INQUIRY INTO ALLEGATIONS OF BULLYING IN WORKCOVER NSW

Name: Name suppressed

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1. Introduction

I have included the following information in the hope this will help the Inquiry Committee better understand the dimensions of the bullying culture within WorkCover.

The focus of my submission is on the culture of WorkCover and is based on   years' experience on WorkCover's staff.

I have also given advice and support to many staff who have been unwell because of their work experiences. I have also directly experienced bullying behaviours.

The main point I would like to make to the Inquiry is the difficulty for WorkCover staff to notify complaints that may involve bullying behaviours to their employer and have them investigated appropriately.

Experience suggests there is no credible complaints investigation mechanism within WorkCover for reports of bullying behaviours. A new mechanism for managing reports of bullying behaviours needs to be established.

There are particular issues of accountability and transparency for WorkCover in dealing with bullying risk factors and instances of bullying behavior. Given that it is the workplace safety regulator, there is an understandable reluctance for WorkCover's leadership to admit when things go wrong.

There are also conflict of interest issues in having a WorkCover safety Inspector investigate reports of bullying within the workforce.

This means a culture of denial has entrenched itself in the senior and executive ranks where obvious problems are covered up, sometimes to an extraordinary degree. This attitude is a substantial obstacle to organisational improvement.

Without accepting and reconciling its history with its staff, I believe it will be virtually impossible for the organisation to move forward.

2. An insider's view

Several major issues can be easily identified regarding the internal health and safety record of WorkCover over the past several years.

a. A high corporate risk tolerance

WorkCover's risk appetite and respect for the law is indicated in its internal policy *Risk Tolerance and Rating Matrix*. This corporate policy document is the risk planning document used by the organisation. Please refer to Appendix 1.

The policy gives a rating of "Insignificant" to the scenario of "an increase in staff complaints". This gives a clear message to staff that there is no point in raising issues, including safety complaints. It gives a clear message to managers to not take staff complaints seriously.

The *Risk Tolerance and Rating Matrix* also rates as "Insignificant" the scenario of "non-compliance with legislation – nil external impact". This rating gives staff and management the clear message that breaches of law that are raised internally will be dismissed as insignificant, including complaints that could be a breach of the workplace safety legislation.

Similarly, the *Matrix* rates the consequence of "complaints to the CEO/Minister" as "minor".

These examples suggest that no attention needs to be given by the organisation to these types of issues. A nil response to an increase in staff complaints regarding safety, for example, is endorsed by the *Matrix*.

It can be no surprise that staff experience treatment in line with this policy. Staff reporting safety issues including bullying have been poorly treated and perceived as troublemakers by management.

This problem with the policy settings of the organisation was raised some three years ago at the Joint Consultative Committee, where agreement to amend the policy was reached. To date, no action has been taken.

I suggest the *Risk Tolerance and Rating Matrix* be reviewed and replaced with an appropriate policy that shows respect for the law and staff concerns. With respect, I suggest the policy owner and Executives who have approved the *Matrix* be counseled for their endorsement of this insensitive policy that undermines workplace safety.

b. **A poor commitment to workplace health and safety legislation.**

WorkCover has been non-compliant with the relevant OHS/WHS legislation in force in a number of ways. For the purposes of the current Inquiry, the most important of these breaches has been the failure to conduct OHS risk assessments for bullying as required by the OHS Act, which was in force until 1 January 2012.

Please refer to Appendix 2 for other examples of breaches of the OHS legislation

The OHS Act required risk assessments to be conducted in consultation with the OHS Committees. This has never happened

This non-compliance situation existed before, during and after the PriceWaterhouseCoopers (PWC) Inquiry.

When employee representatives raised the need to do risk assessments they were ill-treated and bullied by the management representatives on the Gosford OHS Committee.

I am aware of   employee representative   on the Gosford OHS Committee being bullied by management for carrying out the functions of an employee representative described in the OHS Act.

Employee representatives on an OHS Committee were protected from discrimination under the OHS Act then in force. However, the complaint of discrimination can only be made to WorkCover as the workplace safety regulator. This is an obvious problem for safety committee representatives working in WorkCover. In each of these   cases the intimidation contributed to the staff finishing their involvement with the safety committee.

If risk assessments for bullying had been conducted properly by the organisation as required by the OHS Act then it would have reduced the pressure on employee representatives to report cases of bullying at the OHS Committee, with the personal risks that this has involved.

I recommend an external mechanism be created to ensure that WorkCover staff have access to an independent process for safety issues. This would include legislative compliance and complaints investigations for all safety issues, not just bullying.

Earlier this year the Commonwealth Fair Work Act was amended to provide a rapid response mechanism for complaints of workplace bullying. I recommend the Inquiry Committee consider allowing SRWSD staff access to the Fair Work Authority for this purpose.

c. Poor support services for staff.

Internal mechanisms for reporting complaints of bullying have not proven effective. This is because the organisation has had a low safety culture historically. It does not have a history of practising safety for its staff. The failure to conduct risk assessments is a key point in this history. Acute understaffing of the internal OHS – Workers Compensation Unit (renamed the Employee Safety and Wellbeing unit) is the other major evidence in this history.

The Employee Safety and Wellbeing unit has had recent increases in resources and this is a welcome development. However, the effectiveness of this unit has been compromised or limited because these additional resources have been provided in order to deal with high levels of staff mental stress because of massive restructuring, job insecurity and job loss throughout WorkCover over the past 18 months or so. The Employee Safety and Wellbeing unit is widely seen as the cleanup squad for restructuring, job loss and subsequent mental stress.

I suggest the Inquiry Committee treat with caution the numbers of bullying complaints, workers compensation claims and support services usage rates recorded by WorkCover. These data are an unreliable gauge of the prevalence of bullying.

The unreliability or limited utility of the data reported by WorkCover is because of a widespread hesitation and fear about reporting bullying. This in turn is a direct result of the realignment processes and downsizing threatening the large majority of staff's employment security.

As an example of this intimidation effect, a Director in the Workers Compensation Insurance Division told staff in one team to not bother applying for their positions as none of them would get their jobs in the new structure. He taunted staff by saying words to the effect that: "If you don't like what I'm saying then go and complain to the Employment Relations Team". The implied threat was that any staff raising concerns about the restructuring methods would be subjected to some kind of disciplinary action.

Similarly, a significant number of the 500 or so staff in the Gosford Office are aware of the intimidation of the   employee representatives on the OHS Committee mentioned earlier. Staff who know about incidents like these would think twice before reporting an issue, particularly during a period when their future employment is at risk during a restructure.

I note that at the time of the PWC Inquiry in 2010 there were some 1,312 staff at WorkCover. According to the WorkCover submission to the current Inquiry into Allegations of Bullying in WorkCover NSW, dated 26 August 2013, there are now 1,083 staff at WorkCover. The threat of job loss has been real and is a significant risk factor for bullying.

Employee surveys have also shown staff are reluctant to report bullying issues and do not trust

HR / People and Culture to properly deal with those issues. For example, the People Matter Employee Survey conducted in 2012 found that only 34% of staff agreed or strongly agreed with the statement "I have confidence in the ways my organisation resolves grievances".

The Bullying Response Service was intended to provide confidential support to staff who felt they were being bullied. However, the integrity of this service was completely compromised a few years ago when the service provider

Consequently, myself and others felt that it was no longer possible to responsibly suggest to staff that they consider using the Bullying Response Service. In any event, WorkCover stopped promoting the service to staff shortly after the PWC Inquiry.

More recently I have been advised directly several months ago by a member of staff that details of "confidential" conversations with a Bullying Response Service counselor have been provided in detail to a member of People and Culture. I have been advised anecdotally several months ago that a similar situation happened for another staff member, only this time details of the "confidential" conversation about bullying were disclosed to the person's supervisor.

As online staff surveys are a more reliable indicator of the prevalence of bullying risk factors and actual bullying behaviours, I recommend these surveys should be repeated annually and trends monitored. Interventions and control measures can then be properly evaluated over time for their effectiveness in managing the risk of bullying.

I also recommend the annual survey needs to include an evaluation of the efficacy of support services offered under the Grow program, as well as identifying opportunities for humanising restructure methods. To date there has been no evaluation of Grow program's actual value to its staff. It is essential that a staff-based evaluation of the Grow program be conducted.

d. **Staff surveys show high levels of bullying and bullying risk factors.**

Staff surveys at WorkCover since 2007 have continually indicated the prevalence of high levels of bullying risk factors and bullying behaviours. The most recent surveys were The Voice survey and the People Matter survey in 2012. Please refer to Appendix 3.

Results from The Voice survey show a response 20% worse than the average of other government agencies and 25% worse than the average of All Industries for the statement "Bullying and abusive behaviours are prevented and discouraged".

Other results at Appendix 4 show responses far worse than the average of other government agencies and the average of All Industries for executive leadership responsibilities and other issues, indicating the presence of bullying risk factors.

Major findings reported on page 28 of the PwC report included that:

1. 779 (59%) of WorkCover's 1,312 staff responded to a survey on workplace culture.
2. 310 (40%) of these respondents "said they felt they had been bullied and / or sexually harassed in the workplace".
3. 215 (69.4%) of those who reported being bullied and / or sexually harassed said they were bullied by a manager / supervisor.

A surprising variety of survey instruments have been deployed by WorkCover management to survey staff, which makes it difficult to compare trend results over time. Despite this, all results reveal a high level of bullying risk factors and bullying behaviours.

In 2010 when presented with the PWC Inquiry staff survey statement "Bullying and abusive behaviours are prevented and discouraged" only 46% of staff agreed or strongly agreed.

Only some 50% of staff agreed or strongly agreed with the same statement in the 2012 Employee Engagement Survey.

This is an appalling result that indicates actions taken in response to the PWC Inquiry did not address the issues around bullying.

If a WorkCover Inspector were presented with this evidence of the prevalence bullying in any other workplace in NSW it would be astonishing if they did not take some kind of enforcement action to gain compliance with the WHS legislation.

The 2013 WorkCover Employee Engagement Survey was scheduled for August 2013. It has been cancelled, even though it would have provided the Inquiry Committee with valuable

contemporary information. This cancellation is widely viewed by staff as covering up ongoing problems.

e. The PWC Inquiry - "When things go wrong WorkCover just rotates the flat tyres".

The PWC Inquiry process received an enormous amount of information about the psychological wellbeing of staff. I acted as a support person for   staff who gave evidence, as well as providing my own information.

From this vantage point, I think it is fair to say that the PWC·Inquiry Report was a poor reflection of the testimonies it received. A clear description of the problem was not provided, so a number of the recommendations could not be matched to known circumstances. There was a disconnect between the facts on the ground, the Report and the corporate response.

The corporate response was the Leadership Challenge program that had little relationship to the problem of bullying. As a colleague with some 25 years experience at WorkCover said at the time, "When things go wrong, WorkCover just rotates the flat tyres".

The findings and recommendations contained in the PWC Inquiry report didn't break much new ground but simply confirmed existing evidence on the presence of bullying at WorkCover. The report barely reported or analysed information provided by 138 then-current and former WorkCover staff.

Most importantly, there was no analysis of whether WorkCover was compliant with key legislative, government and corporate requirements including:

- the obligation under the OHS legislation to provide employees with a bullying-free workplace and conduct OHS risk assessments
- the obligation under the government's Dignity and Respect Charter to conduct a risk assessment for bullying
- the internal procedure for Managing Reports of Bullying and the internal policy for Preventing Workplace Bullying

Had the PWC Inquiry Report focused on these safety-critical compliance requirements then improvement in the bullying culture could have been expected over the past three years.

If WorkCover's response to the PWC Inquiry Report focused on these safety-critical compliance requirements rather than the distractions of the Leadership Challenge then improvement in the bullying culture could have been expected over the past three years.

I recommend that attention be centred on the sincerity and ability of those in command to recognise the problem of bullying and address it properly. Covering up the problem and rotating the flat tyres has not worked.

On the positive side of the PWC Inquiry, I can only praise the PWC staff in dealing sensitively with a number of WorkCover staff who were very distressed during their interview. The opportunity to tell their experiences of being bullied was a great relief for many staff. Unfortunately, the PWC Report and WorkCover's response did not honour or respect their suffering.

f. The reason for the PWC Inquiry – WorkCover's cover up of bullying

The PWC Inquiry was initiated by WorkCover's-then Minister when media reports disclosed the fact that he had twice given incorrect answers in parliament regarding the findings of a WorkCover Inspector's investigation of bullying in WorkCover.

Although the Inspector found that "a pattern (of bullying) has been occurring for a prolonged period of time" the-then Minister twice said there was no evidence found of bullying. The Minister's answers were no doubt based on advice from WorkCover.

The Minister was quoted by the ABC at the time as saying: "And now I'm not satisfied with that (advice), and I've asked for an independent investigation."
http://www.abc.net.au/news/stories/2010/09/21/3017442.htm?site=news

The PWC Inquiry Report did not answer any questions around this cover-up of bullying within WorkCover:

- who was responsible for providing this false information to the Minister?
- Where is the accountability for this incident?
- What mechanisms have been put in place to make sure a cover-up cannot happen again?

To date there has been no explanation given to staff for this episode. This experience of corporate dishonesty and lack of accountability teaches WorkCover staff that covering up a finding of bullying has been condoned at the highest level of the organisation.

I recommend that an explanation and apology be given to WorkCover staff for this episode.

Without accepting its history and honestly reconciling with its staff it will be virtually impossible for the organisation to move forward. This step is essential for recovery.

g. The culture of the safety inspectorate

From working in the OHS Division / WHS Division (WHSD) for   years I think it is useful to mention the culture of the inspectorate as a factor influencing the culture of the whole organisation.

The WHS Division is the largest division within WorkCover. Within it in turn, the inspectorate is the largest element. The dynamics and management style of the inspectorate have a large effect on the organisation as a whole.

For a number of historical reasons, the culture of the inspectorate tends to be authoritarian, elitist and sectarian. These can be seen as risk factors for bully behaviours.

The senior leadership group of the WHSD has been dominated by staff from the inspectorate. These people are fairly clearly selected on the basis of their liege loyalty and some WHS technical skills, rather than their people leadership skills and corporate governance skills. Their management style is therefore typically autocratic and authoritarian rather than persuasive and empowering.

A reasonably valid criticism from industry that is the inspectorate has room for improvement in its communication, coaching and persuasive skills. Historically the inspectorate has relied on its coercive powers rather than its educative role. This mindset remains embedded in the executive leadership layer of the WHSD and influences its attitudes towards staff.

A very high percentage of the lower and middle management positions in the WHSD are effectively reserved as inspector-only positions. It is unusual for a non-inspector to be given acting opportunities in most of the WHSD management roles. This reinforces an elitist view amongst a substantial portion of the inspectorate that can manifest itself in unfortunate ways, such as sectarianism towards other staff like Departmental Professional Officers, Business Advisory Officers, Project Officers and clerical staff - all of whom have just had some of their positions deleted in the latest restructure. The training, developmental opportunities and benefits available to inspectors compounds this attitude and can be the source of tension among staff.

As an example of this situation, inspectors are allowed the use of a vehicle as a tool of the trade. Some inspectors worked in the Business Advisory Group alongside Business Advisory Officers working under the clerical award doing the exact same work. The Advisory Officers were not allowed the use of vehicles on the same tool of trade basis. They were rarely permitted the overnight garaging of vehicles even if performing after-hours work, as was regularly required. This was not the case for the inspectors working at the same event. There are numerous similar examples that serve to remind staff in the WHSD of the silo between inspectors and other staff.

As a side note, the Business Advisory Officer positions were all deleted a year ago and the innovative specialist advisory function they performed was lost.

Over time the number of non-inspector, specialist positions like the Business Advisory Officers and professionally qualified positions in the WHSD has been reduced. At the same time there has been a drift towards the generalist inspector model at the expense of specialist inspector elements. This trend narrows the skills base of the WHSD and consolidates the silo and potential for friction between the inspectorate and other staff.

The WHSD has experienced a seemingly endless series of restructures since 1998, each one directing considerable resources inwards, promising improvement, but never subjected to proper evaluation.

This failure to evaluate and learn from experience is a feature of the WHSD and the organisation as a whole. There is frequent churning of staff through restructuring, and a failure to genuinely evaluate both the restructure methods and efficacy of the new structures.

There is a kind of corporate autism at WorkCover, a profound inability to learn from the experiences of the organisation. This extends to staff welfare issues such as work stress and bullying.

3. Some personal experiences

The following are some examples of my personal experiences that may help the Inquiry Committee be familiar with the sort of behaviours that happen inside WorkCover.