

**Submission
No 1**

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

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COUNCIL

3 January 2014

Director
Standing Committee on Law and Justice
Parliament House
Macquarie St
Sydney
NSW 2000

Dear Sir/Madam,

Submission to the
Legislative Council Standing Committee on Law and Justice
Review of the Exercise of the functions of the WorkCover Authority

Please find enclosed a personal submission to the committee.

Yours sincerely

Ross Hampton

**Submission to the Legislative Council
Standing Committee on Law and Justice
Review of the Exercise of the functions of the WorkCover Authority**

Submitted by Ross Hampton

Terms of Reference addressed and focus

This submission broadly addresses term 2(a) in relation to monitoring and reviewing the exercise of the WorkCover Authority's functions.

The focus of this submission is on the part that was previously called the OHS Division, dealing with work health and safety. I note that there is no detailed organisational chart published on the new web page. It is a reflection on management over a number of years and suggests some problems that persist today.

About the writer's qualifications to make this submission:

Ross Hampton is a retired officer who worked for the WorkCover Authority for more than 22 years, and subsequently in the Mine Safety area of the then Department of Primary Industries (the name later changed to the Department of Industry and Investment, and numerous others). Ross Hampton has attained the university degrees of a Bachelor of Science in Chemistry, a Master of Philosophy in Sociology and a Graduate Diploma in Public Health. His role in WorkCover can broadly be described as a project officer working in policy and regulation drafting areas including the preparation of publications and codes of practice.

Dysfunctional nature of management

In practice, management of the WorkCover Authority experience difficulty in managing WorkCover's functions. Lack of leadership and direction was a constant feature of senior management. An ethic of "no bad news" was enforced by management meaning that staff could not give feedback on programs or approaches that did not work, or other organisational problems.

For example, the units responsible for various licensing and registration functions never had sufficient staff to carry out their functions. Many functions such as the registration of plant fell into disuse, despite a mandatory requirement.

Another example is that legislation was not updated. Such updates do not change the basic requirements but merely ensure currency and relevance. For example references in

regulations to other publications and other legislation. Certain senior managers resisted such up-dating, partly on the basis of "do not rock the boat". This partly reflects Ministerial uncertainty and lack of knowledge of government by Ministers and their staff as to the nature of government roles and functions.

In general, the goals, objectives and outcomes of strategic plans were adjusted in a way that management could not fail and in a way that trivialised the planning purpose.

The move to Gosford, along with "flexible arrangements" meant that many managers did not appear to turn up for work at Gosford as often as they should.

Despite the objective of the "prevention of workplace injury and disease" being in the Corporate Plan for many years, little was done to achieve this.

Constant organisational restructuring leading to disorganisation

The members of the Committee are no doubt aware of the matter, raised previous inquiries, of the constant restructuring of the organisation. Often the restructure was pointless and only at the behest of the Premier's Department to incorporate the latest management fad.

Together with the lack of leadership, this lead to the inability of staff to effectively carry out their functions. One example was a change of floor level various units worked on as part of supposed increase of efficiency. Much disruption resulted from staff having to move from one floor to another, swapping places, for no real gain other than a certain manager being able to claim to the Premier's Department that desired efficiencies had resulted.

In fact it is true to say that many staff did not know what their job was and did not have constructive work to do. The atmosphere over a long period was low morale, sinking ever lower with every management disaster.

Record keeping was almost non-existent, and the computer bases "Rec Find" program allowed many files to be made about the same matter so as to be useless in finding the required material, thus defeating the point of a record system. Staff cuts meant that few staff were allocated to record keeping, or were trained or capable.

Supervision by the Premier's Department

The Committee should extend its inquiries into the Premier's Department, which failed to monitor the Senior Executive Service and their performance in any effective way. Essentially the SES members act in a self-serving way to meet their contacts. This results in distortions of what is reported.

As an example, senior management were not investigated and no action was taken against them in relation to the scandal of the wrongly issued Certificates of Competency (as investigated by ICAC), even though management policy meant the relevant branch never had sufficient staff to carry out their tasks.

Further, a culture throughout the public service has developed such that managers at all levels do not take any responsibility for anything.

The Premier's Department also dictated many management changes in accordance with the latest fads, even when they did not or could not work. There were too many to remember. Among them was quality assurance, despite the fact the organisation did not manufacture goods. Another example was "project management" which had an elaborate system of reporting at various stages, resulting in more effort being put in to the "management" than into the project itself. Much time and money was wasted on extensive attempts to make the fads work, which were eventually given up as they proved useless.

What is worse was the way the Premier's Department failed to examine the persistent recruitment of incompetent managers, and failed to intervene. The committee should recommend that the Public Service Commission appoint a fourth person to each selection panel and that the older system be reverted to where a third person was from the personnel section and competent in the issues surrounding appointments.

Above all, it can be said that the Premier's Department failed to engender a professional approach and appropriate standards in public service management.

In addition there was no effective supervision by the Board.

Added to this is the ignorance many WorkCover managers, including those in Personnel, had of the Premier's Directives. These often laid down policies and protocols to be followed, but frequently they were not.

Publications

Publications, including on-line content, are a simple way of communicating the complex requirements of WHS law. However, senior management discouraged publications. There was also a turf war with people from the publications unit exerting authority over what could be published and how, over-riding technical expertise and the perceived need by staff such as inspectors for publications.

In fact publications are widely used, particularly by trainers, and making these available on a cost price basis is an effective intervention. But effective interventions were not what WHS management wanted.

Many codes of practice are out of date due to changes in legislation. Despite efforts by me and other staff, management refused to allow up-dating, thus destroying the credibility of the material.

Prosecutions

Members of the committee would be familiar with the issue of the decline in the number of prosecutions. This was due in part to political intervention by the Government, in part to the disorganisation of the inspectorate by constant restructuring, and in part to political beliefs of senior managers.

It is difficult to interpret the trends annual statistics because during the 1990's there was a big backlog of cases giving the appearance of a sudden large rise, that in fact was a backlog finally being cleared. This made the prosecution rate appear higher than it would if based on the accident date. There was a political backlash to the apparently high prosecution rate leading to interventions to make it lower.

The statistics are also compromised by the inability of the legal section to take a statistical approach and properly count distinct cases and distinct charges. In addition over the last 15 years a large backlog of appeals has developed, making outcomes uncertain.

The Committee should enquire as to why there have been numerous appeals; some successful. In a number of cases, charges have been dismissed because they were not correctly laid. This would suggest that the legal advice and service that WorkCover receives is less than adequate. Is this due to excessive outsourcing?

The Committee should avoid the view that prosecutions and other types of interventions are alternatives. All possible types of interventions should be adopted with a view to reducing and maintaining reduced injury rates.

Premiums and economic rationalism

There is a belief that premiums can affect health and safety outcomes. On analysis it will be found that this is a false belief. As a result, there is no synergy to be found by locating insurance functions with WHS functions.

The premium scheme of the Authority has been changed numerous times to reflect every possible design. There is always some part of industry complaining; however there is no magic solution. Injuries do not occur frequently enough for economic effects and pricing to be a realistic factor affecting change, despite the claims of economists. A business having high claims one year may well, without intervention have low or average claims the following year. This is a statistical effect known as “regression to the mean”, and was demonstrated in unpublished research carried out by WorkCover staff.

What follows from this is that there is no reason for workers compensation and health and safety to be in the one organisation. In fact the association has meant that WHS and prevention has been overshadowed by the controversies and political turmoil surrounding compensation.

Members of Parliament often suggest a bonus and malus scheme along the lines of what was once used in South Australia. This faith is based on misunderstandings about how it worked and the differences from the NSW scheme. In fact it is expensive to monitor each business, and there was only one tariff premium with no industry variation. That is, construction would have the same tariff as banking. SA has now revised its scheme.

What also should be noted in relation to premiums is the political intervention involved in setting them, including the Premier’s involvement, in setting an arbitrary figure of a percentage of wages rather than basing premiums on need.

Policy and hindered participation in national developments

During the development of the national model Work Health and Safety Act and Regulations staff of WorkCover, and other government agencies, were actively restrained from making any comments or submissions. There was no coherent policy approach from the State, apart from Minister Tripodi insisting that NSW be like Victoria.

It should also be recognised that the original national body, *WorkSafe Australia* was almost completely dismantled by the Howard Coalition Government. The newer *Safe Work Australia* did not have the necessary expertise to develop national legislation, but NSW expertise was not utilised. Regrettably, the result was an Act and Regulation based on that of Victoria.

Decline in expertise and recruitment of staff including inspectors

In general, it can be stated that in relation to work health and safety expertise was not wanted or recognised by managers. Over the years expert staff have been made redundant, as a crude cost cutting measure. There need to be a proper evaluation of the need for

expertise at both the state and national level. For example, state expertise is needed in the investigation of accidents.

Despite claims to the contrary, expertise is not and was not valued in WorkCover. This is partly due to the persistent recruitment of incompetent managers. Frequently the position requirements were so generally based that almost any person would be eligible and as a result the persons on the selection panel appointed their friends on a no merit basis. The selection procedure and appointments warrant an inquiry in itself.

Annual Report

When preparing material for the Authority's annual report, myself and other staff experienced pressure to change the material to reflect more favourably on management. In effect, we were asked to tell lies and distort the truth. Eventually I refused to write annual report material, as did others, since we considered it improper, and an illegal request, to comply with such pressure to distort the true picture.

The role of ICAC and the Ombudsman

Probably due to insufficient staff and resources, bodies that should also investigate WorkCover, the ICAC and Ombudsman, have done surprisingly little, despite complaints made to them by WorkCover staff. In some cases they deny a complaint has been made. This is another aspect that requires investigation by a Royal Commission.

Relationship to the Minister's Office

Over the years I have seen the staff of the Minister's office (various Ministers) have inordinate power over management. Partly this is because with "Mega" Ministries each individual Minister cannot properly deal with all the material in front of them and delegates to their staff.

Again it is the "no bad news" and "do not rock the boat" approach, with no new initiatives.

It has also been the case that certain individual WorkCover employees have close political contacts and are close to the Minister's staff in a manner that promotes an unhealthy favouritism and control over what information is provided to the Minister. Overall, this resulted in unprofessional and dysfunctional relationships and approaches to policy.

Relationship to other Government agencies

In general WorkCover managers did not see the need to closely cooperate with other agencies. Having said that, it was also evident that other agencies did not see the need to cooperate with WorkCover, despite overlaps of functions. Such overlaps where other agencies have some jurisdiction include mines, ports, rail and road transport, transport and delivery of dangerous goods, electrical safety and pipelines. These other government agencies were paralysed in the same way as WorkCover management, by budget cuts, constant restructuring and the lack of proper over-sight by the Premier's Department, and the damaging effect of the management fads promoted by the Premier's Department.

Supervision by Minister Tripodi

Given the appearance of ex Minister Tripodi in front of ICAC it is time to examine his role in relation to WorkCover. The nature of WorkCover needs to be examined in the light of what now appears to be the dysfunctional and corrupt nature of Labour Ministers.

Personnel policies

During the mid 2000's the staff section attempted to write policies covering all aspects such as grievances, leave, sick leave, etc. The lack of knowledge by staff meant that these policies often did not comply with the Public Sector Management and Employment Act and Regulations, nor with relevant awards. This contributed to issues, which have been examined by Legislative Council Committees, including bullying.

Along with other parts of the agency, staff cuts and "cost savings" meant that the personnel section did not have enough staff to adequately deal with personnel matters. For example, when a person left WorkCover for another government position, it took many months for their leave balance to be forwarded to their new agency. Similarly, on resignation, it took many months for payments and superannuation to be finalised.

Interpretation of statistics and research

In general the rate of injuries has declined over the last 20 years. However, this may not be due to anything WorkCover has done. The most significant long-term trends have been the replacement of workers by machines and the movement of manufacturing overseas, meaning that high risk jobs are not carried out any more. For example, Newcastle no longer has a steel works.

Over a number of years WorkCover funded a variety of research projects. Often the results of these were not reported, and never did any valid conclusions lead to an improved preventative approach. In other words, research money was spent with no real purpose.

Overview – doing as little as possible

The nature of WorkCover management can easily be summed up – do nothing. No effective interventions of any sort. Despite there being well established models in the public health area, this was not taken up by WorkCover management. Again, this is because expertise of staff was not recognised and expert staff not recruited.

Need for a Royal Commission

There is no evidence that the senior management of WorkCover have addressed or overcome the problems described above.

Many staff and former staff cannot give submissions or tell the full story for a variety of reasons, including fear of retaliation and being sued for defamation. There are many examples that could be provided by staff or former staff, including the names of relevant managers, and examples that could be obtained from records (limited as they are). It is important, that given the problems over the past 20 years with this organisation, that WorkCover management is fully investigated by a Royal Commission. This needs to extend to all agencies that have a connection with WorkCover and in particular the Premier's Department.

Anything less can never get to the truth and reveal the role of senior management, ministerial staff and ministers. If not dealt with now, the organisation will continue to be dysfunctional.

3 January 2104