

The Chair, Hon David Clarke  
The Law and Justice Standing Committee  
NSW Legislative Council  
Parliament House, Macquarie Street  
Sydney NSW 2000

Dear Mr Clarke

Re: review of the exercise of the functions of WorkCover Authority in enforcing workplace health and safety and treatment of injured workers by self-insurer

I am taking up your invitation to forward the personal accounts of some members of the Injured Workers Support Network (IWSN) regarding the intimidation and bullying experienced by injured workers as well as the manner in which WorkCover exercise its functions under sub-section 22(3) of the Workplace Injury Management and Workers Compensation (WIMWC) Act 1998 in particular:

- (i) **Work Health and safety(WHS)** – to promote the prevention of workplace injuries and diseases as well as to develop health and safe workplaces in NSW
- (ii) **Injury Management (IM)** – to promote the prompt, efficient and effective management of injuries to workers,
- (iii) **Workers Compensation (WC) Insurance** – to ensure the efficient operation of WC insurance arrangements
- (iv) **Co-ordination of the WHS and Workers Compensation (WC) Legislations** – to ensure appropriate co-ordination of WHS & WC legislations for the administration of the WC schemes

As requested by the Committee, I will make clear the meaning of the following terms:

- (a) Intimidation: to overawe. Within the context of an organisation, it includes the use of the institutional power to act in a manner to subdue, restrain or affect a person with a feeling of mixed emotion of reverence and respect for the policy and institutional authority, together with the dread or threat of punitive power.  
Note: in the personal accounts, the writer has described a feeling of being restrained from going back to work and had no choice but to follow the direction of the employer. It is taken that the writer is describing a feeling of being overawe. In such a situation, even if the word intimidation is not used, it is taken to mean intimidation.
- (b) Bullying : repeated unreasonable behaviour directed towards a worker that creates a risk to health and safety (Guide for preventing and responding to workplace bullying, November 2013). However, due to the strict liability of the WHS duties requiring duty holders to not expose workers to risks to health and safety, question has been raised about the validity of the criterion of repeated from a health and safety perspective (See Chan-Mok, Caponecchia and Winder, 2013 The Concept of Workplace Bullying, Psychiatry, Psychology and Law).

These three personal accounts provided showed that:

1. The workers rang WorkCover to seek the protection of the OHS Act. WorkCover did not exercise its responsibility to enforce or seek compliance from the employer to ensure that actions taken by the employer do not expose workers to risks to health and safety.

2. WorkCover receive reports on workers compensation claims and failed to carry out quality assurance reviews of insurers, in particular, self-insurers to ensure that injury management and return to work programs of injured workers are effectively and treatment plans are developed in consultation with injured workers. Instead, the injury management process has resulted in injured workers feeling intimidated and anxious and not surprisingly, aggravated their mental health. While the work of WIRO is commendable, information obtained from WIRO showed that it fell outside its scope of responsibilities.
3. The numerous exchanges between the injured workers and WorkCover failed to show that showed WorkCover has an appropriate co-ordination of the OHS and Workers Compensation legislation and that it is working well.

A standout feature of the documents provided by MA is the inconsistency and key missing information relating to her case in the then Minister, Greg Pearce's letter of 8 October 2012 to the Hon Sharon Grierson (see Attachment 2). For instance:

"...in March 2010, WorkCover conducted an investigation in response to a media article regarding a former member of staff".

MA has written to the then Minister stating that WorkCover alleged investigation did not include finding out factual information from her (Excel "MA timeline of events-17 APR14 & Attachment 3)

MA's suicide attempt was on February 2011 at the workplace. The employer would have the obligation to report this incident to WorkCover. Yet no one from WorkCover contacted her. On 16 July 2012 MA specifically asked WorkCover to investigate her case. Yet this sequence of events is not mentioned in the Minister's letter to Sharon Grierson (Attachment 2)

The Committee has heard that WorkCover's inspectors were directed not to investigate stress and workplace bullying. Based on my understanding and knowledge, inspectors would usually attend the workplace to seek initial information about the complaint. They would then go back and discuss this with their Team co-ordinator and Manager who have the authority to direct the inspector to stop or proceed with their inquiry.

From a humanist point of view, employment is a contractual agreement between an employer with the ability to direct the manner, type of tasks and time frame for the labour activities of the worker in exchange for monetary payment for their labour services. Like communities worldwide who have signed up to ILO Convention 155, the community of NSW, has determined that the right to direct a worker and the work environment are not to pose any risks to the health and safety of workers earning a living.

The evidence for this group of workers suggests that even if the workplace bullying resulted in a worker attempting to end her life, WorkCover will not investigate. There has been a recent coronial inquiry into the suicide of a 17 years old apprentice and again, WorkCover has not taken any action to enforce the health and safety law proactively. The Directors and Managers of WorkCover need to take responsibility for fulfilling their legislative and public service responsibilities to achieve the standard of desired behaviour enacted by Parliament on behalf of the people of NSW.

May I take the opportunity to thank the Committee for their dedication and commitment to achieve the objects of the WHS and WIMWC Acts by enforcing the rigour of the Health and Safety Regulator to ensure that workers in NSW are not exposed to risks to health and safety and injured workers have an effective and consultative return to work program.

Janet Chan

Member of Injured Worker Support Network, 17 April 2014