

**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE
WORKCOVER AUTHORITY**

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TO THE NSW PARLIAMENT, LEGISLATIVE COUNCIL
STANDING COMMITTEE ON LAW AND JUSTICE

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WORKCOVER AUTHORITY

Summary of submission

I make this submission in my capacity as an injured worker. I was bullied at work, which caused serious psychological injury. The worker's compensation insurer accepted liability for my injury. I contend that WorkCover's failed to properly respond to, and act on, a complaint I made about an unsafe workplace that had a culture of bullying. In this submission I outline the circumstances of my complaint to WorkCover, and WorkCover's response. I maintain that WorkCover are failing to meet their regulatory and legal obligations in respect of workplace health and safety, and it follows that the WorkCover Authority is failing to properly and adequately exercise its functions as they relate to work health and safety for employees and workplaces in New South Wales.

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Background to my contact with WorkCover

1. I am a solicitor, having been admitted to practise in July 1998. As at June 2012 I held a position as employed solicitor and Principal/director of a small, incorporated legal practice (“the firm”). I was the only solicitor, supported by one full time secretary and one part-time secretary. I was one of two directors and the other director had the role of managing director (“the MD”), but was not a solicitor. The law firm shared offices with an associated, small mercantile business, (hereafter referred to as “MC”). The MD was also the managing director of MC.
2. My concerns about WorkCover are better understood by outlining some of the issues arising at the particular workplace that was the subject of my complaints. In this submission I will refer to the shared office of the firm and MC as “the Workplace”.
3. I tried to maintain a pleasant, friendly and professional workplace that was a nice place to work. However, the MD had an autocratic and non-politically correct management style. Furthermore, and despite my best intentions, certain individuals caused the Workplace to be toxic and there was a culture of bullying. The Workplace was one where the MD, and a MC Manager, (hereafter referred to as “the BDM”) regularly had loud discussions about work and non-work related topics, which could be heard by the other staff in the workplace. They swore profusely in the office, and regularly expressed derogatory remarks about various social, cultural and racial groups. They would, at times, also express crude, judgmental and unfairly critical comments in the office, of a personal or work related nature, about staff behind the back of the particular staff member.

4. While I was with the firm, the MD refused to have staff training on the topics of anti-discrimination and anti-bullying in the Workplace. During my time with the law firm, I saw and heard employees of MC being bullied by the MD and/or by the BDM. For example, over a period of time the MD had been saying to a mature, female clerical employee at MC that she was a “sucker’s daughter” [I feel uncomfortable repeating this, but that is what he said]. The employee had requested that he cease saying that to her, but that did not stop him. I had to ask the MD to stop speaking to the employee that way.
5. I also witnessed other instances of bullying by the MD and/or the BMD over the years, involving other employees.
6. In late 2010 an employee of MC, who I will refer to as “S”, lodged a claim with MC’s then worker’s compensation insurer in respect of psychological injury from workplace bullying and discrimination. Soon after S lodged her claim I heard the MD on the phone to the insurer threatening to cancel all his various insurance policies with them if they accepted liability for S’s claim. Liability was accepted, and S was not able to return to employment with MC, and I believe she was on worker’s compensation for a period of at least about six months. The MD subsequently changed the firm’s and MC’s worker’s compensation insurer.
7. Several months after S ceased working at MC, news in the office was that S may now have commenced a new job. The MD stated, within earshot of all staff at the law firm and MC that he wanted to find out where S was working, so he could warn the new employer that S was what he termed “a worker’s comp malingerer” and the new

employer could sack her in her probationary period. I do not know if he ever found out where S was working, but I contend that his comments were a clear warning to all staff of the possible consequences of pursuing any course of action unacceptable to the MD.

8. I thought I could protect my two secretaries from the bullies in that workplace, and that I could keep myself safe and not become a target of the BDM. I had previously worked for the law firm for 4 ½ years, before it became an incorporated legal practice, when it had been a business under the proprietorship of another solicitor. I was head-hunted back to a position with the firm after it became an incorporated legal practice. The firm had made a profit during my previous employment, but, after that time, when I was not with the firm, things had not gone well and it had been running at a loss. After my return the firm became and remained profitable for the further 4 ¼ years I was with the firm.
9. I was very good litigation solicitor. I was the only employee of the firm doing billable work, and I had the responsibility of being both the only solicitor at the firm and the legal practitioner director. The income I generated for the firm paid for, inter alia, the wages of the two secretaries and the substantial overheads associated with running a law firm. Others individuals, such as the MD and the share holders (I was not a share holder) of the incorporated legal practice benefited financially from the income I generated.
10. My experience of the bullies the Workplace was that the head bully seemed to attack one target then move onto the next. She would also, somehow, manipulate and distort rational thinking of other staff and a mob mentality would ensue. In the eyes of that

mob, a good and decent person was totally dehumanised. The target had no hope in those circumstances, and would be slandered personally and professionally, and lose their job by some means. The MD appeared to allow the BDM to do whatever she pleased and then he would join in with the attack.

11. I felt increasingly concerned about what I saw occurring in the office, and had tried to protect staff, including one of my secretaries, who I shall refer to as "A", from the head bully. Unknown to A, the head bully had A in her sights soon after A commenced employment with the firm. I found A to be a good secretary and managed to keep her out of the direct line of fire whilst I was at the firm.

12. In late 2011 I had become increasingly concerned my authority and position as solicitor was being undermined and I was being unfairly criticised by the MD and the BDM. In early 2012 I realised I had become the next target of the head bully. The ongoing attack was intentional and cruel, and intensified over time. My two secretaries (who I had thought of as friends and co-workers) also took part in an increasingly vicious psychological attack on me. I could not believe what was happening, and there was nothing I could do to protect myself - nothing. It is hard for me to put into words the hell I experienced in the Workplace.

13. Over a period of at least several months the attack on me escalated and included, but was not limited to, the following:
 - I was repeatedly criticised unfairly, including in front of other employees at the Workplace;

- I was repeatedly humiliated and belittled, including in front of other employees at the Workplace;
- My position and authority were repeatedly undermined;
- My responsibilities and legal obligations as a solicitor and as a legal practitioner director of the firm were repeatedly undermined and threatened;
- My work and duties were repeatedly interfered with.
- The MD and the BDM engaged in conduct that put my Practising Certificate under threat;
- My personal items and computer were interfered with when I was not in my office;
- I was the subject of malicious gossip, which included lies and misrepresentations about me personally and professionally;
- I was ostracised and excluded from office activities;
- My sense of self worth was repeatedly undermined;
- The work I had done for the firm and for MC was no longer acknowledged;
- I was unfairly criticised by some of the employees, including my two secretaries, to seek to have me dismissed;
- I was subjected to repeated rude and aggressive behaviour;
- Unpleasant and humiliating remarks were made about my personal appearance in front of other staff;
- My authority over my support staff was removed, without me being informed;
- After I complained about the bullying, unreasonable demands were made on me to do work for the firm outside normal working hours;

- After I complained about the bullying I was asked to resign (but I refused to do so);
- After I complained about the bullying further outrageous and untrue allegations were raised;
- I was repeatedly denied any procedural fairness;
- The bullies conspired against me to seek to have me lose my job;
- The workplace was made an unsafe place for me to be;
- The MD threatened that if I went on workers compensation he would inform any future potential employer that contacted him for a reference that I had been on workers compensation;
- I was constructively dismissed;
- After I applied for worker's compensation further untrue and utterly devastating allegations were raised about me.

14. The bullying caused me to suffer major psychological injury in the form of major depression with anxiety and panic attacks. I became suicidal, and remain fearful for my life. My world and the things that meant so much to me unravelled around me as the bullies intensified their attack. The psychological pain I experienced was excruciating, and I had done nothing wrong.

15. Whilst I was still working at the firm and being bullied, I saw a doctor and got a referral to a psychologist who was experienced with victims of workplace bullying.

16. I referred to one of my secretaries, A, earlier in this submission. I knew she would be the next target after me. I had tried to warn her, but she would not hear my concerns for her at the time and continued to participate in the mobbing and attack on me.
17. I now understand that, in cases of workplace bullying, the head bully is often protected by management. This further validates the conduct of the head bully in the eyes of the lynching mob. In their insidious, frenzied attack work colleagues discard common sense, justice and civility. This may sound melodramatic, but it is what happens – it is what happened to me in the workplace. In the face of all truth and reality and my decency and innocence, it was decided I was guilty and deserved to be punished and destroyed.
18. I lodged a claim for worker's compensation in late June 2012, for which the insurer accepted liability. I have not been able to work since, and remain unfit to work. I am under the care of a Psychiatrist and a Psychologist. The impact of the bullying has been devastating to me psychologically, emotionally, career wise, and financially. My life will never be the same again.
19. Early last year I was informed that A, who I had predicted would be the next target, was bullied in the Workplace late in 2012 and that she had applied for worker's compensation for psychological injury from workplace bullying. I understand she is unable to return to her position with the firm. I am informed she wants to apologise for what she did to me, but I have not had any direct contact with her since I was last in the office in June 2012. Later in 2013 I was informed that the insurer did not

accept liability for her claim, however, she did receive worker's compensation payments and medical coverage for about 3 months.

My complaints to WorkCover

20. In 2012, before I had knowledge of the further bullying involving A, I contacted WorkCover by telephone on 10 September 2012 to lodge a complaint about the workplace bullying. I was concerned about what had happened to me and about other staff at the shared office of the law firm and at MC. The workplace was clearly unsafe and unhealthy. I thought that WorkCover was responsible for work health and safety. Peoples' lives were being destroyed in the Workplace and something clearly needed to be done by the workplace health and safety regulator.

21. When I phoned WorkCover on 10 September 2012 I provided alot of details about the Workplace and my concerns. I was informed that an Inspector can go out to investigate about the bullying and ensure an anti-bullying policy is in place. I was then transferred to the Duty Inspector and gave him alot of details during a lengthy phone conversation, including the fact mine was the second worker's compensation claim for psychological injury from bullying in the same office (the shared office of the law firm and MC), and both cases involved the same bullies, and that in both cases the insurer had accepted liability. I expressed my concern for the safety of employees at that work place. I confirmed the "boss" had refused to have in place any anti-bullying policy or training, despite my requests to him. The Inspector assured me my complaint would be logged on to the system, and an inspector would be allocated to attend that workplace, and that I would be contacted after that occurred. I left my contact details.

22. I heard nothing more from WorkCover by 18 October 2012, so I phoned WorkCover on that date. I was given the name of the Inspector dealing with the matter, who was the same Duty Inspector I had spoken to on 10 September 2012. I was directed to his voice mail, and left a message and my contact details on his voice mail.
23. I had still heard nothing further from WorkCover by 1 November, 2012, so phoned the Inspector on that date. He said he recalled speaking with me in September, but he had not contacted my employer. I recall he took a lot of details from me during our phone conversation in September, but during our 1 November 2012 phone conversation he said he had no case notes. The Inspector did apologise for the matter being “missed” [his words]. I provided some details again, which was distressing to have to do. He also stated that the risk to me was over, as I was no longer in the particular workplace. I tried to explain that I had also been bullied and threatened after I was no longer physically in the workplace, but while I was still deemed to be an employee of the firm. He did confirm he would now do an inspection of the workplace in the next few days, and contact me afterwards.
24. By 13 November 2012 I had heard nothing more from the Inspector nor Workcover, so I phoned the Inspector on that date. He confirmed having attended the workplace, and being informed there was an unwritten anti-bullying policy in place. He indicated to me Workcover had no power to make the workplace have a written policy, but that he had suggested to the employer that the policy be put in writing. He was to follow up with a further inspection. I was not contacted by Workcover nor the Inspector after that phone conversation on 13 November 2012.

25. On 15 January 2013, after I became aware about A being bullied, my partner contacted the WorkCover Inspector. I was too distressed to make the phone call. The Inspector confirmed that the employer had up-graded their anti-bullying policy and procedures to a written document after the intervention of WorkCover, following my complaints. The Inspector also indicated that if the most recent target of the bullying lodges a complaint with WorkCover, then the employer would be in breach of their own policy, and WorkCover could take the matter further.

Conclusion: WorkCover's failure to keep employees and workplaces safe

26. I felt disappointed and concerned about Workcover's failure to take a pro-active approach to the workplace bullying. The impact of the bullying was clearly resulting in workplace injuries that were devastating on the various targets/victims, such as myself, and a huge impost on the finances of the workers' compensation system. I was concerned that someone may end up self harming due to the psychological injuries being inflicted on employee after employee in the particular workplace.

27. As far as I know nothing further has been done by WorkCover about the Workplace to ensure that the employees and management are educated about workplace bullying and workplace mobbing, nor has WorkCover taken any proper investigation or prosecution of the employer. Workcover could and should have further investigated taking action against my employer. There was, clearly, evidence of repeated and blatant breaches of work health and safety obligations, yet WorkCover failed to act to prevent those breaches from continuing. WorkCover failed to take action that may have prevented further workplace injuries.