

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

**Organisation:** Community & Public Sector Union Victorian Branch  
**Date received:** 23/08/2013

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## **NSW Legislative Council Inquiry into allegations of bullying in WorkCover NSW**

### **Submission by Community Public Sector Union - State Public Sector Federation – Victorian Branch (CPSU – SPSF Vic Branch)**

CPSU – SPSF Vic Branch wishes to make a submission to this inquiry in relation to our union having similar industrial coverage to the regulator of our state occupational health and safety legislation being WorkSafe Victoria; as the NSW Public Service Association (PSA) has industrial coverage within WorkCover NSW.

Within WorkSafe Victoria there has been a number of internal workplace bullying complaints against senior management and executives that has resulted in difficulties in relation to an agreed investigation process. The question that is asked is who oversees the Regulator in this case?

We had sought that our members would be able to exercise their legislative rights through the WorkSafe Victoria, Enterprise Bargaining Agreement, the Victorian OH&S Act 2004 and WorkSafe Victoria's internal policy and procedures.

WorkSafe Victoria has in some of these cases sought to use organisations such as KMPG to undertake their internal investigations. CPSU have found this process to be ineffective in relation to its transparency and lack of effective outcomes for our member's serious workplace bullying complaints.

As a result of these difficulties a number of ex-WorkSafe Victoria employees have had to take their cases through the Fair Work Commission (FWC) as part of an unfair dismissal process. Common law action has also been taken that has resulted in what we believe to be compensation in relation to workplace bullying situations that were settled on the basis of confidentiality.

Ex-WorkSafe Victoria employee Clarke Martin and middle manager was so frustrated and psychologically impacted by the lack of fair process or accountability by WorkSafe Victoria in relation to his personal bullying complaint and lack of regulatory oversight that he took his story to the Australian Broadcasting Corporations television program the Victorian 7.30 Report that was viewed on the 25/10/2012 and titled "WorkSafe is facing complaints of a bullying culture that the regulator denies, so what is happening at the workplace bullying watchdog organisation?" A copy of that transcript has been attached to this submission. It can also be viewed at [www.abc.net.au/7.30/content/2012/s3619167.htm](http://www.abc.net.au/7.30/content/2012/s3619167.htm)

As a result of these bullying complaints not being effectively or satisfactorily addressed by WorkSafe Victoria we have a perceived view by our members which includes the inspectorate, that there is a lack of effective and transparent processes within WorkSafe Victoria for our members to be given the same level of protection that WorkSafe Victoria as a regulator provides for all other state employees under the Victorian OH&S legislation.

This has led to the belief that there is a bullying culture at the management level at WorkSafe Victoria and that by seeking to resolve any serious complaints through the internal WorkSafe Victoria processes would inflict further psychological damage to the employee as well as result in further detriment to the employee.

Therefore this has led to a reluctance for our members to pursue this difficult internal WorkSafe Victoria process. Instead, they leave their employment as a method of removing themselves from a serious bullying situation.

A few years ago there were some discussions with the WorkSafe Victoria CEO and the CPSU Victorian Branch State Secretary as to the possibility of an arrangement with WorkCover NSW, for the ability of investigations into suspected breaches of OH&S legislation to be undertaken by an agreed senior investigator from that state regulator. Unfortunately to date no arrangements between the regulators have materialised.

Having this type of reciprocal arrangement would also be useful in relation on how the regulator WorkSafe Victoria would be able to ensure an impartial determination of a Provisional Improvement Notice (PIN) that may be issued against WorkSafe Victoria itself by a Health and Safety Representative (HSR) under the *OH&S Act 2004*.

As part of the Federal Governments Harmonisation of Australian OH&S legislation processes significant work has been done between regulators to harmonise the inspectorate operational processes across State and Territory governments. Therefore this does provide an opportunity for reciprocal inspectorate arrangements between States and Territories to be developed.

WorkSafe Victoria has in recent history had an agreement with the Commonwealth Government Comcare regulator where Victorian WorkSafe inspectors have been accredited to undertake Comcare OH&S investigations under the Commonwealth OH&S legislation.

Another important process for oversight of WorkSafe Victoria would be for CPSU SPSF Vic Branch to be able to take dispute matters in relation to workplace bullying situations to FWC.

The Federal Government has recently passed amendments to the Fair Work Act to allow for workplace bullying matters to be heard and for these matters to be given direction to assist in their resolution.

Most Victorian Public Sector workers will not have access to the FWC processes in relation to Workplace Bullying disputes because of the limitations placed by the Victorian Government on matters referred to the federal jurisdiction.

There is some uncertainty whether WorkSafe Victoria is a constitutional corporation and therefore would be subject to the Fair Work Act provisions in relation to Workplace Bullying matters.

It has also been CPSU SPSF Vic Branch experience with WorkSafe Victoria that some of our member's workplace bullying complaints has occurred within the human resources area and also

with senior management personnel. It has been our experience that because of this situation the human resources area is conflicted because they have in the past seen their role as protecting the organisation and generally supporting senior and line management.

Finally, whilst there will be a focus on individuals that may be responsible for workplace bullying it is important to ensure that the organisations responsibilities and "Duty of Care" is not overlooked. Employers have responsibilities in providing a healthy and safe workplace which includes being free of workplace bullying behaviour and harassment by their employees. The Employer must ensure changes that they make in a workplace that could facilitate bullying behaviour are also taken seriously by the organisation. This includes changes that could significantly increase workloads on employees which can significantly increase conflict and workplace bullying occurring in that workplace.

**Recommendations to address issues raised:**

CPSU SPSF Vic Branch believe that a number of recommendations as listed below could significantly improve workplace bullying resolution processes and accountability of State and Territory OH&S regulators.

1. That the State and Territory OH&S regulators develop processes that would allow for agreed panel of investigative inspectors to cross State and Territory borders to deal with serious workplace bullying investigation matters and also matters relating to Provisional Improvement Notices issued to that state or territory regulator.
2. The processes for the application of 1 above to be subject of agreement with the regulators industrial organisation in a Memorandum of Understanding attached to the regulators Enterprise Bargaining Agreement.
3. That FWC or a similar State Industrial tribunal can hear and determine dispute matters between the industrial parties in relation to workplace bullying matters.

Carl Marsich

CPSU OH&S Officer

22 August 2013

Weeknights on ABC1 and [ABC News 24](#)

## Workplace bullying watchdog faces accusations of its own

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Australian Broadcasting Corporation

Broadcast: 25/10/2012

**Reporter: Heather Ewart**

**Worksafe is facing complaints of a bullying culture that the regulator denies, so what is happening at the workplace bullying watchdog organisation?**

### Transcript

LEIGH SALES, PRESENTER: Complaints of workplace bullying are on the rise and regulators around the country are struggling to deal with the workload. Now in Victoria, the Government watchdog is itself accused of having a systemic culture of bullying. National affairs reporter Heather Ewart has the story.

HEATHER EWART, REPORTER: WorkSafe Victoria is the government watchdog over thousands of workplaces across the state. It's charged with overseeing workers' safety and that includes investigating complaints about bullying. Yet WorkSafe is being accused of a bullying culture within its own ranks and some are taking legal action against the regulator.

CLARKE MARTIN, FORMER MANAGER, WORKSAFE VICTORIA: There are pockets in WorkSafe that have got what you would describe as threatening, intimidating environments. And, yes, I have seen that and it is very, very disappointing.

JOSH BORNSTEIN, WORKPLACE LAWYER: I'm aware that there's a large number of very unhappy employees and former employees of WorkSafe who've alleged that there is a serious bullying problem within the organisation and it has been a serious problem for some time.

KAREN BATT, COMMUNITY AND PUBLIC SECTOR UNION: And if they don't feel secure in their own workplace and their own position then I think that their ability to do their job is seriously undermined.



HEATHER EWART: Clarke Martin is the latest victim of restructures at WorkSafe. He started at the regulator 12 years ago as an inspector and worked his way up to middle management. That's until he was made redundant last month, he claims in a climate of low morale and threatening behaviour by some of his superiors.

CLARKE MARTIN: The intimidation I felt was at first subtle, things like managers being moved without much discussion, senior managers starting to resign. Our direct manager we were just told has packed up and left the night before. These kind of things I'd never seen before.

HEATHER EWART: A few WorkSafe staff have even lodged bullying claims against their employer in the Federal Court and before the tribunal Fair Work Australia. In late May this year, a former senior WorkSafe officer settled her case with Fair Work out of court. The settlement was confidential. It was an unfair dismissal case defended by WorkSafe Victoria.

The commissioner referred to claims by the former WorkSafe officer at a preliminary hearing where she spoke of taking her bullying complaints to HR at WorkSafe. She said one HR manager, "... agreed that a systemic culture of bullying existed and something needed to be done." The complainant said she was "in fear of retribution" and was disgusted that she'd encountered such behaviour at WorkSafe. How could it be the regulator if it was not the exemplary employer?

There was no finding on these claims before the case settled. Lawyers representing the WorkSafe employees are bound by confidentiality agreements, but the firm Morris Blackburn, which represented one such case, says it can make this general observation:

JOSH BORNSTEIN: Employees generally have difficulties in pursuing bullying allegations because the legal system provides them with absolutely no practical assistance. Employees of WorkSafe are in even greater difficulty because who is going to investigate the occupational health and safety regulator? It can hardly investigate itself.

KAREN BATT: We believe there needs to be a proper review of what's occurring within WorkSafe, but we also think that some of the concerns the staff have about how certain senior managers behave just start being treated seriously.

HEATHER EWART: WorkSafe has declined an interview, but in a statement the regulator said that as with any large organisation, there would be some disgruntled employees in times of change. Overwhelmingly, WorkSafe was staffed with happy, productive employees. It refuted any suggestion it discouraged the reporting of bullying incidents and said it was committed to a safe and productive working environment.

Clarke Martin says he and many of his old colleagues don't see it that way.

CLARKE MARTIN: WorkSafe has to be the exemplar. We have to lead everyone in our practices. And it is just so disheartening to hear about, see management practices that aren't delivering the kind of exemplary behaviour that's needed.

HEATHER EWART: While WorkSafe says it's commissioned an independent inquiry into its internal complaints process, the union claims the system remains ad hoc and it's alarmed by the stories it's hearing from its WorkSafe members.

KAREN BATT: Morale is rock bottom. There's been recently an employer opinion survey that highlighted that morale within that organisation is almost collapsed.

HEATHER EWART: WorkSafe disputes this, but as the national focus on workplace safety and bullying intensifies, Clarke Martin argues the culture he experienced in some pockets at WorkSafe means staff are risk averse and less inclined to speak freely for fear of losing their jobs.

CLARKE MARTIN: We're WorkSafe Victoria. Anywhere should feel safe to speak up should be at WorkSafe

Victoria. I, like many other managers and many other people at WorkSafe, are disappointed that that's not the case. It used to be the case.

HEATHER EWART: It was publicity surrounding the shocking case of the suicide of a young Melbourne waitress, Brodie Panlock, in 2006 that opened the floodgates to bullying complaints to WorkSafe. Brodie's employers were successfully prosecuted by the regulator for bullying, and in 2011, a new anti-stalking law was set up in her name.

JOSH BORNSTEIN: There is simply too many complaints for OHS regulators to investigate. As a result, they don't investigate the overwhelming majority of such complaints. It is very rare for an occupational health and safety regulator to take any action about a bullying complaint. A prosecution of a workplace bully or a company for workplace bullying is even rarer.

HEATHER EWART: In the past 13 years WorkSafe has prosecuted only 30 bullying cases and Brodie's Law has never been used.

CLARKE MARTIN: Look, clearly there is a frustration amongst a number of inspectors about their ability to get matters before courts.

KAREN BATT: We've got concerns that we don't have enough inspectors. We've only got six inspector designated for bullying for the whole of the state. All of those issues are starting to take a toll on the staff who don't believe there's enough emphasis in trying to deal with recalcitrant employers who need to have the matters addressed properly.

HEATHER EWART: These are just some of the concerns to be faced by the newly-appointed CEO of WorkSafe, a New Zealand bureaucrat, Denise Cosgrove, who starts in the job next month.

KAREN BATT: I think it's going to be a rocky road. I think the organisation is very unhappy, currently doing its enterprise agreement. Quite distressed staff associated with the management practices and I think that she will have her job cut out for her.

LEIGH SALES: Heather Ewart there.

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