

Legislative Council General Purpose Standing Committee No 1

Inquiry into Allegations of Bullying in WorkCover NSW

WorkCover witnesses - Questions on Notice

from an *in camera* hearing Tuesday 10 December 2013

Question on Notice 1:

Mr David Shoebridge: At the time that you provided the answers to us on notice last Thursday you had not provided any further information to the board about the Butler case. Is that right?

Ms Newman: Not in writing, no.

Mr David Shoebridge: What about orally?

Ms Newman: Orally, yes, we have had discussions. I see that that is a weakness in what we are doing in the board in that we are not putting out some written material that we should and we are not reporting in the minutes as fully as we should be.

Mr David Shoebridge: Since you put those answers on notice there was a further board meeting on Monday. Is that right?

Ms Newman: And there was one a fortnight prior to that.

Mr David Shoebridge: The fortnight prior to that would have been before you gave answers on notice.

Ms Newman: And there was extensive discussion. In fact, there was about an hour's discussion.

Mr David Shoebridge: You did not include that material in your answers to questions on notice?

Ms Newman: No, but I can provide that.

Mr David Shoebridge: Then you had further reporting yesterday to the board?

Ms Newman: Yes.

Mr David Shoebridge: Can you provide the Committee with a further set of answers in detail providing the information you gave to the board and any written reports?

Ms Newman: Do you want me to do that now or can I take that on notice?

Mr David Shoebridge: Can you do that now?

Chair: Or you can take it on notice: it is up to you.

Mr David Shoebridge: I assume they were oral reports?

Ms Newman: There were oral reports yesterday. There were also reports that went up to the board with

—
Mr Barnier: We talked about the Internal Audit Bureau report.

Ms Newman: We talked about the IAB report in some detail.

Mr David Shoebridge: You have given us a copy of the IAB report.

Ms Newman: Yes, I have.

Mr David Shoebridge: Was there a written report that went with that?

Ms Newman: Yes, there was a written response to the interim report, which I can provide to the Committee.

Mr David Shoebridge: Thank you.

Ms Newman: There was also a covering brief that went out with the final IAB report as well.

Chair: Is that written report with you now?

Ms Newman: No, it is not but I can provide it.

Chair: You will take it on notice?

Ms Newman: Yes.

Mr David Shoebridge: And the covering letter.

Ms Newman: Yes.

Answer:

Board Meeting – 25 November, 2013

The following agenda items included relevant discussion. The relevant extracts from the minutes are at **Attachment A**.

- Agenda Item 2.1 - CEO report – 12:30pm to 1:26pm.
- Agenda Item - 5.1 Employee Safety and Wellbeing Report - 1:48pm to 2:23pm. Briefing note - Employee Safety and Wellbeing update and work, health and safety performance: 1 July 2013 to 30 September 2013. **Attachment B**

The Board held a closed meeting with members inviting key executives to attend to respond to questions as required from 2:52pm to 5:37pm. The following is a recollection of the issues that were discussed in detail:

1. Review of Deputy President Harrison's decision.
2. The steps that were being taken to address the issues raised in Deputy President Harrison's decision. Briefing note - SRWSD Internal Investigation System Review – draft final report (IAB). **Attachment C**
3. The transcript and questions on notice arising from the hearing of 11 November, 2013, in particular the role of the Board.
4. Progress report on the PwC recommendations. Table - 2011 PwC Report Recommendations Status Report – November 2013. **Attachment D**
5. Preliminary assessment of the Possible Interventions for preventing workplace bullying as outlined in *Caponecchia, C., Wyatt, A (2011). Preventing workplace bullying: An evidence based guide for managers and employees. Sydney: Allen & Unwin. (and Routledge internationally) figure 6.2 page 91* and the current SRWSD approach. Table - SRWSD Comparison to Dr Carlo Caponecchia Time Line for Prevention and Management of Workplace Bullying. **Attachment E**
6. Preliminary self- assessment of the SRWSD policy and processes relating to the prevention of workplace bullying using the WorkCover NSW Bullying Prevention Improvement Toolkit. **Attachment F**
7. Internal Audit Bureau draft report - Internal Investigations Review. (final report provided in response to Supplementary Question 1 from 11 November, 2013 Questions on Notice)
8. SRWSD consultation framework for employment related policies. Briefing note - Compliance with the Work Health and Safety Act 2011 (previously reported to the Board February, 2013). **Attachment G**
9. Issues raised in the treatment of injured workers and actions to be taken by WorkCover.

The meeting reopened at 5:37pm. The Board resolved:

To establish a Human Resources Committee of the Board comprising of four Board members, being three non-executive members and the CEO.

Board Meeting – 9 December, 2013

The following agenda items included relevant discussion. The relevant extracts from the minutes are at **Attachment H**.

- Agenda Item 2.1 – CEO Report – meeting commenced 10:00am - 10:25am
- Agenda Item 7.6 - External review of SRWSD investigation processes – 10.25am to 10:39am (item brought forward). Briefing note: External Review of SRWSD Investigation Processes – interim report (IAB) – matters identified **Attachment I** and Briefing note: External Review of SRWSD Investigation Processes Final Report (IAB), **Attachment J**.

The meeting closed to members only from 10:39am – 11:10am. Discussions held regarding the involvement of ICAC in the Butler case.

Meeting reopened 11:10am

The Board approved the membership of the HR committee and agreed that it would hold its first meeting in February.

The Board approved Gavin Bell (Chair), Elizabeth Carr, Michael Carapiet and Julie Newman as members of the Human Resources Committee (resolution).

- Agenda Item 6.2 and 6.3 – Work Health and Safety Report and Work Health and Safety Cultural Change Program- 12:38pm - 1:08pm. Briefing note: Work Health and Safety Division cultural change program. **Attachment K**
- Agenda Item 7.1 – Workforce Analytics Report. Item carried over to February meeting. Briefing note: Quarterly Workforce Analytics Report – QE September 2013 (deferred to February 2014). **Attachment L.**
- Agenda Item 7.2 – Preliminary self-assessment of SRWSD policy and process around prevention of workplace bullying using the WorkCover NSW bullying prevention improvement tool. Item carried over to February meeting. Briefing note: Self-assessment of SRWSD policy and process around prevention of workplace bullying using the WorkCover NSW Bullying Prevention Improvement Tool – resubmitted for detailed discussion. **Attachment M.**
- Agenda Item 7.3 - Update on actions completed, currently in progress or planned in response to the PwC report recommendations – 1:12pm – 1:45pm. Briefing note: Update for the Board on actions completed, currently in progress or planned in response to the PwC report recommendations. Attachment D is the table submitted to the Board 25 November, 2013. **Attachment N.** Table provided at 9 December, 2013 meeting.

At the close of the meeting the Board resolved that an independent review of the Butler file be undertaken with regard to the findings of the Industrial Relations Commission and that IAB be engaged to undertake the review.

My response to question on notice 13 on page 80 of the transcript of the in camera hearing relates to this resolution.

Question on Notice 2:

The Hon. Mick Veitch: These people have been appointed on a contract for how long?

Mr Barnier: I would have to check. I think it is three years.

The Hon. Mick Veitch: That is okay. Perhaps you could take it on notice.

Mr Barnier: It is two or three years.

Answer:

Converge International have been contracted to provide the services for the Bullying Response Service for a term of three years commencing August 1, 2013. The contract also provides for an option to extend for two periods of one year.

Converge International has also been contracted to provide the Critical Incident Support Program for a term of three years commencing August 1, 2013 with an option to extend for two periods of one year.

Davidson Trahaire Corpsych have been contracted to deliver the employee assistance Program for a term of three years commencing August 1, 2013. The contract also provides for an option to extend for two periods of one year.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

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Question on Notice 5:

Mr David Shoebridge: Since then what steps have you put in place to ensure that you have resolved that conflict of interest or have you just got the independent inspector model?

Mr Barnier: No, as Mr Watson said when he was here on the eleventh talked about making arrangements with another agency.

Mr David Shoebridge: Which has not gone anywhere yet?

Ms Newman: I have exchanged correspondence. I have written to Primary Industries with regard to formalising discussions with regard to an arrangement to bring some independence into issues referred to the regulator for WorkCover issues.

Mr David Shoebridge: Will you provide the Committee with that correspondence? Have you received a response from Primary Industries?

Ms Newman: I certainly will. I cannot recall but I will certainly provide a response if we have it.

Chair: Will you take that question on notice?

Ms Newman: Yes.

Mr David Shoebridge: In terms of that model, are you thinking of the mine investigators that Primary Industries have?

Ms Newman: Yes.

Mr David Shoebridge: Do you really believe they are the appropriate organisation to be looking at internal bullying matters? I accept that you are looking around for an independent body and I am not criticising you for doing that. Do you think that mine inspectors are the appropriate independent body to be looking at bullying and those kinds of matters?

Ms Newman: I think both of us here today do not understand what the full responsibilities are for the mines and whether they do investigate bullying. That is part of having discussion about what are the possibilities. I know that previously discussion had been had with other State regulators as to whether it was more appropriate for another State to provide the independence to WorkCover. I am unable to comment on how far those discussions went but certainly I can look to provide any information that we have on that.

Mr David Shoebridge: That would be good if you could do that. Have you looked at other jurisdictions for a best practice model?

Ms Newman: I cannot comment on that but my understanding is, and I would have to confirm this, that they operate in the same way that we do but I will confirm that for you.

Answer:

Initial discussions have been held between WorkCover NSW and the Department of Trade and Investment, Regional Infrastructure and Services, with a view to developing agreed arrangements for the referral for investigation of work health and safety matters including allegations of workplace bullying between the agencies. Meetings were held at an officer level on the 12 August 2013 and 9 October 2013 to progress this issue.

To further progress the matter a further meeting was conducted on 29 January 2014. The Department of Trade and Investment, Regional Infrastructure and Services have taken a draft Memorandum of Understanding for review and to make formal amendments to settle the contents of the schedules to the proposed Memorandum of Understanding. It is anticipated that another meeting will be scheduled for late February / early March to discuss any changes before signing the Memorandum of Understanding.

With a view to formalising the initial discussions Julie Newman PSM, the CEO of the Safety and Return to Work and Support Division wrote to the Director General of the Department of Trade and Investment, Regional Infrastructure and Services on the 24 October 2013. A formal response has not yet been received from the Department of Trade and Investment, Regional Infrastructure and Services.

Attachment Q

It is intended that the proposed arrangements should be established in order to bring transparency, accountability and proportionality to the investigation of significant work health and safety matters where the conduct of WorkCover NSW as a 'person conducting a business or undertaking' is in question. WorkCover NSW is a duty holder subject to the *Work Health and Safety Act 2011*.

The identification of the Department of Trade and Investment, Regional Infrastructure and Services as a potential agency for the referral of work health and safety matters is considered appropriate given the responsibility it has for the administration of the *Work Health and Safety Act 2011* in the NSW mining industry. It is noted that the Department of Trade and Investment, Regional Infrastructure and Services operates and makes decisions independently from WorkCover NSW.

The Department of Trade and Investment, Regional Infrastructure and Services, Primary Industries inspectorate, amongst other roles, has the responsibility of administering the NSW work health and safety legislation in the mining industry in NSW. The range of issues that are dealt with in that industry extends to the full range of work health and safety risks including the risk of workplace bullying. Primary Industry investigators are trained in the conduct of investigations of workplace health and safety matters in the course of their duties. WorkCover NSW has a close operational relationship with this co-regulator. It should be noted that they operate and make decisions independently from WorkCover NSW. It therefore

considered that they are well placed to extend their oversight of the NSW work health and safety legislation to cover matters related to alleged workplace risks that come to notice within WorkCover.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

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Question on Notice 11:

The Hon Adam Searle: I have a specific question about that which I am happy, obviously, for you to take on board. It is this: Based on a lot of the information we have received, and I accept it is not limited to WorkCover, there does seem to be a continuing theme that people might be very good at what they do, in a technical sense, but they may not be appropriately skilled to deal with people – to manage them, to lead them, to support them, however, you want to put it. And I guess I would be interested to know what the organisation is doing on two fronts. One is that, when you do recruit people into new positions how you are going to place a renewed emphasis on that component; and the second thing is, what steps is the organisation taking to support existing managers to develop those skills? Again, I do not expect an immediate answer. I am happy for you to take it on notice.

In relation to two other matters, WorkCover is a very diverse organisation, it has a lot of different accountabilities and different obligations and one of the questions that I have asked other witnesses is whether or not the organisation could better be separated out into a number of other organisations.

Mr David Shoebridge: By WorkCover, you mean the safety, and return to work – all those bodies together?

The Hon. Adam Searle: All the bodies that currently constitute WorkCover.

Ms Newman: Particularly WorkCover if it is regulatory –

The Hon. Adam Searle: Yes, should it be broken up into its component parts and would that lead to happier, better-focused organisations? If you have got an answer, take it.

Ms Newman: No, I do not because I think it is something that needs to be well thought out.

The Hon. Adam Searle: I am hesitant at promoting it because I know there is a lot of change fatigue.

The Hon. Catherine Cusack: If you promote it, it will not happen.

Ms Newman: It is ? a question that has to be asked and needs to be explored and answered because it constantly comes up.

The Hon. Adam Searle: I know there has been a lot of change fatigue but it is a question that naturally suggests itself. My last question is, with the board now essentially being the board of a number of different component organisations, there is a very heavy emphasis on the finances, say, of the Workers Compensation Scheme and the Motor Accidents Scheme and that would take up a lot of the board's time and attention and creative energies. Is that a function that should be reposed perhaps in a separate, dedicated board, so that the board could better focus on all of the other issues facing the organisations which it has oversight?

Ms Newman: I would have to take that on notice.

Answer:

Over the last two years a number of initiatives have been developed and are being implemented to bring stronger focus on leadership and management capabilities when recruiting for roles which are required to manage and lead teams. In May 2012 a revised Recruitment and Selection Policy and procedures was launched across the Division which included a number of key changes to ensure people are selected to take into account all capabilities (behavioural and technical) during recruitment and selection processes.

This included the adoption of the 2008 NSW Public Sector Capability Framework developed by the Department of Premier and Cabinet / Public Service Commission in addition to behavioural interviewing as a standard approach to recruitment. In the case of roles which lead or manage other people, position descriptions, selection criteria and behavioural interview questions focus on the Leadership and Management Capabilities which include:

- Develops and communicates vision
- Inspires and motivates
- Creates and develops culture
- Manages change
- Manages people
- Plans for outcomes
- Financial management
- Corporate governance and risk management
- Manages strategically

A revised NSW Public Sector Capability Framework was developed by the Public Service Commission in 2012 and Safety, Return to Work and Support Division are planning to adopt the revised framework over the next year.

Support tools have been developed and are available to managers and selection committees regarding the selection process, development of position descriptions, behavioural interview guides, performance management framework and training options.

Employee contracts relating to all people leadership roles include the following text:

Mandatory Leadership Development – This is an identified People Leader position. SRWSD is committed to supporting its People Leaders by providing access to opportunities and strategies that support ongoing leadership development. Our Corporate Leadership Development (CLD) Program is mandatory for people leaders and calls on them to routinely reflect on their own learning, enabling review of their current leadership capability as well as their ongoing professional leadership development strategies.

The formal acceptance of offer of a leadership / management role requires the individual to confirm the following:

"I am committed to ongoing personal leadership development. I understand that as a People Leader, I am required to actively participate in the Mandatory Leadership Development Program and responsible for planning my own CLD activities, with prior approval and support of my People Leader."

All new people leaders are required to complete a mandatory one day face to face course titled "SRWSD Management Practices". This course focuses on the key accountabilities and critical information people leaders need to be aware of specific to SRWSD.

With regard to supporting existing managers to develop their leadership capabilities, the Safety, Return to Work and Support Division GROW Leadership Strategy was developed and is being implemented to achieve the following outcomes:

- Address the capability gaps identified in the People Matters Survey and the SRWSD annual employee survey.
- Support the attraction, selection and retention of high calibre individuals to leadership roles
- Foster opportunities for career progression
- Ensure leadership and management development is prioritised and committed to throughout the career of a leader with SRWSD
- Strengthen leadership and management capability
- Provide leaders with the appropriate tools and role clarity to be successful in their role
- Provide leaders with flexible support options to help them cope with the challenges of being a leader
- Provide opportunities for greater collaboration and learning via coordinated activities such as leadership learning circles and forums
- Recognise excellence in leadership
- Improve employee engagement, communication, commitment to our values and safety

All existing people leaders are required to attend the one day management practices training to familiarise managers with policies, procedures and frameworks specific to the Division. Learning outcomes for the management practices training include:

- The role and accountabilities of a leader within SRWSD
- Reporting requirements
- Procurement and finance process and policies
- Understanding delegations of authority and formal approval process (CAMEO)
- Leave and flex time management (including unplanned absences)
- Resources, policies and procedures relating to under performance or misconduct
- Grievance handling procedures
- Supporting a safe and well culture (duty of care and due diligence)
- Introduction to recruitment processes and policies
- Performance and development review cycle and activities
- Support available

Additionally, two new non-mandatory training programs 'Management Essentials' (2 day course focused on transferrable management skills) and 'Leadership Excellence' (2 day course targeting transactional and operational level leaders) will be available from March 2014.

All people leaders are required to participate in the Continuous Leadership Development (CLD) program and attain a minimum of 12 CLD points per performance year. The CLD Program requires people leaders to acquire twelve (12) CLD leadership points over each 12 month period (July to June) by attending or participating in:

- Formal activities such as professional training courses and structured online learning (these should make up at least 8 of the annual CLD points required), and
- Informal activities which are self-managed learning activities relevant or related to your professional role (these can make up a maximum 4 of the annual CLD points required).

People Leaders are responsible for planning their own CLD activities, with the prior approval and support of their People Leader.

In April and May of 2013 mandatory one day Leadership Summits for all managers across the Division were conducted by the Executive Leadership team and a member of the Safety, Return to Work and Support Board. This program received positive feedback from the participants and content included:

- Provide an overview of our cultural journey
- Identify who our leaders are and what we expect of them

- Allow leaders to share experiences with one another
- Allow leaders to get to know members of the executive team
- Provide an overview of leadership fundamentals
- Introduction to development centres
- Introduction to models / tools to be adopted
- Introduction to Resource (Talent) Reviews
- Promotion of annual employee awards
- An overview of five exemplary leadership practices supported by real life examples from each member of the Executive Leadership Team and a member of the Board.

Development centres have been developed which will be available from March 2014 for each of the three identified levels of leadership (Strategic, Operational and Transactional Leadership).

A Talent Management Strategy has also been developed which enables strategic resource reviews and talent management reviews to take place supported by mentoring, acting in other roles to broaden experience, targeted training or development activities. One on one coaching is available for strategic leaders and group coaching for senior leadership teams.

As a component of the Employee Assistance Program, 'Manager Assist' is a confidential support service provided to people leaders by Davidson Trahaire Corpsych.

Strategic leadership forums are conducted quarterly by members of the Executive Leadership Team and attended by strategic leaders in order to provide visibility, knowledge and a forum for input into strategic initiatives, plans and performance together with an opportunity for attendees to network and develop relationships across the organisation.

The People & Culture Service and Advice operating model has been implemented to provide coaching and advice to people leaders who require assistance with staff matters.

Senior Executive Service employees have also been participating in the SES 4-6 Executive Development Programs developed by the Public Service Commission.

In relation to the question regarding whether or not the organisation could better be separated out into a number of other organisations, this is a matter for Government.

Question on Notice 12:

Mr David Shoebridge: But the day after you gave evidence to this inquiry you expanded the scope of the Internal Audit Bureau review.

Ms Newman: I did.

Mr David Shoebridge: Could you provide us with the material you gave about the expansion of the scope?

Ms Newman: I certainly will.

Chair: The witness will take that on notice.

Answer:

I would like to correct my evidence from 10 December, 2013. I indicated the scope of the report had been expanded. This was not the case.

I requested more detailed information relevant to the Butler matter to be included in the final report, it was not an expansion of the scope of the review as the Butler matter was always part of the 17 files (8 preliminary investigations and 9 full investigations) to be reviewed in compliance with the requirements of Chapter 9 of the NSW Personnel Handbook (Public Service Commission) in accordance with the Public Sector Management Act 2002.

The more detailed information in the final report adds transparency by identifying the issues found across the 17 files, and which specifically were found in the Butler matter.

Question on Notice 13:

Mr David Shoebridge: Because I would be deeply troubled for there to be yet another review of the Butler case to find out if you can justify the initial decision rather than doing what I think is far more important, which is just to accept it, apologise and get on with working with your employees. Could you provide an answer to the Committee about whether the board is or is not having a further review?

Ms Newman: Certainly.

Chair: And what form the review will take.

Mr David Shoebridge: Indeed.

Ms Newman: Can I just add that with regard to the scope of the current IAB report I took note of your questions quite specifically as to whether –

Mr David Shoebridge: I am not criticising you.

Ms Newman: No, but I actually went back and asked for some more detail to be put on the record because we needed to know and it needed to be transparent to the Committee.

Mr David Shoebridge: I assume it was probably for the good but, as I said, I would be deeply troubled if the board is going along and you are seeking to justify the initial decision rather than accepting the outcome, talking to your employees, saying sorry and getting on with it.

Ms Newman: My personal opinion is exactly what you are saying: we need to get on with it.

The Hon. Catherine Cusack: I think we need to acknowledge the responsiveness here.

Ms Newman: And I was going to have a further discussion with the chair. It was a pretty emotional meeting, the two of them have been with the board and I wanted to go back and have that discussion as to whether or not that was appropriate because I agree we need to get on with it. That is really all we want to do.

Mr Barnier: I think it goes back to the question of the eleventh that you raised: What have we learned from this?

Chair: If you could take that question on notice. You do not have the answer at the moment but if you do get the answer in the immediate future as to what the board proposes to do you could let us know so we can include that in our deliberations.

Ms Newman: I had every intention of having a further discussion with the Board – with the chairman.

Chair: If you could let the Committee know the outcome of that discussion.

Ms Newman: Certainly.

Answer:

At the meeting of 9 December, 2013 the Board resolved that an independent review of the Butler file be undertaken with regard to the findings of the Industrial Relations Commission and that IAB be engaged to undertake the review.

Subsequent to the Board meeting of 9 December, 2013 the Board has accepted management's recommendation not to proceed with a review of the Butler file until the final report and recommendations from the Parliamentary Committee are received and the Board has considered the outcome. At that time the Board will decide whether or not it wishes to proceed with the review.