

General Purpose Standing Committee No. 1

Review of the inquiry into allegations of bullying in WorkCover NSW

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Terms of reference

1. That General Purpose Standing Committee No. 1 inquire into and report on the implementation of the recommendations of the inquiry into allegations of bullying in WorkCover NSW.
2. That the committee report by 11 December 2014.¹

These terms of reference were referred by the Legislative Council on 11 September 2014.

¹ *Minutes*, Legislative Council, 11 September 2014, p 49.

Committee membership

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>Chair</i>
The Hon Melinda Pavey MLC	The Nationals	<i>Deputy Chair</i>
The Hon Catherine Cusack MLC	Liberal Party	
Mr Scot MacDonald MLC*	Liberal Party	
The Hon Adam Searle MLC**	Australian Labor Party	
Mr David Shoebridge MLC***	The Greens	
The Hon Mick Veitch MLC	Australian Labor Party	

* Member replacing Hon Greg Pearce MLC from 21 October 2014.

** Member substituted for Hon Walt Secord MLC from 28 October 2014.

*** Member substituted for Dr John Kaye MLC from 17 September 2014.

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Chairman's foreword

In June 2014 I tabled a report concerning allegations of bullying in WorkCover NSW.

Now, less than six months later, I am tabling a report which tracks progress on the implementation of the 12 recommendations to government made in the committee's first report and, I am pleased to say, progress on these suggested reforms has been impressive.

Our first report found that WorkCover had a serious problem with bullying and an executive team not open to addressing the issue. The committee was determined that our first report would not be placed on a shelf to gather dust. And so the Legislative Council referred terms of reference to allow us to review the outcomes of the first inquiry. I believe this review has been instrumental in generating greater momentum for action in response to our first inquiry.

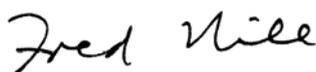
The appointment of a new CEO, Mr Vivek Bhatia, who has publicly and genuinely acknowledged that WorkCover has a problem with bullying, is encouraging. So too is the greater level of openness about these matters that we have witnessed under Mr Bhatia's leadership and that of the new Office of Finance and Services' Chief Executive, Mr John Hubby. The satisfactory implementation of the committee's first two recommendations, that WorkCover publicly apologise to all WorkCover employees, including Mr Wayne Butler, was a critical first step in the organisation's trajectory towards a safer workplace.

The government issued a formal response to the committee's recommendations two months earlier than is required under Legislative Council standing orders, which is further evidence of its commitment to addressing workplace bullying both within and beyond WorkCover.

While there is still much to be done, we are confident that the significant progress to date on implementing the committee's original recommendations has laid the groundwork for long overdue systemic and cultural change in WorkCover.

I thank my committee colleagues once again for finding common ground on an issue of such significance, and the inquiry participants, including current and former WorkCover employees and the Public Service Association of NSW, who contributed significantly to the effectiveness of the review.

The reforms generated by our first inquiry and this review are a testament to the value of the Upper House committee system and it is with considerable satisfaction that I commend the report to the House.



Revd the Hon Fred Nile MLC
Committee Chairman

Summary of recommendations

Recommendation 1

9

That WorkCover NSW meet with the Public Service Association of NSW on at least two occasions annually to discuss initiatives to address bullying in WorkCover, including the draft action plan to address punitive use of process.

Recommendation 2

12

That as a matter of priority WorkCover NSW liaise with the Public Service Association of NSW to determine the most effective method of collecting, monitoring and publishing reliable data on the incidence of workplace bullying in Safety Return to Work and Support.

Recommendation 3

15

That as soon as practical, WorkCover NSW and the Department of Trade and Investment, Regional Infrastructure and Services publish information on how complaints covered by the recently signed Memorandum of Understanding between both entities will operate, including at a minimum:

- how these complaints will be managed
- who will manage these complaints
- the expected timeframes within which complaints will be addressed.

Chapter 1 Introduction

This chapter provides a background to the review of the inquiry into allegations of bullying in WorkCover NSW and the methods used to invite participation. The following chapter reports on the progress to date of the committee's 12 recommendations to the government from its first report which was tabled in June 2014.

Background to the review

- 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. WorkCover, in its role as work health and safety regulator, responds to bullying in workplaces across New South Wales.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.³
- 1.2** 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 in early 2011 and the Minister undertook to accept and implement all the report's recommendations. The committee notes that there was a change of government as a result of the election on 26 March 2011. Questions have been raised about whether the PwC recommendations were implemented in full.⁴
- 1.3** 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 publicly chastised for its treatment of an employee. 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' and had the 'characterisation of institutional bullying'. Further, the IRC described the investigation as a 'witch hunt' and speculated that it was motivated by 'malicious intent'.⁵
- 1.4** Following the IRC decision, the Legislative Council passed a resolution to refer the inquiry into allegations of bullying in WorkCover NSW to the General Purpose Standing Committee No. 1 for investigation and report.⁶ The committee was to examine:
- 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

² General Purpose Standing Committee No. 1, NSW Legislative Council, *Allegations of bullying in WorkCover NSW* (2014), p 1.

³ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*, p 1.

⁴ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*, p 2.

⁵ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*, p 2.

⁶ *Minutes*, Legislative Council, 27 June 2013, p 22048.

- appropriate recommendations to address issues raised.

- 1.5 In June 2014, the committee handed down its report, entitled *Allegations of bullying in WorkCover NSW*.⁷ In the report, the committee found that WorkCover had a significant and longstanding organisational problem with bullying at a cultural level.⁸ The committee made 12 recommendations to the government (see at Appendix 1) to assist WorkCover to move forward.
- 1.6 In one of its recommendations, the committee undertook to review the government's implementation of the inquiry's recommendations in late 2014.⁹ The committee expressed its concerns that 'without continuing oversight the cultural barriers to improvement we have identified throughout this report will make implementation of necessary change very difficult'.¹⁰
- 1.7 On 17 September 2014, terms of reference for the review of the inquiry into allegations of bullying in WorkCover NSW were referred to the committee by the Legislative Council. The terms of reference are reproduced on page iv. The committee notes that the government response for this report was due by 19 December 2014 but was received on 17 October 2014.

Conduct of the review

Submissions

- 1.8 The committee called for submissions by writing to all agencies and witnesses who participated in the first inquiry. The closing date for submissions was Friday 17 October 2014.
- 1.9 The committee received 15 submissions and one supplementary submission. A full list is provided at Appendix 2. The submissions are also available on the committee's website: www.parliament.nsw.gov.au/gpsc1.

Hearing

- 1.10 The committee held one public hearing at Parliament House on 28 October 2014, where evidence was taken from the Public Service Association of NSW, WorkCover NSW and the Public Service Commissioner. The Minister for Finance also appeared briefly to address the committee outlining the government's response to the recommendations of the committee's first report.
- 1.11 A list of witnesses is set out in Appendix 3 and the transcripts are available on the committee's website.
- 1.12 The committee is grateful to the individuals and agencies that contributed to this review.

⁷ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*.

⁸ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*, p x.

⁹ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*, p xvi.

¹⁰ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*, p 118.

Chapter 2 Progress on the recommendations

This chapter reports on the progress to date of the implementation of the committee's 12 recommendations to the government made in the June 2014 report. Significant steps have been taken by WorkCover to address bullying, both within its own ranks and in relation to its role as workplace regulator. This chapter proposes two new recommendations designed to ensure that the momentum generated by our first inquiry is maintained.

The apology to employees and Mr Wayne Butler

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.

Government response:

A statement has been issued by the Chief Executive Officer of Safety, Return to Work and Support and is also addressed in the WorkCover submission to the review of the Inquiry.

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.

Government response:

An apology has been issued by the Chief Executive Officer of Safety, Return to Work and Support.

Background to recommendation 1

- 2.1** In our first inquiry report, the committee found that WorkCover had a significant organisational problem with bullying, the extent of which had not been fully grasped by the WorkCover executive nor the board. We recommended that WorkCover publicly acknowledge the harm caused by its failure to address this issue as an important first step in rebuilding trust between WorkCover and its employees.

Progress on recommendation 1

- 2.2** On 5 September 2014 the new CEO of WorkCover, Mr Vivek Bhatia, sent an email to relevant employees in the Office of Finance and Services (OFS) within Safety, Return to Work

and Support (SRWS). In this email Mr Bhatia acknowledged that WorkCover had a significant problem with workplace bullying and apologised to any employee affected by such behaviour.¹¹

- 2.3** In its submission to the review, WorkCover included a statement from the board and the executive acknowledging the committee's finding that WorkCover had a significant problem with workplace bullying:

In acknowledging this the SRWS Board and Executive regret the hurt that may have been caused to any employee affected by bullying.¹²

- 2.4** While the Public Service Association of NSW (PSA) welcomed the apology from Mr Bhatia, which it believes has been broadly accepted in good faith by its members, it suggested that the 'statement of regret' on the part of the board and the executive should have been an apology.¹³

- 2.5** At the time of preparing its submission to the review, Unions NSW was unaware that a public statement had been made by WorkCover, but noted 'hearsay' information from WorkCover staff that WorkCover was unlikely to issue an apology on the basis of legal advice that such an apology would expose the authority to legal liability.¹⁴

- 2.6** In its submission to the review, the Injured Workers Support Network noted that its members continue to report high degrees of bullying and harassment in their interactions with scheme agents, which in their view 'demonstrates WorkCover NSW has not accepted their systemic problem with workplace bullying'.¹⁵ The network's concerns regarding scheme agents are discussed further from paragraph 1.66 to paragraph 1.78.

Background to recommendation 2

- 2.7** The punitive use of process in relation to bullying complaints in WorkCover was a major theme of the committee's first report and it would be difficult to find a case that exemplifies this more starkly than that involving Mr Wayne Butler. Thus in addition to a general apology and acknowledgement to all WorkCover staff, the committee felt it was imperative for WorkCover to issue a specific apology to Mr Butler.

Progress on recommendation 2

- 2.8** On 15 October 2014 a formal written apology was issued to Mr Butler on behalf of the SRWS and the executive and circulated to all SRWS staff. This followed a meeting arranged by Mr Bhatia with Mr Butler to agree on the most appropriate and acceptable apology, both in terms of 'content and delivery'.¹⁶ The apology stated, in part:

¹¹ Submission 2, WorkCover, p 6; WorkCover, Attachment B. The email is included at Appendix 4.

¹² Submission 2, WorkCover, p 3.

¹³ Submission 13, Public Service Association, p 2.

¹⁴ Submission 10, Unions NSW, p 4.

¹⁵ Submission 9, Injured Workers Support Network, pp 2-3.

¹⁶ Evidence, Mr Vivek Bhatia, Chief Executive Officer, WorkCover, 28 October 2014, p 20.

This is an unconditional apology, made without any qualifications or reservations. I regret the way in which you were treated during the investigation and your dismissal and I acknowledge that you and your family did go through a difficult and distressing time. I would also like to extend my apology to your family as well.¹⁷

- 2.9** In its submission to the review, WorkCover acknowledged that Mr Butler had been ‘exonerated’ and confirmed that there are no further matters outstanding in relation to his conduct.¹⁸
- 2.10** According to PSA Assistant General Secretary, Mr Steve Turner, Mr Butler (who had previously been reinstated to his original position after the Industrial Relations Commission decision in his favor) was appreciative of the apology and pleased that he was approached about how to move forward. Mr Turner also noted that the apology had been well received by the organisation as a whole.¹⁹
- 2.11** In its submission, Unions NSW suggested that the apology to Mr Butler should have been issued earlier, at least prior to the submission deadline for this review, given WorkCover’s stated commitment to the importance of resolving workplace safety issues in a timely manner.²⁰

Do the apologies demonstrate acceptance of the need for change?

- 2.12** We note the concerns of one submission author who observed that the two executives responsible for the Butler investigation: the former CEO of SRWS, Ms Julie Newman, and the former General Manager of WorkCover, Mr John Watson, had not apologised:
- Their failure to apologise has created further reputational damage for WorkCover. It has also provided comfort to those within the organisation who deny the prevalence of bullying and are reluctant to change. Their failure to apologise has made it more difficult for the organisation to move forward.²¹
- 2.13** The same submission author argued that an alleged comment made by the Acting Chief Executive of the Office of Finance and Services, Mr John Hubby, further indicates the failure of the SRWS executive to fully acknowledge the systemic nature of bullying in WorkCover.
- 2.14** The comment is purported to have been made in front of 100 staff at a meeting in the Gosford office on 25 June 2014 in response to a question from the floor about the committee’s recently released inquiry report. Mr Hubby is alleged to have said ‘I can’t say from my direct experience that WorkCover has a bullying problem. I accept that parliament thinks we have a problem.’ According to the submission author Mr Hubby’s response (and the lack

¹⁷ Anna Patty, ‘WorkCover NSW bullying: Wayne Butler receives belated apology for poor treatment and dismissal’, *Sydney Morning Herald*, 16 October 2014, <<http://www.smh.com.au/nsw/workcover-nsw-bullying-wayne-butler-receives-belated-apology-for-poor-treatment-and-dismissal-20141016-116jx1.html>>.

¹⁸ Submission 2, WorkCover, p 7.

¹⁹ Evidence, Mr Steve Turner, Assistant General Secretary, Public Service Association of NSW, 28 October 2014, p 5.

²⁰ Submission 10, Unions NSW, p 5.

²¹ Submission 12, Name suppressed, p 1.

of response from another WorkCover executive also present at the meeting) indicated that the executive is a long way from accepting that there is a serious problem with bullying in the organisation:

The ... question was a chance for the CEO or the Director People and Culture to make a statement that they accepted the Butler decision and the inquiry report. Instead they both remained silent throughout the rest of the meeting. An opportunity to show leadership was missed.²²

2.15 Asked about this exchange during the hearing, Mr Hubby told the committee he could not recall making that statement:

I very clearly stated ... that we have a problem and that we will not get anywhere if we do not acknowledge that we have a problem. I said that we will take it seriously and we will build in practices and actions and we will take steps to improve. I always feel somewhat careful, though, about recognising the fact that there are people certainly in WorkCover and every part of the Office of Finance and Services and every part of Safety, Return to Work who do not experience bullying. I have had direct feedback from staff within WorkCover and within Safety, Return to Work that they feel confronted and frustrated by the fact that they feel the whole organisation is painted with somewhat of a broad brush. They feel they work with positive managers and work in a positive workplace and have great relationships with their co-workers.²³

2.16 Mr Steve Turner, Assistant General Secretary of the PSA, who was also present at the meeting, said that what happened during that meeting did not represent Mr Hubby's view. Mr Turner believed that Mr Hubby 'is committed to turning WorkCover around and making it free from injury'.²⁴ He further commented that while senior officials have accepted the committee's findings and recommendations, a portion of middle management is not accepting the need for change.²⁵

Committee comment

2.17 The committee is satisfied that recommendation 1 and 2 have been implemented to an acceptable degree. While the committee acknowledges that WorkCover's expression of regret is not precisely in line with the apology called for by recommendation 1, WorkCover's statement of regret, coupled with Mr Bhatia's sincere apologies to all SRWS employees and to Mr Butler and his family, fulfil the spirit of our recommendations and as such constitute a critical first step in the organisation's trajectory towards a safer workplace.

²² Submission 12, partially confidential, p 2.

²³ Evidence, Mr John Hubby, Acting Chief Executive, Office of Finance and Services, 28 October 2014, p 35.

²⁴ Evidence, Mr Turner, 28 October 2014, p 6.

²⁵ Evidence, Mr Turner, 28 October 2014, p 6.

Overcoming a culture of fault

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.

Government response:

Supported. Regular reports have and will continue to be provided to the Safety, Return to Work and Support Board on actions taken to address punitive use of process and foster a constructive, empowered, productive and safe workplace culture. The Human Resources Board Sub-Committee will monitor and oversee the implementation of actions

Background to recommendation 3

- 2.18** The committee's first report documented the invidious impact of the poor management of performance related issues in WorkCover. The Wayne Butler case epitomised the damage that may be caused by the inappropriate escalation of a human resources issue to an industrial matter, but it was only one of several cases reported to the committee involving a tendency towards a punitive approach to such issues by WorkCover management and executive.
- 2.19** With this in mind, the committee called on WorkCover to identify how it planned to ameliorate an apparent culture of blame in the organisation and to report back to the board on its proposed actions.

Progress on recommendation 3

- 2.20** WorkCover's submission included an extensive list of remedial activities to address concerns about the punitive use of process within SRWS and WorkCover, as set out in the 'draft action plan to address punitive use of process.' These initiatives include:
- revised policies in relation to bullying and grievance handling that focus on a risk based approach rather than an immediate misconduct investigation
 - mandatory training for all people leaders on grievance resolution and managing unsatisfactory performance
 - a skills audit of the People and Culture Group team members who are coaching and advising people leaders to ensure they have appropriate skills and qualifications
 - regular reporting to the board on its learnings in relation to the punitive use of process.
- 2.21** WorkCover also advised that progress on the action plan would be measured via the next People Matter Employee Survey response in 2016 and an interim survey in 2015. The draft action plan can be found at Appendix 5.
- 2.22** At the hearing on 28 October, Mr Bhatia assured the committee that he was determined to unravel WorkCover's process-focused and at times punitive culture.²⁶ Mr Bhatia advised that

²⁶ Evidence, Mr Bhatia, 28 October 2014, p 19.

the draft action plan was a key initiative designed to transform WorkCover's putative 'culture of blame.'

- 2.23** The PSA indicated that it was encouraged by WorkCover's commitment to improving its management of performance-related matters:

What they are acknowledging is that you cannot instantly launch into treating every matter as a matter of misconduct. That is a very positive sign. They will wait for a report and then take a risk management approach to the problem that an employee may have reported....we have to say it is a very good development that they have acknowledged that you need first to get the facts, gather the facts, decide the nature of the problem and then decide what you will do.²⁷

- 2.24** According to PSA Industrial officer, Ms Jan Jeffries, the PSA had not discussed the action plan with WorkCover, nor had they seen a copy of it at the time of the hearing. Ms Jeffries advised that the association intends to follow up this and other matters in future meetings with WorkCover.

- 2.25** Since the release of the committee's report the PSA has met with WorkCover in relation to relevant matters on two occasions: 9 September and 9 October 2014. Mr Turner told the committee, '...we believe they are committed [to meeting with the union] on a needs basis, which is good. But there was no set schedule'.²⁸ Asked by the Chairman as to whether the association was satisfied with the frequency of its meetings with WorkCover and whether there should be regular bimonthly meetings, Mr Turner responded while they are confident that WorkCover is willing to work with the PSA, such a recommendation could be helpful.²⁹

Committee comment

- 2.26** The 'draft action plan to address punitive use of process' is a refreshingly concise yet comprehensive document designed to address a problematic aspect of WorkCover culture highlighted by the Butler case and substantiated by our earlier report. While the committee is confident that Mr Bhatia and Mr Hubby are serious about its implementation, we consider it highly desirable that a meeting between the PSA and WorkCover to discuss the plan should occur very soon. We make a similar comment later in the report regarding the Memorandum of Understanding with the Department of Trade and Investment (see paragraphs 1.52-1.62) While we are satisfied that Mr Bhatia and Mr Hubby are committed to consulting the PSA on measures to address bullying in WorkCover, we nevertheless recommend that a minimum of two meetings be held with the PSA each year to discuss initiatives to address bullying in WorkCover, including the draft action plan to address punitive use of process, to ensure a structured and ongoing process so that these matters are addressed.

²⁷ Evidence, Mr Colin Fraser, Central Councillor and Delegate, Public Service Association of NSW, 28 October 2014, p 7.

²⁸ Evidence, Mr Turner, 28 October 2014, p 8.

²⁹ Evidence, Ms Jann Jeffries, Industrial Officer, Public Service Association of NSW, 28 October 2014, p 9.

Recommendation 1

That WorkCover NSW meet with the Public Service Association of NSW on at least two occasions annually to discuss initiatives to address bullying in WorkCover, including the draft action plan to address punitive use of process.

The Safety, Return to Work and Support Board**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.

Government response:

Supported. These matters will be considered in the NSW Treasury review of NSW Government insurance and regulatory functions.

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.

Government response:

Supported.

Background to recommendation 4

- 2.27** As discussed in the committee's first report, it is likely that the substantial legislative and organisational change that has occurred in WorkCover since 2012 has meant that internal workplace health and safety issues including bullying have not received adequate attention from the SRWS board. The committee therefore recommended that the structure and functions of the board be reviewed to ensure it is equipped to meet this requirement and ensure more effective governance and oversight of WorkCover and its executive in relation to bullying of both internal and external employees.

Progress on recommendation 4

- 2.28** According to the government response, the role and functions of the board in relation to workplace issues will be considered in the NSW Treasury review of NSW Government insurance and regulatory functions.

- 2.29** In its submission to the review, Unions NSW advised that it had written to the Minister regarding the nature of the Treasury review and how the consultation will occur but had not yet received a response. They also reiterated their views regarding the pressing need to re-establish advisory councils to the Board.³⁰

Background to recommendation 5

- 2.30** Recommendation 5 is one of several recommendations designed to ensure that the SRWS board plays an integral role in transforming the culture of WorkCover. In order to facilitate open communication between both entities, the committee recommended that progress on the recommendations of our first report be reported to the board approximately every six months and published on WorkCover's website.

Progress on recommendation 5

- 2.31** At the meeting between the PSA and Mr Hubby and Mr Bhatia on 9 September 2014, they discussed, among other things, the PSA's view that updates on progress of the implementation of the recommendations from the first inquiry should be available to all staff and should be publicly available on a website so that non employees who contributed to the inquiry can see that progress is being made. In its submission to the inquiry, the PSA said that such an undertaking was made and this was confirmed in the WorkCover submission³¹
- 2.32** WorkCover stated that 'reports to the SRWS Board on bullying matters will be regularly published on the WorkCover website and the CEO of SRWS will continue to provide regular updates to all employees'.³²

Committee comment

- 2.33** The committee is pleased that our recommendations concerning a review of the structure and functions of the SRWS board, and for reports to the board on actions arising from the recommendations of our inquiry, have both been supported.
- 2.34** In relation to the former, the issue of the board's capacity to monitor and improve WorkCover's organisational problem with bullying will be but one aspect of the much bigger Treasury review of government insurance and regulatory functions. The committee trusts that this important issue will be properly and distinctly considered and addressed. Until this is addressed, there is a risk that the board's governance of financial aspects of the organisation will continue to overshadow its oversight of work health and safety matters remains.

³⁰ Submission 10, Unions NSW, p 6.

³¹ Submission 13, Public Service Association of NSW, p 4.

³² Submission 2, WorkCover, p 17.

Reliable data on workplace bullying

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.

Government response:

Supported.

Background to recommendation 6

- 2.35** In its first report the committee emphasised the importance of collecting reliable data on bullying, to enable sound conclusions regarding the extent of the problem along with effective monitoring over time. We noted that while the 2013 People at Work Survey³³ was a promising start but that we were not sure how often WorkCover intended to repeat this survey.

Progress on recommendation 6

- 2.36** According to the WorkCover submission, the high level People Matter³⁴ survey responses for OFS and SRWS were made available to all SRWS staff in September 2014. In addition, and business unit level reports for the most recent People Matter and People at Work surveys were placed on the WorkCover intranet. The results of these surveys are being formally reviewed with the PSA and internally by WorkCover with a view to identifying risks and actions.³⁵
- 2.37** WorkCover reported that SRWS was also planning to discuss with the PSA how more reliable data on workplace bullying may be collected, monitored and published.³⁶

Committee comment

- 2.38** While we are pleased the government supported this recommendation and acknowledge the importance of analysing and communicating the results of the People Matter and People at Work Surveys, we would like to have seen more progress on the main objective of the recommendation: identifying reliable data on workplace bullying. Without this data, it will be difficult for WorkCover to measure the impact of its many initiatives designed to address bullying within the organisation. Accordingly, we recommend that as a matter of priority

³³ The People at Work Project is a a nation-wide research project conducted by the University of Queensland and the Australian National University. The project aims to identify risk factors that impact psychological health and wellbeing in the workplace, of which bullying is only one component.

³⁴ The People Matter Survey is a biennial survey of all staff across the public sector on how well the public sector values and employment principles are applied within each organisation.

³⁵ Submission 2, WorkCover, pp 15-17.

³⁶ Submission 2, WorkCover, p 15.

WorkCover liaise with the PSA to determine the most effective method of collecting, monitoring and publishing reliable data on the incidence of workplace bullying in SRWS.

Recommendation 2

That as a matter of priority WorkCover NSW liaise with the Public Service Association of NSW to determine the most effective method of collecting, monitoring and publishing reliable data on the incidence of workplace bullying in Safety Return to Work and Support.

Independent investigation of bullying complaints in WorkCover**Recommendation 7**

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

Government response:

Supported. Internal bullying resolution procedures will encourage timely and effective risk management and resolution. Where investigation is necessary, investigations will be conducted by an independent expert investigator under the oversight of the Office of Finance and Services (OFS). SRWS employees are now provided with the additional option of reporting bullying to, and seeking support and advice concerning bullying, from the Office of Finance and Services. In future, employees may also make a request for service or complaint to the relevant work health and safety regulator as per the arrangement being developed with the Department of Trade and Investment referred to in Recommendation 8.

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).

Government response:

Supported. WorkCover is formalising a Memorandum of Understanding that will allow for all requests for service and complaints under the Work Health and Safety Act 2011, relating to WorkCover as an employer, to be investigated independently by the safety inspectorate of the Department of Trade and Investment, Regional Infrastructure and Services. Evaluation of these arrangements will occur within two years of the commencement of arrangements and will include input from the Public Service Association of NSW and be formally considered by the SRWS Board and the Independent Expert Workplace Bullying Panel (see Recommendation 12).

Background to recommendations 7 and 8

- 2.39** The inadequate nature of the system for handling complaints about bullying in WorkCover and the imperative to rebuild employees' trust in those systems was a major theme in the committee's first report. Key to the concerns raised during the inquiry was the lack of independence in a system in which the regulator regulates itself. Thus recommendation 7 and 8 were designed to allow WorkCover staff to have their complaints investigated by a body external to WorkCover.

Progress on recommendations 7 and 8

- 2.40** Despite the commitment to these recommendations from the government and WorkCover, the committee was concerned to hear that the PSA were not aware of progress on the Memorandum of Understanding (MOU) with the Department of Trade and Investment, Regional Infrastructure and Services.³⁷
- 2.41** At the hearing on 28 October Mr Hubby confirmed that the MOU had already been executed.³⁸
- 2.42** Asked why the PSA had not been consulted prior to its finalisation, Mr Hubby responded that the lead-up or the development of the MOU predated both he and Mr Bhatia:

It was essentially in a state where it was ready to be signed when both of us commenced our roles ... I am not aware, frankly, of its development and whatever interim consultation might have occurred in its development ... it had gone down the path of negotiation and the work had been done to establish the terms and the framework of the MOU and I did not necessarily consider that it was appropriate to reopen discussions.³⁹

- 2.43** Mr Bhatia reassured the committee that he would consult the PSA on the implementation of the MOU:

Your point is well taken on the consultation. I am of the opinion that in our next joint consultative committee we will speak with them, table the MOU and work through what is the best process for that to be enacted and ensure that there is a very clear understanding of what that MOU is. I have to admit that we have not published the MOU. We have signed it but as at two days ago we have not received a copy.⁴⁰

- 2.44** Mr Hubby also noted that if there were problems about the way the MOU was structured or drafted, or executed or implemented, 'then there is no document that cannot be amended.'⁴¹

³⁷ Submission 13, Public Service Association of NSW, p 5.

³⁸ Evidence, Mr Hubby, 28 October 2014, p 20; Answer to questions on notice, Mr John Hubby, Acting Chief Executive, Office of Finance and Services, 17 October 2014, Attachment 1.

³⁹ Evidence, Mr Hubby, 28 October 2014, p 21.

⁴⁰ Evidence, Mr Bhatia, 28 October 2014, p 21.

⁴¹ Evidence, Mr Hubby, 28 October 2014, p 20. Answer to questions on notice, Mr John Hubby, Acting Chief Executive, Office of Finance and Services, 17 October 2014, Attachment 1.

- 2.45** One submission author, Dr Carlo Caponecchia, was also concerned that the Office of Finance and Services which is to oversee investigations conducted by independent investigators, is not sufficiently independent at this point in time:

...I am not convinced that the Government's plan to have the Office of Finance and Services...goes far enough to ensure independence, build trust, and reform this system...Issues have progressed beyond the point at which they can be fixed by shifting responsibility to another Government agency. There may be a role for OFS led investigations much later, once trust has been re-established through making independence and transparency key features of the culture.⁴²

- 2.46** Unions NSW also questioned the independence of the OFS:

Unions NSW also notes that the Office of Finance and Services wrote the Government's Response whilst also providing legal representation for WorkCover in disputes. As such, Unions NSW questions the independence of the Office of Finance and Services.⁴³

- 2.47** Furthermore, Mr Colin Fraser, a WorkCover employee, informed the committee that the current complaints process via the OFS is unclear.

The Department of Finance and Services have said they are the people who we can report to, and it is unclear what they, in fact, do with reports ... They have provided an email address, which I have in fact used, but I do not know what the outcome of that is; I have received nothing .. I have been in touch with two persons in their human resources area, who have said to me that this needs looking into, but I have not heard another thing since' ⁴⁴

- 2.48** Mr Hubby acknowledged concerns about the lack of clarity and undertook to establish a clear process in consultation with the PSA and other interested parties:

By way of submissions to this Committee I have read at least one concern that a matter was submitted to OFS and was not responded to in a timely manner, so I followed up that personally with the director of the people function and have been assured that the individual has been responded to directly. But I agree there needs to be a clear process. So we will ...it is clear that we need to publish a process..⁴⁵

- 2.49** Dr Caponecchia suggested that several different models of investigation were implied by recommendation 7 and that these require clarification:

For example, how does the model of independent investigation discussed in the committee's report in relation to Recommendation 7 work alongside Recommendation 8?⁴⁶

- 2.50** In relation to actions in respect of recommendation 8, Unions NSW speculated as to whether mines inspectors from the Department of Trade and Investment, Regional Infrastructure and

⁴² Submission 6, Dr Carlo Caponecchia, p 4.

⁴³ Submission 10, Unions NSW, p 7.

⁴⁴ Evidence, Mr Fraser, 28 October 2014, p 14.

⁴⁵ Evidence, Mr Hubby, 28 October 2014, p 31.

⁴⁶ Submission 6, Dr Carlo Caponecchia, p 3.

Services have the technical skills to investigate the psychosocial aspects of workplace bullying.⁴⁷

Committee comment

- 2.51** The committee agrees with those concerns about the implementation of these recommendations, reiterates its original recommendations 7 and 8, and asks the government to address the concerns raised.
- 2.52** The committee is concerned at the lack of information available to both the PSA and employees of WorkCover regarding the recently signed MOU with the Department of Trade and Investment concerning the independent investigation of bullying complaints within WorkCover. If employees of WorkCover are to have faith in this process then they must be provided with clear knowledge of how complaints will be handled, who they will be handled by and the expected timeframes within which they will be addressed. While we accept that at the time of the committee hearing the arrangements concerning the MOU were only recently finalised, we recommend that this information be made available as soon practical.
- 2.53** The committee reiterates its earlier comments regarding recommendation 1 about the need for biannual meetings between the PSA and WorkCover to ensure that timely and effective consultation occurs on matters of significance to both entities. We also welcome Mr Hubby's commitment to ensuring the process for WorkCover employees is clear and responsive.

Recommendation 3

That as soon as practical, WorkCover NSW and the Department of Trade and Investment, Regional Infrastructure and Services publish information on how complaints covered by the recently signed Memorandum of Understanding between both entities will operate, including at a minimum:

- how these complaints will be managed
 - who will manage these complaints
 - the expected timeframes within which complaints will be addressed.
-

Inadequate customer service by scheme agents and WorkCover staff

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.

⁴⁷ Submission 10, Unions NSW, p 7.

Government response:

Supported in part. Action will be taken on complaints by individual workers. WorkCover employees are already subject to a code of conduct. Findings of misconduct where breaches of the code are established may result in a range of actions against an employee including termination of employment, a fine, reduction of remuneration payable to the employee, reduction in the classification or grade of an employee, assignment of the employee to a different role, caution or reprimand the employee. WorkCover Scheme agents will be responsible for meeting a new code of conduct under the new deed from 2015 and where breaches of the code are established, non-performance will potentially result in financial penalties. Injured workers and their representatives do have available processes to have complaints investigated by the WorkCover Independent Review Officer and for review by the NSW Ombudsman.

Background to Recommendation 9

2.54 As the statutory body overseeing the workers compensation scheme, WorkCover issues insurance policies and manages workers compensation claims through contracted insurance companies known as ‘scheme agents’.⁴⁸ During our first inquiry, the committee received evidence from representatives of injured workers suggesting that the service provided by scheme agents was unsatisfactory and may even constitute bullying against clients.⁴⁹ They also alleged that when complaints against scheme agents were reported to WorkCover, they were not properly followed up and that WorkCover staff were rude and aggressive towards the complainants.⁵⁰

Progress on recommendation 9

2.55 The government partially supported recommendation 9. WorkCover employees are already subject to a code of conduct which includes financial penalties as a remedy for breaches.⁵¹ From 1 January 2015 WorkCover scheme agents will be required to meet a new code of conduct under a new deed which includes financial penalties as a remedy for breaches.⁵² WorkCover also noted the implementation of a new customer service framework⁵³ which commenced in May 2013,⁵⁴ and which is expected to see an improvement in the services provided by scheme agents.

⁴⁸ General Purpose Standing Committee No. 1, Legislative Council, *Allegations of bullying in WorkCover NSW* (2014), p 15.

⁴⁹ Evidence, Ms Michelle Burgess, Chief Executive Officer, Workers Health Centre, 6 November 2013, p 36, in the report by the General Purpose Standing Committee No. 1, Legislative Council, *Allegations of bullying in WorkCover NSW* (2014), p 15.

⁵⁰ General Purpose Standing Committee No. 1, *Allegations of bullying in WorkCover NSW*, pp 112-113.

⁵¹ Submission 2, WorkCover, p 13.

⁵² Submission 2, WorkCover, p 14; Answers to questions on notice, Mr Vivek Bhatia, Chief Executive Officer, WorkCover, 17 November 2014, p 1.

⁵³ Submission 2, WorkCover, pp 12-13.

⁵⁴ *In camera* evidence, Ms Julie Newman, Chief Executive Officer, Safety Return to Work and Support Division, NSW Government Service, 10 December 2013, p 53, in General Purpose Standing Committee No. 1, Legislative Council, *Allegations of bullying in WorkCover NSW* (2014), p 115.

The new deed for scheme agents

- 2.56** In evidence, Mr Bhatia said that unsatisfactory and inadequate customer service from scheme agents and WorkCover staff was ‘completely unacceptable’. Mr Bhatia said:

If a scheme agent behaves in an inappropriate manner, that is reflective of our role as an insurer, and if that complaint is escalated to WorkCover as a regulator and we do not address it in the right manner, then we are forfeiting our obligations as a regulator.⁵⁵

- 2.57** Mr Bhatia assured the committee that the code of conduct under the new deed to commence in 2015 had been clearly communicated to scheme agents. He noted that over the last three months WorkCover had conducted 27 presentations to 1,800 scheme agent staff to inform them about the key underlying principles of the code of conduct which are embedded in the new deed.⁵⁶

Enforcement of the code of conduct by individual workers and their representatives

- 2.58** The government did not agree with the committee’s recommendation that individual workers and their representatives should have an enforcement right against WorkCover and scheme agent staff for breaches of the code of conduct. WorkCover submitted that such a right cannot be instigated except as allowed under current law.⁵⁷ WorkCover noted that ‘any change to legislation would be a matter for government policy and, ultimately, the parliament’.⁵⁸
- 2.59** Mr Hubby asserted that to allow individual workers or their representatives to enforce the code of conduct could lead to a complicated and difficult governance arrangement and potentially violate the existing deed.⁵⁹ Mr Hubby believed that the current customer service framework in place and the new deed to be implemented in 2015 were adequate to address the enforcement issue.⁶⁰
- 2.60** In contrast, Mr Turner of the PSA asserted that workers should be empowered to enforce their rights against scheme agents.⁶¹

Committee comment

- 2.61** The committee acknowledges that WorkCover has taken important steps to improve the way in which scheme agents manage workers compensation claims.
- 2.62** The committee is hopeful that the new code of conduct for scheme agents, which includes financial penalties as one of several remedies for a breach of the code, will assist to raise

⁵⁵ Evidence, Mr Bhatia, 28 October 2014, p 22.

⁵⁶ Evidence, Mr Bhatia, 28 October 2014, p 22; Answers to questions on notice, Mr Vivek Bhatia, Chief Executive Officer, WorkCover NSW, 17 November 2014, p 1.

⁵⁷ Submission 2, WorkCover, p 14.

⁵⁸ Submission 2, WorkCover, p 14.

⁵⁹ Evidence, Mr Hubby, 28 October 2014, p 22.

⁶⁰ Evidence, Mr Hubby, 28 October 2014, p 22.

⁶¹ Evidence, Mr Turner, 28 October 2014, p 3.

standards of customer service. This clearly a matter of ongoing concern and the committee expects WorkCover to closely monitor the operation of the code especially in relation to how it addresses the concerns regarding bullying of injured workers by scheme agents. The committee stands by its original recommendation 9 and asks the government to implement it.

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.

Government response:

Supported in part. Complaints against WorkCover employees are already reviewable by the NSW Ombudsman and are investigated in line with the requirements of and advice from the NSW Ombudsman. Complaints about scheme agents of the Nominal Insurer, or about other insurers, can be referred to WorkCover or the WIRO. A complaint about the conduct of a public authority (which would include WorkCover and the WIRO) may be made to the Ombudsman. The Ombudsman may investigate the conduct of a public authority if it appears to the Ombudsman the conduct may be within section 26 of the *Ombudsman Act*.

* WIRO is an independent body created in 2012 to deal with individual complaints and provide free independent legal advice to individual workers in circumstance where there is a disagreement with insurers regarding entitlements.

Background to recommendation 10

- 2.63** The aim of recommendation 10 was to ensure that complaints by injured workers against WorkCover and scheme agents are investigated fairly and independently.

Progress on recommendation 10

- 2.64** The government partially supported recommendation 10. WorkCover informed the committee that complaints against WorkCover employees are currently reviewable by the NSW Ombudsman⁶² and that complaints against scheme agents can be referred to WorkCover, the NSW Ombudsman and the WorkCover Independent Review Office (WIRO).⁶³ The Review Office is an independent body created in 2012 to deal with individual complaints and provide free legal advice to workers in circumstances where there is a disagreement with insurers regarding entitlements.⁶⁴

⁶² Submission 2, WorkCover, p 13.

⁶³ Evidence, Mr Bhatia, 28 October 2014, p 22.

⁶⁴ Standing Committee on Law and Justice, Legislative Council, *Review of the exercise of the functions of the WorkCover Authority* (2014), p xii.

- 2.65** Unions NSW submitted that third parties should be allowed to gather evidence of a complaint and bring actions to an independent body such as the Workers Compensation Commission.⁶⁵ It contended that current enforcement bodies such as WorkCover and the Ombudsman are ineffective in handling workers' complaints against WorkCover and scheme agents. Unions NSW argued that there is a conflict of interest between WorkCover and scheme agents, and that the Ombudsman lacks the expertise and resources to investigate complaints of this nature.⁶⁶ It thus called this aspect of the government response 'inadequate'.⁶⁷
- 2.66** The government response to our first inquiry suggested that complaints can be made to the WIRO. We are aware that in the report of the Review of the exercise of the functions of the WorkCover Authority, the Legislative Council Standing Committee on Law and Justice recommended that the scope of the WIRO be extended to health and safety.⁶⁸ However, as the government response to that inquiry has not been received, it is not clear to the committee whether this has occurred. It would be valuable for this to be clarified.

Anti-bullying legislation

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.

Government response:

The Government is considering the matter.

Background to recommendation 11

- 2.67** In addition to failing to address bullying in its own ranks, the committee's first report also noted WorkCover's poor record in meeting its statutory role as the regulator of work health and safety in workplaces across New South Wales. Given the extent of the problem identified by the committee, we called on the government to introduce anti-bullying legislation.

Progress on recommendation 11

- 2.68** In its submission to this review, Maurice Blackburn Lawyers reiterated its support for the introduction of anti-bullying legislation in New South Wales as set out in its submission to the committee's first inquiry and called on the government to action recommendation 11 immediately.⁶⁹ While not involved in any discussions regarding this issue, the PSA also

⁶⁵ Submission 10, Unions NSW, p 8.

⁶⁶ Submission 10, Unions NSW, p 8.

⁶⁷ Submission 10, Unions NSW, p 8.

⁶⁸ Submission 10, Unions NSW, p 8; Standing Committee on Law and Justice, Legislative Council, *Review of the exercise of the functions of the WorkCover Authority* (2014), p xvi.

⁶⁹ Submission 7, Maurice Blackburn Lawyers, pp 1-2.

supported a clearer legal framework to make it easier for persons conducting a business or undertaking (PCBU) to know what to do and for WorkCover to assist and monitor PCBUs in this work.⁷⁰

- 2.69 However, it would appear from the government response that little progress has been made in relation to this recommendation.

Committee comment

- 2.70 The committee notes that the government has made very little progress on this issue to date. The committee accepts that any new laws will need to be considered by the new parliament and we maintain our support for the implementation of this recommendation.

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.

Government response:

Supported in part. The Minister for Finance and Services will request the Safety, Return to Work and Support Board to establish an independent expert workplace bullying panel to advise on 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 Safety, Return to Work and Support Board will then advise the Minister on the current initiatives and programs currently undertaken by WorkCover NSW in addressing workplace bullying; any deficiencies identified in these programs; and whether there are additional programs that could be explored to enable WorkCover to more effectively meet objectives.

Background to recommendation 12

- 2.71 Our first report made the case for the establishment of some form of independent panel which would oversee WorkCover's statewide regulatory work. This would provide expert advice on strategies to address workplace bullying and ensure that human resource matters would receive the attention they deserve without competing for the attention from a board which has numerous other complex financial and structural issues requiring its attention.

Progress on recommendation 12

- 2.72 The government only partially supported this recommendation, preferring that the panel be established to advise the board, which will continue to advise the Minister. The use of the

⁷⁰ Submission 13, Public Service Association of NSW, p 7.

term ‘advise’ in the response rather than ‘oversee’ was noted by Dr Carlo Caponechia explained:

I note that the recommendation uses the term “oversee” to describe the role of the panel, while the Government response uses the somewhat softer term “advise”. Further probing is required to understand the exact role and power of the steering panel that will be implemented, including its reporting lines.⁷¹

- 2.73** Dr Caponecchia reiterated the issues that he raised in his submission to the first inquiry regarding the role, function and membership of the steering committee, as well as questioning how the steering committee might relate to the bullying roundtable established by the Public Service Commission.⁷²
- 2.74** Unions NSW said the independent panel had not been publicised yet nor have members been called for.⁷³

Committee comment

- 2.75** We are pleased that there has been some movement on this recommendation. We urge the government to establish the panel very soon and keep the PSA informed of any developments.

An issue arising from the hearing

Security of employment and the incidence of bullying

- 2.76** As observed in our first report, the turmoil for SRWS staff created by near constant organisational change, including the move to Gosford in 2002, created conditions that have been conducive to bullying. In its submission to our first inquiry, Unions NSW highlighted that workplace change and job role uncertainty are recognised in the literature as risk factors for workplace bullying.⁷⁴
- 2.77** One of the issues raised during the hearing on 28 October 2014 was the impact of job insecurity on the level of bullying in an organisation. Questions were asked about the impact of Rule 10 of the *Government Sector Employment Act* on the level of bullying across the government sector and beyond.
- 2.78** Under Rule 10, as at 24 February 2015, temporary employees would be prevented from working for more than four years with the same government agency.
- 2.79** The Public Service Commissioner advised that the number of employees across the sector potentially impacted by Rule 10 is 2,400 (the number of employees who will have been employed for more than four years in one agency as at 24 February 2015, assuming

⁷¹ Submission 6, Dr Carlo Caponecchia, p 2.

⁷² Submission 6, Dr Carlo Caponecchia, p 3.

⁷³ Submission 10, Unions NSW, p 9.

⁷⁴ Submission 66 (first inquiry), Unions NSW, p 7.

continuous employment) and Mr Bhatia advised that there are only 13 temporary employees in WorkCover whose contract dates end post 24 February 2015.

- 2.80** The Commissioner also noted that following consultation with the sector and unions, the rule would be amended ‘to ensure appropriate transition arrangements can be put in place for the affected group of temporary employees.’⁷⁵

Conclusion

- 2.81** The committee welcomes the government’s positive response to its first inquiry, and appreciates that it was provided two months earlier than required under Legislative Council standing orders. We believe this indicates that the government is intent on addressing the problem of workplace bullying both within and beyond WorkCover.
- 2.82** The appointment of a new CEO, Mr Vivek Bhatia, who has publicly and genuinely acknowledged that WorkCover has a problem with bullying, is also encouraging. So too is the greater level of openness about these matters that we have witnessed under Mr Bhatia’s leadership and that of the new OFS Chief Executive, Mr John Hubby since taking up their new positions.
- 2.83** While there is still much to be done, we are confident that the significant progress to date on implementing the committee’s original recommendations has laid the groundwork for long overdue systemic and cultural change in WorkCover.

⁷⁵ Answers to supplementary questions, Public Service Commissioner, 14 November 2014, p 1.

Appendix 1 Recommendations from the committee's first report

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.

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.

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.

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.

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.

Recommendation 7

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

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).

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.

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.

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.

Appendix 2 Submissions

No	Author
1	Mr Colin Fraser
1a	Mr Colin Fraser
2	WorkCover NSW
3	Mrs Diana Simpkins
4	Name suppressed
5	Confidential
6	Dr Carlo Caponecchia
7	Maurice Blackburn Lawyers
8	Confidential
9	Injured Workers Support Network
10	Unions NSW
11	Confidential
12	Name suppressed
13	Public Service Association of NSW
14	Ms Kathy Quinlan
15	Name suppressed

Appendix 3 Witnesses

Date	Name	Position and organisation
Tuesday 28 October 2014 Macquarie Room Parliament House, Sydney	Mr Steve Turner	Assistant General Secretary, Public Service Association of NSW
	Ms Jann Jeffries	Industrial Officer, Public Service Association of NSW
	Mr Colin Fraser	Central Councillor and Delegate, Public Service Association of NSW
	Mr Ian Tuit	Central Councillor and Delegate, Public Service Association of NSW
	Hon Dominic Perrottet MP	Minister for Finance and Services
	Mr Vivek Bhatia	Chief Executive Officer, WorkCover NSW
	Mr John Hubby	Acting Chief Executive, Office of Finance and Services
	Mr Graeme Head	Public Service Commissioner, Public Service Commission

Appendix 4 Answers to questions on notice

The committee received answers to questions on notice from:

- Public Service Commission
- WorkCover NSW
- Office of Finances and Services
- Public Service Association of NSW

Appendix 5 Email from WorkCover CEO to employees

From: Vivek Bhatia
Sent: Friday, 5 September 2014 12:00 PM
To: SRWSD_All_Accounts
Subject: Thank you for the warm welcome

Dear Colleagues,

As you know I have recently commenced as the Chief Executive Officer of Safety, Return to Work and Support (SRWS).

I have been getting to know people in the SRWS agencies and our stakeholders and I look forward to meeting with all of you as I settle into the role.

I spent my first day in the role meeting with the Board and this was an excellent way to build my understanding of challenges, opportunities and achievements right across SRWS. I have met the SRWS executive team and also Minister Perrottet and the Office of Finance and Services executive team.

I would like to say a few words on one of the issues that has been an important topic of conversation already in my short time as CEO.

I am aware of the Legislative Council's General Purpose Standing Committee 1 report on its Inquiry into Allegations of Bullying at WorkCover which was published on 19 June 2014.

One of the findings in the report was that WorkCover NSW had a significant organisational problem with bullying. Bullying in the workplace is not acceptable. I personally have zero tolerance for bullying and harassment behaviour.

I am committed to ensuring people working in the SRWS agencies have a working environment that protects their health and safety. I know that the Board and the Executive are also committed to ensuring SRWS is a safe and healthy place to work.

The Committee made a number of recommendations, including in relation to an apology.

I believe it is important that we are able to acknowledge when we need to improve and to apologise. I am committed to ensuring that we take all appropriate steps to eliminate bullying and I sincerely apologise to any WorkCover NSW employee who has been affected by bullying.

I am keen to ensure WorkCover NSW and the other SRWS agencies and the people who work in and with them can move forward, make improvements and deliver services to the people of NSW.

I am aware that WorkCover NSW has been working to address bullying for some time. I am working with the Executive team to review what further steps need to be taken and will keep you informed as further steps are developed.

Some of the actions we have taken to help make SRWS/WorkCover NSW a better place to work include:

- Developing two revised policies: *Management of workplace bullying policy* and revised *Workplace issues and grievance resolution policy*. Both of these policies have provided for comment to the SRWS Health & Safety Committee (HSC), Health and Safety Representatives (HSRs), and the Public Service Association (PSA). We anticipate releasing these policies during September on conclusion of the consultation process.
- Implementing the People & Culture Service and Advice model to provide coaching and advice to managers and team members with people matters.

- Relaunching the Bullying Response Service and Employee Assistance Program for advice and support.
- Providing an independent pathway to report bullying through the Office of Finance and Services.
- Working to improve incident reporting data to identify causes, trends and work environment with regard to bullying.
- Providing a dedicated Wellness and Employee Relations Consultant role (with a psychology background) in People & Culture Group to assist employees on a confidential basis with workplace issues.
- Continuing to implement key GROW initiatives such as the leadership development strategy (mandatory training, strategic leadership forum, leadership development centres and management practices training) to improve leadership capability and build a constructive, empowered, productive and safe workplace culture.

I have given some thought to the values of SRWS – these are the NSW Public Service values of Integrity, Trust, Service and Accountability. I would like us to adopt a fifth – Respect. I want to see the people in SRWS demonstrating respect for ourselves, respect for our colleagues and respect for our customers. A respectful, inclusive and fair working environment is built when everyone behaves with respect.

I will also be setting up an email address so that anyone in SRWS can email me with a question, idea or comment. There will be more information on the email address soon. I will be interested in hearing from you about a broad range of topics, including how we can improve SRWS as a place to work and how we can improve the services and outcomes we can influence for the people of NSW.

I will also be keen to hear about the work you and your team are involved in. I am planning to email you each week with an update of my activities and also the work you and your colleagues have been doing around NSW.

Thank you for welcoming me to SRWS.

I look forward to working with you.

Warm regards

Appendix 6 WorkCover’s draft action plan to address punitive use of process

Safety, Return to Work and Support - Draft Action Plan to Address Punitive Use of Process

I Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
1 Culture of fault	<p>Matters default to misconduct for a breach of a policy</p> <p>Human resource management issues are escalated immediately to Employee Relations team in People & Culture Group for investigation</p> <p>Managers defaulting to People and Culture (P&C) to manage employee related issues rather than addressing at local level</p>	<p>Revised bullying and grievance handling policies do not default to misconduct procedures.</p> <ul style="list-style-type: none"> Safety, Return to Work and Support (SRWS) has developed revised policies in relation to bullying and grievance handling which focuses on a risk based approach to managing reports of bullying and grievances rather than defaulting to a matter being dealt with as misconduct. Only in exceptional circumstances would matters be referred as possible misconduct. It is anticipated that the revised policies will be published during October 2014 when union consultation is finalised. Since early 2014 an early intervention and de-escalation approach to managing grievances and possible misconduct issues has been implemented through the P&C Service and Advice model. <p>Effective 1 August 2014, an additional resolution pathway direct to OFS was put in place for staff who may not feel comfortable in raising a concern with their manager or P&C in SRWS.</p> <p>Under the Government Sector Employment (GSE) Act, the management of misconduct is dealt with separately from management of unsatisfactory performance. The concept of ‘disciplinary action’ for performance management has been removed.</p> <p>Misconduct falls under section 69 of the GSE Act and is more tightly defined with <i>performance of duties in such a manner as to justify the taking of disciplinary action</i> having been removed.</p>	<ul style="list-style-type: none"> Approval of revised policies – October 2014 Employee awareness program of new policies – October to December 2014 Reduction of misconduct investigations – June 2015 Improved 2016 People Matter Survey responses for: <ul style="list-style-type: none"> Experienced Bullying Witnessed Bullying Confidence in the way the organisation resolves grievances Conduct short form pulse survey in June 2015 to measure improved responses for: <ul style="list-style-type: none"> Experienced Bullying Witnessed Bullying Confidence in the way the organisation resolves grievances Percentage of complaints

¹ As identified in the Industrial Relations Commission of NSW decision 21 June 2013 ref: (2013) NSSIRComm45 and the General Purpose Steering Committee No. 1 report into Allegations of bullying in WorkCover NSW

Draft Action Plan to Address Punitive Use of Process

1	Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
2	<p>Procedural fairness</p>	<p>Managers tacitly condone an employee's breach of policy but then the employee is subject to misconduct proceedings</p> <p>Employees not given a caution, counselling or warning in respect to any of the issues put against them, and as such are denied procedural fairness.</p> <p>The notion that issues are so serious that the step of talking with the employee is bypassed and the matter is instead progressed to management as a disciplinary matter</p>	<p>Mandatory management practices training for all people leaders has been introduced and 16 workshops have been conducted to date with 252 attendees. Of the target participant group, 74 people are to attend by June 2015.</p> <ul style="list-style-type: none"> Workshops are one day in duration and focus on policies and procedures relevant to SRWS. The workshop provides our people leaders with a sound awareness and knowledge base in regards to the policies relevant to leading their teams. It will focus on the role and accountabilitys of an SRWS people leader to give them confidence in understanding their specific responsibilities in making decisions when leading their teams. <p>Presented by internal specialists, there is ample opportunity to interact, and discuss key topics with these specialists and share experiences with other people leaders</p> <ul style="list-style-type: none"> Understand your role and responsibilities as a people leader in SRWS Clarify expectations for your team on the government priorities and organisational objectives Identify key elements in identifying and managing risk and ensuring governance requirements are met Understand the relationship between procurement and financial management and your responsibilities Manage your workforce requirements and resources Manage organisational, team and individual performance Manage and support employee health, safety and wellbeing <p>The management practices training will be enhanced to provide</p>	<p>being resolved locally versus formal investigations</p> <ul style="list-style-type: none"> Management practices training completion rates – Report Quarterly from October 2014 Enhancement of management practices program to include grievance resolution and managing unsatisfactory performance – March 2015 Pre and post training assessment scores for grievance resolution and managing unsatisfactory performance shows improved score post training. Implementation of revised OFS policies and procedures for misconduct – as soon as available Implementation of revised OFS policies and procedures for managing unsatisfactory performance – as soon as available P&C staff managing investigations holding relevant qualifications – ongoing –

Draft Action Plan to Address Punitive Use of Process

I Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
		<p>additional support for managers to handle and resolve grievances and manage unsatisfactory performance. This second day of the program may also incorporate the manager as a coach program currently under development</p> <p>Guidelines and tools for managers to improve decision making are available on the intranet and will continue to be enhanced to provide guidance and improve decision making.</p> <p>P&C Staff capability lifted in relation to procedural fairness.</p> <ul style="list-style-type: none"> A number of P&C staff have now completed the Diploma of Government (Investigations) to ensure that fact finding and management of investigations is procedurally fair and in line with best practice. P&C has also implemented the recommendations from the Internal Audit Bureau in relation to conduct of investigations. <p>P&C Group have continued to recruit team members with experience and qualifications in human resources management to ensure that there is capability to coach and advise managers on contemporary human resources management and in dealing with difficult conversations.</p> <p>An initial skills audit of the P&C team was conducted in November 2013. Of 42 staff in P&C:</p> <ul style="list-style-type: none"> 39 (93%) held tertiary or vocational qualifications. 32 (76%) P&C staff held tertiary or vocational qualifications directly relevant to their roles in human resources management 7 (18%) P&C staff hold masters level degrees 14 (36%) P&C staff hold bachelor level degrees 31 (79%) hold Diploma/Advanced Diploma or Graduate Diplomas 24 (62%) hold Certificate or Advanced Certificate 	<p>updated skills audit November 2014</p> <ul style="list-style-type: none"> P&C staff who provide advice and guidance to managers hold relevant qualifications and experience – updated skills audit to be conducted by November 2014

Draft Action Plan to Address Punitive Use of Process

I	Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
3	Punitive use of process	<p>There is a perception that the organisation has implemented policies, practices and procedures that are overly complex and difficult to comply with. As a result, employees find it difficult to comply. It is perceived that the policies/practices/procedures are not enforced consistently, ie, it is perceived that some staff have been targeted for non-compliance where others have not.</p>	<p>vocational qualifications.</p> <ul style="list-style-type: none"> A number of P&C staff hold qualifications in multiple categories above. <p>As SRWS no longer holds delegations in relation to dealing with misconduct, OFS will review and manage any misconduct matters referred to the CE OFS to ensure procedural fairness.</p> <ul style="list-style-type: none"> Where required SRWS may support the fact finding and investigation. Decisions relating to misconduct proceedings are determined by the CE OFS. 	<ul style="list-style-type: none"> Number of OFS employment policies adopted – Report quarterly from October 2014 Provision of tools and guidelines for managers – February 2015 P&C Service and Advice call trend statistics – report Monthly from October 2014 Management practices training completion rates – Report Quarterly from October 2014 Enhancement of management practices program to include grievance resolution and managing unsatisfactory performance – March 2015

Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
1		<p>Managers should discuss with team members concerns they may have in relation to performance and conduct and seek to be clear on expectations and acceptable behaviours. The role of P&C is to support managers in the process rather than manage the process.</p> <p>Early intervention will minimise the escalation of issues.</p> <ul style="list-style-type: none"> Authentic conversation by managers with team members regarding performance and conduct as soon as a matter comes to hand will enable all parties to identify concerns, seek to resolve the issue and manage performance to minimise the need to escalate to formal procedures. 	
4	<p>Inolerance of points of view that diverge from management</p> <p>Unwillingness to listen to different perspectives.</p>	<p>Development of a manager as a coach program to improve capability in listening, understanding and having authentic, constructive conversations with team members.</p> <p>GSE implementation will also result in additional guidelines and tools for managers to improve decision making.</p>	<ul style="list-style-type: none"> Development of a manager as a coach program for managers – March 2015 Training completion rates for manager as a coach program – Quarterly from June 2015 Pre and post training assessment scores for manager as a coach program shows improved score post training.
5	<p>There is a perception that core management practices are inconsistent and sometimes poor. For example, some staff have</p>	<p>Management Practices training discussed in item 2 <i>Procedural Fairness</i> above also deals with building management capability. Support for managers is in place to handle grievances and manage performance.</p> <ul style="list-style-type: none"> The P&C Service and Advice Team provide coaching and 	<ul style="list-style-type: none"> Management practices training completion rates – Report Quarterly from October 2014 Enhancement of management practices program to include

I Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
	<p>indicated their supervisors have not followed appropriate processes regarding management of time sheets and reconciliation of flexitime, advising employees that doing direct work/tasks was more important.</p> <p>WorkCover lacks effective means to ensure that managers at all levels are trained in management and dispute resolution techniques, and are held accountable for their conduct.</p> <p>WorkCover lacks effective methods for ensuring proper management of grievances.</p> <p>Managers and staff sometimes demonstrate disrespectful and hostile behaviours.</p>	<p>advice to managers and team members in grievance handling and resolution in addition to managing performance. Managers are provided with additional training (mandatory management practices workshops, development centres, leadership excellence and leadership insights). This is also supported through online policies, toolkits and resources.</p> <ul style="list-style-type: none"> The management practices training will be enhanced to provide additional support for managers to handle and resolve grievances and manage poor performance. This need has been identified in the responses to the 2014 People Matter Survey. <p>Development of a manager as a coach program to improve capability in listening, understanding and having authentic, constructive conversations with team members is also underway.</p> <p>The CEO will also discuss expectations of a leader and the SRWS approach to management with each member of the SRWS Executive Team as a group and individually. Each member of the Executive will then be expected to conduct similar discussions with their teams as a group and their direct reports individually. Additionally the CEO will discuss this with all senior executives at the October Strategic Leaders Forum on 13 October 2014.</p> <p>GSE implementation will also result in additional guidelines and tools for managers to improve decision making.</p> <ul style="list-style-type: none"> In particular the implementation of the Public Sector Capability framework and the performance management processes to comply with GSE Act will ensure that processes in place from recruitment through the employee lifecycle will reinforce good people management. <p>The CHRO conducts regular case reviews in an effort to de-</p>	<p>grievance resolution and managing unsatisfactory performance – March 2015</p> <ul style="list-style-type: none"> Development of a manager as a coach program for managers – March 2015 Improved post assessment training scores following management practices training Training completion rates for manager as a coach program – Quarterly from June 2015 CEO discussions with Executive Team and all Senior Executives to set expectations of leaders in SRWS to be conducted – Strategic Leaders Forum October 2014 Implementation of GSE recruitment processes – February 2015 Amend Annual Performance Review processes to include Public sector Capability Framework – June 2015 Quarterly reporting to the Board HR subcommittee and the SRWS Executive on trends and environmental scanning –

Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
1		<p>escalate issues and identify emerging trends.</p> <ul style="list-style-type: none"> The P&C team meets regularly with the CHRO to review grievances and cases in hand to ensure that where possible matters are handled locally by the appropriate manager, that all parties are receiving appropriate support (including wellbeing) and that trends can be identified for development of risk based mitigation strategies. <p>Environmental scanning to detect workplace environmental elements that may contribute to a poor workplace culture.</p> <ul style="list-style-type: none"> P&C is examining a range of metrics, indicators and reports to understand environmental factors such as instability of management roles, poor training, patterns of reports of issues / bullying, unplanned absenteeism, exit interviews, performance reviews, incident reporting, etc. to identify potential hotspots and remediation strategies. 	October 2014
6	A large number of participants highlighted poor management practices as a characteristic of the culture of WorkCover.	<p>Continue to implement the Growing Our Culture (GROW) Program to build a constructive, empowered, productive and safe workplace.</p> <ul style="list-style-type: none"> SRWS will continue to deliver and support initiatives under the GROW program to support managers and team members to work together in a more constructive style. <p>Focus groups will provide an informed view of further opportunities.</p> <ul style="list-style-type: none"> Focus groups planned over the next month will contribute to the action planning process for the 2014 People Matter Survey and the People@Work Survey will contribute further ideas to create the desired culture and building trust. <p>Adding 'Respect' to the SRWS values.</p>	<ul style="list-style-type: none"> Continue GROW program implementation – Ongoing Conduct employee focus group for People Matter Employee Survey and People@Work Survey action planning – October to December 2014 Develop and agree People Matter Employee Survey and People@Work Survey action plans – December 2014 Communicate action plans and measures to staff – December

I Areas of concern	Practices that may be construed as punitive ¹	Our approach to address the practices that may be construed as punitive	How we will measure progress
		<ul style="list-style-type: none"> The Chief Executive Officer has announced that Respect will be added to the SRWS values of Integrity, Trust, Service & Accountability. Work is underway to develop supporting tools and workshops to inculcate respect for self, colleagues and customers as an organisational value. SRWS has also adopted the OFS Dignity & Respect Charter which is intended to be made available for local managers to sign and display in workplaces. 	<p>2014</p> <ul style="list-style-type: none"> Implementation of employee survey action plans complete Develop support material for the SRWS value of 'Respect' with input from focus groups – December 2014 Develop support material for managers to enable personal ownership of the OFS Dignity & Respect Charter – December 2014

Updates on progress of actions to address punitive use of processes reported on a monthly basis to the Chief Executive Officer SRWS, SRWS Executive and SRWS Board Human Resources Subcommittee.

Updates on progress of actions to address punitive use of processes reported on a quarterly basis to the SRWS Board and Chief Executive OFS.

Appendix 7 Minutes

Minutes No. 48

Wednesday 17 September 2014
General Purpose Standing Committee No. 1
Members' Lounge, Parliament House, 2.18 pm

1. Members present

Revd Nile, *Chairman*
Mrs Pavey, *Deputy Chair*
Ms Cusack
Mr Foley (substituting for Mr Veitch)
Mr Pearce
Mr Secord
Mr Shoebridge (substituting for Dr Kay for the duration of the inquiry)

2. Previous minutes

Resolved, on the motion of Ms Cusack: That draft minutes nos 44, 45, 46 and 47 be confirmed.

3. Correspondence

Received:

- 24 June 2014 – From the author of submission no. 18 to the inquiry into the allegations of bullying in WorkCover NSW to the committee, providing further information in relation to that inquiry.

Resolved, on the motion of Mr Shoebridge: That the committee keep confidential the correspondence received from the author of submission no. 18 to the inquiry into the allegations of bullying in WorkCover, dated 24 June 2014.

4. ***

5. Adjournment

The committee adjourned at 2.30 pm, *sine die*.

Beverly Duffy
Clerk to the Committee

Minutes No. 49

Wednesday 17 September 2014
General Purpose Standing Committee No. 1
Members' Lounge, Parliament House, 6.45 pm

1. Members present

Revd Nile, *Chair*
Mrs Pavey, *Deputy Chair*
Ms Cusack
Mr Secord

2. Apologies

Mr Pearce

Mr Shoebridge

3. Previous minutes

Resolved, on the motion of Ms Cusack: That draft minutes no. 48 be confirmed.

4. Review of the implementation of the recommendations of the inquiry into allegations of bullying in WorkCover NSW

4.1 Terms of reference

The committee noted the following terms of reference referred by the House on 11 September 2014.

1. That General Purpose Standing Committee No. 1 inquire into and report on the implementation of the recommendations of the committee's Report No. 40 entitled "Allegations of bullying in WorkCover NSW", dated June 2014.
2. That the committee report by 11 December 2014.

4.2 Proposed timeline

Resolved, on the motion of Ms Cusack: That the committee adopt the following timeline for the administration of the inquiry:

Call for submissions	Friday 19 September 2014 (<i>3 months from tabling of report</i>)
Closing date for submissions	Friday 17 October 2014 (<i>4 weeks</i>)
Half day public hearing	Tuesday 28 October 2014
Report deliberative	Monday 8 December 2014
Table report	Thursday 11 December 2014

4.3 Stakeholder list

Resolved, on the motion of Ms Cusack: That:

- the secretariat email members a list of stakeholders to be invited to make written submissions, which will include all agencies and witnesses who participated in the first inquiry
- members have two days from the email being circulated to nominate additional stakeholders.

4.4 Advertising

Resolved, on the motion of Mrs Pavey: That the committee advertise the inquiry via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales but not place ads in the metropolitan media.

4.5 Submission publication

Resolved, on the motion of Ms Cusack: That the committee authorise the publication of all submissions to the inquiry, subject to the committee clerk checking for confidentiality, adverse mention and other issues. Submissions identified as containing confidentiality, adverse mention or other issues are to be considered by the committee.

4.6 Attachments to submissions

Resolved, on the motion of Mrs Pavey: That all attachments to submissions received during the inquiry remain confidential, unless otherwise published by the committee.

4.7 Witnesses

Resolved, on the motion of Mr Secord: That:

- the committee hold a half day hearing on Tuesday 28 October 2014 and invite representatives of the Public Service Association, WorkCover NSW, Public Service Commissioner and the Minister for Finance and Service
- the proposed half day public hearing comprise one hour with representatives of the Public Service Association of NSW; one and half hours with representatives of WorkCover NSW; half an hour with the Public Service Commissioner and one hour with the Minister for Finance and Services.

4.8 Questions on notice and supplementary questions

Resolved, on the motion of Ms Cusack: That for the duration of the inquiry:

- supplementary questions be lodged with the secretariat up to two days following the receipt of the hearing transcript
- witnesses be requested to return answers to questions on notice and supplementary questions within 14 days of the date on which questions are forwarded to the witness.

5. Adjournment

The committee adjourned at 6.50 pm, until Tuesday 28 October, 10.00 am, Macquarie Room, Parliament House (public hearing).

Beverly Duffy
Clerk to the Committee

Draft minutes no. 50

Tuesday 28 October 2014

General Purpose Standing Committee No. 1

Macquarie Room, Parliament House, 9.45 am

1. Members present

Revd Nile, *Chairman*

Mrs Pavey, *Deputy Chair*

Ms Cusack

Mr MacDonald (*replacing Mr Pearce*)

Mr Searle (*substituting Mr Secord*)

Mr Shoebridge

Mr Veitch

2. Change in committee membership

The committee noted the resolution of the House of 21 October 2014 discharging Mr Pearce from the committee and appointing Mr Scot MacDonald.

3. Previous minutes

Resolved, on the motion of Mrs Pavey: That draft minutes no. 49 be confirmed.

4. Review of the inquiry into allegations of bullying in WorkCover NSW

4.1 Correspondence

The Committee noted the following items of correspondence:

Received

- 25 September 2014 – From Clerk Assistant-Committees to the committee, advising of the Minister for Finance and Services' acceptance of the invitation to address the committee at a hearing on 28 October 2014
- 2 October 2014 – From the Hon Dominic Perrottet MP, Minister for Finances and Services to the Chairman, dated 9 September 2014, suggesting a meeting with WorkCover NSW officials instead of a review
- 15 October 2014 – From the Hon Dominic Perrottet MP, Minister for Finances and Services to the Chairman, providing a witness list and confirming his availability to address the committee at the hearing on 28 October 2014
- 17 October 2014 – From the Hon Dominic Perrottet MP, Minister for Finances and Services to the Chairman, providing the government response to committee report no. 40 entitled '*Allegations of bullying in WorkCover NSW*'.

Sent

- 30 September 2014 – From the Chairman to the Hon Dominic Perrottet MP, Minister for Finance and Services, inviting the Minister to make a submission to the review and appear as a witness together with officials from the WorkCover NSW at a committee hearing
- 30 September 2014 – From the Chairman to Mr Graeme Head, Public Service Commissioner, inviting the Commissioner to make a submission to the review and appear as a witness at a committee hearing
- 30 September 2014 – From the Chairman to Mr John Cahill, General Secretary, Public Service Association of NSW, inviting the Association to make a submission to the review and appear as witnesses at a committee hearing.

4.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of an earlier resolution: submission nos 1, 2, 6, 7, 9 and 10.

4.3 Partially confidential submissions**4.3.1 Sensitive information**

Resolved, on the motion of Mrs Pavey: That the committee authorise the publication of submission no. 3, with the exception of potential adverse mention which is to remain confidential, as per the recommendation of the secretariat.

4.3.2 Name suppressed

Resolved, on the motion of Mr MacDonald: That the committee authorise the publication of submission no. 4, with the exception of identifying information which are to remain confidential, as per the request of the author.

4.3.3 Name suppressed and sensitive information

Resolved, on the motion of Mrs Pavey: That the committee authorise the publication of submission no. 12, with the exception of identifying information and a case study which are to remain confidential, as per the request of the author.

4.4 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos 5, 8 and 11 confidential, as per the requests of the authors.

4.5 Attachments to submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of attachments to submission no. 2.

4.6 Allocation of questioning

Resolved, on the motion of Mrs Pavey: That the sequence of questions to be asked during the hearing alternate between opposition, cross bench and government members, in that order, with an equal proportion of time being allocated to each.

4.7 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from the Public Service Association were sworn and examined:

- Mr Steve Turner, Assistant General Secretary
- Ms Jann Jefferies, Industrial Officer
- Mr Ian Tuit, Central Councillor
- Mr Colin Fraser, Central Councillor.

The evidence concluded and the witnesses withdrew.

The Hon Dominic Perrottet MP, Minister for Finance and Services, joined the meeting.

The Chairman reminded the Minister that he did not need to be sworn, as he had sworn an oath to his office as a member of Parliament.

The Minister addressed the committee.

The evidence concluded and the Minister withdrew.

The following witnesses were sworn and examined:

- Mr John Hubby, Acting Chief Executive, Office of Finance and Services
- Mr Vivek Bhatia, Chief Executive Officer, WorkCover NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Graeme Head, Public Service Commissioner.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

5. Adjournment

The committee adjourned at 1.25 pm until Monday 8 December 2014, at 10.00 am, Waratah Room, Parliament House, Sydney (*Report deliberative*).

Beverly Duffy

Clerk to the Committee

Draft minutes no. 51

Monday 8 December 2014

General Purpose Standing Committee No. 1

Waratah Room, Parliament House, 10.00 am

1. Members present

Revd Nile, *Chairman*

Ms Cusack

Mr MacDonald

Mr Searle (*substituting for Mr Secord for the Budget Estimates inquiry*)

Mr Shoebridge (*substituting for Dr Kaye for the Budget Estimates inquiry*)

Mr Veitch

2. Apologies

Mrs Pavey

3. Previous minutes

Resolved, on the motion of Mr Veitch: That draft minutes no. 50 be confirmed.

4. ***

5. Review of the inquiry into allegations of bullying in WorkCover NSW

5.1 Correspondence

The committee noted the following correspondence received:

- 26 November 2014 – From Ms Anne Gardiner, General Secretary, Public Service Association of New South Wales, thanking the committee for the conduct of the inquiry into allegations of bullying in WorkCover NSW.

Resolved, on the motion of Mr Searle: That the committee publish the correspondence from Ms Gardiner, dated 26 November 2014.

5.2 Public submissions

The committee noted that submission nos 1a, 13 and 14 were published by the committee clerk under the authorisation of an earlier resolution.

5.3 Partially confidential submissions – Name suppressed

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 15, with the exception of identifying information which is to remain confidential, as per the request of the author.

5.4 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of an earlier resolution:

- answers to questions on notice from Mr John Hubby, A/Chief Executive, Office of Finance and Services, received 17 November 2014
- answers to questions on notice and a supplementary question from Mr Vivek Bhatia, Chief Executive Officer, WorkCover NSW, received 17 November 2014
- answers to questions on notice and supplementary questions from the Public Service Commissioner, received on 17 November 2014
- answers to a question on notice from Public Service Association, received on 14 November 2014.

Resolved, on the motion of Mr Shoebridge: That the committee secretariat seek clarification of the rationale for WorkCover's request to keep confidential attachment A to the answers to questions on notice provided by Mr Bhatia.

6. Consideration of Chairman's draft report

The Chairman submitted his draft report entitled *Review of the inquiry into allegations of bullying in WorkCover NSW*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Searle: That paragraph 1.2 be amended by

- omitting 'the following year' and inserting instead '2011'
- omitting 'Despite the Minister's undertaking, questions' and inserting instead 'The committee notes that there was a change of government as a result of the election on 26 March 2011. Questions'.

Resolved, on the motion of Mr Searle: That paragraph 1.38 be amended by inserting 'to ensure a structured and ongoing process so that these matters are addressed.' at the end of the sentence.

Resolved, on the motion of Mr Searle: That paragraph 1.46 be amended by omitting 'duly' and inserting instead 'properly and distinctly'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.50 be amended by inserting 'as a matter of priority' before 'WorkCover liaison with'.

Resolved, on the motion of Mr Shoebridge: That Recommendation 2 be amended by inserting ‘as a matter of priority’ before ‘WorkCover NSW’.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted before paragraph 1.63:

‘The committee agrees with those concerns about the implementation of the recommendations, reiterates its original recommendations 7 and 8, and asks the government to address the concerns raised.’

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted before paragraph 1.63:

‘The committee is concerned at the lack of information available to both the PSA and employees of WorkCover regarding the recently signed MOU with the Department of Trade and Investment concerning the independent investigation of bullying complaints within WorkCover. If employees of WorkCover are to have faith in this process then they must be provided with clear knowledge of how complaints will be handled, who they will be handled by and the expected timeframes within which they will be addressed. While we accept that at the time of the committee hearing the arrangements concerning the MOU were only recently finalised, we recommend that this information be made available as soon practical.’

Resolved, on the motion of Mr Shoebridge: That the following new recommendation be inserted after paragraph 1.64:

‘Recommendation 3

That as soon as practical, WorkCover NSW and the Department of Trade and Investment, Regional Infrastructure and Services publish information on how complaints covered by the recently signed Memorandum of Understanding between both entities will operate, including at a minimum:

- how these complaints will be managed
- who will manage these complaints
- the expected timeframes within which complaints will be addressed.’

Resolved, on the motion of Mr Shoebridge: That paragraph 1.72 be amended by:

- omitting ‘trusts’ and inserting instead ‘is hopeful’
- inserting ‘This is clearly a matter of ongoing concern and the committee expects WorkCover to closely monitor the operation of the code especially in relation to how it addresses the concerns regarding bullying of injured workers by scheme agents’ at the end of the paragraph.

Resolved, on the motion of Mr Searle: That paragraph 1.72 be amended by inserting ‘The committee stands by its original recommendation 9 and asks the government to implement.’ at the end of the paragraph.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.80 be amended by inserting ‘The committee accepts that any new laws will need to be considered by the new parliament and we maintain our support for the implementation of this recommendation.’ at the end of the paragraph.

Resolved, on the motion of Mr MacDonald: That paragraph 1.80 be amended by omitting ‘is disappointed’ and inserting instead ‘notes’.

Mr MacDonald moved: That the following new recommendation be inserted after paragraph 1.46:

‘Recommendation X

That the Minister reviews the capacity of the SRWS Board and considers the appointment of a Board member with appropriate skills in human resource management.’

Question put and negatived.

Resolved on the motion of Mr Veitch: That:

- a) the draft report, as amended, be the report of the committee and that the committee present the report to the House
- b) 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
- c) 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
- d) the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- e) the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- f) the report be tabled on 11 December 2014
- g) the Chairman issue a media release.

7. Adjournment

The committee adjourned at 10.35 am, *sine die*.

Beverly Duffy

Clerk to the Committee