

**INQUIRY INTO REVIEW OF THE INQUIRY INTO
ALLEGATIONS OF BULLYING IN WORKCOVER NSW**

Organisation: Maurice Blackburn Lawyers

Date received: 16/10/2014

16 October 2014

Attention: Rev. The Hon. Fred Nile MLC
Committee Chair
General Purpose Standing Committee No. 1
Parliament House, Macquarie Street
SYDNEY NSW 2000

By Email: gpscno1@parliament.nsw.gov.au

Dear Sir

Review of the inquiry into allegations of bullying in WorkCover NSW

1. We refer to your letter, dated 25 September 2014, inviting Maurice Blackburn Lawyers to make a submission to the Committee on this matter. Thank you for the opportunity to make this submission.
2. The report of the Committee's inquiry into allegations of bullying in WorkCover NSW (**Report**) *inter alia*:
 - (a) identifies the prevalence of bullying in WorkCover NSW;
 - (b) recognises the gaps in protections against bullying for employees in New South Wales; and
 - (c) recommends that 'the Parliament of New South Wales enact laws which protect all workers in the state, including injured workers, from workplace bullying, and that such laws be based on the National Occupational Health and Safety Commission's Draft National Code of Practice.'
3. Despite the above, the Parliament of New South Wales is yet to pass legislation that provides protection against bullying for employees in New South Wales including, the victims of bullying in WorkCover NSW.

Enact anti-bullying legislation in New South Wales

4. It is our submission that the Parliament of New South Wales should action recommendation 11 of the Report immediately by enacting anti-bullying legislation that protects all workers in New South Wales from bullying in the workplace. In support of this submission, we rely on but do not repeat the matters set out in our submissions to the Committee, dated 23 August 2014.

The content of anti-bullying legislation in New South Wales

5. It is appropriate for legislation that the Parliament of New South Wales enacts to be similar to the anti-bullying provisions in the Fair Work Act, and we recommend that any such legislation contain a definition of 'bullying' and 'worker' that is similar to that in the Fair Work Act.

Remedies and access

6. It is necessary for the legislation that the Parliament of New South Wales enacts to include preventative and reactive remedies.
7. The anti-bullying provisions in the Fair Work Act do not allow the making of an order requiring payment of compensation; rather, the only available remedy is an order that the bullying stops.
8. Workplace bullying often has the effect of causing severe damage to a worker's health and wellbeing, and to the functioning of an employment relationship. As such, in certain circumstances preventative measures can be an inadequate mechanism to remedy the damage caused by workplace bullying.
9. Further, by limiting the available remedies to preventative remedies, the Fair Work anti-bullying provisions preclude workers who have suffered from workplace bullying, but are no longer employed by the employer, from accessing the jurisdiction.
10. It is our recommendation that the:
 - (a) legislation, in addition to permitting the making of orders that the bullying stops, include the awarding of compensation as a remedy in appropriate circumstances;
 - (b) the amount of compensation be unlimited, and include an ability to recover compensation for economic loss, and pain and suffering; and
 - (c) legislation apply to workers who have ceased to be employed.

Considerations when making of orders

11. Often, it is difficult for victims of bullying to access internal complaint mechanisms. This is particularly so where the bully is the victim's manager or a senior manager, or where there is no dedicated HR function within the company.
12. The anti-bullying provisions in the Fair Work Act enable the Fair Work Commission to consider whether a bullying complaint has been made internally when making orders.
13. Given the practical difficulties that victims of bullying can face in raising an internal bullying complaint, it is our recommendation that such considerations not feature in any anti-bullying legislation that the Parliament of New South Wales seeks to enact.
14. Thank you again for the opportunity to make this submission. We would be more than happy to speak to the submission and address any questions from the Committee.

Yours faithfully

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