INQUIRY INTO ALLEGATIONS OF BULLYING IN WORKCOVER NSW

Name: Dr Carlo Caponecchia

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Submission to the NSW Legislative Council inquiry into workplace bullying at Workcover NSW

Dr Carlo Caponecchia
Senior Lecturer,
The University of New South Wales

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Background to this submission

I was pleased to be invited to make a submission to the NSW Legislative Council's inquiry into Allegations of bullying in WorkCover NSW

My submission does not deal with specific cases, or allegations, of workplace bullying in Workcover NSW. I do not consider that I currently have sufficient knowledge of specific cases to be able to meaningfully comment. I have been concerned for some time over the allegations of bullying at Workcover NSW, which have received significant media attention over several years. Some of these resulted in a review by Price Waterhouse Coopers (referred to below in more depth). I am concerned for individual staff at Workcover NSW who may have been, and may still be, exposed to workplace bullying. I have no doubt the committee will be well informed of those cases throughout the course of the inquiry by those with more information on these issues.

However, there is a wider picture here that also needs to be addressed. How Workcover NSW prevents and manages bullying internally, and how it is seen to prevent and manage workplace bullying internally, has a wider effect on the perception and management of workplace safety in NSW. This is essentially a credibility issue. If a regulator is not seen to manage its own affairs then any operation that should be regulated by it may be less concerned that it will be held to account for its acts or omissions. This situation exposes NSW workers to significant risks, as, despite better intentions, it conveys the message that bullying is either too difficult to manage, or doesn't matter. This can give organisations implicit license to not take this hazard this hazard sufficiently seriously. This is an unacceptable situation.

Workcover NSW recognises in its corporate plan 2010-15 that being an "exemplar organisation" in WHS is part of its purpose (Workcover NSW, 2010):

"Our aim is to lead in workplace health and safety, and sharing (sic) our expertise with others" (p. 22).

This underscores the importance of having workplace bullying managed in an exemplary manner in this organisation, and being transparent about how this is done now and into the future.

Further, question marks over credibility are not limited to the domain in which they occur (workplace bullying in this case). A lack of credibility with respect to one hazard undermines the promotion of workplace safety in general.

This inquiry is about workplace bullying, but has reach far beyond this single hazard. The potential for the recommendations of this inquiry to positively affect how workplace safety is valued, promoted, and delivered in this State should not be underestimated. The committee is therefore presented with an opportunity to better protect NSW workers from injury into the future.

The following outlines some issues which may assist the committee organise, interpret and interrogate material supplied during the inquiry.

Recent developments in on workplace bullying in Australia

The committee would be aware of several activities which have occurred at a national level which bear on any discussion of workplace bullying, and its regulation.

The House of Representatives Standing Committee on Education and Employment (HRSCEE) held a national inquiry into workplace bullying in 2012. The federal government accepted many of its recommendations. Several of the recommendations have direct implications for WHS regulators in the States and Territories, around sharing and collaboration of enforcement practices, training, and collection of data and trends. These recommendations need to be considered in detail in this inquiry, to ensure consistency as far as possible. Importantly, the HRSCEE report supported the adoption of a national definition of workplace bullying, which should be adopted in this inquiry (see below).

The major outcome of the HRSCEE report was the amendment to the Fair Work Act, which will enable workers to make a claim to the Fair Work Commission regarding workplace bullying. These powers are set to commence on January 1, 2014, though as yet there is little detail of exactly how this will operate in practice. It should be noted that the motivation for this recommendation (and resulting amendment) was to give workers a method of individual recourse to make bullying behaviours stop, in addition to the actions workplace safety regulators can take to ensure organisations maintain their duties to provide a safe system of work etc. It is not envisaged that the FWC powers will replace WHS regulators from having an important educative and regulatory role in preventing and managing workplace bullying within organisations.

The HRSCEE report recommended adoption of the proposed national Code of Practice for Preventing and Responding to Workplace Bullying. The code came from the ongoing efforts to harmonise WHS legislation, of which NSW has long been a part. The process of developing and approving the code is ongoing, with a second round of public commentary being sought in the last few months. The

committee should consider the proposed code (available from Safe Work Australia), because it outlines what organisations are supposed to do to prevent and manage workplace bullying. Workcover NSW as an employer should itself comply with the code, if/when adopted. Indeed, it should model the implementation of the code. Accordingly, for consistency, and efficiency, the code should play a role in informing this inquiry.

Several other reviews and/or investigations that have been made public also serve as important background information for the committee, and for organisations revising their treatment of workplace bullying. Worksafe ACT's investigation of how allegations of bullying were handled at the Canberra Institute of Technology provides insight into how organisations should manage bullying more effectively, but also into how a WHS regulator can undertake meaningful action on workplace bullying. That this report was made public is probably not appreciated by the CIT, but was an important move in demonstrating what the regulator can do, and will do, if those situations occur without proper risk control in the future. It was a turning point in WHS regulatory action of this issue in Australia (see http://www.worksafe.act.gov.au/news/view/1312

In the last few weeks a review into allegations of bullying at CSIRO was publically released (Pearce, 2013). This is another important background document for this committee. A key issue highlighted in this report is the system-wide issues that influence whether bullying occurs, how it occurs, and what is done about it need to be considered, rather than focusing on an individual-level view. This is consistent with theory, and an approach we have advocated for some time (e.g. see Caponecchia & Wyatt, 2011).

Basic issues in workplace bullying

There are several issues that can sometimes make workplace bullying appear even more complex. Some of these are outlined below.

Definition

Although debate on the definition of workplace bullying continues in academic circles, Australia has had a relatively consistent definition of workplace bullying for regulatory purposes for many years. A definition has been recommended for adoption nationally (HRSCEE, 2012) and is part of the proposed national code of practice:

workplace bullying is repeated, unreasonable behaviour directed towards a worker or group of workers, that creates a risk to health and safety (HRSCEE, 2012, p.18)

No doubt the committee will be presented with evidence that people still interpret this definition differently, or bring their own perceptions of bullying to bear on whether and how they report "bullying". This is true to an extent. However, little effort has been made, despite having relatively consistent definitions of bullying in several states (including NSW), to guide people on how to interpret and use the definitional criteria. People need support to know how to judge that something is repeated. They need assistance to know how to evaluate unreasonableness, for themselves, in a manner that is as objective as possible, and they need skills and resources to interpret whether there is a risk to their health and safety. These are not concepts in common usage. It could be argued that a lack of reliability in reports of bullying (e.g. mislabelling of behaviours) are in part due to a failure to adequately communicate about how to use the definitional criteria. Work needs to be done in this area by all WHS regulators. It is not as simple as dismissing bullying as a perceptual issue, nor dismissing most bullying complaints as false (e.g. Wells, 2011). There is a knowledge/skill gap that should be addressed before reflecting on reported rates of bullying. As a consequence of the House of Representatives inquiry (HRSCEE, 2012), we are involved in a project with Safe Work Australia which

seeks to develop a decision tool that assists people to assess whether what is happening to them is bullying or not, and to know what options are available.

Antecedents of workplace bullying

Workplace bullying is often thought of as something that occurs at an individual level. It is also often treated at an individual level (counselling, "resilience" training etc). The most common expression of this is that bullying is a "personality clash" or "interpersonal issue". This is a bit of a distraction. Individual level variables are of course relevant (personality traits, past experiences etc) but they are only part of the story. The structure of the organisation, how it deals with bullying reports, whether bullying is permitted or encouraged by the structure and culture, and the efficacy of its demonstrated efforts to prevent workplace bullying all have an effect on whether bullying occurs, whether it is reported and resolved, and the degree of effects that it can have on individuals and the organisation itself (see also Einarsen et al., 2003, 2011; Caponecchia & Wyatt, 2011). An extreme example of the focus on an individual level explanation is the "workplace psychopathy" approach. This can be quite dangerous and stigmatising (see Caponecchia, Sun, & Wyatt, 2012).

Bullying as a WHS issue

Workplace bullying is now firmly recognised as a WHS issue – that is, an issue that affects people's health, safety and wellbeing at work, that should be managed using a WHS framework and approach (Lyon & Livermore, 2007; Johnstone et al., 2011).

Some argue that bullying (and other psychosocial hazards) are too different to familiar WHS hazards to be dealt with in the same manner (e.g. noise, dusts etc). This is a complex argument, which can be discussed in more detail if desired. Underlying some of these objections is a misunderstanding of how psychological and physiological variables are interrelated rather than diametrically opposed. Suffice it to say that workplace bullying and psychosocial hazards can still be managed from within a WHS framework and approach. Part of this means that

the most effective control strategies should be used, the potential for further risk exposure should be identified and engineered out.

There is still a tendency to manage bullying from within a human resources model. This essentially treats bullying as a conflict or grievance issue. This approach enshrines an individual level analysis to a problem that is systemically influenced. Regularly, HR-style interventions to workplace bullying have been observed to expose workers to additional risks, simply because a risk framework is not considered when an "issue-resolution" framework is adopted. Consideration should be given as to how bullying is prevented and managed as a WHS issue, similar to other WHS issues. This does not mean that HR personnel should not be involved, just that the approach taken may need to be better informed by the assumptions and values of WHS practice.

Training

Training is the most commonly used intervention (or "control") implemented for preventing and managing workplace bullying. It is not always well undertaken, and is a much abused risk control. A range of training initiatives relevant to bullying were highlighted as being undertaken in the PWC (2011) review. Any representations made to the committee regarding training should consider

- The scope and purpose of the training (e.g. awareness training; training for managers around receiving and responding to reports of bullying; training for senior managers on higher level capabilities and knowledge);
- Whether a training needs assessment was performed, and the background knowledge and skills possessed by people in various roles;
- Whether training was competency based; and
- Whether training was assessed, and the quality of this assessment.

Training competencies for managers in the area of bullying are currently being investigated in a project which we (myself and my colleague Dr Anne Wyatt) are conducting for Safe Work Australia.

The 2011 PWC review recommendations

In 2011, a major review was commissioned by the NSW Department of Premier and Cabinet into allegations of bullying at Workcover NSW. This review was completed by PriceWaterhouseCoopers (PWC). The limitations of the review are noted in the final report, including the small number of submissions received, and the lack of investigation undertaken of current and past cases of bullying. The review thus needs to be evaluated with these issues in mind. The report was made public, although I am unaware of reporting of progress against the recommendations made. Progress may have been achieved, though I would have thought it important to communicate this widely, given the credibility issues raised earlier.

A range of questions emerge from consideration of the PWC recommendations. For example:

- Has an amended bullying policy been developed, communicated internally and training been offered, along with all other tasks outlined in Recommendation 2?
- How do the plans to reform the People and Culture functions, independent of the OHS ensure that bullying is dealt with as a WHS issue, rather than as an issue resolution or grievance matter? (see Recommendation 3)
- Have performance measures and development plans for staff included responsibilities related to managing workplace bullying, and how does this relate to any new training that has been offered or planned? (Recommendation 4, though this recommendation does not seem to make reference to workplace bullying)

The PWC report also refers to "current and planned actions to address culture" undertaken by Workcover NSW at the time of the PWC report (2011). These included

"Developing a framework for an external expert panel to investigate serious allegations of bullying and harassment" (PWC, 2011, p.6). Whether and how this occurred needs to be established, in addition to what level of external advice Workcover NSW has sought regarding these seemingly ongoing problems.

Further, among the strategies highlighted in 2011 was a culture program that sought to build

personal resilience and develop[ing] a capability for self-awareness and self-actualisation (p.7).

This relates to the issues raised above, regarding the tendency to implement individual level interventions. These are generally at odds with a WHS approach, which usually does not seek to blame (or imply blame on) individuals. Where individual level interventions are undertaken, they should be done in addition to wider system level interventions. The "resilience building" stated above needs to be further explored in terms of whether wider system level interventions have been implemented, and in terms of the relative emphasis on system versus individual controls. I currently do not have enough information to assess this. Depending on what is occurring, the "resilience approach" may reflect that bullying is treated as an individual-based problem, as opposed to approaching it from a WHS perspective. If this is the case, this will require a major overhaul, for consistency with current strategies (e.g. see the proposed code of practice).

It is positive that the PWC report was made public. It is disappointing that any follow up that may have occurred was not made public. Given the credibility issues outlined above, it is hoped that any actions taken as a result of this inquiry are transparent, widely communicated, appropriately consulted upon, monitored and reviewed. It is no coincidence that these processes are essential components of any good safety management system. This is fundamental to rebuilding trust in Workcover NSW, from within its organisational bounds and from the people and organisations it serves.

Qualifications and Expertise

I hold a PhD in Psychology from the University of NSW, and an Honours degree in Psychology from the University of Newcastle (Australia). My Phd was in the area of stress and health. I have worked as an academic for several years at the UNSW, teaching in workplace health and safety programs, and conducting research on psychosocial hazards at work, and in human factors. In my current position at the School of Aviation, UNSW, I am continuing my human factors research (fatigue; error identification and classification in various domains; training of expert system operators; risk perception and communication) as well as maintaining research in psychosocial hazards in the context of workplace safety. My teaching responsibilities include teaching safety risk management to postgraduate students, and basic workplace safety to undergraduate students.

I have contributed to training and development on workplace bullying for several organisations and professional associations. I often assist courts as an expert witness in workplace bullying and harassment matters. The book I co-authored with Dr Anne Wyatt, *Preventing Workplace Bullying: An evidence based guide for managers and employees* (2011, Allen & Unwin) summarises our collective work on workplace bullying.

I have been involved in several public inquiries into workplace bullying, providing evidence at the 2008 NSW Legislative Council's inquiry into the operations of the NSW Ambulance Service, and the 2012 Federal House of Representatives inquiry into workplace bullying.

I acted as an expert adviser to Safe Work Australia following the first round of public comment on the proposed code of practice on workplace bullying (2011-12). I am currently involved in several research consultancy projects with Safe Work Australia, following the outcomes of the House of Representatives 2012 inquiry. These include further development of the proposed national code of

practice, and issues of training competencies, confidentiality and transparency, promotion and implementation of the code, and the development of a decision aid for workplace bullying.

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