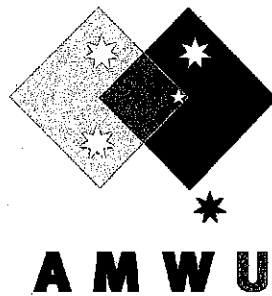


**AUSTRALIAN MANUFACTURING WORKERS' UNION**



**AMWU error of fact, questions taken on notice and supplementary questions  
to the Allegations of Bullying in WorkCover NSW (Inquiry)  
November 2013.**

**Principal Contact: Dave Henry  
Organisation: Australian Manufacturing Workers' Union**

## Error of fact

1. We wish to inform the Committee that there has been an unintentional error of fact in the evidence which was provided to the hearing. The error can be found to occur on page 44 of the transcript of Wednesday 6 November 2013.

**The Hon. MELINDA PAVEY:** Mr Henry and Ms Sukkariéh, in relation to your roles with the Australian Manufacturing Workers Union and following our discussion with the Public Service Association, and Unions NSW is represented on the WorkCover board, what relationship or discussion have you had with your board member about your concerns about the WorkCover Authority?

**Mr HENRY:** Certainly as part of my role as the work health and safety officer, through Unions NSW, there is a monthly meeting of like officers from the other respective unions. That is the forum in which we have these discussions. This particular issue, as you can imagine, was an area of discussion when this inquiry was first announced.

**The Hon. MELINDA PAVEY:** I am talking about over the years.

**The Hon. CATHERINE CUSACK:** Unions NSW is represented on the board of WorkCover.

**Mr HENRY:** Yes, Mark Lennon is the director on the board.

**The Hon. CATHERINE CUSACK:** Do you meet with him?

**Mr HENRY:** He is not in attendance at that meeting. There is a work health and safety officer who is directly employed by Unions NSW who facilitates those meetings.

**The Hon. CATHERINE CUSACK:** Given that Mark Lennon is your representative on the board how is he accountable to you?

**Mr HENRY:** If we become aware of issues, I do not think any of us would have any qualms at all in directing a question to Mark.

**The Hon. MELINDA PAVEY:** Have you?

**The Hon. CATHERINE CUSACK:** Is he representing you on the board on this issue?

**Mr HENRY:** I cannot answer the question.

**The Hon. MATTHEW MASON-COX:** Have you ever picked up the phone and called him?

**Mr HENRY:** I have not picked up the phone to Mark but I have certainly through Unions NSW sent an email to the proper contact person for myself.

**The Hon. MELINDA PAVEY:** Is that since this inquiry?

**Mr HENRY:** I do not recall—certainly not only in relation to this issue may be a better way to put it. I do not recall when I have sent the emails but if there are issues that I think that Mark as the director may be able to address in his position, I certainly have a history of sending an email down to Unions NSW and asking if it can be raised with Mark.

2. We are not aware that Unions NSW per section 4<sup>i</sup> of the *Safety, Return to Work and Support Board Bill 2012* having a seat on the Safety, Return to Work and Support Board. We accept that Mr Mark Lennon is a member of the board, but nothing in legislation indicates that his position was secured or owned by Unions NSW.
3. The criteria for consideration does not make mention of peak bodies or representation for the interest of workers. It can only be assumed that Mr Lennon's appointment on this Board was as a result of him meeting the criteria. Mr Lennon is well known for his vast experience and advocacy in work health and safety and workers compensation on behalf of workers.
4. As a result of this, any answers that the AMWU may have provided along this line of questioning about Mr Lennon been our representative on the Board are likely incorrect. The AMWU understands how the assumption that Unions NSW has a position on the Board. It would be the expectation of the people of NSW that a Board of this nature would have tripartite characteristics particularly in light of ILO Charter 155 to which NSW is a signatory. This is a matter the Government may wish to consider in relation to any legislative amendments foreshadowed.

#### Questions taken on notice

5. 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 second aspect is, to pick up on the question from the Chair, you also talk about discussions had with inspectors about how they feel that their own autonomy in enforcing the legislation has effectively been knobbled by management. Does that call for some legislative change to reinforce the independence of inspectors?

Workers have reported issues in relation to the lack of dignity and respect shown them when they come into contact with WorkCover's scheme agents for as long as they have been in place. It is our experience there has been a steady increase in these complaints over the last few years and has reached a peak following the introduction of the workers compensation amendments in June 2012. This is not to say all Case Managers within the scheme agents conduct themselves in the same manner and anecdotally it would also appear that some scheme agents perform better than others, however this may be affected by the distribution of policies.

The issues faced by workers and their representatives feeling let down by Inspectors has been increasing over the past 5 years. Inspectors being so embarrassed that they feel they need justify their inaction with "off the record" discussions, is a feature we have only come into contact with over the course of the past 12 months.

We would agree that there should be some consideration, possibly legislative, to ensure the independence of inspectors. Some of this independence was taken away when WorkCover decided that that all prosecutions should be brought solely by the regulator as oppose an inspector. In this time we have seen a decline in prosecutions whilst the number of fatalities in

our industry is increasing and the number of serious injuries fails to improve. There would be no need for legislative amendment to reverse this failed decision if the regulator were to provide a general written authorisation to inspectors to bring matters to court under s230(1)(b)<sup>ii</sup> of the *NSW Work health and Safety Act 2011* (the Act). What may need to be considered legislatively are provisions which would enliven Part 6 of the Act<sup>iii</sup> in relation to inspectors.

6. 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 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?

It is the AMWU's experience that WorkCover do not know how to address bullying either as a safety regulator or as the nominal insurer. The fact that WorkCover would deal with bullying within their own ranks by implementing resilience programs (little more than quackery) which is not supported by any peer reviewed research or evidence is testimony to this. What is even more ironic is that resilience programs don't even feature within WorkCover's own guidance.

We look forward to the day that a worker reports of the positive experience delivered by WorkCover following the making of a bullying complaint. To date the experience of many of these workers is abandonment, sometimes WorkCover will focus on the system in place (or not as the case may be) to manage bully in a workplace, but never have they bother to look at the offence of the legislation. In the case of our member Lucky, whose story was provided at the hearing, the experience with WorkCover was devastating and lead to thoughts of self-harm.

In relation to injured workers, WorkCover has remained mostly remained silent in relation to the inappropriate behaviour of some case managers. It is likely that WorkCover does not recognise it has any responsibility for these workers and the way they interact with injured workers.

#### Supplementary questions from the Hon Adam Searle MLC

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

The lack of focus derived from the objects of the respective legislation WorkCover is tasked to uphold has contributed to the organisations problematic culture. We are aware that the creation on the Safety, Return to Work and Support Division as the employment agency has led to a decrease in employment security and the continual restructuring within WorkCover has led to change fatigue.

Whilst the Safety, Return to Work and Support Division remains the employment body any structural change or separation of discrete roles within WorkCover would have little impact on the culture.

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

Where there is a lack of focus or where the focus is at odds with the expectations of the people who WorkCover is intrusted to serve, it will always be more difficult to manage. WorkCover staff is torn between their desires to meet the communities expectations of them, whilst the organisation is heading in a different direction.

9. 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?

This is a difficult question to answer and would require more time to consider the prospect than what has been given. There is the potential for both intended and unintended outcomes. What should be considered is the collapsing of the labour hire arrangement which is in place through the Safety, Return to Work and Support Division. WorkCover workers should be directly engaged by the Authority, this would create a clearer line of accountability. The reasoning behind the Safety, Return to Work and Support Division and its predecessor is mostly past and shared services does not rely on there been a single employment agency.

10. 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?

Yes. This would be beneficial.

Unfortunately we have not had the time to consider in detail the functions of WorkCover if they were legally independent of the Executive Government. Clearly there are some areas of the current functions which would need to be strengthened.

It is suggested that such a move would require the provision of oversight via a mechanism similar in form and function to the police integrity commission via a tripartite body.

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#### **<sup>i</sup> 4 Establishment and composition of Board**

- (1) There is to be a Safety, Return to Work and Support Board.

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(2) The Board is to consist of 7 members, being:

(a) the Chief Executive Officer, and

(b) 6 members appointed by the Governor on the recommendation of the Minister.

(3) A person may not be recommended for appointment unless the person has skills and experience in any one or more of the following areas, namely, insurance, finance, investment, law, health, marketing, communications, work health and safety, injury prevention or management, return to work programs and disability services.

(4) Schedule 1 contains ancillary provisions relating to the members and procedure of the Board.

**ii 230 Prosecutions**

(1) Subject to subsection (4), proceedings for an offence against this Act may only be brought by:

(a) the regulator, or

(b) an inspector with the written authorisation of the regulator (either generally or in a particular case), or

(c) the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate, but only as permitted by subsection (3) if the offence concerned is a Category 1 offence or a Category 2 offence.

**iii Part 6 Discriminatory, coercive and misleading conduct**

**Division 1 Prohibition of discriminatory, coercive or misleading conduct**