

Submission
No 96

INQUIRY INTO EMERGENCY SERVICES AGENCIES

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NSW Legislative Council

Portfolio Committee No. 4 – Legal Affairs

Inquiry into emergency services agencies

Submission in respect of Fire and Rescue New South Wales

20 July 2017

Submission to NSW Legislative Council's Portfolio Committee No. 4 – Legal Affairs - Inquiry into emergency services agencies

This submission is directed to the prevalence of bullying, harassment and discrimination within Fire and Rescue New South Wales and aims to identify to the Committee the structure and culture within Fire and Rescue New South Wales that supports bullying and/or harassment. It will reference KPMG 2010 report into bullying and harassment within Fire and Rescue New South Wales which identified those practices and was intended to lead to corrective action and strategies to improve the workplace. It will cite the recent 2015 Review by the Honourable Roger Boland to indicate the practices and deficiencies in Fire and Rescue New South Wales' handling of grievances from current and former employees in which bullying and harassment was alleged.

The submission will also explore the role and objective of the Minister for Emergency Services and of Fire and Rescue New South Wales in setting up the Boland Review and acting on its findings in such a way as to restrict and suppress public disclosure of the practices within the agency and the treatment of its employees.

My name is _____, and my address is _____
with mobile phone _____.

I am _____ years of age and a retired Local Government Engineer and Town Planner with over 28 years in senior management roles.

My son is a former firefighter with FRNSW and I am aware of his experience whilst employed at _____ leading to his medical discharge in _____.

I have assisted with my son accessing treatment for mental illness resulting from his service with FRNSW, and assisted in the documentation of evidence extracted in response to actions by FRNSW and its insurers Allianz and EML.

Over the past ten years I have become more aware of abuses within FRNSW and I am familiar with a number of the matters reviewed by Hon RP Boland and the reported cases associated with them. I believe that a full assessment of all of the evidence behind the information, examined by, and/or withheld from Hon RP Boland will confirm that the culture and management style within FRNSW continues to encourage bullying, harassment, intimidation, abuses of power, and other forms of psychological harassment.

I believe that it is significant in examining reported cases to explore the Judge's comments after determining a case and then stepping outside the legal parameters containing it to comment on reasonableness.

Submission to NSW Legislative Council's Portfolio Committee No. 4 – Legal Affairs - Inquiry into emergency services agencies

A. BACKGROUND

The Inquiry

1 On Thursday 11 May 2017, the Honourable Robert Borsak MLC, Chairman of the Portfolio Committee No. 4 – Legal Matters, informed the Legislative Council that the Committee had resolved that day to inquire into and report on emergency services agencies.¹

The Reference

2 That Portfolio Committee No. 4 – Legal Affairs inquire into and report on emergency services agencies, and in particular:²

- (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) New South Wales Rural Fire Service;
 - (ii) Fire and Rescue New South Wales;
 - (iii) New South Wales Police Force;
 - (iv) Ambulance Service of New South Wales;
 - (v) New South Wales State Emergency Service.
- (b) the support structures in place to assist victims of workplace bullying, harassment and/or discrimination within 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 Services Headquarters to Orange, Dubbo or Parkes; and
- (f) any other related matter.

Input to the Inquiry

3 In a public announcement on 11 May 2017, Chair Robert Borsak MLC said that the Committee were 'calling for submissions from anyone in these areas for the committee to examine'.³

¹ Legislative Council Hansard 11 May 2017

² Ibid

³ Daily Telegraph 11 May 2017

Reason for the Inquiry

- 4 During early 2015 there had been agitation by a number of firefighters to their local representatives for support in publicising action by FRNSW which those firefighters believed had not been handled satisfactorily. The media was used to publicise specific cases. Around this time there had been a number of TV references to bullying, harassment, sexual assaults, and other practices leading to mental health problems for employees within service agencies in NSW, ACT and Victoria. A significant emphasis was given to the incidence of PTSD among military personnel, firefighters, police and para medics; and a perceived failure of respective agencies to adequately resolve difficulties arising from service in those agencies.
- 5 In respect of Fire and Rescue New South Wales, Emergency Services Minister Hon David Elliott MLA, under pressure from Member for Shellharbour Anna Watson MLA and from The Illawarra Mercury, set up a review of historical complaints into bullying and harassment within Fire and Rescue New South Wales. The review was to be conducted by the Hon Roger Boland, a recently retired Industrial Commission president, over a short time scale under terms of reference requiring Justice Boland to present his Report to Minister Elliott and to Anna Watson. Justice Boland provided his Report to the Minister on 30 November 2015. Minister Elliott has denied a copy of the Report to Anna Watson and the disclosure of the findings by Justice Boland and resultant action by Fire and Rescue New South Wales has been seriously restricted both by the structure of the review and privacy considerations.
- 6 The process of extracting information under Government Information (Public Access) has been slow and frustrating. What has been revealed to individual complainants through this process supports their view that the Minister has sought to avoid public scrutiny of the Report's findings; and that another process is required to resolve their concerns. In his Report, Justice Boland says

'Of course short of a judicial inquiry where individuals may be compelled to give evidence, one cannot be sure one has the complete picture of what took place regarding any complaint of bullying and harassment within FRNSW',⁴

- 7 and *'...Beyond that, given my terms of reference I have nothing to add'.*

- 8 Justice Boland was constrained by

the type of inquiry – "review of ... historical complaints";

the scope of the review under its terms of reference – "bullying and harassment";

the time frame for the review – "... to complete the review by 30 November 2015...."⁵

⁴ Boland Para 8

⁵ Boland letter to Lynch 13 November 2015

and, prevented from “*propos(ing) remedies and/or mak(ing) recommendations regarding any further action that (he) consider may be required*” – deletion of cl. 3 (e) of the terms of reference.

- 9 Subsequent to the disclosures under GIPA, complainants were supported by the Sunday Telegraph which, on 22 January 2017, publicised incidents revealed in the Boland Review, reporting an earlier statement by Minister Elliott that the report “*found no major failings on the part of Fire and Rescue NSW*”. The newspaper went on to say that Member for Shellharbour Anna Watson had called for a parliamentary inquiry after labelling the review by Justice Boland a “*whitewash*”.⁶
- 10 In announcing the Inquiry by the Portfolio Committee No. 4 – Legal Affairs, Chairman Borsak stated:-

“I had someone who came to me who was in one of these services who was a victim of bullying and harassment and asked me to do something about it.

“Rather than limit the inquiry to just one particular service, I believe we need to extend it across all services”⁷

B THE AGENCY

Fire and Rescue New South Wales

- 11 Fire & Rescue NSW (FRNSW) (as of 1 January 2011) formerly the New South Wales Fire Brigades (NSWFB), created in 1910, is the State Government agency responsible for the provision of fire, rescue and hazmat services in cities and towns across New South Wales in accordance with the [Fire Brigades Act 1989](#), the [State Emergency and Rescue Management Act 1989](#) and other related legislation. The FRNSW is one of the key agencies involved in the response phase of most emergency or disaster events throughout NSW.
- 12 FRNSW is one of the world’s largest urban fire and rescue services and is the busiest in Australia. Its stated purpose is to enhance community safety, quality of life, and confidence by minimising the impact of hazards and emergency incidents on the people, property, environment and economy of NSW.⁸
- Structure of the agency**
- 13 Fire and Rescue New South Wales is a paramilitary emergency service agency with a hierarchical structure. The command structure is top-down, and until recently senior management positions were dominated by uniformed officers. Historically the agency has been ‘an organisation dominated by white, Anglo-Saxon males’.⁹ A

⁶ Sunday Telegraph 22 January 2017

⁷ Daily Telegraph 11 May 2017

⁸ FRNSW webpage

⁹ KPMG Report 2.1.2

pervading “Boys Club” mentality was suggested in KPMG’s 2010 Report, with a lack of support networks in place for female firefighters.

- 14 Operational branches are charged with delivery of emergency response across the State 24 hours per day and seven days per week. State wide operations are based on the first response unit being the Platoon under the control of a Station Officer. On the fireground, strict adherence to the hierarchical structure and established rules and procedures are vital for the safety of firefighters and the public. To be effective, the platoon unit must operate as a team with each member performing their role. The platoon must always be cohesive and each member fully committed to a successful outcome as a team. The platoon unit is the visible face of FRNSW in the public arena. Senior management is charged with ensuring a safe workplace for all employees in which to operate at high standards of performance under the agency’s policies and guidelines. Progression to senior management within the operational directorates requires “satisfactory service” within the ranks from firefighters; and “merit-based” advancement to Station Officer to Inspector to Superintendent. Promotion is seen by many to depend on patronage from above as well as qualification.¹⁰
- 15 A culture of power, patronage and protection pervades the agency and there is a perception within FRNSW that senior management applies a ‘command and control’ philosophy to ensure compliance.

Public perception

- 16 Fire and Rescue New South Wales promotes firefighting as “one of the most trusted professions in Australia”. This view is widely held in the community and is supported by routine surveys conducted by polling organisations.
- 17 In respect of Ethical Behaviour and Workplace Standards, its Annual Reports routinely state:-

“FRNSW is determined to maintain the community’s trust by meeting the highest standards of ethical behaviour and workplace conduct in all of its operations and activities. As an organisation, FRNSW has accepted zero tolerance for any unethical, fraudulent or corrupt practices and has reinforced this to all staff.”¹¹

“The Workplace Standards Branch, which FRNSW established the previous year¹² continues to maintain and enforce professional and ethical standards. This includes managing and resolving workplace complaints and serious conduct issues; providing information and education for managers and

¹⁰ KPMG 2010

¹¹ FRNSW Annual Reports 2009-2010-2011-2012 et al

¹² 2010

employees; and promoting an accountable and values-based culture through various prevention strategies.”¹³

18 It is appropriate for the Annual Reports to favourably present FRNSW but the “award winning” Reports are designed to inhibit extraction of data unfavourable to the agency other than by way of GIPA or questioning during parliamentary budget examination. Applications for disclosure under GIPA face the test of applicable public interest considerations against disclosure where disclosure could reasonably be expected to prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency’s functions; prejudice the effective exercise by an agency of the agency’s functions; and result in the disclosure of information provided to an agency in confidence.

Maintaining public trust and high values

19 The Commissioner as head of the agency is committed to maintaining the trust and confidence of the public and to instil and enforce high values within the agency. It is in the interest of the agency, and the Commissioner himself, to maintain the highest level of public trust and confidence. Commissioner Mullins has consistently projected the image of FRNSW as a competent, trained and ready, organisation protecting and serving the NSW community in times of emergency. Commissioner Mullins frequently utilised the media to maintain and enhance public trust and confidence. The regular nightly news TV appearances of Inspector from various firegrounds is to assure the public that it can trust and rely on the agency and its firefighters to respond to emergencies. Maintaining public trust and confidence was an important issue to Commissioner Mullins. Maintaining public trust and confidence was, and remains, important to senior management of FRNSW.

20 Minister for Emergency Services David Elliott had direct Ministerial responsibility for the operation of FRNSW on behalf of the people of New South Wales. He was answerable for his oversight of his portfolio agencies to the Premier and the Parliament. Whilst he might bask in the performance of those agencies and the esteem in which they might be held by the public when things are going well, he had no responsibility for failures within those agencies other than perhaps where those failures can be attributed to policies that he has introduced. However it was within his interest to project knowledge of performance and operation of his agencies and display authority in directing those agencies to achieve goals set by government. If those qualities are evident, his political standing is maintained. Close liaison with then-Commissioner Mullins has been crucial to the Minister being aware of topical events within FRNSW should answers to hard questions in Parliament be required. The Minister had access to then-Commissioner Mullins through then-Chief Superintendent . Maintaining public trust and confidence in FRNSW was important politically to Minister Elliott. Maintaining public trust and confidence in FRNSW is important to the image of government.

¹³ FRNSW Annual Report 2010-2011

Loss of public trust

- 21 During 2015 FRNSW and then-Commissioner Mullins were under pressure from media coverage of allegations of bullying and harassment in an organisation that publicly professed zero tolerance of such practices. Then-Commissioner Mullins had a personal interest in avoiding a loss of public trust. A loss of public trust and confidence in the agency that he led would discredit him professionally, reflecting adversely on his governance and performance. Then-Commissioner Mullins would have concern at any potential for public exposure of failings which might damage FRNSW through an open and transparent inquiry into the agency. With his retirement mooted, then-Commissioner Mullins would wish to exit the agency with his reputation intact. Adverse findings arising from issues handled “on his watch” would need to be contained.
- 22 The Commissioner was in a position to influence Minister Elliott in the form and scope of an inquiry that would be suitable to Minister, Commissioner and FRNSW whilst appearing to the public as sensibly meeting the demands of complainants and the media. A restricted inquiry could be controlled through the narrow scope in its terms of reference, and a review of historical complaints would ensure that FRNSW would be fully aware of the papers to be reviewed. It might be reasonable to foreshadow the findings of such an inquiry and to prepare a suitable minimisation strategy and response. Such an inquiry was that conducted by Justice Boland.
- 23 Minister Elliott had received representations from parliamentarians seeking resolution to problems of their constituents or information in respect of Fire and Rescue New South Wales issues within their electorates. Like earlier occupiers in his position, Minister Elliott was entitled to expect factual responses from FRNSW to any referral he might make. He had the benefit of direct access to Chief Superintendent [redacted] should he require clarification of any of those responses. As Chief of Staff to the Commissioner, Chief Superintendent [redacted] would be able to present the views of the Commissioner in relation to how the Minister should pass on information provided to him by FRNSW. Like the Commissioner, the Minister would have concerns for the potential public exposure of failings in the FRNSW workplace from a transparent inquiry. He had an interest in restricting the fallout from an uncontrolled inquiry. As the Minister, he had an obligation to seek the truth of the allegations, and pursue appropriate remedies – as necessary - through corrective action.
- 24 The Minister, after negotiations between the Commissioner and Anna Watson MLA, and in lieu of the parliamentary inquiry sought by Anna Watson, agreed to set up a review “to be conducted by a judicial officer”. The understanding of Anna Watson as conveyed to Parliament on 15 October 2015 was that the inquiry was “a mechanism that will deal with these legacy issues once and for all...”¹⁴ with the intention that Justice Roger Boland “reassess each claim made by individual Fire and Rescue

¹⁴ Hansard 15 October 2015

NSW personnel” and an assurance from the Commissioner that should Justice Boland find deficiencies in the way the cases were addressed, “... such matters will be put right....”.¹⁵

- 25 Justice Boland conducted the REVIEW OF HANDLING OF A NUMBER OF HISTORICAL COMPLAINTS AND HARASSMENT INVOLVING CURRENT AND FORMER EMPLOYEES OF FIRE & RESCUE NSW and provided a copy of his Report to Minister Elliott on 30 November 2015.
- 26 I submit that the form, scope, timing and findings from the Boland Review, and the actions subsequent by Minister Elliott, Secretary Darryl Maguire MLA, Commissioner Mullins and senior management of FRNSW, need examination as exemplifying the manner in which issues of bullying and harassment have been historically handled by FRNSW. The command structure of power, patronage and protection will continue to persist throughout FRNSW whilst the culture remains unchallenged, and officers at all levels are not seen to be held accountable for actions contrary to *Regulation*, policies and the *Code of Conduct*.

C KPMG REPORT

Background and involvement

- 27 The significance of health and safety impacts from practices and culture within NSWFB has been known to Commissioner Mullins for some time. He has introduced changes. _____, Assistant Director Health and Safety NSWFB appears to have been instrumental in bringing some greater focus on inappropriate cultural issues and practices to the notice of the Commissioner during the late 2000s. Incidents of “bastardisation” and initiation practices were to become of major concern to NSWFB and the Government when in February 2009 written allegations were received by the NSWFB that allegedly involved indecent assaults dating back to 1989¹⁶.
- 28 Commissioner Mullins states that he commissioned an independent review of NSWFB workplace culture and practice “following allegations of serious misconduct and bullying in the workplace in the 1970’s and 80’s”¹⁷. There was sufficient concerns within the Government for the then Minister (Steve Whan) to support a Steering Committee in August 2009, required to
- Review all corrective actions taken by the NSW FB to address issues raised by the 1989 allegations, the 2007 disclosures and 2009 media coverage and determine whether these actions are appropriate;
 - Provide oversight of and guidance to the workplace conduct and governance review being undertaken by KPMG;

¹⁵ Hansard 15 October 2015

¹⁶ Media release 21 February 2010

¹⁷ Commish’s Corner 18 June 2010

- Consider the recommendations arising from the review to determine whether they will facilitate the adoption of contemporary best practice;
- Report its findings and recommendations to the Commissioner periodically and at the end of the review.¹⁸

29 The Steering Committee was oversighted by the Director-General of the Department of Premier and Cabinet; and membership included a former Deputy Director-General of the NSW Department of Premier and Cabinet (independent chair), a former Assistant Director-General NSW Department of Premier and Cabinet, and a former Director-General NSW Department of Education and Training as independent members, together with _____ and Acting Deputy Commissioner _____ as the two NSWFB representative members.

30 _____ was appointed Deputy Commissioner to NSWFB on 28 March 2010. _____ was withdrawn from involvement with oversight of the KPMG review and prospective corrective action by NSWFB to address the recommendations from the Report.

31 On the same day as he advised NSWFB employees of his support for the findings by KPMG (18 June 2010), Commissioner Mullins announced the pending departure of _____¹⁹.

What KPMG was required to do

32 NSWFB engaged KPMG to:-

conduct a review of NSWFB’s management of workplace conduct matters (including a consideration of the framework, governance and processes);

analyse whether bullying and/or harassment is currently supported or reinforced in the NSWFB’s workplace culture; and

make recommendations with respect to the management of workplace conduct matters that are required to achieve contemporary best practice in this area.

33 The review by KPMG aimed to identify whether the NSWFB was supported by appropriate best practice procedures, policies and governance arrangements to promote the health and wellbeing of its workforce.

What KPMG found

34 Bullying and harassment were found to be present within NSWFB and KPMG analysed the nature and prevalence of the bullying and harassment that was occurring. Surveys and interviews of NSWFB personnel and focus groups conducted by KPMG in 2010 identified verbal abuse and psychological abuse as the most common forms of bullying.

¹⁸ Hansard 21 April 2010

¹⁹ Commish’s Corner 18 June 2010

- 35 KPMG said that verbal abuse and psychological abuse were the predominant forms of bullying and harassment, having replaced physical abuse. Physical abuse was indicated to remain as an issue among permanent firefighters.
- 36 Under KPMG's survey material, verbal abuse was defined as shouting, aggressive language, swearing, threats and insults.
- 37 Psychological abuse was not so well defined but given for example as inconsistent treatment in similar situations that would normally require the same response.
- 38 Despite being unable to expand on its definition of psychological bullying to survey participants, in relation to survey comments that senior management were the worst perpetrators of psychological bullying, KPMG suggests that the definition of bullying and harassment within NSWFB harassment prevention policy may have been insufficiently communicated to employees.²⁰
- 39 Excluding and ostracising were found to exist within NSWFB but KPMG made no connection as a form of psychological bullying.
- 40 The Review did include examples of factors contributing to workplace bullying and the mitigating of workplace conduct issues in references to other organisations and the NSW public sector, pointing out the availability of clear and concise definition of workplace related terminology such as bullying and harassment as common to their documents.
- 41 In respect of positive workplace conduct and discouraging bullying the KPMG Review found that the

"NSWFB Code of Conduct and the Fire Brigades Regulation 2008 provide the workplace conduct and ethical behaviour policy framework for the NSWFB"

and that those documents were supported by a range of related policies and procedures. However, it found that the application of the policies was inconsistent and that staff may have lacked the skills required to implement them.

- 42 The worst perpetrators of psychological abuse were indicated to be senior management. The 'command and control' philosophy and the authority of rank coupled with the threat of transfer under *Regulation* were perceived as stressors in that area.
- 43 I submit that the matters referred to the Boland Review exemplify that psychological abuse has continued post-2010 notwithstanding the continued assertions of former-Commissioner Mullins that:-

²⁰ KPMG 2010, 2.1.1

“Bullying, Harassment and other forms of inappropriate workplace conduct have no place in FRNSW and are not tolerated”,²¹

44 In August 2014, Commissioner Mullins wrote drawing the attention of FRNSW employees to recent comments and incidents which had caused him to “...question whether our core values are actually understood and embraced by everyone.” He warned employees that bullying and harassment in the workplace was subject to “zero tolerance” within FRNSW.

“Other issues that have arisen include vicious rumours aimed at undermining people’s abilities as firefighters; bullying, harassment and misuse of positional power; homophobic and sexist comments aimed at hurting and demeaning individuals and groups; and bullying via social media.”

“...there appear to be a small number who want FRNSW to regress to become a 1950’s “boys club”, where they can make their own rules and determine who can and can’t belong.”

45 All of the examples given by the Commissioner in 2014 align with the findings from KPMG in 2010 and from which \$1.3M was allocated in FRNSW’s 2010/2011 budget to establish the Workplace Standards Branch and provide training to combat those trends.

Trends in issues referred to Workplace Standards

46 The Annual Report of 2010/2011 spoke well of the establishment of the Branch as the cornerstone of the reform process, and which had revised policies for managing workplace complaints including the *Resolving Workplace Complaints Policy* and *Preventing and Managing Workplace Bullying and Harassment* and rolled out *Respectful Workplace Training* to about 6500 employees across all fire stations and Directorates. 277 issues were referred to WSB in that year and two terminations, three demotions and two fines resulted from the 71 conduct matters concluded.

47 In 2011/12, from the 234 referrals to WSB, 225 were concluded, including the 19 disciplinary matters from which two employees were terminated, seven resigned, and three were medically discharged. Analysis to show how many were bullying and/or harassment issues was not indicated. But 100 non-disciplinary matters went back to local managers and another 64 required no disciplinary action after examination.

48 In 2012/13 there were 304 issues referred to Workplace Standards Branch. Of the 252 issues concluded 109 were non-disciplinary and referred back to local management; only five were subject to disciplinary action, of which two resulted in the imposition of a caution/reprimand, with three employees resigning prior to the conclusion of disciplinary action. Again, 77 matters required no disciplinary action. It

²¹ Illawarra Mercury 13 Mar 2015

took until the following year for the figure of 51 matters relating to bullying and/or harassment to be indicated for 2012/13.

- 49 In 2013/14, 226 matters were reported to Workplace Standards Branch again covering the range of bullying, fraudulent conduct, criminal matters and other unprofessional behaviours in line with the consistent wording of previous Annual Reports. 107 matters were referred for local management resolution as non-disciplinary; after examination, no further action was taken on 58 matters. Of the eight matters subject to disciplinary action, three required remedial action and five employees are reported to have resigned during the investigation.
- 50 But for the first time, bullying and/or harassment statistics were presented, albeit in minimal form. 35 complaints for the year of which 33 were investigated and concluded, with only two sustained and disciplinary action taken.
- 51 From the 186 matters finalised in 2014/15 from the 215 reported to Workplace Standards Branch, the outcomes show 73 referred back for local management resolution and 74 examined but requiring no further action. There were two terminations from six matters requiring disciplinary action; and there was one medical discharge.
- 52 Of the 45 complaints alleging bullying and/or harassment in 2014/15, 35 were concluded; 17 were returned to local management whilst only one matter resulted in disciplinary and remedial action. However, three employees resigned during the process.
- 53 The reported figures show that well in excess of two thirds of referrals to Workplace Standards Branch over those years were capable of being dealt with at local level or did not require further action, and could indicate that employees were keen to report matters even when of a minor nature. They also suggest that local management was not involved in early resolution of matters which policies establish they had a responsibility to resolve. They may suggest that local management was not competent in handling such minor matters, and that referral to Workplace Standards Branch was a mechanism to avoid action, avoid decisions, or avoid responsibility of adverse decisions, or limit confrontation.
- 54 The confusing statistics shown in the scant reporting of conduct and bullying and harassment referrals in glossy Annual Reports do not indicate the full extent of the bullying and harassment situation within FRNSW.
- 55 Across the entire NSW Public Service a survey was undertaken in 2012 under the title "People Matter". There was a low level of FRNSW participation.
- 56 The "People Matter Employee Survey 2012" showed that all FRNSW respondents were aware of the Code of Conduct and that 93% were aware of the ways to resolve grievances. But 72% expressed no, or little, confidence in the ways the agency resolved grievances.

57 Many (42%) had witnessed bullying but reporting was generally low (28% of those bullied) in the fear of reprisal from doing so. The perception from the survey was that the agency could not ensure protection to those reporting improper conduct. The results were reminiscent of those earlier recorded by KPMG.

58 The nature of bullying was identified by type:- verbal abuse; exclusion/isolation; psychological harassment; and intimidation. FRNSW responses were (exception verbal abuse) significantly higher than responses across the total public service sector. Significantly within FRNSW respondents, bullying was principally by immediate manager/supervisor or senior manager; again exceeding full sector responses. On the positive side, generally firefighters were proud of their work.

However, only 36% of respondents believed that senior managers model the “values” of the organisation, only 22% believe senior managers listen to employees, and only 21% feel that senior managers provide clear direction for the future of the organisation. Again, these numbers were significantly lower than across the rest of the public sector.²²

59 Government continued with the surveys conducted across the total Public Service in 2014 and 2016. Commissioner Mullins continued to urge participation, and in May 2016 said:-

“So far there has been a disappointing response with FRNSW lagging way behind response rates from other agencies, maybe people are ‘surveyed out’, are happy with the way things are, or perhaps jaded and cynical about whether there will be any purpose to it.”

60 Low participation rates might meet the indicators advanced by the Commissioner, but the responses came predominately from operational staff and those with longer service years.

61 For 2014, senior management were largely seen to not listen to employees and not keep employees informed about what was going on; but not to the same degree as for 2012. Generally other results were similar.

62 A low level of responses from FRNSW employees remained consistent for the 2016 survey with senior management continuing to rate lowly. Overall the response rates remained remarkably stable over the three surveys.

63 However in 25 January 2017 Commish’s Corner, acting Commissioner Jim Hamilton reported:-

“... In the 2016 NSW Government People Matter survey, FRNSW achieved a significant decrease in bullying and harassment matters compared to 2012

²² FBEU Sitrep 15/2013

results, and we reported favourable results compared to other NSW emergency services....”

but A/Commissioner Hamilton also said in relation to the Boland Report:-

“...The Minister advised that Justice Boland found no major failings on the part of FRNSW and, in the majority of matters, recommended no further action....”

A/Commissioner Hamilton was in a senior executive position to know that the terms of reference prevented Justice Boland from making recommendations, a constraint that Justice Boland referred to throughout his Report.

Action to improve – cost to employees

- 64 After the 2010 KPMG Report, Commissioner Mullins actively supported FRNSW partnerships with WorkCover, ICAC, and Ombudsman, and employees were advised through training and In-Orders of information that could be accessed. A response to the 2011 ICAC Report indicated the progress of actions recommended to FRNSW, and the WorkCover *“Bullying Prevention Strategy”* was introduced and implemented in 2013.
- 65 As an improvement measure there was obvious value in FRNSW having better awareness of the interests of the other referral agencies, but the associations opened the way for statutory referrals to be used to enhance public perceptions and intimidate employees under investigation. Open partnering gave some assurance as to the level of potential involvement by those agencies. The partnering established a familiarity with equivalent officers whose reaction would be based on the significance of the referral and the cost to their agency.
- 66 Alleged corrupt conduct around discrepancies in an individual person’s timesheet has the statutory requirement to be referred to ICAC. But the reality is that such a matter can be more appropriately investigated and determined by the agency, and that ICAC will routinely decline to commit its resources. In FRNSW’s case, enquiry to the Commissioner gathers the response *“The matter has been referred to ICAC”*, avoiding any disclosure but implying seriousness and guilt.
- 67 Referral to ICAC is not in itself an indication of guilt. For the employees told that their actions are to be referred to ICAC, the psychological impact can be quite severe and long lasting. When used as an intimidatory tactic, conveyed in a formal document to arrive without warning to the innocent employee, the effect is profound. Used with the intention of inducing workplace stress capable of excluding Workers Compensation under clause 11A of the Act appears contrary to the high ethical standards that FRNSW proclaims.
- 68 Referrals to WorkCover found to be without foundation/substantiation and not actioned do not produce advice or apology from WorkCover or FRNSW. FRNSW consistently fails to inform of outcomes. Another form of psychological bullying.

- 69 There are reciprocal benefits to FRNSW from associations with WorkCover, ICAC, Ombudsman, Information Commissioner and Public Service Commission arising from the adoption of practices intended to better manage bullying and harassment.
- 70 As expected, WorkCover and ICAC defer to FRNSW when a complaint of minor public impact is received. Reasons advanced for deferring predominately relate to scarce resources, a position echoed throughout other NSW agencies.
- 71 Ombudsman, Information Commissioner and Public Service Commission cite issues principally related to employment; issues related to discipline; examples in isolation; strategies in place within FRNSW; (non) application across other agencies; previous investigations into FRNSW, as precluding further investigation (unless the matter complained about can be established as widespread).
- 72 The inter-agency rapport between officers also assists FRNSW in the exchange of opinions as to the merit and motive of complainants, and discourages unbiased examination of facts. The agency line is paramount. A phone call can discourage investigation or emphasise opinion as fact where formal communications risk disclosure. On discovery, formal records can attribute accountability for actions.

Partnering with ICAC

- 73 FRNSW was in regular association with ICAC's Corruption Prevention Division on the management of potential fraud/corruption issues and staff training. In 2010 ICAC enquired into a number of allegations concerning staff at the FRNSW Training Centre and Rescue Section, but determined that it would not be in the public interest to conduct a public inquiry in relation to those matters. ICAC through the course of its investigations and interaction with FRNSW management through training, workshops and consultations, identified a number of serious corruption risk areas.
- 74 In June 2011, ICAC provided a Report under section 14(2) of its Act to FRNSW and the Minister for Police and Emergency Services. The Report did not focus on the corrupt activities of individuals in the agency but rather on the features of FRNSW which allowed or contributed to that behaviour, and recognised that whilst FRNSW was in the midst of a substantial change process on areas subject of the Report, the Report might assist with the change process.²³
- 75 Commissioner Mullins placed the Report on the FRNSW website. The Report was heavily redacted but what it showed *inter alia* was that despite discussion in October 2006 of issues in which weaknesses were acknowledged by FRNSW and for which FRNSW was then currently undertaking or considering changes addressing those issues, the late-2010 investigation indicated that either the changes did not take

²³ David Ipp 15 June 2011

place or had not been effective in managing the risks.²⁴ ICAC made a number of recommendations to help drive the change management strategy, and hence the agency, in the right direction.

- 76 FRNSW posted its response (undated), listing changes currently implemented and those proposed.
- 77 Included in the ICAC recommendations are several that related to issues that participants in the Boland Review had been indicating to management as factors in their grievances. The publishing of their concerns to management had appeared to increase the pressure to suppress, avoid and dismiss the issues raised, and denigrate the complainant, more strongly where the subject was conduct of a supervisor or senior management. Questions within Parliament on an individual's behalf invariably produced a dismissive reply from Ministers to the effect "refer to FRNSW webpage".

Ability to improve

- 78 The Commissioner is hampered in dealing with disciplinary matters under the *Procedural Guidelines for the Management of Conduct Fire Brigades Regulation 2014* in that the Fire Brigades Employees Union (FBEU) has been reported aggressive and adversarial.²⁵ Also the Guidelines arise from cl.34(1) of *Regulation 2014* and can only be amended, revoked or replaced after consultation with the FBEU.
- 79 Action by Commissioner and FRNSW under Part 4 of the *Regulation* for employee 'misconduct' may attract action by FBEU on behalf of the employee. However the 99% claimed membership of firefighters potentially conflicts the FBEU when rank is an issue in action against employees; the FBEU has to consider which officer to support and the weight to apply. The rank and influence of the parties often determines the direction and the level of support for future political advantage or return of favours.
- 80 *Guidelines 2014* is a 40+ page document in two parts covering respectively 1) the management of conduct, and 2) the management of serious offences. It is repetitive and detailed in its explanations as to application and process, and is intended to cover all situations. Delegates and decision makers need to be fully aware of its content as compliance is essential to ensure that the principles of
- Timeliness
 - Procedural fairness
 - Deciding each matter on its merits
- are upheld.

²⁴ ICAC 2011 p.23

²⁵ Various SitRepts; ICAC; NSW elections 2011/12

81 The evidence within cases under review by Hon RP Boland pointed to:-

- sexual harassment
- sexist comments
- bullying and harassment
- exclusion and discrimination
- misuse of positional power
- intimidation

all of which fall under the Misconduct provisions of Part 4 of both the 2008 and 2014 *Regulation*.

82 The issues for participants in the Review by Justice Boland were all misconduct matters whether actions of others to which the participants were exposed (e.g. bullying and harassment), or arising from alleged misconduct by the participants (e.g. disciplinary action taken by FRNSW).

83 All of the participants took stress leave from FRNSW and received medical or psychological assessment of that stress. Workers compensation leave was established in all cases as work related. For most, bullying and harassment was given as the dominant cause of their stress. For several, the stress – even if unstated - was psychological resulting from action/inaction by FRNSW.

Why “bullying and harassment”?

84 Bullying and harassment sells newspapers. Bullying and harassment dominates the TV scene. Most people have experienced bullying and harassment in some form or another and know the impact it can make on victims.

85 ‘Bullying and harassment’ is a blanket term that covers a large range of actions often difficult to define in layman’s terms. The public see bullying and harassment as a practice that is undesirable and having no place in the workplace, and for which victims should be supported. Offenders should be admonished and counselled on acceptable behaviour.

86 ‘Misconduct’ clearly implies bad conduct for which offenders should be disciplined and excluded. The agency should be seen to act decisively to remove opportunity and offender where appropriate.

87 ‘Bullying and harassment’ issues can be treated as minor; the poor management of victims can be treated as unfortunate; the effect on victims can be dismissed as a consequence of their underlying mental condition (particularly when that condition has been explored as part of the Workers Compensation assessment). A “get over it” attitude to “man up” has wide acceptance within a hierarchical agency such as FRNSW.

88 'Misconduct' is something that has to be pursued vigorously and cannot be dismissed in the public eye. 'Misconduct' requires strong action against the offender and the organisation must be seen to have treated the offence seriously and acted decisively. The odium of downplaying or disregarding misconduct is greater than for indifference in acting on individual bullying and harassment complaints.
