

Submission  
No 15

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

**Name:** Mr Colin Fraser  
**Date received:** 24/07/2013

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Partially Confidential

## Introductory Note

The author of this submission is Principal Inspector Colin Fraser who has served on WorkCover's Bullying Working Party.

- Part One makes a number of general observations and suggests remedies.
- Part Two outlines the personal experiences of Fraser in order to illustrate the general points of part one. It refers to bullying by managers.

## Summary of Part One

Internally bullying needs to be brought under control by changes to recruitment of managers, reduction of casual staff, restoration of a confidential means of reporting and provision of Health and Safety Representative access to an independent regulatory authority.

There needs to be regulatory change to require risk identification, assessment and control of risks of psychological injury. This should apply to WorkCover as well as businesses generally. Annual staff climate surveys could be included in risk control plans. The regulator could if necessary issue notices for businesses to conduct their own investigations and implement risk controls for the risks that they had identified.

## Summary of Part Two

Inspector Fraser had without proper explanation been removed from investigations of both the RTA and the South Eastern Sydney Illawarra Area Health Service after covert dealings between WorkCover managers and the managers of the RTA and SESIAHS. Most other inspectors dealing with government departments have also had their work undermined without senior managers actions being recorded.

Fraser repeatedly raised this issue with senior managers at WorkCover's Joint Consultative Committee. There were two attempts to have him investigated and disciplined on trumped up charges. Even after Fraser was found not to have breached any policies or procedures, Alpha, a senior manager, decided to put Fraser on a Performance Improvement Plan. Fraser raised the issue at the NSW Parliamentary Inquiry into Workers Compensation. Following this, a clique of managers attempted to restructure him out of his job under the guise of government cut backs. Fraser believes that his victimization by the dishonest extension of the job cuts and the way they were achieved is a breach of parliamentary privilege. These managers try to intimidate anyone who wishes to tell the parliament the truth. There was no truth to the claim that Wollongong needed to make 7 district inspectors redundant because there was insufficient work for them. No truth to the proposal that Wollongong needed only four district inspectors, the same as each of the Nowra and the Albury district offices. Statistics were manipulated and under reported. The selection process for the remaining Wollongong positions was blatantly unfair. A manager revealed before the applications and interviews that it was known who would be successful. A senior inspector who had had hundreds of sick days with no prospect of recovery, was given a job he did not want, in preference to Inspector Fraser who was on a higher grade. Fraser believes that the CEO should discipline the managers responsible.

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# Part One

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## Why there is Bullying?

In WorkCover, bullying is a means by which some cliques of managers defend their record of self interested behavior and poor performance from those who expect honesty and accountability for serving the public interest. In the Work Health and Safety Division (WHSD) this self interest is seen in four broadly political

forms:

- senior managers practice favouritism in recruitment, surrounding themselves with followers rather than leaders. Many of these favourites appointed to be leaders lack the vision, knowhow and commitment to lead the business to really meaningful results. This is why favouritism leads to the underperformance that the so called leaders cover up with so much busy work.
- senior managers drive staff to generate statistics and close files regardless of whether WHS issues are sustainably resolved.
- the "leaders" sponsor the concoction of poor quality, projects to satisfy each political imperative with little regard to whether within constraints of the project methods and timeframes it is possible to deliver lasting benefits for the public.
- inspectors are under pressure to avoid upsetting anyone with a capacity to complain, pressure not to write notices, pressure to pretend that there is insufficient evidence, pressure to unquestioningly accept unrecorded management interventions and backroom dealings. Serving the public interest by achieving WHS compliance is less valued than creating the appearance of having done so. Those who ask for and practice honesty and accountability on this issue will be bullied.

## How is WorkCover an Institutional Bully?

Senior managers in the WHSD with many years of service have had time to build up their management teams to be compliant with their personal preferences and management style. Despite changes to the questions and definitions of management, the results of annual and ad hoc surveys of WorkCover's staff have consistently revealed a lack of trust in senior management, human resources and the recruitment system. The bullying takes an institutional form when it is done by selectively applying the many procedures that sometimes seem designed to catch people out. For example, the current Code of Conduct attempts to diminish the rights of employees to retain their individuality and private lives. There is a growing number of cases where disciplinary and investigation procedures are misused against individuals. The Wayne Butler case is not a unique case or even an isolated case.

On a longer term basis the senior management cliques maintain their tenure by the endless series of new projects and restructures in the WHSD that are poorly thought out and implemented. There is no serious attempt to evaluate these projects or restructures. Management use change to create an illusion of progress. Contrary to government policy, senior managers have found it easier to use the downsizing and restructuring of recent years as opportunities to target and displace individuals.

## Mixed Success as a Regulator

In recent years WorkCover has improved its capacity to provide initial advice about what compliance looks like on a broad range of issues. There are a lot of good publications and slick power point presentations. We are very good at explaining the law. However, WorkCover is not sufficiently clear and strong when there is a difficult problem that needs resolution. WorkCover managers tend to expect inspectors to sit on the fence when confronted with hard practical questions. Examples might be, "Should I have two means of attachment for tree climbing?", "Are the electronic controls on my self made recycling machine an acceptable means of isolation?" or "Can you write a prohibition notice on my supervisor yelling at me?" Unless there is a fatality, WorkCover managers would much prefer to protect themselves from complaints, than to protect the public. This is the reason that policy statements and publications usually avoid hard practical questions. Pressure is applied to inspectors who do not get the hint. They are taken off cases, sometimes without explanation. If the

inspector asks why, they are targeted with a broad spectrum of bullying tactics. They are overlooked when lodging expressions of interest for projects, training and higher duties. Their applications for leave and promotion assessment are often delayed. They are secretly undermined with employers. They are subjected to full scale investigation by highly paid contractors in relation to minor trumped up charges while everyone knows that the obvious misconduct of others is ignored for years on end.

## How the Regulator can Improve – Internally

WorkCover cannot manage Work Health and Safety unless it cleans up its own backyard.

- The methods of recruiting senior managers should be reviewed to ensure selection on merit.
- The number of temporary casual staff should be reduced so that staff will not be so accepting of bullying and misconduct.
- WorkCover follow government policy by not using restructuring as a means of targeting individuals.
- WorkCover should follow government policy of assisting the redeployment of excess employees by identifying internal vacancies and allowing excess employees to apply.
- There should be a confidential means for staff to report risks to the psychological health of themselves or others in WorkCover. The extent to which this information is passed on to other parties should be subject to the agreement of the reporter.
- WorkCover's own acts of non compliance motivate it to weaken its compliance policy and activities both the internally and externally. This conflict of interest should be overcome by appropriate enabling legislation to establish a framework for WorkCover Health and Safety Representatives within WorkCover to refer serious instances of non-compliance with the WHS Act to external regulators for review and possible enforcement action. An independent Work Health Safety Investigator could triage allegations of bullying or other causes of psychological injury and investigate or otherwise deal with these allegations as deemed appropriate.



The internal compliance function could work as follows:

- NSW Health and Safety Representatives within WorkCover should be able to make a referral providing that WorkCover NSW has first had sufficient opportunity to address the issue.
- The independent Work Health Safety Investigator would also respond to any appeals by WorkCover NSW against provisional improvement notices that may be issued by the Health and Safety Representatives. The independent Work Health Safety investigator could at his or her discretion provide advice, issue improvement notices or negotiate enforceable undertakings with WorkCover NSW.
- The independent Work Health Safety Investigator could be tasked with responding to all other complaints and incidents brought to the investigators attention by WorkCover NSW Health and Safety Representatives.
- The Independent Work Health Safety Investigator would make recommendations to his own interstate regulator who may in turn initiate legal proceedings including court approval of enforceable undertakings. The Independent Work Health Safety Investigator may choose not to issue improvement notices or recommend legal proceedings until the WorkCover NSW CEO has had an opportunity to peruse and respond to the report of the Independent Work Health Safety Investigator. At the end of each investigation the Independent Work Health and Safety Investigator would provide a written report to the CEO of the Interstate WHS Regulator, the CEO of WorkCover NSW, and the WorkCover NSW HSR that instigated the request for assistance.

The NSW Government could establish the framework for independent investigators of WorkCover NSW by contracting an interstate Work Health and Safety Regulator to provide suitably qualified and resourced independent investigators. These independent Work Health Safety Investigators could work in accordance with the usual protocols that apply to WorkCover NSW Inspectors. Investigators could be granted inspectors powers under the WHS Act in force. These investigators could continue to be employed, remunerated and supervised by the interstate Work Health Safety regulator. Legislation, as is appropriate, could be introduced to enshrine this independence to receive and consider requests for assistance by WorkCover NSW Health and Safety Representatives

## How the Law Should Change

The regulator can improve its external performance by recommitment to its mission. This will be brought about by the changes recommended above that will help make it an exemplar organisation. After that WorkCover needs revised laws and revised use of compliance tools.

The WHS Act should not be changed to directly refer to bullying. Bullying should not be defined in the WHS Act. To do so is to risk narrowing the scope of risks that duty holders are required to control. Those who want to do nothing to control risks of psychological injury could argue that the alleged harmful behaviour is not bullying. The Act currently requires the control of all work related risks to a worker's health and safety however these arise and regardless of whether the behaviours appear to be bullying or otherwise psychologically injurious.

- The WHS Act may need to be amended to require risk assessments for some matters. These matters could include psychological injury. Workplace safety regulations could explain the means by which risk factors for psychological injury could be systematically identified and assessed using WorkCover Codes and guidance material. A risk identification and assessment tool could include matters such as consideration of position descriptions, standard operating procedures, differing understandings of job/ task requirements and priorities, use of email and other facilities provided by the employer, sharing of information to those with a need to know, and procedures for meetings and decision making. Large businesses should be required to conduct annual staff climate surveys as both a means of risk identification and control.
- Confidential reporting. The WHS Regulations should be amended to require that workers must be provided the option of a confidential means of reporting incidents of bullying and other risks of psychological injury. This will ensure that workers are willing to report. Small businesses could use the risk manager of their workers compensation insurer. Large businesses should use a psychological counselling service to receive reports. The person conducting the business or undertaking should only receive information from such confidential reports as is agreed by the reporter. The information from the

reports, an annual workplace survey and other risk identification tools should be used to develop a risk control plan.

- **Risk Control Plans.** All businesses must be required to have a documented plan to control significant identified risks where it is practicable to do so. They must be able to demonstrate implementation of the risk control plan by a record of actions taken where necessary in regard to individuals, resourcing, training, supervision, communication, the working environment and systems of work. Workers must see management commitment in action before they will confidently report and fully support the risk control plan. Mediation may sometimes be an appropriate remedial action for relatively equal and willing individuals. It must not be accepted as an adequate risk control or remedy on its own if risk factors not including the mediating parties are also at play. The PCBU must also identify, assess and control so far as reasonably practicable those non personal risk factors that are able to be controlled. A required risk control must be that each business must have a statement of corporate values and a statement of respectful behaviours that persons must demonstrate. These should be attached to each position description and included in performance appraisals.

## The Compliance Approach of WorkCover

Bullying and related stressors such as fatigue, occupational violence and work overload should be treated with the same range of compliance and enforcement activities that are applied to other breaches of health and safety law. This includes the provision of information, education, improvement notices and prohibition notices and prosecution for breaching health and safety duties. In response to particular incidents, as well as generally, WorkCover inspectors must have the explicit power to issue improvement notices to require investigations to identify the possible work related risk factors and causes of psychological injury.

**Inspector powers.** Inspectors must have the explicit power to issue improvement notices to require documentation of the possible options for control of the risks of work related psychological injury. Inspectors should have the power to issue improvement notices requiring the PCBU to implement some risk controls as may be prescribed by the WHS regulation. In addition, if judged necessary in the opinion of the inspector, the PCBU could be required to update the psychological injury risk management plan in accordance with the findings of the most recent psychological injury risk investigation, risk identification audit or assessment. If

judged necessary in the opinion of the inspector, an improvement notice could require the PCBU to implement recommendation of the PCBU's own psychological injury risk management plan.

The reason for these explicit powers is that the regulator does not have the resources to investigate the majority of bullying complaints. It would take fewer resources for the PCBU to investigate because the PCBU already know their own business far better than the regulator. This would be less disruptive for the PCBU.

**Complaint handling by the regulator.** Unless the matter is serious, urgent or complicated with language difficulties, the regulator should generally handle complaints and incident reports as follows:

- On receipt of a verbal complaint or incident report the complainant would be sent an information pack and told that the regulator will not usually take action unless the complaint is clearly explained in writing.
- Written complaints and incident reports will be triaged by the regulator before allocation to an inspector. The inspector would do some an interim fact finding investigation without taking formal statements but possibly including some review of documents. The purpose of the interim investigation would be to form a reasonable opinion as to whether the PCBU was appropriately managing the risks both specifically and generally.
- If the inspector formed an opinion that there were risk exposures that were not being controlled so far as reasonably practicable, the inspector could issue notices as outlined above.
- The inspectors usual role would be to oversee compliance. This would mean ensuring that the PCBU has implemented effective methods of risk identification, assessment and control.
- The PCBU will generally be expected to retain responsibility and will be offered advice, assistance and firm instruction as needed. The regulator would only consider actively conducting its own comprehensive investigation if the PCBU had had sufficient opportunity to control a risk and yet there was a serious breach of the WHS Act.
  - Prosecutions should be considered for non compliance with notices or failure to take action so far as reasonably practicable to control behaviour that is bullying or is otherwise a serious risk to the psychological health of persons at work.

# Part Two

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**Introductory Note:** In this part persons will be referred to by a code letter.

As a PSA delegate, Principal Inspector Fraser been involved in managing responses to the many of the forms of bullying described in part one of this submission. He has done this for others at his workplace, for himself and also at an organizational level.

## Summary of Part Two

Fraser had without proper explanation been removed from investigations of both the RTA and the South Eastern Sydney Illawarra Area Health Service after covert dealings between WorkCover managers and the managers of the RTA and SESIAHS. Most other inspectors dealing with government departments have also had their work undermined without management actions being recorded.

Fraser repeatedly raised this issue with managers at WorkCover's Joint Consultative Committee. There were two attempts to have him investigated and disciplined on trumped up charges. Even after Fraser was found not to have breached any policies or procedures, Alpha a senior manager, decided to put Fraser on a Performance Improvement Plan. Fraser again raised the issue at the NSW Parliamentary Enquiry into Workers Compensation. Following this, a clique of managers attempted to restructure him out of his job under the guise of government cut backs. Fraser believes that his victimization by the dishonest extent of the job cuts and the way they were achieved, is a breach of parliamentary privilege. These managers try to intimidate anyone who wishes to tell the parliament the truth. There was no truth to the claim that Wollongong needed to make 7 of 11 Wollongong district inspectors redundant because there was insufficient work for them. No truth to the Wollongong needing only four district inspectors, the same as each of the Nowra and the Albury district offices. Statistics were manipulated and under reported. The selection process for the remaining Wollongong positions was blatantly unfair. A manager revealed before the applications and interviews and that it was known who would be successful. A senior inspector with no prospect of recovery, who had had

hundreds of sick days, was given a job [redacted] did not want, in preference to Inspector Fraser who was on a higher grade.

## About the Author

Fraser has been an Inspector with WorkCover NSW since 1994. He believes that the perpetrators of the bullying were a number of senior managers above the level of his team coordinators. The alleged bullies were [redacted] E, [redacted] G, [redacted] B, [redacted] D, [redacted] Alpha. Other persons involved to an unknown extent included were [redacted] F and [redacted] C. Because all of these persons were WorkCover line managers with involvement in decisions that adversely affected Fraser, Fraser believes that he has been bullied by WorkCover which is therefore an institutional bully. During his period of employment Fraser maintained good relations with [redacted] L and M.

[redacted] Fraser's supervisors had no issues with his work performance. In 2013 Fraser was promoted to Principal Inspector Level 2.

## Fraser's Defense of Staff

1. At the local workplace level Fraser supported victims of bullying. In one case concerning [redacted] V, he requested the [redacted] E to conduct a bullying risk assessment as required by the WorkCover procedure. [redacted] When this was not done, Fraser complained to the now former CEO Lisa Hunt [redacted]. Fraser requested that the CEO assist the resolution of V's complaint of bullying that was being managed by [redacted] B. Fraser assisted V to explain [redacted] case to [redacted] B about what action should be taken by B in accordance with the Procedure for Managing Reports of Workplace Bullying. [redacted] Lisa Hunt did her best to clean up bullying.
2. In 2012 Principal Inspector Fraser, lodged an email complaint with [redacted] G. The email from Fraser had as attachments insulting and humiliating emails sent to the inspectors by [redacted] J and some clerical staff [redacted] alleged were encouraged to be rude, aggressive and bullying toward the inspectors of the Wollongong district office. G met with the inspectors [redacted] to discuss the matter. [redacted] then proceeded to have a meeting that also included clerical staff. In this meeting a clerical officer

spoke in a confrontational manner to Fraser. G called one on one meetings with staff, that did not appear to change their behavior. G did not agree to the action requested by Fraser's in his initial complaint email. It was only after this was forwarded to C that the clerical staff stopped their aggressive behavior and emails. J returned to substantive position at another office because term of acting in Wollongong had expired. after months of waiting Fraser found that his extended leave applications lodged 10 months early were rejected by J on the excuse that J would not be acting supervisor when the leave was to be taken. By that logic Fraser might have to wait to the week beforehand only to be rejected because there was not time to make staff arrangements.

3. Fraser as the PSA delegate complained on behalf of members about the foul language of G. Staff including women reported to Fraser that they were offended by foul language and sexually explicit comments. These were not isolated instances. G would often use unprofessional language as part of usual friendly joking demeanor. Fraser complained about this language to D who counseled the G to mind language. G sent an apologetic email to staff that also appeared to issue a threatening warning about their own conduct. This is the same manager who was soon after had acting position confirmed as the permanent. The selection panel that decided the initial Wollongong redundancies included this manager.

## Managing Bullying at the Organizational Level

From early 2007 in his role as a PSA delegate participating in WorkCover,s approved consultation forum the Joint Consultative Committee, Principal Inspector Fraser, had been involved in urging WorkCover towards the establishment of a subcommittee called the Bullying Working Party. This was initially resisted, but was accepted in December 2007 after the PSA bullying survey results were published. In 2009 and 2010 the issue gained prominence in the media and in Parliament. Fraser became the major contributor to WorkCover's internal procedures and training relating to bullying that he titled Working With Respect. He devised the concept of the WorkCover Bullying Response Service, that originally offered a means of confidential reporting, support, dispute resolution and risk identification.

Fraser believes that WorkCover policies on bullying have been allowed to wither as staff perceive that management have usually refused to take effective action. In early 2013 Fraser had been involved in advising the PSA and Inspectors Vocational Group how to take action to get WorkCover to fully implement its procedures aimed at preventing and dealing with Bullying.

## Victimization of Fraser

In 2006 B asked CM to investigate a case of attempted bribery that Fraser had reported, even though Fraser told of CM's serious conflict of interest with and even though CM had no legal power to do such an investigation.

### Intervention Without Proper Record Keeping, 2007- 2009

The issue began in 2007 when Fraser was effectively removed from dealing with a safety issue at the RTA.

Despite assurances, the issues were not dealt with and the intervening managers did not record their actions on the file. This is required by the State Records Act. The interventions were by B and E. From that time the Fraser raised the issue of unrecorded interventions at the regular meetings that PSA delegates have with senior managers. At those Joint Consultative Committee meetings he also highlighted the risk of corruption. The cases Fraser brought to the attention of management included matters with SESIAHS.

Fraser attempted to deal with this interference by seeking to discover what had occurred and asking for it to be recorded. He raised it as a PSA delegate in the expectation that accountability and transparency would protect the public interest and the health, safety, respect and reputation of inspectors.

2009 Fraser attended Joint Consultative Committee meeting in company with PSA Industrial Officer. B and Alpha were present with other high ranking managers. handed Alpha a letter on behalf of the General Secretary of the PSA. The letter summarized WorkCover's failure to effectively deal with the record keeping issue. To support the letter Fraser handed over a folder with some of the WSMS records mentioned above. Alpha and B were exposed as managers who had not recorded their actions on the files.



Fraser raised the issue of record keeping in order to safeguard the psychological health of inspectors who may be dissatisfied with their work being openly or secretly undermined after they had undertaken to diligently seek optimal OHS outcomes. He believed that management interventions should be recorded so that inspectors would not have to face criticism from complainants who may be unhappy with the lack of action on their complaints.

From November 2009 B in concert with E and F then sought to build a misconduct case against Fraser. were consulted. The email traffic between them revealed the following. A message from F to B was that had compiled a report for E and G, Fraser's. E was instructed to write a statement. G was told to maintain confidentiality and have M closely review all of Fraser's work. B's email revealed the existence of a secret directive by E that Fraser was not to handle complaints from union officials. Fraser knew nothing of this secret. M revealed to Fraser that in 2010 he had been instructed to performance manage Fraser. M said that strongly resisted this instruction because the performance of Fraser was above average.

Other covert management actions continued with Fraser's prosecution matters being discontinued without him being consulted.

Fraser contends that he was victimized for asking managers to practice the appropriate standards of transparency and accountability that the public deserve.

### **Covert Intervention and Bullying, 2011 - 2013**

On 10 October 2011 Fraser was allocated complaint that like earlier complaints contained allegations of bullying at the area health service SESIAHS. Fraser served notices that had been approved by J. When Fraser went to follow up one of these notices on 13 October a health service manager revealed that WorkCover managers had told him he did not need to comply. Fraser felt that the health service would have assumed that WorkCover would have told Fraser of this development and that he Fraser might have appeared to be unprofessional by asking for compliance.

It was not until 14 October that Fraser was told of the intervention by E and G. Fraser was told that the health service had asked E for Fraser to be removed from the case.

G had withdrawn one of the notices at the request of the health service. Fraser later sent G a copy of the WorkCover procedure that required that this decision be made by WorkCover's Governance and Appeals Unit. On 14 October G refused Fraser's request that follow WorkCover's Compliments and Complaints procedure that requires external complainants to put their complaint in writing.

G wanted to deal with the matter informally. Fraser was confident he had nothing to hide and wanted everything on the record. On 25 October a health service manager refused to assist Fraser to meet a witness. On 3 November 2011 Fraser was removed from the case and a formal investigation of Fraser's conduct was launched by JD at the request of Alpha.

Private Investigator O was contracted to investigate the health service complaint against Fraser. Fraser provided a written and a verbal statement to O.

### Alpha's Bullying Response

The investigation was completed on 13 December 2011, but contrary to procedure Fraser was told nothing about the outcome until he wrote to Alpha in May 2012. **Alpha's reply was a clear act of bullying that like the Wayne Butler case showed a refusal to respond to the facts in a balanced way.**

Attached to Alpha's reply was the report of private investigator O. O concluded that "The investigation and analysis of the evidence obtained, has not identified any employee of WC (WorkCover) or individual that may have breached any policies or Code of Conduct of the WC (WorkCover)

In other words, Fraser was innocent but this did not stop Alpha stating in cover letter of that Fraser would be put on a Performance Improvement Plan. (This is a remedial step that can be taken prior to disciplinary action if the requirements of the plan have not been met)

### Revelations of BIAS and Prior Covert Activity

Even the unbalanced investigation found Fraser innocent. Investigator O ignored the failure of G to follow procedures. O did not interview the only two Workcover eye witnesses to Fraser's conduct. Instead interviewed E who by previous dealings with the health service had caused them to believe that they were promised that they would not have to deal with Fraser again after their earlier complaint of 2009 in connection with case .

Since that time the Fraser was only allocated a small number of jobs at [redacted] when no other inspectors were available.) WorkCover management never told Fraser of secret undertakings to businesses that had the effect of encouraging the businesses to attempt to derail Fraser's investigations.

O, the investigator of the SESIAHS complaint against Fraser, revealed that E had said that [redacted] had had problems with the Fraser's performance since 2009. In stark contrast to this, the file [redacted] records that at a meeting on 19 February 2009 after Fraser had been removed from the case, E declined to say whether he thought Fraser had done anything wrong. On 1 April 2009 E once more failed to explain what had happened as did [redacted] B by email on 16 April 2009.

### **Lack of Due Process**

The delay in providing the investigation outcome gave Fraser six months of unnecessary worry. Fraser was not being given a draft copy of the report and findings before these were finalized. In that sense Alpha had not followed the disciplinary procedures of the personnel handbook for what was a comprehensive investigation dressed up as a preliminary investigation.

WorkCover spends a lot of money on private investigators, who consequently have a vested interest in securing repeat business from the Employment Relations Team.

### **NSW Parliament Joint Select Committee on the NSW Workers Compensation Scheme**

Fraser raised the issue of unrecorded management interventions as part of his evidence before the NSW Parliament on 28 May 2012. Fraser personally appeared before a Legislative Council Committee of Inquiry into the NSW Workers Compensation Scheme to explain impediments and opportunities that impact on the cost of the scheme. He explained how unrecorded interventions prevent inspectors reducing injury rates. His evidence can be read as an uncorrected transcript on the website of the NSW Parliament. Also on the website is his written submission [redacted]. Its contents make it clear that it was written with the operational knowledge of an inspector.

## Joint Select Committee on the NSW Workers Compensation Scheme

The verbal evidence is on the following link:

[http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/3669d4dd25549a10ca257a0d001e86ba/\\$FILE/120528%20Uncorrected%20transcript\\_2.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/3669d4dd25549a10ca257a0d001e86ba/$FILE/120528%20Uncorrected%20transcript_2.pdf)

### Unrecorded Intervention Quite Common

Fraser's experience of inadequately notified intervention in his work was a common complaint from most inspectors who dealt with government agencies. E was a frequent offender. As a result, members of E's team met to develop a communications protocol. Their actions led to the development of procedures for managers but these procedures were not effectively made available or implemented until 19 June 2013 when the draft procedure was published on the WorkCover intranet. The immediate impetus for that was that Fraser had raised the matter on 12 March 2013 when he attended a Joint Consultative Committee meeting with senior management. C agreed to the publication. This was more than 12 months after it had been agreed and more than 12 months after Fraser raised the issue at the parliamentary enquiry.

### 2013 Targeted Job Cuts

On 9 April 2013 Alpha told Wollongong Inspectors that 9 inspector positions needed to be cut at Wollongong because there was not enough work for them to do. ( 2 had already gone so 7 more were to be forced to leave) Fraser believes that the true motive for the depth of the cuts was payback for reports of bullying, management misconduct and unrecorded interference by managers in the compliance work of inspectors. Alpha refused to provide the statistical analysis on which he claimed the depth of the cuts was based. When all the circumstances are considered together with the unfair implementation of the cuts, the extent of the cuts appeared to be designed to target Fraser. In so doing it is bullying and also a breach of the protection offered to him under parliamentary privilege.

On 9 April 2013 there were 11 Wollongong district inspectors. In addition to that there were another 6 with a broader area of operation including accident investigation extending beyond Wollongong. 15 inspectors were required to contest 8 or possibly 9 positions if one of them was suitable to become a return to work inspector. 7 were set to become redundant. The proposed final outcome was that the whole inspectorate would remain at 315 positions as Alpha cut 9 Wollongong inspectors positions to create 9 externally advertised return to work inspectors jobs spread throughout NSW. With many other vacant positions around NSW there was no need to create the 9 Return To Work Inspector positions from deep job cuts in Wollongong alone. Alpha said that the displaced Wollongong Inspectors would not be permitted to apply for existing vacancies in the metropolitan area. They would only be able to apply for externally advertised positions including the 9 Return To Work Inspectors positions. This was contrary to the government's redeployment policy. The final outcome for Wollongong would be that there would only be 4 inspectors to do the Wollongong district work. This is the same as Nowra and the same as Albury that have a fraction of the workforce.

Alpha revealed that although some vacant positions would be deleted elsewhere, Wollongong would be the only place a group of inspectors would be retrenched without a change in their position descriptions. Alpha said that over the years inspectors had been recruited to do different things at different times. said that some of those who were recruited to do enforcement have not been able to adapt to WorkCover's new approach of providing advice and facilitating safety outcomes. provided no evidence that 9 enforcement dinosaurs were concentrated in Wollongong and existed nowhere else.

Alpha stated that was basing the staffing changes on a SafeWork Australia document titled Comparative Performance Matrix. The Matrix compares all the safety regulators of Australia and New Zealand. This document shows that WorkCover NSW has one inspector for every 10,000 workers, a figure that is similar to the other states.

Alpha claimed that statistical analysis showed that the Wollongong district office did not have enough work for its current team of inspectors. stated that the cut of nine Safety Inspector positions in Wollongong would be used to create nine Return To Work Inspector positions across NSW. Alpha did not reveal that in addition to the RTW inspectors had already commenced action to recruit new generalist Safety Inspectors. Alpha refused to reveal the details of statistical analysis to allay fears that work in development of training , serious accident investigation and the taking of military leave, sick leave and

, long service leave had not been taken into account. Wollongong inspectors had an older age profile and fear that they were victims of indirect age discrimination.

**Alphas claims that the cuts were based on statistics is simply untrue.**

Under the proposals Wollongong would have 4 district inspectors (not including a separate unit of 4 accident inspectors and two others servicing the South of NSW.) Albury and Nowra will continue to have 4 inspectors each, which is one more than country offices were ever intended to have. The over allocation of staff in Albury and Nowra are historical accidents that occurred under the former Labor government. Albury inherited an extra position as a way of dealing with mismanagement at another country office. Former Labor Minister John DellaBosca, accidentally promised a position in Nowra that has recently been converted to an inspectors position. This conversion to an inspector's position happened as part of a state wide arrangement where some redundant Business Advisory Officers became inspectors. Wollongong Inspectors believe that they have deliberately been denied work. G discouraged Wollongong inspectors doing residential construction work unless they made a high risk observation. The Nowra part of the team managed by J when doing construction site visits recorded a site visit for every contractor they would meet on a single construction site. Wollongong Inspectors believe productivity statistics were manipulated. They were a leading office in High Consequence Low Frequency project work. After the job cuts were announced J confirmed by email on 27 May 2013 that project work in which Wollongong had led the way had been under reported. On 28 June 2013 G sent an email about the leading performance and workload of the Wollongong team. This was just after the job cuts based on the myth of the lack of work. G gave one inspector an investigation of a fatality at a business that had closed down its work site and moved its head office interstate beyond NSW jurisdiction. This task was almost impossible from the start because the first responding inspectors notebook had been lost despite its custody being signed over to be given to G to pass on to the investigating inspector from Wollongong.

**Inequitable Treatment**

Business Advisory Officers were relatively well treated. Their restructuring process allowed 4 – 13 months depending on the path chosen from the announcement in early June 2012. All were offered a redundancy package. This package was still available to them even if they accepted the opportunity to be assessed for

suitability to enter the inspectors training program. Those that did not pass the assessment took their redundancy packages. Those that passed the assessment were given extensive retraining as inspectors. The inspectors were told that they could only get a redundancy package if they failed at interview to secure one of the few remaining positions. They were not offered the two day training for Return to Work Coordinators that together with their long standing experience of workers compensation compliance, could have equipped some of them them to take on the new role of assisting Return To Work.

## Dishonest Predetermined Selection Process

X told Fraser that that day D had said words to the effect that it was already known who would be selected at interview. X told Fraser that had recorded this in notebook. Y told Fraser that was also party to the same conversation with D. Fraser recorded these conversations in his notebook. Applications and interviews were not complete until 4 weeks later. On X gave Fraser contemporaneous notes of conversation with D.

With 7 jobs to be cut, 8 volunteered to take voluntary redundancy. Three of these volunteers were denied the voluntary redundancy. S, one of those three has serious depression and has had hundreds of days off work in the last 2.5 years.

Within the past five years 7 inspectors with substantive positions in Sydney were appointed to Wollongong. They were then permitted to rotate into the Wollongong District positions. This combined with the targeted redundancies ensured that these appointed inspectors displaced those more experienced inspectors who had previously won the positions by a competitive selection process.

## The Reluctance to Provide Redeployment

There are two policies of the Department of Premier and Cabinet that WorkCover has been tardy in following. These policies are "Managing Excess Employees" and Case Management and Redeployment Guidelines. On 9 April 2013 Alpha indicated that excess Wollongong inspectors would not be permitted to be redeployed into existing vacancies in Sydney even if they relocated their residence. On 3 May when pressed C agreed that this would be permitted. On 17 June when Fraser was declared unsuccessful at retaining his

Wollongong position he was told by [redacted] D and a redeployment case manager that they did not know of any vacancies. Fraser was told that the process was that he would be notified if any vacancies were to appear on the government website and he could ask for priority assessment. Fraser told the case manager that he knew of many vacant inspector positions for which action had already been taken to begin an external recruitment. The next day when the PSA raised the matter in the industrial commission WorkCover gave a commitment to allow redeployment. It was not until 4.57pm 20 June that Fraser was offered the opportunity to apply for a list of vacant inspector positions. He was only given until 24 June even though some of these were as far away as Dubbo and Narrabri.

### **The Relationship Between Earlier Victimization & Current Retrenchments**

○ On first glance it does not seem plausible to interpret the retrenchments of a group with the targeting of an individual. WorkCover is not your average government department as the Price Waterhouse Coopers Enquiry into bullying revealed. Some WorkCover managers had other reasons why they wanted to displace inspectors. A small number of Wollongong inspectors were thought to have poor health, poor performance and lack of willingness to adapt to change. The government policy of finding costs savings provided the opportunity to more easily dispose of these people than more time consuming established processes. With statistical information hidden and distorted there was the perfect cover for victimizing Inspector Fraser who had spoken to the parliamentary enquiry about ways of reducing the costs of the workers compensation scheme.

### **○ The Final Outcome Post Wayne Butler**

By 1 July 2013 six Wollongong inspectors had taken redundancy. These were all older inspectors who had originally won their positions by merit selection. Fraser was reinstated. Two others including [redacted] S were belatedly offered redundancy packages after their particular cases for compassionate consideration had once more been pressed by the PSA.



