

**Submission  
No 66**

## **INQUIRY INTO EMERGENCY SERVICES AGENCIES**

**Organisation:** SafeWork NSW  
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SafeWork NSW

**SafeWork NSW submission  
to the Legislative Council Portfolio  
Committee No. 4 – Legal Affairs:  
*Inquiry into emergency services agencies***

**August 2017**

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## 1. BACKGROUND

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SafeWork NSW understands the inquiry will look at:

- a) the prevalence of bullying, harassment and discrimination, as well as the effectiveness of the protocols and procedures in place to manage and resolve such complaints within emergency services agencies, including:
  - i. NSW Wales Rural Fire Service
  - ii. Fire and Rescue NSW
  - iii. NSW Police Force
  - iv. Ambulance Service of NSW
  - v. NSW State Emergency Service
- b) the support structures in place to assist victims of workplace bullying, harassment and/or discrimination with emergency services agencies
- c) the support services available to emergency services workers and volunteers to assist with mental health issues resulting from workplace trauma and the effectiveness of those programs
- d) the appropriateness of uniforms provided to personnel in emergency services agencies
- e) the relocation of the New South Wales Rural Fire Services Headquarters to Orange, Dubbo or Parkes
- f) any other related matter.

SafeWork NSW is able to address the terms of reference as the work health and safety regulator, particularly in relation to:

- prevalence of bullying, harassment and discrimination in the identified emergency services agencies as reported to SafeWork NSW
- the regulatory support services available to emergency services workers and volunteers to assist with mental health issues resulting from workplace trauma, and
- work health and safety (WHS) legislation and bullying prevention.

## 2. INTRODUCTION

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SafeWork NSW welcomes the opportunity to make a submission to the Legislative Council Portfolio Committee No. 4 – Legal Affairs (the Committee) – *Inquiry into emergency services agencies*.

SafeWork NSW is the WHS regulator for NSW (except in relation to mining workplaces). It works with the community to reduce work-related fatalities, serious injuries and illnesses.

SafeWork NSW is established under the *Work Health and Safety Act 2011* (WHS Act), which is part of a nationally harmonised scheme. SafeWork NSW's regulatory functions are set out in section 152 of the WHS Act and include:

- advising and making recommendations to the Minister and reporting on the operations of the effectiveness of WHS legislation
- monitoring and enforcing compliance with WHS legislation
- collecting, analysing and publishing WHS statistics
- providing advice and information on WHS to duty holders and their representatives, and promoting and supporting education and training on WHS matters
- sharing relevant information including with corresponding regulators
- conducting and defending proceedings under WHS legislation before a court or tribunal.

## 3. REGULATORY SERVICE PROVIDED BY SAFEWORK NSW

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a) *the prevalence of bullying, harassment and discrimination, as well as the effectiveness of the protocols and procedures in place to manage and resolve such complaints within emergency services agencies, including:*

- i. *NSW Wales Rural Fire Service*
- ii. *Fire and Rescue NSW*
- iii. *NSW Police Force*
- iv. *Ambulance Service of NSW*
- v. *NSW State Emergency Service*

Mental health, just like physical health, is an essential part of work health and safety. 'Health' is defined in the WHS Act as both physical and psychological health.

Preventing and managing work-related risk factors that may lead to poor mental health is essential to creating a mentally healthy, safe and productive workplace. These risk factors include bullying, harassment and discrimination in the workplace.

The WHS Act does not include a definition of "bullying". NSW defines workplace bullying in accordance with the Safe Work Australia publication: *Dealing with Workplace Bullying – A Workers' Guide*, as follows:

- **Workplace bullying** is '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 considered the circumstances, would see as victimising, humiliating, intimidating or threatening.

Section 19 of the WHS Act requires a person conducting a business or undertaking (PCBU) to ensure, so far as is reasonably practicable, the health and safety of its workers. This includes workers engaged, or caused to be engaged, by the person and workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

The PCBU's primary duty of care includes ensuring, so far as is reasonably practicable, the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the business, and that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

In order to assist PCBUs to comply with their WHS duties, SafeWork NSW proactively engages with industry and stakeholders, including emergency services agencies, on prevention and intervention activities.

Reports of workplace bullying should be raised within the workplace, and reasonable attempts should be made to resolve the matter internally before referring to external agencies.

Allegations of bullying and harassment at work are not always reported to the regulator. This can be for numerous reasons so, like many psychosocial issues, SafeWork NSW data will not fully reveal the extent to which bullying and harassment occurs within emergency services agencies.

Investigating bullying complaints often involves dealing with very complex and highly emotive issues, which results in significant time and resources being utilised to investigate these types of matters.

### **Statistical information**

Attachments A, B and C provide statistical information provided by SafeWork NSW regarding requests for service in regard to bullying-related matters within emergency services agencies over the past five years.

Since 2012, SafeWork NSW has received 110 requests for service regarding alleged bullying and harassment within the five emergency service agencies. Of these, 84 were escalated to an inspector response, which means the matter was allocated to an inspector for investigation.

Action taken by an inspector during an investigation varies depending on the details of the complaint raised by the requestor, sensitivities in the workplace, complexities of the matter, merit of the complaint, whether the complaint falls within SafeWork's jurisdiction and the response of the employer to any agreed actions between the employer and inspector. Every request for service (RFS) is individual and needs to be assessed on its merits and the inspector's recommendations are tailored to suit each situation. Further information on action taken by an inspector during an investigation can be found below under the heading 'Responding to a bullying RFS'.

In 10 of the 84 investigated by an inspector, the agency received a notice requesting the production of evidence or documents. No improvement or penalty notices were issued in any of these cases, meaning the inspector has investigated the matter and satisfied themselves that the agency had a system in place to address the risk in relation to a particular hazard, in this case bullying. An improvement notice is issued to remedy systems of work or hazards which do not or will not pose a serious and immediate or imminent risk to the health or safety of any person. A penalty notice is issued where the recipient has not complied with an improvement notice.

## **Receipt and triage of RFS**

SafeWork NSW may be contacted where reasonable attempts to resolve a workplace bullying complaint through internal processes within the workplace have failed. We take all bullying complaints reported to us seriously and will determine the appropriate level of response relevant to the potential or actual risk.

The National Compliance and Enforcement Policy (NCEP) sets out the approach SafeWork NSW will take to compliance and enforcement under the WHS Act and the Work Health and Safety Regulation 2011.

Bullying RFS are received via a workplace bullying form, available on the SafeWork NSW website, and triaged via a process implemented in July 2014. Prior to this time all requests received an inspector response. The triage system was implemented to direct inspectorate resources to first address safety issues of the highest risk.

The possible assessment outcomes for an RFS are:

- referral to a relevant agency for matters outside our jurisdiction, for example, the Fair Work Commission for a case of unfair dismissal
- administrative response, for example, the inspector issuing a letter for issues assessed as low risk, and
- inspector response for issues of moderate to high risk.

## **Responding to a bullying RFS**

Attachment D provides a copy of the *SafeWork NSW Workplace Bullying Response – Service Standards*, which explains what SafeWork NSW can and cannot do when a bullying complaint has been raised through a RFS. This information is available on the SafeWork NSW website at [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au).

On responding to a RFS, a SafeWork NSW inspector will initially contact the requestor (if known) and seek clarification on any aspect of the request for service. The inspector will periodically update the requestor as required. Next the inspector will inquire into whether an employer or business (or other PCBU) is, among other things:

- consulting with workers about work health and safety
- providing and maintaining a work environment that is without risks to health and safety



- providing and maintaining safe systems of work
- monitoring the health and safety of workers and the conditions at the workplace, to ensure that work-related illnesses and injuries are prevented, and
- providing appropriate information, instruction, training or supervision to workers and others at the workplace, to allow work to be carried out safely.

As the above list indicates, inspectors draw upon a range of tools used to collect information from which to form an opinion on the situation, including whether action is required to resolve the complaint.

### **Outcomes of RFS**

On completion of an inspector's inquiries, they will provide a final verbal outcome for the RFS to the requestor. RFS outcomes include:

- (1) No further action: an inspector has determined that an employer or business has systems in place to deal with complaints of bullying.
- (2) Improvement notice: issued where improvement is required for an identified risk.
- (3) Prohibition notice: issued where there is an imminent serious risk to health and safety.
- (4) Agreed actions: recorded as part of an inspection report – outlines actions the employer or business is taking that do not require an improvement notice.
- (5) Penalty notices: issued for non-compliance with an improvement notice.
- (6) Commencing prosecution action: this avenue generally exists in relation to incidents, however can be undertaken in relation to RFS where a breach of work health and safety legislation is apparent.

### **Bullying Prevention Improvement Strategy**

SafeWork NSW (then WorkCover) undertook an audit program to monitor and review the status, effectiveness and employee awareness of bullying prevention strategies organisations and companies have in place. Targeted organisations were identified through workers' compensation claims data showing above-average claims as a result of bullying and/or harassment at work. During 2012 and 2013, audits were undertaken of Ambulance Service of NSW and Fire and Rescue NSW facilities.

Both agencies were acknowledged as being in the process of implementing strategies to improve the management of bullying. Findings from both audits led to recommendations for enhanced training, leadership, reporting, communications and consistency of implementation of policies and procedures in a number of areas to enhance the effectiveness of the existing bullying prevention strategies.

As per the figures in Table 1 of Attachment A, the audits assisted with a sustained improvement in the number of complaints received by SafeWork NSW for Ambulance Service of NSW and Fire and Rescue NSW.

#### **4. WHS LEGISLATION AND BULLYING PREVENTION**

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The objective of work health and safety laws is to protect workers and other persons against harm to their health, safety and welfare. That is, a PCBU is to ensure so far as reasonably practicable the provision and maintenance of a work environment without risks to health and safety. This includes bullying, harassment and discrimination.

The WHS Act, which commenced in NSW on 1 January 2012, provides for offence provisions for breach of the health and safety duties, with differing penalties for Category 1, 2 and 3 offences, depending on the level of seriousness.

The maximum penalty for an individual, other than a PCBU, being \$300,000 or five years imprisonment or both, maximum penalty for a PCBU \$600,000 or five years imprisonment or both and a \$3 million penalty for a corporation.

#### **5. CONCLUSION**

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SafeWork NSW would be pleased to assist the Committee with any further information it may require to assist it report within the Inquiry's Terms of Reference.

## ATTACHMENT A – REQUESTS FOR SERVICE

Since 2012, SafeWork NSW (including former WorkCover) has received 110 Requests for Service for bullying-related matters concerning emergency services agencies.

**Table 1 – total number of RFS regarding each agency**

Requests for Service						
Agency	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Rural Fire Service	5	5	5	0	0	0
Fire & Rescue NSW	1	12	1	1	0	0
Ambulance NSW	7	3	2	4	16*	1
NSW Police	5	8	7	12	7	0
NSW State Emergency Services	2	4	1	1	0	0

\*The increased number of Requests for Service occurred following a social media campaign calling for staff to contact SafeWork NSW with complaints. Investigations found that most of the incidents occurred prior to 2012. The number of Requests for Service received in 2016/17 outside the social media campaign remained consistent.

**Table 2 – triage status percentages for all RFS**

Triage Status Percentages for all Requests for Service		
Total Requests for Service	110	
Administration response – letter	13	12%
Administration response – no action	10	9%
Assessment of request for S238	1	1%
Inspector Response	86	78%

## ATTACHMENT B – NOTICES ISSUED

Table 3 – notices issued by SafeWork NSW inspectors

Notices Issued					
Agency	2012/13	2013/14	2014/15	2015/16	2016/17
	S155	S155	S238	S171	
Rural Fire Service	2	1			
Fire & Rescue NSW		2			
Ambulance NSW					
NSW Police			1	1	
NSW State Emergency Services					
<b>TOTAL</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>0</b>

S155 – Notice to obtain Information/Documents/Evidence

S238 – Notice to produce records

S171 – Notice to produce Documents

## ATTACHMENT C – RESULTS

**Table 4 – results of Requests for Service received by SafeWork NSW**

Agency	2012/13		2013/14		2014/15			2015/16			2016/17			2017/18
	Admin Response - Letter	Inspector Response	Admin Response - No action	Inspector Response	Admin Response - Letter	Admin Response - No action	Inspector Response	Admin Response - Letter	Admin Response - No action	Inspector Response	Admin Response - Letter	Admin Response - No action	Inspector Response	Inspector Response
Rural Fire Service		5		5	1	1	3							
Fire & Rescue NSW		1		12	1					1				
Ambulance NSW		7		3	0		2	1		3	5	5	6	1
NSW Police	1	4	1	7	2	1	4		2	10	1		6	
NSW State Emergency Services		2		4	1					1				
<b>TOTAL</b>	<b>1</b>	<b>19</b>	<b>1</b>	<b>31</b>	<b>5</b>	<b>2</b>	<b>9</b>	<b>1</b>	<b>2</b>	<b>15</b>	<b>6</b>	<b>5</b>	<b>12</b>	<b>1</b>

## **ATTACHMENT D – WORKPLACE BULLYING RESPONSE – SERVICE STANDARDS**

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This explains what we can and cannot do, and what you can expect from us when you raise a bullying issue with us.

### **What we can do**

We can only act on situations that fall within the scope of the *Work Health and Safety Act 2011*.

This includes verifying an employer or business (or other PCBU) is:

- consulting with workers about work health and safety
- providing and maintaining a work environment that is without risks to health and safety
- providing and maintaining safe systems of work
- monitoring the health and safety of workers and the conditions at the workplace, to ensure that work-related illnesses and injuries are prevented
- providing appropriate information, instruction, training or supervision to workers and others at the workplace, to allow work to be carried out safely.

### **What we cannot do**

There are some things we cannot do. These include:

- mediate between the workplace parties involved
- provide legal advice
- provide counselling
- order the employer or business (or other PCBU) to discipline the alleged bully or terminate their employment
- take sides
- deal with industrial matters or discrimination
- issue an order to stop bullying behaviour-the Fair Work Commission have powers to issue these orders if required.

### **What we expect from you**

We can provide you with a better service if you:

- check that what is occurring to you is workplace bullying
- try to resolve it in your workplace by:
  1. talking to someone – eg your supervisor, manager, health and safety representative (HSR) or union representative – about what you are experiencing and what you can do about it
  2. checking if your workplace has an anti-bullying policy and reporting procedure and following it
  3. telling the other person that you object to their behaviour and asking that it stop (if you feel safe and comfortable doing this)
  4. reporting the behaviour as early as possible – eg to your supervisor, manager, HSR or union representative – and/or using workplace reporting procedures
- check that we are the right agency to approach for your issue if it's still not resolved
- read 'what you can expect from us', below
- complete and submit the workplace bullying online form, if you want to raise the issue with us.

Web browsers must be updated to the latest version to ensure online forms are submitted without error. You can also request a hard copy form by calling 13 10 50.

### **What you can expect from us**

- we will acknowledge in writing that we have received your request
- we may contact you for more information
- we will decide on the most appropriate action by assessing the information you provide and the circumstances of your request, and by considering our compliance policy and prosecution guidelines
- we will contact the workplace to which the issue relates (or the place from which the relevant person generally conducts their business or undertaking) by one of the following methods:
  - letter
  - phone call
  - visit by an inspector

- we will take care to not disclose any information that may identify you if you have made a request for your identity to remain confidential. However, it is possible that the workplace parties will make assumptions about who has raised the issue with us. In some circumstances, remaining anonymous may limit the scope of our action.
- we will be transparent with the workplace about why contact is being made and what their obligations are under the WHS Act. If a visit is undertaken, the inspector will make enquiries to:
  - assess the extent of compliance by the workplace duty holders with their work health and safety obligations in relation to the alleged bullying issues
  - support compliance with legislation
- we will not, in most circumstances, take steps to verify that bullying has occurred. Our primary purpose is to assess the extent of compliance with WHS laws and ensure compliance, not to support a person's version of events over another or examine a potential breach of a code of conduct (although this may occur whilst we are making our enquiries).
- within 10 working days from receipt of your request, we will respond to your request which may include contacting you and/or the workplace.
- we will keep you informed of progress, and when finalised, will provide you with the outcome, the reason for the decision and any actions taken. This will usually be via a phone call.
- we will ensure that our decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant legislation, policies and procedures.
- we take unreasonable behaviour seriously. The customer Service Standard outlines our standards of service. We do not view abuse, threats, intimidation or harassment of our staff by customers as part of their job. If your behaviour is unacceptable, we may set limits or conditions on your contact with us and provide you with a warning. If your unacceptable behaviour continues, we may cease all direct contact with you.



- we may not be in a position to continue to respond to issues that have already been actioned by us. We may stop responding to you if we have already investigated and responded to your issues. If you have been provided with an opportunity to express your concerns, have been treated fairly, given reasons for decisions made and a reasonable explanation as to why your request can go no further, the matter will be closed. Any further correspondence from you about matters already dealt with will be noted, and no further action will be taken.