

Supplementary  
Submission  
No 146a

## INQUIRY INTO EMERGENCY SERVICES AGENCIES

**Name:** Name suppressed

**Date received:** 6 August 2017

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Partially  
Confidential

## ISSUE

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

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

First, I will provide my understanding of bullying and harassment so that the matters I raise can be taken into context from my understanding of these definitions. Discrimination need not be explained as I am sure everyone understands or has an interpretation of discrimination which can be applied to the matters I raise.

The NSW Police policy identifies harassment as

Is behaviour or conduct which

is unwelcome, uninvited or unreciprocated;

makes the recipient feel intimidated, offended, humiliated or belittled, and targets the recipient because of a discriminatory ground.

The behaviour does not need to be repeated or continuous. One-off incidents are capable of constituting harassment.

It is important to note that what is acceptable to one person may not be acceptable to others. The test

is whether, having regard to all the circumstances, a reasonable person would be offended, humiliated

or intimidated by the conduct. . Harassment can occur regardless of whether or not a person intended

to harass another person.

Examples of what might constitute harassment include:

persistent verbal abuse or threats; comments that put down or stereotype people generally or an

individual particularly; derogatory or sexual comments, innuendo, insults or taunts; or intrusive

questions or insinuations about a person's private life

Harassment is a more complex issue to look at when dealing with NSW Police Officers. Police officers who are subjected to harassment may fall under Section 60 of the Crimes Act 1900.

Section 60 makes it an offence to harass,

(1) A [person](#) who assaults, throws a missile at, stalks, harasses or intimidates a police [officer](#) while in the execution of the [officer](#)'s duty, although no actual bodily harm is occasioned to the [officer](#), is liable to imprisonment for 5 years.

(4) For the purposes of this section, an action is taken to be carried out in relation to a police [officer](#) while in the execution of the [officer](#)'s duty, even though the police [officer](#) is not on duty at the time, if it is carried out:

- (a) as a consequence of, or in retaliation for, actions undertaken by that police [officer](#) in the execution of the [officer](#)'s duty, or
- (b) because the [officer](#) is a police [officer](#).

is liable to imprisonment for 12 years.

## **Background**

Background information removed for protection of victims and to ensure compliance with 'procedural fairness' to alleged offenders.

It should be noted that the only current recourse for victims of workplace bullying and harassment is a private action as below. Yes victims can employ a solicitor but anything to do with an 'action' against a NSW department is expensive and many victim survive on workers compensation payments to meet child care, power, water, mortgage, rates, car payments, fuel, all of this before we feed ourselves.

[Section 49\(1\) of the Criminal Procedure Act 1986 \(NSW\)](#) ('the Act') gives individuals the power to commence private prosecutions. It states as follows:

"If a person other than a police officer or public officer is authorised under section 14 of this Act or under any other law to commence committal proceedings against a person for an offence, the person may commence the proceedings by issuing a court attendance notice, signed by a registrar, and filing the notice in accordance with this Division."

[Section 14 of the Act](#) is headed 'Common informer' and provides that:

"A prosecution or proceeding in respect of any offence under an Act may be instituted by any person unless the right to institute the prosecution or proceeding is expressly conferred by that Act on a specified person or class of persons."

The NSW Police Harassment the breeches at law and their tactics which they undertake to harasses and intimidate are listed below, and are so systemic injured officers are force to resign or seek medical discharge. They have no recourse to address issues of bullying and/or harassment in the workplace.

The NSW Police are self-insured as defined under the Workers Compensation Act. TMF (treasury Managed Fund) and now called iCare manage the self-Insurance scheme. EML previously known as Employers Mutual Limited are contracted to iCare to supply management service to the TFM for workers Compensation.

It should be noted that EML under the Workers Compensation Act are not exempt from holding a license to provide service for workers compensation. The state Insurance Regulatory Authority (SIRA) confirm that no exemption has ever been provided by the state not to be licensed. However, they are allowed to operate without license and regulation.

It must be noted that the NSW government has just awarded all workers Compensation insurance to be undertaken by EML as of 2018.

The State Insurance Regulatory Authority admit that they hold no regulatory authority over EML and cannot enforce EML to follow the legislation either under the Workers Compensation Act, the workers Compensation and Injury Management Act, the Health record and Information Protection Act or the Privacy and Personal Information Protection Act 1998 and are, in their very own words, 'toothless to act'.

Police and Fire brigade officers are not aware of the information being shared between the scheme agent and their employer that results in the bullying and harassment. The sharing of information both under the state Act and the Federal Act both require consent as an opt in not an opt out. They both require informed consent which the NSW Police and their contracted agent do not seek. If you question that consent you get sent letters stating your payments may cease. That occurs within these unregulated workers compensation system which I will now explain.

Whilst it is agreed that information sharing is undertaken on claim submission. What no one is told is of is the information sharing without consent with the NSW Police and what I understand the NSW fire brigade. After the claim is accepted every time you call your case officer, and hold what is thought to be a private discussion, that information is typed up and placed onto the treasury management fund system. Those records are then provided to your employer. All email and conversation are provided to your employer. I have copies of the case file notes from both systems and screen shots from the treasury management fund system from EML which shows the information without consent being shared.

The NSW Police when they receive the 'UNLAWFUL' shared information under HRIPA and provide instruction to EML. Go to 'any' length to achieve their goal no matter how unlawful they act. The NSW Police go so far as to request other agencies such as TAL and request an IME/IMA under separate income protection policies to get what information they want. I must be noted that IME/IMA' report is done with other only information provided is that of the employer and EML the contractor. No other independent information is supplied in all cases. I will provide case file note and emails from both the NSW Police system and EML to show how this occurs if called to give evidence.

The NSW Police target the injured officer by requesting IME (Independent Medical Evaluations/Assessments). These IME/IMA are regulated under the workers compensation and Injury Management Act and are gazetted by the government in the guidelines which form part of the ACT.

The Police instruct EML, the unlicensed management workers compensation provider to undertake the IME, knowing it does not comply with the legislated guidelines. The letter issued to the injured worker states that unless you attend payments will cease, out of fear of payments being ceased Police and Fire brigade officer attend. The guidelines show that this is nothing more than a threat and harassment by the employer.

The State Insurance Regulatory Authority (SIRA) which is a call center funded by NSW treasury have no power to require EML to comply as they are not licensed and do not fall under the act to ensure compliance. This is their statement not mine. I will provide names phone calls and email to show this is the case at hand on how we are intimidated to comply.

The cost to the government in unlawful IME/IMA is well into the hundreds of thousands of dollars. These costs are paid by the government making them a co-offender in harassment. With the limited and really non-excitant power of SIRA to compel compliance, investigative power or authority to place restriction on license (in accordance with the workers Compensation Act) or suspend shows that harassment policies by any government agency and in fact any law to protect a workers rights are useless when the very authority empowered to oversight, hold no power to do as resisted by the current government.

A whole state department (SIRA) is funded to protect the rights of workers, under the department of finance (call center). The staff have no proper training in their roles rights and responsibilities as a State Regulatory Authority (SIRA). SIRA hold not rights to investigate or take action against EML as EML are not licensed under the workers Compensation ACT and only hold a contract to preform Management services. As of January 2018, EML have been provided the sole contract, unregulated, to provided Workers Compensation service as unlicensed and unregulated. The question has to be asked, how does a private company win such a contact? Secondly if the contract proceeds then will SIRA be closed as they hold no regulatory authority to investigate or compel EML to comply with legislation. If none of these issues are addressed then this must be a matter a matter for the ICAC.

Who does an injured worker complain to about harassment from their employer when the very agency empowered to undertake that investigation holds no power to do so. The loss of life from suicide is directly attributed to this system established by the current NSW Government.

This is a high cost to the NSW Government for workers compensation. The police, when they understand you know the rules under the workers Compensation and injury management act, issues a direction under workcover, the police act and the police regulation that if you do not attend an IME you may be subject to management action.

It must be made clear the police have no right to recall an injured officer back to work and the direction issued is nothing more than harassment or a threat

The NSW Police through their shared unlawful information system direct at times EML (who is contracted for the supply of service to them) collude about unlawful actions and to co-offend in bullying and harassment of an injured work until such time as they resign as I did, accept medical discharge or at a less expense to the state government in the case of , a sworn officer unnamed for privacy, committed suicide.

There is no action available other than civil claim to address the privacy breaches, unlawful actions of EML in collusion with the NSW Police against an injured worker. This applies to NSW Fire brigade officers as well.

The current Commissioner made a public statement stating, Injured workers cause increment creep, a way to overcome this in his recommendation is that the government consider a payout at 20 years to reduce this cost by the removal of injured officers from the work place.

The workplace harassment policy is nothing more than a well word document. The issue is, as you have seen how do you get them to comply with their own policy, cause not to comply with a policy document is not an offence.

## **COMMENT**

This issue raised in this submission are serious allegations of misconducted by NSW Police Commissioned officers and sworn officers and should be treated as such.

If when a Deputy Commissioner of police is advised of harassment and Bullying and states "...your treatment has been unfair. No doubt about it, and I have fought some battles to try and right the wrongs, but sadly failed. I feel for you.....".(direct quote from the Deputy Commissioner) What protection does any NSW Police employee have. How can the public ensure their matters are treated fairly, when? given as a compliant, that the NSW Police will investigate when they refuse to properly investigate their own matters and this is treated as normal behaviour.

The NSW Police policy into workplace bullying and harassment is well worded and no amendments could be made to cover it further. The support structure in paper format is excellent, in fact in the last year the NSW Police changed the amount of contact for the EAP from 8 sessions to unlimited. I was on the 8-session rule and was limited to contact. More support officers at senior ranks need to be created and in fact enforced.

As you have read, how can you make an organisation comply with its own policy when according to the supreme court of NSW they are not obliged to do so, as 'it's a policy not legislation'. Some many common law matters come before the court where the NSW Police are criticised for their failure to follow their own policies and in fact at times increases the common-law payout to plaintiffs (police officer)

All policies, it must be noted at one time or another have been used against police officer/s in criminal, civil and internal matters. The Police Act of 1990 allows the NSW to access anything in existence, which includes any records of attendance in seeking help. In recent years a police officer invled in a death in custody sought help for the NSW Employee Assistance Program, known as EAP. The conversation/s this officer had with them were subpoenaed and used in evidence. This officer was not found guilty of any offence. Police officers are now well aware of this and no don't seek help, when they are at their lowest and most vulnerable to get help as they know one-word said out of place or conversations shared and incorrectly recorded may leave them vulnerable. The NSW Police know this but yet place no legislative requirement to exempt these conservations from the Police Act, EAP or peer support officers from having to write statements from memory about conversations they have had with later targeted officer or Work damages claim/s.

If it is not clear now, it should be the system is designed to fail and support the police in whatever lawful and now identified unlawful activity they wish to undertake without question or risk of prosecution.

How can an injured worker comply with their originations policy when their own organisation contracts a Workers compensation supplier who is not licensed and without exception does not hold a license to undertake such management function. Further a government who pays tens of thousands of dollars to NSW



treasury to fund a call center of untrained person/s to answer question and take complaints against organizations who they have no authority over to ensure rule of law is followed.

How does anyone comply in a system that is built on corruption, noncompliance of law and is only answerable to itself for compliance of law.

Many websites when providing information about bullying and harassment in the workplace ask you to contact the Police. How can the public do this when the employees of the NSW Police are offered no protection and commit suicide as a result of their own employers refusal to comply with the very laws they are entrusted to enforce.

In recent times, the public have seen the deputy commissioner of Police Catherine Burns admit to lies and falsifying reports before a judicial enquiry, but no action taken to remove her other than a public apology. How does a NSW Police employee expected to be treated on a non-enforceable police policy of harassment and bullying, expected to be taken seriously to enforce their protection and right when this could not even be achieved in 15 years of enquiry into the bullying and harassment of Deputy commissioner KALDAS.

## **RECOMMENDATION**

That local area Complaints Management Teams cease, to ensure strict compliance with policy and legislation without interference from commanders and senior management.

The NSW Ombudsman be provided greater oversight to include not only recommendations but also enforceable action, further investigation or discontinuance of an investigation which over rules current police powers.

All complaints regardless of severity be submitted to the NSW Ombudsman's for proper categorisation and investigation if NSW are to hold internal investigative power. Outcome to be oversighted and when necessary over ruled by Ombudsman and recommendations by NSW Ombudsman to be followed.

A penalty system be enforced for non-compliance for bullying and harassment. Constable guilty 5 penalty unity. Sergeants 10 penalty units for noncompliance with the policy. Senior management 20 penalty units for noncompliance with the

policy and region commanders and above 500 penalty units. Watch how much compliance with the rules will occur when it affects their personal pay.

EML be enforced to apply of a license as a provider to undertake services as a worker's compensation provider.

SIRA given greater power to include authority over any individual or orginsations that provides workers compensation management or service to ensure compliance.

That all TMF workers compensation suppliers to TMF repay all non compliant IME/IMA as per the Workers Compensation and Injury Management Act guidelines.

That the contract of EML for the supply of management services be overturned until such time as they obtain a license in accordance with the workers Compensation Act

That EML be investigated for the actions of deliberate refusal to comply with the Health Records and Information Privacy Act. That all suppliers of workers compensation service or management strictly comply with the Health records and Information Privacy Act when sharing information to other parties without the consent of the workers. Written consent be required.