

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

**Organisation:** Public Service Association of NSW  
**Date received:** 27/10/2014

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Public Service Association of New South Wales

General Secretary: Anne Gardiner ♦ President: Sue Walsh  
160 Clarence Street, Sydney  
GPO Box 3365, Sydney NSW 2001

Telephone: 1300 772 679  
Facsimile: 02 9262 1623  
E-mail: psa@psa.asn.au  
Internet: www.psa.asn.au  
ABN: 83 717 214 309



In reply please quote: AG:MG

27<sup>th</sup> October, 2014

The Director  
General Purpose Standing Committee No. 1  
Legislative Council  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

Dear Sir/Madam,

**Re : Submission to Review of the Implementation of the  
Recommendations of the Committee's Report No. 40 entitled  
"Allegations of Bullying in WorkCover NSW"**

Please find attached the Public Service Association's submission to the Inquiry for consideration of the Committee.

We apologise for the delay in making this submission but we felt it imperative to review in the light of the government's response released on 17 October, 2014.

  
Yours faithfully,

  
**STEVE TURNER**  
**Assistant General Secretary**



**Public Service Association  
of NSW**

**Submission**

**to the**

**Review of the implementation of  
recommendations from the  
Parliamentary Inquiry on Allegations of  
Bullying in WorkCover NSW**

**October 2014**

## Public Service Association – Submission to parliamentary review

The PSA notes that the parliamentary committee report indicated that WorkCover has an unhealthy and unsafe work environment. The Inquiry clearly established that the risk of bullying had not been managed properly in accordance with the Work Health Safety Act. The Inquiry recommendations are intended to correct that situation.

The PSA is heartened that the government has now responded.

### Recommendation 1

That the WorkCover NSW Executive Team and the Safety, Return to Work and Support Board make a public statement that genuinely:

- accepts that WorkCover, as an organisation, has a significant problem with workplace bullying
- apologises to employees for past wrongs, including in respect of Mr Wayne Butler
- accepts the findings of the NSW Industrial Relations Commission in respect of Mr Butler
- commits to addressing at an organisational level the problem of bullying.

On 7 July 2014 the PSA raised with the previous CEO, Julie Newman, our concerns that an apology had not been made. We also raised concerns that a fast resolution was needed for closure and to enable the employees to move forward. Ms Newman undertook to pass on our concerns to John Hubby the CEO of the Office of Finance and Services who she advised was charged with the responsibility of responding to the recommendations.

The new CEO of Safety Return to Work Support (SRWS), Vivek Bhatia, made a personal apology which was sent to all staff on 5 September 2014. This was shortly after his commencement. The PSA welcomed this move and it was broadly accepted in good faith by our members.

The PSA welcomes WorkCover's submission to the review indicating that the SRWS executive "fully supports Mr Bhatia's apology and statement to employees." We note also that WorkCover's submission contain a statement of "regret" on the part of the SRWS Board and Executive, however the PSA believes an apology should be given.

### Recommendation 2

That the WorkCover NSW Executive Team sincerely apologise to Mr Wayne Butler for how he was treated during his investigation, for his dismissal, and for their failure to accept the findings of the NSW Industrial Relations Commission.

Shortly after his appointment the new CEO of SRWS, Vivek Bhatia, made a personal apology to Mr Butler and personally engaged with Mr Butler in a constructive way seeking his views on what should be formally done or said to implement this recommendation. On 15 October 2014 a formal written apology was issued to Mr Butler and circulated to all SRWS staff. This apology was also made on behalf of the SRWS Executive.

This has been received well as a pivotal action towards positive improvement.

### **Recommendation 3**

That WorkCover NSW report to the Safety, Return to Work and Support Board on actions to be taken to address the punitive use of process within the organisation, especially in human resources matters.

No discussion has occurred with the PSA on this point, however we note the comments in WorkCover's submission regarding the existence of an action plan. The PSA does however have some views on this point which we intend to discuss with SRWS and Office of Finance and Services in the coming months. For example the way in which restructuring processes can be used to target individuals.

We recommend that a working party be established to conduct risk assessments of standard approved work processes and procedures of SRWSD.

### **Recommendation 4**

That the Minister for Finance and Services review the structure and functions of the Safety, Return to Work and Support Board to determine whether they are appropriate or expansive enough to cover the board's obligations under the *Work Health and Safety Act 2011*, including its obligation to ensure that WorkCover is addressing its organisational problem with bullying

Further, that in undertaking this review, the Minister consider whether it is feasible for all these functions to be undertaken by the existing board.

The PSA has no knowledge of this issue.

**Recommendation 5**

That WorkCover NSW report to the Safety, Return to Work and Support Board on the progress of all actions arising from the recommendations of this inquiry, at intervals of at least six months, and that these reports be published on WorkCover's website.

No discussion has occurred with the PSA on this point. The PSA did however meet with John Hubby (OFS) and Vivek Bhatia (SRWS) on 9 September 2014 and amongst other points discussed our view that any updates on progress should be available to all staff and should also be publically available on a website so that non-employees who contributed to the Inquiry or who have an interest, can see that progress is being made.

The PSA was given an undertaking that this would be considered and we are heartened to see this undertaking in WorkCover's submission to the review.

**Recommendation 6**

That WorkCover NSW formally review, in liaison with the Public Service Association of NSW, the findings of the 2013 People at Work Survey and other measures of workplace bullying, with a view to collecting, monitoring and publicly reporting reliable data on workplace bullying within the organisation on an annual basis.

This was discussed at the meeting with senior managers of SRWS and OFS held on 9 September where it was agreed that further meetings would be held. A further meeting was held on 9 October 2014 at which the draft policy for resolving workplace concerns was discussed. The PSA provided feedback on this policy on 9 September 2014 which does not appear to have been taken into account.

Detailed feedback was also given on 9 September 2014 on the draft Management of Workplace Bullying policy. Our feedback was critical of the total absence of any preventative strategies or means of identifying and resolving systemic issues. The PSA believes that this specific policy still approached the matter as an individual issue and therefore added nothing of substance to the general grievance handling process. The PSA recommended that this policy be abandoned in favour of the then current policy.

In a meeting on 9 October 2014 the PSA was handed final copies of the policies, essentially unchanged. These policies were then issued to staff on 17 October 2014 despite an undertaking to the PSA that accompanying procedural documents would be provided to the PSA prior to any release of the policies on a trial basis.

These policies when issued were not stated as on trial and the PSA has not received the procedural documents promised.

The PSA will be requesting meetings with SRWS to continue discussion on these issues and to seek to address the total absence of any preventative measures or a proper risk management system.

**Recommendation 7**

That WorkCover NSW ensure that all investigations of bullying complaints within WorkCover are investigated independently.

The PSA is not aware of any developments with the Memorandum of Understanding with DTIRIS that was reported on by WorkCover in evidence to the Inquiry as the external agency to investigate reports of bullying, however it appears that reports of bullying continue to be reviewed internally.

John Hubby, CEO of Office of Finance and Services, issued a communication to staff advising of a new process for making complaints. In a meeting with the PSA on 9 September 2014, he clarified that his communique was not intended to be a replacement policy but merely advising staff of potential pathways to raise issues. It was agreed at this meeting that we would continue to discuss the relevant policies with SRWS representatives, and our feedback was provided on these policies later that day.

It is currently up to the employee to choose the pathway for making a report of bullying, which may lead to an investigation. Currently all investigations are done internally in the first instance. The PSA agrees that all bullying complaints within WorkCover should be investigated independently, but on a transitional basis only. WorkCover must eventually be able to operate the same as any other business in NSW. This means that a PCBU should have a management system that is able to prevent and / or respond to possible bullying behaviour.

The need for an independent reviewer would then only arise where a worker has judged that the internal business processes have failed to address a safety issue. This would be the same mechanism that any worker in NSW could access to report the matter to WorkCover for investigation. A similar independent mechanism should be available for WorkCover employees at this point.

### Recommendation 8

That WorkCover NSW undertake a formal evaluation of the arrangements with the Department of Trade and Investment, Regional Infrastructure and Services for referral of work health and safety matters for investigation, including allegations of workplace bullying, within two years of the commencement of the arrangements. The review, which must be published, is to:

- include formal input from employees and the Public Service Association of NSW
- be formally considered by the Safety, Return to Work and Support Board and the independent workplace bullying steering panel (see recommendation 12).

As far as the PSA is aware this arrangement with DTIRIS has not been put in place.

We note the comment in the Parliamentary committee report (at 7.87) that *“should an arrangement with DTIRIS not prove achievable in the near future, then it is essential that another independent mechanism be established.”*

The PSA is not aware of any other arrangement having been put in place.

Such an arrangement should not be too onerous for another body as this mechanism should only be required at the point where an employee judges that the usual business processes have failed to address the safety issue. The PSA is aware of only two occasions in the past, where it was deemed necessary to notify WorkCover (as the safety regulator) about failures of WorkCover as the employer. Both these notifications were made by the PSA. We do of course note that more notifications may have occurred had there not been the inherent conflict of interest that exists now.

If there is some difficulty in gaining co-operation from another safety regulator, the PSA considers it would be possible to refer matters to an independent reviewer who is delegated the full powers of a WHS regulator. The independent WHS regulation of WorkCover could be done by a former WHS inspector contracted and supervised by the Office of Attorney General or Office of Finance and Services. The inspector could report annually to a Standing Committee of the NSW Legislative Council, if deemed appropriate.

The PSA has detailed views on how such an arrangement could work and will be discussing these ideas with WorkCover in the coming months.



### **Recommendation 9**

That WorkCover NSW ensure that the code of conduct for WorkCover and scheme agent staff is enforceable by individual workers and their representatives, and that financial penalties are included as one of the remedies where breaches of the code are established.

The PSA has no knowledge of this issue other than to say that there has been a code of conduct in place for WorkCover staff for many many years.

### **Recommendation 10**

That the Minister for Finance and Services take the necessary steps to ensure that complaints against WorkCover NSW staff by injured workers are investigated independently, and that investigations of complaints against scheme agent or WorkCover staff are reviewable by an independent body.

The PSA has no knowledge of this issue.

### **Recommendation 11**

That the Parliament of New South Wales enact laws which protect all workers in the state, including injured workers, from workplace bullying, and that such laws be based on the National Occupational Health and Safety Commission's Draft National Code of Practice.

The PSA has not been involved in any discussion on this point.

We do however agree that a clearer legal framework will make it easier for PCBU's to know what to do and for WorkCover to assist and monitor PCBU's in this work. The WHS Regulations should in our view be amended to require PCBU's to undertake preventive risk management activities similar in nature to the risk assessments, site safety management plans and safe work method statements already required by the Regulation.

The PSA has views on a variety of actions that could be taken in this regard and will be discussing these with WorkCover in the coming months.

**Recommendation 12**

That the Minister for Finance and Services and the Safety, Return to Work and Support Board establish an independent workplace bullying steering panel to oversee the actions of WorkCover NSW in addressing workplace bullying, both within its own organisation and in other workplaces as the state regulator of work health and safety. The panel must be empowered to require action on its recommendations and sufficiently resourced to perform its role.

The PSA has not been involved in any discussion on this point.