



GENERAL PURPOSE STANDING COMMITTEE NO. 1

INQUIRY INTO ALLEGATIONS OF BULLYING IN WORKCOVER NSW

Answers are to be returned to the Committee secretariat by 3 December 2013.

Supplementary questions: Injured Workers Support Network

Questions from the Hon Adam Searle MLC

1. Does having the multiple functions carried out by WorkCover (insurance, compliance, prosecutions) within a single body contribute to the organisation's problematic culture?

Answer:

Yes it presents a conflict of interest.

The NSW Workcover Authority has operated as single body administering the multiple functions of (insurance, compliance, prosecutions) within the same organisation since 1989.

How can one organisation possibly look after the best interests of such a hybrid group of Injured Workers, Employers and Insurers - whilst at the same time endeavouring to perform best practice administration of insurance, compliance and prosecutions without creating a culture that could be deemed problematic at best?

2. Does this make the organisation more difficult to manage for middle and senior managerial staff? If so, how?

Answer:

The crossover functions between insurance, compliance and prosecutions would possibly make it difficult for not only middle and senior management but for all Workcover staff in general.



3. Should WorkCover be separated into different bodies, each charged with a discrete part or parts of its current functions? If yes, what do you suggest as being the best proposal to effect this?

Answer:

Rehab and return to work information and services - Provider accreditation

Insurance – Scheme agent contracts, insurer's code of conduct,

Compliance –site and enforcement inspectors, return to work officers and prosecutions.

Each branch accountable individually to a single tripartite group comprising employers, unions, injured workers and the Senior Officer of the Authority.

4. Given the evidence received regarding alleged interference by managers in inspectors enforcing safety laws, is there a need for some of WorkCover's functions being made statutorily and legally independent of Executive Government (similar to Police or the DPP)? If yes, what functions and what model do you suggest?

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The Hon. ADAM SEARLE:

The questions go to the period of time over which your organisations have been experiencing the difficulties you outline in your submissions. Has that been over the last year or two years? How long has it been?

The Injured Workers Support Network (IWSN) was formed as a result of the NSW June 2012 Workers Compensation reforms. From inception we have received over 2 million visitors to our website resulting in a large number of telephone and written enquiries from distressed injured workers.

Since the June 2012 reforms we have received countless reports from injured workers complaining of an increase in the hostile behaviour undertaken Workcover and its Scheme Agents. This has left injured workers with no avenue of appeal and in dire circumstances



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Mr DAVID SHOEBRIDGE:

Yes, although I am happy to do it in the same form. WorkCover says that its response to the PriceWaterhouse Coopers inquiry has been to develop in part this wellness model. Rather than focussing on addressing the cause of bullying it focuses on improving personal resilience—the physical, social, emotional and financial wellbeing of the person being bullied—to make them more resilient to the situation they are in.

I wonder if that is your view of how they treat bullying more broadly, not just within the organisation but also for injured workers who have been bullied and the like. Are they focused on improving the resilience of the person being bullied rather than addressing the cause of the bullying in the workplace?

When it comes to dealing with injured workers there doesn't appear to be any resilience model used by Workcover or any of its Licenced Scheme Agents.

Injured Worker Dennis:

"I tried to neck myself in the garage after just one too many heated conversation with the insurer who clearly didn't care I had lost my family after our home got repossessed by the Bank. Weeks of being in the house alone, my wife gone and with no money food I didn't know what else to do"

Injured worker Jill says

"I tried to find out when the insurer was going to pay me as I didn't have any pay for nearly 4 months because the bank told me they would take my house. I was told by the insurer – this is not our problem you should have thought of that before going on compo! They don't give stuff and always make you feel like you're a bludger."

Injured Worker Sally

Was told by her Insurer acting under the authority of NSW WorkCover. "Other people have had this treatment and it did NOT work for them so it will not work for you. If you want the treatment and want to get better you should use Medicare or your Private Health Insurance to have the treatment".

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Supplementary questions: Injured Workers Support Network

Questions from the Hon Adam Searle MLC

1. Does having the multiple functions carried out by WorkCover (insurance, compliance, prosecutions) within a single body contribute to the organisation's problematic culture?

Answer:

The multiple functions carried out by WorkCover Authority of NSW have been in place since 1989.

If the multiple functions structure is a contributing factor to the organisation's problematic culture, then it would be reasonable to expect this problematic culture to appear much earlier rather than 30 years after the first consolidated OHS Act was enacted in NSW...

2. Does this make the organisation more difficult to manage for middle and senior managerial staff? If so, how?

Answer:

The general functional structure of WorkCover (insurance, compliance, prosecutions) has been in place for about 30 years with the symptoms of problematic culture being a more recent phenomenon.

The research on leadership and management has consistently found a significant relationship between the values and behaviour of leader and the culture of the organisation. In view of this, it is reasonable to draw a conclusion that the problematic culture of WorkCover is related to the values and behaviour of senior management and middle management.

As a regulatory agency charged with the responsibility of enforcing the law, it is imperative that WorkCover uses sound ethical values so as to fulfil their role and responsibilities to the NSW

community's expectations of the law being enforced effectively and in a just manner within and without WorkCover.

3. *Should WorkCover be separated into different bodies, each charged with a discrete part or parts of its current functions? If yes, what do you suggest as being the best proposal to effect this?*

Answer:

WorkCover NSW has two separate Divisions, Work Health and Safety Division and Workers Compensation Division. Both Divisions administer separate legislations with complementary objectives – the health and safety to promote and enforce the duty owed to provide a safe workplace and workers compensation to rehabilitate workers back to pre-injury health condition.

When a health and safety inspector goes into the field to investigate a complaint of poor health and safety system in the workplace, the inspector is also empowered to seek information on workers compensation premium and post injury treatment of workers.

It could be argued that the current structure offers a savings in terms of enforcement cost. What is needed is more inspectors and a greater weighting to be given to inspectors' opinions.

Currently, the manager is able to ignore an inspectors' recommendation without due examination or consideration.

4. *Given the evidence received regarding alleged interference by managers in inspectors enforcing safety laws, is there a need for some of WorkCover's functions being made statutorily and legally independent of Executive Government (similar to Police or the DPP)? If yes, what functions and what model do you suggest?*

Answer:

Good governance needs a system of checks and balances; and an independent office that deals with the internal and external complaints of WorkCover will go towards achieving the functional integrity of WorkCover.

David Shoebridge:

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that its response to the PricewaterhouseCoopers inquiry has been to develop in part this wellness model. Rather than focussing on addressing the cause of bullying it focuses on improving

personal resilience—the physical, social, emotional and financial wellbeing of the person being bullied—to make them more resilient to the situation they are in. I wonder if that is your view of how they treat bullying more broadly, not just within the organisation but also for injured workers who have been bullied and the like. Are they focused on improving the resilience of the person being bullied rather than addressing the cause of the bullying in the workplace?

Answer:

In the field of Psychology, studies of children and adolescents development gave rise to the concept of “resilience in development” which refers to the capacity of some children who are raised in harmful environments to somehow rise above these disadvantages and achieve healthy development.

Such resilience development phenomenon could be explained by a group of protective factors working in combination. The three factors that must be present and working together are:

- (1) Family – such children are able to establish a close bond with at least one competent and emotionally stable person that is trusted and provides encouragement.
- (2) Community - Caring neighbours, teachers, youth workers, clergy to rise above the poverty and harsh environment
- (3) Personal – good communication and social skills, intelligent and temperament that elicits positive responses from care givers.

Resilience is therefore the result of interactions between a person and their environment. It is not a personal attribute or trait.

In the case of workplace bullying, resilience training focuses on the personal factor – to train them to better resist the harsh and harmful work environment.

This means that resilience training is failing to address the source of the harsh and harmful work environment – the bullying behaviour of the perpetrator.

Secondly, resilience training communicates to the targeted worker that the problem is that the worker is not strong enough to stay well in the harsh and harmful work environment

Thirdly, resilience training also implicitly informs the worker that the harsh and harmful work environment is a stable condition that does not need ameliorating.

Taken together, it is difficult to conceptualise resilience training is conducted to promote the wellness of workers. In reality, it is otherwise.

As to the environmental factor of the perpetrator’s bullying behaviour in creating a harsh and harmful work environment, WorkCover has failed to properly address this issue within WorkCover and more broadly within the NSW community by allowing the bullying behaviour to continue to pose a risk to the psychological and physical health of the targeted worker.

By not addressing the bullying behaviour immediately and requiring workers to be exposed to repeated bullying incidents, WorkCover has neglected to be mindful of the fact that protecting workers and other persons against harm to their health and safety *through the elimination or minimisation of risks arising from work* as one of the key objects of the Work Health and Safety Act 2011.

**INJURED WORKERS SUPPORT NETWORK
VICKI PEPYAT, INJURED WORKER**

REPLY TO QUESTION ON NOTICE

**TO THE NSW PARLIAMENT, LEGISLATIVE COUNCIL
GENERAL PURPOSE STANDING COMMITTEE NO. 1**

**INQUIRY INTO ALLEGATIONS OF BULLYING IN WORKCOVER
NSW**

**QUESTIONS ON NOTICE FROM 6 NOVEMBER 2013:
REPLY TO QUESTION BY MR DAVID SHOEBRIDGE**

WorkCover says that its response to the PricewaterhouseCoopers inquiry has been to develop in part this wellness model. Rather than focussing on addressing the cause of bullying it focuses on improving personal resilience – the physical, social, emotional and financial wellbeing of the person being bullied – to make them more resilient to the situation they are in. I wonder if that is your view of how they treat bullying broadly, not just within the organisation but also for injured workers who have been bullied and the like. Are they focusing on improving the resilience of the person being bullied rather than addressing the cause of the bullying in the workplace?

What is wrong with the resilience approach?

1. There is so much wrong with this approach. As indicted in the question, a focus on improving the so-called resilience of a target individual fails to focus on the bullying behaviour. The individual being bullied is expected to change; to adapt; to toughen up; to move forward. This model also conveys to individuals who have been bullied that it is their fault – if only they had been resilient enough then they would not have been bullied; or, alternatively, they may have reacted differently to the bullying. It is heartless and cruel to blame someone who has been bullied.
2. The “wellness model” has the potential to humiliate and belittle decent, honest, hardworking and resilient employees who have done nothing wrong, all the while not tackling the problem. The further harm this approach could cause to bullied and injured workers is real.
3. The wellbeing model fails to acknowledge different types of bullying and bullies, and the fact that bullying can be insidious and occur over a prolonged period of time. The bullying needs to be addressed, and this will not be achieved by some esoteric resilience program. A wellness/resilience approach is also predicated on the target being in a relationship with the bully or bullies that, in reality, does not exist.
4. It is worth recalling that, in complete contrast to many bullied workers, bullies may exhibit some or all of the following characteristics (this is not an exhaustive list):
 - Predatory;
 - Controlling (of other employees);
 - Aggressive;
 - Inadequate;
 - Inability to feel empathy or real compassion;
 - Jealous;
 - Dishonest; deceitful and manipulative;
 - Hateful;
 - Willing to dehumanise, invalidate and demonise good and decent people;
 - Narcissistic and/or other personality disorders;

5. One of the most informative and comprehensive websites I found about bullying is: <http://www.bullyonline.org> Attached at page 9 is a printout from that website, which outlines and distinguishes some aspects of harassment and workplace bullying (<http://www.bullyonline.org/workbully/bully.htm> accessed and printed on 14 November 2013)

Has the resilience approach permeated the way WorkCover deals with bullying in respect of injured workers?

6. WorkCover has a number of approved and accredited rehabilitation services providers. My experience has included two of those providers, the first of which was (), which I referred to in my evidence. If I may elaborate on my experience further, as this goes directly to the question.
7. As stated in my individual submission, I have been on workers' compensation since June 2012. Since that time I have been medically certified as 100% unfit to work. As at 3 October 2012 I had been seeing a Psychologist since June 2012 in respect of my psychological injury from workplace bullying, and I was waiting for my first appointment with a Psychiatrist, which was on 25 October 2012 and had been approved by the workers' compensation insurer. There had been a long wait to get the appointment with the Psychiatrist.
8. On 3 October 2012 I had a phone conversation with an employee of the workers' compensation insurer. He is variously referred to as the Psychological Injury Claims Specialist or as the Psychological Claims Specialist ("the PCS"). Early in that conversation the PCS said to me, in an aggressive tone, words to the effect:

"I have not heard from you for a while. Have you been applying for jobs?"

I was not aware I had to contact him, and I was in no state to be job searching. I could hardly believe what he said. In reply I said words to the effect:

"I am not able to function and I struggle to get through each day. I am still in that office in my head."

In reply to which he said words to the effect:

“The workers compensation you get will go down soon”

I said words to the effect:

“I did not want to be in this situation, and never thought I would be”

He then informed me he had arranged for me to have an Independent Medical Examination (“IME”) with a Psychiatrist on 17 October. Despite my Psychologist sending regular invoices and reports to the insurer, the PCS inquired if I was still seeing the Psychologist. I said “yes”. He then said words to the effect:

“In future you can still see him [the Psychologist] if you want via Medicare or pay for it yourself”

I could hardly believe what I was hearing. I was in shock that the PCS was threatening me as he was. During the phone conversation I was crying and shaking. The PCS already had reports from my Psychologist about my psychological injury from workplace bullying, which included major depression and that I had been on suicide watch!

9. During the phone conversation on 3 October the PCS also went on to say I would be contacted by a business that does re-training, as I need to be retrained. That business was . At that time he did not inform me that I could choose my rehab service provider.
10. After the phone conversation I looked up the website of (<http://www.>) describe them-selves as a specialist return to work service provider in the area of workplace psychological injury and rehabilitation. They offer a program called “ ”. One of the assertions on their website about resilience and what they offer is as follows:

Strong emotional resilience is vital to positive mental health and psychological wellbeing. Emotional resilience is not a trait we are born with, but rather a series of learnt behaviours and with the right tools and techniques, anyone can enhance their own personal emotional resilience. Improved emotional resilience allows us to better manage stress, deal with change and maintain positive relationships.¹

11. I was not reassured by the information on the _____ website. I felt like I was being blamed for being bullied and for having a psychological injury. On 5 October 2012 “L” from _____ phoned me to arrange an appointment with her. She identified herself as a Psychologist. During that conversation she said to me words to the effect:

“What I will do will enable you to put it behind you and move forward. I sometimes see people like you, who are more than just clock on and clock off employees, hit hard”.

12. I was concerned the insurer may cut off my weekly payments and that I had no option other than to go to the appointment that was made with _____. That appointment was at a Sports Club in the Blue Mountains on Friday 12 October 2012, in the afternoon. One of the first things L asked me was for me to tell her all about the bullying. I did not know or trust her. I was suffering major depression and anxiety from bullying, and her question sent me into meltdown. I could not face reliving all the trauma of the bullying to a stranger who I expected, given the details on the _____ website, would be unfairly saying I lacked resilience. I broke down and cried and could not go on with the meeting. I apologised to her.

13. On Monday 15 October 2012, during the morning, the PCS from the insurer phoned me. He asked how the meeting had gone on Friday with _____. I replied with words to the effect:

“I presume [name] has already reported to you about what happened.”

In reply to which he said words to the effect:

“Yes, I have an email, but I want your version of what happened.”

During a long conversation at that time with the PCS I found him, yet again, to be threatening and intimidating. I was very distressed, crying, shaking and having trouble with my breathing. During the conversation I repeatedly said to him words to the effect:

“Why can’t you wait until I see my Psychiatrist for the first time on 25th October? I am hoping she may be able to assist with some medication. You are putting too much pressure on me now”.

I also said, words to the effect:

“I am informed by a support group that I can choose my own rehab service provider”.

14. Again, I found what the PCS said to me to be very disturbing, however, he did finally agree I could wait to see a rehab service provider of my choice (provided the insurer approved of them) until after I saw my Psychiatrist. The conversation also included reference to the upcoming IME that the insurer had arranged. He reminded me again that my weekly payments would soon decrease.

15. It was during the phone conversation with the PCS on 15 October 2012 that I was so distressed by what he said and how he said it that I said to him:

“Are you trying to push me over the edge?”

His threatening tone and words did not change after I said that to him!

16. During the next six months I had further extremely disturbing phone conversations with the PCS, including him saying to me things that were not true. I started experiencing disturbing flashbacks that involved hearing his voice on the phone.

During a phone conversation with the PCS on 6 March 2013 I said to him words to the effect:

“You upset me terribly last time we spoke on the phone, and you are doing it again”.

During a phone conversation with the PCS on 15 March 2013 I said to him words to the effect:

“I have left a message for my Psychiatrist to contact me. I don’t want to talk to you further until after I speak with her. Every time I speak with you I find it too disturbing and get upset”.

In reply he had the audacity to say to me:

“And why do you think that is?”

During a further conversation I said to him words to the effect:

“After I speak with my Psychiatrist either I will phone you or she will. I would prefer not to speak with you further.”

In reply to which he said words to the effect:

“It must be me who speaks with you.”

17. In an email I drafted and sent to the PCS on 18 April 2013 I alleged, inter alia, as follows:

- Your repeated unreasonable behaviour, intimidation and harassment of me, with no regard to my psychological state or for me as a person, was unnecessary and cruel.
- My comments about how much you were upsetting me resulted in absolutely no compassion on your part and you continued to harass me.

- I have grave concerns for my psychological safety in the event you correspond with me further.

I also requested that he be removed from any involvement in my matter, and that he not attempt to speak with me at any future time. I did not receive a reply to that email directly from the PCS nor anyone else at .

18. On 23 April 2013 I complained to WIRO about a number of issues about the insurer. I directed my complaint to a gentleman at WIRO who had assisted me in February 2013 with another dispute with the insurer (that was resolved in my favour after the insurer, finally, conceded they were wrong). Part of my complaint to WIRO was titled: **Bullying and harassment of me by employee**. I requested that the PCS be removed from any involvement with my claim.

19. On 2 May 2013 I received an email reply from WIRO, which included a reply from the insurer to my complaint about the PCS. The reply was as follows:

[name of individual] is employed by as a psychological injury claims specialist and as his title dictates all claims with diagnosis of anxiety/depression falls under his scrutiny. [name] will continue to support the management of this claim as required by his role but will not be in direct communication with the worker.

20. Thoughts of phone conversations with the PCS still distress me, all these months later. As far as I am aware, the PCS still has his job with the insurer. continue to be a WorkCover accredited service provider. The individuals who bullied me at work have not been held to account. As far as I am aware, WorkCover has not undertaken any investigation of the repeated bullying in my workplace.

21. My ongoing psychological and psychiatric treatment and care continues to be paid for by the workers' compensation insurer.

Vicki Pepyat, Injured Worker, for Injured Workers Support Network

19 November 2013

9

Definitions of harassment and bullying vary and there is much overlap. The essential differences between harassment and workplace bullying are as follows:

Harassment	Workplace bullying
Has a strong physical component, eg contact and touch in all its forms, intrusion into personal space and possessions, damage to possessions including a person's work, etc	Almost exclusively psychological (eg criticism), may become physical later, especially with male bullies, but almost never with female bullies
Tends to focus on the individual because of what they are (eg female, black, disabled, etc)	Anyone will do, especially if they are competent, popular and <u>vulnerable</u>
Harassment is usually linked to sex, race, prejudice, discrimination, etc	Although bullies are deeply prejudiced, sex, race and gender play little part; it's usually discrimination on the basis of competence
Harassment may consist of a single incident or a few incidents or many incidents	Bullying is rarely a single incident and tends to be an accumulation of many small incidents, each of which, when taken in isolation and out of context, seems trivial
The person who is being harassed knows almost straight away they are being harassed	The person being bullied may not realise they are being bullied for weeks or months - until there's a moment of enlightenment
Everyone can recognise harassment, especially if there's an assault, indecent assault or sexual assault	Few people recognise bullying
Harassment often reveals itself through use of recognised offensive vocabulary, eg ("bitch", "coon", etc)	Workplace bullying tends to fixate on trivial criticisms and false allegations of underperformance; offensive words rarely appear, although swear words may be used when there are no witnesses
There's often an element of possession, eg as in stalking	Phase 1 of bullying is control and subjugation; when this fails, phase 2 is elimination of the target
The harassment almost always has a strong clear focus (eg sex, race, disability)	The focus is on competence (envy) and popularity (jealousy)
Often the harassment is for peer approval, bravado, macho image etc	Tends to be secret behind closed doors with no witnesses
Harassment takes place both in and out of work	The bullying takes place mostly at work
The harasser often perceives their target as easy, albeit sometimes a challenge	The target is seen as a threat who must first be controlled and subjugated, and if that doesn't work, eliminated
Harassment is often domination for superiority	Bullying is for control of threat (of exposure of the bully's own inadequacy)
The harasser often lacks self-discipline	The bully is driven by envy (of abilities) and jealousy (of relationships)
The harasser often has specific inadequacies (eg sexual)	The bully is inadequate in all areas of interpersonal and behavioural skills