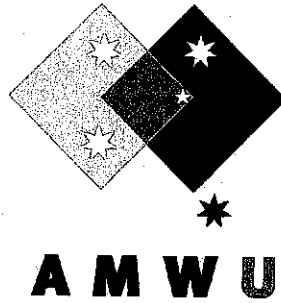


**INQUIRY INTO ALLEGATIONS OF BULLYING IN
WorkCover NSW**

Organisation: Australian Manufacturing Workers' Union

Date received: 23/08/2013

AUSTRALIAN MANUFACTURING WORKERS' UNION



**AMWU Submission to the Allegations of Bullying in WorkCover NSW
(Inquiry)
August 2013**

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Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a submission with relation to Allegations of bullying in WorkCover NSW (Inquiry).
2. The AMWU was compelled to offer this submission to this Inquiry due to evidence that the current culture and bullying within the NSW WorkCover Authority (WorkCover) is having a detrimental effect on our members, both with respect to our injured members on workers compensation and more broadly our members in workplaces relying on the health and safety regulator to enforce compliance. The AMWU expresses its concerns in relation to the welfare of the workers engaged by WorkCover. The AMWU will continue to voice its strong objections where ever it feels there is an injustice regardless of whether it directly effects our members or not.
3. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU NSW Branch has a membership of 25,000 workers. Our members are employed in the private and the public sectors, in blue collar and white collar positions, and in a diverse range of industries, vocations and locations.
4. For the purpose of this submission the AMWU shall rely upon the definition of bullying as proposed by Safe Work Australian in the draft Code of Practice, being;

Workplace bullying is defined as repeated and unreasonable behaviour directed towards a worker or a 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, including behaviour that is victimising, humiliating, intimidating or threatening.

On the ground

5. The AMWU, like many in New South Wales (NSW), is concerned to read reports of WorkCover bullying its workers. Whilst the AMWU has only a small number of Union members who are directly employed by WorkCover, our broader membership (where they have sustained a workplace injury) have been adversely affected by the bullying culture of WorkCover's scheme agents and have felt a deep a sense of desertion by the regulator when it fails to act in relation to safety complaints.
6. Manufacturing in NSW injures more workers than any other industry based on WorkCover's own statisticsⁱ (16.0% of all major employment injuries), is the most expensive industry for the scheme with respect to payments (20% of total scheme costs) and has an incident rate at double the States average (the third highest incident rate of 26.9). This results in a disproportionate number of our members across the manufacturing industry that comes into contact with WorkCover's scheme agents managing their workers compensation claims.
7. Feedback from our members, and injured workers generally, suggests that the workers compensation agents of WorkCover treat injured workers in the vast majority of cases with little respect or dignity. Workers are made to feel like criminals who are concocting elaborate schemes to carry out fraud against the workers compensation scheme. In many cases provisional

87 payments have not been forthcoming within the 7 days post the agent been notified and when
88 challenged, injured workers have been provided with explanations which reflect a lack of
89 understanding of the legislation or are given “special treatment” with additional hurdles put in
90 the way of their claim, including unlawful requests to attend medical appointments with
91 company or insurer preferred doctors.
92

93 8. It is our experience that many workers who suffer a secondary psychological injury following a
94 physical injury, do not suffer the psychological injury as a result from a depression onset due to
95 concerns arising from the disability or pain. The psychological injury is generally as a direct result
96 of their treatment at the hands of WorkCover’s agents or frustration in trying to seek genuine
97 assistance through the scheme. This is exacerbated if the injured worker suffers from an existing
98 psychological condition or injury, where their treatment by WorkCover’s agents results in
99 extended periods of time away from work. It is common for the AMWU to be told by workers, “I
100 had a psychological injury when I entered the workers compensation system as a result of
101 bullying in the workplace, then I was reinjured from bullying by the Claims Manager”.
102

103 9. Despite unions’ and other organisation who advocate for the interests of injured workers
104 including lawyers and the Injured Workers Support Network (IWSN) continually raising concerns
105 for many years with WorkCover regarding the behaviour of their agents or companies
106 WorkCover has licenced to manage workers compensation in house (self-insurers), WorkCover
107 have done very little to change this culture. In recent times WorkCover have taken actions which
108 seek to legitimise unlawful practices and behaviours rather than reprimanding those who have
109 utilised them, including rewriting gazetted guidance called up under the legislation under the
110 guiding hand of the interests of scheme agents to the exclusion of all other stakeholders and
111 parties.
112

113 10. It would appear from the experience of our members, that WorkCover has condoned the
114 management of workers covered under the workers compensation scheme through the use of
115 bullying tactics. Ironically, where our Union has questioned the use of these tactics or suggested
116 that the repeated unreasonable hounding or alleged threats against injured workers is bullying,
117 WorkCover has recoiled in shock that such an allegation could be laid. Sadly, in many cases our
118 union is of the view that the shock is genuine. Despite WorkCover also being the safety regulator
119 and as part of its statutory function an educator, it is alarming that they do not recognise what
120 bullying looks like or that they have an internal problem.
121

122 11. The AMWU notes that many of the organisations, who hold responsibilities to injured workers
123 under the workers compensation scheme, used the latest round of submissions to Safe Work
124 Australia seeking to water down or eradicate the Code of Practice on Bullying. When reading
125 those submissions it becomes evident that what many of these organisations fear above all else
126 is the codification of bullying. This is understandable as there is a direct mirroring of these
127 organisations management practices and their treatment of injured workers with the definition
128 of workplace bullying, per paragraph 3.
129

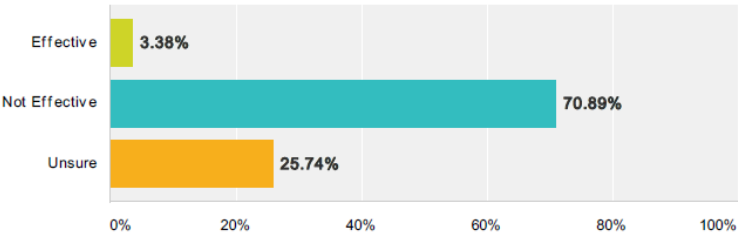
130 12. Within the Work Health and Safety Division of Workcover it would appear that things are little
131 better. Many of the AMWU’s Officials come into contact with WorkCover Inspectors. This often
132 occurs following one of our members making a workplace complaint to the regulator following
133 inaction by their employer regarding safety matters. Workers and our Officials report repeatedly
134 feeling let down by the Inspectors who instead of focusing on compliance with the legislation, as
135 one would expect from a regulator, instead focus on collaborating with and supporting the

136 employer to the exclusion of the workers and their representatives. There are a number of
137 examples of how this is a problem.
138

- 139 13. This anecdotal evidence is supported by a range of quantitative data which is publicly available.
140 For example, in making its recent submissionⁱⁱ to Safe Work Australia the IWSN conducted an
141 online survey in relation to bullying in the workplace and measures which people thought would
142 be appropriate in tackling this issue. The results were both unexpected and shocking.
143
- 144 14. Whilst almost 30% of participants stated that they would feel comfortable raising bullying
145 matters with their employer, almost 71% answered that they had no faith in the regulator in
146 dealing with bullying complaints and only just above 3% saying they thought WorkCover were
147 effective in dealing with these matters. It is not surprising that WorkCover has struggled to
148 effectively deal with bullying complaints when it has been unable to control these type of
149 behaviour within the regulator.
150
151

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

Answered: 237 Skipped: 0



Answer Choices	Responses
Effective	3.38% 8
Not Effective	70.89% 168
Unsure	25.74% 61
Total	237

- 152
153
- 154 15. In recent times a number of our unions Officials have had opportunity to speak confidentially
155 with some Inspectors and raise questions regarding their approach and their lack of willingness
156 to support vulnerable workers. Overwhelming the response has been one of despair. Inspectors
157 report been dragged over the coals by Managers if they act in a manner which is contrary to the
158 current ethos, which is that employers are their clients, not workers. The AMWU has heard that
159 Inspectors are even dissuaded from issuing improvement notices, for fear of an employer
160 making a complaint or seeking a review and the negative attention this will draw to them from
161 the Workcover Leadership.
162
- 163 16. Unfortunately, many Inspectors now accept their role is not that of a regulator. This is as a direct
164 result of the current culture imposed by the leadership who are enforcing this approach. Those
165 inspectors who have expressed concern about the current approach have been warned to keep
166 their heads down for fear of having it chopped. This culture has not only undermined WorkCover
167 as an genuinely independent organisation, but also undermines the good people who are

employed by WorkCover, many of whom joined the organisation with the ambition of being part of a positive change toward safer NSW workplaces.

17. Such a culture erodes the effectiveness of WorkCover, disarming it from the tools it is provided under the Work Health and Safety Act 2011, and inhibiting its capacity to be an effective regulator. It appears a small number of senior managers have chosen which of the functions the regulator will be permitted to carry out and actively enforce and that other functions of the regulator are not to be. It is little wonder that we have seen no improvement in safety in our workplaces in recent times and some employers feel emboldened to ignore their obligations under the legislation including Health and Safety Representatives (HSRs) Provisional Improvement Notices and even HSRs requests for training.

18. Following is the functions of the regulator as set out under the *NSW Work Health and Safety Act 2011*;

152 Functions of regulator

The regulator has the following functions:

- (a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act,*
- (b) to monitor and enforce compliance with this Act,*
- (c) to provide advice and information on work health and safety to duty holders under this Act and to the community,*
- (d) to collect, analyse and publish statistics relating to work health and safety,*
- (e) to foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters,*
- (f) to promote and support education and training on matters relating to work health and safety,*
- (g) to engage in, promote and co-ordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator,*
- (h) to conduct and defend proceedings under this Act before a court or tribunal,*
- (i) any other function conferred on the regulator by this Act.*

Where some of the issues lay

19. When looking to identify the causes of the current problematic culture within WorkCover we must start at the top. Despite the functions of WorkCover been clearly set out in the Work Health and Safety Act 2011 and the Workplace Injury Management and Workers Compensation Act 1998, the bulk of these functions were inconsequentially eroded or weakened when the NSW Government abolished the WorkCover Board and created the Safety, Return to Work and Support Board (the Board) under the Safety, Return to Work and Support Board Bill 2012ⁱⁱⁱ.
20. When comparing the functions of the Board it fails to reflect the provisions of the legislation or provide for accountability against these legislative functions. In part, this has changed the focus of the Board diverting its attention from ensuring WorkCover is an effective regulator of NSW workplaces, to little more than an overseer of the various scheme's finances and investments. This has largely been facilitated by the makeup of the Board being limited in its skills and expertise base being predominately lawyers and investment advisors.
21. In addition, the diversity of views tabled to the Board has been limited with the NSW Government, under the Safety, Return to Work and Support Board Bill 2012, abolishing the Workers Compensation and Work Health and Safety Council. This tripartite body had for over a decade sort to maintain some focus on the issues that presented across industry. Without this

tripartite body in place (which is a contravention of the Inter-Governmental Agreement regarding Harmonised Health and Safety Laws) the only views now tabled to the Board are those of WorkCover's executive. Further to this, WorkCover held accountabilities to the Work Health and Safety Council which, since its abolition have never been replaced.

22. This has resulted in a WorkCover executive with less genuine accountability for the performance of the regulator and would appear to only provide a limited view of the regulators performance being tabled to the Board. Whilst reports of bullying within WorkCover are not new, it would appear there has been an intensification of the use of bullying as a management tool once these accountabilities were removed. There has also been an intensification of WorkCover withdrawing from its role as a regulator during this time. It would appear that the executive of WorkCover are convinced they should be running an organisation with more a focus on appeasing and supporting business groups and their political masters, than managing the States safety regulator and workers compensation insurer.
23. This lack of focus and accountability has driven the intense interest by the public in the recent reports^{iv} of the NSW Industrial Relations Commission reinstating a sacked WorkCover worker who was subjected to behaviour described by the Commissioner as "shabby and disgraceful" and "had all the characterisation of institutional bullying". The public has the right to expect that WorkCover are an exemplar organisation in relation to health and safety performance. The citizens of this State do not accept a "do as I say, not as I do" attitude from a regulator.

Recommendations

24. The NSW government clearly has a critical role to play in stamping out bullying in its workplaces. There needs to be a review of the functions of the board including whether they are appropriate or expansive enough to cover its obligations and function under the legislation. The Board must play a more proactive and hands on role, ensuring that WorkCover has in place appropriate systems to manage allegations of bullying. These systems must be agreed to by both the workers and their representatives. Further, the Board should be approachable by any worker(s) engaged by WorkCover should bullying instances occur and the worker(s) feel that the management or the executive are unapproachable or involved.
25. The NSW government should set an example by clearly sending a zero tolerance of bullying in NSW message. This can be achieved in part by supporting the making of the Prevention of Bullying Code of Practice at Safe Work Australia.
26. The NSW government should ensure that it is clear in setting direction for WorkCover, both in the way it treats its workers and WorkCover's role as a regulator. There should be no political interference with WorkCover carrying out its full functions as set out in legislation.
27. The NSW government should immediately reconstitute the Workers Compensation and Work Health and Safety Council and support the role it has played in positively assisting Workcover and its Board. In reconstituting this Council it should consider the accountabilities that WorkCover should owe the Council and any functions or powers the Council should have, including giving a directive and in providing reports to the Minister and the Parliamentary Committee. Workers engaged by WorkCover should have a right to approach members of the Council should they have concerns in relation to bullying and the worker(s) feel that the management or the executive are unapproachable or involved.

28. WorkCover should develop, through negotiation with injured workers and their representatives, new operational directives for the workers compensation nominal insurers' scheme agents or licenced insurers regarding the management of injured workers, ensuring injured workers are treated with respect and dignity at all times. These operational directives upon completion should then be included into the conditions when contracts or licences next come up for renewal.
29. WorkCover should establish a system to prosecute or fine scheme agents or licenced insurers where they are found to have, without reasonable excuse, withheld weekly benefits or authority for medical treatment from injured workers outside of legislated timeframes.
30. The executive and management of WorkCover should support its workers, in particular the Inspectors. There needs to be recognition that the Inspectorate are highly trained Officers of WorkCover who, with few exceptions, have pursued this career wanting to effect positive change in the safety of NSW workplaces, seeing a reduction in injuries and fatalities. If the executive hold concerns in relation to the quality of the training received to date or its relevance to the real world, then WorkCover should ensure that high quality, relevant training is developed and delivered to all WorkCover Inspectors.
31. Notwithstanding the above paragraph, all WorkCover Inspectors should be provided training in how to manage bullying complaints. NSW workers expect that when an Inspector is attending a workplace in relation to a bullying complaint, they do not engage in exclusive conversations with employers and report only their thoughts or the outcomes to workers affected by the bullying. Investigations should not simple be limited to whether a business or undertaking has a policy on bullying, but also look at the matter at hand to which the complaint arose and following their own investigations inform themselves whether bullying has occurred and if reasonable steps had been taken by the employer to stop this from occurring. If deemed necessary Inspectors should then take appropriate enforcement action against parties considered not compliant with their duties.
32. Once WorkCover has in place agreed systems to manage allegations of bullying in the workplace, the Board, executive and all senior managers should be required to undertake training in relation to bullying. That training should include, but not be limited to identifying bullying, how to eliminate bullying in the workplace, how investigations into bullying should be conducted, how to manage those who have engaged in bullying once identified, how to assist victims of bullying.
33. WorkCover jointly with the Public Service Association of NSW as the principal union should conduct an annual survey of all WorkCover's workers with a clear focus on bullying in the workplace. This survey should continue until such time as both parties no longer believe it is of any value.
34. The AMWU calls for an end to the culture that has allowed bullying to continue within WorkCover. Our members and all workers in NSW, deserve a workplace safety regulator who's Inspectors feel empowered to act to protect workers guided by their conscience and training, not the concern of potential reprisals.

315 35. We call on WorkCover to ensure its direct workers, its agents and licensees who interact with
316 injured workers treat them with dignity and respect at all times. It is the public's expectation
317 that WorkCover be an exemplar organisation with regards to bullying.
318

319 **END**

ⁱhttp://www.workcover.nsw.gov.au/formspublications/publications/Documents/statistical_bulletin_2008_2009_2810.pdf

ⁱⁱ <http://www.safeworkaustralia.gov.au/sites/SWA/model-whs-laws/public-comment/Documents/Bullying%20public%20comment/Bullying%20submissions/054-Injured-Workers-Support-Network.PDF>

ⁱⁱⁱ[http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/131a07fa4b8a041cca256e610012de17/47a959367af232d3ca257a22001bc47b/\\$FILE/b2012-037-d18-House.pdf](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/131a07fa4b8a041cca256e610012de17/47a959367af232d3ca257a22001bc47b/$FILE/b2012-037-d18-House.pdf)

^{iv} <http://www.theherald.com.au/story/1591570/bullied-employee-reinstated/?cs=12>