

INQUIRY INTO ALLEGATIONS OF BULLYING IN WORKCOVER NSW

Name: Name suppressed

Date received: 6/11/2013

Partially Confidential

Supplementary submission to Bullying Inquiry

A member of WorkCover's staff has requested that I bring her de-identified case to the Inquiry as evidence of current problems with the investigation of bullying complaints.

Tomorrow this person will leave WorkCover. She no longer has a job with WorkCover.

She believes there is a direct connection between lodging a complaint of bullying from her supervisor (between September 2012 and April 2013), and now losing her job in a restructure.

A one page summary of the case is provided here for members.

While I won't read the summary I would like to highlight deficiencies in the procedure used by WorkCover to investigate her bullying complaint:

- witnesses to the bullying were identified by the complainant in writing but they were not interviewed as part of the investigation.
- throughout the investigation the complainant was not advised of any progress of the complaint, or even whether it would be investigated externally or internally.
- the complainant was not advised of the investigation procedures nor of any specific findings, recommendations or actions taken regarding the complaint.

These deficiencies mean that a proper investigation has not taken place.

In addition, an external investigator was not appointed. Although this may not always be necessary, in this case it was, because the WorkCover member of staff initially allocated to receive documentation from the complainant rents a house to the person being complained about.

Despite this fact, no conflict of interest was declared by the original staff contact for the investigation. It was left to the complainant to raise this issue when she became aware of it.

Further, correspondence dated 26 September 2013 from the Minister for Finance and Services stated that:

"All investigations are currently undertaken by an external investigator. ... Complex investigations or investigations where there may be a conflict of interest will remain with external investigators". See Attachment 1.

The experience of the person leaving WorkCover tomorrow is inconsistent with the Minister's statement.

Instead, her complaint was investigated internally and there was also a conflict of interest.

This case demonstrates that there are continuing problems with WorkCover's management of reports of bullying. It is one of several current problematic cases of which I am aware.

Summary of how a bullying complaint was managed by WorkCover

- Complaint made on 19 April 2013 against their supervisor. Person making complaint advised two months later to lodge a "formal" complaint or nothing would happen, even though she had thought this was already done.
- Bullying Policy stated that the notified direct Manager, person notified in People and Culture, and the contacted counselling organisation should advise the complainant of options to report a bullying complaint. None did.
- Investigation contact for the complainant within WorkCover rents a house to the supervisor who is the subject of the complaint. No conflict of interest declared.
- Complainant raised the conflict of interest. Another WorkCover person then took over the complaint investigation.
- Complainant's team restructured. Supervisor who is the subject of the complaint was believed by the complainant to be on the selection panels for positions despite being under investigation. Complainant asked if this could be confirmed but was told this information could not be provided. Complainant did not feel confident to apply for any positions with supervisor on the panel.
- Complainant not placed in new structure. Complainant considered option of applying for lower grade and alternate positions within the unit under that supervisor who was the subject of the complaint; however that supervisor was the recruitment convenor for all the remaining positions.
- Complainant was formally declared excess on 24 October 2013 and leaves on 7 November 2013.
- At the conclusion of the internal investigation, the complainant was given a verbal non-specific outline of some of the recommendations in relation to the staff member who was found to have bullied the complainant. The complainant was then told everything discussed in the outcome meeting was contained in a letter provided by the organisation.
- The points discussed in the outcome meeting regarding the subject of the complaint were not included in the letter. The complainant was also advised the process since the original complaint was made was found to be flawed. Specific points regarding recommendations or actions to address the bullying or investigation flaws were not provided in the letter. When the complainant queried this, they were informed it was an internal investigation only and those issues were confidential.
- Complainant is not aware of how investigation of her complaint was conducted. An external investigator was not appointed.
- Two witnesses to the bullying were provided in writing when the bullying complaint was made on 19 April 2013. These witnesses were not interviewed.

- Complainant is not aware of findings or recommendations from investigation of her complaint.
- The undated letter from WorkCover at Attachment 2 was given to the complainant on 29 October 2013. It has no specific details of findings or actions taken in response to the complaint. This letter closes the investigation.
- When the complainant raised concern that the letter provided was neither dated nor on an official letterhead, a new copy was provided. On querying why no further information on the recommendations made regarding the subject of the complaint were included, complainant was advised these were confidential.
- The investigation process was never discussed by WorkCover at any stage with complainant until the matter was concluded.
- The complainant reports that she was told verbally by People and Culture staff that her complaint of bullying was substantiated. Despite this finding, the person found to have behaved as a bully succeeded in securing a more senior position less than two weeks after the complainant was declared excess, and less than 10 days after the complainant was advised of the outcome of the investigation.

ATTACHMENT 1

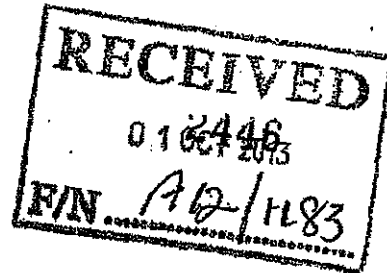
ACS-80



The Hon. Andrew Constance MP
Minister for Finance and Services

Our Ref: WC02105/13
Your Ref: ST:MG

Mr Steve Turner
Assistant General Secretary
Public Service Association of New South Wales
GPO Box 3365
SYDNEY NSW 2001



Dear Mr Turner

Thank you for your correspondence requesting that I direct WorkCover to review its investigative processes and procedures following the recent Industrial Relations Commission decision in relation to the dismissal of Mr Wayne Butler.

I am advised the Safety Return to Work and Support Division has been reviewing and updating its internal policies and processes since 2012 to ensure ongoing compliance with legislation and best practice. This has included policies relating to code of conduct and ethics, the prevention and management of workplace bullying, discrimination and harassment, secondary employment, workplace concerns and grievance resolution, and gifts, bribes and benefits.

All employment related policies are developed in consultation with the Division's Health and Safety Committee and the Public Service Association, with updates on key policy related issues provided to all staff on a regular basis.

In July 2012, the Division introduced a centralised human resource service and advice function to support the early management of underperformance, issue and grievance resolution and employee reports of bullying and harassment. Since then, regular reviews have been undertaken to improve the model. The model has a tiered approach to investigations and case management, with escalation to specialist teams within People and Culture when required. The Division has advised that early indications are that this new approach is showing positive results.

All investigations are currently undertaken by an external investigator and managed internally by the Division's Employee Relations and Policy Team, to ensure that the requirements for the 'Management of Conduct and Performance' under Part 2.7 of the *Public Sector Employment and Management Act 2002* and chapter 9 of the Personnel Handbook are met. I am advised the process is currently under review with the aim of the Division undertaking non-complex investigations internally. The new model will require anyone undertaking an investigation to hold a recognised investigations qualification (for example - *Diploma in Government (Investigations)*). Complex investigations or investigations where there may be a conflict of interest will remain with external investigators.

I am advised that since the Commission's decision regarding the dismissal of Mr Butler, the Division's Chief Executive Officer and Chief Human Resources Officer have met with the Association on a monthly basis to discuss new policies, employee concerns, corporate governance and other matters as raised. This included discussion about the Division's current and proposed approach to investigations and disciplinary matters as it continues to apply an early intervention approach to employee concerns and investigations. I understand the Association has found the constructive and productive nature of these meetings positive.

I would encourage both parties to continue these meetings in the spirit of cooperation and progress.

Yours sincerely

Andrew Constance MP

26/9/13



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& Support Division**

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PRIVATE AND CONFIDENTIAL

Dear:

I confirm that SRWSD has concluded its review into concerns raised by you against

I acknowledge the responses you have provided in the meeting on the 1st September 2013 with myself. I am confident that SRWSD have conducted a comprehensive, fair and efficient process for all parties concerned.

In summary as a result of the meeting conducted with you and I, the following actions were undertaken:

- An independent review was undertaken by the Employee Relations Team within the People and Culture Group into the concerns raised by you against
- AS a result of the independent review, a number of confidential recommendations were made by Employee Relations.
- I can confirm that management have taken the appropriate action in relation to the recommendations provided.
- As a result People and Culture have had the opportunity to refine and improve SRWSDs complaints handling procedure

The formal review into this matter is now closed. We now wish to work with you to agree an appropriate way forward. We also want to take the opportunity to discuss support mechanisms that may be implemented to assist you further.

I would also like to remind you that to ensure procedural fairness for all parties involved, you should keep these matters strictly confidential.

I understand this may have been a difficult time for you and I would like to take this opportunity to remind you of SRWSD's Employee Assistance Program (EAP) that you may choose to access during this time. The EAP can be contacted on 1300 360 364.

I thank you for your cooperation in this process. If you have any future concerns regarding this matter, please feel free to contact me.

Yours sincerely,

People and Culture Group, SRWSD