

Submission
No 25

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

Organisation: Injured Workers Support Network

Date received: 23/08/2013

PARLIAMENTARY INQUIRY AUGUST 2013

Injured Workers Support Network www.injuredworkerssupport.org.au

*Allegations of
Bullying within
NSW WorkCover*



IWSN Submission:

Allegations of Bullying within the NSW Work Cover Authority (Inquiry) August 2013.

Set up in 2011, The Injured Workers Support Network is a not for profit organisation whose prime purpose is to assist injured workers trying to navigate the adversarial NSW Workers Compensation system.

The Injured Workers Support Network (IWSN) is an organisation whose prime purpose is to assist injured workers in meeting the adjustment needs, psychological issues and re-employment challenges during their injury or illness. The network offers-

- * Peer support – opportunity to meet other workers who face the same difficulties and challenges via monthly support meetings
- * Supply information regarding the NSW workers compensation system
- * An opportunity to be supported whilst dealing with their injury, illness or disability

Our Mission is to assist and support workers who have sustained work related injuries, illness and disabilities:

- To provide and share information and experiences about the workers compensation system and the rights of injured & disabled workers.
- To form networks between injured workers and other organisations that has similar aims and objectives.
- To assist and encourage injured workers to establish links within their local community health system, Government Departments, organisations and other individual support groups who can assist injured workers.
- Advocate for a fair system of workers compensation for injured and ill workers and their families

The Injured Workers Support Network (IWSN) welcomes the opportunity to provide a submission in relation to Allegations of Bullying in the NSW Work Cover Authority. This Inquiry is an opportunity to raise concerns on behalf on injured workers and their families in relation to the bullying and intimidating tactics being currently used by NSW WorkCovers insurance agencies.

In NSW there are seven Scheme Agents (insurers) appointed by Work Cover:

NSW.Allianz Australia Workers' Compensation (NSW) Limited,Xchanging Integrated Services Australia Pty Ltd (trading as 'Xchanging') CGU Workers Compensation (NSW) Limited,Employers Mutual NSW Limited,Gallagher Bassett Services Pty Ltd,GIO General Limited and QBE Workers Compensation (NSW) Limited.

Sadly there are no exceptions to rule when it comes to bullying by insurers of injured and ill workers and their families. All do it, only the levels of behaviour vary.

Many injured workers contact the IWSN reporting they initially entered the workers compensation system suffering only a physical injury. Alarming, most report they have since developed a secondary psychological injury due to bullying and harassment at the hands of the insurer.

Workplace bullying is defined as 'repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety'. Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time. Unreasonable behaviour means behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable this includes behaviour that is victimising, humiliating, intimidating or threatening.

In the case of injured workers, even though they are physically out of their workplace they are still dealing with both the employer and the insurance company.

This behaviour most commonly favoured includes:

- Threats of reducing or withdrawing benefits and/or medical treatments if workers ask questions about how or why they are required to carry out tasks or try to understand the new legislation
- Overt name calling – malingering ,lazy, troublemaker
- Speaking in aggressive and intimidating tones
- Exclusion from being involved in return to work programmes
- Exclusion from involvement in meetings with insurers, doctors and allied health providers
- Exclusion - Not creating working relationships by communicating directly to injured workers, only via letters by Post.
- Giving short notice to attend specialist appointments the following day ,then penalising workers by suspending weekly payments
- Treating workers in a hostile manner as if they should not be on workers comp – a perception that they are “bludging”
- Losing or misplacing WC medical certificates and job logs and then ceasing benefits for noncompliance.
- Denying or reasonably excusing claims due to alleged non receipt of certificates,doctor reports or until the factual investigator provides his report
- Pressuring and coercing workers to use a particular provider the insurer prefers and trying to deny access to one of the workers choice.
- Convincing workers they would be better off under the public health system or income protection cover and assists in coercing them to exit the Scheme

Most of these issues above fall clearly within the description of bullying according to the NSW Work Cover websites own advice around bullying-

Types of unreasonable behaviour that may be considered as workplace bullying, when part of a repeated pattern of events, can include:

- abusive, insulting or offensive language
- undue criticism
- excluding, isolating or marginalising a person from normal work activities
- withholding information that is vital for effective work performance
- unreasonably overloading a person with work, or not providing enough work
- setting unreasonable timelines, or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person's skill level
- denying access to information, supervision, consultation or resources, resulting in detrimental effects to the worker
- spreading misinformation or malicious rumours
- improper treatment in relation to accessing workplace entitlements, such as leave or training

The behaviour designed purely to reduce cost and in the hope if life is hard for the worker they will drop their claim. In some cases this is sadly what does happen and workers are then reliant on the public health system.

What happened to trying to engage injured workers and get them back on the job as soon as possible? Is that not what the Scheme is designed to do?

A. Behavior of WorkCover NSW and its Scheme Agents

Injured workers from a wide range of backgrounds and industries contact the IWSN. Almost all confirm Work Cover as being ill-equipped to intervene in the event of such repeated unreasonable behaviour.

The culture of WorkCover can only be described as being one of institutionalized denial. Complaints made against an employer and or insurer for bullying are rarely if ever substantiated.

Recent findings handed down by the NSW Court of Industrial Relations stated a senior employee within the WorkCover Authority itself had been systematically bullied out of his position and that Work Covers handling of the matter was an absolute disgrace and characteristic of institutional bullying.

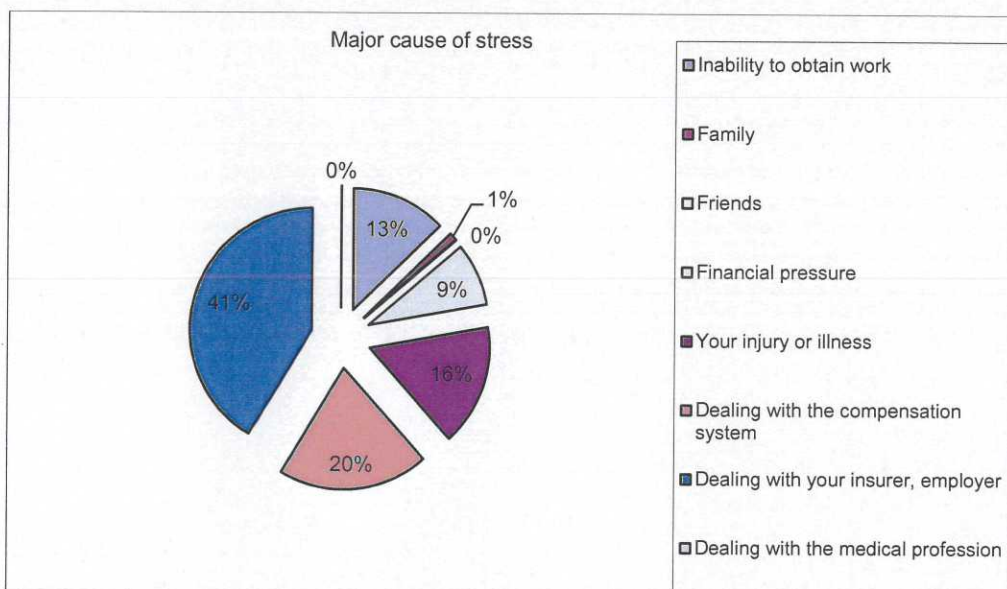
Those who have had little or no dealings with the WorkCover authority were shocked by this. Those who have had any ongoing dealings with WorkCover are unfortunately all too familiar

with the systemic bullying as undertaken by the authority and its Insurers towards injured workers

Evidence of this are in surveys IWSN have conducted over the past two years.

“Uncaring and hostile employers and insurers, along with inadequate compensation have been consistently cited as a major obstacle for most injured workers. The pressures resulting from these failures impact on other areas of injured workers lives which further hamper attempts at recovery. In too many cases, injured workers report that employers do everything they can to stop them from returning to work and that insurers attempt to bully them and their treating doctors into treatment schedules that ignore medically accepted treatment standards.”

Survey participants were asked to cite only one of the causes of stress since their sustaining their injury and or illness.



Dealing with their employer or insurer was by far the largest cause of stress. Dealing with the compensation system in general was the second. However, if the level of care most required by injured workers were sufficient, dealing with injury and/or illness and inability to obtain work would be their only central concerns. As is highlighted in the survey findings many are concerned more with the poor and often hostile treatment they continually receive from insurers and their employers than focusing on recovery and returning to the workforce. It is these types of unnecessary and often inappropriate pressures that run counter to many injured workers rehabilitation needs.

This supports claims that the claims management process is indeed experienced as hostile and uncaring by many injured workers

Under the new workers compensation laws workers are feeling sidelined by both the Work Cover Authority and the insurer. Neither recognising or choosing not to recognise and address the bullying tactics being used by insurers. Examples given by injured workers in this document have had the names changed to protect their identities.

Injured worker Liza - *"To ring WorkCover is a complete waste of time and energy ,that would be an understatement - the system is non-existent - .They can provide little information, the staff are rude, ill equipped and ill informed. You get off the phone feeling battered, bruised and wishing you'd never asked the question"*



Injured Worker Adam – *"I have written to WorkCover to try and get a concise response and have found they are only there to cover up workplace accidents. They will always take sides with the employer and insurer regardless. In my opinion their too scared to act in case they get bullied themselves"*

Injured Worker Pete: *"you're just a number not a person with the insurer. Threatened, intimidated and disrespected and it's a disgrace"*

Injured worker Jill says

"I tried to find out when the insurer was going to pay me as I didn't have any pay for nearly 4 months because the bank told me they would take my house. I was told by the insurer – this is not our problem you should have thought of that before going on compo! They don't give stuff and always make you feel like you're a bludger."

Injured Worker Dennis:

"I tried to neck myself in the garage after just one too many heated conversation with the insurer who clearly didn't care I had lost my family after our home got repossessed by the Bank. Weeks of being in the house alone, my wife gone and with no money food I didn't know what else to do"

Injured Worker Sally

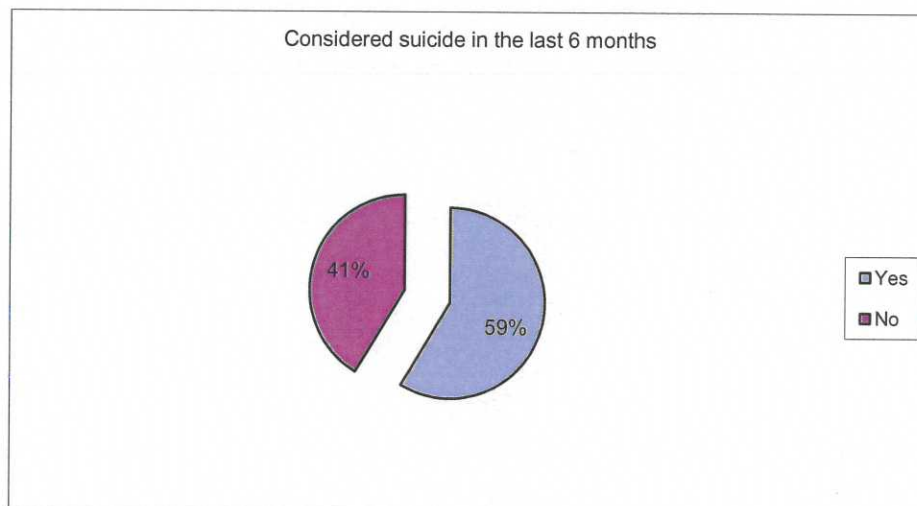
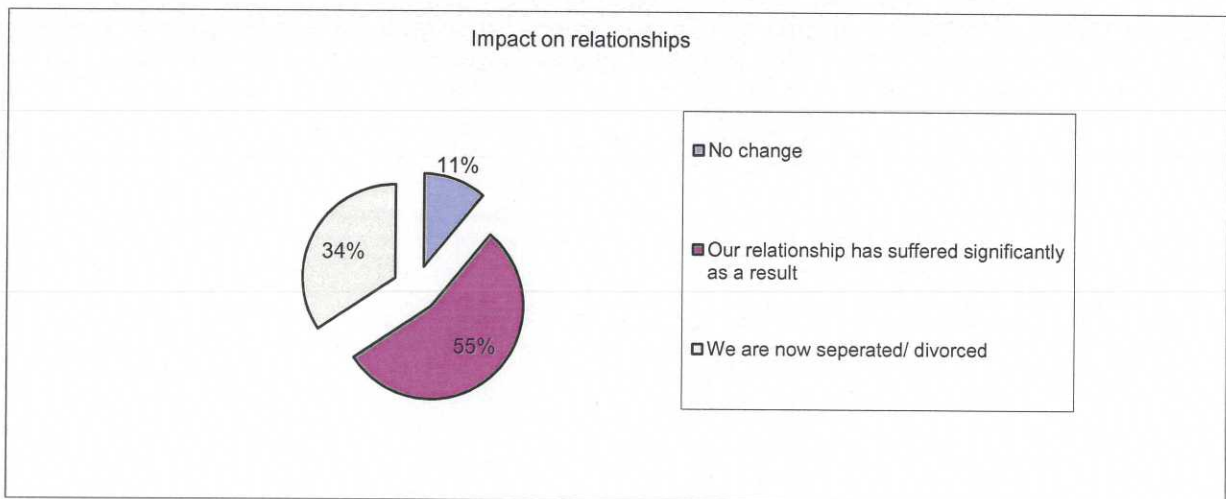
Was told by her Insurer acting under the authority of NSW WorkCover. "Other people have had this treatment and it did NOT work for them so it will not work for you. If you want the treatment and want to get better you should use Medicare or your Private Health Insurance to have the treatment".

Injured Worked Kerry

Scheme agents acting under the authority of NSW WorkCover told me regardless of my Injury that I needed to get my priorities right by returning to work as soon as possible, especially if I would like to keep the family home



The results of such conversations causing great anxiety to injured workers .The results far reaching and include, loss of self-esteem and inability to successfully return to work, additional health related problems such as depression , suicide, loss of the family home and family relationship breakdown. Again evident in our survey of 2011.



B. Work Cover’s role as the State Regulator of Occupational Health and Safety (as it relates to bullying in the workplace)

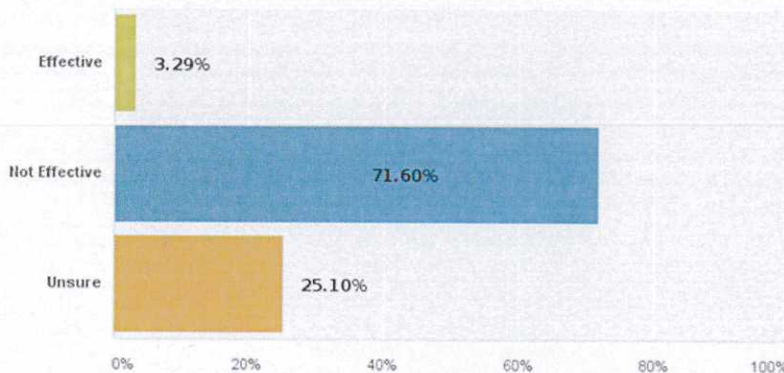
The majority of injured workers who contact the IWSN confirm that, in their opinion, WorkCover is failing in its role as the state regulator for occupational health and safety in so far as workplace bullying is concerned. Despite provisions under the recently changed Work Health Safety laws with clear provisions for enforcing the duties of a PCBU, NSW Work Cover are still unable to control bullying in either the workplace or in their own backyard.

The message is clear – Work Cover NSW is letting down the community in NSW by their inactivity.

Evident again in our most recent IWSN survey.

Q6 How effective do you think State WHS regulators (WorkCover/WorkSafe) are when dealing with workplace bullying complaints?

Answered: 243 Skipped: 0



Injured Worker Vicky – *“Will WorkCover wait until someone commits suicide from the bullying in that workplace before they do something? Will they do something then? WorkCover are not taking workplace bullying seriously”*

Injured Worker Katherine – *“Work Cover NSW and the NSW Coalition government were indirect bullies as they allowed my employer and the Insurer to bully me out of work and did nothing.”*

Injured Worker Joe – *“I was bullied by my employer to the extent I lodged a claim for workers compensation and had to take time off work. During such time WorkCover conducted an investigation and issued my employer with an improvement notice. After returning to work the bullying re-commenced to the extent I was admitted to a Psychiatric Hospital for a number of weeks. WorkCover initiated another investigation and re-issued an improvement notice, no penalty was applied.”*

As this is being written the media have reported the following about Work Covers behaviour following a fatal accident at Peel in the Central West of NSW where a 23 year old male was killed.: Source Western Advocate:

Peel man crushed to death under tip tray

Peel resident Michael Booth was delivering a load of firewood to a property on Reservoir Road at around 2.15pm when he began to have problems with the hydraulic lifter on the tip tray of the small truck carrying the wood. He went to investigate the problem.

Police officers' initial observations suggest that a weld on the back of the chassis rail failed, and that allowed the unit to rock forward on the pivot ram, crushing the man.

However, the vehicle will be subjected to a more thorough examination. The property owner was present when the accident happened and called police straight away. Police Rescue also attended the scene and it took them more than two hours to release the body.

A report has been sent to the coroner. WorkCover were informed about the accident but won't investigate.

Too scared to act??Is it any wonder the community has no confidence in the Regulator.

C. Recommendations to address issues raised:

1. Work Cover immediately seek consultation and co-operation with injured workers and their representatives including IWSN to develop new operational guidelines and directives regarding the management of ill and injured workers within the Scheme.

These operational guidelines MUST include as a minimum:

•respectful and dignified methods of communications in dealing with clients, clear explanation and engagement with workers of processes within the Scheme that are closely aligned to the philosophy of workplace rehabilitation - creating a positive environment that delivers durable return to work outcomes for all stakeholders.

•Clear methods of reporting bullying by Scheme Agents to the regulator for investigation and actioning

•Include stakeholder engagement and zero tolerance as performance measures to Scheme Agents contracts

2. If necessary draft/amend the new workers compensation legislation in such a way that bullying by ANY stakeholders will not be tolerated and will be penalised accordingly.

3. Support the making of the Prevention Bullying Code of Practice thru Safe Work Australia that is fundamentally based around the use of established risk management processes and shareholder engagement and education.

4. Adopt the Unions NSW dignity and respect charter

5. The NSW government to adopt zero tolerance of workplace bullying and launch a public education campaign