

**INQUIRY INTO ALLEGATIONS OF BULLYING IN  
WorkCover NSW**

**Organisation:** WorkCover NSW

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**General Purpose Standing Committee No. 1**

**Inquiry into allegations of bullying in WorkCover NSW**

**Submission from WorkCover NSW  
August 2013**

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## 1. Background to the Inquiry and this submission

On 27 June 2013, a Legislative Council inquiry was established to report on allegations of bullying in WorkCover NSW (WorkCover).

The inquiry is being conducted by General Purpose Standing Committee No. 1 with the following terms of reference:

*That General Purpose Standing Committee No. 1 inquire into and report on allegations of bullying in WorkCover, and in particular:*

- *the culture of WorkCover,*
- *WorkCover's role as the State Regulator of occupational health and safety as it relates to bullying in the workplace,*
- *appropriate recommendations to address issues raised, and*
- *any other related matter.*

This submission provides information relevant to the first two points in the terms of reference in relation to WorkCover, its culture and approach to managing the risk of bullying, and its role as regulator of work, health and safety in New South Wales.

This submission sets out the operating environment of WorkCover and provides:

- an overview of the services provided by WorkCover,
- information about structure, reporting arrangements and development programs,
- WorkCover's approach to workplace health and safety,
- management of the risk of bullying within WorkCover,
- WorkCover's role as a NSW work, health and safety regulator, and
- WorkCover's approach to managing bullying issues in NSW workplaces.

Outlined throughout the submission are the steps WorkCover has taken to create a constructive, empowered, productive and safe workplace.

## 2. Introduction

WorkCover is an agency within the Safety, Return to Work and Support Division of NSW Government Service.

WorkCover is a statutory body representing the Crown. WorkCover is established under section 14 of the *Workplace Injury Management and Workers Compensation Act 1998* and is an agency within Safety, Return to Work and Support (SRWS).

SRWS is a Division of NSW Government Service reporting to the Minister for Finance and Services. It was established on 1 August 2012 under the *Safety, Return to Work and Support Board Act 2012* and includes WorkCover, the Motor Accidents Authority of NSW, the Lifetime Care and Support Authority of NSW and the NSW Workers Compensation (Dust Diseases) Board.

The Act replaced the Boards of WorkCover, Motor Accidents Authority, Lifetime Care and Support Authority and Sporting Injuries Committee with a single governing Board to oversee the schemes the authorities administer.

### WorkCover in 2012/13

- 271,000 employers provided with workers compensation insurance protection
- 250,000 community engagements
- 19,000 workplace visits
- 17,000 client telephone enquiries
- 5800 advice and support services to workers compensation claimants with an 85 per cent satisfaction rate.

SRWS and its employees are subject to the objectives of the *Public Sector Employment and Management Act 2002* and the *Government Sector Employment Act 2013* (awaiting commencement) which:

- recognise the role of the Government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day, and
- establish an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the Government of the day.

The Division is subject to the policy directives of the Public Service Commissioner in relation to public sector workforce management.

SRWS aims to improve the economic growth, productivity and wellbeing of the NSW economy by leading and managing systems to:

- prevent, mitigate, and insure for, personal injury risks, and
- provide recovery and support services when injuries or illnesses covered by personal injury insurance occur.

SRWS employs 1,355 permanent employees across its agencies. Of this number, 1083 employees are allocated to WorkCover.

SRWS operates a shared services model hosted by WorkCover. Functions including strategy and performance, people and culture, financial and information technology services, legal, procurement and asset management services are provided by the shared services divisions to all SRWS agencies and employees.

### **The WorkCover Authority of NSW (WorkCover)**

WorkCover monitors and regulates the workers compensation system in NSW and administers the work health and safety legislative and regulatory framework.

WorkCover's functions are undertaken by three divisions: the Workers Compensation Insurance Division; the Work, Health and Safety Division and Investment Division.

### **Workers Compensation Insurance Division**

- Administers workers compensation laws and regulates workers compensation insurance arrangements in NSW including 66 self and specialised insurer licences and the Retro Paid Loss Scheme,
- Manages the Workers Compensation Scheme on behalf of the Workers Compensation Nominal Insurer,
- Manages the claims of uninsured, volunteer bush fire fighters and emergency rescue workers in NSW and administers and manages the Sporting Injuries Scheme,
- Promotes prompt and efficient management of work-related injuries through effective injury management, medical and rehabilitation services, including engagement and oversight of service providers,

- Ensures correct premiums are determined for employers and the correct worker compensation benefits are paid to injured workers,
- Manages fraud prevention activities across the system,
- Determines premium appeals and worker status rulings, and accreditation of rehabilitation providers, and
- Monitors the performance of the workers compensation system in NSW.

### **Work Health and Safety Division**

- Administers the work health and safety legislative and regulatory framework,
- Provides advice and assistance to help the State's businesses meet their work health and safety responsibilities,
- Designs, implements and evaluates work health and safety and return to work programs,
- Enforces work health and safety legislation through inspections, investigation of incidents and complaints, mediation of disputes and penalties and prosecutions,
- Licenses defined premises, high-risk work and the operation and design of hazardous equipment,
- Provides technical expertise and advice associated with work health and safety risks, and
- Manages commercial laboratory and testing services through TestSafe Australia.

### **Investment Division**

- Manages five statutory fund portfolios with assets of over \$17 billion:
  - the Workers Compensation Insurance Fund,
  - the Lifetime Care and Support Fund,
  - the NSW Workers Compensation (Dust Diseases) Board Fund,
  - the Insurers Guarantee Fund, and
  - the Sporting Injuries Fund.

### 3. WorkCover Culture

Over the last three years, WorkCover has implemented major reforms to the work, health and safety and the workers compensation regulatory frameworks in NSW.

NSW introduced the *Work, Health and Safety Act 2012* on 1 January 2012, together with its supporting Regulation and a series of model Codes of Practice.

Systemic reforms to the NSW workers compensation system were progressively implemented from June 2012 and have continued throughout 2013.

WorkCover has implemented a number of initiatives to realign and build its organisational capacity to deliver the Government's reforms and the organisation's corporate responsibilities. These initiatives include implementation of 2012 Work Health and Safety laws within SRWS, functional realignments, an action plan to address the 2010 PricewaterhouseCooper's review and implementation of the SRWS GROW people and culture program.

#### ***Work Health and Safety Act 2012 implementation within SRWS***

As the regulator of work, health and safety in NSW, WorkCover recognises the importance of being seen as a role model, particularly in relation to safety.

To support this focus on safety, the Employee Safety and Wellbeing Team has increased in size from a staff of three in 2011 to a staff of six in 2013. The Team is primarily focused on ensuring employees receive the right training, tools, systems and resources to perform their duties safely, while supporting the early identification of risks and implementing strategies to mitigate them.

In January 2012, new work, health and safety legislation came into effect and a number of actions were completed to align SRWS with the legislation including:

- The identification and establishment of work groups and Health and Safety Representatives (HSRs). SRWS currently has 31 identified workgroups represented by 35 HSRs and other agreed consultation arrangements,
- Establishment of the SRWS Work, Health and Safety Committee of which the Chief Executive Officer and Chief Human Resources Officer are members,
- Regular reporting to the SRWS Board on work health and safety within SRWS,
- Training for members of the Senior Management Group on their responsibilities as officers of the Person Conducting a Business or Undertaking (PCBU),



- All employees are required to complete mandatory training on:
  - Bullying and harassment awareness,
  - Drug and alcohol awareness,
  - Manual handling,
  - Understanding safety in the office, and
  - the Code of Conduct and Ethics.
- Regular announcements and communications on topics such as:
  - Increasing awareness of personal safety,
  - Being aware of risks within the workplace and how to mitigate these risks, and
  - Ergonomic intervention including how an individual's work station or motor vehicle is set up correctly to prevent overuse and body stressing injuries.

All position descriptions for senior executive roles include work, health and safety responsibilities.

WorkCover's approach to consultation regarding policy on work, health and safety matters, is comprehensive. Documents are circulated to all HSRs and members of the Health and Safety Committee for comment and feedback. WorkCover recognises and values the expertise within its people and is receptive to the knowledge and context that their feedback provides. Feedback is collated and referred back to the Committee.

### **WorkCover functional realignments**

WorkCover's Work, Health and Safety Division has implemented a new structure that has an emphasis on placing expertise within the regions, working collaboratively with regional businesses to:

- engage more closely with industry,
- develop location solutions to local issues,
- focus on achieving workplace safety through information and education of workplaces, and
- facilitate an early and safe return to work following injury.

The changes to the Work Health and Safety Division will deliver a customer focused operating model which is agile, flexible and responsive. Under the changes, some office locations are being amalgamated and resources are being realigned to better meet the changing needs of the New South Wales community.

WorkCover's Workers Compensation Division has been restructured in response to legislative changes to the Workers Compensation Scheme to provide greater emphasis on early and safe return to work, dispute resolution and claims management.

The restructure took into consideration where customers and service providers are located, and how to engage with them most effectively. It also considered the need to increase productivity and value for the New South Wales community.

A consolidated Customer Service Centre was established within the SRWS Strategy and Performance Division and restructured to provide WorkCover customers with a 'one stop shop' for information, advice and issues resolution. This change included a significant emphasis on improving support for customer service frontline employees and building a more positive, healthy and safe workplace culture.

Given WorkCover's role as the regulator of work, health and safety in NSW, it is understandable that there are times when customers are not pleased with a decision, particularly where the exercise of the regulatory role by WorkCover is considered by the customer to place additional financial or administrative burden on the customer or impinges on management control of the workplace. Frontline employees may potentially be subjected to negative, emotional or abusive communication from customers.

The SRWS Customer Service Charter supports employees by clearly outlining the service level expectations of the organisation and providing a platform that supports them when dealing with customers.

The charter:

- depicts the standards of service customers can expect,
- advises customers how they can give customer feedback, and
- informs how customers can contact SRWS agencies.

The Customer Service Centre's new operating model also incorporates a customer service quality framework including capability, training and knowledge management support and a new customer feedback and complaints framework for SRWS, improved processes for the customer experience (simplified and more timely) and establishment of clear role accountability and responsibility.

A health and safety risk management focus has been employed during realignments including:

- A clearly defined transparent process for developing an effective operating structure in consultation with employees and unions and managing business realignments,
- Guiding principles for filling permanent positions and a careful employee impact analysis with provision of considered communication and support for impacted individuals, and
- A change management plan that includes clear explanation of the reasons for change and the proposed changes to the organisational structure, proposed means for filling positions, employee communication strategy, support services, consultation, impact on equal employment opportunity groups, impact on employees with special needs, management of excess employees and management of temporary employees.

### **PricewaterhouseCoopers (PwC) review into WorkCover**

In September 2010, the NSW Department of Premier and Cabinet engaged PricewaterhouseCoopers (PwC) to undertake an independent review into alleged workplace bullying and harassment within WorkCover. The review followed concerns around allegations of bullying which had been the subject of both external and internal comment.

The PwC Report outlined the need for more work to be done on:

- clearer internal communication and engagement strategies,
- transparent recruitment processes,
- robust performance management,
- effective grievance handling framework, and
- strengthened leadership capability.

WorkCover agreed to all recommendations, WorkCover implemented a multi-faceted approach to address both the report findings and some long-term cultural issues within the agency.

Actions included:

- The introduction of the GROW cultural framework which underpins a variety of positive initiatives to improve communication, engagement and leadership to support cultural change. The GROW program is outlined in further detail in this submission;
- New business rules to provide consistency and greater transparency in recruitment processes,
- An enhanced performance management framework, which facilitates and enables authentic conversations between employees and supervisors,

- Increasing the capability of the People and Culture team,
- Improving grievance handling procedures and support for employees with workplace concerns, and
- Building leadership capability across SRWS.

The approach is reinforcing to all employees, including all levels of management, that there is no tolerance for bullying behaviours or misconduct of any kind.

### **The SRWS GROW people and culture program**

The SRWS GROW people and culture program aims to create a constructive, empowered, productive and safe workplace. It consists of seven key elements which support the desired workplace culture. It is an engagement model for employees that sets clear objectives, aligns to all new employee-based initiatives, and provides a clear line of sight for employees about what the organisation is doing and why.



The GROW program commenced in October 2011 and is providing employees with role clarity and the capabilities to perform their jobs well, people leaders with the skills to effectively manage people and performance and be positive role models, and supports the right of all employees to work in an environment of respect and dignity. Each element of the framework is supported by a number of initiatives and activities. One of the elements is *Wellness*. While all of the elements contribute to the health, safety and wellbeing of employees and a constructive, productive and safe organisation, this element is expected to be of particular relevance to this inquiry and so is outlined in more detail.

The element of *Wellness* focuses on promoting individual wellbeing through programs relating to physical, social, emotional and financial wellbeing. The model that underpins the *Wellness* element is best represented by the work of leading psychologist Martin Seligman.

Examples of the actions implemented by SRWS aligned to this model include:

- Since 2011, WorkCover, as part of SRWS, has focused on providing early intervention where health or wellbeing issues are evident. SRWS established a dedicated Employee Safety and Wellbeing Unit focused on supporting managers, individuals and impacted team members to address concerns from the first signs of there being any health related issue. Case management is a priority, regardless of whether it is work related or non-work related,
- Appointment of an Employee Relations and Wellness Consultant in January 2013 to enable early intervention for employees who have concerns in the workplace with working relationships, personal issues or bullying,
- Individual case managers from the Employee Safety and Wellbeing Team are assigned to employees during any complaint, grievance or disciplinary investigation process,
- Establishment of a sub-committee of the SRWS Work Health and Safety Consultative Committee focused on psychological wellbeing,
- The Employee Assistance Program (EAP) and Manager Assist Program. SRWS demonstrates a healthy utilisation of the EAP service with a 12.56 per cent utilisation rate for the period 1 April 2012 to 31 March 2013 evenly distributed between work and non-work related matters,
- Provision of EAP on-site counselling to employees when required. For example, if there is a need for employees to have timely access to grief counselling,
- The Bullying Response Service (BRS),
- A Critical Incident Support Program to deliver advice and support to employees exposed to traumatic incidents in the normal course of their duties, such as fatalities, serious injury, major incidents, threats and abuse,
- Provision of a range of activities to support and promote wellbeing and reduce absenteeism,
- Mental health awareness seminars and training, for example: maintaining good mental health in high performing cultures, and
- Support of initiatives such as *R U OK? DAY*, Mental Health Month, *No Leave No Life Campaign*, Movember and the Get Healthy Program.

## **Workers' compensation claims**

Workers' compensation claims provide one measure to monitor the success of WorkCover's actions to address the risk of bullying in the workplace. A review of data for workers compensation claims submitted by all WorkCover employees shows a positive downward trend.

In WorkCover, there was a 59 per cent decrease in injury claims between 2011/12 and 2012/13 with the number of injury claims falling from 54 in 2011/12 to 22 in 2012/13. Injuries specifically involving psychological injury decreased by 84 per cent between 2010/11 and 2012/13 with 21 reported cases in 2010/11; 10 in 2011/12 and 4 in 2012/13.

There were 11 reported bullying claims in 2011/12 compared to 2 in 2012/13.

SRWS continues to monitor its progress towards creating a constructive, empowered, productive and safe workplace and has implemented comprehensive monitoring of health and safety related KPI's and trend indicators.

## 4. Managing the risk of bullying within WorkCover

WorkCover's framework for preventing and dealing with bullying is aligned with the good practice approach provided to NSW employers and workers in WorkCover's *Bullying Prevention Kit*. The *Bullying Prevention Kit* reflects the draft model national Code of Practice for *Preventing and Responding to Workplace Bullying*. The kit goes beyond strict regulatory requirements and sets out good practices for continuous improvement of bullying prevention controls. The six areas of focus are:

- management commitment,
- consultation,
- policy and procedures,
- training and supervision,
- reporting, and
- injury management.

### Management commitment

WorkCover recognises, and is committed to, its duty of care to provide a safe workplace through systematic risk management and extensive and open consultation with employees.

WorkCover is committed to its managers having the resources, capabilities and commitment to prevent injury and illness in the workplace.

The GROW Leadership Strategy is aimed at broadening leadership capability within SRWS and ensuring that manager's responsibilities are clearly identified, understood and acted upon. The strategy is underpinned by the Public Service Commission values and capability framework and includes the following components:

- A definition of who is considered to be a leader within SRWS,
- A definition of the role of a leader within SRWS,
- A definition of SRWS's aspirational leadership culture,
- A review of spans of control and reporting layers,
- Support and collaboration opportunities for leaders,
- The GROW Leadership Excellence Development Program.

All people managers in SRWS attended leadership summits in April and May 2013. These were facilitated by members of the SRWS Executive team and a member of the SRWS Board.

WorkCover provides a number of support mechanisms for employees experiencing both workplace and personal issues including concerns about bullying.

- The **Employee Wellbeing and Support Unit** manages and supports employees with both work-related and non-work related concerns and injuries using an early intervention model to secure the employee's safe return to productive and positive work engagement,
- The **Bullying Response Service** (BRS) receives calls from employees and offers advice on how to resolve a complaint of bullying. This may involve recommending mediation or other workplace strategies to address issues, such as speaking directly with the other person involved and trying to resolve the issue informally, and
- The **Employee Assistance Program** (EAP) is a free and confidential counselling and advice service for all employees and their immediate families to seek professional advice for any personal or work related problems.

## **Consultation**

WorkCover's consultation regarding policy, including health and safety, is thorough. For example, documents impacting on workplace health and safety are circulated to all HSRs and members of the Health and Safety Committee for comment and feedback. WorkCover recognises and values the expertise within its people and is receptive to the knowledge and context that their feedback provides. Feedback is collated and referred back to the Committee.

As mentioned earlier, WorkCover has a network of Health and Safety Representatives (HSR) together with a SRWS Health and Safety Consultative Committee (HSC). The structure provides a support mechanism for employees and an avenue for the agency to consult on health and safety policies and procedures.

Employees are consulted through established consultative arrangements. Employees are also informed of their rights and responsibilities in relation to a safe and healthy workplace and if injured or ill of WorkCover's Return to Work Program. This information is communicated through a variety of avenues, including:

- Induction for new employees,
- Employee development and training strategies,
- Information posted on the WorkCover Employees Health and Safety Intranet site,
- Information posted on workplace notice boards,
- The activities of the Work Health and Safety committees, and
- Relevant union/and other representatives.



A key mechanism for receiving feedback from employees is the employee survey. Since 2006, eight surveys have been conducted. The most recent employee survey took place in 2012 and achieved a participation rate of 82 per cent.

Strengths identified in the 2012 survey included:

- Good working relationships exist with co-workers, who are willing to offer support and help,
- Employees believe in the objectives of their agency and the work it undertakes, and
- There are good facilities for employees, while flexibility is offered to meet employee needs.

Development areas identified in the 2012 survey included:

- Employees felt improvement was required in relation to change management,
- Greater awareness is needed around the vision by senior management for the agencies,
- Senior managers need to be seen as role models.

As a consequence of the feedback received, the Executive prioritised the following areas:

- Leadership - including talent management, capability development and the development of a high performing culture through effective performance management, and
- Management accountability - defining the role of the manager and acceptable behaviours within the workplace.

These focus areas were incorporated into the GROW Program.

WorkCover also utilises a wide range of channels for communicating with employees. People leaders are accountable for communicating with their teams. In addition, the SRWS People and Culture team are responsible for coordinating communication with all SRWS employees about organisational culture in a strategic, coherent way including:

- CEO announcements,
- Communicating GROW program services and opportunities,
- Change management communication and support,
- Communicating organisational culture, policies, behaviours and values,
- Online and group courses,
- Briefings,
- Focus groups,
- Quarterly strategic leadership forums,
- Intranet content,

- People and Culture – ‘keeping you informed’ notifications, and
- The Work Health and Safety Consultative Committee and Psychological Wellbeing Subcommittee.

## **Policies and procedures**

The *Government Sector Employment Act 2012* contains an ethical framework for all NSW public sector agencies and employees that is built on four core values – integrity, trust, service and accountability.

The SRWS *Code of Conduct and Ethics* policy reiterates these values together with the behaviours expected of its employees and reinforces the obligation of all employees to:

- take reasonable care to ensure actions do not adversely affect the health and safety of others and to report any unsafe work practices, risks or injuries,
- not bully, discriminate against, harass, intimidate, victimise or vilify any person encountered during the course of our business,
- apply the principles of equal employment opportunity, and
- make ourselves aware of relevant SRWS policies and participate in training and any other measures to maintain a workplace free from bullying, discrimination and harassment.

WorkCover has a range of internal policies that relate to the reporting, escalation, management investigation and resolution of allegations of bullying and harassment.

WorkCover’s approach to managing the risk of bullying is outlined in its *Managing the Risk of Workplace Bullying* policy.

The policy outlines WorkCover’s zero tolerance towards bullying. It establishes protocols to eliminate or minimise the risk of bullying and outlines a risk management process to be followed to identify, assess and control risks of bullying in the workplace. The Bullying Checklist attached to the policy provides a tool for managers to assess the potential for bullying in workplaces.

The *Managing Reports of Workplace Bullying* policy and procedure includes the avenues for reporting and dealing with complaints of bullying, procedures for handling complaints, and the requirements to monitor unresolved bullying issues and conduct follow-up reviews.

These main policies are supported by the following ancillary policies:

- *Grievance and Dispute Resolution* policy - outlines the process for reporting and managing all types of grievances,
- *Dealing with Harassment Prevention in the Workplace* policy - defines harassment and refers employees with concerns about harassment,
- *Managing Violence, Bullying, Harassment and Sexual Harassment* policy - applies to managing violence and harassment in the workplace. Provisions of this policy related to bullying have been superseded by the *Managing Risk of Workplace Bullying* policy,
- *Employee Assistance Program* policy - outlines the third party confidential counselling services provided. The EAP is an avenue for reporting bullying,
- *Return to Work Program* policy - articulates WorkCover's commitment to providing employees who report injuries or illness with an opportunity of a safe return to work as soon as practicable, and
- *Dignity and Respect in the Workplace Charter* developed by Unions NSW and the Public Service Association (PSA) to protect workers from bullying and harassment in the workplace. WorkCover became a signatory in September 2005.

WorkCover's policies provide a range of informal and formal processes for managing incidences of bullying in the workplace including self-management, manager assist, mediation and investigations pathways.

Since 2010, all WorkCover formal disciplinary investigations are conducted by external independent investigators.

New policies currently under development by SRWS will replace a number of existing policies relating to the management of bullying in the workplace. A new *Prevention of Workplace Bullying, Discrimination and Harassment* policy and a new *Workplace Concerns and Grievance Resolution* policy will update and replace current policies to reflect legislative changes in health and safety and the Safe Work Australia Code of Practice on preventing and managing bullying.

SRWS is currently consulting with its Health and Safety Consultative Committee and Public Service Association representatives on the draft policies prior to their implementation scheduled for later in 2013. A communication and education program will support the implementation of the two new policies.

## **Training and supervision**

All SRWS employees undertake on-line mandatory training on the SRWS Code of Conduct and Ethics policy and Bullying and Harassment Awareness on induction and every two years thereafter. An additional half-day 'Prevention of Bullying and Harassment' workshop is provided by the SRWS Learning and Development Group. SRWS also provides a range of training courses on subjects relevant to workplace bullying and workplace culture including:

- Building Positive Workplaces,
- Workplace Communication,
- Issues Resolution, Managing Conflict and Negotiation skills,
- Dealing with Difficult Situations,
- Coping with Organisational Change, and
- Ethical decision making.

Managers have access to additional training in:

- Effective Workplace Relations,
- Leadership and Motivation,
- Managing Teams, and
- Management Practices (a mandatory training course).

The Continuous Leadership Development Program (CLD) was launched in July 2013. The program was developed to provide continuous learning and ongoing development for all SRWS people leaders.

Participation in the CLD Program is mandatory for all SRWS people leaders. Under the program, people leaders are required to participate in a minimum number of leadership development activities each year including mentoring, participating in a development centre or training and education course. This flexibility allows people leaders to select activities that best suit their needs, aspirations and learning style.

There are several optional courses included within the GROW Leadership Development Program. However, only the Management Practices course has been identified as mandatory for all people leaders. The course aims to strengthen people leaders' awareness of their accountabilities. An overview of the Public Service Commission's Performance Development Framework and performance management principles is provided as part of the course.

Other courses include Management Essentials, Transactional Leadership Excellence and Operational Leadership Excellence. These courses will be launched by the end of 2013.

## **Reporting**

All employees are encouraged to immediately report injury and illness. In reporting the injury or illness, employees and their managers are required to ensure the following steps are taken:

- Report the workplace injury or illness to the Supervisor as soon as practicable after the event,
- Complete, or have the supervisor do so on behalf of the injured/ill worker, a notification of work related injury/illness form on an automated online form as soon as possible after the event. This online system is SRWSD's Register of Injuries as required by the Workers Compensation Act, and is used to monitor workplace injuries and trends, and
- In cases involving or likely to involve time lost, medical expenses or treatment, the employee or their supervisor must contact the SRWS Employee Safety & Wellbeing Unit within 24 hours to discuss the incident and obtain assistance from the Team in lodging any Workers Compensation Claim.

## **Injury Management**

WorkCover has a documented Return to Work Program policy. WorkCover's Return to Work Program has been developed to:

- Provide assistance to the employee,
- Create an environment of trust,
- Encourage cooperation from all relevant parties involved in injury management, and
- Positively influence return to work outcomes.

In accordance with the policy, WorkCover is committed to:

- Preventing injury and illness by providing a safe and healthy work environment,
- Returning an injured/ill employee to work in a safe, timely and durable manner,
- Providing meaningful suitable duties for an injured employee as soon as possible,
- Ensuring that injured/ill employees and anyone representing them are aware of their rights and responsibilities, including the right to choose their own doctor and rehabilitation provider,
- Ensuring confidentiality of injured/ill employees' records.

As soon as a significant injury or illness is reported, the process of injury management commences. SRWS provides every injured employee with the opportunity of a safe return to work as soon as practicable. Employees are encouraged to actively participate in the Return to Work process.

Workcover has developed guidance for employees titled '*What to do if you are ill or injured at work*'.

Collectively, these initiatives form the framework for SRWS and WorkCover to comply with their work, health and safety obligations.

## 5. Workcover's role as NSW Work Health and Safety Regulator

New South Wales has enacted nationally harmonised work health and safety laws to improve work health and safety, provide consistent duties for workplaces and reduce the regulatory burden.

The nationally harmonised model legislation was developed under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. The *Work Health and Safety Act 2011* (WHS Act) and the *Work Health and Safety Regulation 2011* (WHS Regulation) commenced in New South Wales from 1 January 2012.

WorkCover is the regulator for work health and safety for all workplaces and all hazards with the exception of mining workplaces and coal workplaces. Section 276A of the WHS Act allows for the NSW Department of Primary Industries' Mine Safety Inspectorate to regulate work health and safety at mining workplaces and coal workplaces.

Section 19 of the WHS Act establishes the primary duty of care of a person conducting a business or undertaking (PCBU). The duty is to ensure, so far as is reasonably practicable:

- that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking, and
- the provision and management of a work environment without risk to health and safety.

Health is defined in the WHS Act as meaning both physical and psychological health.

The draft model national Code of Practice for Preventing and Responding to Workplace Bullying identifies the following legislative duties relating to bullying prevention.

A person conducting a business or undertaking (PCBU), officers, workers and other people at the workplace all have duties in relation to work health and safety including the prevention of bullying in the workplace.

Safe Work Australia has developed a draft model national *Code of Practice for Preventing and Responding to Workplace Bullying* and a separate *Guide for Workers*.

The Code and Guide has been developed by Safety Work Australia in consultation with all jurisdictions, as well as industry and union stakeholders. The Code and Guide are designed to support the WHS Act and WHS Regulation.

The draft Code identifies the following legislative duties relating to bullying prevention.

A person conducting a business or undertaking must also, so far as is reasonably practicable:

- provide and maintain a work environment that is without risks to health and safety,
- provide and maintain safe systems of work,
- monitor the health and safety of workers and the conditions at the workplace to ensure that work related illnesses and injuries are prevented, and
- provide appropriate information, instruction, training or supervision to the worker and other people at the workplace to allow work to be carried out safely.

Officers, such as company directors, must exercise due diligence to ensure the business or undertaking complies with the WHS Act and WHS Regulation.

This includes taking reasonable steps to ensure the business or undertaking has and uses appropriate resources and processes to eliminate or minimise risks associated with workplace bullying.

Workers also have a duty to:

- take reasonable care for their own health and safety,
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons,
- comply, so far as is reasonably practicable, with any reasonable instruction given by the person conducting a business or undertaking, and
- co-operate with any reasonable policies and procedures of the person conducting the business or undertaking, such as a workplace bullying policy.

A similar duty to that of a worker is placed on other people at the workplace, for example, visitors and clients.

### **What is workplace bullying?**

For the purpose of its role as the regulator of the work health and safety laws in New South Wales, WorkCover defines workplace bullying as 'repeated, unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety'.

This definition has been adopted by Safe Work Australia in its draft Code of Practice and in the recent anti-bullying amendments to the Commonwealth's Fair Work Act.



The draft Code of Practice recognises that bullying can be downwards from managers to workers, sideways between workers and upwards from workers to supervisors or managers.

### **What is not workplace bullying?**

Safe Work Australia advises that reasonable management actions such as those listed below:

- setting reasonable performance goals, standards and deadlines,
- allocating work,
- rostering and allocating reasonable working hours,
- transferring a worker for operational reasons,
- failing to promote someone after a proper, documented selection process,
- informing a worker that their performance is unsatisfactory, after following established performance management guidelines,
- informing a worker, objectively and confidentially, that their behaviour is inappropriate, and
- a restructure,

are not considered to be workplace bullying.

Discrimination and harassment are dealt with separately under anti-discrimination, industrial and human rights laws. The WHS Act includes specific protections against discriminatory conduct for persons raising health and safety concerns or performing legitimate safety-related functions.

A worker can be bullied, harassed and discriminated against at the same time.

Violence usually involves physical assault or the threat of physical assault. Bullying and violence can both result from conflict and can occur together. However, bullying does not always result in violence.

## **6. How WorkCover manages requests to resolve bullying issues**

WorkCover, in its role as Workplace Health and Safety regulator, responds to bullying issues in workplaces across New South Wales.

The steps for resolution of health and safety issues in NSW workplaces are set out in sections 80-82 of the WHS Act. The parties who may be involved in a matter include: a person conducting a business or undertaking, worker/s, worker/s representatives, HSRs. The resolution steps are:

1. Parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is not a procedure, the default procedure prescribed in clause 23 of the WHS Regulation,
2. The default procedure includes informing each other party of the issue (nature and scope) to be resolved; meeting or communicating with each other to attempt to resolve the issue; having regard to all relevant matters; setting out resolution in a written agreement in a manner all parties are satisfied with; and providing copies of the written agreement to each party,
3. If the issue has not been resolved after reasonable efforts, a party to the issue may ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue, and
4. On attending a workplace the inspector may exercise any of the inspector's compliance powers.

If bullying has been reported at work and has not been resolved, or the PCBU has not acted to resolve it, or the Health and Safety Representative has been unable to resolve the matter, the bullying issue can be escalated to WorkCover as the regulator.

When a customer contacts WorkCover about workplace bullying, the responding employee provides the customer with a bullying information kit, which includes frequently asked questions, guidance and a complaint form. The information sets out information about bullying, what WorkCover can do to assist and how to make a complaint.

### **Enforcement and compliance**

To allow the benefits of harmonised work health and safety laws to be fully realised, safety regulators recognised the need for the laws to be complemented by a nationally consistent approach to compliance and enforcement.

The *National Enforcement and Compliance Policy* sets out the principles that underpin the approach regulators will take to monitoring and enforcing compliance with the work health and safety legislation. WorkCover has adopted the National Enforcement and Compliance Policy into its Compliance Policy and Prosecution Guidelines 2012.

### **Outcomes-focused interactions**

A focus on outcomes gives primacy, not simply on compliance with rules, but on achieving duty-holder capability to continually improve health and safety and injury management.

Primary responsibility for achieving work health and safety, and developing effective systems and processes that enable work to be healthy and safe and return injured workers to work, lie with the business.

Where businesses knowingly or recklessly fail in their responsibilities, Workcover will take appropriate enforcement action to protect workers and clearly send the message that the community expects workplaces to be healthy and safe.

When interacting with WorkCover, the community and duty holders can expect:

- information about their rights and obligations,
- support and assistance to build capability to managing safety obligations,
- to be treated fairly and that WorkCover officials will act with integrity and professionalism,
- that WorkCover will apply a consistent set of criteria in determining what action to take in the public interest, and
- that decisions are able to be reviewed internally, and in some cases externally by relevant bodies.

### **Customer-focused regulatory services**

WorkCover interacts with the community through many channels, which may include:

- conducting advisory visits to workplaces,
- hosting workshops and webinars,
- promoting work health and safety at seminars and conferences,
- publishing guidance, factsheets and other written material,
- promoting work health and safety videos on YouTube,
- designing and implementing targeted injury and illness prevention programs,

- conducting workplace inspections and audits,
- resolving work health and safety disputes,
- responding to requests for information through telephone and digital services,
- issuing licenses, permits and other authorisations,
- responding to serious incident notifications and hazardous work notifications,
- conducting risk and incident investigations and taking court action where necessary,
- negotiating enforceable undertakings,
- providing testing services,
- forming partnerships and alliances, and
- providing sponsorships, financial rebates and other incentives.

WorkCover utilises a range of channels and actions to achieve compliance and good health and safety outcomes.