

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

**Name:** Name suppressed

**Date received:** 2/07/2013

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Partially Confidential

My submission with respect to this inquiry is as follows:

## FACTS AND ARGUMENTS

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1. Premier Barry O'Farrell utilised WorkCover to perpetuate a political agenda of reform (hereinafter referred to as 'the agenda') with respect to WorkCover and WorkCover were complicit with that process as follows:

(a) Barry O'Farrell (hereinafter 'O'Farrell') provided Minister for Finance, Greg Pearce (hereinafter 'Pearce') was supplied a copy of an Email dated 18 March 2012 from myself to Barry O'Farrell with respect to problems within WorkCover and the Workers Compensation scheme;

(b) It is submitted that:

(a) O'Farrell instructed, inferred or otherwise directed Pearce to utilise the Email and obtain further information on my WorkCover claim with CGU Workers Compensation with respect to work related and employer admitted (with respect to cause and work-relatedness) Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (hereinafter 'my claim'); and/or

(b) Pearce utilise the Email and obtain further information on my claim; and

(c) Pearce liaised with WorkCover to obtain information from WorkCover and WorkCover was complicit with the supply of that information relevant to my claim, including, but not limited to name, personal details, claim history, medical information, claim costing, personal financial information, investigations, and the like;

(d) Such supply was:

(i) in breach of my privacy;

(ii) used for a purpose that was morally and legally corrupt.

2. Pearce utilised the information obtained from WorkCover to fashion a media release dated 23 April 2012 entitled "WorkCover Improvements Begin". In that release, Pearce spoke of the deficits in the system and the need to "transform" the scheme, the need to "achieve better rehabilitation outcomes, better rates of return-to-work and better management of the scheme", then spoke about the release of an issues paper outlining the scheme's failings, and stating that "injured worker [were] remaining on WorkCover benefits for longer than ever before". Pearce then went on to present Case Study One which detailed some accurate and inaccurate information with respect to my claim. The inference to be drawn from the case study were that:

(a) my claim was one of the claims that was:

(i) causing an increase in the costs of the scheme;

(ii) an example of someone who should have been rehabilitated and returned to work;

(iii) an example of the failing and mismanagement of the scheme;

(b) that my claim was one where my work within a different field should mean no entitlement to claim for "maximum weekly workers' compensation benefits"

(c) that my claims for travel, domestic assistance, lawn mowing, physiotherapy, chiropractic and exercise physiology was not appropriate nor justified and therefore an unfair burden on the system;

3. Pearce reveals information that is not accurate, including:

(a) Deliberately misleading and/or negligently misstated information, including but not limited to:

(i) Blatantly incorrect and slanted background information about the claim;

(ii) Understating and incorrectly stating the causation of the condition;

(iii) Misstating the condition as Chronic Fatigue Syndrome when in fact it is Myalgic Encephalomyelitis/Chronic Fatigue Syndrome with an overlay of Fibromyalgia (as established via WCC dispute in 2005/2006);

(iv) Attributing diet to causation;

(v) Misstating the total cost of the claim by at least \$ 100,000;

(vi) creating the impression that the condition could be rehabilitated when in fact it is a life long condition of a disabling nature that can at best be managed;

(vii) creating the impression that there was in fact a rehabilitation program in place when in fact there was a management program in place - the latter being distinguished from the former by fact that a management program is about quality of life and facilitating my involvement at work, whereas a rehabilitative program has a definite outcome whereby the problem is rectified; and

(viii) creating the impression that I have personally been in receipt of the sum of \$ 657,039 when in fact this was so far from reality as to be insultingly laughable.

(b) Omitting reference to:

(i) unethical actions of employer;

(ii) unreasonable increases in budget requirement by employer;

(iii) unreasonable and unethical managerial behaviours;

(iv) threats against my job for ethical, legal and reasonable actions within the specifications of my role;

(v) unfair dismissal via redundancy;

(vi) inappropriate comments and managerial conduct;

(vii) not allowing me time off work at times that I was sick, thereby perpetuating the condition;

(viii) the employers insistence that I return to work before I was fully recovered from Glandular Fever because I was required to meet budgets.

(ix) that excessive work hours and stress alone were combined with the above circumstances and therefore, as a whole, responsible for the condition;

(c) Omission of the fact that the employer admitted, three times in three disputes, responsibility for causation and admission that the condition was work-related;

(d) Omission of the fact that the insurer had six subsequent disputes in which decisions where claims were found to be reasonable and necessary, including the physiotherapy and the chiropractic expenses;

(e) Omitting the fact that the reason for the 1000+ km trips is:

(i) My treating doctor moved interstate in 2009;

(ii) Due to the nature of the condition this doctor has specialist knowledge of the condition that I cannot find in this region and he has been the treating practitioner since 2003 so has intimate knowledge of my claim and history; and

(iii) WorkCover themselves do not have an AMS with this specialist knowledge.

4. O'Farrell as Premier and/or Pearce, as the Minister overseeing WorkCover and therefore an agent of workcover:

(a) Knowingly and deliberately effected a public and private campaign of deigration against me and my claim;

(b) Knowingly and deliberately obtain and utilise private information from WorkCover to perform such denigration

5. WorkCover, by way of complicity and knowledge of Pearce's intent did:

(a) Knowingly and deliberately effected a public and private campaign of deigration against me and my claim;

(b) Knowingly and deliberately obtain and utilise private information to facilitate such denigration

5. A complaint was made to both Pearce and WorkCover with respect to the breach of privacy and breach of the principles of the PIPP Act 1998 and HRIP Act 2002:

(a) Pearce's office denied that they were required to review the matter and refused to review the matter because the "Minister does not come within the definition of 'public sector agency' ... therefore the Minister is not subject to internal reviews of his conduct". Such statement was, in fact, a lie because the definition of 'public sector agency' includes any office whose financial reports were audited by the Registrar General, and this of course includes ministers of the crown. Furthermore, S. 53(1A) of the PPIP Act excludes the review of ministers acts under Information Protection Principle 15.

(b) Workcover denied that it was a breach of privacy to given health and personal information to the Minister when in fact it, particularly given the information was not accurate and the information was so specific as to have been sufficient to reveal my identity (noting the decision of AFW v WorkCover Authority of New South Wales [2013] NSWADT 133 where member Montgomery stated at para 50 (on the specific issue of this media release by Pearce) that " in my view, it is possible that the identity of the individual referred to in at least one of the case studies contained in the media release could be identified from the details provided. In my view the term 'personal information' is broad enough to include this type of information". Clearly the finding was inappropriate and inaccurate and biased towards the authority.

#### IMPACT UPON EXECUTION OF CLAIM:

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Following the inquiries to and provision of information from WorkCover (which would have, by necessity resulted in inquiries and communications with CGU) and since that point CGU have adopted a combative approach to the claim that resulted in:

(a) The issuing of Section 74 notices on:

- (i) 12 July 2012 - rejection of domestic assistance (previously approved);
- (ii) 29 Sep 2012 - rejection of cardiac blood tests (previously approved);
- (iii) 14 January 2013 - rejection of IVF claim;
- (iv) 30 January 2013 - rejection of permanent impairment claim;
- (v) 6 May 2013 - rejection of Weight Loss Program and Sleep Apnoea investigation (both previously approved);

(b) Rejection of various other aspects of the claim without provision of Section 74 notices;

(c) Rejection of consideration of aspects of the claim;

(d) Referral to so-called independent medical examination to support their approach to the claim.

#### IMPACT UPON ME:

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The impact of the bullying and harrassment by WorkCover was:

- (a) actual and perceived public humiliation by the WorkCover;
- (b) actual and potential deterioration of the underlying condition because of fear, upset, distress, depression and embarrasment associated with the media release and bullying act;
- (c) fear and insecurity as to the future of my claim within the WorkCover system when clearly:
  - (i) they are specifically targetting my claim as one that needs to be terminated under the new system; and
  - (ii) they have carriage of all future dealings with the claim; and
  - (iii) they are regularly called upon to assist with the claim; and
  - (iv) termination of the claim will cause financial, physical and emotional distress to myself and my family.
- (d) inability to access the necessary medical testing, treatment, investigation and other assistance
- (e) inability to access financial assistance inherently part of the Workers Compensation scheme, being it proper weekly benefits, reimbursment of expenses, impairment benefits, cpi benefits, interest for unpaid monies and the like;
- (e) incredible anger and frustration that impacts upon the condition and my family life.

#### SUBMISSION AS TO BULLYING:

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It is my submission that this process undertaken as detailed above, as a whole, constitutes bullying and harrassment of myself by WorkCover for no better reason than:

- (a) retribution for writing to Premier O'Farrell and suggesting solutions to the WorkCover problem that don't meet his agenda; and/or
- (b) having a long-term WorkCover claim that they felt could be moulded inaccurately to give the appearance of a claim that was an unnecessary and inappropriate burden on the people of NSW; and/or
- (c) being an easy target for public admonishment and retribution.

#### CONCLUSION:

The circumstances that have been revealed are indicative of the culture of WorkCover and what is more disturbing, it comes from the very top being the Premier and the Minister for Finance. The operationalisation of WorkCover as whole is designed to bully, intimidate and oppress the unfortunate worker whose only crime is to have worked for his or her employer and been injured due to the employer's negligence.

This scheme of Workers Compensation and its overseer being WorkCover, needs to change. The way the scheme operates at the moment, it literally traumatises the individual.

The scheme subjects the worker to demeaning and demoralising medical examinations by Doctors who are beholden to WorkCover and deliver decisions (particularly Whole Person Impairment Assessments that consistenly coincidentally deliver findings that fall ever so conveniently short of important threshold figures) that deny benefits.

What has occurred here in my case is an unusual, although not atypical case of what happens under the scheme.

This type of dehumanizing and outrageous behaviour needs to change. Not once has WorkCover thought to put in place a scheme that cooperates with the employee and collaboratively sets out to achieve realistic and genuine goals. It has never thought to use genuine assessments. The cost of litigation to dispute obviously outrageous behaviour is enormous and is supported by a defendant legal system that relies upon disputes for its income, and therefore carries out such disputes regardless of validity or morality involved in workers claims.

Returning to the actual submissions, I urge the inquiry to address this behaviour and admonish what everyone already knows exists. WorkCover are an out of control bully given free reign by an equally bullying executive.

Stamp it out once and for all.