

QON 1: Satisfaction with bullying complaint outcomes

Mr DAVID SHOEBRIDGE: Just stopping you there—I will let you finish your answer—what proportion of the individuals who have raised bullying complaints with you have been satisfied with the outcome?

Ms DEAKES: I would not have that information but I would be happy to take that on notice.

QON 1: Answer

SafeWork NSW is committed to seeking feedback and improving its services to the NSW community. We regularly measure customer satisfaction of those who have had an interaction with SafeWork, via an annual survey; and seek requestor satisfaction with the outcome from individuals who have had an inspector response.

When we are notified of any work health and safety concern, we assess/triage the information to determine the appropriate SafeWork NSW response in accordance with the *National Compliance and Enforcement Policy*. For a bullying matter, this is based upon information provided by the requestor on the bullying complaint form. This provides critical details to inform the level and type of response SafeWork NSW will take in relation to a particular bullying matter.

The following tables provide details in relation to those who have received an inspector response and those where the complaint has been managed via an administrative response. Please note it is optional for the requestor to provide a response as to whether they are satisfied with the outcome of the complaint.

Requestor Satisfaction with Outcome	Inspector Response		Admin Response		Total	
	No.	%	No.	%	No.	%
Yes	41	46%	4	17%	45	40%
Unknown	34	38%	20	83%	54	48%
No	13	15%	-	-	13	12%
Still Active	1	1%	-	-	1	1%
Total	89	100%	24	100%	113	100%

The requestor will be informed of the outcome of their complaint, if contact details have been provided. This information is often provided by way of correspondence (letter or email) and contains details of further options available, if appropriate, to the requestor.

If further contact is made by the requestor, staff will discuss the outcome, that is, the method of determination and reinforcement of other options available to the person.

Given the complexity of workplace health and safety bullying matters, SafeWork NSW has developed specific information (available on its website) to assist workers in understanding what assistance and support is able to be provided. This includes a general and a specific customer service standard relevant to workplace bullying.

QON 2: Claims data

The Hon. CATHERINE CUSACK: *Do you have any claims data?*

Ms DEAKES: *We do not own the claims data. The State Insurance Regulatory Authority and icare have that data. We can access that data and we do.*

The Hon. CATHERINE CUSACK: *Is it possible for you to access that data to inform the Committee about claims?*

Ms DEAKES: *Yes, I am happy to take that no notice.*

The Hon. CATHERINE CUSACK: *Can I ask that that not just be about bullying but about mental health issues generally in those services?*

Ms DEAKES: *Absolutely.*

QON 2: Answer

The workers compensation claims data provided in the table below has been provided by Insurance and Care NSW (icare) and includes all mental health claims and a breakdown of the bullying / harassment claims. These aggregate the figures for the five emergency services agencies. The figures for 2017/2018 financial year include claims up to and including February 2018.

Emergency services agencies Workers compensation claims		
Financial Reporting Year	Mental Health Claims	Bullying/Harassment Claims
2012/2013	524	100
2013/2014	571	105
2014/2015	588	75
2015/2016	670	101
2016/2017	666	76
2017/2018	458	50

Emergency services agencies Bullying/harassment claims					
Financial Reporting Year	Anxiety and Depression Combined	Anxiety or Stress Disorder	Post-Traumatic Stress Disorder (PTSD)	Reaction to Stressors	Other
2012/2013	14	52	4	15	15
2013/2014	19	32	5	39	10
2014/2015	9	19	5	35	7
2015/2016	11	37	6	41	6
2016/2017	10	20	1	42	3
2017/2018	3	24	4	16	3

QON 3: Table of outcomes for 113 Requests for Service

Mr DAVID SHOEBRIDGE: My last question is about the six different actions that can be outcomes of a request for service listed on page 8 of your submission. On notice, can you please provide us with a table of the 113 requests for service, showing the outcome of each of them, using numbers 1 to 6, from "no further action" to "commencing prosecution action"? You have that data and that would be useful. Would you mind providing that on notice?

Ms DEAKES: Yes, we can provide that on notice.

QON 3: Answer

As the work health and safety regulator, SafeWork NSW aims to reduce the risk of harm arising from work and pro-actively secure improved health and safety outcomes. For SafeWork NSW, harm prevention is about securing compliance with work health and safety laws which is achieved through both prevention and response functions.

SafeWork NSW works closely with emergency services agencies to build their capability to systematically manage risks in the workplace, including bullying, with a view to securing compliance with work health and safety legislation.

For all Requests For Service regarding an alleged bullying matter, SafeWork NSW will thoroughly assess and respond to each complaint on the basis of risk potential.

The following table provides a summary of the outcomes of the 113 Requests For Service. Refer to the notes below the table for further explanation.

Outcomes of Requests for Service	No.
(1) No further action: an inspector has determined that an employer or business has systems in place to deal with complaints of bullying.	107 ¹
(2) Improvement notice: issued where improvement is required for an identified risk.	0
(3) Prohibition notice: issued where there is an imminent serious risk to health and safety.	0
(4) Agreed actions: recorded as part of an inspection report – outlines actions the employer or business is taking that do not require an improvement notice.	5
(5) Penalty notices: issued for non-compliance with an improvement notice.	0
(6) Commencing prosecution action: this avenue generally exists in relation to incidents, however, can be undertaken in relation to Request For Service where a breach of work health and safety legislation is apparent.	0
Total	112²

¹ There are several reasons for (1) 'No Further Action' following an assessment and/or investigation. Of the 107 determined as No Further Action required, inspectors confirmed in 33 per cent of matters that the emergency services agency had responded appropriately to the allegation and had appropriate systems in place to manage bullying issues. It was determined that 21 per cent of requests fell outside the statute of limitations or the issue reported was not a bullying matter and therefore not within the regulatory authority of SafeWork NSW. Where appropriate, these requestors were referred to the relevant regulatory body, such as the Industrial Relations Commission of NSW, the NSW Ombudsman, the State Insurance Regulatory Authority, the NSW Workers Compensation Commission, and the Federal Fair Work Commission.

The remaining requests had a variety of reasons for no further action being taken, including insufficient information provided by the requestor, the allegation was not substantiated, there were agreed actions between the parties, or requests were anonymous. In all cases, SafeWork NSW was satisfied that the risk of harm relating to the request had been addressed.

² One Request For Service is still active. (Note also, 113 Requests for Service includes an additional three Requests for Service received from NSW Ambulance since SafeWork NSW lodged its submission to the Inquiry).

Given the complexities associated with bullying issues, the table above represents response activities and is only a proportion of SafeWork NSW' approach to psychological-related harms.

SafeWork NSW also keeps abreast of bullying issues from a range of information, including trends in workers compensation claims, People Matter Employee Survey results, customer call data and published research.

The *Work Health and Safety Roadmap for NSW 2022* (Roadmap) highlights SafeWork NSW' commitment to embedding a work health and safety landscape within all workplaces, including emergency services agencies. The Roadmap also identifies Government Sector as a high-risk sector for attention. This six-year strategy aims to protect workers from harm, reduce unnecessary compliance costs and secure safety standards in NSW workplaces.

The critical elements at the heart of an effective work health and safety landscape include:

- consultation
- committed leadership
- good safety practices
- safe design and supply chains
- skilled workers who look out for each other and
- response and recovery when an incident does occur.

SafeWork NSW has worked with each emergency services agency to embed and continuously improve each critical element of the landscape. Through a portfolio model, SafeWork NSW engages with key personnel responsible for work health and safety, including leaders, to monitor and evaluate their efforts to prevent and respond to work health and safety matters, including bullying in the workplace.

Examples of activities that SafeWork NSW has undertaken with emergency service agencies to continuously improve their systems of work include:

- Health & Safety Representative (HSR) Verification Programs
- Monitoring of NSW Rural Fire Service Consultative Framework
- Bullying Prevention Improvement Tools (Survey Tool) including desk top audits
- Due diligence presentation to State Emergency Services, Fire and Rescue and Ambulance executives

Contributing to:

- NSW Police *Respectful Workplace Behaviours* guidelines, 2016 and the *Standards of Professional Conduct* 2017
- Critical Incident Support Services programs
- Mental Health Strategy for First Responders National Conference hosted by beyondblue

To action the commitment within the WHS Roadmap for NSW to improve work health and safety and return to work across the NSW Government, SafeWork NSW has undertaken high end engagement with emergency service practitioners who manage work health and safety and return to work as a part of their core role, and employee associations who represent emergency services workers. This engagement has identified mental health and bullying as a key priority for attention across the sector. In addition, the Public Service Commissioner Office has been engaged to include a greater work health and safety focus within the NSW People Matter – Public Sector Employee Survey.

SafeWork NSW recognises that bullying is a complex matter and involves multiple sources of data and engagement to understand underlying causations and implications. For this reason, we have built greater capacity and capabilities to understand and influence bullying in workplaces and will continue to do so.

QON 4: Notifiable incidents

The Hon. ERNEST WONG: In relation to the earlier question I asked, I am very confused about the fact you said you are not going to do follow-up as to outcomes for a complainant—whether they are satisfied and whether they are still in the workforce. Without that kind of data, how are you able to convince yourself that your SafeWork framework is actually working for those people? Bullying is not just one action at one point; it has cumulative consequences. If you are not taking that as part of the whole picture, that will not help you work. You can respond to that on notice if you wish.

Mr BULTITUDE: To the extent that this may answer your question, when we respond to a complainant, we send an inspector to the workplace. As a result of that interaction, the inspector will talk to the requestor and advise them as to what they have done. They get that feedback at that point. It is always open to that person to come back to us again if their circumstance changes or the situation exacerbates. On occasions they do that as a matter of course. We cross-check against our database. Every time a complaint comes in it is not only looked at in terms of the hazard and the risk; it is also looked at in terms of: "What do we know about that business?" That informs our response. If we have seen a spate of complaints, no matter what hazard or risk type they are, that will inform our response.

Mr KELLY: And matters are not closed in relation to bullying if there is a harm or risk to the worker—they remain open until we are satisfied there is no further harm or risk to the worker.

The Hon. ERNEST WONG: Are you saying there is an open end to the help for the complainant?

Mr KELLY: Yes.

The Hon. ERNEST WONG: In your submission you are not saying that. You are saying as soon as you send them a correspondence, either by mail or whatever it is, that is the end of it—you are not going to interfere with any of those cases any more.

Mr DAVID SHOEBRIDGE: They have not said they send correspondence. It is a phone call, is it not?

Mr BULTITUDE: Can I just explain? It is two things—it is one or the other. If the complaint comes in and SafeWork determines not to allocate that to an inspector, we will write to the requestor and explain the decision we have made and why we have made the decision. It is open to that person to then come back to us if they have a concern about that particular determination. If we allocate it to an inspector for response then the inspector will call the requestor and advise them of what they have done and what the outcome is.

Mr DAVID SHOEBRIDGE: It is not a letter; it is a phone call.

Mr BULTITUDE: It is one or the other. I also explain that the complaints that come to SafeWork come from requestors. In terms of what is a notifiable incident under the work health and safety legislation, a notifiable incident is defined as a fatality, a very serious injury or a dangerous incident. It does not pick up psychosocial matters. The obligation is not on the duty holder, which is the business, to inform the regulator of instances of bullying or psychosocial risk in their workplace.

The CHAIR: Questioning will come to an end now, thank you very much.

Mr DAVID SHOEBRIDGE: Perhaps you could explain that on notice, because it seems a mysterious end to a situation of bullying.

Mr BULTITUDE: Yes—happy to do that.

QON 4: Answer

Under the model legislation as adopted by NSW, there is an obligation on a business/employer (Person Conducting a Business or Undertaking (PCBU)) to notify a death, defined serious injuries, illnesses or dangerous occurrences.

As the workplace health and safety regulator, SafeWork NSW is committed to preventing work-related deaths, injuries and illnesses. The notification of defined notifiable incidents can assist in identifying the causes of incidents so that targeted preventative strategies can be implemented across industry. Failing to report a 'notifiable incident' is an offence and penalties apply.

A 'notifiable incident' is the death of a person; a serious injury or illness; or a dangerous incident that arose out of the conduct of the business or undertaking. This can involve any person, such as an employee (worker, including a volunteer), contractor or member of the public.

The *Work Health and Safety Act 2011 NSW (WHS Act)* and guidance material clearly define what types of injuries, illnesses and dangerous incidents are required to be notified immediately to the regulator. In relation to serious injuries and illnesses, a specific prerequisite for notification relates to a person requiring **immediate** treatment for an injury or treatment as an inpatient within 48 hours following exposure to a substance.

A 'dangerous incident' means an incident that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to damage to plant and structures, electric shock, uncontrolled escape or leakage of a substance, gas, steam or pressurised substance. It also includes uncontrolled fire, implosion or explosion, collapse or failure of an excavation or shoring, and instances involving underground work regarding the inrush of water, mud or gas or the interruption to the main ventilation system.

The definition of 'notifiable incident' in the WHS Act does not capture psychological injury. Therefore, there is no legislative requirement for a PCBU or workplace to notify SafeWork NSW when a person may have suffered such an injury, which is attributable to their activities at work or because of their experiences at work, such as bullying. However, the definition of health in the WHS Act includes both physical and psychological health, and so a PCBU does have workplace health and safety duties in relation to psychological health as well as physical health and relevant penalties can apply.

Although workplace bullying is not a notifiable incident, SafeWork NSW uses multiple sources of intelligence to understand all work health and safety issues and risks.

This type of injury may be deemed claimable under the workers compensation system managed by Insurance and Care NSW and regulated by the State Insurance Regulatory Authority.