

NSW Legislative Council GPSC No. 1 Inquiry into allegations of bullying in Workcover NSW

Responses to supplementary questions

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Following the hearings I attended on November 6, 2013, I was asked a number of supplementary questions.

These questions included questions from the Chair related to:

Possible explanations as to why Workcover NSW appeared blind to bullying within its own organisation, and top level strategies that could be implemented to improve these issues.

Questions were also posed by Mr David Shoebridge MLC as follows:

In light of the difficulties of effectively being a self regulator of its own workplace safety and workplace safety responses, do you have any thoughts on a possible model for an independent advisory panel (or similar) to oversight WorkCover?

In particular could you consider issues such as an independent advisory panel's (or similar) tenure, what its role(s) might be, and the knowledge and skills that should be represented in its membership?.

Questions from the chair

There are a range of possible explanations for why bullying may not have been recognised within Workcover NSW. Prominent among these is the notion that

reporting systems or other data may indicate a lower level of bullying than was really occurring. This may be due to a lack of integrity of these data or reporting systems (eg. due to a lack of trust, fear of payback or confidentiality breach, job insecurity). Why this was not substantially improved following the PWC inquiry, which despite not finding evidence to support widespread bullying, nonetheless indicated that there was a range of problems, is unclear.

There are several broad strategies that can be implemented to improve recognition these issues in advance, such that they can be prevented from escalating.

First among these is a genuine acceptance of the observation that there is a bullying problem in Workcover NSW, and ownership of responsibility for this problem. These would need to be *demonstrated* by senior management. This kind of ownership, and acceptance that bullying is an organisational problem, rather than an individual problem, has recently been emphasised in other inquiries (see Pearce 2013 <http://www.hwlebsworth.com.au/csiro-investigation.html>). Related to this, there seems to be disagreement over the extent of bullying in Workcover, or an unwillingness to admit the scope of the problem. One way to resolve this is to dispense with all current indicators of the problem (internal surveys, reports, claims), which are all likely flawed in one way or another, and commission independent research (thus free from fears of payback or lack of trust in management) into the depth of the problem.

Strategies to increase trust in reporting and management systems obviously have to be implemented if the recognition, prevention and management of bullying are to be improved. These strategies are aimed at improving the integrity of any internal reporting system.

Greater process transparency on how reports of bullying will be deal with is an important inclusion (ie. details of exactly what will happen once bullying is reported being communicated to parties, provided of course these details are consistent with best practice).

Greater system transparency on how bullying reports have been received, dealt with and/or resolved both now and into the future is another important step. This involves making de-identified data available to staff (and other stakeholders) regarding the number of reports received, how long it took to respond, how many resulted in external investigations, the types of interventions used etc. This kind of openness demonstrates to staff that an organisation really does take reports that are made seriously, and that the organisation has a track record of responding appropriately. It also demonstrates that the behaviours will be dealt with in a consistent, systematic manner. This is equally important for targets of bullying behaviour, as well as people who may display bullying behaviours.

Many of these strategies do not require another protracted review to justify their implementation. However, support and advice may be required to implement them appropriately.

There are other strategies that may need to be implemented to improve recognition and identification of the bullying problem, though these may be more appropriately considered by any independent advisory panel who will have access to the full range of relevant data, procedures and have the resources and authority to recommend such strategies. For example, it may be decided that the most appropriate course of action is to make reporting of bullying completely independent of Workcover NSW, in a similar way to the use of whistleblower hotlines employed by some organisations. The nature of any such panel is discussed below in response to other questions on notice.

Independent advisory panel

Should an independent advisory panel be recommended, there is a range of issues that should be considered in its design. I have no information on of what

this hypothetical panel may comprise, or what it may be called. Accordingly I will use the term “independent advisory panel” suggested in the question.

Role of the independent advisory panel

If an independent panel were to be formed, it should advise on the immediate, medium, and long-term strategies that need to be employed in order to improve the activities around workplace bullying in Workcover NSW. Given the significant credibility issues raised by Workcover regulating workplace bullying in other employers in NSW, the role of the panel should extend to Workcover’s treatment of workplace bullying in general, outside the confines of its own operation. Given the apparent extent of the problem, the role of the panel may need to be more than advisory. It is apparent that at least some of the 2011 PWC review recommendations were not acted upon by Workcover management. If any panel is merely an advisory panel, there is a risk that its “advice” may be ignored or not acted upon, in a manner consistent to what occurred with the PWC review.

Immediate concerns for any such panel include designing better reporting systems; getting accurate data on exactly how much bullying is occurring (probably through independent data collection); and improving procedures around investigation. Part of this role may include assigning external investigators to matters, following a vetting process to avoid conflicts of interest and to ensure the appropriateness of investigator skills and qualifications. For example, having some background in organisational behaviour would usually be considered desirable in relation to workplace bullying investigations. Consideration should also be given to the notion that terms of reference could be set by the panel, and that the investigator(s) could report to the independent panel, rather than to Workcover NSW management. This arrangement removes perceptions of bias of the investigation due to the investigator being beholden to the organisation for payment. Consideration would then need to be given to the authority of the panel, in recommending actions on the basis of the investigation, and how such recommendations are enacted by Workcover NSW.

Medium term priorities would include a full policy and procedure review relevant to workplace bullying, and potentially a more broad review of how WHS responsibilities are met within Workcover. This would likely have to encompass reviewing, with a view to improving: training of staff (awareness training and specific inspectorate training); the bullying response service; HR functions in relation to workplace bullying and how they interface (or fail to interface) with WHS principles/frameworks, and potentially other elements of the system.

Longer-term priorities are likely to include, but not be limited to ongoing monitoring and evaluation of any implemented changes over time.

Independence

Any such panel needs to be completely independent of Workcover NSW. The suggestion that other state/territory regulators could perform a review, or take an investigative or advisory role is entirely inappropriate, particularly given that other state WHS regulators are known to have bullying problems of the scale of those in Workcover NSW. The suggestion that the mining regulator could perform investigations of bullying behaviours is also inappropriate, for reasons of independence (being another state government regulator), and for reasons of skill base and knowledge.

The use of the Public Service Commission for providing investigations, and the internal Audit Bureau is similarly flawed. It is very difficult for government bodies to truly independently investigate other government bodies. The importance of independence was highlighted in my first submission and evidence to the committee. Evidence presented to the inquiry has also recorded perceptions of the shortcomings of taking these issues to the NSW Ombudsman.

In short, any independent panel for the roles outlined above has to be purpose-built to ensure both real independence and an appropriate complement of skills.

Skills, knowledge and background of panel members

It is imperative that any panel that may be formed comprises significant expertise in WHS frameworks, principles, values and practices. Workcover not only has to manage bullying of its own staff, but also credibly demonstrate best practice to other organisations, which are supposed to manage bullying under a WHS model. It would be counterproductive, undermining, and inconsistent with modern practice in workplace bullying prevention and management, to envisage any other framework or approach to developing bullying strategies. Further, some actions need to be taken reasonably quickly. Waiting for any panel to get up to speed with WHS frameworks is an unnecessary and undesirable situation. Workcover NSW needs a clear focus on WHS as a priority, and this should be replicated in any panel advising on workplace bullying to this organisation.

The panel will also require at least some people with specific and deep knowledge of workplace bullying behaviours and other psychosocial hazards. These are particularly specialised areas within WHS. Without this domain specific knowledge, any advisory panel will be ill-equipped to deal with this complex phenomenon.

Some would argue that the panel should include someone with public sector experience. This may be appropriate, though the panel should not be constrained by this, nor led by it. It is important that new ways are found, rather than advocating practices that are merely consistent with current guidelines, or using current guidelines to justify less than optimal behaviour/strategies, as was highlighted in some of the evidence to the inquiry on November 11, 2013.

Authority, resources and reporting lines

Careful thought needs to be given to the power the panel will have, and to whom it will report. This is particularly the case given the confusion over the role of the Board and the position of the Workcover CEO on the board as outlined in the transcript of November 11, 2013. Possible options include reporting direct to the Minister, or to the Board. Clear acceptance of the role of any such panel, and a

demonstrated willingness to act on the recommendations of the panel will be required in order for the panel to be effective, and in order that Workcover employees view the development of the panel as a credible, positive step forward. This is of course important to the overall success of any intervention recommended by the committee.

If an advisory panel is not adequately resourced, it will fail in its important role. The resources that will likely be required include free and open access to data, procedures, and cases where relevant, time with representatives of Workcover NSW, as well as administrative support.

Timecourse

To be effective, the activity of any independent advisory panel will not be a brief undertaking. Major changes will be required, along with appropriate formal evaluation and monitoring. Three years would not be a long time for this panel to be in effect given the long-standing nature of this problem, and its likely extent. Depending on the final role and authority of any such panel, it may be appropriate for it to be permanent. It may be appropriate that Workcover NSW has a steering panel specific to WHS issues into the future, given the advice and expertise it already receives of an actuarial nature. However, as outlined above, any advisory panel for this issue would need specific skills relevant to workplace bullying.