee view**

- 6.45** It is very clear to the committee, based on the evidence before us and set out in chapters 4 and 5, that WorkCover has a significant organisational problem with bullying. This is exhibited in both the behaviour of individual staff and in the punitive use of process. The involvement of WorkCover's leadership team in the decision to investigate Mr Butler, and their disdain for the findings of the IRC, have shone a spotlight on the extent of these cultural problems.
- 6.46** It seems probable that the pressure on managers at all levels of the organisation to focus their efforts on assisting WorkCover out of its financial difficulties has contributed to this situation, not least because it has created an environment in which performance has been judged on improvements to the financial situation of WorkCover, with scant attention to the wellbeing of staff. In addition, this environment must have created stresses that inevitably played out in managers' relationships with staff.
- 6.47** It is clear to the committee that more effective leadership and governance are essential if the organisation is to move forward and truly address bullying.
- 6.48** The committee welcomed the news that in early November 2013 the then Minister for Finance and Services, the Hon Andrew Constance MP, along with WorkCover's Chief Executive Officer, gave an undertaking that they would engage with the PSA to address workplace bullying. It is pleasing that this inquiry has helped to facilitate this shift. Given our key finding, we strongly encourage the new Minister, the Hon Dominic Perrottet MP, to make action in this area a high priority.
- 6.49** The evidence shows that WorkCover executives and the board have not yet grasped the extent of the problem, nor the factors contributing to the serious mistrust between management and staff, both of which are clearly documented in our report. While WorkCover has been working on various fronts to address bullying (as discussed in detail in the following chapter), this work has obviously not been sufficient to address the very serious problems that exist in the organisation. In addition, its executives do not appear to have understood the urgent need to take ownership of the problem and address it. There seem to be several factors at work here, one of which is data quality (discussed again in the following sections of this chapter). It also appears that the executive may simply have a blind spot with regard to this problem.
- 6.50** Furthermore, the committee is left deeply troubled by the responses of WorkCover's most senior executives to the findings of the IRC, both initially and at each point of their interactions with us, in their public hearing, *in camera* hearing, answers to questions on notice, and then correspondence.
- 6.51** We take on board Mr Carapiet's contention that management are still 'raw' about the IRC findings, which reflect very poorly on them. Nevertheless, we cannot help but consider that immediately after the IRC findings were handed down, and certainly during their public hearing with the committee, the proper and professional response for WorkCover executives

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<sup>300</sup> Answers to questions on notice, WorkCover, NSW, 6 February 2014, p 14.

to take would have been to simply acknowledge that mistakes had been made and that steps were being taken to address them. It would have been much better to have said, 'With the benefit of hindsight, we should have done better, and we will make sure this will never happens again.'

- 6.52** Instead, the committee has had to pursue WorkCover representatives at great length for adequate explanations for the actions taken. The committee does not believe that it has in fact received acceptable explanations of the matters that are the subject of this inquiry from WorkCover management. As discussed in chapter 1, during the convoluted process of verbal and written answers, WorkCover witnesses sought to avoid providing certain information to the committee, and to avoid publication of much information, on the basis of concern for the privacy of individuals including Mr Butler. While WorkCover was guided by Crown Solicitors' advice, the committee considers that much of the material that WorkCover sought to withhold or suppress did not breach individuals' privacy, but rather, reflected poorly on WorkCover itself.
- 6.53** The committee accepts that WorkCover's actions here resonated strongly with inquiry participants' views about a culture of cover up and denial within the organisation and led by management.
- 6.54** We very much hope that WorkCover gains from this inquiry an understanding that it is better to admit mistakes quickly, issue an apology, and set about working on the lessons to be learned. This holds true in respect of the particular actions against Mr Butler, and the much broader issue of the culture of bullying within the organisation.
- 6.55** The committee notes Dr Caponecchia's advice at the start of this chapter that the most important of a number of actions that WorkCover can do to move forward in addressing bullying is for senior management to genuinely accept that the organisation has a significant problem and to take ownership of it on behalf of the organisation (see paragraph 6.2). This is reflected in our first recommendation, set out below, which is directed not just to the executive team but also to the board, which is ultimately responsible for the governance of WorkCover.
- 6.56** Mindful of the many deeply sad accounts of bullying that people relayed to us, we see real value in a public apology to staff for past wrongs. Numerous inquiry participants argued that an apology and acknowledgement of past harm would be an important first step in commencing the process of rebuilding trust between WorkCover and its employees.<sup>301</sup> The committee believes that a sincere apology could act as a powerful circuit breaker, enabling individuals to let go and move forward, having had their experiences acknowledged and validated.
- 6.57** The committee was heartened that Ms Newman indicated to us her openness to considering an apology.<sup>302</sup> We believe that an important element of this would be a specific apology to Mr Butler, as well as the rest of the organisation, for the way he was treated by WorkCover. This is set out in our second recommendation, seen below.

<sup>301</sup> See Submission 20, Public Service Association of NSW, p 39; *In camera* evidence, Dr Bell, 6 November 2013, pp 59 and 60.

<sup>302</sup> *In camera* evidence, Ms Newman, 10 December 2013, p 67.

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**Recommendation 1**

That the WorkCover NSW Executive Team and the Safety, Return to Work and Support Board make a public statement that genuinely:

- accepts that WorkCover, as an organisation, has a significant problem with workplace bullying
- apologises to employees for past wrongs, including in respect of Mr Wayne Butler
- accepts the findings of the NSW Industrial Relations Commission in respect of Mr Butler
- commits to addressing at an organisational level the problem of bullying.

**Recommendation 2**

That the WorkCover NSW Executive Team sincerely apologise to Mr Wayne Butler for how he was treated during his investigation, for his dismissal, and for their failure to accept the findings of the NSW Industrial Relations Commission.

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- 6.58** On the positive side, it is encouraging to note that WorkCover has gained insight into the need to improve the way it conducts investigations and is endeavouring to ensure that performance related matters are dealt with early by managers so that they do not escalate into industrial matters. The Butler case stands as a beacon as to how damaging this process can be.
- 6.59** For those rare matters that actually warrant going down a disciplinary path, we reiterate the message of the IAB review that WorkCover needs to move forward and adopt a best practice approach to the disciplinary process.
- 6.60** Consistent with this, and following the disturbing evidence set out in chapter 5, we recommend that WorkCover examine what other actions it must take to address the punitive use of process within the organisation, especially in relation to human resources matters. This will require careful consideration of the culture and approach emanating from the People and Culture Unit, and must be informed by the PSA's detailed submission to the inquiry, along with chapter 5 of this report.
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**Recommendation 3**

That WorkCover NSW report to the Safety, Return to Work and Support Board on actions to be taken to address the punitive use of process within the organisation, especially in human resources matters.

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- 6.61** The committee was also pleased that the board has, since the start of our inquiry, taken an active role in learning from the Butler experience, although we were disappointed that it seems not to have appreciated the extent to which bullying is a problem for the organisation. The board too must own responsibility for the problem and moving forward, and this is examined in greater detail in the following section on governance. We do not consider that a formal review of the Butler file will assist this process, but we do encourage all members of the board
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and executive to read the IRC decision carefully, with a view to heeding the lessons learned and making sure that such a process never occurs again.

- 6.62** At this point we further note the imperative to establish better data systems that will furnish greater insight into the problem, greater acceptance of it, and also greater transparency. We take up this issue in the following chapter.

## Governance

- 6.63** Given the apparent extent of bullying as an organisational problem for WorkCover, along with the public profile that the issue has had, the committee chose to explore whether WorkCover's governance arrangements at the board level need to be improved. Here we consider how much attention the board has been paying to bullying, and how better oversight can be achieved.

### Safety, Return to Work and Support Board

- 6.64** An overview of WorkCover's governance arrangements was provided in chapter 2. Here we note again that the Chief Executive Officer of WorkCover and the SRWSD, who is responsible for the operational and administrative aspects of the Division, is a member of the board. She does not report directly to the board, but instead to the Minister for Finance and Services.<sup>303</sup> The board comprises six external non-executive directors in addition to the Chief Executive Officer.<sup>304</sup>

- 6.65** In evidence, Ms Newman outlined the board's responsibilities:

The board are responsible for setting the strategic direction in the organisation. They are responsible for the financial management of the organisation. They are responsible for the governance of the organisation. They are responsible for the decision making around a number of the activities ... [for] the workers compensation system—they are responsible for ensuring that we have the appropriate policies in place. Certainly with the implementation of the new health and safety legislation there was a lot of governance over that from the board ... They also have responsibility for ... looking at what is happening with regard to our workforce ... with regard to the activities of the work health and safety division and what is happening in business across New South Wales.<sup>305</sup>

- 6.66** The board meets monthly. The SRWSD makes recommendations upon which the board makes decisions; the SRWSD then implements these actions.<sup>306</sup> Each of the senior managers attend in turn, providing reports on their relevant agenda items.<sup>307</sup>

<sup>303</sup> Evidence, Mr Carapiet, 11 November 2013, p 49.

<sup>304</sup> Evidence, Mr Carapiet, 11 November 2013, p 45.

<sup>305</sup> Evidence, Ms Newman, 11 November 2013, p 26.

<sup>306</sup> Evidence, Ms Newman, 11 November 2013, p 26.

<sup>307</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 47.

- 6.67** Asked who is ultimately accountable for ensuring WorkCover's compliance with occupational health and safety regulations and the smooth operation of WorkCover – the Chief Executive Officer, the Minister or the board – Mr Carapiet, Chair of the board, answered, 'All three.'<sup>308</sup>

**How much attention has the board been paying to bullying?**

- 6.68** In evidence, Mr Carapiet underscored the very significant monetary assets for which the board is responsible. The board determines investment policies for several funds totalling approximately \$18 billion, the main ones being the workers compensation insurance fund (\$14.2 billion), the workers compensation dust diseases fund (\$840 million) and the lifetime care and support authority fund (\$2.8 billion). Correspondingly, the board oversees premium income of over \$3 billion per year and investment income of over \$1 billion per year.<sup>309</sup>
- 6.69** Mr Carapiet reported that, '[B]ullying has been on the table at WorkCover for quite a few years and we are trying to work as constructively as possible to make the organisation a more supportive, encouraging and motivating workplace.'<sup>310</sup> At the same time he highlighted the very substantial legislative and organisational change that has occurred within WorkCover since mid 2012, and went on to advise that the board's major workload is around the workers compensation scheme:

[W]orkers compensation and WorkCover are by far and away the majority of the workload. Probably next comes the motor accidents and then third would be lifetime care, and the smaller ones we do not spend terribly much time on ... the key work is around workers compensation, particularly with the legislation that was passed last year, the number of the changes and the challenges and the investment policies and the changes with the staff as well. They have been quite significant.<sup>311</sup>

- 6.70** Mr Carapiet estimated that the time devoted to workplace health and safety (of which bullying in WorkCover might be a small part) would vary at between 10 and 30 minutes out of a four hour board meeting. By comparison, in addition to this four hour meeting, the board's investment subcommittee meets for three hours.<sup>312</sup> He reported that the board has required SRWSD executives to report regularly on the implementation of the PwC recommendations, but acknowledged that the time afforded to bullying issues has been limited. He further advised that the data that the board has seen has not suggested that there is a significant problem of bullying in WorkCover.<sup>313</sup>
- 6.71** Mr Carapiet also reminded the committee of the context in which the board was formed in 2012 and took up its role: the workers compensation insurance scheme was \$4 billion in deficit. This situation, he argued, necessitated a primary focus on the finances of the scheme.<sup>314</sup>

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<sup>308</sup> Evidence, Mr Carapiet, 11 November 2013, p 55.

<sup>309</sup> Evidence, Mr Carapiet, 11 November 2013, pp 48-49.

<sup>310</sup> Evidence, Mr Carapiet, 11 November 2013, p 45.

<sup>311</sup> Evidence, Mr Carapiet, 11 November 2013, p 45.

<sup>312</sup> Evidence, Mr Carapiet, 11 November 2013, p 46.

<sup>313</sup> Evidence, Mr Carapiet, 11 November 2013, p 48.

<sup>314</sup> Evidence, Mr Carapiet, 11 November 2013, p 48.

- 6.72 Finally, Mr Carapiet indicated his interest in the committee's report, whilst also providing some insight into the views of the board and the executive on the problem of bullying:

I think it will be extremely helpful for the board to see the outcome of what you say and what we can recommend and what we can do. All the feedback we have got from management is that it was an issue, we are working assiduously to change the culture, to train it and to sort of prevent it. Frankly, I think Greg Barnier has been quite a big factor in changing the way managers manage within the organisation. Structurally you can change overnight but culture takes a long time to change. To assume that there was a big bullying problem two years ago and all of a sudden there is none is a bit fanciful, frankly.<sup>315</sup>

- 6.73 Appearing several weeks after Mr Carapiet, board member, Mr Mark Lennon, estimated that the issue of bullying in WorkCover is discussed by the board on a quarterly basis,<sup>316</sup> going on to assert that while bullying is a serious issue, the board has many other work health and safety responsibilities to execute.<sup>317</sup> He advised that the various reports that are made to the board are simply noted, and that he is satisfied with the programs presently underway in WorkCover that flow from the PwC recommendations.<sup>318</sup> He argued that the board is doing its job effectively, proposing instead that the deficiencies lie at the operational level:

No, I think the board, in terms of making sure that strategies and policies are in place when it comes to the issue of work health and safety, have done their job. The question is whether operationally it is working, and clearly there is evidence that has come forward and that is why I say that clearly there are pockets of workplace bullying within the organisation. Clearly, operationally we need to do more; there is no doubt about it.<sup>319</sup>

### Participants' views on the board

- 6.74 Several participants made criticisms of the board. Mr Phillip Cantrell, an employee of WorkCover, suggested that the board's poor oversight in this area has contributed to the problem of bullying:

The current circumstances that led to a rash of bullying behaviour in WorkCover has been fostered by poor oversight from WorkCover's Board, with members who are mainly drawn from the finance and insurance industries and whose knowledge of [work health and safety] is probably minimal. Hence, what has become all pervasive is the fiscal aspects of WorkCover to the detriment of all else. It is easy to see why WorkCover is regarded by many as just another insurance company.<sup>320</sup>

- 6.75 Witness A gave evidence that the board is a 'non-entity' to WorkCover staff: while staff might contribute to the material provided to the board, they are afforded no insights into what it

<sup>315</sup> Evidence, Mr Carapiet, 11 November 2013, p 50.

<sup>316</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 36.

<sup>317</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 44.

<sup>318</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 39.

<sup>319</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 39.

<sup>320</sup> Submission 73, Mr Phillip Cantrell, p 10.

considers, what decisions it makes, or how its members exercise their due diligence.<sup>321</sup> PSA delegate, Mr Ian Tuit, suggested that, 'If the board has been engaged around the work health and safety performance of the organisation, that is not known to staff at large. There is no report back loop.'<sup>322</sup>

- 6.76** In its submission, the Australian Manufacturing Workers' Union (AMWU) recommended that the functions of the board be reviewed, including whether these functions are appropriate or expansive enough to cover its obligations under the legislation. It suggested that the board play a more proactive, hands on role, ensuring that WorkCover has in place appropriate systems to manage allegations of bullying in NSW workplaces.<sup>323</sup>

### **Achieving better oversight**

- 6.77** Mr Lennon advised the committee that in early December the board decided to set up a human resources subcommittee to give this issue the same profile as audit and risk, and investment, which have their own subcommittees, 'so that it has better oversight of the operational practice'.<sup>324</sup> Ms Newman advised that the subcommittee would commence in February 2014.<sup>325</sup>
- 6.78** Mr Lennon stated his personal view that, ideally there would be a separate board providing governance with respect to work health and safety – that is WorkCover's statewide regulatory work. He explained that insurance issues are very time consuming, inevitably overshadowing work health and safety matters. He noted that while the reports that the board receives regarding work health and safety look good, his 'major concern is that we should have 315 inspectors and have we got them in the right place at the right time?'<sup>326</sup> He went on to agree with the proposition that, in the absence of a separate governance structure for work health and safety, a human resources subcommittee would be a positive move.<sup>327</sup>
- 6.79** The PSA advised that it would welcome 'any means of external oversight that affords [SRWSD] employees the same kind of regulatory framework that WorkCover provides for other employees in NSW,' and made a detailed recommendation for a parliamentary committee to permanently oversee the government agencies that implement both work health and safety and workers compensation legislation.<sup>328</sup>
- 6.80** Dr Caponecchia also saw merit in an external oversight mechanism and recommended an independent advisory panel 'to advise on the immediate, medium and longer term strategies that need to be employed to improve the activities around workplace bullying in WorkCover

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<sup>321</sup> *In camera* evidence, Witness A, 6 November 2013, p 56.

<sup>322</sup> Evidence Mr Turner and Mr Ian Tuit, Delegate, Public Service Association of NSW, 6 November 2013, p 28.

<sup>323</sup> Submission 30, Australian Manufacturing Workers' Union, p 6.

<sup>324</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 40.

<sup>325</sup> *In camera* evidence, Ms Newman, 10 December 2013, p 58.

<sup>326</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 46.

<sup>327</sup> *In camera* evidence, Mr Lennon, 10 December 2013, p 46.

<sup>328</sup> Answers to questions on notice, Public Service Association of NSW, 20 January 2014, attachment 2.

NSW'.<sup>329</sup> He set out a detailed model for such a 'steering panel' in written answers to questions on notice, advocating that its role extend to WorkCover's responses to workplace bullying in general, consistent with its statewide regulatory role. Dr Caponecchia went on to caution that given the extent of the problem, the steering panel's role may need to be more than advisory to ensure that its 'advice' is acted upon.<sup>330</sup>

**6.81** Dr Caponecchia emphasised that the steering panel 'needs to be completely independent of WorkCover NSW', and must be 'purpose built to ensure both real independence and an appropriate complement of skills'.<sup>331</sup> He cautioned that the authority of the steering panel, its reporting lines and resources must be carefully considered:

Careful thought needs to be given to the power the panel will have, and to whom it will report. This is particularly the case given the confusion over the role of the board and the position of the Workcover CEO on the board ... Possible options include reporting direct to the minister, or to the board. Clear acceptance of the role of any such panel, and a demonstrated willingness to act on the recommendations of the panel will be required in order for the panel to be effective, and in order that WorkCover employees view the development of the panel as a credible, positive step forward. This is of course important to the overall success of any intervention recommended by the committee.

If an advisory panel is not adequately resourced, it will fail in its important role. The resources that will likely be required include free and open access to data, procedures, and cases where relevant, time with representatives of Workcover NSW, as well as administrative support.<sup>332</sup>

**6.82** He identified a number of immediate areas of concern for the proposed steering panel:

- designing better reporting systems
- obtaining accurate data on how much bullying is occurring
- improving investigation procedures.<sup>333</sup>

**6.83** In relation to the lifetime of this steering panel, Dr Caponecchia advocated a minimum of three years, given the longstanding nature and apparent extent of the problem, and also raised the possibility of the panel being permanent, if required.<sup>334</sup>

### Committee view

**6.84** It is clear to the committee, and understandable, that since the board's formation, its priority has been the solvency of the workers compensation scheme and the structural changes to SRWSD necessitated by the 2012 scheme reforms. In addition, we acknowledge the breadth of the board's responsibilities, and note that its expertise on human resources matters is

<sup>329</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 4.

<sup>330</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 4.

<sup>331</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 5.

<sup>332</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, pp 6-7.

<sup>333</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 4.

<sup>334</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 7.

limited. We are encouraged by the board's greater focus on the issue of bullying in WorkCover since our inquiry commenced, and we exhort the board to continue this focus.

- 6.85** In regard to the board's oversight of bullying within WorkCover, the committee was concerned that the board was unaware of the allegations against a former senior WorkCover employee that were investigated by the IAB at the request of the Public Service Commissioner (discussed in detail at the end of chapter 4).<sup>335</sup> Notwithstanding that this investigation arose from a public interest disclosure and was highly confidential, it seems reasonable and desirable that the board should be aware of it.
- 6.86** We remind the board's members that that the board is a vital mechanism for accountability and leadership not only on financial matters and structural reforms, but also on matters of work health and safety both within WorkCover and across NSW workplaces. As noted in chapter 1, the issue of bullying in WorkCover goes to the organisation's integrity as the regulator of work health and safety in New South Wales; and like any other workplace, WorkCover has responsibility to protect the health and safety of its employees. Greater leadership and accountability are required from the board on this front, to ensure a safe work environment for WorkCover staff, to help rebuild trust between management and staff, and to restore WorkCover's moral authority over other workplaces. In addition, we note that addressing the problem of bullying can only enhance the organisation's productivity and performance.
- 6.87** The committee sees merit in the board's establishment of a human resources subcommittee to provide greater oversight of human resources issues within the SRWSD. However, we believe that of itself, this will be insufficient to achieve the necessary improvements within WorkCover, and in addressing bullying in other workplaces.
- 6.88** The committee considers that the board must play a more proactive, hands on role in relation to this issue, and we are concerned by the possibility that the board's remit might actually be hindering this. Thus we see value in the AMWU's proposal that the functions of the board be reviewed, including whether these functions are appropriate or expansive enough to cover its obligations under the legislation. This includes the board's obligation to ensure that WorkCover is addressing its organisational problem with bullying. This review should also examine the current structure of the board, and whether it is feasible for all the board's functions to be undertaken by the existing board.

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#### **Recommendation 4**

That the Minister for Finance and Services review the structure and functions of the Safety, Return to Work and Support Board to determine whether they are appropriate or expansive enough to cover the board's obligations under the *Work Health and Safety Act 2011*, including its obligation to ensure that WorkCover is addressing its organisational problem with bullying. Further, that in undertaking this review, the Minister consider whether it is feasible for all these functions to be undertaken by the existing board.

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<sup>335</sup> *In camera* evidence, Mr Carapiet, 11 November 2013, p 58.

- 6.89** In addition, we believe that a steering panel of the nature envisaged by Dr Caponecchia will provide greater impetus and accountability in addressing the organisation's entrenched culture of bullying, which will in turn lead to effective change over time. In chapter 8 the committee explores the need for more effective action with regard to complaints of bullying in other workplaces. There we explore the value of extending the purview of the steering panel, as suggested by Dr Caponecchia, to WorkCover's regulation of bullying in other workplaces across New South Wales. We recommend that the Minister and the board establish an independent workplace bullying steering panel to oversee the actions of WorkCover in addressing workplace bullying, both within its own organisation and in other workplaces as the state regulator of work health and safety. The panel must be empowered to require action on its recommendations and sufficiently resourced to perform its role (see recommendation 12).
- 6.90** At this point we again note that the data informing WorkCover executives and the board about the extent of bullying appears to be flawed, and thus has affected their ability to understand the extent of the problem. Here we underscore that the data on bullying in WorkCover must be improved. We take up this issue in the following chapter on the numerous other steps that WorkCover should take to move forward.
- 6.91** In addition to the establishment of a steering panel, we believe it will be necessary for the Parliament of New South Wales, through this committee, to continue to oversee what if any measures are adopted by WorkCover to address the serious failings identified in this report. This is the subject of a recommendation on continuing parliamentary oversight in the following chapter.



## Chapter 7 Other ways to move forward

The previous chapter explored the issues of leadership and governance in WorkCover, and made a number of recommendations for improvements to ensure that the organisation's problem of bullying is better recognised, understood and addressed. This chapter focuses on other ways that WorkCover needs to move forward if it is to address the problem of bullying.

First, the chapter documents WorkCover's current strategies to address bullying. It then examines in detail three particular areas that were highlighted by inquiry participants as priorities for further action. The first concerns a number of strategies to bring about cultural change and build trust with employees. The second concerns better systems for managing complaints and undertaking investigations. The third concerns independent inspections of bullying complaints within WorkCover.

### WorkCover's current strategies to address bullying

- 7.1 This section acknowledges the various actions that WorkCover is already taking to address bullying. We do not see it as our role to evaluate these in detail, but rather to briefly note them and to document feedback that inquiry participants gave to us.
- 7.2 While the Public Service Association of NSW (PSA) acknowledged that WorkCover has introduced a number of changes, its representatives argued in evidence that progress has often been unnecessarily delayed, and that the actions are not actually stopping the bullying from occurring:

We acknowledge that WorkCover and the Safety, Return to Work and Support Division as the broader umbrella organisation have made a number of attempts and introduced some interventions, but the things they have chosen to introduce just do not hit the mark. They are not really addressing the current prevalence and existence of bullying in the organisation. They tend to be longer term interventions aimed at cultural change rather than actually addressing the instances of bullying ...<sup>336</sup>

- 7.3 At the *in camera* hearing in December 2013, the Chief Executive Officer of WorkCover, Ms Julie Newman PSM, gave a broad overview of WorkCover's recent progress to address the issues raised in the committee's inquiry:

To date ... we have done the administrative review [of investigation processes], which is the IAB report. We have released a new code of conduct. We have continued to review all the employment policies and we are part way through that. We have put in place management practices training for all managers, which is outlining their accountabilities as managers as opposed to leadership training. There are two components to that. We are in the process of developing fact sheets to provide clarity on policy intent and application. We have improved access to all policies on the intranet. It was very hard to find policies; they are now all residing in one place and there is a single entry point into the intranet.

I initiated monthly meetings with Ms Jeffries. Those meetings are with me and Mr Barnier and they are very much informal meetings to allow free discussion about

<sup>336</sup> Evidence, Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, 6 November 2013, p 13.

issues. There have been a number of issues that we have talked about. The most predominant issue has been the grievance and bullying management policy. Certainly, having listened to some of the evidence and read some of the submissions and also had further discussion with Ms Jeffries, there is more that we can do there with regard to moving it initially more to a risk management approach on a work health and safety basis. We have committed to do that with Ms Jeffries over the next month and Mr Barnier is working on that.

We have implemented a service and advice model where we are triaging concerns and complaints that come in so that it is not with the employee relations team; it is with the front end of the [human resources] team. In the first instance where there is the ability to do it—and it is not what I would call a critical issue in that somebody really was at risk—we are referring that back to management and working with management so that they can resolve those issues at the local level. Also I am doing regular case reviews with the people and culture group to provide some guidance. That is what we have done to date.<sup>337</sup>

- 7.4 WorkCover provided further information on its various actions in its submission, hearings and answers to questions on notice. These are summarised very briefly below, along with inquiry participants' comments.

#### ***GROW people and culture program***

- 7.5 The WorkCover submission states that the GROW people and culture initiative was driven by the PwC review and commenced in October 2011. It underpins a range of positive initiatives 'to improve communication, engagement and leadership to support cultural change' and aims to 'create a constructive, empowered, productive and safe workforce.'<sup>338</sup> It consists of seven key elements which support the desired workplace culture: wellness, safety, achievement, innovation, capability, leadership and customer experience. According to WorkCover the GROW program 'is providing employees with role clarity and the capabilities to perform their jobs well, people leaders with the skills to effectively manage people and performance and be positive role models, and supports the right of all employees to work in an environment of respect and dignity.'<sup>339</sup>
- 7.6 PSA representatives reported that from their perspective, GROW is a good initiative, with resources overdue in this area. However, the PSA noted that its content and service delivery need to be evaluated.<sup>340</sup>

#### ***Early intervention approach to bullying***

- 7.7 Mr Greg Barnier, Chief Human Resources Officer, People and Culture Group, Safety, Return to Work and Support Division (SRWSD), advised the committee that since January 2013, WorkCover has been endeavouring to move away from a formalised misconduct approach to bullying towards an early intervention or risk management approach:

<sup>337</sup> *In camera* evidence, Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 10 December 2013, pp 55-56. Evidence published by resolution of the committee.

<sup>338</sup> Submission 32, WorkCover NSW, pp 9-10.

<sup>339</sup> Submission 32, WorkCover NSW, p 10.

<sup>340</sup> Evidence, Mr Ian Tuit, Delegate, Public Service Association of NSW, 6 November 2013, p 25.

I think the traditional way that WorkCover has done it in the past is the formal: Let's look at the misconduct provisions and how that may work. We have been working with what we call an early intervention approach ... which is how can we move away from dealing with such things as misconduct first and move more towards the space of an employee's safety and wellbeing or a work health and safety issue and how do we manage that rather than a disciplinary approach? ... More and more we are now working through how do we get our raising grievance and concern policy as well as our handling the bullying and harassment policies to line up more with let us treat it as a work health and safety issue first and if there are issues of intent or misconduct, how do we refer it to misconduct instead of defaulting to misconduct ... We recently undertook a literature review to understand what is best practice for managing bullying issues in organisations, looking at academic work around the world and we are working through that as well.<sup>341</sup>

### ***Policy on prevention of workplace bullying, discrimination and harassment***

- 7.8** WorkCover is redeveloping its prevention of workplace bullying, discrimination and harassment policy following consultation. This will, among other things, clarify what constitutes bullying.<sup>342</sup>
- 7.9** The PSA advised the committee that following a very short period in which to consider a draft policy in July 2013, it was advised in November that the policy was finalised. The Association had serious concerns about the document's shift away from dealing with reports of bullying in a safety environment back to dealing with matters as individual grievances. After the PSA escalated the issue, WorkCover gave in principle agreement to revert to the safety framework, and this shift was strongly welcomed by the PSA:

The policy was discussed in a meeting with the Chief Executive Officer and Director, People and Culture, on 26 November 2013. In that meeting in-principle agreement was gained to respond to reports of bullying with a safety investigation rather than necessitating a disciplinary investigation into alleged misconduct. It was agreed that should the safety investigation uncover any behaviour which could be potential misconduct then that part could be referred for disciplinary investigation at that time without impacting on the ability to continue to address any safety issues in the workplace.

This has been a major change and most welcomed by the PSA. We feel that this will move investigations of reports of bullying away from an approach that seeks to apportion blame and towards an approach which seeks to find solutions to whether there is an unhealthy workplace.<sup>343</sup>

<sup>341</sup> Evidence, Mr Greg Barnier, Chief Human Resources Officer, People and Culture Group, Safety, Return to Work and Support Division, NSW Government Service, 11 November 2013, p 32; see also *in camera* evidence, Mr Greg Barnier, Chief Human Resources Officer, People and Culture Group, Safety, Return to Work and Support Division, NSW Government Service, 10 December 2013, p 66. Evidence published by resolution of the committee.

<sup>342</sup> *In camera* evidence, Mr Barnier, 10 December 2013, p 77.

<sup>343</sup> Answers to questions on notice, Public Service Association of NSW, 20 January 2014, Attachment 1.

### ***Reporting bullying***

- 7.10** Mr Barnier advised that WorkCover is also seeking to make it easier for staff to report bullying:

As I mentioned earlier, there is a multiplicity of ways that people can report concerns or issues regarding bullying or any other workplace matter. With the restructure of the People and Culture Group we have created a one-stop shop so that people do not have to understand our structure to know who to talk to. There is one team that will take reports and concerns and pass them to the centre of expertise or a specialist to address. We have put a case management system in place for our service and advice team to help us to better record incidents and concerns and to track trends.<sup>344</sup>

- 7.11** The author of submission 90, however, argued that the investigation mechanism lacks credibility and it is difficult for staff to notify complaints:

The main point I would like to make to the inquiry is the difficulty for WorkCover staff to notify complaints that may involve bullying behaviours to their employer and have them investigated appropriately. Experience suggests there is no credible complaints investigation mechanism within WorkCover for reports of bullying behaviours. A new mechanism for managing reports of bullying behaviours needs to be established.<sup>345</sup>

- 7.12** Mr Russell Ashley, a retired employee of WorkCover's Work Health and Safety Division, spoke about the absence of trust in systems to address bullying, suggesting that formal reports of bullying are uncommon because staff believe they will exacerbate rather than address problems:

To my knowledge reports of bullying ... are rare. The staff I deal with would not report bullying, gossip or harassment as it would only increase the problems not solve them. I have spoken to supervisors and sent emails to the Chief Financial Officer but to no avail. Bullying is embedded and will take much work to eliminate.<sup>346</sup>

### ***Bullying Response Service***

- 7.13** The Bullying Response Service provides independent support and advice to employees and managers relating to workplace bullying. It aims to assist all employees who feel they have experienced, witnessed, or are managing a situation that may be considered bullying or harassment. It is staffed by psychologists who help the individual decide whether it is a bullying issue, and assists them to develop a plan to address their concerns, including what other resources and support might be available.<sup>347</sup> The Bullying Response Service was established in 2009. A contract with a new provider, Converge International, commenced in August 2013.<sup>348</sup>

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<sup>344</sup> Evidence, Mr Barnier, 11 November 2013, p 41.

<sup>345</sup> Submission 90, Name suppressed, p 3.

<sup>346</sup> Submission 74, Mr Russell Ashley, p 3; see also submission 90, Name suppressed, pp 6-7.

<sup>347</sup> Submission 32, WorkCover NSW, p 14; Answers to questions on notice, WorkCover NSW, 6 December 2013, p 3.

<sup>348</sup> Answers to questions on notice, WorkCover NSW, 6 December 2013, p 7.

- 7.14** Commenting on this service, PSA representatives reported that utilisation dropped markedly after breaches in confidentiality. They advised that individuals' use of the service became known to their managers, resulting in further instances of bullying.<sup>349</sup> This not only occurred several years ago, but on two recent occasions.<sup>350</sup>
- 7.15** PSA representatives also expressed concern that WorkCover no longer appears to be promoting the Bullying Response Service to staff,<sup>351</sup> and that its present focus on mediation places an overemphasis on individual rather than organisational contributors to the situation.<sup>352</sup> Further, they noted that while the original intention was that information generated through the Bullying Response Service would be reported on and inform systemic improvements, this has not occurred for several years.<sup>353</sup>
- 7.16** According to WorkCover, in response to a decline in utilisation and confidentiality concerns, confidentiality arrangements were revised as part of this new contract. Employee conversations are confidential, except where the issues present an immediate risk to the health and safety of the caller or others.<sup>354</sup> As of late 2013, WorkCover intended to promote the service further via a 'relaunch' in early 2014.<sup>355</sup>

### ***Bullying awareness training***

- 7.17** WorkCover's submission states that all SRWSD employees undertake online mandatory training on the Division's code of conduct, its ethics policy, and bullying and harassment awareness as part of their induction and every two years thereafter. An additional half-day prevention of bullying and harassment workshop is provided by the SRWSD Learning and Development Group.<sup>356</sup>

### ***Employee Wellbeing and Support Unit***

- 7.18** This unit manages and supports employees with both work related and non-work related concerns and injuries using an early intervention model to secure their safe return to productive and positive work engagement.<sup>357</sup>
- 7.19** The author of submission 90 welcomed the recent increase in resources to the unit but suggested that its effectiveness has been limited because the additional funds were provided to deal with high levels of staff mental stress arising from restructuring, job insecurity and job loss throughout WorkCover since mid 2012. This individual suggested that the unit 'is widely seen as the cleanup squad for restructuring, job loss and subsequent mental stress.'<sup>358</sup>

<sup>349</sup> Evidence, Ms Jeffries, 6 November 2013, p 24.

<sup>350</sup> Submission 90, Name suppressed, p 7.

<sup>351</sup> Evidence, Ms Jeffries, 6 November 2013, p 24.

<sup>352</sup> Evidence, Mr Colin Fraser, Delegate, Public Service Association of NSW, 6 November 2013, p 26.

<sup>353</sup> Evidence, Mr Tuit, 6 November 2013, p 26.

<sup>354</sup> Answers to questions on notice, WorkCover NSW, 6 December 2013, p 7; Evidence, Mr Barnier, 11 November 2013, pp 27-28.

<sup>355</sup> *In camera* evidence, Mr Barnier, 11 November 2013, p 67.

<sup>356</sup> Submission 32, WorkCover NSW, p 7.

<sup>357</sup> Submission 32, WorkCover NSW, p 14.

<sup>358</sup> Submission 90, Name suppressed, p 6.

### ***Employee Assistance Program***

- 7.20** The Employee Assistance Program (EAP) is a free and confidential counselling and advice service for all employees and their immediate families, providing professional counselling for personal or work related problems.<sup>359</sup> A new contract for EAP services commenced with Davidson Trahaire Corpsych in August 2013. This company was the previous provider.
- 7.21** The committee sought information as to whether staff had been surveyed about their satisfaction with the services provided. WorkCover advised that the provider conducts customer satisfaction surveys with clients following their agreed sessions; the survey results are fed back to WorkCover annually. In the last five reporting periods the majority of respondents were either satisfied or very satisfied with the level of service provided.<sup>360</sup> A People and Culture Unit representative meets with the provider quarterly to review utilisation rates and discuss any issues or trends in presenting problems.<sup>361</sup> Beyond these measures, WorkCover has not evaluated the program.<sup>362</sup>
- 7.22** Mr Ian Tuit, a PSA delegate, expressed cynicism with the on site EAP service, suggesting that it is mostly required where a member of staff is given adverse news about their job security in a restructuring process.<sup>363</sup> His fellow delegate, Mr Colin Fraser, acknowledged the EAP Manager Assist Program as a valuable service that is well utilised and which WorkCover should be given credit for.<sup>364</sup>

### ***Improving people management practices***

- 7.23** In its submission, WorkCover advised the committee that as a result of the findings of the 2012 Staff Engagement Survey, the executive team has prioritised action on:
- leadership ‘including talent management, capability development and the development of a high performing culture through effective performance management’
  - management accountability, ‘defining the role of the manager and acceptable behaviours in the workplace.’<sup>365</sup>
- 7.24** Mr Barnier informed the committee that WorkCover’s work with managers is informed by the ‘engagement model’:

We are doing a lot of work around the engagement model. If you have a great day at work it is normally because your relationship with your manager or team members is good. We are focusing on trying to get people to understand how that works and giving them the skills, training, coaching, mentoring and practical training they need.

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<sup>359</sup> Submission 32, WorkCover NSW, p 14.

<sup>360</sup> Answers to questions on notice, WorkCover NSW, 6 December 2013, p 2.

<sup>361</sup> Answers to questions on notice, WorkCover NSW, 6 December 2013, p 3.

<sup>362</sup> *In camera* evidence, Witness A, 6 November 2013, p 51. Evidence published by resolution of the committee.

<sup>363</sup> Evidence, Mr Tuit, 6 November 2013, p 26.

<sup>364</sup> Evidence, Mr Fraser, 6 November 2013, p 26.

<sup>365</sup> Submission 32, WorkCover NSW, p 15.

That is in addition to providing behavioural standards. That is why we have taken this holistic approach.<sup>366</sup>

- 7.25** To achieve this, WorkCover has provided greater detail to managers on their role and that of other team members. It has also established a mandatory management practices program for all managers, whereby all new and existing managers are required to complete a one day face to face course titled 'SRWSD Management Practices'. In addition, two new non-mandatory training programs, 'Management Essentials' and 'Leadership Excellence' became available from March 2014. All people leaders are required to participate in the Continuous Leadership Development Program and attain a minimum of 12 points per year.<sup>367</sup>
- 7.26** In April and May 2013, the executive leadership team conducted mandatory one day leadership summits for all managers across the division.<sup>368</sup> Also, quarterly strategic leadership forums are conducted by members of the executive leadership team 'to provide visibility, knowledge and a forum for input into strategic initiatives, plans and performance'.<sup>369</sup>
- 7.27** As in the rest of the public sector, WorkCover is continuing to implement a performance development framework. In 2013 this required the mandatory setting of individual performance objectives. Both managers and employees are being coached on how this framework operates.<sup>370</sup>
- 7.28** On the other hand, PSA representatives questioned the extent to which the training has been able to effect changes in practice on the ground. The Association told the committee that while its members have reported that the manager training is very good, some supervisors who have sought to implement its principles have been 'pulled into line' by more senior managers and told that the proposed new management practices will not be accepted.<sup>371</sup> Ms Jann Jeffries, Industrial Officer, PSA, the committee that there is a 'disconnect' between the training and follow up, and called for greater accountability for managers to implement what they learn.<sup>372</sup>

### ***Recruitment and selection policy***

- 7.29** In May 2012 revised recruitment and selection policy and procedures were launched across SRWSD, which included a number of key changes to ensure recruitment and selection processes take into account all capabilities, behavioural and technical.<sup>373</sup>

<sup>366</sup> Evidence, Mr Barnier, 11 November 2013, p 42.

<sup>367</sup> Answers to questions on notice, WorkCover NSW, 6 February 2014, p 12.

<sup>368</sup> Answers to questions on notice, WorkCover NSW, 6 February 2014, p 12; *In camera* evidence, Mr Barnier, 10 December 2013, p 76.

<sup>369</sup> Answers to questions on notice, WorkCover NSW, 6 February 2014, p 13.

<sup>370</sup> *In camera* evidence, Mr Barnier, 10 December 2013, pp 76-77.

<sup>371</sup> Evidence, Mr Fraser, 6 November 2013, p 26.

<sup>372</sup> Evidence, Ms Jeffries, 6 November 2013, 27 and 31. See also *in camera* evidence, Witness A, 6 November 2013, p 52.

<sup>373</sup> Answers to questions on notice, WorkCover NSW, 6 February 2014, p 11.

### Committee view

- 7.30** The committee acknowledges the efforts that WorkCover is making on various fronts, noting that these efforts have accelerated since our inquiry commenced. We broadly consider that the extent of the bullying issues that have been reported to us suggest that these efforts are not sufficient. Moreover, they need to be matched with a genuine understanding by WorkCover executives of the extent of the problem and the profound impact that it has had, and continues to have, on many employees. Each strategy must be built on an understanding that the problem is to be approached as an organisational one, rather than an individual one. This issue is discussed in detail in the following section.
- 7.31** While we cannot comment on the detail of these various initiatives, we do have two particular observations. The first concerns WorkCover's new policy on prevention of workplace bullying, discrimination and harassment. It is worrying that as late as November 2013, the policy was to have an emphasis on disciplinary investigations. This is despite executives' assurances to the committee at their first appearance, also in November, that an early intervention approach was being built into the system.<sup>374</sup> This is most puzzling. Like the PSA, we welcome the fundamental shift by management towards a work health and safety approach later reflected in the document, and we trust that this is reflected in the final policy adopted by the organisation.
- 7.32** The second concerns improving people management practices. In chapter 5 the committee documented evidence of poor management practices at various levels of the organisation, as a characteristic of the culture of WorkCover. These accounts were very troubling to us. While the positive accounts that we received reveal that this picture is a complex one, and that there are many effective managers and leadership practices in WorkCover, it was nonetheless apparent to the committee that significant improvement is necessary throughout all levels of the organisation.
- 7.33** WorkCover has already recognised this and is working to address it. The committee is heartened that the organisation is endeavouring to build more effective leadership and management throughout the organisation, and each of the elements of its work here appear valuable. Much emphasis in particular has been placed on manager training, however reports that individual managers who have attempted to put the principles into practice are 'pulled into line' by more senior officers are disheartening. They underscore the challenges of improving culture without demonstrated change and effective leadership from senior management, cascading downwards through all levels. Again, WorkCover needs to gain insight into this very serious and complex problem and address it.

### What else does WorkCover need to do?

- 7.34** In the previous chapter, the committee observed the fundamental need for WorkCover's leadership team and the Safety, Return to Work and Support Board to own, acknowledge, apologise for and commit to addressing the organisation's problem of bullying, and for improved governance arrangements at the board level to enable greater accountability and strategic direction to address bullying. Already in this chapter, we have canvassed WorkCover's current efforts to address bullying.

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<sup>374</sup> Evidence, Mr Barnier, 11 November 2013, p 21 and 30.

- 7.35** The committee now turns to considering what other positive steps WorkCover can take to augment the improvements signalled to date, and ensure that significant change is achieved. We note Unions NSW's entreaty to the committee to provide a positive pathway forward:

Our concern would be that if this committee finds simply negatively about WorkCover and cannot provide some constructive alternatives or a pathway forward, we will end with an organisation with no moral authority that continues to be unable to effectively investigate workplace breaches, be they bullying, harassment, accidents in the workplace, those sorts of issues, and that would leave workers further exposed in their workplaces, both in the public and private sectors. So our emphasis is that this needs to be not only about correcting what is wrong but providing a constructive pathway forward for how you can have an organisation responsible for safety that can fulfil its roles and protect workers in New South Wales.<sup>375</sup>

- 7.36** The committee agrees with this approach and has identified three particular areas where we consider that WorkCover needs to prioritise its efforts: cultural change and building trust; complaints and investigations; and independent inspections. Each of these is examined in turn below.

### **Cultural change and building trust**

- 7.37** In its submission, the PSA underscored that cultural change will only occur with effort at every level of the organisation:

Commitment to this change needs to come from the top but it is insufficient for the Chief Executive Officer to make a public commitment to eradicate bullying. This kind of public statement of commitment needs to be reiterated at each successive layer of management down to the frontline worker.

Commitment needs to be backed by action. It is usually in the implementation phase that positive change falls down. Ongoing monitoring for performance against common key performance indicators in this area needs to take place. Managers and supervisors need to get into the habit of correcting small disrespectful or inappropriate actions before they become bullying. This level of action needs to be visible to employees.

Although this is a difficult area it is possible to make positive change. The employees know best what they need to make a healthy and safe work environment so any intervention must include input from those employees.<sup>376</sup>

- 7.38** Other participants identified aspects of cultural change that they consider needs to occur. Dr Howard Bell, a principal lawyer and union delegate at WorkCover, for instance, called for the restoration of kindness and respect at all levels — including among workers, executive staff and union delegates — as a key way to enhance psychological wellbeing in the organisation.<sup>377</sup> He also called on WorkCover to build a culture where staff are empowered 'to give of their

<sup>375</sup> Evidence, Mr Mark Morey, Deputy Assistant Secretary, Unions NSW, 11 November 2013, p 3.

<sup>376</sup> Submission 20, Public Service Association of NSW, p 39.

<sup>377</sup> *In camera* evidence, Dr Howard Bell, 6 November 2013, p 63. Evidence published by resolution of the committee.

best and work as well as their talents will allow them'.<sup>378</sup> Similarly, Mr Phillip Cantrell, a Senior Project Officer with WorkCover, called for a cultural shift in which 'WorkCover must find its humanity, direction and intellect again'.<sup>379</sup>

**7.39** In his submission, oral evidence and answers to questions on notice, Dr Carlo Caponecchia, Senior Lecturer in the Faculty of Science, University of New South Wales, identified a number of broad strategies that WorkCover should pursue to address bullying and build trust with employees. These are summarised below.

- **Recognise and respond to bullying as a system wide issue rather than an individualised one**, consistent with a systemic health and safety approach that treats bullying as a risk to be managed rather than a conflict or grievance issue. This approach builds integrity into the structure and systems of the organisation, with an emphasis on prevention.<sup>380</sup>
- **Improve the integrity of internal systems** for reporting bullying and managing it, to build employees' trust and enable better recognition, prevention and management of the problem.<sup>381</sup>
- **Provide process transparency** on how reports of bullying will be dealt with, that is, details of exactly what will happen once bullying is reported.<sup>382</sup>
- **Ensure that cases are investigated independently, fairly, appropriately and consistently**, being based on best practice. The same procedures should apply to everybody, no matter who they are.<sup>383</sup>
- **Provide system transparency** on how bullying reports have been received, dealt with or resolved, via ongoing reporting to staff of de-identified data on the number of reports received, time taken to respond, number of external investigations, types of interventions used, and so on – to demonstrate that reports are taken seriously and responded to appropriately, and that behaviours are dealt with in a consistent manner.<sup>384</sup>

**7.40** In addition, Dr Caponecchia argued that it will be very important for WorkCover to consult on, report on, monitor and review its actions arising from this inquiry:

Given the credibility issues outlined above, it is hoped that any actions taken as a result of this inquiry are transparent, widely communicated, appropriately consulted upon, monitored and reviewed. It is no coincidence that these processes are essential components of any good safety management system. This is fundamental to rebuilding trust in Workcover NSW, from within its organisational bounds and from the people and organisations it serves.<sup>385</sup>

<sup>378</sup> *In camera* evidence, Dr Bell, 6 November 2013, p 64.

<sup>379</sup> Submission 73, Mr Phillip Cantrell, p 11.

<sup>380</sup> Submission 24, Dr Carlo Caponecchia, pp 5 and 7-8; Evidence, Dr Carlo Caponecchia, Senior Lecturer, Faculty of Science, University of New South Wales, 6 November 2013, pp 2 and 7.

<sup>381</sup> Answers to questions on notice, Dr Carlo Caponecchia, Senior Lecturer, Faculty of Science, University of New South Wales, 3 December 2013, p 2.

<sup>382</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 2.

<sup>383</sup> Evidence, Dr Caponecchia, 6 November 2013, p 7.

<sup>384</sup> Answers to questions on notice, Dr Caponecchia, 3 December 2013, p 3.

<sup>385</sup> Submission 24, Dr Carlo Caponecchia, p 10.

- 7.41** In relation to the pressing need for accurate data, Mr Barnier explained that the data collection that occurred as part of the PwC review provided a good baseline, but that the executive had decided to use the People at Work Survey, which it promotes to external workplaces, to furnish more detailed data in each part of SRWSD. He advised that data was being collected in the second half of 2013 and should be available in early 2014, and stated his hope that employees will trust the system sufficiently to ‘stand up and report’.<sup>386</sup> Mr Barnier did not indicate whether the survey would be conducted annually.
- 7.42** The PSA called for an annual online survey utilising a consistent instrument, to monitor trends over time and facilitate better action. It also recommended that an action plan be developed and reviewed each year to address the top ten issues identified in the survey.<sup>387</sup>
- 7.43** The author of submission 90 echoed the PSA’s point and advocated that the annual survey include an evaluation of the efficacy of support services offered under the GROW program.<sup>388</sup>

#### **Committee view**

- 7.44** The committee agrees that WorkCover needs to build a respectful culture at all levels of the organisation. Its new commitment to addressing bullying needs to be owned and communicated at every level of management, most particularly at senior levels.
- 7.45** In addition to the enhanced governance arrangements discussed in the previous section, the committee sees real merit in Dr Caponecchia’s recommendations and we strongly encourage WorkCover and the board to consider each of them carefully. We do not see it as our role to make recommendations on the detail of the tasks ahead for WorkCover; this is best left to experts under appropriate governance and guidance.
- 7.46** We highlight the need for WorkCover to abandon its culture of denial and cover up in relation to bullying, and to embrace transparency and accountability in order to build trust. As a starting point, we consider that WorkCover must report to the board on its progress in implementing the recommendations of this report. This must be done at regular intervals. Every six months appears a reasonable requirement here, but publication could also occur when any significant improvement is made. These reports must be published on WorkCover’s website.

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#### **Recommendation 5**

That WorkCover NSW report to the Safety, Return to Work and Support Board on the progress of all actions arising from the recommendations of this inquiry, at intervals of at least six months, and that these reports be published on WorkCover’s website.

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- 7.47** The committee also emphasises the imperative to collect reliable data on bullying, to enable sound conclusions on the extent of the problem at any point in time, along with effective

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<sup>386</sup> Evidence, Mr Barnier, 11 November 2013, p 31.

<sup>387</sup> Submission 20, Public Service Association of NSW, p 12; see also Submission 30, Australian Manufacturing Workers’ Union, p 7.

<sup>388</sup> Submission 90, Name suppressed, p 7.

monitoring over time. Such data will be essential to the new approach to transparency that the committee considers to be fundamental to WorkCover's efforts to rebuild trust. The data collected in the People at Work Survey sounds promising, but the committee is not in a position to judge this, and we do not know how often WorkCover intends to repeat the survey.

- 7.48** In addition, WorkCover should conduct a formal review of the utility of other data sources such as workers compensation claims statistics. We recommend that WorkCover work with the PSA to review the findings of the 2013 People at Work Survey, along with other measures of workplace bullying presently utilised by the organisation in relation to its staff, with a view to collecting, publicly reporting and monitoring reliable annual data on workplace bullying.
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### **Recommendation 6**

That WorkCover NSW formally review, in liaison with the Public Service Association of NSW, the findings of the 2013 People at Work Survey and other measures of workplace bullying, with a view to collecting, monitoring and publicly reporting reliable data on workplace bullying within the organisation on an annual basis.

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### **Improving complaints and investigations**

- 7.49** Another area highlighted by inquiry participants as a priority for action concerns WorkCover's current systems for managing complaints and undertaking investigations in respect of bullying. A number of the personal accounts in chapter 4 pointed to systems that were unhelpful or even made the problem worse.

#### ***Better systems***

- 7.50** The author of submission 34 called for a clear, protected and confidential process for raising grievances, so that staff have confidence that if they have a grievance, they can raise it without being victimised, shunned or made to 'feel bad' about their complaint.<sup>389</sup>
- 7.51** Similarly, the author of submission 5 implied the need for a robust and effective complaints system that protects victims:

Staff are often dismissed when making complaints or the system in place is of such a tokenistic nature that staff are just guided through the steps of making a complaint and then the matter just goes away, leaving the complainant to feel further victimised and violated. Action is rarely taken against the perpetrator of bullying behaviour. Policies are worded beautifully, but their interpretation and implementation almost always favours the needs of the business and the organisation and as a consequence, it neglects the health and safety of the staff member being victimised. Given that WorkCover is charged with the responsibility of ensuring workplace safety across NSW, it is ironic that its own workplace is completely dysfunctional and abusive towards its own workers.<sup>390</sup>

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<sup>389</sup> Submission 34, Name suppressed, p 10.

<sup>390</sup> Submission 5, Name suppressed, p 3.

**7.52** Here the committee also notes a particular finding of the Public Service Commission's *People Matter Employee Survey 2012*, that only 34 per cent of respondents from the Compensation Authorities Staff Division (which includes WorkCover) indicated that they have confidence in the ways their organisation resolves grievances. This compared with 57 per cent of respondents in that agency cluster and 50 per cent of respondents across the public sector.

**7.53** In evidence, the PSA emphasised the need for skilled investigators who take an inquisitorial (or fact finding) approach rather than an adversarial one. Ms Jeffries told the committee:

They should have proper investigative skills, so the process they are undertaking is inquisitorial rather than adversarial. I do not believe that the majority of investigations are inquisitorial. From the reports, they appear very much to have been adversarial in nature—that is, attempting to demonstrate some wrongdoing.<sup>391</sup>

**7.54** The author of submission 48 called for an end to investigations being conducted by former police officers, as is often the case. Instead, this person recommended that they only be done by investigators with occupational health and safety expertise, in order to address issues of fairness:

Investigations into industrial relations incidents and health and safety issues be undertaken by investigators from those fields and not ex-police investigators. Many issues I have seen where staff state they have been treated unfairly have been due to investigators who are ex-police. Using specialist investigators will give a clearer indication of an issue from an expert rather than from another source.<sup>392</sup>

**7.55** Mr Fraser, a PSA delegate, told the committee that the investigations he has observed were aimed at establishing whether misconduct had occurred, and did not look more broadly to identify causes. Nor did they take a 'risk identification point of view' that would provide recommendations to control risks to the organisation, such as through mentoring, training, closer supervision or even disciplinary action. Echoing Dr Caponecchia's approach set out earlier in this chapter, he sought an end to the 'individualised' approach to bullying, and called for a work health and safety approach to investigations:

If you make up your mind from the start that it is going to be treated either as mediation or as discipline you are defining the problem as an individual one. You should not go into any investigation with a closed mind on the issues. They appoint people to do investigations from the human resources perspective. This is a complex issue that should not be simply defined before you start with a narrow disciplinary point of view. They are basically appointing people without work health and safety investigation experience.<sup>393</sup>

**7.56** In evidence, Witness A tabled a case study of a former staff member, stating that this individual believes there is a direct connection between her lodging a complaint of bullying and her losing her job in a restructure. Witness A argued that the case highlighted continuing deficiencies in the investigation process.<sup>394</sup> The case study is set out below.

<sup>391</sup> Evidence, Ms Jeffries, and Mr Fraser, 13 November 2013, pp 16-17.

<sup>392</sup> Submission 48, Name suppressed, p 1.

<sup>393</sup> Evidence, Ms Jeffries, and Mr Fraser, 13 November 2013, pp 16-17.

<sup>394</sup> *In camera* evidence, Witness A, 6 November 2013, pp 47-48.

**Case study based on a submission - Kim**<sup>395</sup>

Kim no longer has a job with WorkCover. She believes that there is a direct connection between her losing her job and having lodged a complaint against her supervisor.

Two months after making her initial bullying complaint, Kim was advised that she needed to make a formal complaint, even though she thought she had already done so. While WorkCover's bullying policy states that the notified direct manager, the People and Culture Unit representative, and the contracted counselling organisation should advise a complainant of their options to report a bullying complaint, none of these parties did so.

Kim raised a conflict of interest when she found out that the person investigating her complaint within WorkCover rents a house to the supervisor who was the subject of the complaint. Another investigator was allocated to the case. In the meantime, Kim's team underwent a restructure with staff required to reapply for their positions.

Kim's supervisor was on the selection panel despite being under investigation, therefore Kim did not feel confident to apply for any positions at her current grade. Nor did she apply at a lower grade, as the supervisor ultimately convened all these selections. Kim did not secure a position in the new structure at WorkCover.

The investigation of Kim's complaint was conducted internally despite advice from the minister to the PSA that all investigations involving a conflict of interest are conducted by an external investigator. Kim was not advised of the investigation procedure so is not aware of how the investigation was conducted, but the two witnesses she identified in her complaint were not interviewed.

At the conclusion of the investigation, Kim was advised verbally that the supervisor was found to have bullied her. She was also given a verbal non-specific outline of recommendations and told that everything discussed with her would be documented in a letter.

However, these findings were not confirmed in the undated letter she subsequently received, which closed the matter. When Kim queried this, she was informed that those matters were confidential.

The letter to Kim advising of the outcome of her complaint is set out below.

Dear \_\_\_\_\_

I confirm that [the Safety, Return to Work and Support Division (SRWSD)] has concluded its review into the concerns raised by you against \_\_\_\_\_.

I acknowledge the responses you have provided in the meeting on the 1<sup>st</sup> September 2013 with myself. I am confident that SRWSD have conducted a comprehensive, fair and efficient process for all parties concerned.

In summary as a result of the meeting conducted with you and I, the following actions were undertaken:

<sup>395</sup> Submission 90a, Name suppressed, pp 1-3 and attachment 2. This case study is not taken verbatim from the submission, but is an accurate reflection of its contents.

- An independent review was undertaken by the Employee Relations Team within the People and Culture Group into the concerns you raise against \_\_\_\_\_.
- As a result of the independent review, a number of confidential recommendations were made by Employee Relations.
- I can confirm that management have taken the appropriate action in relation to the recommendations provided.
- As a result People and Culture have had the opportunity to refine and improve SRWSDs complaints handling procedure.

The formal review into this matter is now closed. We now wish to work with you to agree an appropriate way forward. We also want to take the opportunity to discuss support mechanisms that may be implemented to assist you further.

I would also like to remind you that to ensure procedural fairness for all parties involved, you should keep these matters strictly confidential.

I understand this may have been a difficult time for you and I would like to take this opportunity to remind you of SRWSD's Employee Assistance Program (EAP) that you may choose to access during this time. The EAP can be contacted on 1300 360 364.

I thank you for your cooperation in this process. If you have any future concerns regarding this matter, please feel free to contact me.

Yours sincerely,

\_\_\_\_\_, People and Culture Group, SRWSD

The supervisor against whom the complaint was made succeeded in securing a more senior position within 10 days of the complaint being finalised. Kim however, has been declared excess and has left WorkCover.

### *Independent investigations*

- 7.57** A number of inquiry participants called for investigations of bullying allegations within WorkCover to be conducted independently.
- 7.58** Several submission authors expressed their mistrust in the present system. The author of submission 9, for example, asserted, 'I have no confidence in the impartiality of People and Culture, or others in [WorkCover], particularly in the current environment where retribution appears to be enacted without a party having any avenue of recourse and policy/procedures are used as tools to bully.' This individual sought the establishment of an independent arbiter akin to an Ombudsman to consider matters unable to be addressed in existing systems due to 'perceived inherent bias'.<sup>396</sup>
- 7.59** Unions NSW observed WorkCover's 'unfortunate history' of dealing with bullying inside their own organisation, and noted the fundamental importance of independence:

<sup>396</sup> Submission 9, Name suppressed, p 1.

You need to have tools in place and definitions but at the end of the day there needs to be some way in which someone is independently, in extreme circumstances, able to make a judgement as to whether that is occurring in the workplace. There is a vehicle by which people who are truly being bullied have access to something where they can take that complaint and an independent person can say, “Yes, you are being bullied” or “No, you are not being bullied.”<sup>397</sup>

**7.60** Dr Caponecchia emphasised that investigations of serious allegations of bullying must be independent, and seen to be independent:

I cannot stress how important that independence is. When I talk about independence I really mean independence. I have had experience of that term being interpreted in a very fuzzy way in this field in the past. “Independent” means external from, outside of, without real or perceived conflicts of interest.<sup>398</sup>

**7.61** Dr Caponecchia offered two possible models for how independent investigations might occur: via an external expert panel of investigators; and via an independent expert panel whose role is to vet and assign appropriately qualified expert investigators.<sup>399</sup>

**7.62** The committee notes that recommendation 2.6 of the 2011 PricewaterhouseCoopers recommendations was that WorkCover ‘Develop and share protocols in relation to the appointment of external investigators. Continue to develop a framework for a panel of appropriately skilled and experienced [occupational health and safety] investigators.’<sup>400</sup>

**7.63** The PSA advised that this recommendation was never implemented. According to Ms Jeffries, currently, most investigations are conducted externally, but certainly not all.<sup>401</sup>

**7.64** Witness A provided the committee with a letter from the then Minister for Finance and Services, Mr Andrew Constance MP, setting out the arrangements as at 1 October 2013, and flagging that these were soon to change:

All investigations are currently undertaken by an external investigator and managed internally by the Division’s Employee Relations and Policy Team, to ensure that the requirements for the ‘management of Conduct and Performance’ under Part 2.7 of the *Public Sector Employment and Management Act 2002* and Chapter 9 of the *Personnel Handbook* are met. I am advised that the process is currently under review with the aim of the Division undertaking non-complex investigations internally. The new model will require anyone undertaking an investigation to hold a recognised investigations qualification ... Complex investigations or investigations where there may be a conflict of interest will remain with external investigators.<sup>402</sup>

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<sup>397</sup> Evidence, Mr Morey, 11 November 2013, p 8.

<sup>398</sup> Evidence, Dr Caponecchia, 6 November 2013, p 2.

<sup>399</sup> Evidence, Dr Caponecchia, 6 November 2013, p 2.

<sup>400</sup> Department of Premier and Cabinet and PricewaterhouseCoopers, *WorkCover (NSW) Review: Independent inquiry into workplace bullying and harassment*, February 2011, p 9.

<sup>401</sup> Evidence, Ms Jeffries, 6 November 2013, p 16.

<sup>402</sup> Tabled document, Witness A, correspondence from the Hon Andrew Constance MP, Minister for Finance and Services, to Mr Steve Turner, Assistant Secretary, Public Service Association of NSW, 1 October 2013, p 1.

**7.65** As noted in the earlier case study of Kim, Witness A went on to provide an example of an employee whose complaint of bullying was not investigated externally, despite there being a conflict of interest for the employee appointed to conduct the investigation.

#### **Committee view**

**7.66** The handling of bullying complaints in general, and the investigations system in particular, were the focus of significant concern in the inquiry. This is an area where an absence of trust is very apparent and needs to be addressed. Employees must be able to trust the system or they will not use it. Moreover, unless WorkCover is seen by its employees to take complaints seriously and to investigate them impartially and effectively (where an investigation is warranted), its efforts to address bullying will continue to lack credibility.

**7.67** We are encouraged by WorkCover's indication that it is moving towards an 'early intervention approach' that treats bullying first as a work health and safety issue, rather than always as a grievance or misconduct issue. Many matters do not need to proceed to investigation and many employees will benefit from timely and constructive resolution of the problem. As Dr Caponecchia argued (see paragraph 7.4), where investigations are necessary and appropriate, they should be conducted fairly and consistently, reflecting best practice. In addressing bullying more effectively, they will build employees' trust. We note again that Dr Caponecchia identified that one of the immediate concerns for the independent workplace steering panel, which he proposed be established and which is reflected in our recommendation 12, in the following chapter, would be improving procedures for investigation.

**7.68** Moreover, we note the very important work that the Public Service Commission has commenced, via the Bullying Roundtable that commenced in early 2014, to develop a framework for bullying complaints and investigations across the public sector (discussed in detail in chapter 9). We expect that the framework, which is to be finalised in September 2014, will address many of the problems identified with WorkCover's investigations system, by enabling better prevention of bullying; earlier resolution of complaints, so that matters are resolved in a timely and low key way; and ensuring that where investigations are necessary, they are conducted in an impartial, consistent and robust manner. WorkCover will benefit greatly from such a framework.

**7.69** One of the strong messages from this inquiry is that WorkCover needs not only a better complaints and investigations framework; it also requires cultural change around the framework's application. The two together will enable a shift away from a punitive approach to a constructive one that respects WorkCover employees and builds trust.

**7.70** Investigations into WorkCover in its role as an employer cannot credibly be undertaken by the institution itself. Some inquiry participants have suggested that comparable interstate bodies could be tasked with this role. This would enable a specialised body without any inherent conflicts of interest to investigate all work health and safety incidents that involve WorkCover as employer, including allegations of bullying. The committee agrees with this approach. While a framework for this is being developed, WorkCover should take steps to ensure complaints of bullying that involve WorkCover as an employer are conducted independently of WorkCover itself. In this regard, the committee notes the arrangements between WorkCover

and the Department of Trade and Investment, Regional Infrastructure and Services discussed at paragraph 7.83 to 7.87.

- 7.71** The committee considers that all investigations of bullying complaints within the organisation must be conducted by external investigators. This will be vitally important to achieving fair processes and outcomes, and to being seen to be fair, again building trust in the complaints handling system.

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### **Recommendation 7**

That WorkCover NSW ensure that all investigations of bullying complaints within WorkCover are investigated independently.

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### **Independent inspection of complaints within WorkCover**

- 7.72** A final issue raised by inquiry participants concerned the need for a system which provides for independent inspections of work health and safety complaints that arise in WorkCover itself. Some participants referred to this as ‘who regulates the regulator?’
- 7.73** Several stakeholders explored the conflict of interest that arises when WorkCover employees undertake inspections relating to the regulator’s own alleged non-compliance with work health and safety requirements, including in relation to bullying.
- 7.74** Witness A, for example, asserted that, ‘There is ... a conflict of interest in having an inspector review a safety complaint from within their own workforce.’<sup>403</sup> The witness recommended that ‘an external mechanism be created to ensure that WorkCover staff have access to an independent process for safety issues. This would include legislative compliance and complaints mechanisms for all safety issues, not just bullying.’<sup>404</sup>
- 7.75** The Unions NSW submission set out a flow chart indicating how the independence of an inspector might be compromised when acting on a bullying complaint within WorkCover.<sup>405</sup> It contended that the present oversight mechanism for appealing decisions, via the Ombudsman’s Office, is not ideal as its staff are not sufficiently specialised. Unions NSW went on to recommend that a memorandum of understanding be formed between interstate regulators that empowers inspectors from other states to investigate work health and safety breaches, including bullying, inside WorkCover.<sup>406</sup>
- 7.76** Mr Colin Fraser, a Principal Inspector in WorkCover and PSA delegate, alleged that inspectors are often under pressure from management, including to avoid upsetting employers, not issue safety notices, pretend that there is insufficient evidence, and unquestioningly accept unrecorded employer interventions in relation to health and safety complaints. He suggested that WorkCover’s conflict of interest in investigating itself could be overcome via an

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<sup>403</sup> *In camera* evidence, Witness A, 6 November 2013, p 47.

<sup>404</sup> Submission 90, Name suppressed, p 5.

<sup>405</sup> Submission 66, Unions NSW, p 11.

<sup>406</sup> Submission 66, Unions NSW, p 13; see also evidence, Mr Shay Deguara, Industrial Officer, Unions NSW, 11 November 2013, p 4.

independent Work Health and Safety Investigator, who would triage allegations of bullying or other causes of psychological injury and investigate or otherwise deal with these allegations as deemed appropriate. He went on to propose a detailed model for how this could work.<sup>407</sup>

**7.77** Others who called for external regulation of WorkCover's compliance with work health and safety included the author of submission 48 and the Community and Public Sector Union Victorian Branch.<sup>408</sup>

**7.78** The PSA advised the committee that the 'inherent conflict of interest of WorkCover as the safety regulator investigating itself as a non-compliant employer' was raised as an important issue during the PwC inquiry. It reported that, after some initial traction contemplating the involvement of another regulator such as WorkSafe Victoria or Comcare, the issue has remained unresolved since April 2011. In the meantime, further difficulties have arisen for WorkCover staff who have nowhere independent to make a complaint. The Association went on to argue that changes to the *Work Health and Safety Act 2011* have actually exacerbated the conflict of interest. The Association recommended that arrangements be developed for an independent regulator to address compliance issues which arise within WorkCover and SRWSD. It called for the protocol to be broad enough to cover all aspects of compliance with the work health and safety legislation, including consultation, not just safety complaints.<sup>409</sup>

**7.79** In evidence, Mr John Watson, General Manager of WorkCover's Work Health and Safety Division, acknowledged the duality of WorkCover's roles, but denied that this is a problem. Mr Watson stated that arm's length arrangements are put in place when such circumstances arise:

First of all there clearly is a conjunction of roles in WorkCover. We are the regulator for work health and safety and workers compensation, return to work but we are also the person conducting a business or undertaking [PCBU] under the Act and we have offices, duties and responsibilities under the *Work Health and Safety Act*. That is the same for every other regulator around the country. In respect of how we deal with matters, we do have matters raised with us routinely internally about all sorts of work health and safety issues. We just deal with those in exactly the same way we would expect another employer to deal with them.

Where matters are highlighted we set up an independent process separate from the unit that the officer may be in, particularly in my division where the inspectors are and most of the regulatory functions are carried out and we separate ourselves.<sup>410</sup>

**7.80** Mr Watson and Mr Barnier informed the committee that WorkCover had obtained advice from the Ombudsman's Office that WorkCover could undertake investigations of itself, and that an independent body for such purposes was not necessary.<sup>411</sup> Mr Barnier explained that the Deputy Ombudsman's view was that if there was a serious concern, for example if the

<sup>407</sup> Submission 15, Mr Colin Fraser, pp 7-8.

<sup>408</sup> Submission 48, Name suppressed, p 1; Submission 29, Community and Public Sector Union Victorian Branch, p 3.

<sup>409</sup> Submission 20, Public Service Association of NSW, pp 35-36.

<sup>410</sup> Evidence, Mr John Watson, General Manager, Work Health and Safety Division, WorkCover NSW, 11 November 2013, pp 28.

<sup>411</sup> Evidence, Mr Watson, 11 November 2013, p 29; Evidence, Mr Barnier, 11 November 2013, p 32.

allegation was against one of the executives responsible for that area, investigations would occur through the Ombudsman's Office or the Public Service Commissioner.<sup>412</sup>

- 7.81** In the 10 December 2013 hearing, Mr Barnier acknowledged that there is an issue 'about maintaining that an inspector who is acting in the inspectorate capacity would still be carrying out their duties appropriately and did not feel conflicted. And if they felt conflicted then, yes, to make other arrangements.'<sup>413</sup>
- 7.82** Despite his defence of current arrangements, Mr Watson indicated that 'there needs to be a clear indication of independence and separation,' and that he had therefore initiated discussions with a co-regulator in New South Wales and his counterparts in other states, however, neither was comfortable to undertake the role.<sup>414</sup> He further advised that he was also exploring with the Department of Primary Industries the possibility of mines inspectors fulfilling this independent inspections role.<sup>415</sup>
- 7.83** In answers to questions on notice after the 10 December hearing, WorkCover provided further detail on this work. Initial discussions were held in August and October 2013 with representatives of the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS), with a view to developing agreed arrangements for the referral for investigation of work health and safety matters including allegations of workplace bullying between the agencies. At a further meeting in January 2014, DTIRIS accepted a draft memorandum of understanding for review, and another meeting was expected to take place by March 2014, to discuss any proposed changes. WorkCover contended that DTIRIS is an appropriate agency for such an arrangement given its responsibility for administering the *Work Health Safety Act* in the mining industry, and because the issues that the mining inspectorate deals with include the full range of work health and safety risks, including bullying. While WorkCover has a close relationship with its co-regulator, they operate independently.<sup>416</sup>
- 7.84** Finally, WorkCover noted that the intention of the proposed arrangements with DTIRIS is 'to bring transparency, accountability and proportionality to the investigation of significant work health and safety matters where the conduct of WorkCover NSW as a "person conducting a business or undertaking" is in question.'<sup>417</sup>

### Committee view

- 7.85** The committee is pleased that WorkCover has recognised the potential conflict that exists in investigating its own compliance with work health and safety legislation. This conflict would place many inspectors in an untenable or at least very uncomfortable position, and we consider that it should be avoided, not only to protect inspectors, but also to ensure the integrity of the inspection system, and the trust that WorkCover employees should rightly place in it.

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<sup>412</sup> Evidence, Mr Barnier, 11 November 2013, p 32.

<sup>413</sup> *In camera* evidence, Mr Barnier, 10 December 2013, p 69.

<sup>414</sup> Evidence, Mr Watson, 11 November 2013, p 29.

<sup>415</sup> Evidence, Mr Watson, 11 November 2013, p 38.

<sup>416</sup> Answers to questions on notice, WorkCover NSW, 6 February 2014, p 6.

<sup>417</sup> Answers to questions on notice, WorkCover NSW, 6 February 2014, p 6.

- 7.86** We hope that the memorandum of understanding with DTIRIS is now in place and operational. We consider that it will be important to evaluate the effectiveness of the arrangement within a suitable period, perhaps two years. This formal evaluation should be published and considered by both the board and the new independent workplace bullying steering panel that in chapter 8 we recommend be established.

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**Recommendation 8**

That WorkCover NSW undertake a formal evaluation of the arrangements with the Department of Trade and Investment, Regional Infrastructure and Services for referral of work health and safety matters for investigation, including allegations of workplace bullying, within two years of the commencement of the arrangements. The review, which must be published, is to:

- include formal input from employees and the Public Service Association of NSW
- be formally considered by the Safety, Return to Work and Support Board and the independent workplace bullying steering panel (see recommendation 12).

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- 7.87** However, should an arrangement with DTIRIS not prove achievable in the near future, then it is essential that another independent mechanism be established. In that regard, the committee sees merit in the suggestion that investigations of WorkCover be undertaken by a workplace regulator in another state or territory.
- 7.88** In the following chapter we explore stakeholders' views on WorkCover's responses to bullying in other workplaces as the work health and safety regulator, along with its oversight of the workers compensation scheme.



## Chapter 8 WorkCover as health and safety regulator

Along with considering issues of bullying within WorkCover, the terms of reference for the inquiry charged the committee with examining WorkCover's role as the state regulator of work health and safety as it relates to bullying. While the bulk of evidence before the committee focused on bullying within WorkCover, a number of participants made assertions about WorkCover's effectiveness in meeting its statutory role with regard to workplace bullying.

This inquiry has shone a spotlight on WorkCover's credibility as an organisation. Just as it must recognise and respond effectively to bullying in its own ranks, WorkCover must perform its regulatory role – to promote compliance with work health and safety legislation in workplaces across New South Wales – with commitment and integrity. Similarly, in its role in monitoring and regulating the workers compensation scheme, WorkCover must itself meet the highest standards of customer service in relation to injured workers, and ensure that other stakeholders such as insurance scheme agents do so as well.

This chapter first examines the evidence of inquiry participants regarding how well WorkCover is fulfilling its compliance role in respect of bullying in workplaces across New South Wales. Next, it considers their views on its oversight of the workers compensation scheme.

### Promoting compliance with regard to workplace bullying

- 8.1** A number of participants drew a link between WorkCover's own organisational problem of bullying and its effectiveness in addressing bullying in other workplaces. As noted in chapter 2, WorkCover's role in promoting employers' compliance with the *Work Health and Safety Act 2011* (WHS Act) is in respect of both physical and psychological health, and therefore extends to the psychological hazard of bullying (see paragraph 2.5).
- 8.2** The Injured Workers Support Network (IWSN), for example, asserted that despite the WHS Act's clear provisions for enforcing the duties of a person conducting a business or undertaking (PCBU), 'WorkCover are still unable to control bullying in either the workplace or their own backyard.'<sup>418</sup> It went on to argue that 'The culture of WorkCover can only be described as being one of institutionalised denial. Complaints made against an employer ... for bullying are rarely if ever substantiated',<sup>419</sup> leading to a widespread perception among injured workers that WorkCover is failing in its role as workplace regulator.<sup>420</sup>
- 8.3** Similarly, the Workers Health Centre argued that WorkCover's own poor record regarding bullying, and its public perception as a 'toothless tiger' in relation to other workplaces, means that many injured workers 'won't waste their time' reporting bullying to WorkCover.<sup>421</sup>
- 8.4** In its submission, the Australian Manufacturing Workers' Union (AMWU) proposed that the culture of bullying within WorkCover contributes to the regulator's failure to act in relation to safety complaints because inspectors are bullied into inaction by WorkCover management.<sup>422</sup>

<sup>418</sup> Submission 25, Injured Workers Support Network, p 7.

<sup>419</sup> Submission 25, Injured Workers Support Network, p 3.

<sup>420</sup> Submission 25, Injured Workers Support Network, p 7.

<sup>421</sup> Submission 23, Industrial Health and Research Foundation, t/as Workers Health Centre, p 4.

- 8.5** A number of other inquiry participants, including several injured workers, argued that WorkCover is not sufficiently active in addressing bullying in NSW workplaces. For example, the author of submission 60, who has a psychological injury as a result of workplace bullying, reported that her bullying complaint to WorkCover was not acted upon. She asserted that the system is prejudicial to psychological injuries, and suggested that ‘WorkCover as the state regulator of occupational health and safety fails miserably.’<sup>423</sup>
- 8.6** Mr Gregory Lynch, a former public service employee, gave a detailed account in his submission of WorkCover’s protracted failure to respond adequately to allegations of bullying in his workplace, despite his successful workers compensation claim. He reported that even after two years of involvement from WorkCover his workplace was not made safe, such that he now has a severe psychological injury for which he receives workers compensation and is ‘unemployed/unemployable’.<sup>424</sup>
- 8.7** Mr John McPhilbin, who also had a psychological injury from bullying, argued that WorkCover do not seem to take workplace bullying seriously, including where an organisational culture of bullying is apparent:
- Despite claims by WorkCover that they take workplace bullying seriously they seem to be doing remarkably little to address the issue in workplace across NSW. Their policy allegedly is to only investigate claims of widespread systemic bullying claims and refuse to become involved in individual claims of bullying. Like many others, including myself, who make complaints, the basis of making a complaint is that the problem is not just of being an individual target of bullying but one of many who are receiving similar treatment – in other words a culture of bullying cultures exists in the workplace. This fact, it seems, is conveniently ignored. This also seems evident going by the lack of legal action taken against offending companies ...<sup>425</sup>
- 8.8** Like others, Mr McPhilbin argued that a proactive approach would help to prevent further damage for many individuals.<sup>426</sup>
- 8.9** In evidence, Ms Omeima Sukkarieh, Support Person with the AMWU, reported poor understanding and poor customer service by a WorkCover inspector in response to a complaint by an employee alleging bullying and harassment in a workplace.<sup>427</sup>
- 8.10** Another participant, whose experiences are captured in the case study on the following page, reported that WorkCover’s intervention did not follow its own protocols and actually made the problem worse, to the point where she lost her career.<sup>428</sup>

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<sup>422</sup> Submission 30, Australian Manufacturing Workers’ Union, pp 2 and 7.

<sup>423</sup> Submission 60, Name suppressed, p 1.

<sup>424</sup> Submission 6, Mr Gregory Lynch, p 4.

<sup>425</sup> Submission 1, Mr John McPhilbin, p 2.

<sup>426</sup> Submission 1, Mr John McPhilbin, p 2.

<sup>427</sup> Evidence, Ms Omeima Sukkarieh, Support Person, Australian Manufacturing Workers’ Union, 6 November 2013, pp 39-40.

<sup>428</sup> Submission 8, Name suppressed, p 5.

**Case study based on a submission - Casey<sup>429</sup>**

Casey was bullied in her local government workplace and lodged a complaint with WorkCover online. She did not feel comfortable including all her documentation, so she requested that the inspector allocated to her case contact her before visiting her workplace. Despite this request, nobody contacted Casey and her complaint was initially assessed as not having provided sufficient information.

The complaint was allocated to an inspector who had been working with her employer on a work health and safety liaison project. Rather than speaking with Casey in the first instance, the inspector spoke directly with her workplace management team, including the manager and human resources officer who were the subject of the allegations. He disclosed Casey's identity, collected adverse information about her and subsequently closed the investigation without advising her.

Three weeks passed and Casey contacted WorkCover to find out what had happened with her complaint. She received a voice mail message from the inspector informing her that the matter was closed and that his finding was that she been 'performance managed', rather than bullied.

Adamant that this was not the case, Casey requested that the inspector review her statement and supporting documents. The inspector assessed her documents against the council's 'good workplace relations' policy concerning harassment based on race, gender and sex, rather than its bullying policy.

Casey made a *Government Information (Public Access) Act 2009* (GIPA) application for all the documents pertaining to the investigation of her complaint. This revealed that the password protected complaints system was accessed inappropriately, certain entries were deleted and an altered complaint form was attached to the inspector's affidavits, which themselves contained untrue statements.

As a result of Casey's GIPA application, her investigation was reviewed, but by the same inspector. Casey alleges that his review used an illegally obtained psychiatric report to make up for the deficiencies of the initial investigation. The inspector reiterated that no further issues needed to be addressed. WorkCover defended the inspector's conduct.

According to Casey, in handling her complaint, WorkCover did not follow its own investigation protocols; nor did it practice procedural fairness. Procedures for confidentiality were not followed; Casey was not contacted by the investigator to find out the details of her complaint; she was not given an opportunity to respond to information provided by other parties; and she was not consulted on the investigator's findings.

Casey believes that as a result of her complaint to WorkCover, she was further victimised by her manager and the human resource officer, who went on to conduct vexatious disciplinary proceedings against her. She was ostracised by her colleagues, lost her professional reputation and ultimately her career.

<sup>429</sup> Submission 8, Name suppressed, p 5. This case study is not taken verbatim from the submission, but is an accurate reflection of its contents.

- 8.11** Ms Vicki Pepyat, an injured worker and member of the IWSN, reported that WorkCover took insufficient action in relation to her bullying complaint because her employer said it had a bullying policy. She suggested that this allowed further breaches to occur:

WorkCover could have further investigated taking action against my employer for breach of its anti-bullying policy and/or breaches of applicable occupational health and safety legislation, regardless of whether the employer's policy was in a written form. The employer apparently represented to the WorkCover inspector that it had a policy in place, written or otherwise. There was, clearly, evidence of repeated and blatant breaches of work health and safety obligations. WorkCover failed to act to prevent those breaches from continuing. WorkCover failed to take action that may have prevented further workplace injuries. The bullies remain unaccountable and, presumably, undeterred.<sup>430</sup>

- 8.12** The author of submission 11 told the committee that in 2013 a senior inspector investigated multiple complaints of bullying and other safety matters in her workplace. After issuing several improvement notices, the inspector completed the investigation and dismissed the bullying component of the complaints. The submission author asserted:

We were satisfied that the improvement notices would help address our issues. We were wrong. He finalised two of the notices even though management failed to complete necessary actions. We told him the requirements were not being met.

For one of these notices, the management did not meet legislative requirements stipulated on the WorkCover website! The end result was he gave the bullies free reign and the workplace is depressing and unsafe. We now get silenced into submission by managers with the finalised notices!!!!

We now wonder if a culture of bullying exists within WorkCover how can anyone get satisfactory help when they report bullying in their own workplaces?<sup>431</sup>

- 8.13** The Public Service Association of NSW (PSA) suggested that the approach to bullying varies according to inspectors. Like others, the Association noted the common approach of setting a bullying complaint aside if the workplace has a policy on bullying:

The extent to which bullying complaints are pursued with any PCBU is very much determined by the particular inspector involved. Inspectors seem to be discouraged from taking on these issues from a compliance perspective and appear to be encouraged to limit their investigation to determining whether a PCBU has a policy for dealing with bullying issues. If a policy exists the inspector is encouraged to close the file by noting that the employer is compliant with the legislation.<sup>432</sup>

- 8.14** The AMWU argued that WorkCover should better support its inspectors to fulfil their roles in safeguarding workplace safety, including via training in handling bullying complaints:

[A]ll WorkCover inspectors should be provided training in how to manage bullying complaints. NSW workers expect that when an inspector is attending a workplace in relation to a bullying complaint, they do not engage in exclusive conversations with

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<sup>430</sup> Submission 17, Ms Vicki Pepyat, p 15; see also submission 60, Name suppressed, p 1.

<sup>431</sup> Submission 11, Name suppressed, p 1.

<sup>432</sup> Submission 20, Public Service Association of NSW, p 34.

employers and report only their thoughts or the outcomes to workers affected by the bullying. Investigations should not simply be limited to whether a business or undertaking has a policy on bullying ... If deemed necessary inspectors should then take appropriate enforcement action against parties considered not compliant with their duties.<sup>433</sup>

- 8.15** Witness A, a WorkCover employee, provided insights on this issue, suggesting that the problem is partly that WorkCover does not recognise bullying as a serious issue, and also that ‘the drum’ in WorkCover is that bullying complaints are very difficult to investigate, largely because they do not lend themselves to evidentiary standards. The witness also acknowledged the challenges of this work, but argued that prosecutions are not necessarily what people want anyway, and that they will benefit much more from the problematic behaviour being addressed early on:

It can be difficult to deal with, to investigate, but we do not want a prosecution in every instance of a workplace where there could be some bullying taking place. We want a solution for that. We are not looking for a prosecution evidentiary standard. That is one of the obstacles. It is too hard to get into that evidence, but you want prevention. You want a simple solution put in place. You want some healing for the people who feel that they are under work pressure.<sup>434</sup>

- 8.16** One WorkCover inspector gave their perspective on the challenges of investigating bullying:

Bullying allegations involve personalities and perceptions. As inspectors we not only have to gather the facts and evidence, but communicate with complainants with unrealistic expectations from complaints on a daily basis. As bullying is an emotional issue it is not uncommon for inspectors to be ‘battered’ both verbally and mentally by complainants and others because expectations are not met ... I am in no doubt that workplace bullying occurs as I have first-hand knowledge of the effect it has on an individual, their families, friends and careers.<sup>435</sup>

### *Unions NSW’s view*

- 8.17** Unions NSW’s submission addressed in detail the issue of WorkCover’s effectiveness in regulating workplace bullying. It explained that WorkCover’s approach to compliance has shifted away from a ‘proactive enforcement regime’ towards a softer ‘partnership with business’ and ‘educational approach’, summing up WorkCover’s current approach to bullying as ‘hands off’.<sup>436</sup> It noted its frustration with other Australian regulators in relation to the hazard of bullying and called for a return to the ‘enforcement’ approach:

The role of the regulator enforcing the legislation is ... important if we are to combat the prevalence of bullying behaviour and send a message to the work community to deter future occurrences, and encourage positive workplace behaviours. NSW has a less than satisfactory history in regulating this issue. When you consider the

<sup>433</sup> Submission 30, Australian Manufacturing Workers’ Union, p 7.

<sup>434</sup> *In camera* evidence, Witness A, 6 November 2013, pp 54. Evidence published by resolution of the committee.

<sup>435</sup> Submission 96, Name suppressed, pp 5-6.

<sup>436</sup> Submission 66, Unions NSW, p 8.

proportion of claims and gross incurred cost, there are very few serious investigations into workplace bullying in NSW and even fewer successful enforcement actions.<sup>437</sup>

**8.18** Unions NSW further observed that the prevailing approach to bullying appears to be to investigate it as for a physical hazard, which has a limit of 20 days for investigation. It argued that this is insufficient time to prepare a brief of evidence for prosecution of bullying, and noted WorkCover has only prosecuted one bullying case, with this having had a large element of physical and violent assault attached to the bullying behaviours.<sup>438</sup> Unions NSW asserted that Victoria's regulator, WorkSafe, takes a more active role in this area and has a specialised inspectorate dealing with psychological hazards:

WorkSafe Victoria has similar laws to NSW and a similar size inspectorate, with slightly less inspectors per head of population. Despite this they are able to maintain enforcement action that identified workplace bullying and establishes precedents that act as a deterrent to prevent future bullying being condoned. After several reviews and inquiries in Victoria they created a specialist inspectorate to look at investigating psychological hazards.<sup>439</sup>

**8.19** The Unions NSW submission made a number of recommendations including:

- create a mandatory reporting regime to a central independent government agency, that requires all employers, health professionals, medical services and insurers to report psychological injuries caused at work
- establish a specialist, independent dedicated inspectorate to focus on workplace bullying, with comprehensive procedures to facilitate thorough investigation of all workplace bullying, and adequate training and support for its inspectors
- regulate bullying under the WHS Act through a new regulation titled 'psychological risk management'
- establish a tripartite panel to manage workplace health and safety strategic direction and boost compliance and enforcement activity within NSW with regard to workplace bullying<sup>440</sup>
- develop a prescriptive code of practice for workplace bullying, supported by WorkCover and its representatives at Heads of Workplace Safety Authorities Australia and New Zealand.<sup>441</sup>

## Oversight of the workers compensation scheme

**8.20** The second area of concern in relation to WorkCover's regulatory role raised by inquiry participants was in relation to WorkCover's statutory oversight of the workers compensation

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<sup>437</sup> Submission 66, Unions NSW, p 23.

<sup>438</sup> Submission 66, Unions NSW, pp 23-24.

<sup>439</sup> Submission 66, Unions NSW, p 24.

<sup>440</sup> Submission 66, Unions NSW, pp 28-29.

<sup>441</sup> Submission 66, Unions NSW, p 29. Heads of Workplace Safety Authorities Australia and New Zealand is a group comprised of general managers of peak bodies responsible for regulation and administration of work health and safety.

scheme. As noted in Chapter 2, in its role as Nominal Insurer, WorkCover regulates the workers compensation scheme, including numerous contracted insurance companies known as ‘scheme agents’ (see paragraph 2.4). Inquiry participants claimed that not only does WorkCover preside over a system in which scheme agents bully injured workers; its own staff are rude and aggressive.

- 8.21** In evidence, Mr David Henry, Work Health and Safety Officer at the Workers Health Centre, voiced strong concerns about the treatment of workers with psychological injuries by claims managers and scheme agents and underscored WorkCover’s responsibility with regard to the way injured workers are managed in the workers compensation system.<sup>442</sup>
- 8.22** The Workers Health Centre went so far as to refer to the behaviour of many scheme agents as bullying.<sup>443</sup> Similarly, the IWSN submission referred to ‘the bullying and intimidation tactics’ used by scheme agents.<sup>444</sup> Both organisations reported that WorkCover staff are also aggressive.<sup>445</sup>
- 8.23** In evidence, Ms Pepyat asserted that workers who are psychologically injured are being treated as ‘second class citizens’ by both scheme agents and WorkCover simply because of their injury, within a system that lacks compassion, empathy, civility and respect.<sup>446</sup>
- 8.24** Further, these participants argued that injured workers who wish to complain about their treatment have poor recourse from WorkCover, even though it regulates insurers. Ms Michelle Burgess, Chief Executive Officer of the Workers Health Centre, contended that complaints to WorkCover about agents do not get followed up, and contended that WorkCover staff are ill-equipped to deal with such bullying.<sup>447</sup>
- 8.25** Similarly, Mr Adam Grumley of the IWSN suggested that complaints to WorkCover to address poor treatment by insurers are met with an ineffectual response:

I am an injured worker and I was unemployed for two years. I was forever chasing information on when I would be paid next. It is very hard to budget on a compromised income; you lose more than just the use of your arm or shoulder. When chasing up when I would next be paid, they would say, “When we feel like it.” I would then ring WorkCover and they would say, “We can tell them, but they won’t do anything.” If they cannot act on that, what hope does an injured worker have?<sup>448</sup>

<sup>442</sup> Evidence, Mr David Henry, Work Health and Safety Officer, Workers Health Centre, 6 November 2013, p 37.

<sup>443</sup> Submission 23, Industrial Health and Research Foundation t/as Workers Health Centre, p 8; Evidence, Ms Michelle Burgess, Chief Executive Officer, Workers Health Centre, 6 November 2013, p 36.

<sup>444</sup> Submission 25, Injured Workers Support Network, p 1.

<sup>445</sup> Submission 25, Injured Workers Support Network, p 1; Submission 23, Industrial Health and Research Foundation t/as Workers Health Centre, p 4.

<sup>446</sup> Evidence, Ms Vicki Pepyat, Injured Worker, Injured Workers Support Network, 6 November 2013, p 35; see also Submission 60, Name suppressed, p 1; see also Evidence, Mr Adam Grumley, Injured Worker and Member, Injured Workers Support Network, 6 November 2013, p 36.

<sup>447</sup> Evidence, Ms Burgess, 6 November 2013, p 40.

<sup>448</sup> Evidence, Mr Grumley, 6 November 2013, p 41.

- 8.26** The Workers Health Centre submission argued that, by operating the way it does, the current insurance system actually creates psychosocial hazards and thereby thwarts rehabilitation and recovery.<sup>449</sup> Ms Burgess pursued this point in evidence:

If we are going to stick with the workers compensation structure we have, then we have to have a compassionate and efficient way to deal with people when they are injured. That is not by avoiding, isolating or abusing them over the phone or cutting off their benefits when they raise issues. That totally defies the idea of rehabilitation and return to work. You will never get people to return to work if they are not supported adequately along the way. Support is not what we see.<sup>450</sup>

- 8.27** Both the Workers Health Centre and the AMWU recommended that WorkCover develop new operational guidelines and directives, in consultation with injured workers and their representatives, regarding the management of injured workers, to ensure that they are treated with dignity and respect.<sup>451</sup> The AMWU further recommended that the operational directives be included into the conditions when contracts or licences next come up for renewal. In addition, it recommended that WorkCover establish a system to prosecute or fine scheme agents or licenced insurers, in cases where they are found to have withheld weekly benefits or authority for medical treatment from injured workers outside of legislated timeframes without reasonable excuse.<sup>452</sup>

## WorkCover's perspective

- 8.28** WorkCover's submission advised that each state and territory's approach to monitoring and enforcing compliance in work health and safety is being driven by a process of national harmonisation. As part of this, WorkCover has adopted the National Enforcement and Compliance Policy, which emphasises not only PCBU's compliance with rules, but also their capacity to continually improve health and safety and injury management. WorkCover stated that within this framework:

Primary responsibility for achieving work health and safety, and developing effective systems and processes that enable work to be healthy and safe and return injured workers to work, lie with the business.

Where businesses knowingly or recklessly fail in their responsibilities, WorkCover will take appropriate enforcement action to protect workers and clearly send the message that the community expects workplaces to be healthy and safe.<sup>453</sup>

- 8.29** Following its public hearing, WorkCover responded to a question that noted participants' views that the focus of the regulator has moved from enforcement towards advice and a pro-employer bias, said to be evidenced in a significant decline in prosecutions. The question asked whether WorkCover sees value in providing statutory independence for inspectors in their role enforcing work health and safety laws, to ensure integrity in application of the law.

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<sup>449</sup> Submission 23, Industrial Health and Research Foundation t/as Workers Health Centre, p 4.

<sup>450</sup> Evidence, Ms Burgess, 6 November 2013, p 41.

<sup>451</sup> Submission 23, Industrial Health and Research Foundation t/as Workers Health Centre, p 10; Submission 30, Australian Manufacturing Workers' Union, p 7.

<sup>452</sup> Submission 30, Australian Manufacturing Workers' Union, p 7.

<sup>453</sup> Submission 32, WorkCover NSW, p 25.

**8.30** WorkCover's response again emphasised that the national harmonisation process has driven the shift in regulatory approach, and suggested that if New South Wales gave statutory independence to inspectors this would involve moving out of this nationally framework.<sup>454</sup>

**8.31** Ms Julie Newman PSM, Chief Executive Officer of WorkCover, noted in evidence a number of strategies that WorkCover is pursuing to improve its customer service in relation to both work health and safety complaints and workers compensation. WorkCover has:

- established a new operating model for customer service that uses technology to stream calls, direct callers to subject matter experts, and facilitate standardisation of response and closure of matters - which will be evaluated via performance measures
- established a customer service charter for the Safety, Return to Work and Support Division
- considered how bullying should be triaged, and whether a specific group should deal with these calls before they are forwarded to the inspectorate
- communicated the customer service framework to scheme agents, who are expected to operate in a similar manner
- drafted a code of conduct, to be put in place by the end of 2014 and written into contracts with scheme agents.<sup>455</sup>

**8.32** WorkCover's submission provided some detail on the new customer service charter:

The [Safety, Return to Work and Support or SRWS] Customer Service Charter supports employees by clearly outlining the service level expectations of the organisation and providing a platform that supports them when dealing with customers.

The charter:

- depicts the standards of service customers can expect,
- advises customers how they can give customer feedback, and
- informs how customers can contact SRWS agencies.

The Customer Service Centre's new operating model also incorporates a customer service quality framework including capability, training and knowledge management support and a new customer feedback and complaints framework for SRWS, improved processes for the customer experience (simplified and more timely) and establishment of clear role accountability and responsibility.<sup>456</sup>

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<sup>454</sup> Answers to questions on notice, Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 6 December 2013, p 15.

<sup>455</sup> *In camera* evidence, Ms Julie Newman PSM, Chief Executive Officer, WorkCover NSW and Safety, Return to Work and Support Division, NSW Government Service, 10 December 2013, p 53. Evidence published by resolution of the committee.

<sup>456</sup> Submission 32, WorkCover NSW, p 8.

## Committee view

- 8.33** The committee is very concerned by the accounts of numerous participants who reported ineffective action by WorkCover in relation to complaints of bullying in workplaces across New South Wales. Just as WorkCover has not grasped the seriousness of bullying within its own organisation, it appears not to have recognised the seriousness of this issue in other workplaces, nor to have taken a sufficiently active role in promoting compliance. We are also very concerned by reports that WorkCover presides over a workers compensation system in which scheme agents and its own staff treat injured workers with disrespect.
- 8.34** In relation to promoting compliance, while we see value in an educative role, we consider that complaints should always be acted upon and investigated where appropriate. While we support early intervention to prevent a problem from escalating, active intervention will always be necessary in some cases. Simply ensuring that an organisation has a policy in place will in many cases be insufficient, and as the experiences of psychologically injured workers documented above attest, does very little to address a problem once it has escalated. In addition, a compliance approach sends a clear message to other workplaces that bullying is wrong.
- 8.35** We were pleased to hear of the strategies that WorkCover is pursuing to improve its customer service, and acknowledge the important work that is being done here. The committee is also encouraged by the development of a code of conduct for its own staff as well as scheme agents, which will be in place by the end of 2014 and written into agents' new contracts. We trust that this will address injured workers' concerns about both WorkCover itself and the scheme agents.
- 8.36** However, this approach will only work if WorkCover properly oversees the scheme agents' behaviours and there are real penalties in place for breaches of the code of conduct. This must include financial penalties in the case of breaches by scheme agents or their staff. Any system for investigating issues raised or complaints made by injured workers must be easy for workers and their representatives to access, and must be fair, simple and independent.

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### Recommendation 9

That WorkCover NSW ensure that the code of conduct for WorkCover and scheme agent staff is enforceable by individual workers and their representatives, and that financial penalties are included as one of the remedies where breaches of the code are established.

### Recommendation 10

That the Minister for Finance and Services take the necessary steps to ensure that complaints against WorkCover NSW staff by injured workers are investigated independently, and that investigations of complaints against scheme agent or WorkCover staff are reviewable by an independent body.

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- 8.37** Turning to the separate issue of addressing workplace bullying, and considering the significant body of evidence received by the committee and the matters contained in paragraphs 3.19 to 3.20, the committee believes that there needs to be specific legislative provisions ensuring all

workers in New South Wales, including injured workers, are protected from workplace bullying.

- 8.38** The committee recognises that not all complaints of workplace bullying are valid, and some reflect reasonable efforts by employers to improve workplace performance. Such actions by employers should not be caught by any new legislation.
- 8.39** Such legislative provisions should incorporate the definition of workplace bullying utilised in the National Occupational Health and Safety Commission's Draft National Code of Practice and set out in paragraphs 3.1 and 3.2 of this report, namely actions which constitute 'repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety and/or causes harm.'

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### **Recommendation 11**

That the Parliament of New South Wales enact laws which protect all workers in the state, including injured workers, from workplace bullying, and that such laws be based on the National Occupational Health and Safety Commission's Draft National Code of Practice.

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- 8.40** In addition, the nature of participants' concerns appears to highlight fundamental issues about the role of inspectors and the effectiveness of the compliance role. It seems clear that issues raised by participants concerning enforcement versus education relate to work health and safety broadly; however, the committee's focus and the recommendations in this report address the psychosocial hazard of bullying.
- 8.41** Looking at the bigger picture, it is quite possible that the culture of some parts of WorkCover is such that bullying is seen as 'too difficult' to investigate or do anything about. Unlike workplace hazards such as asbestos or unsafe building sites, it is not necessarily easily evidenced nor quickly addressed.
- 8.42** People's psychological wellbeing can be profoundly affected by bullying. Moreover, the legislation has ascribed WorkCover a role in promoting compliance in respect of psychological injury, which it has a duty to fulfil. It appears that the shift away from compliance and proactive enforcement towards education and partnership with business may have gone too far, with the effect that WorkCover is not taking sufficient action in relation to workplace bullying. We consider that an independent body would have a valuable role to play in considering this issue and overseeing WorkCover's actions to address bullying in other workplaces, thereby assisting it to find the appropriate balance in regulation, while still operating within the nationally harmonised framework.
- 8.43** In chapter 6 the committee recognised significant value in the establishment of an independent workplace bullying steering panel to oversee WorkCover's actions to address workplace bullying. The current chapter clearly reflects the valid concerns of stakeholders, especially injured workers, about WorkCover's fulfilment of its role as the state regulator of work health and safety in relation to bullying. Taken together with the evidence considered in chapter 6, we consider that the steering panel should oversee WorkCover's actions to address bullying within WorkCover itself and also in workplaces across New South Wales.

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**Recommendation 12**

That the Minister for Finance and Services and the Safety, Return to Work and Support Board establish an independent workplace bullying steering panel to oversee the actions of WorkCover NSW in addressing workplace bullying, both within its own organisation and in other workplaces as the state regulator of work health and safety. The panel must be empowered to require action on its recommendations and sufficiently resourced to perform its role.

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- 8.44** In addition, we believe that there is a role for this committee to continue to oversee the implementation by WorkCover of our recommendations. We are concerned that without continuing oversight, the cultural barriers to improvement we have identified throughout this report will make implementation of necessary change very difficult. The committee intends to conduct a review in late 2014 of WorkCover's implementation of the recommendations in this report.
- 

**Recommendation 13**

That General Purpose Standing Committee No. 1 conduct a review in late 2014 of the implementation of the recommendations of its 2014 report into allegations of bullying in WorkCover NSW.

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## Chapter 9 Public sector wide responses

Our report has focused on the allegations of bullying in WorkCover, including the culture of the organisation and the steps that the Safety Return to Work and Support Division, including WorkCover itself, needs to take to improve that culture. A smaller but important portion of the inquiry considered work across the public sector led by the Public Service Commission to improve prevention of and responses to bullying in state government agencies. We note at the outset that the Commission's role in leading the strategic development and management of the government sector workforce means that the policies and guidelines that it sets in place, as well as the organisational values that it prioritises, will set the standards to which WorkCover must comply.

As we stated in previous chapters, it is vitally important that employees have faith in the system for responding to complaints of bullying, including where appropriate, through investigations.

This chapter considers: the Bullying Roundtable initiated by the Public Service Commissioner and comprised of key public sector stakeholders; the new framework that the Roundtable will develop for bullying prevention, response and investigations; improved guidelines for investigations overseen by the Commission itself; and other measures.

### Background

- 9.1** As noted in chapter 3, the Public Service Commission's *People Matter Employee Survey 2012* found that across the public sector as a whole, 48 per cent of respondents indicated that they had witnessed bullying at work in the last 12 months, while 29 per cent reported having personally experienced bullying during that period.
- 9.2** The committee notes that the second People Matter Survey has recently taken place and will enable valuable comparisons between now and two years ago. The committee was advised that the 2014 survey includes additional questions on bullying to assist the interpretation of responses.<sup>457</sup>
- 9.3** In chapter 4 the committee documented its examination of matters raised in a submission to the inquiry concerning allegations of bullying against a former senior employee of WorkCover. There we noted that Mr Graeme Head, the Public Service Commissioner, who initiated an investigation of the allegations following a public interest disclosure, advised the committee that a number of lessons had been learned from the experience, first in relation to investigations and second, in relation to the communication that occurs with individuals involved in those investigations (see paragraph 4.63). Greater detail on this work is set out in the following sections.
- 9.4** First appearing before the committee in December 2013, the Commissioner informed us that the Public Service Commission itself has a view that the processes that are attached to both prevention and investigation of bullying complaints need quite a significant overhaul.<sup>458</sup>

<sup>457</sup> Answers to questions on notice, Mr Graeme Head, Public Service Commissioner, 27 March 2014, p 7.

<sup>458</sup> *In camera* evidence, Mr Graeme Head, Public Service Commissioner, 10 December 2013, p 21. Evidence published by resolution of the committee.

9.5 Mr Head advised the committee that the framework for bullying investigations used by all public sector agencies, whether in-house or outsourced to an independent organisation, needs to be improved so that all who undertake investigations apply that framework properly. He proposed that this will provide greater clarity of process and enable issues to be resolved speedily and satisfactorily, ensuring that people can have faith in the process.<sup>459</sup>

## Bullying Roundtable

9.6 Mr Head indicated that he has convened a Bullying Roundtable, which first met in January 2014. The Commissioner advised that the aims of the Roundtable are as follows:

- Identify the major risk factors associated with bullying in public sector workplaces at both a system and workplace level by improving the quality of information about the incidence and experience of bullying. Use this information and current research to develop guidance around strategies which work in terms of preventing and managing the risks associated with workplace bullying.
- Identify the key elements which contribute to workplace cultures which have low levels or are free of workplace bullying. This should include consideration of system and workplace culture in order to promote cultural change at all levels.
- Assess and review current strategies for dealing with complaints of workplace bullying. This should include consideration of the fact that 81 per cent of the respondents to the *People Matter Survey* who reported they had been bullied in the last 12 months had not complained.
- Identify good practice and develop improvements and/or alternatives to current practice which emphasise sustainable working relationships between the people involved and maintaining safe workplaces.
- Consider how the investigation of complaints of workplace bullying can be improved to ensure that both complainants and respondents are treated fairly. In addition consider improved and standardised approaches to investigating complaints across the sector including complaints of misconduct.<sup>460</sup>

9.7 The Roundtable consists of public sector leaders invited by the Commissioner and employee representatives nominated by the Secretary of Unions NSW.

9.8 Alongside the Public Service Commissioner, other participants are the Secretary of the Department of Finance and Services, Unions NSW, the Office of Industrial Relations, the Public Service Association, Health Services Union, Teachers' Federation and Nurses and Midwives Association. In addition, external experts will assist the Roundtable as required.<sup>461</sup>

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<sup>459</sup> *In camera* evidence, Mr Head, 10 December 2013, p 22.

<sup>460</sup> Correspondence from Mr Graeme Head, Public Service Commissioner, to Principal Council Officer, 29 May 2014, Attachment 1, p 1.

<sup>461</sup> Answers to questions on notice, Mr Head, 27 March 2014, p 6.

- 9.9 The Commissioner further advised that the Bullying Roundtable will meet regularly and report by September 2014. In its report the Roundtable will consider the most appropriate ongoing structure to monitor the impact of its work.<sup>462</sup>

### Framework to address bullying across the public sector

- 9.10 A key priority for the Bullying Roundtable is to develop a new framework for dealing with bullying across the NSW public sector. The committee understands that this will include guidelines for agencies on the appropriate internal processes for handling complaints about bullying. A key aim is 'to ensure that there is a consistent, best-practice approach to investigation of complaints about bullying deployed across the entire sector.'<sup>463</sup>
- 9.11 In evidence, the Commissioner also stressed a focus on prevention, stating that, 'The focus of that work is very squarely on two things: how do you prevent this from happening and when it is happening, how do you properly assess the issues and get the right course of action?'<sup>464</sup>
- 9.12 Emphasising the need for a less adversarial approach, Mr Head argued that significant effort needs to go into early intervention. The Commissioner said that employees must understand how to make a complaint, and that those to whom complaints are made must understand and be supported to handle the matters properly. He suggested that, 'a lot of what we see in these investigations are preventable disputes where early action and good faith discussions with people would have avoided the adversarial nature of the process'.<sup>465</sup> The Commissioner later observed that often an agency's first response is to be 'risk averse' and assume that there is going to be a complaint made of a different type unless they act, so they proceed straight to a formal investigation.<sup>466</sup>
- 9.13 Where investigations do need to occur, the Commissioner was clear that he is seeking from the new framework a robust and fair process that provides a solid basis for action:

But whether or not something is being investigated internally or by an external contractor, there should be a quality assured framework that means that the investigation is fair, it is properly conducted and the matters that are found to [have] stood up in an investigation can be acted upon.<sup>467</sup>

### Guidelines for investigations by the Public Service Commission

- 9.14 Mr Head also advised that the Commission has improved its own processes, having learned from the investigation discussed in chapter 4. As noted previously, this investigation was referred a matter of days after the Commission was established. He told the committee that the Commission now has a set of formal guidelines for the investigations that it conducts or

<sup>462</sup> Answers to questions on notice, Mr Head, 27 March 2014, p 6.

<sup>463</sup> Answers to questions on notice, Mr Head, 27 March 2014, p 6.

<sup>464</sup> *In camera* evidence, Mr Graeme Head, Public Service Commissioner, 8 April 2014, p 28. Evidence published by resolution of the committee.

<sup>465</sup> *In camera* evidence, Mr Head, 10 December 2013, p 33.

<sup>466</sup> *In camera* evidence, Mr Head, 8 April 2014, pp 25-26.

<sup>467</sup> *In camera* evidence, Mr Head, 10 December 2013, p 30.

oversees, that deal with every aspect of an investigation including record keeping and communication with stakeholders. The guidelines cover the Commissioner's use of the broad inquiry powers provided under the *Government Sector Employee Act 2013*.

**9.15** The guidelines also provide linkages to the investigations frameworks of other relevant agencies, that is, the Ombudsman's Office (for example in investigations arising from protected disclosures) and the Independent Commission Against Corruption.<sup>468</sup>

**9.16** In light of the need for better communication with participants in an investigation, as shown in chapter 4, the committee sought an assurance from the Commissioner that this would be provided for in the guidelines, and this assurance was given.<sup>469</sup> The guidelines, which were in draft form in April 2014, will be adopted as general policy of the Public Service Commission Advisory Board, thereby requiring compliance by the Commission.<sup>470</sup>

## Other measures

**9.17** The committee notes a number of other measures have been instituted by the Public Service Commission that are also relevant to the issue of bullying in public sector workplaces.

- In 2012, following the first People Matter Survey, the Commissioner issued a direction to all agency heads to examine what measures they have in place to understand bullying that is occurring in their workplace, to prevent it and to take action against it.<sup>471</sup>
- The Performance Development Framework released in June 2013 was in part intended to re-establish the basis for effective discussions between supervisors and staff around performance and prevent legitimate concerns escalating into an adversarial discussion.<sup>472</sup>
- The shift towards capability based assessment was designed in part ensure that supervisors have the interpersonal skills to perform their role well, through a focus on leadership measures and accountability.<sup>473</sup>

## Committee view

**9.18** The committee is pleased that valuable lessons have been learned from the individual matter pursued by the committee, and that these lessons are informing the Public Service Commissioner's work to improve the prevention of bullying, and responses to it, including investigations, across the public sector. We agree with the Commissioner's position that the present processes for prevention and investigation of bullying complaints are in need of a significant overhaul, and we are pleased that our inquiry has assisted this work to take a high priority through the Commission's establishment of the Bullying Roundtable.

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<sup>468</sup> *In camera* evidence, Mr Head, 8 April 2014, p 28.

<sup>469</sup> *In camera* evidence, Mr Head, 8 April 2014, p 3.

<sup>470</sup> *In camera* evidence, Mr Head, 8 April 2014, p 3.

<sup>471</sup> *In camera* evidence, Mr Head, 10 December 2013, p 29.

<sup>472</sup> *In camera* evidence, Mr Head, 10 December 2013, p 31.

<sup>473</sup> *In camera* evidence, Mr Head, 10 December 2013, p 34.

- 9.19** On a different note, we register our disappointment that the opportunity was missed to address the problem of bullying in WorkCover following the 2011 PricewaterhouseCoopers (PwC) inquiry. Given that the Department of Premier and Cabinet (DPC) auspiced that inquiry, we consider it reasonable that DPC would have assumed greater stewardship over WorkCover's implementation of the PwC recommendations. Instead, WorkCover's efforts evaporated and the problem continued. Even if this was not DPC's responsibility, it raises the question of who in government ensures greater accountability when an agency is struggling with a problem as significant as this.
- 9.20** More positively, the work being undertaken by the Bullying Roundtable, including the framework being developed, appears to be informed by the work health and safety approach that emphasises prevention and seeks to avoid grievances, which Dr Carlo Caponecchia, a Senior Lecturer at the University of New South Wales, and other inquiry participants emphasised as best practice and wholly desirable in this area.
- 9.21** We welcome this important work and the way that it is progressing in partnership with key stakeholders. The committee is very hopeful that this framework will enable better prevention of bullying and earlier resolution of complaints. We also trust that it will ensure that where investigations are necessary, they are conducted in a consistent, fair and robust manner to ensure that, in particular, those who are bullied receive a satisfactory outcome. It is imperative that once in place, the framework is complied with, so that employees can have faith that the system will work effectively when they raise issues of bullying, whether by more senior officers or others at any level of an organisation. Over time, such a framework has the potential to play a significant role in changing the culture of public sector agencies including WorkCover.
- 9.22** Indeed, the committee notes that much of the work by the Commission and the Bullying Roundtable will be of direct benefit to WorkCover as it grapples with its culture and processes and puts in place the changes that need to occur as it moves forward.



## Appendix 1 Submissions

No	Author
1	Mr John McPhilbin
2	Name suppressed
3	Name suppressed
3a	Name suppressed
4	Confidential
5	Name suppressed
6	Mr Gregory Lynch – partially confidential
7	Confidential
8	Name suppressed
9	Name suppressed
10	Name suppressed
11	Name suppressed
12	Confidential
13	Home Loan Experts
14	Confidential
15	Mr Colin Fraser – partially confidential
16	Name suppressed
17	Ms Vicki Pepyat – partially confidential
18	Confidential
19	Confidential
20	Public Service Association of NSW
21	Confidential
22	Name suppressed
23	Workers Health Centre
24	Dr Carlo Caponecchia
25	Injured Workers Support Network
26	Mr Gary Fuchs
27	Dr Howard Bell – partially confidential
28	Confidential
28a	Confidential
29	Community & Public Sector Union, Victorian Branch
30	NSW Australian Manufacturing Workers Union

<b>No</b>	<b>Author</b>
31	Name suppressed
32	WorkCover NSW
33	Dr Robert Kenyon
34	Name suppressed
35	Confidential
36	Confidential
37	Confidential
38	Confidential
39	Confidential
40	Confidential
41	Confidential
42	Confidential
43	Confidential
44	Confidential
45	Confidential
46	Name suppressed
47	Confidential
48	Name suppressed
49	Maurice Blackburn Pty Limited
50	Confidential
51	Confidential
52	Name suppressed
53	Confidential
54	Confidential
55	Confidential
56	Confidential
56a	Confidential
57	Confidential
58	Name suppressed
59	Confidential
60	Confidential
61	Name suppressed
62	Confidential
63	Name suppressed
64	Name suppressed

<b>No</b>	<b>Author</b>
65	Confidential
66	Unions NSW
67	Name suppressed
68	Confidential
68a	Confidential
69	Confidential
70	Confidential
71	Confidential
72	Confidential
73	Mr Phillip Cantrell
73a	Mr Phillip Cantrell
74	Mr Russell Ashley – partially confidential
75	Mr William Steenson – partially confidential
76	Name suppressed
77	Confidential
78	Confidential
79	Confidential
80	Ms Jodie Miller – partially confidential
81	Name suppressed
82	Confidential
83	Mrs Deborah Martens – partially confidential
84	Name suppressed
85	Confidential
86	Confidential
87	Ms Heather Jackson – partially confidential
88	Name suppressed
89	Mrs Diana Simpkins – partially confidential
90	Name suppressed
90a	Name suppressed
91	Ms Kathy Quinlan – partially confidential
92	Name suppressed
93	Confidential
94	Some members of the Psychological Wellbeing Subcommittee of the Safety, Return to Work and Support Division Health and Safety Committee
95	Confidential

<b>No</b>	<b>Author</b>
96	Name suppressed
97	Confidential
98	Mr Wayne Butler

## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>	
<b>Wednesday 6 November 2013</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Dr Carlo Caponecchia	Senior Lecturer, Faculty of Science, University of New South Wales	
	Mr Colin Fraser	Delegate, Public Service Association of NSW	
	Ms Jann Jeffries	Industrial Officer, Public Service Association of NSW	
	Mr Ian Tuit	Delegate, Public Service Association of NSW	
	Mr Steve Turner	Assistant General Secretary, Public Service Association of NSW	
	Ms Michelle Burgess	Director, Workers Health Centre	
	Ms Janet Chan	Advocate for preventing workplace bullying, Injured Workers Support Network	
	Mr Adam Grumley	Coordinator, Injured Workers Support Network	
	Mr David Henry	WHS Officer, Australian Manufacturing Workers' Union	
	Ms Vicky Pepyat	Injured worker	
	Ms Omeima Sukkarieh	Support person, Australian Manufacturing Workers' Union	
	<b>Wednesday 6 November 2013</b> <b><i>In camera</i> hearing</b>	Witness A	Individual
		Dr Howard Bell	Individual
<b>Monday 11 November 2013</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Mr Shay Deguara	Industrial Officer, Unions NSW	
	Mr Mark Morey	Deputy Assistant Secretary, Unions NSW	
	Ms Mary Yaager	Executive Officer, Unions NSW	
	Mr Greg Barnier	Chief Human Resources Officer, People and Culture Group, Safety Return to Work and Support Division, NSW Government Service	
	Ms Julie Newman PSM	Chief Executive Officer, WorkCover NSW and Safety Return to Work and Support Division, NSW Government Service	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr John Watson	General Manager, Work Health and Safety Division, WorkCover NSW, NSW Government Service
	Mr Michael Carapiet	Chair, Safety, Return to Work and Support Board
<b>Monday 11 November 2013</b> <i>In camera</i> hearing	Mr Michael Carapiet	Chair, Safety, Return to Work and Support Board
<b>Tuesday 10 December 2013</b> <i>In camera</i> hearing	Witness C	Individual
	Mr Graeme Head	Commissioner, Public Service Commission
	Mr Mark Lennon	Member, Safety, Return to Work and Support Board
	Mr Greg Barnier	Chief Human Resources Officer, People and Culture Group, Safety Return to Work and Support Division, NSW Government Service
	Ms Julie Newman PSM	Chief Executive Officer, WorkCover NSW and Safety Return to Work and Support Division, NSW Government Service
<b>Tuesday 8 April 2014</b> <i>In camera</i> hearing	Mr Graeme Head	Commissioner, Public Service Commission
	Mr Stephen Horne	Managing Director and Chief Executive Officer, Internal Audit Bureau

## Appendix 3 Tabled documents

### Wednesday 6 November 2013

#### Macquarie Room, Parliament House

- 1 Copy of a letter from Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Mr Graeme Head, Public Service Commissioner, attaching a report detailing actions to understand and address bullying in the Safety, Return to Work and Support Division, tendered by Mr Ian Tuit, Delegate, Public Service Association of NSW.
- 2 Public Service Commission, People Matter Employee Survey 2012: Agency report for Compensation Authorities Staff Division, tendered by Mr Ian Tuit, Delegate, Public Service Association of NSW.

### Wednesday 6 November 2013

#### *In camera* hearing

- 3 Additional material, tendered by Dr Howard Bell, individual.

### Monday 11 November 2013

#### Macquarie Room, Parliament House

- 4 Safe Work Australia, Strategic Issues Group on WHS, Meeting 09, Friday 27 September 2013, Draft Minutes, tendered by Mr Shay Deguara, Industrial Officer, Unions NSW.
- 5 Letter from Ms Christine Laing, Right to Information, WorkCover Authority of NSW, to Ms Kate Minter, Unions NSW, providing information in response to a request under the *Government Information (Public Access) Act 2009*, tendered by Mr Shay Deguara, Industrial Officer, Unions NSW.

## **Appendix 4 Answers to questions on notice and supplementary questions**

The Committee received answers to questions on notice from:

- Dr Carlo Caponecchia, Senior Lecturer, Faculty of Science, University of New South Wales
- Witness A
- Dr Howard Bell
- Australian Manufacturing Workers' Union
- Injured Workers Support Network
- WorkCover NSW
- Unions NSW
- Public Service Association of NSW
- Public Service Commission.

These answers to questions on notice are published on the committee's webpage.

## Appendix 5 Procedural documents



LEGISLATIVE COUNCIL

GENERAL PURPOSE STANDING COMMITTEE NO. 1

27 March 2014

Our Ref: D14/06815

Ms Julie Newman PSM  
 CEO Safety, Return to Work and Support  
 WorkCover Authority of NSW  
 Locked Bag 2906  
 Lisarow NSW 2252

Dear Ms Newman

### **Inquiry into allegations of bullying in WorkCover NSW**

Thank you for your letter of 12 March 2014 responding to the Committee's requests for a detailed rationale for withholding certain documents from the Committee, or requesting the Committee to keep certain information confidential.

Your letter notes that one of the challenges you have faced in seeking to respond to the Committee's requests for information are your obligations under the *Privacy and Personal Information Protection Act 1998* (presumably section 18). Your letter also cites Crown Solicitor's advice disputing the power of Legislative Council committees to order the production of documents.

The Committee resolved that I write to you to clarify the Legislative Council's position on the common law with regard to statutory secrecy provisions and orders for papers.

As already stated in our letter of 26 February 2014, a number of NSW statutes contain secrecy or non-disclosure provisions that make the disclosure of particular information an offence. However, it has been repeatedly found at law, and the Legislative Council strongly asserts, that parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words. As the Parliament's powers are not expressly excluded by the PPIP Act, privilege overrides the disclosure prohibitions in the Act. Please refer to *New South Wales Legislative Council Practice* at pages 512-516 if you require further information regarding the application of statutory secrecy provisions to

Parliament House  
 Macquarie Street Sydney  
 NSW 2000 Australia

Telephone (02) 9230 3586  
 Facsimile (02) 9230 2761  
 gpenco1@parliament.nsw.gov.au

parliament.<sup>1</sup> This position is also supported by two separate legal advices from Brett Walker SC to the Clerk of the Legislative Council in 2000 and 2012.<sup>2</sup>

We therefore reject your rationale for not providing certain information to the Committee on the grounds of the non-disclosure provisions of the PPIP Act.

Your letter of 12 March also cites Crown Solicitor's advice disputing the power of parliamentary committees to order the production of documents, the implication being that WorkCover would only provide documents ordered by the House.

The Legislative Council strongly asserts that committees possess a common law power to order documents, if it is necessary in the context of a particular inquiry. Clear authority for this position can be found in *Attorney-General (Canada) v MacPhee* and in the absence of countervailing authority, is the authoritative statement of the common law in this area. As Cheverie J observed:

It is my conclusion the Legislative Assembly of Prince Edward Island has the power to summon witnesses and order them to produce documents. This power is constituted by virtue of the fact it is an exercise of inherent parliamentary privilege. The Committee of the House is an extension of the House and possesses the same constitutional power to summon witnesses and order them to produce documents.<sup>3</sup>

A comprehensive discussion of the power of committees to order State papers can be found in *New South Wales Legislative Council Practice* at pages 538-542.

The Committee is frustrated that despite indicating your eagerness to assist the Committee with its important work, you are withholding certain information inappropriately. For example:

- In answers to questions on notice received on 6 February 2014, you provided a redacted copy of the letter from ICAC referring the Wayne Butler investigation, noting that ICAC did not consider WorkCover to be under any obligation to maintain confidentiality regarding the letter. Nevertheless, you redacted certain information on the basis that it was not relied on by WorkCover in the IRC proceedings nor in WorkCover's decision to terminate Mr Butler's employment and that the allegation had not been made public.
- On 26 February 2014 the Committee asked for an unredacted copy of the letter of referral. WorkCover provided the letter, acknowledging its erroneous belief that the allegation that had previously been redacted was already in the public domain. A simple check of the Industrial Relations Commission decision would have revealed that the allegation was already in the public domain and this check should have been done as soon as WorkCover received the release from ICAC on 5 December 2013. Indeed, one would have thought senior WorkCover staff would have already been very familiar with the details of the IRC decision.

The Committee is disappointed with your failure to cooperate fully with our requests for information which is essential if the Committee is to thoroughly explore the inquiry terms of reference. I need to advise you that it is likely that the Committee's disappointment will be noted in its report.

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<sup>1</sup> The principle authority is a decision of the House of Lords in *The Duke of Newcastle v Morris* (1870) LR 4 HL 661

<sup>2</sup> A copy of these opinions has been appended to a GPSC No 4 Budget Estimates 2012-2013 report which can be accessed from the Parliament's website at:

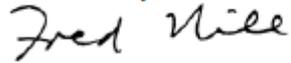
<http://bulletin/Prod/parliament/committee.nsf/0/13C7B07D072CEFC9CA257AC500816685>

<sup>3</sup> *Attorney-General (Canada) v MacPhee* (2003) 661 APR 164 at 182.

As the Independent Commission Against Corruption has provided the Committee with a full copy of the interim and final reports of the Madden investigation and the letter of referral, on 'public interest' grounds, we have decided not to press the matter, notwithstanding our undoubted power to do so.

If you have any further questions, please call the Committee Director, Madeleine Foley on 9230 3586.

Yours sincerely

A handwritten signature in cursive script that reads "Fred Nile".

Revd the Hon Fred Nile MLC  
Chairman



LEGISLATIVE COUNCIL

COMMITTEE OFFICE

**MEMORANDUM**

To	Members, General Purpose Standing Committee No 1
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From	David Blunt, Clerk of the Parliaments
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Subject	Response to recent correspondence from WorkCover NSW
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Date	23 May 2014
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TRIM reference	D14/13037
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**PURPOSE**

The members of GPSC No 1 have asked me to comment on certain procedural matters raised in correspondence from Ms Julie Newman, the CEO of the Safety, Return to Work and Support Division of WorkCover, dated 10 April 2014 (attachment A).

**BACKGROUND**

The committee has written to WorkCover on two recent occasions regarding WorkCover's response to the committee's requests for particular information and the publication of their evidence.

In its letter of 26 February 2014, the committee asked Ms Newman why she wanted to keep some of her evidence confidential and why she would not provide certain information as requested (attachment B). In her response of 12 March 2014 Ms Newman advised that while she wanted to cooperate fully with the committee, she was bound by Crown Solicitor's advice which indicated that WorkCover risked breaching the non-disclosure provisions of the *Privacy and Personal Information Protection Act* or the *Independent Commission Against Corruption Act* if she provided this information voluntarily. As this advice also disputed the power of Legislative Council committees to compel the production of state papers (unless conferred by statute) Ms Newman felt she was unable to meet the committee's requests to provide certain material (attachment C).

The committee responded to this letter on 27 March 2014, expressing its dissatisfaction with WorkCover's failure to fully cooperate with its requests for information throughout the inquiry (attachment D).<sup>1</sup> In her response of 10 April 2014, Ms Newman reiterated and expanded on the reasons referred to in her earlier correspondence for not acceding to the committee's requests.

I understand that members were particularly frustrated by the letter of 10 April on the grounds that it exemplified WorkCover's legalistic approach to the inquiry to date, when a more 'commonsense' approach would have been more appropriate and constructive. Members also perceived WorkCover's response to demonstrate a serious disregard for the Council's role in scrutinizing the executive.<sup>2</sup>

<sup>2</sup> Email correspondence from the Hon Catherine Cusack to the Committee, 11 April 2014.

The committee therefore asked that both clerks be apprised of the matters raised in this correspondence and so I will take the opportunity to discuss these issues with the Clerk of the Legislative Assembly, Ms Ronda Miller, at the first opportunity.

## RESPONSE

As members would be aware, WorkCover is not the first government agency to dispute the power of committees to seek information about matters covered by statutory non-disclosure provisions or to call for state papers.

To cite a recent example, during the 2012-2013 GPSC No 4 Budget Estimates inquiry, the Deputy Police Commissioner refused to answer certain questions due to perceived constraints imposed by the statutory secrecy requirements in the Police Integrity Commission and Crime Commission Acts.<sup>3</sup>

In regards to orders for papers, while there was a growing body of precedent between 1999 and 2003 of documents being provided in response to a formal order by a committee, by 2004 these orders were increasingly resisted by the government, on Crown Solicitor's advice. It would appear the Crown Solicitor accepts the undoubted power of the House to order state papers, but disputes that this power is delegable to its committees.<sup>4</sup>

The committee's letters of 26 February 2014 and 27 March 2014 clearly outline the Legislative Council's position on these matters and there is no need to reiterate those arguments here. However I would like to take the opportunity to address two specific issues raised in Ms Newman's letter of 10 April, the first of which as far as I am aware, has not been raised by the government when similar disputes have arisen previously. These issues are: the relevance of *Attorney-General (Canada) v McPhee* (2003) 661 APR 164 to the power of committees to order state papers, and the relationship between non-disclosure provisions and parliamentary privilege.

### Committee orders for papers and the relevance of *Attorney-General (Canada) v McPhee*

In its most recent correspondence, the committee cited the case of *Attorney-General (Canada) v McPhee* (2003) 661 APR 164. This case goes precisely to the power of committees of a Canadian provincial legislature to order documents. As Cheverie J observed:

It is my conclusion the Legislative Assembly of Prince Edward Island has the power to summon witnesses and order them to produce documents. This power is constituted by virtue of the fact it is an exercise of inherent parliamentary privilege. The Committee of the House is an extension of the House and possesses the same constitutional power to summon witnesses and order them to produce documents.<sup>5</sup>

*Attorney-General (Canada) v McPhee* (2003) is an authoritative statement of the common law in this area and I am not aware of any similar case law in Australia. However, as can be seen from the following excerpt from Ms Newman's letter of 10 April 2014, the Crown Solicitor has a very different view on its relevance:

Whether or not the decision in *Attorney-General (Canada) v McPhee* (2003) 661 APR 164 reached the correct conclusions about the powers of the Legislative Assembly of Prince Edward Island, the sources of parliamentary privilege in this state are limited to:

<sup>3</sup> GPSC No 4, Budget Estimates 2012-2013, Report 26, November 2012pp1-2

<sup>4</sup> GPSC 1 Budget Estimates hearing 17 Nov 2008, 2004 Orange Grove Inquiry, 2011 Gentrader

<sup>5</sup> *Attorney-General (Canada) v McPhee* (2003) 661 APR 164 at 182.

- Such powers and privileges as are implied by reasonable necessity; and
- Express statutory sources.

It is difficult to see how the Crown Solicitor could deny the relevance of Canadian case law to NSW. That colonial legislatures in Westminster systems in Canada, Australia and elsewhere share certain inherent powers is unambiguously expressed by the former Chief Justice of the Canadian Supreme Court, Lamer J in the leading case on parliamentary privilege in Canada, *New Brunswick Broadcasting Co v Nova Scotia* [1993] 1 R.C.S.:

In the colonial legislatures in Canada and elsewhere, parliamentary privileges were derived from common law or statute law. In common law, such legislatures were held to have certain inherent powers simply by virtue of their creation. It was not accepted, however, that those powers were as extensive as those of the Houses of Parliament in the United Kingdom simply because they were bodies with analogous functions.<sup>6</sup>

As has been expressed many times in the past, the powers of the Houses of the New South Wales Parliament rest on the principle, first established by the Privy Council in *Kielley v Carson* in 1842, that independent former colonial legislatures deriving their authority from Imperial statutes, such as the Parliament of New South Wales, have only such powers and immunities as were 'necessary for the existence of such a body, and the proper exercise of the functions which it is intended to execute'. The same foundation of privilege applies in former colonial legislatures in Canada.

In my view the Crown Solicitor's opinion on the relevance of this case is unsupportable. While it may be true that this case would not be binding on a court in NSW, given the powers of the Legislative Assembly of Prince Edward Island are drawn from the same principle of reasonable necessity as those of the NSW Parliament, it is nevertheless persuasive. Whether the court came to the correct conclusion may be in dispute however the relevance of the case should not be dismissed.

#### **Non-disclosure provisions and parliamentary privilege**

As noted in the committee's letter of 27 March 2014, the Legislative Council asserts that parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words. Therefore, the committee does not accept that the non-disclosure provisions in the *Privacy and Personal Information Protection Act* or the *Independent Commission Against Corruption Act* precluded WorkCover from providing certain information as requested.

This view is clearly not shared by the Crown Solicitor, as noted in Ms Newman's letter of 10 April 2014. The Crown Solicitor argues that in the absence of express statutory power, committees have no implied power to require the production of documents and so any production in response to a request from a committee would be voluntary. There is nothing new in this argument: the Crown Solicitor has advised agencies against disclosing information captured by secrecy provisions to parliamentary committees since at least 1988.<sup>7</sup>

It is well established at common law that statutes which limit or extend common law rights must be clearly expressed and unambiguous. The principal authority for this position is the decision of the House of Lords in *The Duke of Newcastle v Morris*, in which the Lord Chancellor, Lord Hatherley, observed:

<sup>6</sup> *New Brunswick Broadcasting Co v Nova Scotia* [1993] 1 R.C.S. pp345-346

<sup>7</sup> Lovelock and Evans, *New South Wales Legislative Council Practice*, Federation Press, 2008 pp513

It seems to me that a more sound and reasonable interpretation of such an Act of Parliament would be, that the privilege which had been established by Common Law and recognised on many occasions by Act of Parliament, should be held to be a continuous privileges not abrogated or struck at unless by express words in the statute ...<sup>8</sup>

On this matter, I note the recent legal opinion provided by the New South Wales Solicitor General and Ms Mitchelmore of Counsel dated 9 April 2014 (tabled in the Legislative Council on 6 May) which observed that it is reasonably clear that authorities such as Odgers, the Commonwealth Attorney-General and Solicitor General, and Mr Bret Walker SC take the view that statutory non-disclosure provisions could only affect the powers of parliament by express reference or necessary implication. The New South Wales Solicitor General and Ms Mitchelmore went on to state that 'We are inclined to agree that this view accords with the role of Parliament in a system of responsible and representative government, although the matter can hardly be free from doubt ...'<sup>9</sup>

At a more practical level, if parliamentary privilege were ever to be read down other than by express statutory enactment or necessary implication, there is no end to the legislative provisions that could be interpreted or claimed as the occasion may suit as limiting the powers of the House and its committees to obtain information.

Members may also be interested in legislative reform in Queensland regarding this issue. In the late 1990s, during a period of significant constitutional reform in that state, the Legislative Assembly Members' Ethics and Parliamentary Privileges Committee noted several instances where the presumption in favour of parliamentary privilege, which has been established by 'high authority', was challenged on a number of occasions. The committee recommended amending the *Constitution Act 1867* to ensure this important principle was upheld by the courts.<sup>10</sup> Following further examination of this issue by the Legal, Constitutional and Administrative Review Committee,<sup>11</sup> a new provision (13B) was inserted into the *Acts Interpretation Act 1954* to enshrine the legal presumption in favour of the powers, rights and immunities of the Legislative Assembly:

**13B Acts not to affect powers, rights or immunities of Legislative Assembly except by express provision**

(1) An Act enacted after the commencement of this section affects the powers, rights or immunities of the Legislative Assembly or of its members or committees only so far as the Act expressly provides.

(2) For subsection (1), an Act affects the powers, rights or immunities mentioned in the subsection if it abolishes any of the powers, rights or immunities or is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.

(3) In this section—

*rights* includes privileges.

<sup>8</sup> *The Duke of Newcastle v Morris* (1870) LR 4 HL 661 at 668

<sup>9</sup> The Solicitor General (Mr Sexton SC) and Ms Mitchelmore, 'Question of Powers of Legislative Council to Compel the Production of Documents from Executive', 9 April 2014, p 8

<sup>10</sup> Queensland Legislative Assembly Members' Ethics and Parliamentary Privileges Committee Report 26, January 1999, pp19-20 <http://www.parliament.qld.gov.au/documents/committees/ETHICS/1998/Powers-of-LA/Report26.pdf>

<sup>11</sup> Legal, Constitutional and Administrative Review Committee, Consolidation of the Queensland Constitution, Report No 13, April 1999, p 18

The merits and disadvantages of such a legislative response to these sorts of issues would need to be very carefully considered before being pursued. However, the Queensland response is indicative of a parliament's determination to not acquiesce in challenges to its powers.

**CONCLUSION**

As Ms Newman noted in her most recent correspondence, in retrospect she should have consulted the Independent Commission Against Corruption or checked the public record of a particular case in the Industrial Relations Commission before responding to the committee's requests for certain information. By relying almost exclusively on legal advice WorkCover has made it more difficult for the committee to access information necessary for its inquiry.

The executive will most likely continue to disagree with the Legislative Council on the inherent powers of the parliament and its committees, at least until these matters are clarified in the courts. In the meantime, it is important for members to continue to assert the Council's position regarding the powers that are reasonably necessary for it to make laws, conduct inquiries and hold the executive to account.

If you have any further questions in relation to this matter, I can be contacted on 9230 2323.

Yours sincerely



David Blunt  
Clerk of the Parliaments



RECEIVED

8 NOV 2013

Received by me, 4-04pm  
  
 A1739467

Ms Madeleine Foley  
 Clerk to the Committee  
 General Purpose Standing Committee No 1  
 Legislative Council  
 Parliament House  
 Macquarie Street  
 SYDNEY NSW 2000

**CONFIDENTIAL**

Dear Ms Foley

**Inquiry into allegations of bullying in WorkCover NSW**

I refer to your letter of 7 November 2013 (Ref No D13/32226).

Following receipt of your letter, I sought urgent legal advice from the Crown Solicitor in order to be satisfied, given the matters I raised in my letter of 21 October 2013, whether or not it would be lawful for me to produce the documents requested.

I obtained advice from the Crown Solicitor in conference on 7 November 2013. I am advised that:

1. Standing Order 208(c) is invalid to the extent, if any, that it purports to authorise the Committee to compel a person such as me to produce documents to it.
2. Section 15(1)(a) of the *Constitution Act 1902* relevantly permits the Legislative Council to prepare and adopt standing orders regulating the "orderly conduct" of the Legislative Council. This is accepted as being confined to regulating matters involving the internal management of the House, and not to extend to a power to deal with persons outside of the House<sup>1</sup>.
3. A standing order which purports to authorise a committee to compel a person who is not a member of the House to produce documents would not be a standing order authorised by s. 15(1) of the *Constitution Act*.
4. The expression "send for and examine persons, papers, records and things" in Standing Order 208(c) may not in fact be a purported conferral of power on a committee, but may only indicate the range of activities intended to be pursued, in accordance with whatever power is lawfully available. (The power of committees to "send" for and examine persons, for example, is actually conferred by the *Parliamentary Evidence Act 1901*. Certain committees established by statute have powers to require the production of documents<sup>2</sup>.)
5. It is not reasonably necessary for the exercise of its functions that the Legislative Council has power to compel production of State papers (or any

<sup>1</sup> See *Crick v Harnett* (1907) 7 SR (NSW) 126, and Twomey, A. *The Constitution of New South Wales*, Federation Press, 2004, at p. 470.

<sup>2</sup> See for example sections 31G, 31H of the *Ombudsman Act 1974*.

Integrity, Trust,  
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other documents) from persons other than Ministers. (The High Court in *Egan v Willis* (1998) 195 CLR 424 made it plain it did not consider this question.<sup>3</sup>)

6. Even if a Standing Order, which must be approved by the Governor, could be treated as a delegation or conferral of power by the House, the Legislative Council could not purport to delegate to, or confer upon, a committee a power the House itself does not possess.

While I would like to assist the Committee with its Inquiry, I am only able to provide the documents sought if I am under a lawful requirement to do so. Having regard to the advice provided to me I cannot conclude I am subject to a lawful requirement to do so and, regretfully, I decline to produce the documents. I trust you will understand my position.

Yours sincerely



Graeme Head  
Public Service Commissioner

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<sup>3</sup> The relevant citations from the decision of the High Court (and the Court of Appeal) are referred to by Twomey at pp. 518-519 note 207.

## Appendix 6 Minutes

### Minutes No. 22

Thursday 27 June 2013

General Purpose Standing Committee No. 1

Members' Lounge, Parliament House, 4.00 pm

#### 1. Members present

Revd Mr Nile *Chair*

Mrs Pavey *Deputy Chair*

Ms Cusack

Mr Mason-Cox

Mr Secord

Mr Shoebridge (Dr Kaye)

Mr Veitch

#### 2. Substitutions

The Chair noted that Mr Shoebridge would be substituting for Dr Kaye for the duration of the Inquiry into allegations of bullying in WorkCover NSW.

#### 3. Previous minutes

Resolved, on the motion of Mr Veitch: That draft Minutes No. 21 be confirmed.

#### 4. \*\*\*

#### 5. Inquiry into allegations of bullying in WorkCover NSW

The Committee noted the resolution of the House on 27 June 2013 establishing Terms of Reference for an inquiry into allegations of bullying in WorkCover NSW.

##### 5.1 Proposed timeline

Resolved, on the motion of Mr Shoebridge: That the Committee adopt the following timeline for the management and administration of the inquiry:

- 10 July 2013 – Advertise in major daily newspapers
- 23 August 2013 – Closing date for submissions to the inquiry
- November 2013 – Hearings to be held during November 2013
- 28 February 2014 – Report to be tabled.

##### 5.2 Advertising

Resolved, on the motion of Mr Shoebridge: That advertisements calling for submissions be placed in the *Sydney Morning Herald* and *The Daily Telegraph*.

Resolved, on the motion of Mr Shoebridge: That a media release announcing the inquiry and calling for submissions be issued immediately.

##### 5.3 Closing date for submissions

Resolved, on the motion of Mr Shoebridge: That the closing date for submissions be 23 August 2013.

#### 5.4 Stakeholders

Resolved, on the motion of Mr Shoebridge: That the Secretariat email members with a list of stakeholders to be invited to make written submissions, and members have until 5pm (two days later) to nominate additional stakeholders.

#### 5.5 Correspondence to Chief Executive Officer, WorkCover NSW

Resolved, on the motion of Mr Shoebridge: That the Committee write to Ms Julie Newman PSM, Chief Executive Officer of WorkCover NSW, inviting WorkCover NSW to make a submission to the inquiry and advising WorkCover NSW about Committee procedures.

#### 5.6 Hearings

Resolved, on the motion of Mr Shoebridge: That the Committee hold hearings in November 2013, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

#### 5.7 Submission publication

Resolved, on the motion of Mr Shoebridge: That the Committee authorise the publication of all submissions to the inquiry into allegations of bullying in WorkCover NSW, subject to the Committee Clerk checking for confidentiality, adverse mention and other issues.

### 6. Adjournment

The Committee adjourned at 4.10 pm until Thursday 15 August 2013 at 8.50 am in the Macquarie Room.

Stewart Smith

**Clerk to the Committee**

### Minutes No. 28

Tuesday 17 September 2013

General Purpose Standing Committee No. 1

Room 1153, Parliament House, Sydney, at 1.50 pm

#### 1. Members present

Revd Nile, *Chairman*

Mrs Pavey, *Deputy Chair*

Ms Cusack

Mr Mason-Cox

Mr Searle (Secord)

Mr Shoebridge (Kaye)

Mr Veitch

#### 2. Substitutions

The Chair advised that Mr Searle would be substituting for Mr Secord for the duration of the inquiry into allegations of bullying in WorkCover NSW.

#### 3. Inquiry into allegations of bullying in WorkCover NSW

##### 3.1 Correspondence

The Committee noted the following correspondence received:

- 1 July 2013 – Email from Hon Amanda Fazio MLC to Secretariat, advising that Hon Peter Primrose MLC will be substituting for Hon Walt Secord MLC for the duration of the inquiry

- 9 July 2013 – Letter from Judge Keating, President, Workers Compensation Commission, to Chairman, advising that the Commission will not make a submission to the inquiry
- 10 July 2013 – Letter from Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Chairman, confirming receipt of a letter from the Committee and affirming that WorkCover NSW employees will not be discouraged or intimidated from making submissions or appearing as witnesses at committee hearings
- 4 August 2013 – Email from Dr Kevin Purse, Senior Research Fellow, Central Queensland University, to Secretariat, advising that he will not make a submission to the inquiry
- 12 August 2013 – Email from Ms Jann Jeffries, Industrial Officer, Public Service Association, to Secretariat, seeking advice on whether former WorkCover employees who have signed a deed of release requiring confidentiality or non-disparagement are protected from legal repercussions, should they participate in the inquiry
- 19 August 2013 – Email from Mr Colin Fraser, Principal Inspector, WorkCover, to Secretariat, advising that he does not wish any action to be taken in respect of the allegation in his submission that detrimental action was taken against him as a result of his giving evidence to the Joint Select Committee on the NSW Workers Compensation Scheme
- 22 August 2013 – Email from Mr Bret Walker SC to the Clerk of the Parliaments, providing advice on whether former WorkCover employees who have signed a deed of release requiring confidentiality or non-disparagement are protected from legal repercussions, should they participate in the inquiry
- 26 August 2013 – Email from Hon Amanda Fazio MLC to Secretariat, advising that Hon Adam Searle MLC will be substituting for Hon Peter Primrose MLC for the duration of the inquiry.

The Committee noted the following correspondence sent:

- 28 June 2013 – Letter from Committee to Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, inviting WorkCover NSW to make a submission to the inquiry and advising WorkCover NSW not to discourage or intimidate employees from making submissions or appearing as witnesses at committee hearings
- 15 August 2013 – Letter from Clerk of the Parliaments to Mr Bret Walker SC, seeking advice on whether former WorkCover employees who have signed a deed of release requiring confidentiality or non-disparagement are protected from legal repercussions, should they participate in the inquiry
- 26 August 2013 – Letter from Clerk of the Parliaments to Ms Jann Jeffries, Industrial Officer, Public Service Association, providing advice on the protections afforded to WorkCover NSW employees who participate in the inquiry and who had signed a deed of release requiring confidentiality or non-disparagement
- 27 August 2013 – Letter from Chairman to Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, advising that no detrimental action should be taken against inquiry participants as a result of making a submission or giving evidence to the inquiry.

### 3.2 Submissions

The Committee noted the Secretariat's approach to publication of submissions received to date.

Resolved, on the motion of Mr Searle: That the Committee consider the potential publication of submission no. 85 at the next Committee meeting.

Resolved, on the motion of Mr Searle: That Mr Searle, on behalf of the Committee, prepare a list of questions regarding the allegations made in submission no. 85, and indicate who the questions should be directed to, and that the questions be circulated by the Secretariat to members for approval.

#### Confidential

Resolved, on the motion of Mr Veitch: That the confidential submissions, and the full versions of the partially confidential submissions, be distributed to members in hard copy on red paper after trialling the possibility of distribution on a lighter coloured paper.

**Public**

Resolved, on the motion of Mr Shoebridge: That the Committee note that submission no. 32 was published by the Committee Clerk, subject to checking for confidentiality, adverse mention and other issues, under the authorisation of an earlier resolution.

Resolved, on the motion of Mr Shoebridge: That the Committee publish submissions no. 1, 13, 20, 23, 24, 25, 26, 29, 30, 32, 33, 49, 66, 73 and 82.

**Name suppressed**

Resolved, on the motion of Mr Shoebridge, that submissions no. 2, 3 and 11 be published with the exception of the authors' names, which are to remain confidential.

**Name suppressed and partially confidential**

Resolved, on the motion of Mr Shoebridge: That submissions no. 5, 8, 9, 10, 16, 22, 31, 34, 46, 48, 52, 58, 60, 61, 63, 64, 67 and 76 be published, with the exception of the authors' names, potentially identifying or sensitive information relating to the authors and/or third parties and potential adverse mention, and that the authors' names, other potentially identifying or sensitive information and potential adverse mention remain confidential.

**Partially confidential**

Resolved, on the motion of Mr Shoebridge: That submissions no. 6, 15, 17, 27, 74 and 75 be published, with the exception of potentially sensitive information relating to the authors and/or third parties, information potentially identifying third parties and potential adverse mention, and that the potentially sensitive information, information potentially identifying third parties and potential adverse mention remain confidential.

**Attachments to submissions**

Resolved, on the motion of Mr Shoebridge: That the attachments to submissions no. 1, 15, 20, 21, 27, 28, 39, 42, 53, 55, 59, 64, 65, 67, 70, 73, 77, 78, 79, 80 and 84 remain confidential.

**3.3 Witnesses**

Resolved, on the motion of Mr Shoebridge: That the Committee invite evidence from the following witnesses:

- WorkCover NSW
- Public Service Association
- Australian Manufacturing Workers' Union
- Industrial Health and Research Foundation (Workers Health Centre)
- Unions NSW
- Dr Carlo Caponecchia, University of New South Wales
- Injured Workers Support Network.

Resolved, on the motion of Mr Searle: That two hours be set aside for the duration of the Public Service Association's hearing.

**In camera witnesses**

The Committee noted its willingness to hold in camera hearings with authors of confidential or partially confidential hearings, and to potentially publish transcripts of those hearings, subject to consultation with witnesses.

**Process for determining further witnesses**

Resolved, on the motion of Mr Shoebridge: That the Secretariat circulate suggestions for further witnesses by email, with the opportunity for members to nominate additional witnesses within seven days, and that Committee agree to the witness list by email, unless a meeting of the Committee is required to resolve any disagreement.

**4. Adjournment**

The Committee adjourned at 2.30 pm until 10.00 am, Wednesday 6 November 2013, Macquarie Room (public hearing).

Merrin Thompson  
**Committee Clerk**

**Minutes No. 31**

Wednesday 6 November 2013

General Purpose Standing Committee No. 1

Macquarie Room, Parliament House, Sydney at 10.00 am

**1. Members**

Revd Nile, *Chairman*  
Mrs Pavey, *Deputy Chair*  
Ms Cusack  
Mr Mason-Cox  
Mr Searle  
Mr Shoebridge  
Mr Veitch

**2. Confirmation of previous minutes**

Resolved, on the motion of Mr Veitch: That draft Minutes No. 28 be confirmed.

**3. Inquiry into allegations of bullying in WorkCover NSW****3.1 Correspondence**

The Committee noted the following correspondence received:

***Received:***

- 17 September 2013 – Letter from Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Chairman, responding to request to inform WorkCover NSW staff that no detrimental action will be taken against those who participate in the inquiry
- 17 September 2013 – Email from Ms Karol Blackley to Committee, providing information to the Committee as an injured worker
- 25 September 2013 – From Ms Josephine Wadlow-Evans, to Committee, providing information in relation to asbestos contamination
- 11 October 2013 – Letter from Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Chairman, responding to the Committee's request for information about allegations made in a submission
- 16 October 2013 – Email from the author of submission no. 82, to Secretariat, requesting that the submission be kept confidential
- 21 October 2013 – Letter from Mr Graeme Head, Public Service Commissioner, to Chairman, responding to the Committee's request for information about allegations made in a submission
- 21 October 2013 – Letter from Hon Andrew Constance MP, Minister for Finance and Services, to Chairman, nominating witnesses to represent WorkCover NSW at the hearing on 11 November 2013

- 22 October 2013 – Letter from Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Chairman, providing requested statistics on claims of bullying made by employees of WorkCover and NSW employees generally
- 22 October 2013 – Email from author of submission no. 68, to Secretariat, requesting to give evidence in camera
- 22 October 2013 – Letter from Professor John McMillan, Australian Information Commissioner, to Chairman, indicating that his Office will not be making a submission to the inquiry.

***Sent:***

- 1 October 2013 – Letter from Chairman to Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, requesting information about allegations made in a submission
- 1 October 2013 – Letter from Chairman to Mr Graeme Head, Public Service Commissioner, requesting information about allegations made in a submission
- 1 October 2013 – Letter from Chairman to Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, requesting statistics on claims of bullying made by employees of WorkCover and NSW employees generally
- 23 October 2013 – Letter from Secretariat to Hon Andrew Constance MP, Minister for Finance and Services, thanking him for nominating witnesses to represent WorkCover NSW at the hearing on 11 November 2013.
- 4 November 2013 – Letter from Chairman to Ms Josephine Wadlow-Evans in response to her letter regarding asbestos contamination.

Resolved, on the motion of Mr Mason-Cox: That the letter from Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Chairman, providing requested statistics on claims of bullying made by employees of WorkCover and NSW employees generally, be published on the Committee's website.

Resolved, on the motion of Mr Shoebridge: That the following correspondence remain confidential, subject to further consideration by the Committee:

- 11 October 2013 – Letter from Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Chairman, responding to the Committee's request for information about allegations made in a submission
- 16 October 2013 – Email from the author of submission no. 82, to Secretariat, requesting that the submission be kept confidential
- 21 October 2013 – Letter from Mr Graeme Head, Public Service Commissioner, to Chairman, responding to the Committee's request for information about allegations made in a submission
- 22 October 2013 – Email from author of submission no. 68, to Secretariat, requesting to give evidence in camera
- 1 October 2013 – Letter from Chairman to Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, requesting information about allegations made in a submission
- 1 October 2013 – Letter from Chairman to Mr Graeme Head, Public Service Commissioner, requesting information about allegations made in a submission.

### **3.2 Submissions**

#### **3.2.1 Public**

Resolved, on the motion of Ms Shoebridge: That the Committee publish submission no. 73a.

#### **3.2.2 Name suppressed and partially confidential**

Resolved, on the motion of Mr Shoebridge: That the potentially sensitive information, information potentially identifying third parties and potential adverse mention in submissions no. 81, 84, 88 and 90 remain confidential.

Resolved, on the motion of Mr Shoebridge: That submission no. 3a be published, with the exception of the author's name, potentially identifying or sensitive information relating to the author and/or third parties and potential adverse mention, and that the author's name, other potentially identifying or sensitive information and potential adverse mention remain confidential.

### **3.2.3 Partially confidential**

Resolved, on the motion of Mr Shoebridge: That the potentially sensitive information, information potentially identifying third parties and potential adverse mention in submissions no. 80, 83, 87 and 89 remain confidential.

### **3.2.4 Confidential**

Resolved, on the motion of Mr Shoebridge: That submissions no. 4, 7, 12, 14, 18-19, 21, 28, 35-45, 47, 50-51, 53-57, 59, 62, 65, 68-72, 77-79 and 86, and the attachment to submission no. 3a, remain confidential.

### **3.2.5 Submission no. 85**

The Committee deferred consideration of whether to publish submission no. 85.

### **3.2.6 Submission no. 82**

Resolved, on the motion of Mr Searle: That submission no. 82 be made confidential.

## **3.3 Reference to certain matters during public hearings**

The Secretariat briefed the Committee on avoiding mention of certain matters during the public hearing.

## **3.4 Questions on notice and supplementary questions**

Resolved, on the motion of Mrs Pavey: That answers to questions taken on notice be provided within 21 days from the date on which they are forwarded to witnesses.

Resolved, on the motion of Mr Mason-Cox: That members have two days after a hearing in which to submit supplementary questions.

## **3.5 Allocation of question time**

Resolved, on the motion of Mrs Pavey: That the time allocated for questioning be divided equally between Cross Bench, Opposition and Government members, with questions proceeding in that order.

## **3.6 Public hearing**

Witnesses, the public and media were admitted.

Dr Carlo Caponecchia, Senior Lecturer, Faculty of Science, University of New South Wales, was sworn and examined.

The evidence concluded and the witness withdrew.

The following representatives from the Public Service Association of NSW were sworn and examined:

- Ms Jann Jeffries, Industrial Officer
- Mr Steve Turner, Assistant General Secretary
- Mr Ian Tuit, Delegate
- Mr Colin Fraser, Delegate.

Mr Tuit tendered the following documents:

- Copy of a letter from Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Mr Graeme Head, Public Service Commissioner, attaching a report detailing actions to understand and address bullying in the Safety, Return to Work and Support Division
- Public Service Commission, *People Matter Employee Survey 2012: Agency report for Compensation Authorities Staff Division (CASD)*.

The evidence concluded and the witnesses withdrew.

The following representatives were sworn and examined:

- Mr David Henry, WHS Officer, Australian Manufacturing Workers' Union, NSW Branch
- Ms Michelle Burgess, Director, Workers Health Centre
- Mr Adam Grumley, Coordinator, Injured Workers Support Network
- Ms Janet Chan, Advocate, Injured Workers Support Network
- Ms Vicky Pepyat, Injured Worker.

Ms Omeima Sukkarieh joined the meeting.

Ms Omeima Sukkarieh, Support Person, Australian Manufacturing Workers' Union, NSW Branch, was sworn and examined.

The Chair requested the public and the media to withdraw.

The public and the media withdrew.

### **3.7 *In camera* hearing**

Resolved, on the motion of Mr Veitch: That the Committee proceed to take evidence *in camera*.

Persons present other than the Committee: Ms Beverly Duffy, Ms Madeleine Foley, Ms Merrin Thompson, Ms Shu-Fang Wei, Ms Christine Nguyen, and Hansard reporters.

Witness A was sworn and examined *in camera*.

The witness tendered the following document:

- Supplementary submission 90a.

The evidence concluded and the witness withdrew.

The Committee deliberated.

Resolved, on the motion of Mr Searle: That supplementary submission no. 90a be published, with the exception of the author's name, potentially identifying or sensitive information relating to the author and/or third parties and potential adverse mention, and that the author's name, other potentially identifying or sensitive information and potential adverse mention remain confidential.

Witness B was sworn and examined *in camera*.

Witness B tendered the following document:

- Package of material entitled, 'Additional material tendered ... at parliamentary hearing into bullying at WorkCover on 6 November 2013'.

The evidence concluded and the witness withdrew.

Mr Mason-Cox left the meeting.

### **3.8 *Deliberative meeting***

Resolved, on the motion of Mr Veitch: That the Committee accept and publish the following document tendered during the *in camera* hearing:

- Package of material entitled, 'Additional material tendered ... at parliamentary hearing into bullying at WorkCover on 6 November 2013'.

Resolved, on the motion of Mr Searle: That the Committee accept and publish the following document tendered during the public hearing:

- Copy of a letter from Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Mr Graeme Head, Public Service Commissioner, attaching a report detailing actions to understand and address bullying in the Safety, Return to Work and Support Division
- Public Service Commission, *People Matter Employee Survey 2012: Agency report for Compensation Authorities Staff Division (CASD)*, tendered by Mr Ian Tuit.

Resolved, on the motion of Ms Cusack: That the Committee invite the following members of the Safety, Return to Work and Support Board to give evidence at the public hearing on Monday 11 November 2013, for 45 minutes each, after 2.00 pm:

- Mr Michael Carapiet, Chair
- Mr Mark Lennon, Board Member.

Resolved, on the motion of Mr Shoebridge: That under standing order 208(c) the Committee order the production of certain documents held by the Public Service Commissioner in relation to submission no. 85, and that the documents be provided by 4 pm on Friday 8 November 2013.

#### 4. **Adjournment**

The Committee adjourned at 5.15 pm until 9.30 am, Monday 11 November 2013, Macquarie Room.

Merrin Thompson  
**Committee Clerk**

#### **Minutes No. 32**

Monday 11 November 2013  
 General Purpose Standing Committee No. 1  
 Macquarie Room, Parliament House, Sydney at 9:30 am

#### 1. **Members**

Revd Nile, *Chairman*  
 Mrs Pavey, *Deputy Chair*  
 Ms Cusack  
 Mr Mason-Cox  
 Mr Searle  
 Mr Shoebridge  
 Mr Veitch

#### 2. **Inquiry into allegations of bullying in WorkCover NSW**

##### **Correspondence**

The Committee noted the following correspondence:

##### ***Received***

- 6 November 2013 – Correspondence from Ms Janet Chan, Advocate, Injured Workers Support Network, forwarding a research article on the implications of Australian workplace health and safety laws on workplace bullying
- 6 November 2013 – Correspondence from the author of submission 90, providing three publications in relation to workplace bullying

- 8 November 2013 – Letter from Mr Graeme Head, Public Service Commissioner, to the Clerk to the Committee, declining to produce documents in response to the Committee’s order for the production of documents in the possession of the NSW Public Service Commission.

**Sent**

- 7 November 2013 – Letter from the Clerk to the Committee to Mr Graeme Head, Public Service Commissioner, ordering the production of documents in the possession of the NSW Public Service Commission
- 7 November 2013 – Email from the Committee Secretariat to Mr Michael Carapiet, Chair, Safety, Return to Work and Support Board, inviting Mr Carapiet to appear as a witness to the Inquiry on Monday 11 November 2013
- 7 November 2013 – Email from the Committee Secretariat to Mr Shay Deguara, Industrial Officer, Unions NSW, confirming Mr Deguara’s advice that Mr Mark Lennon, Board member, Safety, Return to Work and Support Board, will not be available to appear as a witness at the hearing on Monday 11 November 2013.

**3. Order for Papers: Public Service Commission**

Resolved, on the motion of Mr Shoebridge: That the Committee Secretariat prepare wording for a potential notice of motion to be moved in the House by the Committee Chairman regarding an order for papers under standing order 52, and that this matter be considered later in the day.

**4. Additional witnesses: Safety, Return to Work and Support Board**

The Committee noted the following responses from the additional witnesses invited to attend the hearing on Monday 11 November 2013:

- Mr Michael Carapiet, Chair, Safety, Return to Work and Support Board accepted the invitation to give evidence
- Mr Mark Lennon, Board Member, Safety, Return to Work and Support Board could not attend as he has a prior commitment in Melbourne.

Resolved, on the motion of Mr Shoebridge: That the Committee defer consideration of additional witnesses until a future meeting.

**5. In camera transcripts**

Resolved, on the motion of Mr Searle: That the Secretariat consult the *in camera* witnesses who appeared on Wednesday 6 and Monday 11 November 2013 regarding potential publication of the *in camera* transcripts, subject to the deletion of identifying or other potentially sensitive information. Further, that the redacted transcripts then be circulated to the Committee for review prior to the Committee approving publication.

**6. Commemoration of Remembrance Day**

The Committee observed the minute’s silence to commemorate Remembrance Day.

**7. Public hearing**

Witnesses, the public and media were admitted.

The following representatives from Unions NSW were sworn and examined:

- Ms Mary Yaager, Executive Officer
- Mr Mark Morey, Deputy Assistant Secretary
- Mr Shay Deguara, Industrial Officer.

Mr Deguara tendered the following documents:

- Safe Work Australia, Strategic Issues Group on WHS, Meeting 09, Friday 27 September 2013, Draft Minutes

- Letter from Ms Christine Laing, Right to Information, WorkCover Authority of NSW, to Ms Kate Minter, Unions NSW, providing information in response to a request under the *Government Information (Public Access) Act 2009*.

The evidence concluded and the witnesses withdrew.

The following representatives from the Safety Return to Work and Support Division, NSW Government Service, were sworn and examined:

- Ms Julie Newman, Chief Executive Officer
- Mr John Watson, General Manager, Work Health and Safety Division, WorkCover Authority of NSW
- Mr Greg Barnier, Chief Human Resources Officer, People and Culture Group.

The evidence concluded and the witnesses withdrew.

Mr Michael Carapiet, Chair, Safety, Return to Work and Support Board, was sworn and examined.

Resolved, on the motion of Mr Searle: That the Committee proceed to take evidence from Mr Carapiet *in camera*.

The public and the media withdrew.

#### **7.1 In camera hearing**

The Committee proceeded to take evidence *in camera*.

Persons present other than the Committee: Ms Beverly Duffy, Ms Madeleine Foley, Ms Merrin Thompson, Ms Shu-Fang Wei, Ms Anna Perkins and Hansard reporters.

The evidence concluded and the witness withdrew.

## **8. Deliberative meeting**

### **8.1 Publication of tendered documents**

Resolved, on the motion of Mr Veitch: That the following documents be accepted and published:

- Safe Work Australia, Strategic Issues Group on WHS, Meeting 09, Friday 27 September 2013, Draft Minutes
- Letter from Ms Christine Laing, Right to Information, WorkCover Authority of NSW, to Ms Kate Minter, Unions NSW, providing information in response to a request under the *Government Information (Public Access) Act 2009*.

### **8.2 Order for papers: Public Service Commission**

The Committee considered a draft resolution relating to a potential order for papers under standing order 52.

Resolved, on the motion of Mr Shoebridge: That the Chairman of GPSC No. 1, Revd the Hon Fred Nile, give the following notice of motion in the House on Tuesday 12 November 2013, and seek to move this notice as formal business on Wednesday 13 November 2013.

If the notice does not proceed as formal business on Wednesday 13 November 2013, the Committee will meet to discuss this matter on Thursday 14 November 2013.

If the matter does proceed as formal business, the Committee will meet to discuss the return to order on Thursday 21 November 2013.

That, under standing order 52, there be laid upon the table of the House within 7 days of the date of the passing of this resolution, the following documents in the possession, custody or control of the Public Service Commission, the Department of Premier and Cabinet or the Premier, created since 1 January 2011:

- a) Any report arising from or connected to an investigation conducted by Ms Linda Pettersson, Investigator, Internal Audit Bureau, or any other person, in relation to alleged bullying or harassment by a former employee of WorkCover NSW, together with copies of any annexures or appendices connected to any such report.
- b) Any document which records or refers to the production of documents as a result of this order of the House.

## 9. Adjournment

The Committee adjourned at 3.15 pm *sine die*.

Merrin Thompson  
Committee Clerk

## Minutes No. 33

Thursday 21 November 2013

General Purpose Standing Committee No. 1

Members' Lounge, Parliament House, Sydney at 1.00 pm

### 1. Members present

Revd Nile, *Chairman*

Mrs Pavey, *Deputy Chair*

Ms Cusack

Dr Kaye (*Mr Shoebridge*)

Mr Lynn (*Mr Mason-Cox*)

Mr Searle

Mr Veitch

### 2. Substitutions

The Chairman advised that the following members would be substituting for the meeting:

- Mr Charlie Lynn for Mr Mason-Cox
- Dr John Kaye for Mr Shoebridge.

### 3. Previous minutes

Resolved, on the motion of Mr Veitch: That draft Minutes Nos. 31 and 32 be confirmed.

### 4. Inquiry into allegations of bullying in WorkCover NSW

#### 4.1 Correspondence

The Committee noted the following items of correspondence:

##### *Received*

- 11 November 2013 – Three documents from Mr Shay Deguara, Industrial Officer, Unions NSW, to the Committee, providing policy and guidelines on preventing and managing workplace bullying
- 11 November 2013 – Letter to Mr Chris Osborne from Ms Christine Laing, Right to Information, WorkCover NSW, regarding a request for documents

- 13 November 2013 – Email from [one of the individuals named in an adverse context in the transcript of 11 November 2013] to the Committee, enquiring about their right to respond to having been identified in an adverse context in the public hearing on 11 November 2013
- 18 November 2013 – Email from an individual to the Secretariat, attaching correspondence concerning alleged inaction by senior managers in response to complaints about inappropriate behaviour by a WorkCover NSW manager.

***Sent***

- 12 November 2013 – Letter from Committee Director to Mr Michael Carapiet, Chair, Safety, Return to Work and Support Board, enclosing the *in camera* transcript for review with a view to publication
- 19 November 2013 – Letter from Principal Council Officer to Witness A, enclosing the *in camera* transcript for review with a view to publication
- 19 November 2013 – Letter from Principal Council Officer to Witness B, enclosing the *in camera* transcript for review with a view to publication.

Resolved, on the motion of Dr Kaye: That the following correspondence remains confidential:

- 18 November 2013 – Email from an individual to the Secretariat, attaching correspondence concerning alleged inaction by senior managers in response to complaints about inappropriate behaviour by a WorkCover NSW manager.

#### **4.2 Submissions**

***Partially confidential***

Resolved, on the motion of Mr Searle: That the submission no. 91 be published, with the exception of potentially sensitive information relating to the author and/or third parties, information potentially identifying third parties and potential adverse mention, and that the potentially sensitive information, information potentially identifying third parties and potential adverse mention remain confidential.

***Name suppressed and partially confidential***

Resolved, on the motion of Mr Searle: That submission no. 92 be published, with the exception of the author's name, potentially identifying or sensitive information relating to the author and/or third parties, and that the author's name and other potentially identifying or sensitive information remain confidential.

***Confidential***

Resolved, on the motion of Dr Kaye: That supplementary submissions no. 28a and 68a remain confidential.

***Attachments to submissions***

Resolved, on the motion of Mr Veitch: That the attachments to submissions no. 91 and 92 and supplementary submission no. 28a remain confidential.

#### **4.3 *In camera* transcript**

Resolved, on the motion of Mr Searle: That the redacted transcript of the *in camera* witness who appeared on Monday 11 November 2013 be published, and that the suppressed content remain confidential.

Resolved, on the motion of Mr Searle: That the Committee defer consideration of agenda items 5.4 - 5.7 until a meeting is scheduled for next week, and that at this meeting Mr Searle report to the Committee on the return to order.

Mrs Pavey joined the meeting.

#### **4.4 Persons named in the hearing transcript**

Resolved, on the motion of Ms Cusack: That the names of those WorkCover employees identified in an adverse context be redacted from the transcript transcribed of the public hearing on 11 November 2013, subject to seeking the advice of the Clerks.

Resolved, on the motion of Mrs Pavey: That the Committee write to [one of the individuals named in an adverse context in the transcript of 11 November 2013], who was identified in an adverse context in the

public hearing on 11 November 2013, to invite him to make a written submission to address the issues raised in the transcript, should he wish to do so.

## 5. Adjournment

The Committee adjourned at 1.15 pm until Tuesday 26 November, at 1 pm, in the Members' Lounge.

Madeleine Foley

**Clerk to the Committee**

## Minutes No. 34

Tuesday 26 November 2013

General Purpose Standing Committee No. 1

Members' Lounge, Parliament House, Sydney at 1.10 pm

### 1. Members present

Revd Nile, *Chairman*

Mrs Pavey, *Deputy Chair*

Ms Cusack

Mr Lynn (*Mr Mason-Cox*)

Mr Searle

Mr Shoebridge

Mr Veitch

### 2. Substitutions

The Chair advised that the following member would be substituting for the meeting:

- Mr Charlie Lynn for Mr Mason-Cox.

### 3. Previous minutes

Resolved, on the motion of Mr Veitch: That draft Minutes No. 33 be confirmed.

### 4. Inquiry into allegations of bullying in WorkCover NSW

#### 4.1 Correspondence

The Committee noted the following items of correspondence:

##### *Received*

- 21 November 2013 – Letter from the Hon Barry O'Farrell MP, Premier, to Chairman, advising that the report ordered to be produced by the House has been provided to the House, subject to a claim of privilege.

##### *Sent*

- 22 November 2013 – Letter from the Chairman to [one of the individuals named in an adverse context in the transcript of 11 November 2013], noting their concerns regarding the transcript of Monday 11 November 2013 and inviting him to make a written submission.

#### 4.2 Return to the Order for Papers – Public Service Commission

Resolved, on the motion of Mr Searle: That the Committee have regard to the material contained in the return to order in its deliberations during the Inquiry.

Resolved, on the motion of Mr Shoebridge: That the Committee defer consideration of agenda items 5.3 and 5.4 pertaining to submission no. 85 until the next meeting.

#### 4.3 Additional witnesses

Resolved, on the motion of Ms Cusack: That the Committee invite the following witnesses to give evidence at an *in camera* hearing, and that the witnesses be invited to appear in the order listed:

- Witness C, named in the privileged return to the order for papers (one hour)
- Mr Graeme Head, Public Service Commissioner (one hour)
- Mr Mark Lennon, Member, Safety, Return to Work and Support Board (one hour)
- Representatives of WorkCover NSW, including Ms Julie Newman, CEO, Safety Return to Work and Support Division, and Mr Greg Barnier, Chief Human Resources Officer, People and Culture Group, Safety Return to Work and Support Division (two hours).

Resolved, on the motion of Mrs Pavey: That the *in camera* hearing take place on Tuesday 10 December 2013.

Resolved, on the motion of Mr Shoebridge: That the Committee extend its indicative report tabling date to Friday 28 March 2014.

## 5. Adjournment

The Committee adjourned at 1.35 pm until Tuesday 10 December, at 9.15 am (*in camera* hearing, *Inquiry into allegations of bullying in WorkCover NSW*).

Madeleine Foley  
**Clerk to the Committee**

## Minutes No. 35

Tuesday 10 December 2013  
 General Purpose Standing Committee No. 1  
 Room 1136, Parliament House, Sydney at 9.35 am

### 1. Members present

Revd Nile, *Chairman*  
 Mrs Pavey, *Deputy Chair*  
 Ms Cusack  
 Ms Ficarra (*Mr Mason-Cox*)  
 Mr Searle (*Mr Secord*)  
 Mr Shoebridge (*Dr Kaye*)  
 Mr Veitch

### 2. Substitutions

The Chairman advised that Ms Ficarra would substitute for Mr Mason-Cox for the meeting.

### 3. Previous minutes

Resolved, on the motion of Mr Veitch: That draft Minutes Nos. 30 and 34 be confirmed.

### 4. Correspondence

The Committee noted the following items of correspondence:

#### *Received*

- \*\*\*
- 3 December 2013 – Answers to questions on notice received from Witness B
- 3 December 2013 – Answers to questions on notice received from Dr Carlo Caponecchia

- 3 December 2013 – Answers to questions on notice received from Mr David Henry, Australian Manufacturing Workers' Union
- 3 December 2013 – Email from Mr David Henry, Australian Manufacturing Workers' Union, providing clarification of evidence given on 6 November
- 4 December 2013 – Email from Ms Michelle Burgess, Director, Workers Health Centre, to the Committee, seeking an extension to provide answers to questions on notice
- 4 December 2013 – Answers to questions on notice received from Mr Adam Grumley, Co-ordinator, Injured Workers Support Network
- 4 December 2013 – Email from Mr David Blunt, Clerk of the Parliaments, to Committee Director, providing advice on questions asked during the *in camera* hearing that concern the privileged documents provided in the return to order
- 5 December 2013 – Answers to questions on notice and a cover letter correcting figures previously provided to the Committee, received from WorkCover NSW
- 6 December 2013 – Letter from Hon Andrew Constance MP, Minister for Finance and Services, to Chairman, confirming the attendance of witnesses representing WorkCover NSW at the *in camera* hearing on 10 December 2013 and requesting that, if the Committee wishes to publish the transcript, witnesses be consulted and be given a reasonable opportunity to review it
- 6 December 2013 – Full answer to question on notice no. 9 received from WorkCover NSW
- 9 December 2013 – Email from Ms Carmel Donnelly, General Manager, Strategy and Performance, WorkCover NSW, to the Committee, requesting that attachment M to the answers to questions on notice provided on 5 December 2013 be kept confidential.

#### *Sent*

- 26 November 2013 – Letter from the Chairman to Hon Andrew Constance MP, Minister for Finance and Services, inviting representatives of WorkCover NSW to appear at an *in camera* hearing on 10 December 2013
- 27 November 2013 – Letter from Secretariat to Mr Graeme Head, Public Service Commissioner, inviting him to appear at an *in camera* hearing on 10 December 2013
- 27 November 2013 – Letter from Secretariat to Mr Mark Lennon, Secretary, Unions NSW, inviting him to appear in his capacity as Member, Safety, Return to Work and Support Board, at an *in camera* hearing on 10 December 2013
- 4 December 2013 – Letter from Secretariat to Witness C, named in the privileged return to the order for papers, inviting him to appear at an *in camera* hearing on 10 December 2013.

Resolved, on the motion of Mr Shoebridge: That the Committee:

- publish the correspondence from WorkCover providing corrections to figures provided in submission no. 32
- keep confidential the letter to Witness C, named in the privileged return to the order for papers, inviting him to appear at an *in camera* hearing
- publish the correspondence received from Mr David Henry, Australian Manufacturing Workers' Union, dated 3 December 2013, providing clarification of evidence given on 6 November 2013.

5. \*\*\*

## 6. Inquiry into allegations of bullying in WorkCover NSW

### 6.1 Reference to the return to order during the *in camera* hearing

The Committee discussed advice from the Clerk of the Parliaments regarding questions during the *in camera* hearing that concern the privileged documents provided in the return to order.

### 6.2 Claim of privilege on the return to order

Resolved, on the motion of Mr Searle: That the Chairman, on behalf of the Committee, dispute the validity of the claim of privilege over the documents provided in the return to order received on

Wednesday 20 November 2013, regarding a report arising from an investigation conducted by the Internal Audit Bureau in relation to alleged bullying or harassment by a former employee of WorkCover NSW. Further, that the draft correspondence be circulated to the Committee for comment.

### **6.3 *In camera* hearing**

The Committee proceeded to take evidence *in camera*.

Persons present other than members of the Committee: Ms Beverly Duffy, Ms Madeleine Foley, Ms Merrin Thompson, Ms Shu-Fang Wei and Hansard reporters.

Witness C, named in the privileged return to the order for papers, was admitted.

Witness C was sworn and examined.

The evidence concluded and the witness withdrew.

Mr Graeme Head, Public Service Commissioner, was admitted.

Mr Head was sworn and examined.

The evidence concluded and the witness withdrew.

Mr Mark Lennon, Member, Safety, Return to Work and Support Board, was admitted.

Mr Lennon was sworn and examined.

The evidence concluded and the witness withdrew.

The following representatives from the Safety, Return to Work and Support Division, were admitted:

- Ms Julie Newman, Chief Executive Officer
- Mr Greg Barnier, Chief Human Resources Officer, People and Culture Group.

Ms Newman and Mr Barnier were examined on former oath.

The evidence concluded and the witnesses withdrew.

### **6.4 Correspondence to the Premier**

Resolved, on the motion of Mr Shoebridge: That the Committee write to the Premier, to:

- advise the Premier that the Committee has resolved to dispute the claim of privilege on the return to order
- request that the Premier voluntarily provide the documents provided in the return to order received on Wednesday 20 November 2013, regarding a report arising from an investigation conducted by the Internal Audit Bureau in relation to alleged bullying or harassment by a former employee of WorkCover NSW, subject to those documents being kept confidential to the Committee.

Further, that the draft correspondence be circulated to the Committee for comment.

### **6.5 Deferral of agenda items**

Resolved, on the motion of Mr Searle: That the Committee defer consideration of agenda items 7.6 and 7.7 pertaining to submission no. 85 until after the receipt of the arbiter's report in relation to the dispute claim of privilege on the return to order.

### **6.6 Publication of *in camera* transcript from today's hearing**

Resolved, on the motion of Mr Shoebridge: That the Committee:

- consult the *in camera* witnesses who appeared on Tuesday 10 December 2013 regarding potential publication of the *in camera* transcript, including their views on the redaction of identifying or other potentially sensitive information
- review the proposed redactions prior to approving publication
- reserve its decision regarding publication of those portions of the *in camera* transcript that relate to the return to order until after the dispute process is finalised.

#### **6.7 Publication of *in camera* transcript from 6 November 2013**

Resolved, on the motion of Ms Cusack: That the transcript of Witness B who appeared on 6 November 2013 be published in full, at the request of the witness.

#### **6.8 Submission no. 93**

Resolved, on the motion of Mr Searle: That the Committee:

- keep confidential submission no. 93
- remove any reference to the author of submission no. 93 from the previous minutes and agenda and that the author's name be kept confidential
- keep confidential any correspondence between the author of submission no. 93 and the Committee.

#### **6.9 Answers to questions on notice**

Resolved, on the motion of Mrs Pavey: That responses to all questions on notice and supplementary questions arising from the hearing on 10 December 2013 be required to be provided by 31 January 2014, to allow witnesses additional time over the Christmas period.

Resolved, on the motion of Mr Shoebridge: That the potential adverse mention in the answers to questions on notice from the Injured Workers Support Network be kept confidential.

Resolved, on the motion of Mr Shoebridge: That the initial and full answers to question on notice no. 9 from WorkCover NSW be kept confidential, at the request of WorkCover NSW.

Resolved, on the motion of Mr Shoebridge: That the Committee defer consideration of the request from WorkCover NSW that Attachment M to the answers to questions on notice be kept confidential, until WorkCover NSW provide the answers to the questions on notice arising from the *in camera* hearing on 10 December 2013.

#### **6.10 Supplementary submission 56a**

Resolved, on the motion of Ms Cusack: That supplementary submission no. 56a be kept confidential.

#### **6.11 Correspondence to Public Service Commissioner**

Resolved, on the motion of Mr Shoebridge: That the Committee write to the Public Service Commissioner to invite the Commissioner to comment on an apparent discrepancy between his evidence and that of WorkCover NSW representatives, after first consulting with WorkCover NSW about releasing a portion of their *in camera* transcript to the Public Service Commissioner.

#### **6.12 Correspondence to Internal Audit Bureau**

Resolved, on the motion of Ms Cusack: That the Committee write to the Internal Audit Bureau to ascertain whether improvement processes have been put in place regarding its investigations.

#### **6.13 Future Inquiry directions**

The Committee agreed to meet in early February 2014 to discuss the direction of the report, at a time to be determined by the Chair in consultation with Committee members.

### **7. Adjournment**

The Committee adjourned at 4.10 pm *sine die*.

Madeleine Foley

**Clerk to the Committee**

**Minutes No. 36**

Thursday 23 January 2014

General Purpose Standing Committee No. 1

Room 1254, Parliament House, Sydney at 10.32 am

**1. Members present**Revd Nile, *Chairman*Mrs Pavey, *Deputy Chair*Ms Cusack (*via teleconference*)Mr Lynn (*Mr Mason-Cox*)Mr Searle (*via teleconference*)

Mr Shoebridge

Mr Veitch (*via teleconference*)**2. Substitutions**

The Chairman advised that Mr Lynn would substitute for Mr Mason-Cox for the duration of the Inquiry into allegations of bullying in WorkCover NSW.

**3. Previous minutes**

Resolved, on the motion of Mrs Pavey: That draft Minutes No. 35 be confirmed.

**4. Correspondence**

The Committee noted the following items of correspondence:

***Received***

- 10 December 2013 – Email from an individual mentioned in the transcript of 6 November 2013, disputing evidence given to the Committee on 6 November 2013
- 24 December 2013 – Email from Mr Colin Fraser disputing information in answers to questions on notice provided by WorkCover NSW
- 17 January 2014 – Answers to questions on notice received from the Public Service Association of NSW.

***Sent***

- 19 December 2013 – Letter from Committee Director to WorkCover NSW, enclosing the *in camera* transcript for review with a view to publication, forwarding questions on notice, and seeking any objection to the transcript being provided to the Public Service Commissioner
- 14 January 2014 – Letter from Committee Director to Mr Mark Lennon, Member, Safety Return to Work and Support Board, enclosing the *in camera* transcript for review with a view to publication, and forwarding questions on notice.

Resolved, on the motion of Mr Shoebridge: That the Committee:

- keep confidential the email dated 10 December 2013 from the individual mentioned in the transcript of 6 November 2013, disputing evidence given to the Committee on 6 November 2013, at the request of the email's author, and
- seek further clarification from the author in relation to their concerns regarding the evidence given on 6 November 2013.

Resolved, on the motion of Mr Searle: That the Committee publish the email from Mr Colin Fraser disputing information in answers to questions on notice provided by WorkCover NSW.

## 5. Inquiry into allegations of bullying in WorkCover NSW

### 5.1 Submission No. 94

Resolved, on the motion of Mr Searle: That submission no. 94 be published, with the exception of the authors' names and the names of third parties, and that the names of the authors and third parties remain confidential.

### 5.2 Answers to questions on notice

Resolved, on the motion of Mr Shoebridge: That the Committee agree to the seven day extension requested by WorkCover to the return date for the answers to questions on notice and supplementary questions, and that the answers now be due on Friday 7 February 2014.

### 5.3 Discussion of ways forward in relation to the return to the order for papers

The Clerk of the Parliaments briefed the Committee on certain matters in relation to the return to the order for papers.

The Committee deliberated.

Resolved, on the motion of Mr Searle: That the Committee:

- *not* proceed with its resolution of 10 December 2013 to write to the Premier to request that he voluntarily provide the documents provided in the return to order received on 20 November 2013
- proceed with its resolution of 10 December 2013 that the Chairman, on behalf of the Committee, write to the Clerk of the Parliaments disputing the validity of the claim of privilege over the documents provided in the return to order, and that the letter be circulated to the Committee for comment. The letter should:
  - note that the Committee is mindful of the privacy concerns regarding this matter and foreshadow that, even if the arbiter finds that the claim of privilege is not valid, the Chairman would propose to move a motion in the House that the privileged documents not be made public, but instead be made available to the Committee for its use during the Inquiry, provided that the documents are kept confidential to the Committee and that the Committee takes all reasonable steps to safeguard the privacy of the persons named in the documents
  - attach two documents to be provided to the arbiter as background information: the briefing note prepared for the Premier on the order for papers dated 18 November 2013, and the letter from the Public Service Commissioner responding to the Premier's direction to provide the documents dated 20 November 2013.
- proceed with its resolution of 10 December 2013 to write to the Premier to advise him that the claim of privilege will be referred to an independent legal arbiter for evaluation and report. Further, the letter should include that portion of the Committee's resolution of this day which stipulates the content of the letter to the arbiter.

## 6. Adjournment

The Committee adjourned at 11.10 am until Wednesday 12 February 2014, 10 am, Room 1153, Parliament House.

Madeleine Foley

**Clerk to the Committee**

## Minutes No. 37

Wednesday 12 February 2014

General Purpose Standing Committee No. 1

Room 1153, Parliament House, Sydney at 10.00 am

### 1. Members present

Revd Nile, *Chairman*

Mrs Pavey, *Deputy Chair*  
 Ms Cusack  
 Mr Lynn  
 Mr Searle  
 Mr Shoebridge  
 Mr Veitch

## 2. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft Minutes No. 36 be confirmed.

## 3. Correspondence

The Committee noted the following items of correspondence:

### *Received*

- 24 January 2014 – Email from an individual identified in submission no. 85 to the Committee Director, noting the ability to provide further information if requested
- 29 January 2014 – Email from Witness A providing answers to questions on notice and requests for redactions to the *in camera* transcript
- 4 February 2014 – Email from Mr Mark Lennon, Member, Safety, Return to Work and Support Board providing an answer to a question on notice and requests for redactions to the *in camera* transcript
- 6 February 2014 – Letter from WorkCover providing answers to questions on notice, requests for redactions to the *in camera* transcript, and agreement to send an unpublished portion of the *in camera* transcript to the Public Service Commissioner.

### *Sent*

- 3 February 2014 – Letter from the Chairman, on behalf of the Committee, to the Clerk of the Parliaments, disputing the validity of the claim of privilege over the documents provided in the return to order received on 20 November 2013
- 3 February 2014 – Letter from Chairman to the Premier advising that the claim of privilege will be referred to an independent legal arbiter for evaluation and report.

Resolved, on the motion of Mrs Pavey: That the email from the individual identified in submission no. 85, received 24 January 2014, remain confidential at the request of the author.

## 4. Inquiry into allegations of bullying in WorkCover NSW

### 4.1 Submissions

Resolved, on the motion of Mrs Pavey: That submission no. 95 remain confidential, at the request of the submission author.

Resolved, on the motion of Mrs Pavey: That submission no. 96 be published, with the exception of the author's name and other potentially identifying and sensitive information, and that the suppressed content remain confidential, at the request of the submission author.

### 4.2 Further evidence gathering

Resolved, on the motion of Mr Shoebridge: That the Committee defer consideration of whether to seek further evidence until after the Clerk receives the report of the independent legal arbiter regarding the privileged status of the return to order and Committee members have given further consideration to the content of submission no. 95.

### 4.3 Publication of *in camera* transcripts

Resolved, on the motion of Mr Searle: That the redacted *in camera* transcript of Witness A of 6 November 2013 be published with the agreement of the witness, with the exception of their name and other identifying and potentially sensitive information, and that the suppressed content remain confidential.

Resolved, on the motion of Mrs Pavey: That the redacted *in camera* transcript of WorkCover witnesses Ms Julie Newman and Mr Greg Barnier of 10 December 2013 be published with their agreement, with the exception of potentially identifying and sensitive information, and that the suppressed content remain confidential.

Resolved, on the motion of Mr Shoebridge: That the Chairman write to the Independent Commission Against Corruption regarding the impact of secrecy or confidentiality clauses imposed by the *Independent Commission Against Corruption Act 1988*. Further, that the Chairman request an unredacted copy of the letter of referral from the Independent Commission Against Corruption to WorkCover dated 26 March 2012.

Resolved, on the motion of Mr Shoebridge: That the Secretariat consult the Clerk of the Parliaments regarding the impact of secrecy or confidentiality clauses imposed by the *Independent Commission Against Corruption Act 1988*.

Resolved, on the motion of Mr Searle: That the Chairman write to WorkCover requesting an unredacted copy of the letter of referral from the Independent Commission Against Corruption to WorkCover dated 26 March 2012, and a copy of the investigation plan and investigation reports referred to in the letter of referral. Further, that the Chairman's letter ask whether the investigation plan and investigation reports were provided to the Independent Commission Against Corruption, and if not, the reasons why.

Resolved, on the motion of Mr Shoebridge: That the Committee reconsider the confidentiality of redactions proposed by WorkCover to pages 51-72 of the *in camera* transcript of WorkCover witnesses Ms Julie Newman and Mr Greg Barnier of 10 December 2013 after considering the impact of secrecy or confidentiality clauses imposed by the *Independent Commission Against Corruption Act 1988*, along with WorkCover representatives' rationale for proposed redactions.

Resolved, on the motion of Mr Shoebridge: That the redacted *in camera* transcript of Mr Mark Lennon of 10 December 2013 be published with his agreement, with the exception of potentially identifying and sensitive information, and that the suppressed content remain confidential.

Resolved, on the motion of Mr Shoebridge: That the Committee reconsider the confidentiality of redactions proposed by Mr Mark Lennon to pages 47-48 of his *in camera* transcript of 10 December 2013 after considering the impact of secrecy or confidentiality clauses imposed by the *Independent Commission Against Corruption Act 1988*.

#### **4.4 Publication of answers to questions on notice**

Resolved, on the motion of Mr Shoebridge: That answers to questions on notice from the *in camera* hearing of 6 November 2013 provided by Witness A be published with the exception of identifying and other potentially sensitive information, and that the suppressed content remain confidential, at the request of the witness. Further, that attachments 1, 4, 5, 6 and 7 remain confidential, at the request of Witness A.

Mr Veitch moved: That attachments 2 and 3 to the answers to questions on notice from the *in camera* hearing of 6 November 2013 provided by Witness A be published with the exception of identifying and other potentially sensitive information, and that the suppressed content remain confidential, at the request of the witness.

Ms Cusack moved: That the motion of Mr Veitch be amended by omitting all words after 'provided by Witness A' and inserting instead 'remain confidential'.

The Committee divided.

Ayes: Ms Cusack, Mr Lynn, Mrs Pavey.

Noes: Revd Nile, Mr Searle, Mr Shoebridge, Mr Veitch.

Amendment resolved in the negative.

Original question, put and passed.

Resolved, on the motion of Mr Searle: That answers to questions on notice and attachments from the *in camera* hearing of 10 December 2013 provided by WorkCover be published, with the exception of answers

no. 3, 4, 6, 7, 8, 9 and 10 and attachments O, P, R, S, T and U, and that the suppressed content remain confidential, at the request of WorkCover.

Resolved, on the motion of Mr Shoebridge: That the Chairman write to WorkCover seeking further clarification of the rationale for its request to keep confidential certain answers to questions on notice from the *in camera* hearing of 10 December 2013, and asking, if that rationale relates to the privacy of current or former employees, whether those individuals were consulted as to their wishes regarding confidentiality.

Resolved, on the motion of Mr Searle: That the Chairman write to WorkCover seeking further clarification of the rationale for its request to keep confidential attachment M to the answers to questions on notice from the hearing on 11 November 2013, and asking, if that rationale relates to the privacy of current or former employees, whether those individuals were consulted as to their wishes regarding confidentiality.

Resolved, on the motion of Mr Shoebridge: That the Committee reconsider whether the answers to questions on notice from the *in camera* hearing of 10 December 2013, and attachment M to WorkCover's answers to questions on notice from the hearing of 11 November 2013, should remain confidential as requested by WorkCover, until after a response has been received from WorkCover regarding the rationale for its requests.

#### **4.5 Additional question on notice**

Resolved, on the motion of Mr Searle: That the Secretariat forward to WorkCover a question on notice inadvertently omitted from the list of questions on notice from the *in camera* hearing of 10 December 2013.

#### **4.6 Proposed revised Inquiry timeline**

The Committee noted the proposed revised timeline for the Inquiry, as follows:

Week of 3 March	House to consider report of independent legal arbiter <i>In camera</i> transcript sent to remaining witnesses
Week of 24 March	Return of answers to questions on notice and transcripts from remaining witnesses
Wednesday 16 April	Chair's draft report to members
Tuesday 29 April	Report deliberative
5/6/7 May	Table report

#### **4.7 Roundtable discussion of the proposed report outline**

The Committee discussed a list of topics to be covered in its report, prepared by the Secretariat. Members' suggestions were incorporated into the list.

### **5. Other business**

Resolved, on the motion of Mr Shoebridge: That the next deliberative meeting take place after the receipt of the independent legal arbiter's report, during the week commencing 24 February 2014.

### **6. Adjournment**

The Committee adjourned at 11.30 am, *sine die*.

Merrin Thompson  
Clerk to the Committee

**Minutes No. 38**

Tuesday 25 February 2014

General Purpose Standing Committee No. 1

Room 1153, Parliament House, Sydney at 12.05 pm

**1. Members present**Mrs Pavey, *Acting Chair*

Ms Cusack

Mr Lynn

Mr Searle

Mr Shoebridge

Mr Veitch

**2. Deputy Chair took the Chair**

In the absence of the Chairman, the Deputy Chair took the Chair for the purpose of the meeting.

**3. Apologies**

Revd Nile

**4. Previous minutes**

Resolved, on the motion of Ms Cusack: That draft Minutes No. 37 be confirmed.

**5. Inquiry into allegations of bullying in WorkCover NSW****5.1 Correspondence to WorkCover**

Resolved, on the motion of Mr Searle: That the draft letter from the Chairman to WorkCover requesting an unredacted copy of the letter of referral from the Independent Commission Against Corruption to WorkCover dated 26 March 2012, along with a copy of the investigation plan and investigation reports referred to in the letter of referral, and seeking further clarification of the rationale for WorkCover's proposed redactions to the transcript of the *in camera* hearing of 10 December 2013, and for its request to keep confidential certain answers to questions on notice from the *in camera* hearing of 10 December 2013, along with attachment M to the answers to questions on notice from the hearing on 11 November 2013, be agreed to and sent.

**5.2 Disputed claim of privilege: Report of independent legal arbiter**

The Clerk of the Parliaments briefed the Committee on the report received from the independent legal arbiter regarding the claim of privilege made in relation to the return to order received on 20 November 2013.

Resolved, on the motion of Mr Shoebridge: That the Committee request that Revd Nile move the following motions:

- upon the President announcing receipt of the arbiter's report, that the report be made public
- upon the arbiter's report being made public, that the documents provided in the return to order not be made public but instead be referred to the Committee for its use during the Inquiry, on the basis that the Committee will take all reasonable steps to safeguard the privacy of the persons named in the documents.

Further, that the draft motion to refer the documents to the Committee be circulated to the Committee for comment.

**5.3 Correspondence to the Independent Commission Against Corruption**

Resolved, on the motion of Mr Searle: That the draft letter from the Chairman to the Independent Commission Against Corruption (ICAC), which now seeks advice on whether ICAC has any concerns

about the Committee publishing material relating to the investigation referred by ICAC to WorkCover on 26 March 2012, and requesting an unredacted copy of the letter of referral and a copy of the investigation plan and investigation reports referred to in the letter of referral, be agreed to and sent.

#### 5.4 Additional *in camera* hearing

Resolved, on the motion of Mr Shoebridge: That the Committee invite the following witnesses to give evidence at a two hour *in camera* hearing, in which they will be examined concurrently:

- Mr Graeme Head, Public Service Commissioner
- Mr Stephen Horne, Managing Director and Chief Executive Officer, Internal Audit Bureau.

### 6. Adjournment

The Committee adjourned at 12.40 pm, *sine die*.

Merrin Thompson  
Clerk to the Committee

### Minutes No. 39

Thursday 27 March 2014

General Purpose Standing Committee No. 1

Members' Lounge, Parliament House, Sydney at 4.10 pm

#### 1. Members present

Revd Nile, *Chairman*  
Mrs Pavey, *Deputy Chair*  
Ms Cusack  
Mr Lynn  
Mr Searle  
Mr Shoebridge  
Mr Veitch

#### 2. Previous minutes

Resolved, on the motion of Mr Lynn: That draft Minutes No. 38 be confirmed.

#### 3. Correspondence

##### *Received*

- 4 March 2014 – Letter from the Hon Megan Latham, Commissioner, Independent Commission Against Corruption (ICAC), to Chairman, advising that ICAC has no concerns about the Committee publishing material relating to the investigation referred by ICAC to WorkCover on 26 March 2012, and providing an unredacted copy of the letter of referral and a copy of the investigation plan and investigation reports referred to in the letter of referral
- 12 March 2014 – Letter from Ms Julie Newman, Chief Executive Officer, WorkCover NSW, to Chairman, declining to provide a copy of both the full and interim investigation reports prepared by WorkCover for ICAC, and providing: an unredacted copy of the letter of referral from ICAC dated 26 March 2012; a copy of the investigation plan referred and correspondence between WorkCover and ICAC; and further clarification of the rationale for WorkCover's proposed redactions to the *in camera* transcript and confidentiality requests relating to answers to questions on notice
- 22 March 2014 – Letter from Witness C to Secretariat, returning his reviewed *in camera* transcript and indicating a concern about potential publication of the transcript
- 27 March 2014 – Answers to questions on notice provided by Mr Graeme Head, Public Service Commissioner.

**Sent**

- 26 February 2014 – Letter from Chairman to Ms Julie Newman, Chief Executive Officer, WorkCover NSW, requesting an unredacted copy of the letter of referral from the ICAC to WorkCover dated 26 March 2012, along with a copy of the investigation plan and investigation reports referred to in the letter of referral, and seeking further clarification of the rationale for WorkCover’s proposed redactions to the transcript of the *in camera* hearing of 10 December 2013, and for its request to keep confidential certain answers to questions on notice from the *in camera* hearing of 10 December 2013, along with attachment M to the answers to questions on notice from the hearing on 11 November 2013
- 26 February 2014 – Letter from Chairman to the Hon Megan Latham, Commissioner, ICAC, seeking advice on whether ICAC have any concerns about publishing material relating to an investigation referred by ICAC and requesting an unredacted copy of the letter of referral and a copy of the investigation plan and investigation reports referred to in the letter of referral
- 6 March 2014 – Letter from Committee Director to Witness C, enclosing the *in camera* transcript of 10 December 2013 for review
- 6 March 2013 – Letter from Committee Director to Mr Graeme Head, Public Service Commissioner, confirming his scheduled appearance at the *in camera* hearing on 8 April; enclosing the *in camera* transcript of 10 December 2013 for review and requesting answers to questions on notice; and inviting comment on an apparent discrepancy between his evidence and that of WorkCover representatives.

Resolved, on the motion of Mr Shoebridge: That the correspondence from ICAC dated 4 March 2014 be published excluding the attachments.

**4. Inquiry into allegations of bullying in WorkCover NSW****4.1 Informing a witness of the purpose of the *in camera* hearing**

Resolved, on the motion of Mr Veitch: That the Committee authorise the Secretariat to provide Mr Stephen Horne, Managing Director and CEO, Internal Audit Bureau, with the proposed words regarding the matters expected to be dealt with at the *in camera* hearing on 8 April 2014.

**4.2 Letter to Internal Audit Bureau**

Resolved, on the motion of Mr Shoebridge: That the Committee not proceed with its resolution of 10 December 2013 to write to the Internal Audit Bureau to ascertain whether improvement processes have been put in place regarding its investigations, and instead advise Mr Horne that he will be questioned on this issue at the *in camera* hearing on 8 April 2014.

**4.3 Procedural matters pertaining to *in camera* hearing**

The Secretariat briefed the Committee on procedural matters that may arise during the *in camera* hearing on 8 April 2014.

**4.4 Response to WorkCover’s correspondence**

Resolved, on the motion of Mrs Pavey: That the draft letter from the Chairman to Ms Julie Newman, CEO, WorkCover NSW, clarifying the Legislative Council’s position on the common law with regard to statutory secrecy provisions and orders for papers and expressing the Committee’s disappointment with WorkCover’s failure to cooperate fully with the Committee’s requests for information, be agreed to and sent.

**5. Adjournment**

The Committee adjourned at 4.15 pm, until Tuesday 8 April at 10.15 am in the Macquarie Room (*in camera* hearing).

Madeleine Foley  
Clerk to the Committee

**Minutes No. 40**

Tuesday 8 April 2014

General Purpose Standing Committee No. 1

Room 1043, Parliament House, Sydney at 10.15 am

**1. Members present**Revd Nile, *Chairman*Mrs Pavey, *Deputy Chair*

Ms Cusack

Mr Lynn

Mr Searle

Mr Shoebridge

Mr Veitch

**2. Previous minutes**

Resolved, on the motion of Ms Cusack: That draft Minutes No. 39 be confirmed.

**3. Correspondence*****Sent***

- 27 March 2014 – From Chairman to Ms Julie Newman, CEO, WorkCover NSW, clarifying the Legislative Council's position on the common law with regard to statutory secrecy provisions and orders for papers and expressing the Committee's disappointment with WorkCover's failure to cooperate fully with the Committee's requests for information
- 27 March 2014 – From Secretariat to Mr Stephen Horne, Managing Director and CEO, Internal Audit Bureau, providing information on the matters expected to be dealt with at the *in camera* hearing on 8 April 2014.

Resolved, on the motion of Mr Shoebridge: That the correspondence to WorkCover dated 27 March 2014 be published.

**4. Inquiry into allegations of bullying in WorkCover NSW****4.1 Submission no. 97**

Resolved, on the motion of Mr Veitch: That Submission no. 97 and all attachments remain confidential.

**4.2 Publication of Public Service Commissioner's answers to supplementary questions**Resolved, on the motion of Mr Shoebridge: That the Public Service Commissioner's answers to supplementary questions arising from the 10 December 2013 *in camera* hearing be published.**4.3 Revised inquiry timeline**

Resolved, on the motion of Mr Veitch: That the Committee adopt the revised timeline for the inquiry, as follows:

Friday 2 May	Return of answers to questions on notice and transcripts
Wednesday 11 June	Chair's draft report to members
Monday 16 June	Report deliberative
Wed 18 or Thurs 19 June	Table report in House

**4.4 *In camera* hearing**The Committee proceeded to take evidence *in camera*.

Persons present other than members of the Committee: Ms Beverly Duffy, Ms Madeleine Foley, Ms Merrin Thompson, Ms Shu-Fang Wei, Ms Christine Nguyen and Hansard reporters.

Mr Graeme Head, Public Service Commissioner, and Mr Stephen Horne, Managing Director and Chief Executive Officer, Internal Audit Bureau, were admitted.

Mr Head was examined on former oath.

Mr Horne was sworn and examined.

The evidence concluded and the witnesses withdrew.

**5. Adjournment**

The Committee adjourned at 12.35 pm, until Monday 16 June 2014 at 10.00 am in Room 1153 (report deliberative).

Merrin Thompson  
**Clerk to the Committee**

**Minutes No. 41**

Wednesday 7 May 2014

General Purpose Standing Committee No. 1

Members' Lounge, Parliament House at 1.02 pm

**1. Members present**

Revd Nile, *Chairman*  
Mrs Pavey, *Deputy Chair*  
Ms Cusack  
Mr Lynn  
Mr Searle  
Mr Shoebridge  
Mr Veitch

**2. Previous minutes**

Resolved, on the motion of Mrs Pavey: That draft minutes No. 40 be confirmed.

**3. Correspondence**

The Committee noted the following item of correspondence:

***Received***

- 11 April 2014 – From Ms Julie Newman, CEO, WorkCover NSW in reply to the Chairman's letter of 27 March 2014, outlining advice from the Crown Solicitor on the legal matters raised in the committee's letter, and responding to the suggestion that WorkCover had failed to cooperate fully with the committee's requests for information.
- 5 May 2014 – From Mr Graeme Head, Public Service Commissioner, providing answers to questions taken on notice during the *in camera* hearing on 8 April 2014.

Resolved, on the motion of Mrs Pavey: That the correspondence from Ms Newman received 11 April 2014 be published.

**4. Inquiry into allegations of bullying in WorkCover NSW**

**4.1 Correspondence**

Resolved, on the motion of Mr Shoebridge: That the committee write to Mr Stephen Horne, Managing Director and Chief Executive Officer, Internal Audit Bureau, to seek his comments on the answers to questions on notice from Mr Graeme Head, Public Service Commissioner, dated 5 May 2014.

**4.2 Submission no. 98 – Wayne Butler**

Resolved, on the motion of Mr Searle: That the committee authorise the publication of submission no. 98 with the exception of potentially identifying information and potential adverse mention, at the request of the submission author.

**5. Adjournment**

The Committee adjourned at 1.12 pm until Monday 16 June 2014.

Madeleine Foley

**Clerk to the Committee**

**Minutes No. 42**

Monday 16 June 2014

General Purpose Standing Committee No. 1

Room 1153, Parliament House, Sydney, 10.10 am

**1. Members present**

Revd Nile, *Chairman*

Mrs Pavey, *Deputy Chair*

Ms Cusack

Mr Lynn

Mr Searle

Mr Shoebridge

Mr Veitch

**2. Committee membership**

The Chairman noted the resolution of the House of 14 May 2014, discharging Mr Mason-Cox from the committee and appointing Mr Pearce to the committee.

**3. Substitutions**

The Chairman advised that Mr Charlie Lynn would be substituting for Mr Pearce for the duration of the inquiry into allegations of bullying in WorkCover NSW.

**4. Previous minutes**

Resolved, on the motion of Mr Lynn: That draft minutes no. 41 be confirmed.

**5. Correspondence*****Received***

- 21 May 2014 – From Mr Stephen Horne, Managing Director, Internal Audit Bureau, to Chairman, providing his comments on the the Public Service Commissioner’s response to questions taken on notice from the *in camera* hearing on 8 April 2014
- 26 May 2014 – From Mr David Blunt, Clerk of the Parliaments, to the Committee, providing a response at the request of the Committee to certain procedural matters raised in correspondence from Ms Julie Newman PSM, Chief Executive Officer, WorkCover, dated 11 April 2014

- 29 May 2014 – From Mr Graeme Head, Public Service Commissioner, to Principal Council Officer, giving permission to publish portions of his *in camera* evidence of 10 December 2013 and 8 April 2014 and the answer to question on notice no. 3 arising from the *in camera* hearing on 8 April 2014, providing a copy of the terms of reference for the Bullying Roundtable, and noting an objection to publication of one portion of the *in camera* transcript

**Sent**

- 12 May 2014 – From Chairman to Mr Stephen Horne, Managing Director, Internal Audit Bureau, seeking his comments on the Public Service Commissioner's response to questions taken on notice when they appeared together during the *in camera* hearing on 8 April 2014
- 19 May 2014 – From Principal Council Officer, to Mr Graeme Head, Public Service Commissioner, seeking his views on the publication of portions of his *in camera* evidence of 10 December 2013 and 8 April 2014, requesting permission to publish the answer to question on notice no. 3 arising from the *in camera* hearing on 8 April 2014, and requesting a copy of the terms of reference for the Bullying Roundtable.

Resolved, on the motion of Ms Cusack: That the committee:

- keep confidential the letter from the Public Service Commissioner dated 29 May 2014
- publish the attachment to the letter from the Public Service Commissioner dated 29 May 2014, providing the terms of reference for the Bullying Roundtable
- publish the Public Service Commissioner's answer to question on notice no. 3 arising from the *in camera* hearing on 8 April 2014, with the Commissioner's permission
- keep confidential the Public Service Commissioner's answers to question on notice no. 1 and 2 arising from the *in camera* hearing on 8 April 2014
- publish the correspondence from Mr David Blunt, Clerk of the Parliaments, dated 26 May 2014, responding to certain procedural matters raised in correspondence from Ms Julie Newman, Chief Executive of WorkCover, dated 11 April 2014
- keep confidential the response from Mr Stephen Horne, Managing Director, Internal Audit Bureau dated 21 May 2014, providing comments on the Public Service Commissioner's response to questions taken on notice when they appeared together during the *in camera* hearing on 8 April 2014.

## 6. Inquiry into allegations of bullying in WorkCover NSW

### 6.1 Correspondence from Public Service Commissioner

Resolved, on the motion of Mr Shoebridge: That the committee publish excerpts identified by the secretariat of the *in camera* evidence given by the Public Service Commissioner on 10 December 2013 and 8 April 2014, as follows:

- excerpts relating to the Public Service Commission's work to prevent and address bullying across the public sector – to be published in the committee's report, and made available on the committee's website for public access as redacted transcripts
- excerpts relating to the investigation of the former senior employee of WorkCover – to be published in a limited way in the committee's report, but not on the committee's website as a redacted transcript.

### 6.2 Publications status of documents provided as per resolution of the House

Resolved, on the motion of Mr Searle: That the privileged documents relating to the actions of a former WorkCover employee, which were provided to the committee by the resolution of the House of 6 March 2014, be kept confidential.

### 6.3 Publication status of various documents

Resolved, on the motion of Ms Cusack: That the committee finalise the publication status of various inquiry documents, as outlined below at items 6.3.1 – 6.3.7:

#### 6.3.1 Correspondence

That the committee keep confidential the following correspondence received and sent:

##### *Received*

- 22 August 2013 – Email from Mr Bret Walker SC to the Clerk of the Parliaments, providing advice on whether former WorkCover employees who have signed a deed of release requiring confidentiality or non-disparagement are protected from legal repercussions, should they participate in the inquiry
- 25 September 2013 – From Ms Josephine Wadlow-Evans, to the committee, providing information in relation to asbestos contamination
- 11 October 2013 – Letter from Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, to Chairman, responding to the committee's request for information about allegations made in a submission
- 16 October 2013 – Email from the author of submission no. 82, to the secretariat, requesting that their submission be kept confidential
- 21 October 2013 – Letter from Mr Graeme Head, Public Service Commissioner, to Chairman, responding to the committee's request for information about allegations made in a submission
- 22 October 2013 – Email from author of submission no. 68, to the secretariat, requesting to give evidence *in camera*
- 5 December 2013 – Email from the Clerk of the Parliaments to Committee Director, providing advice on questioning during the upcoming *in camera* hearing in relation to the privileged documents provided in the return to order
- 22 March 2014 – Letter from Witness C to the secretariat, returning his reviewed *in camera* transcript and outlining his views on publication of the transcript
- 27 March 2014 – Cover letter from Mr Graeme Head, Public Service Commissioner, attaching answers to questions on notice.

##### *Sent*

- 15 August 2013 – Letter from the Clerk of the Parliaments to Mr Bret Walker SC, seeking advice on whether former WorkCover employees who have signed a deed of release requiring confidentiality or non-disparagement are protected from legal repercussions, should they participate in the inquiry
- 1 October 2013 – Letter from the Chairman to Ms Julie Newman PSM, Chief Executive Officer, Safety, Return to Work and Support Division, requesting information about allegations made in a submission
- 1 October 2013 – Letter from the Chairman to Mr Graeme Head, Public Service Commissioner, requesting information about allegations made in a submission
- 7 November 2013 – Letter from the Clerk to the Committee to Mr Graeme Head, Public Service Commissioner, ordering the production of documents in the possession of the NSW Public Service Commission
- 19 November 2013 – Letter from the secretariat to Witness A, enclosing the *in camera* transcript of 6 November 2013 for review
- 6 March 2014 – Letter from the secretariat to Witness C, enclosing the *in camera* transcript of 10 December 2013 for review
- 6 March 2014 – Letter from the secretariat to Mr Graeme Head, Public Service Commissioner, confirming his scheduled appearance at the *in camera* hearing on 8 April; enclosing the *in camera* transcript of 10 December 2013 for review and requesting answers to questions on notice; and inviting comment on an apparent discrepancy between his evidence and that of WorkCover representatives

- 27 March 2014 – From the secretariat to Mr Stephen Horne, Managing Director and Chief Executive Officer, Internal Audit Bureau, providing information on the matters expected to be dealt with at the *in camera* hearing on 8 April 2014.

### **6.3.2 Correspondence from WorkCover dated 12 March 2014**

That the committee publish:

- correspondence received from Ms Julie Newman, Chief Executive Officer, WorkCover NSW, dated 12 March 2014, with the exception of:
  - page 3, paragraphs 4 and 7
  - page 4, paragraphs 1 and 5
  - page 5, paragraph 3.
- attachments A and B to the correspondence and partially publish attachment C with the exception of paragraphs 3, 6 and 7 which shall be kept confidential.

### **6.3.3 Correspondence from the Independent Commission Against Corruption**

That the committee keep confidential all attachments to the correspondence received from the Independent Commission Against Corruption, dated 4 March 2014.

### **6.3.4 Answers to questions on notice and supplementary questions from WorkCover NSW**

That, further to the committee's resolution of 10 December 2013 to keep confidential certain answers to questions on notice provided by WorkCover NSW following the hearing on 11 November 2013, the committee now publish:

- answer no. 9 (the provisional and final versions)
- attachment M with the exception of the report author's biography, which shall be kept confidential.

That, further to the committee's resolution of 12 February 2014 to keep confidential certain answers to questions on notice provided by WorkCover NSW following the hearing on 10 December 2013, the committee now publish:

- answers no. 3 and 6
- attachments O, P and R
- answer no. 4 with the exception of paragraph seven, which shall be kept confidential.

Furthermore, that the committee confirm its resolution to keep confidential answers no. 7, 8, 9 and 10 and attachments S, T and U.

### **6.3.5 Answers to questions on notice from the Public Service Commissioner**

That the committee keep confidential all the answers to questions on notice provided by the Public Service Commissioner following the *in camera* hearing on 10 December 2013.

### **6.3.6 Publication of the transcript from the *in camera* hearing on 10 December 2013:**

That, the committee publish the following portions of the *in camera* transcript of 10 December 2013:

- page 48, all paragraphs
- page 51, paragraphs 5 - 7
- page 57, paragraphs 3 and 10
- page 58, paragraphs 5 – 9
- page 59 – 62, all paragraphs
- page 65, paragraphs 1 – 8 and paragraph 14
- page 72, paragraph 9.

That the committee keep confidential the following portions of the *in camera* transcript of 10 December 2013:

- page 47, paragraphs 13 - 15
- page 52, paragraph 7
- pages 63 – 64, all paragraphs
- page 66, paragraph 4
- page 71, paragraph 19.

### 6.3.7 Submission no. 85

That submission no. 85 remain confidential.

## 6.4 Consideration of Chairman's draft report

The Chairman submitted his draft report entitled *Allegations of bullying in WorkCover NSW*, which, having been previously circulated, was taken as being read.

Chapter 1 read.

Resolved, on the motion of Mr Searle: That paragraph 1.8 be amended by inserting the following words: 'The committee notes that, due to a change of government in March 2011, Minister Daley was not given the opportunity to implement the PwC recommendations.' after the final sentence.

Resolved, on the motion of Mr Searle: That paragraph 1.46 be amended by omitting the word 'our' and inserting instead 'the' after the words 'privilege to be invalid,'.

Chapter 2 read.

Chapter 3 read.

Resolved, on the motion of Mr Shoebridge: That a new paragraph be inserted after paragraph 3.27 to note that statistics on the prevalence of bullying in WorkCover should be seen in light of the barriers to reporting bullying, and to provide a cross reference to paragraphs 6.10 and 6.11.

Chapter 4 read.

Resolved, on the motion of Mr Searle: That the following sentence be inserted at the end of paragraph 4.59: 'The failure by the Public Service Commission to make this clear to the submission author is most regrettable. It contributed to further angst suffered by the submission author, which could have been easily avoided.'

Resolved, on the motion of Mr Shoebridge: That a new paragraph be inserted after 4.63 to read:

'The evidence before the committee was that there was significant discussion between the IAB and the Public Service Commissioner regarding the quality of the report. Much of this evidence was in direct conflict. The committee is not in the position to determine the validity of the concerns with respect to the report, in part due to the absence of a clear paper trail regarding the discussions between the IAB and the Commission. We note that since this matter, the Commission has not used the services of the IAB for such investigations again.'

Mr Searle moved: That two additional paragraphs be inserted after paragraph 4.64 to read:

'The committee finds that the Public Service Commission did not take responsibility for the investigation and its outcome, despite being the body charged with this function. The approach of the Public Service Commission to the investigation was one of being a director of traffic, co-ordinating the paper flow and interfacing with the complainant, the subject of the investigation and the IAB.

Whoever actually conducts an investigation, once it is provided by the Public Service Commission to a subject it is given the imprimatur of the Office of the Public Service Commissioner and effectively

becomes the work of the Public Service Commission. This is necessary given the statutory functions given by Parliament to the Public Service Commission. The Public Service Commission cannot be permitted to subsequently disavow a report in the way which occurred in the present matter.’

Question put.

The committee divided.

Ayes: Mr Searle, Mr Shoebridge and Mr Veitch.

Noes: Ms Cusack, Mrs Pavey, Mr Lynn and Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 4.66 to be amended by omitting the words ‘initiative to develop’ and inserting instead ‘development of’, and inserting the words ‘, in part responding to the failures in the way that this matter was handled,’.

Chapter 5 read.

Resolved, on the motion of Mrs Pavey: That a new paragraph be inserted after paragraph 5.6 to highlight certain factors contributing to bullying in WorkCover, in particular continuous and significant organisational change such as the move of WorkCover’s head office from Sydney to Gosford and numerous large scale restructures, and that the paragraph be emailed to members for review.

Resolved, on the motion of Mrs Pavey: That a new paragraph be inserted after paragraph 5.56 to reflect the committee’s view that significant organisational change has contributed to bullying in WorkCover, and that the paragraph be emailed to members for review.

Chapter 6 read.

Resolved, on the motion of Mr Searle: That paragraph 6.45 be amended by omitting the words ‘reluctance to accept’ and inserting instead ‘disdain for’ after the words ‘to investigate Mr Butler, and their’.

Resolved, on the motion of Mr Lynn: That paragraph 6.49 be amended by omitting the words ‘redouble their work to’ after the words ‘the urgent need to take ownership of the problem and’.

Resolved, on the motion of Mr Searle: That paragraph 6.50 be amended by omitting the word ‘perplexed’ and inserting instead ‘deeply troubled’ after the words ‘In addition, the committee is left’.

Resolved, on the motion of Mr Searle: That paragraph 6.51 be amended by:

- omitting the words ‘it would have been wise’ and inserting instead ‘the proper and professional response’ in the second sentence
- inserting the words ‘to take would have been’ after the word ‘executives’ in the second sentence.

Resolved, on the motion of Mr Searle: That paragraph 6.52 be amended by:

- omitting the word ‘cajole’ and inserting instead ‘pursue’ in the first sentence
- inserting the word ‘great’ before the word ‘length’ in the first sentence
- inserting the word ‘adequate’ before the word ‘explanations’ in the first sentence
- inserting a new sentence after the first sentence to read ‘The committee does not believe that it has in fact received acceptable explanations of the matters that are the subject of this inquiry from WorkCover management.’

Resolved, on the motion of Mr Shoebridge: That paragraph 6.53 be amended by inserting the following words at the beginning of the sentence ‘The committee accepts that’.

Resolved, on the motion of Mr Shoebridge: That paragraph 6.56 be amended by omitting the words ‘While it is perhaps unrealistic for these allegations to be formally resolved via investigations, we do believe’ and inserting instead the words ‘The committee believes’ in the third sentence.

Resolved, on the motion of Mr Shoebridge: That Recommendation 2 be amended by omitting the word 'reluctance' and inserting instead 'failure'.

Resolved, on the motion of Mr Shoebridge: That paragraph 6.87 be amended by omitting the words 'suspect that' and inserting instead 'believe that of itself' after the words 'However, we' in the second sentence.

Resolved, on the motion of Mr Searle: That Recommendation 4 be amended by:

- inserting the words 'structure and' after the words 'review the'
- omitting the words 'these functions' after the words 'to determine whether' and inserting instead 'they'
- inserting a new final sentence to read: 'Further, that in undertaking this review, the Minister consider whether it is feasible for all these functions to be undertaken by the existing board.'

Resolved, on the motion of Mr Shoebridge: That a new paragraph be inserted after 6.90 to read:

'In addition to the establishment of a steering panel, we believe it will be necessary for the parliament, through this committee, to continue to oversee what if any measures are adopted by WorkCover to address the serious failings identified in this report. This is the subject of a recommendation on continuing parliamentary oversight in the following chapter.'

Chapter 7 read.

Resolved, on the motion of Mr Shoebridge: That paragraph 7.44 be amended by inserting the words 'most particularly at senior levels' after the words 'at every level of management'.

Resolved, on the motion of Mr Searle: That paragraph 7.57 be amended by inserting the words 'within WorkCover' after the words 'bullying allegations'.

Resolved, on the motion of Mr Searle: That a new paragraph be inserted after 7.70 to read:

'Investigations into WorkCover in its role as an employer cannot credibly be undertaken by the institution itself. Some inquiry participants have suggested that comparable interstate bodies could be tasked with this role. This would enable a specialised body without any inherent conflicts of interest to investigate all work health and safety incidents that involve WorkCover as an employer, including allegations of bullying. The committee agrees with this approach. While a framework for this is being developed, WorkCover should take steps to ensure complaints of bullying that involve WorkCover as an employer are conducted independently of WorkCover itself. In this regard, the committee notes the arrangements between WorkCover and the Department of Trade and Investment, Regional Infrastructure and Services discussed at paragraphs 7.83 to 7.87.'

Resolved, on the motion of Mr Searle: That Recommendation 7 be amended as follows, and that the secretariat reflect these changes in paragraph 7.70:

- omitting the word 'complex' after the words 'ensure that all'
- omitting the words 'and those where a conflict of interest may exist' and inserting instead the words 'within WorkCover'
- omitting the words ', and clarify the definition of 'complex investigations' to enable greater consistency and transparency of decisions about investigations'.

Resolved, on the motion of Mr Shoebridge: That paragraph 7.85 be amended by omitting the word 'sincerely' before the words 'hope that the memorandum'.

Resolved, on the motion of Mr Shoebridge: That a new paragraph be inserted after 7.85 to read:

However should an arrangement with D'TIRIS not prove achievable in the near future, then it is essential that another independent mechanism be established. In that regard the committee sees merit in the

suggestion that investigations of WorkCover be undertaken by a workplace regulator in another state or territory.

Chapter 8 read.

Resolved, on the motion of Mr Searle: That a new paragraph be inserted after 8.35 to read:

‘However, this approach will only work if WorkCover properly oversees the scheme agents’ behaviours and there are real penalties in place for breaches of the code of conduct. This must include financial penalties in the case of breaches by scheme agents or their staff. Any system for investigating issues raised or complaints made by injured workers must be easy for workers and their representatives to access, and must be fair, simple and independent.’

Resolved, on the motion of Mr Searle: That two new recommendations be inserted after this new paragraph to read:

‘That the WorkCover Authority of NSW ensure that the code of conduct for WorkCover and scheme agent staff be enforceable by individual workers and their representatives, and that financial penalties be included as one of the remedies where breaches of the code are established.’

‘That the Minister for Finance and Services take the necessary steps to ensure that complaints against WorkCover Authority of NSW staff by injured workers be investigated independently, and that investigations of complaints against scheme agent or WorkCover staff be reviewable by an independent body.’

Resolved, on the motion of Mr Searle: That following the two new recommendations, a new paragraph be inserted to read:

‘Turning to the separate issue of addressing workplace bullying, and considering the significant body of evidence received by the committee and the matters contained in paragraphs 3.19 to 3.20, the committee believes there needs to be specific legislative provisions ensuring all workers in New South Wales including injured workers are protected from workplace bullying.’

The committee recognises that not all complaints of workplace bullying are valid, and some reflect reasonable efforts by employers to improve workplace performance. Such actions by employers should not be caught by any new legislation.

Such legislative provisions should incorporate the definition of workplace bullying utilised in the National Occupational Health and Safety Commission’s Draft National Code of Practice and set out in paragraphs 3.1 and 3.2 of this report, namely actions which constitute ‘repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety and/or causes harm.’

Resolved, on the motion of Mr Searle: That a new recommendation be inserted following the new paragraphs to read:

‘That the NSW Parliament enact laws which protect all workers in the State, including injured workers, from workplace bullying, and that such laws be based on the National Occupational Health and Safety Commission’s Draft Code of Practice.’

Resolved, on the motion of Mr Shoebridge: That a new paragraph be inserted after the original Recommendation 9, to read:

‘In addition, we believe that there is a role for this committee to continue to oversee the implementation by WorkCover of our recommendations. We are concerned that without continuing oversight, the cultural barriers to improvement we have identified throughout this report will make implementation of necessary change very difficult. The committee intends to conduct a review in late 2014 of WorkCover’s implementation of the recommendations in this report.’

Resolved, on the motion of Mr Shoebridge: That a new recommendation be inserted following the new paragraph to read:

‘That General Purpose Standing Committee No. 1 conduct a review in late 2014 of the implementation of the recommendations of its 2014 report into allegations of bullying in WorkCover NSW.’

Chapter 9 read.

Resolved, on the motion of Ms Cusack: That:

- the draft report, as amended, be the report of the committee and that the committee present the report to the House
- the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report; and
- upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee and evidence taken *in camera*.

Resolved, on the motion of Mr Shoebridge: That dissenting statements be provided to the secretariat within 24 hours of receipt of the minutes from this meeting.

The committee noted that the summary of key issues would be updated to reflect the amendments to the report and emailed to members for information.

Resolved, on the motion of Ms Cusack: That the secretariat consult with the Clerk of the Parliaments regarding the following matters, and that these matters subsequently be placed before the Chairs’ Committee for consideration:

- ways to educate witnesses on their duty to cooperate with requests for information from Legislative Council committees, which may include preparing an information pack for witnesses. This could be intended to avoid the situation where witnesses refuse to answer questions on the basis of statutory secrecy provisions, such as the privacy legislation cited by WorkCover witnesses
- how to prevent government agencies from refusing to comply with orders for the production of documents by Legislative Council committees under standing order 208(c).

## 7. Adjournment

The Committee adjourned at 1.12 pm until Wednesday 18 June.

Merrin Thompson  
**Clerk to the Committee**

