

# **GENERAL PURPOSE STANDING COMMITTEE No. 1**

## **INQUIRY INTO ALLEGATIONS OF BULLYING IN WORKCOVER NSW**

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**At Sydney on Wednesday 6 November 2013**

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**The Committee met at 10.30 a.m.**

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### **PRESENT**

The Hon. F. J. Nile (Chair)

The Hon. C. E. Cusack

The Hon. M. R. Mason-Cox

The Hon. M. J. Pavey (Deputy-Chair)

The Hon. A. Searle

Mr David Shoebridge

The Hon. M. S. Veitch

**CHAIR:** Welcome to the first hearing of the General Purpose Standing Committee No. 1 inquiry into allegations of bullying in WorkCover NSW. The inquiry is examining the culture of WorkCover and WorkCover's role as the State regulator of occupational health and safety as it relates to workplace bullying. Before I commence, I acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present.

Today is the first of two hearings the Committee plans to hold for this inquiry. We will hear today from an academic with expertise in workplace bullying and then representatives of the Public Service Association of NSW. After lunch the hearing will continue with a panel discussion involving representatives of the Australian Manufacturing Workers' Union, the Workers Health Centre and the Injured Workers Support Network. Before we commence, I will make some brief comments about the procedures for today's hearing.

Copies of the Committee's broadcasting guidelines are available from committee staff. Under these guidelines, while members of the media may film or record committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses say comments outside their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence, as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation.

I remind everyone here today that the Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. I also remind the witnesses and members of the media that parliamentary privilege does not apply to what witnesses say outside the Committee hearing and witnesses should be cautious about any comments they make to the media and others after they complete their evidence. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. Finally, I ask everyone to turn off their mobile phones for the duration of the hearing.

**CARLO CAPONECCHIA**, Senior Lecturer, Faculty of Science, University of New South Wales, affirmed and examined:

**CHAIR:** Dr Caponecchia, do you represent an organisation or do you appear before the Committee as an individual?

**Dr CAPONECCHIA:** As an individual.

**CHAIR:** Do you want to make an opening statement?

**Dr CAPONECCHIA:** Perhaps I will make a brief statement before we move to questions. Thank you for the opportunity to appear at this inquiry today. I will make a couple of points at the outset. The main thrust of my submission was essentially that while individual issues and cases are really important, there is an opportunity here to go beyond those individual cases to affect the way that WorkCover not only deals with its internal issues but the way that it deals with issues in the organisation that it is supposed to regulate and, in turn, the way in which the issue of workplace bullying is perceived in the community and what standards are expected.

I think it is really important that there is an opportunity here to influence the health and safety and wellbeing of all workers, not just workers who have been or currently are employed in WorkCover NSW. I have read some of the submissions and while they are divergent there is a running theme about independence being very important in whatever this Committee recommends be done, and I would echo that. Without pre-empting what the Committee may recommend, if any strategies are undertaken in a non-independent way, they are likely to fail in this area. I cannot stress how important that independence is. When I talk about independence I really mean independence. I have had experience of that term being interpreted in a very fuzzy way in this field in the past. "Independent" means external from, outside of, without real or perceived conflicts of interest.

I think it is also important that any strategies that are recommended are not just short-term strategies but are ongoing and continually monitored and improved. Indeed, that is consistent with what we would normally expect in a work health safety model in the standards and codes of practice. The last point I want to highlight is there was recently an inquiry into the CSIRO. I mention it because I see some similarities between the situation there and the situation here. The CSIRO had a string of bullying complaints that resulted in a rather large and still ongoing investigation. A preliminary report from that investigation was released just a couple of months ago. One of the key elements of that report was the recognition that organisations, and the CSIRO in particular, need to move from seeing workplace bullying as an individual issue to seeing it as an organisational issue.

In other words, they have to own it from the outset rather than treating it as this kind of, micro one-on-one individual issue. I think that is really important and unites some of the themes in my submission and in the approach that we are advocating, which is the systemic health and safety approach. It is important that that approach is used by this organisation in order to build some trust as opposed to the dissatisfaction and disillusionment that is evident in so many of the submissions. There are lots of other issues I could talk about on this topic. I could probably talk about it all day but I will let some of those issues filter through questions as they arise.

**Mr DAVID SHOEBRIDGE:** In your submission you talk about ensuring that bullying is not dealt with through the human resources framework but through a risk framework. Will you expand on that?

**Dr CAPONECCHIA:** For several years bullying has been recognised as a risk issue in many jurisdictions around Australia.

**Mr DAVID SHOEBRIDGE:** By "risk issue" do you mean risk of injury?

**Dr CAPONECCHIA:** Yes, risk of injury.

**Mr DAVID SHOEBRIDGE:** Would you explain what that means?

**Dr CAPONECCHIA:** That situations of bullying present a risk to people's health and safety and wellbeing at work. The injury that people get is often called a psychological injury. Not everyone who is

exposed to bullying meets the criteria for compensation for a compensable psychological injury. That does not mean they are not injured, of course. The issue is rather than treating it as a dispute resolution issue that organisations have to administrate how they prevent and manage bullying, just like any other health and safety risk, just like a risk of manual handling injury, just like a risk of being exposed to dusts like asbestos, for example.

**Mr DAVID SHOEBRIDGE:** Will you put some sort of meat on that framework? If you have a policy but you operate in an inflexible fashion or a discretionary fashion where individuals are singled out for punishment under that policy, is that when you should be getting red flags and adopting a risk approach? How does an organisation do that?

**Dr CAPONECCHIA:** Having a policy is a part of adopting a risk approach. What you are talking about is the quality and the consistency of the implementation of that policy, as well as the quality of the content of that policy. All those things have to be aligned if you are not only adopting a risk management approach but also doing it well. It is not enough to just have a risk management approach, you also have to do it well.

**Mr DAVID SHOEBRIDGE:** Have you had an opportunity to read the submission by the Public Service Association to this inquiry?

**Dr CAPONECCHIA:** No, I have not.

**Mr DAVID SHOEBRIDGE:** I would invite you to do that. It gave one example in the ISB unit—which is like the IT unit, as I understand it—where the policy is that hours of work have to be filled in on a digital register. Because of workplace policies they only want work to be conducted between 7.00 a.m. and 7.00 p.m. The digital record only allows employees to enter their work hours between 7.00 a.m. and 7.00 p.m. A series of IT issues arise outside of those convenient work hours and IT officers are often called to fix things at midnight or 2.00 a.m. or 6.00 a.m. and do that work outside of that period. They then go to fill in their time and they cannot fill that time in. They are then disciplined for not having filled in their register and not done the required 35 hours when there was no possible way that they could have done it. What are your views on that? What kind of approach should be taken?

**Dr CAPONECCHIA:** Clearly, that is an unreasonable arrangement. That is just silliness, isn't it? If people are doing the work then you should record that they are doing the work.

**Mr DAVID SHOEBRIDGE:** And then these employees are counselled for not having done sufficient hours according to the electronic register. So what should be in place in an organisation to ensure that does not go down the route of the human resources-counselling model but rather is dealt with according to a risk management model? How do you do that?

**Dr CAPONECCHIA:** The example you give is a bit of a difficult one because that is not a typical situation that we see in most bullying situations. However, in saying that, what we do notice in a lot of bullying situations is that there are organisational processes or practices that are going on alongside some unreasonable behaviours, which may be interpersonal behaviours, which exacerbate the situation or contribute to more negative outcomes. So when we are talking about bullying it is not just a matter of someone being yelled at or someone being called names; we often have normal business practices gone wrong—so normal business practices that should be done better; normal management stuff. The example that you have given of requiring people to work a particular number of hours and then not letting them log the hours that they actually have to work to do the job is an example of one of those normal business practices that, it would appear, would be easy to solve, would it not?

**Mr DAVID SHOEBRIDGE:** If there was organisational will.

**Dr CAPONECCHIA:** Sure, if there is organisational will, and a willingness to recognise that the way work is organised has an effect on how people do their work, how they respond to their work and how they interpret how they are being treated.

**Mr DAVID SHOEBRIDGE:** A good employer would not get into that situation?

**Dr CAPONECCHIA:** No.

**Mr DAVID SHOEBRIDGE:** Let us assume that you are an ordinary employer but you have good policies in place so that when something becomes a problem it can be resolved and progressed through a risk management model rather than a human resources model. What structure would be in place to allow that to happen?

**Dr CAPONECCHIA:** A good reporting system that allows for issues to be reported and acted upon quickly in a meaningful way. Part of a good reporting system is a reporting system that people feel safe to use. So people do not feel that in reporting a problem there is going to be payback or retribution against them for saying, "This is a problem. Can we fix it, please?" Relating that to a normal risk management system, that is what you are supposed to have in a risk management system: a way of receiving reports of hazards. I do not necessarily think the isolated example that you have given is a hazard; it is just an example of poor management practice. I am talking about hazards as things that could give rise to a risk.

**Mr DAVID SHOEBRIDGE:** Does it become a hazard once an employee is being counselled for failing to fill in the worksheet for 35 hours of work? When does it become a hazard?

**Dr CAPONECCHIA:** The question of the point at which it becomes a hazard is a good one. Usually for something to be called bullying we are talking about a repeated pattern of events. So the example that you have given may well be part of a repeated pattern of events. There may not just be that one particular thing going on. I guess it becomes a hazard when you have that pattern of behaviours that predictably could lead to a negative health outcome.

**Mr DAVID SHOEBRIDGE:** This goes back to what you say is the accepted definition of workplace bullying: the repeated unreasonable behaviour directed towards a worker or a group of workers.

**Dr CAPONECCHIA:** Yes.

**Mr DAVID SHOEBRIDGE:** And so it is about that repeated pattern of unreasonable behaviour.

**Dr CAPONECCHIA:** Yes, those are the criteria that we use in Australia.

**Mr DAVID SHOEBRIDGE:** I will give you another example from the Public Service Association [PSA] submission. The Public Sector Employment and Management Act provides that a person employed in the public services does not undertake any other paid work without the permission of the appropriate department head. There was a disciplinary matter run against an employee who had a private investigator sicked onto him. He found that the employee was doing voluntary work. The employer then sought to discipline that individual on the basis of having been reimbursed for the out-of-pocket expenses incurred in the voluntary work amounted to paid work.

The employer then put a blanket ban on any volunteer work without approval within WorkCover. The PSA says that a complete ban on volunteer work will end up being a policy which can be capriciously applied, because so many employees do volunteer work—whether it is at the school canteen, volunteer refereeing on the weekend, Rural Fire Service work or whatever. If you have a blanket policy, which is patently unreasonable, then it can be capriciously applied to weed out individual employees. What are your views on those blanket policies which allow for that capricious application?

**Dr CAPONECCHIA:** It is difficult to comment on particular circumstances without knowing the full context of those behaviours. But in terms of the policy—

**Mr DAVID SHOEBRIDGE:** I am interested in that idea of a blanket policy.

**Dr CAPONECCHIA:** In terms of the policy, it is very similar to what is often regarded as the concept of organisational bullying—which is where something about the structure or policies of an organisation can be used in such a way that people are treated unreasonably and that can have an effect on their health as well. So that kind of thing does fit within bullying, albeit it in an atypical way from what we would usually consider to be organisational bullying. It is a harder road to travel, though, in terms of the bullying criteria that we use—and that I always advocate people use, and use conservatively—simply because the example you have given is a much more complex set of circumstances.

**Mr DAVID SHOEBRIDGE:** Yes, it is more complex. But what about your views on that structure? Have you seen in other workplaces an across-the-board policy which may have a veneer of reasonableness to it but is then allowed to be applied in a discretionary fashion to single out people within the organisation?

**Dr CAPONECCHIA:** Sure, it does happen; and typically we call it organisational bullying. In situations like that though the question becomes: Do we need to call it bullying? Is there enough within that particular case to say, "This behaviour is just an unreasonable management practice anyway"? Do we need to go down the road of trying to ascribe it to bullying? Are there not other ways in which that kind of practice could be solved?

**Mr DAVID SHOEBRIDGE:** I am sure there are, and I suppose that is what I am trying to engage you on. When should this kind of practice engage a bullying policy and risk management process and when should this kind of practice engage a managerial employment relations process?

**Dr CAPONECCHIA:** What I understand you to be referring to in the human resources managerial process is more like the processes that are used to resolve a grievance or a complaint. It is used very often in many organisations in traditional bullying situations and often where there is an interpersonal issue. The example you have given is less interpersonal and more organisational. The industrial relations-human resources complaint resolution stuff should not be used for those interpersonal situations; it should be a risk management approach where the potential for the person or people to be harmed should be the primary consideration.

However, in those more organisational situations, which you have given an example of, I am not sure that they need to be managed through a risk management system—unless it is obvious that people are going to be or likely to be harmed through those kinds of policies. If a policy that is implemented appears to be unreasonable then surely as part of your normal management review you would review it and do something about it. You do not need to run it through your health and safety system or your risk management system, whichever you want to call it.

**Mr DAVID SHOEBRIDGE:** I will give you another example from the PSA submission. This is about the notification of sick leave or personal carers leave. A new "People and Culture" policy was put in place that explicitly stated that it was not acceptable for employees to notify of sick or carers leave by email and that they had to contact their supervisor, or if their direct supervisor could not be contacted then the supervisor above—escalating up the line until they eventually had face-to-face contact. The PSA gives the example of a member who realised on a Sunday that he would not be able to attend work on the Monday because of carer's responsibilities. He sent an email to the whole team indicating why he would not be in and undertaking to work from home to get a number of pieces of work done.

He heard nothing back on the Monday. He worked from home all day Monday, completed all the tasks and turned up to work the next day. He was then refused pay for the day, and when he sought to get Family and Carers leave he was refused the request for Family and Carers leave. That is cited as one of a number of examples of where this policy is very arbitrary and, on the face of it, unfair. Again, it is another across-the-board policy which has a veneer of reasonableness but can be applied capriciously. Would that fall within the category of organisational bullying or not?

**Dr CAPONECCHIA:** If it is happening to a whole range of people then, yes, it could fall into what we call organisational bullying. However, what if it happened to that one individual and there was a pattern of other unreasonable behaviours? That example on the face of it appears to be unreasonable, so I would have to assess the criteria. Was it happening to that person in a repeated way, so not just that behaviour but potentially other behaviours that form a pattern? Was it unreasonable? On the face of it, it seems to be unreasonable. Did it cause a risk to that person's health and safety? That is something you would need to assess. So the answer to your question, and I know this is not a satisfactory answer, is that it could be one or both.

**Mr DAVID SHOEBRIDGE:** I have one last question. I gave you three examples: the timesheet example, the voluntary work example and the sick leave example. Each of them appears to be of a type: a broad policy able to be capriciously applied, with examples of where that has happened. When there is a pattern of that kind of behaviour in an organisation, is that when the red flags should be going off and there should be a comprehensive review of bullying?

**Dr CAPONECCHIA:** Of course there should be red flags going off with those kinds of things.

**Mr DAVID SHOEBRIDGE:** One maybe, two yes, and with three examples?

**Dr CAPONECCHIA:** Any and all of them and they should have gone off. In the cases of the individuals concerned in those cases as well, yes. Red flags going off are what you are doing in a risk management system. You are noticing things in advance; you are anticipating things that could have a negative effect on people's health and safety. That is evidence of a risk management system working well.

**Mr DAVID SHOEBRIDGE:** And failure to act is evidence of a risk management system failing.

**Dr CAPONECCHIA:** Yes.

**The Hon. ADAM SEARLE:** On page 6 of your submission you talk about a potential definition of bullying as proposed in the proposed national code of practice. When we are talking about issues around bullying, you note in your submission that people might perceive it differently, obviously depending on where they are in the organisation and different people might have a view about what constitutes bullying as opposed to intense discipline or some other view about it?

**Dr CAPONECCHIA:** Sure.

**The Hon. ADAM SEARLE:** Presumably bullying is something that goes beyond the normal form of robust discipline that might occur in a workplace. Do you see the proposed code of practice as adequately encapsulating the phenomenon?

**Dr CAPONECCHIA:** I do. The proposed national code of practice that was put forward by Safe Work Australia, yes, I think it does deal with the definitional issues adequately—I should mention there that not only does the code—and the code builds on guidance material that has been enacted or used in New South Wales for many years now; this is not a new thing. I believe the first guide we had in New South Wales was somewhere in the mid-2000s. It was earlier in Victoria. The code not only goes into what the criteria are for bullying but it also goes into what bullying is not. So bullying is not reasonable management action undertaken in a reasonable way, and gives examples of what those things might be. Reasonableness is assessed with the reasonable person test, which is difficult for some people to apply. However, it is in my view a very important inclusion because part of what the reasonable person test does is it removes individual's perception from the equation.

Of course, when someone feels that they are being bullied, first they have to perceive that they might have been bullied. The unreasonableness test, they can either assess that themselves, but it also allows for someone else who might receive their report to engage in a process somewhere along the line of assessing whether it actually was unreasonable by a person or a hypothetical person who has account of all the circumstances and is divorced from the situation or does not have a stake in the situation. The unreasonableness test, in my view, is very important in terms of removing this perception that it is all about perception, and that issue is often used as a barrier to taking meaningful action on bullying.

**The Hon. ADAM SEARLE:** By that, do you mean the idea that often in a workplace there is sometimes a bit of rough and tumble and sometimes people might be more sensitive than other people and might perceive that they are being bullied when really it is just reasonable management action? Is that the perception you are referring to?

**Dr CAPONECCHIA:** That is right; that is what I am referring to. I guess what I am saying is that there are ways around that. That does not have to be where it ends, and that is not a justification for doing nothing. Of course, there is a normal rough and tumble and conflict can be very positive in moving organisations forward if it is dealt with in an appropriate manner. The issue of individuals' vulnerabilities is another issue. Organisations do not have to assess people's vulnerabilities. They are supposed to take people as they find them. It is often said that bullying and other psycho-social hazards are difficult to deal with because everyone reacts to different things differently. However, we know enough about how bullying works, about the kinds of behaviours that are involved to know about what will generally happen to people exposed to similar kinds of stimuli or situations.

**The Hon. ADAM SEARLE:** On pages 7 and 8 of your submission you talk about tension between the individual complaints and the sort of human resources model versus a systemic approach. WorkCover NSW is the regulator for workplaces generally. But, obviously, some concerns about the body itself have given rise to this particular Committee. How can the issue of bullying be addressed other than through the individual

complaints, given that it is obviously the individual instances that give rise to information about the systemic issues? How can the two be married together so that the organisation can learn from individual cases?

**Dr CAPONECCHIA:** I can see what you mean there. It is not that individual cases should not be managed. Of course they should; they have to be. They have to be investigated fairly, appropriately and consistently. But dealing with individual complaints is after the fact. Work health and safety is meant to be preventative, not clean up after everything has gone wrong. You are meant to stop it from happening in the beginning. Some of the strategies that organisations engage in—and what I am referring to on those pages—are focussed at the individual level and make issues of bullying an individual's responsibility, if you like, to either isolate or buffer themselves from. That is an approach that I do not endorse, and it is an approach that is inconsistent with a health and safety framework. We are not about blaming individuals. We are not about acting at the individual level. It should be about systemic action. Some of the strategies that I am referring to there are around resilience programs.

**The Hon. ADAM SEARLE:** Building the individual's capacity for robust criticism.

**Dr CAPONECCHIA:** Building the individual's capacity to deal with these events, which is kind of ridiculous. It is kind of saying, "Well, we know that when you work for us bad things will happen to you. So we will buffer you and you will be more able to take it".

**Mr DAVID SHOEBRIDGE:** The toughen-up approach.

**Dr CAPONECCHIA:** Toughen up because we know that you will get hurt. It is completely the wrong way around. Similarly, the approaches around focussing on employee wellness are similarly reflective of that approach. Wellness is very individualistic about individual's fitness and health. How exactly does that function as a mechanism to protect people from being bullied at work?

**The Hon. ADAM SEARLE:** What do you see as the solution? What do you see as being needed in a public policy sense based on your knowledge of the situation here in New South Wales?

**Dr CAPONECCHIA:** I think the situation is a little different for an organisation that is having a range of problems and the generic case of what you should do when things are going along as normal. It should not be about individual actions. It should be about having good policy that is properly implemented; that is consistently implemented, that has been consulted upon; that prescribes adequate procedures that are consistently used, and used the same for everybody, no matter who they are, where there is a robust reporting system that people feel they can trust, that is, they are safe to report without fearing payback, and where there is an adequate training program that is not just half a day online training that you click through a multiple choice assessment. Training in this area is incredibly poor. You also need to have interventions of investigation that are fair and independent and I would suggest in a situation like that they all need to be independent and external probably.

**The Hon. ADAM SEARLE:** So not by the organisation itself?

**Dr CAPONECCHIA:** No. Given the problems that have gone on, I do not think anyone could mount an argument for conducting an internal investigation of bullying unless it was very clear that it was quite minor. Investigations are a big problem in this area and a lot needs to be done on it. I have further thoughts that I can share with you about investigations. Mediation is a real problem in this area as well and probably should not be used. It is very controversial. There is a tendency to go straight to mediation and it is an ill-advised strategy.

**The Hon. ADAM SEARLE:** Why do you say mediation is a problem?

**Dr CAPONECCHIA:** For lots of reasons. The goals of mediation and investigation are quite different. The goal of mediation is to get people back to work. So shake hands and let us figure out how we can do this again. It does not establish whether something unreasonable or wrong happened; it does not establish what happened or who did what to whom. It is just about how we can get past this. That is not adequate for a lot of people who have been through these situations. It is difficult for parties to go to mediation, given the often great power imbalance that exists between the parties. I guess the other reason is that it is not consistent with health and safety practice. We do not mediate if you feel that there is a problem of some other kind of workplace hazard; we do something much more akin to investigation. We go and find out if there is a problem, then what we should do about it, and then we implement the most effective control.



**Mr DAVID SHOEBRIDGE:** But you said earlier it was not about blame.

**Dr CAPONECCHIA:** It is not about blame.

**The Hon. ADAM SEARLE:** But you say nevertheless the basic facts have to be investigated.

**Dr CAPONECCHIA:** You have to investigate what happened and if anything happened that was unreasonable. Of course, it is possible that someone claiming that they have been bullied has not been bullied and is making a false complaint or a misdiagnosed complaint.

**The Hon. ADAM SEARLE:** You mentioned before the importance of independence in terms of any changes that are made to the organisation. I want to explore that a bit. Do you mean that the organisation itself needs to have its independence enhanced, or are we talking about the independence of investigations of allegations?

**Dr CAPONECCHIA:** More the latter. I did not want to pre-empt anything that the Committee could recommend, so I did not want to be too specific.

**The Hon. ADAM SEARLE:** Nevertheless, any ideas you might have—

**Dr CAPONECCHIA:** Just to go to what the PricewaterhouseCoopers inquiry recommended in 2011, to quote from that, "developing a framework for an external expert panel to investigate serious allegations of bullying and harassment". That was recommended in 2011. I am not aware of whether that has actually happened.

**The Hon. ADAM SEARLE:** I do not think we are either.

**Dr CAPONECCHIA:** I did not read in the other submissions that it has happened. To take that as an example, an external expert panel to investigate serious allegations. Certainly that would be something that I see as happening external to WorkCover. There are a few ways of doing that. It may be that you have an external expert panel that investigates. It may be that you have an external expert panel whose role is to vet and assign appropriately qualified investigators from outside the organisation. This is a model we have talked about nationally, that there are problems around how to source the right investigator and ensure that there are no conflicts of interest between the organisation and the investigator.

Because when an organisation calls in an external investigator that organisation is paying for that investigative team. There is a perceived conflict of interest there as well and the organisation has to make a decision based on what the investigator finds. Having an external expert panel assign an investigator to different cases as they come up might be one way around this as well, as opposed to that panel doing the investigations. I think it is reasonable to say that getting external expert advice on all of these issues would be appropriate, rather than reworking what currently exists, because I have read in the submissions some of the things that have been implemented post the PricewaterhouseCoopers [PwC] review and some of them go to the things that we were talking about before, about focusing on wellbeing and individual wellbeing.

**The Hon. ADAM SEARLE:** Do you say those things are useful to a point, but they miss the systemic nature—

**Dr CAPONECCHIA:** They are useful to a point, and you have to have those things, but they are the later considerations.

**Mr DAVID SHOEBRIDGE:** They are more like analgesics than anything else?

**Dr CAPONECCHIA:** Yes. In health and safety terms we would call them personal protective equipment—that equivalent of the hierarchy.

**The Hon. ADAM SEARLE:** The asbestos suit.

**Dr CAPONECCHIA:** Exactly. Get rid of the asbestos; do not just give everyone a dust mask.

**The Hon. MICK VEITCH:** Do you think that, in a broad macro sense, the role of WorkCover has been compromised by some of the allegations about bullying within WorkCover and subsequent court cases?

**Dr CAPONECCHIA:** Yes, I do not see how it could not be. It has been front page of the papers several times now. The last time spurred the PwC review in 2011—front page of the *Sydney Morning Herald*. One of the several issues that I believe has led to this inquiry was a particular case in Newcastle regarding the treatment of an inspector, which again gained media attention. One of the issues I covered in my submission was that it undermines credibility, and that is a concern because workplace bullying is an issue in all industries. It can affect anyone in any industry, it does not matter what job you do. With other hazards, it does depend what job you do. A lawyer in a top tier law firm is very unlikely to be hit by a crane and guys on a construction site are more likely to be hit by a crane, but all of them have that equal chance of being exposed to psychosocial injury.

**CHAIR:** On page 6 of your submission you support the definition of workplace bullying by the House of Representatives Standing Committee on Education and Employment, which is repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Why would you support retention of the word "repeated"? Would one case not be sufficient to be dealt with?

**Dr CAPONECCHIA:** That is a very good point and a slightly controversial issue. There are a range of reasons why "repeated" has been used in the definition of bullying. The three criteria that we use—and I should mention that those criteria have come from health and safety practice in Australia—are actually quite conservative. Requiring repetition I think was initially adopted many years ago, partly to be more conservative so we did not have people claiming that they were being bullied on one-off instances. The other criteria of showing that it is unreasonable and that it causes a risk—and to be classified as bullying the situation has to meet all of those criteria—make the definition even more conservative.

I take your point on individual instances. It is usually recognised in guidance material that one-off instances cannot be ignored either, but should be noted in terms of whether they might indicate the start of a pattern or the middle of a pattern or whether they might indicate that more investigation is required. It is not the case that individual behaviours are meant to be ignored; they are meant to be noted, and potentially acted upon and actively monitored. I think it is a bit of a compromise position between wanting to administrate people's health and safety but also be a little bit conservative.

**CHAIR:** The definition has in it the word "unreasonable". That can be interpreted very differently by different people.

**Dr CAPONECCHIA:** Yes.

**CHAIR:** Can we get more specific criteria for what is "unreasonable"?

**Dr CAPONECCHIA:** Again, a controversial issue, but we usually use the unreasonable person test, which is the hypothetical reasonable person. This is a concept that is often used in law. The basic test is whether the hypothetical reasonable person, having an account of the full circumstances—and that is why I was talking before about knowing the full circumstances before calling something bullying—would view the behaviours in those circumstances to be reasonable or not. I understand that that is difficult for some people to use. One of the problems that we have had, in my view, is that there has not been enough guidance around how to use these criteria in a consistent way from any of the health and safety authorities around the country. One of the things that came out of the Federal House of Representatives inquiry in 2012 was the need for better guidance on using these criteria, and that is something that my colleagues and I have been working on with Safe Work Australia to develop a tool that helps people decide whether what they feel they have been exposed to actually does meet the criteria, and that tool is still in development.

**CHAIR:** In your submission you comment that the structure of the organisation can also cause bullying. WorkCover is managed by the Safety, Return to Work and Support Board, which also oversees three other government organisations. I would like to hear your comments on that, but is there some implication that this is a problem for public service organisations as distinct from private industry, or do you find that it is applicable to all areas of employment?

**Dr CAPONECCHIA:** It is applicable to all areas of employment; however, I believe there are specific concerns in the public sector in that some of the new arrangements for the Fair Work Commission, which begin

in January next year, will not apply necessarily to all public sector employees, so with that in mind and with where we seem to be valuing action on this issue as a nation, one could argue that it is more important for public sector organisations to get this right because in some ways public sector employees may actually be less protected or have less avenues of redress.

**The Hon. MELINDA PAVEY:** Have you completed your answer, doctor?

**Dr CAPONECCHIA:** Yes, I think that was all. You mentioned about the board. Was there a specific issue you wanted to address there?

**CHAIR:** I was just wondering if it was a problem in the public service because of the hierarchical structure.

**Dr CAPONECCHIA:** It is known that a hierarchical structure can often lead to these problems occurring. That is not a reason to get rid of hierarchies; it is just a reason to improve the way that you deal with these situations. I think it should also be recognised that the Public Service Commission recently in New South Wales—this has only just happened in New South Wales—has started to do regular surveys in the public service, similar to what has been done in Victoria and other States for many years now, so hopefully we will have ongoing data on how many people in the public sector feel that they have been bullied. This is the, I think they call it, State of the Service report or the People Matter survey—it has various names. Hopefully that will continue.

There are limitations with that survey, of course, in terms of how it asks people about bullying, and those are research issues that could perhaps be improved, but nonetheless some data where there was none prior to 2012. Hopefully that will continue and be enhanced. There are limitations with continued staff surveys, and I noticed that many of the submissions talk about survey after survey after survey. I would hesitate recommending another survey. I would be recommending independent research because there are issues in who responds to those surveys, particularly in a culture where it does not seem that there is a lot of trust, so one wonders about how biased the results of those surveys might be and therefore are they reliable or valid. I would caution using those data as I would caution the use of compensation data to reflect levels of safety. It is a common mistake and should be avoided.

**CHAIR:** Do you have any explanation as to why WorkCover, an organisation that should be concerned about bullying, was blind to bullying within its own organisation? Is there any simple explanation why that did not seem to register with those in charge?

**Dr CAPONECCHIA:** I do not think there is a simple explanation; I imagine it is quite a complex explanation in fact, over many years of action it seems from the submissions. I do not think there is a simple explanation; however, I think that there are some relatively simple top-level strategies that could be implemented that could improve things without too much need for further investigation.

**CHAIR:** Can you take that on notice?

**Dr CAPONECCHIA:** I can take that on notice.

**CHAIR:** We would like to hear the strategies.

**Dr CAPONECCHIA:** Obviously trust has to be rebuilt in this organisation. I am not sure that people feel that they can adequately report things currently. That will take time to fix. Increasing the levels of transparency around how these issues are dealt with will go part-way to addressing that. We talk about the concepts of process transparency and system transparency, transparency in telling people how you are going to deal with their report, should they make a report, what is going to happen, should there be an investigation, what the likely outcomes might be, who will have the information, how it will be kept confidential, and so on. System transparency is more at a macro level, which is about reporting without people's names and confidential details, but reporting that, "We had X number of reports of bullying this year, so many of them were in this section versus that section. We had X number of external investigations run by different investigators, all of whom were vetted and shown to be independent. We made these decisions: one of them was dismissal, one of them was discipline and one of them was transfer."

That kind of system transparency demonstrates a commitment to doing something meaningful about this area. It communicates to people who feel that they may have been targeted that something meaningful has been done in the past and it communicates to people who may be using these behaviours that, should they continue to use those behaviours, something meaningful will be done about it. So over time that can build trust in the reporting system and that the organisation is actually going to do something, rather than nice diagrams that talk about wellness.

**The Hon. CATHERINE CUSACK:** I have three questions: one about sexism, one about culture and one about governance. What is the difference between sexism and bullying?

**Dr CAPONECCHIA:** Well, you do not have to meet the criteria for bullying to call something sexist.

**The Hon. CATHERINE CUSACK:** Things such as excluding people from information they need to do their work, allocating work beneath their skill level, fairness in promotion systems, and routinely denigrating people. Women have put up with this for years. I am curious to know, is that bullying?

**Dr CAPONECCHIA:** It depends on behaviour and how related it is to the person's gender, I suppose. There are theoretical distinctions between what we would call harassment and bullying. Harassment, as dealt with by the Anti-Discrimination Board, does not have to be repeated but it does have to be on the basis of some characteristic of the individual, and one of those is gender—sexuality, religion, race, et cetera. Knowing whether a particular case is bullying or harassment requires knowing the behaviours in the context. It is certainly not the case that cases of bullying are sexism or vice versa. It really depends on the extent to which gender is central to those events.

**The Hon. CATHERINE CUSACK:** I am curious because it seems to me that if someone is the proverbial racist pig, they are probably the proverbial sexist pig and bullying pig. Do you know what I am saying? It all seems to be in the same family of behaviour. From the victim's point of view, technically they might not know whether they are being harassed or bullied.

**Dr CAPONECCHIA:** True, they may not. You are right. It does matter, eventually, because the options that might be available to them if they have experienced sexual harassment or non-sexual harassment compared to bullying might be quite different. Similarly, if they have experienced violence, the options are different, because if you have experienced violence at work the answer is easy: you call the police.

**The Hon. CATHERINE CUSACK:** You can show them your gunshot wound.

**Dr CAPONECCHIA:** Well, that is right, or your bruises.

**The Hon. CATHERINE CUSACK:** Or bleeding.

**Dr CAPONECCHIA:** But let us not forget that violence also includes threats. Threats are violence, so they are not necessarily physical.

**The Hon. CATHERINE CUSACK:** The verification is a lot harder for these matters.

**Dr CAPONECCHIA:** Verification can be harder, but I think we are moving towards providing better guidance around what people need to have as evidence and the fact that they will need evidence if they are making these claims. I think that is happening with the outcomes of the Federal House of Representatives inquiry, that we are moving towards better guidance on things like evidence.

**The Hon. CATHERINE CUSACK:** It seems rather opaque to me. Even for the victims or the perpetrators, the lack of clarity suggests to me it needs—can I say this? I just do not think people know what they are dealing with. It is prevalence. Prevalence is an unknown, given that it relies on people's perceptions, which may or may not be correct.

**Dr CAPONECCHIA:** Sure. It is difficult for people to know what is happening to them but, as I said, I think that there are moves to remedy that. We are working on a decision tool that focuses on the criteria. We always encourage people to use the criteria and use them conservatively. It is very important. Nobody is interested in complaints that are—I should not use the word "complaints"—reports. "Complaints" is HR/IR language that is not really appropriate here. It is reports, and indeed the proposed code of practice talks about

reports, not complaints. It talks about reports of the nature of hazard reports that all organisations everywhere receive regularly. The point is that there is becoming better guidance around how to recognise these behaviours and ensure that you are reporting correctly within the criteria.

**CHAIR:** Thank you very much for attending this hearing. Our time has now concluded.

**Mr DAVID SHOEBRIDGE:** The Hon. Catherine Cusack has one more question.

**CHAIR:** No, we will have to conclude now; we are running overtime. Further questions can be put on notice.

**Dr CAPONECCHIA:** If there are other issues, I am happy to—

**The Hon. CATHERINE CUSACK:** I wanted to know about the role of boards.

**Mr DAVID SHOEBRIDGE:** Mr Chair, I am happy to sit for another five minutes and crunch down the quarter of an hour that we have allocated for morning tea to allow the Hon. Catherine Cusack to ask another question.

**CHAIR:** I would rather we keep to the timetable. Thank you, Dr Caponecchia, for your attendance. We appreciate the information you have provided.

**(The witness withdrew)**

**(Short adjournment)**

**IAN TUIT**, Delegate, Public Service Association,

**JANN LOUISE JEFFRIES**, Industrial Officer, Public Service Association, and

**STEVE TURNER**, Assistant Secretary, Public Service Association, affirmed and examined:

**COLIN ANTHONY FRASER**, Delegate, Public Service Association, sworn and examined:

**CHAIR:** Welcome members of the Public Service Association [PSA]. Thank you very much for your cooperation and sharing in our public hearings. Do any of you wish to make an opening statement?

**Mr TURNER:** Yes. Thank you for allowing us to come along to this inquiry. The PSA has made a submission to this inquiry and stands by that submission. The issue of workplace bullying is a very complex and difficult issue facing our society. The PSA does not underestimate the difficulties managers face in any organisation preventing a culture of bullying taking hold. Certain structural and organisational issues can be identified where bullying has become entrenched. These must be identified and addressed before improvements can be made. We think it can be very much systemic policies that often can lead to, entrench and reinforce the bullying that is taking place. The PSA has been concerned about bullying in WorkCover since 2004. The fact it is now 2013 and there must be an inquiry is shocking, we believe. Nine years later we are still trying to address this issue within WorkCover and have fought to try to improve the responses within WorkCover working with WorkCover to complaints of workplace bullying and to address the underlying causes.

The PSA has fought for this across the public sector being the union that began the fight that eventually led to the public sector Dignity Respect charter. It arose from surveys of our members that showed high levels of personally perceived attacks and bullying on members within the public sector generally. I will not name all the departments. As I have said, the PSA has been trying to address this bullying culture within WorkCover. I have personally met with several CEOs now over those years, but a decision in a recent unfair dismissal application highlights that this culture still exists and is perpetrated through many processes, including work performance, disciplinarys et cetera that exist within WorkCover. Our submission identifies many of the discussions and attempts to address policies and the PricewaterhouseCoopers report arising from the previous Minister's inquiry into bullying in WorkCover and aims to try to address the bullying. We hope this inquiry can address and lead to solutions within WorkCover.

**CHAIR:** Are there any other statements?

**Ms JEFFRIES:** We acknowledge that WorkCover and the Safety, Return to Work and Support division as the broader umbrella organisation have made a number of attempts and introduced some interventions, but the things they have chosen to introduce just do not hit the mark. They are not really addressing the current prevalence and existence of bullying in the organisation. They tend to be longer term interventions aimed at cultural change rather than actually addressing the instances of bullying and that.

**Mr DAVID SHOEBRIDGE:** The PricewaterhouseCoopers report should have been a circuit-breaker and one would have thought that implementing those recommendations should have been the start of a substantial improvement in WorkCover. One recommendation in the report was that the outcomes of the inquiry be communicated as appropriate to all employees. That was in February 2011. How did WorkCover implement that recommendation?

**Ms JEFFRIES:** There have only been a couple of minor attempts at communicating anything with the employees. I think they are substantially addressed in our submission. There was a call by the then CEO to launch a leadership program. That was one thing that appeared to be linked to the recommendations, but not really firmly linked to that. There was an email sent out by what was called the senior managers group suggesting that they were going to be developing a framework and that this would be revisited and communicated to employees in an ongoing way. There was only one communication ever and that was it. Nothing was ever presented to employees.

**Mr DAVID SHOEBRIDGE:** So there was an email?

**Ms JEFFRIES:** One email from a group called the senior management group.

**Mr TURNER:** Therein lies one of the fundamental problems: once having addressed an issue, rather than taking a step back and trying to accept the issue exists and work to improve it, there also seems to have been an attempt to cover up or not recognise the issue exists. That perpetrates the issue continuing, which is the biggest problem within WorkCover and other organisations.

**Mr DAVID SHOEBRIDGE:** If you are one of 500-odd employees in WorkCover, were they given a copy of the report? Were they given a link to the report?

**Ms JEFFRIES:** They were advised that the report was available from the Department of Premier and Cabinet website. I believe they were provided with a link in a CEO's message. So they could read the report. But the report itself does not contain a lot of substance, if you like. It requires for the substance to be put on it after the fact in consultation really between WorkCover and its employees. So that was not really helpful in resolving the issues.

**Mr DAVID SHOEBRIDGE:** There is a series of six broad recommendations with a whole lot of sub-recommendations. Did WorkCover sit down with the PSA and say, "Okay, let's work through these individual recommendations and see about implementing them"?

**Ms JEFFRIES:** We had one meeting that was not held until the September following the release of the report.

**Mr DAVID SHOEBRIDGE:** September 2011?

**Ms JEFFRIES:** That would be correct. In that meeting we were told that they had done a bit of work to map out some actions against the recommendations. They had a spreadsheet that was not handed to us but simply discussed briefly in that meeting. They asked us if that would be the kind of discussion that we would like to have ongoing about how to implement these recommendations. We said, "Yes, that's what we would like, to sit down and systematically go through each of the recommendations and work towards solutions." That was the only meeting. Sorry, just to correct that. We had a further meeting about one of the particular recommendations and that was around recruitment practices. But that meeting arose only because the association had instigated proceedings in the Industrial Relations Commission on that particular matter.

**Mr TURNER:** There is also the issue that when you get to the stage that you must bring an outside organisation like PricewaterhouseCoopers into an organisation to make such a report. The question is why you leave it to the organisation that the report is about to rectify the issues arising as opposed to getting other people to come in to assist to correct the resolutions. Part of the report is about investigating the ongoing bullying or the unresolved complaints at the time. It is a bit like who regulates the regulator, but you are asking the organisation where the bullying is alleged to have occurred and the complaints have occurred to investigate the complaints and for people to try to open up to that organisation to resolve them, whereas the issue is whether Premier's department maybe should have stayed more involved at that stage in resolving it and working to resolve the issues.

**Mr DAVID SHOEBRIDGE:** Indeed, a series of high-priority recommendations were reassessing the framework for how they deal with these issues—complaints, bullying and the like—and then putting in place a new framework in consultation with employees and employee representatives. Has that happened?

**Ms JEFFRIES:** We have just recently been provided with a revised policy.

**Mr DAVID SHOEBRIDGE:** What does "recently" mean?

**Ms JEFFRIES:** About six weeks ago I think we were given an original version of the new policy for bullying.

**Mr DAVID SHOEBRIDGE:** After the establishment of this inquiry?

**Ms JEFFRIES:** Oh yes. Very recently. Just yesterday I was provided with a copy of what they say is the final version to offer up further comments.

**Mr DAVID SHOEBRIDGE:** I am sorry, what is the policy?

**Ms JEFFRIES:** Relating to handling of bullying complaints. So it would be specifically called "Prevention of Workplace Bullying, Discrimination and Harassment Policy."

**Mr DAVID SHOEBRIDGE:** So the day before you come to give evidence in this inquiry you are given a final copy by WorkCover?

**Ms JEFFRIES:** The final copy. It is not the first time we have seen that, but it was only some weeks ago that we saw that.

**Mr TURNER:** Arising from a 2010 report.

**Mr DAVID SHOEBRIDGE:** Are you in a position to table that document?

**Ms JEFFRIES:** It has not yet been—

**Mr DAVID SHOEBRIDGE:** I am not asking you to table it with a view, just to provide the Committee with a copy of the document you got yesterday.

**CHAIR:** Unless you take it on notice and inquire as to whether you can make a copy.

**The Hon. ADAM SEARLE:** That might be the safer course of action.

**Mr DAVID SHOEBRIDGE:** Yes. I am more than happy for you to take it on notice.

**Ms JEFFRIES:** Thank you. I will do that because it was given to me still to provide some feedback. So technically—

**Mr DAVID SHOEBRIDGE:** To provide some feedback on the final document?

**Ms JEFFRIES:** Yes. I know that sounds contradictory, but nonetheless that was the case.

**Mr DAVID SHOEBRIDGE:** WorkCover says, "Since 2010 all WorkCover formal disciplinary investigations are conducted by external independent investigators." Do you have any response to that?

**The Hon. ADAM SEARLE:** Do you know who they are?

**Mr DAVID SHOEBRIDGE:** I suppose, first, what is the process for finding them? Second, is it true? And third, who are they? Or is this something with which you have not been engaged officially?

**Mr TURNER:** That statement is hard to answer from us because it depends how you define bullying complaints. As the Butler decision shows, there might be an issue about time sheets, there might be an issue about performance, there might be an issue about various things that are handled internally by what might be argued appropriate managers.

**Mr DAVID SHOEBRIDGE:** I will just repeat the wording: "Since 2010 all WorkCover formal disciplinary investigations are conducted by external independent investigators."

**Mr FRASER:** Could I comment on that?

**Mr DAVID SHOEBRIDGE:** Yes.

**Mr FRASER:** The wording is the key bit. It says, "external disciplinary investigations."

**Mr DAVID SHOEBRIDGE:** Formal disciplinary investigations.

**Mr FRASER:** Formal disciplinary investigations: for all we know, that may be true, but there are many issues, particularly related to bullying, that are not disciplinary matters. People just have a concern that they raise and they are not investigated. To this day there are quite serious bullying matters, even involving sexual harassment that they refuse to look at.



**Mr DAVID SHOEBRIDGE:** Has the recommendation from PricewaterhouseCoopers, which is to have an external body established to deal with bullying matters, ever been implemented?

**Ms JEFFRIES:** No. It is probably the case that more often than not an external contractor is retained to undertake an investigation where it pertains to disciplinary allegations. That requires that it has gone down that path, the disciplinary and misconduct process, and has not been investigated within the work health safety framework with a risk management approach. Even then we are aware that reports are made that do not go anywhere outside the organisation. There are very recent examples of that.

**Mr DAVID SHOEBRIDGE:** One of the high-priority recommendations, as of February 2011, from PricewaterhouseCoopers is:

Develop and share protocols in relation to the appointment of external investigators. Continue to develop a framework for a panel of appropriately skilled and experienced OHS investigators.

Have any protocols been shared with you in relation to the appointment of external investigators?

**Ms JEFFRIES:** That recommendation may pertain to the idea of trying to resolve the question of who regulates the regulator and the perception that WorkCover should not be investigating itself on its performance. There were some discussions with us, on probably multiple occasions, about the possible framework to address that scenario. We were provided with some spreadsheets detailing an appropriate process to follow. There was an attempt to identify some external body and there was an attempt to identify the right place or person to oversee that. Then the discussions on that point evaporated and there has been no further discussion since the end of 2011.

**Mr TUIT:** The last meeting we had on that subject was in April 2011.

**The Hon. MICK VEITCH:** In a macro sense, have the reviews of the culture of bullying in WorkCover compromised WorkCover's role in New South Wales?

**Mr TURNER:** It raises all sorts of issues, and there are all sorts of practical issues about what instructions are given to inspectors, what bullying they can pin on outside organisations and other issues. It comes back to not being able to resolve issues internally and how to regulate other organisations within society as a whole that the regulator is responsible for regulating.

**Ms JEFFRIES:** There is no doubt a credibility issue arising from that.

**The Hon. MICK VEITCH:** Did you suggest a way forward for WorkCover in New South Wales? As legislators, how do we enhance the role to ensure that credibility is restored?

**Mr TURNER:** That goes back to a previous question arising from the PricewaterhouseCoopers review. There should probably be an external review of WorkCover and external assistance in fixing institutional issues that lead to bullying within the organisation to include even reviewing managers and looking at training programs, so that managers can manage effectively. Once that is in place, the organisation needs to be monitored to make sure that it continues the new culture and keeps it going. That would give it a reform profile to make sure that, as the regulator, that culture is spread across society. This is a big issue within society generally as well.

**The Hon. MICK VEITCH:** I go back to the response provided to Mr Shoebridge's question about external contractors. How are external contractors engaged?

**Ms JEFFRIES:** That is a question for WorkCover or the agency. They choose them in whatever process they have.

**The Hon. MICK VEITCH:** How do you think they should be engaged? What is the process? What skill sets should they have?

**Ms JEFFRIES:** They should have proper investigative skills, so the process they are undertaking is inquisitorial rather than adversarial. I do not believe that the majority of investigations are inquisitorial. From the reports, they appear very much to have been adversarial in nature—that is, attempting to demonstrate some wrongdoing.

**Mr FRASER:** The ones I witnessed were seeking to find out whether there had been misconduct and not looking broadly to find the causes, not taking a risk identification point of view so that we can recommend various means of risk control to the organisation. These means could be mentoring, training, closer supervision or even disciplinary action. If you make up your mind from the start that it is going to be treated either as mediation or as discipline you are defining the problem as an individual one. You should not go into any investigation with a closed mind on the issues. They appoint people to do investigations from the human resources perspective. This is a complex issue that should not be simply defined before you start with a narrow disciplinary point of view. They are basically appointing people without work health and safety investigation experience.

**Mr TURNER:** There probably should also be a review of that generally and a standardisation of the qualifications, experience et cetera of such investigators across the public sector. That could be a role for the Public Service Commissioner to make sure that these qualifications are standardised. This process for external investigators could be like working out which labour hire agencies can be appropriately drawn from. Various public sector agencies use barristers, IAB Services and other sources to get such external investigators. It may be a good idea to get the Public Service Commissioner to standardise the process across the public sector.

**The Hon. MICK VEITCH:** Is there a review regime that could be used?

**Mr TURNER:** Continual review is important for every organisation to make sure things are working as effectively today as they did last year, or 10 years ago, to meet the changing views of society about what is acceptable in workplaces and improving standards of occupational health and safety, in this instance. Fair Work has recently put out some standards about bullying in the workplace. I do not know whether these standards address bullying as I do not have any detail. If you are going to choose outside people to carry out activities within public sector organisations, it may be appropriate for someone like the Public Service Commissioner to set the standards expected of those people to maintain consistency across the public sector.

**Mr DAVID SHOEBRIDGE:** Perhaps have the commissioner appoint them, so that the agency does not choose someone who has not caused the agency problems in the past.

**Mr TURNER:** That would help maintain independence, as opposed to hiring a person who will do what the employer wants.

**Ms JEFFRIES:** Visible independence, because the only investigations that we have seen have been done in a misconduct framework. We are not aware of an investigation, apart from one in 2010, in the work health safety framework. It has always insisted upon there being allegations in the first place and therefore the focus is narrowed to whether a particular person has engaged in any wrongdoing. Even if some systemic problems or related issues have been picked up and they might have contributed to the allegations, those are not the focus of the report. We have seen some practices engaged in by external investigators and have on a number of occasions attempted to engage with the organisation to say we should have a review of what happened because we have some real problems with the independence of the investigator and the way it was conducted. We have requested having dialogue around the issues and having some input into whether the investigator is appropriate in these matters, but we never get anywhere with those discussions. There has been an absolute refusal to discuss any of those issues arising out of the unfair dismissal case that has been quoted regularly.

**The Hon. ADAM SEARLE:** What engagement have you had with WorkCover in the light of Butler? Have you tried to speak to senior management about the systemic issues raised in the Butler decision?

**Ms JEFFRIES:** Numerous times and the answer is, "We will not be talking about that case."

**The Hon. ADAM SEARLE:** Specifically who gave you that feedback, or can you provide correspondence to the Committee as evidence?

**Ms JEFFRIES:** I do not have any correspondence, but the chief executive officer has said that. I think the director of People and Culture has said that.

**Mr TURNER:** We met with the Minister last Wednesday about this very issue—not the Butler case specifically but bullying and the lack of engagement with the Public Service Association. Arising from that meeting, he has given a commitment to oversee that we move forward with it. The chief executive officer was

present and she has invited us to arrange meetings to address the issues and move forward. We hope that will lead to some movement within WorkCover. Going back to the last question, I did not mean to equate the two, but getting standardisation of investigation procedures would be equivalent to having proper guidelines for return-to-work providers. Quite clearly it has been accepted by society that you have to make sure that those providers operate properly within the legislation to ensure a person can return to work as best as possible. We could maybe develop guidelines for external investigators in a similar way to guide such contractors.

**The Hon. ADAM SEARLE:** The union submission talks about issues arising out of right of entry and responses to the unions' government information public access application, which—without doubting what you have said—if accurate, raises serious issues about the regulator's behaviour as a respondent employer. Where is your organisation in pursuing those matters systemically?

**Mr TURNER:** I would rather not address the attempted right of entry or the government information public access application, because they will be dealt with within the law. What this raises is why the Public Service Association, as an organisation representing employees within WorkCover, has had to go to such extent to try to get policy and paperwork that should be available. We would much prefer that we sit with the employer around the table and discuss the issue we are trying to resolve, and that information is provided as part of the roundtable discussions on trying to fix WorkCover. There should not be an attempt to hide information, which results in questions about why there is an attempt to hide it. As part of the roundtable discussions on moving an organisation forward, we would prefer to fix the systemic issues.

**Ms JEFFRIES:** I should say that just yesterday we received a letter from the chief executive officer apologising for the delay in process our Government Information (Public Access) Act application.

**Mr DAVID SHOEBRIDGE:** Yesterday was a busy day.

**Ms JEFFRIES:** It was—and undertaking to process that within the next 20 days.

**The Hon. MATTHEW MASON-COX:** Progress.

**The Hon. ADAM SEARLE:** Leaving aside the finer details of these matters, what does WorkCover's response to date tell you about their mindset about how they see these issues as an employer or as an organisation?

**Mr TURNER:** Historically it shows how reluctant they are to even try to accept, first of all, that there is such a culture within WorkCover and, second, there appears to be a push back to try to prevent fixing what is clearly identified in there. The fact is that we have been raising this issue since 2004. Since we started raising it in 2004 it led to a meeting between myself and the then chief executive officer. We had done a survey—and I know the statistics have come out more recently but this is way back—that showed that we believed 33 per cent of the employees in WorkCover felt unsafe in the workplace. Sitting opposite was the chief executive officer who said, "We've done our own survey and it shows that 78 per cent of employees feel safe in the workplace." I said, "That proves 22 per cent do not feel safe in the workplace." For an organisation that is the regulator of work health and safety in this State to do its own survey and find that 22 per cent of its employees do not feel safe in its own workplace and not be moving to address that, to me, is shocking.

**The Hon. ADAM SEARLE:** In your submission you speak about the idea of an independent body to investigate occupational health and safety matters concerning WorkCover as an employer. Is that still the view of your association that there needs to be some kind of independent body to do that?

**Mr TURNER:** Yes, someone needs to regulate the regulator, whether it is an Ombudsman-type approach to the regulator or whether it is an external body, the Public Service Commissioner as the overarching—

**The Hon. ADAM SEARLE:** Do you know how other States deal with this conundrum?

**Ms JEFFRIES:** I believe other States have similar problems. So part of what is being discussed amongst the regulators or the unions involved in overseeing the regulator has been about, perhaps, a simple solution and that would be a reciprocal arrangement between the regulators in different States to assist with that. There is an inherent problem there as well, because as you move towards harmonisation there is a lot more interaction and cross-fertilisation, if you like, between those organisations

**The Hon. ADAM SEARLE:** You mean "group think"?

**Ms JEFFRIES:** So you may not truly make it an independent kind of thing. But there are ideas out there and we have been trying at least to take a step forward even if it is not perhaps the ideal. What is the ideal?

**The Hon. ADAM SEARLE:** The Fair Work Act has new provisions that are due to start operating from early next year but they do not cover the New South Wales public sector workforce. Does your organisation have a view about those legislative provisions or do you have a view about whether the legislative arrangements in this State are adequate to protect your members in the New South Wales public sector?

**Mr TURNER:** We have a view just from historically seeing what occurs that the current provisions in this State are not strong enough to prevent this type of behaviour within organisations. We see it across the public sector. We hear about it in the private sector. We do not yet have a definitive view on the Fair Work provisions because they are new and they have not operated effectively yet. But the fact that they have attempted to do it within the Fair Work Act is a good move and we believe there ought to be a look at doing it somehow within New South Wales. Whether it is the industrial relations Act or the occupational health and safety Act, we will leave it up to the experts to decide. It would be good if there were some enforceable provisions to protect all occupational health and safety in all workplaces here, including the prevention of bullying.

**Ms JEFFRIES:** Given that the Fair Work Act does not apply to public sector workers in New South Wales, the problems still arises, or if you happen to be an employee of the regulator where do you go when you have got a problem? Clearly the problem is exacerbated by the current work health safety legislation which appoints health and safety representatives within the organisation who can issue improvement notices on their employer. If the employer has a problem with a provisional improvement notice [PIN] notice that has been lodged, then it goes to WorkCover and asks WorkCover to review it. So that has not removed the problem about WorkCover going to itself and saying, "I have got a problem. I want you to review this problem I have got."

**Mr FRASER:** It is just like writing a letter to yourself, is it not?

**Ms JEFFRIES:** Yes. None of that has really been addressed. The employees within WorkCover still need a circuit breaker.

**Mr DAVID SHOEBRIDGE:** Will you take the Committee through instances where an improvement notice has been issued to WorkCover and tell us what has happened as a result of it?

**Ms JEFFRIES:** There has not been an improvement notice from a health and safety representative so far under the new legislation issued in WorkCover. An example of what could occur would be evident from our submission material relating to the investigation that occurred in the licensing solutions unit back in 2009 where the PSA made a safety complaint to WorkCover, the regulator, about a safety issue in WorkCover, the employer. We asked for that to be investigated in a work health safety framework and the results of that are well articulated in our submission to the PricewaterhouseCoopers inquiry and in this submission. An inspector investigated that and reported back to the regulatory part of the organisation but there seemed to be a real disconnect then. They did not complete the circuit by advising the people in the organisation who needed to respond as the employer; they only dealt with it in the regulatory framework. It sort of dropped into a black hole.

**Mr TURNER:** One could ask whether or not the Butler decision is an improvement notice.

**The Hon. MICK VEITCH:** The PricewaterhouseCoopers report mentioned the backlog of workplace bullying claims within WorkCover. What action was taken to address the backlog?

**Ms JEFFRIES:** The only action that was taken—and, I have to say, I think it was probably the only action that could be taken under the circumstances—is that people were invited to come forward yet again and approach the then director of, I think it was still called, Human Resources—it might have been the People and Culture unit—if they still had an unresolved complaint. It was our expectation from that PricewaterhouseCoopers inquiry that the Department of Premier and Cabinet was going to pick up any investigations that needed to be undertaken and carry them out. Our submission is full of the commitments that

were given in that regard. But, in fact, the PricewaterhouseCoopers report says that they were not asked to report on any particular instances that needed to be continued.

**The Hon. ADAM SEARLE:** The Department of Premier and Cabinet wrote to your association saying that it would investigate matters that had been referred to it by PricewaterhouseCoopers in its report?

**Ms JEFFRIES:** That is correct.

**The Hon. ADAM SEARLE:** Have you pursued with the Department of Premier and Cabinet about what, if any, action it has taken in respect of material that it was provided by PricewaterhouseCoopers?

**Ms JEFFRIES:** Not specifically.

**Mr TURNER:** The previous question goes to the issue of once PricewaterhouseCoopers released that recommendation why it was WorkCover that did the investigation. So people who felt the issue had not been addressed. There were the actions of what was then said to the then Minister in the lead-up to it all which was incorrect, which led to PricewaterhouseCoopers saying why would those people have the confidence to go back and talk to the very people to whom the issue had been covered and the review had to be undertaken in the first place.

**Ms JEFFRIES:** A few people did take up that opportunity. It was the chief executive officer who offered that because there was nothing else available to her in the report about specific instances. There were no reports given, as we understand it, to WorkCover itself, no details about cases that needed to be followed up. They made that invitation because the head of the HR unit had changed and perhaps that might have been a way to go and speak to a fresh face, so to speak. A few people did that, but, of course, the vast majority of people just shrugged their shoulders and said, "Here we go again."

**CHAIR:** On page 9 of your submission, in the "Background", you cite a number of times when you were trying to investigate the question of bullying. It shows: July 2009 "no evidence of bullying"; December 2009 "did not substantiate claims of bullying"; February 2010 "revealed no evidence of bullying"; and April 2010 "no bullying"; et cetera. It seems that there must be a need for an external body to investigate bullying within WorkCover. Did you state who you thought that might be, an independent separate organisation from WorkCover, to give oversight to their compliance fulfilments?

**Mr TURNER:** It is those incorrect statements that actually led to the Minister calling in PricewaterhouseCoopers to do the review in the first place. That then raises the issue that we are raising now, following those mis-statements, following the Minister's intervention and PricewaterhouseCoopers coming in, and following its report and recommendations. We are now in 2013 and the culture still exists. An external body needs to come in to look at what can be done and what can be reviewed to turn this organisation around.

**CHAIR:** Would that be an ongoing organisation?

**Mr TURNER:** We would hope that if you could bring in at least a body and review WorkCover itself and get the people properly trained up and turned around and if those processes could be put across the public sector generally, then hopefully there might not be need for an ongoing organisation. But, as we have just raised, it would not hurt to have an external body continually reviewing to ensure that a good culture of health and safety remains.

**CHAIR:** Do you have a suggestion as to who that might be?

**Mr TURNER:** No.

**Mr DAVID SHOEBRIDGE:** Do you want to take that question on notice and give a considered response?

**Mr TURNER:** We could take that on notice.

**CHAIR:** It would help the committee if you could turn your mind to that question.

**Ms JEFFRIES:** Whoever it is needs to have the power to access information because it only became apparent to us—apart from our inherent knowledge of the problem—the real evidence of these incorrect statements being made came as a result of a Government Information (Public Access) Act application where we obtained the inspector's actual report. Those things were not forthcoming. We had to make a specific application to obtain the report, which then told us what the real situation was. The report had in fact said that there was a pattern over a prolonged period of time of unintended bullying. Whoever undertakes that review process needs to have the power to access the information.

**CHAIR:** Does the PSA have union delegates or a senior representative at WorkCover?

**Mr TURNER:** Yes, two of them are present.

**CHAIR:** Did they collate bullying complaints?

**Ms JEFFRIES:** They regularly take bullying complaints.

**Mr FRASER:** I have received many complaints this year, which they refuse to even look at. They will not even talk to the people who have made the complaints to me even though I have given them contact details.

**Mr TURNER:** Colin and Ian are senior delegates from WorkCover from different offices. It is their activities, their interactions with members, and their history of what they have seen is why they have contributed to our report being here today.

**Ms JEFFRIES:** I apologise to Colin for not having told him this before, but yesterday was a busy day and I was also told yesterday that they will actually now speak to some of those people who have reported, as Colin has indicated.

**The Hon. MELINDA PAVEY:** How many people this year?

**Mr FRASER:** I have had reports from nine people but only six of them did so complain.

**CHAIR:** It seems as though over a period of time there has been almost a confrontation between WorkCover and the PSA from all these requests that have been denied and a lack of cooperation. Is that something that has been very noticeable in WorkCover? Do you find that in other government departments or organisations?

**Mr TURNER:** We have found cultural bullying in other organisations but other organisations when issues have been raised have looked at it and moved forward with it. Way back, and I take my hat off to them, when Col Gellatly was head of Premiers and we started raising the issue, he then got involved with us and developed training programs across the public sector. We launched a general public sector policy on it from the Opera House one day. WorkCover has been quite extraordinary in how it talks to its own Minister and to us, and it does not seem to want to recognise that the issue is occurring within the organisation. As I said, we have been fighting this issue in WorkCover since 2004, so it is now nine years later. The fact that we are appearing before a parliamentary inquiry talking about it to have it recognised and to get a resolution is shocking.

**Ms JEFFRIES:** Whilst there are individuals within the organisation who appear to be prepared to confront things head on, it is not possible for one individual to make a difference. The underpinning cultural issues need to be addressed before you can really get traction on improvements.

**Mr TURNER:** You need an organisational commitment to work to implement something if you want it to be properly implemented within an organisation, and that is what is needed in WorkCover.

**Mr TUIT:** I can offer a bit of information that comes from several surveys. At the time of the PricewaterhouseCoopers report [PwC] inquiry a survey of staff was commissioned. A large majority of staff from WorkCover responded to it. The findings included that 40 per cent of staff reported that they had been bullied and/or harassed in the last 12 months.

**The Hon. CATHERINE CUSACK:** That was the category for sexually harassed, was it not?

**Mr TUIT:** Sexual harassment was in there; that is correct. I think the category was "bullied, harassed and/or sexually harassed". Last year there were another two surveys conducted that report on the prevalence of bullying. One was the "People Matter" employee survey. It included a response to the statement, "Witnessed bullying [in WorkCover] in the last 12 months" of 44 per cent of respondents. That is broken down into another category of, "Personally experienced bullying at work in the last 12 months, not currently." The figure for that was 19 per cent.

**CHAIR:** Would you be able to help us by tabling the document you are quoting from? Is that your own document?

**Mr TURNER:** It is from the NSW Public Service Commission.

**Mr TUIT:** It is service wide. It is the "People Matter" survey. There is some interesting information included in it.

**CHAIR:** So it is a public document?

**Mr TUIT:** That is right.

**Mr TURNER:** It is from the NSW Public Service Commission.

**The Hon. CATHERINE CUSACK:** Just to clarify, is that the public sector-wide statistics or do you have statistics for WorkCover?

**Mr TUIT:** This is for the agency, which at that stage was called the Compensation Authorities Staff Division. There are some other minor portfolio agencies included within that entity.

**The Hon. CATHERINE CUSACK:** I am sorry to cut in here but that was the document I was suggesting that we request. So, through you, Mr Chair, would we be able to have that tabled? That is exactly the document I was hoping our inquiry could obtain.

**The Hon. MELINDA PAVEY:** That is from the NSW Public Service Commission not the Federal commission?

**The Hon. CATHERINE CUSACK:** We have the sector wide one but we do not have the specific one.

**CHAIR:** Are you happy to table that document?

**Mr TUIT:** Yes, gladly. The second survey that I mentioned [the SRWSD Employee Engagement Survey] was conducted last year and collected some data about the prevalence of bullying. In response to the question, "Bullying and abusive behaviours are prevented and discouraged," for the entity the result was 54 per cent—that is, 46 per cent of people dissented from that statement. So they could not agree with the statement, "Bullying and abusive behaviours are prevented and discouraged." For WorkCover within that larger entity the result was 50 per cent, so 50 per cent of staff could not agree with that statement.

**CHAIR:** I notice in your recommendations that you also want to have removed what you call punitive approaches. You mentioned that a number of times. How would you describe those punitive approaches and are they, again, something that is particular to WorkCover?

**Ms JEFFRIES:** I do not know if that is particular to WorkCover. What we are talking about there is having a negative approach to things. I think some of that was touched upon earlier in the evidence from Dr Caponecchia about having policies that seem to enshrine a punitive approach to things where policies become ever more restrictive, so that it is possible for employees to trip up more often and the policies themselves become a blunt instrument which can be used to bully somebody where they are applied disproportionately.

So the policy in its extreme letter of the law sense will not be applied to the vast majority—they will be allowed to comply with the spirit of the law. But when a person wants to have a go at an individual in a bullying manner then they are able to use these policies as a blunt instrument to say, "I am going to hold you accountable to the letter of the law." So the examples we have given in the submission about things like not calling the supervisor but sending an email, not being able to correctly enter your times into a timesheet or things like that

become possible. The policies can be used. It should be sufficient for us to raise an issue with a policy—to say, "There is an inherent problem here with the policy"—for it to be reviewed. But that does not seem to happen.

In fact what happens is that policies are consistently reviewed according to individual issues that pop up and become increasingly restrictive and punitive in nature. That leads to that whole culture where all managers get the impression that you are meant to apply policy in the most restrictive way possible rather than having a flexible and responsive organisation that trusts its employees to get on with the work and do what is required in a flexible manner.

**CHAIR:** That must have a big impact on WorkCover itself in just carrying out its duties. There must be such a degree of frustration amongst the employees working there.

**Ms JEFFRIES:** Yes, absolutely.

**Mr TURNER:** That is what has led to the continual complaints that we have been trying to address for so long.

**CHAIR:** So it really is in the Government's interest to clear all of this up so that WorkCover has a happy workforce and can get better results for the money being invested in the organisation.

**Mr TURNER:** It is in the Government's interest for any of its organisations to clear up these issues; but it is especially in the Government's interest when we are talking about the regulator of workplace health and safety.

**The Hon. MATTHEW MASON-COX:** I have a few questions for Mr Turner, in particular—and of course anyone else who would like to add anything. There seems to be a disconnect between what the surveys are saying—which is indicating a high level of dissatisfaction in relation to bullying—and what is being recognised by the claims that are being, if you like, formally lodged with WorkCover from its own staff. Can you give me an explanation as to why there is such a discrepancy? In that regard, I point out that the statistics given to us by WorkCover basically show that in 2013-14, this financial year, we have one claim of bullying. Mr Fraser, you have mentioned that you know of nine cases, or perhaps seven.

**Ms JEFFRIES:** Do you mean workers compensation claims?

**The Hon. MATTHEW MASON-COX:** "Claims of bullying and/or harassment by WorkCover NSW employees" is the title of the table I am looking at.

**Mr DAVID SHOEBRIDGE:** I am happy to give the witnesses my copy of that table.

**Ms JEFFRIES:** I would have to agree though that there seems to be a disconnect, because even in that year when there was a formal investigation by one of their own inspectors into the Licensing Solutions Unit the formal statistical report indicated that there were no reports that year.

**The Hon. MATTHEW MASON-COX:** There seems to be a large number of people upset and reporting workplace bullying informally, if you like, through surveys and the like but no claims flowing. Why is that?

**Mr TURNER:** Firstly, I think we have to be very careful with that question, with all due respect, because there are all sorts of issues that flow from it. If someone feels harassed in the workplace or under pressure, it is one thing to recognise that and feel that individually; it is another thing to actually then attend a doctor, which has to happen as the first step. The doctor may then work with that person or they may see a psychologist personally and not want it to go any further. They may contact the WorkCover Employee Assistance Program [EAP] provider and not take it any further.

So if there is perception of bullying held by 40 per cent of staff—let us use that figure just for the moment—but only one per cent of employees are putting in claims for injury arising from bullying that does not necessarily mean that either figure is incorrect. It is about the process that will get you from what you feel or perceive to a formal medical process and getting it recognised by an insurer. I think that is too big a question for us as the union to answer, with all due respect.



**Ms JEFFRIES:** It is evident though that this is actually about workers compensation claims.

**The Hon. MATTHEW MASON-COX:** Do you not encourage your members to actually report incidents of workplace bullying and to seek compensation?

**Ms JEFFRIES:** Yes, we encourage the reporting of an incident of bullying. But we do not necessarily encourage people to lodge a workers compensation claim. You ask for compensation if you have had some financial disadvantage in some way. They may not have. So there may not be cause to seek compensation for anything; what you are seeking is a resolution of the problems in the workplace.

**Mr TURNER:** There was an issue too about the change to the legislation about to what degree public servants can put in successful claims for injuries at work arising from processes that are seen as public service processes, to put it in a broad sense of the word. But I am not a lawyer so I could not detail that.

**The Hon. MATTHEW MASON-COX:** Mr Fraser, you are busting to contribute something here.

**Mr FRASER:** Yes, a few years ago we suggested to WorkCover that they set up the bullying response service, which was a mechanism for independent reporting. In the latest change in procedures, received in the last few weeks, that has been taken away. We should also recognise that some people are far more resilient. You may be subjected to risky behaviour which could cause you to suffer a psychological injury, but many people subjected to that behaviour would not succumb to it because of their own personal qualities.

**The Hon. MATTHEW MASON-COX:** Why was the bullying response service taken away?

**The Hon. ADAM SEARLE:** We will have to ask WorkCover.

**The Hon. MATTHEW MASON-COX:** What is your understanding of that?

**Mr DAVID SHOEBRIDGE:** What did they tell you?

**Ms JEFFRIES:** It is still there, as I understand it, it is just not really being promoted in any way. The latest version of the policy does not refer to it specifically. Certainly in recent times we have not recommended that people use it because there have been some serious questions around the confidentiality of it. Harm has occurred to a few of our members as a result of accessing that service and that accessing of the service becoming known to their manager.

**The Hon. CATHERINE CUSACK:** What harm are you talking about?

**Ms JEFFRIES:** They have had further instances of bullying occur in the workplace as a result of that. They have been challenged about what they said in the confidential environment where they were seeking some counselling.

**The Hon. ADAM SEARLE:** Are you suggesting that a confidential session has somehow been reported back to their managers?

**Ms JEFFRIES:** That certainly would appear to be the case.

**CHAIR:** So there is a fear of victimisation if they make too much noise about their complaint?

**The Hon. MATTHEW MASON-COX:** As I understand it from your submission, there is some sort of invoicing and a name came back from the invoicing section. Apparently, because a manager asked the person concerned about an issue, a name came back. That is what you have surmised. Am I correct in saying that?

**Ms JEFFRIES:** No, there are two separate things that have occurred. One we are aware of is that the invoices at some stage started to come through with the individuals concerned identified on them.

**The Hon. MATTHEW MASON-COX:** Yes, that was it.

**Mr DAVID SHOEBRIDGE:** Is this invoicing for the Employee Assistance Program [EAP]?

**Ms JEFFRIES:** Yes, the invoicing was for the bullying response service, not the EAP. But, separately to that, we have had anecdotal evidence. Our members have reported to us that they have accessed the bullying response service and then shortly thereafter been challenged by the person they have complained about with specific detail of what they spoke about in their confidential sessions. That is all we can say. There is some kind of reporting mechanism back to the agency, but we are not part of that reporting mechanism so I cannot comment directly on how it occurs.

**The Hon. MATTHEW MASON-COX:** Ms Jeffries, from your opening statement you seem to be acknowledging that WorkCover has done some things in relation to culture but has not responded to the specific incidents you have outlined in your submission. Is that correct?

**Ms JEFFRIES:** That is right. I would say they have sort of looked at some things that might have an impact into the future for new employees who come in now but it is not addressing the current crisis so to speak.

**Mr TURNER:** It is all very well if very senior managers write and design a policy and say to us they are getting a policy. You then need to make sure that the intent of that move forward is implemented all the way down and the idea of the cultural change is implemented with proper training and support and follow-up to make sure it becomes systemic within the organisation.

**The Hon. MATTHEW MASON-COX:** Can we look at that briefly, because WorkCover said that it accepts all the recommendations of the PricewaterhouseCoopers report? They are putting into place a whole range of initiatives. I just want to go through a few of the key ones to get your response in terms of its effectiveness of whatever. Probably the key one is the GROW cultural framework. You will be aware of the People in Culture program. Can you give me your thoughts about how successful that has been?

**Mr TUIT:** I think overall it is a good initiative. I think it is fair to say that there has historically been an absence of resourcing for the work health and safety unit. It was combined for many years with the payroll unit. So the priority of that manager was always to get the payroll activities done first. The occupational health and safety just lapsed.

**The Hon. MELINDA PAVEY:** That is everyone's priority.

**Mr TUIT:** Absolutely.

**The Hon. MATTHEW MASON-COX:** So there is a dedicated employee safety and wellbeing unit as part of that, is that correct?

**Mr TUIT:** We now have that established.

**The Hon. MELINDA PAVEY:** When was that established?

**Mr TUIT:** I am guessing about 18 months ago, something like that. It has put extra resourcing into that space. That is to be welcomed. But the context and the type of service delivery needs to be evaluated. I do not think that has happened.

**The Hon. MATTHEW MASON-COX:** Let me run through a few other initiatives that I would like your response on: the appointment of an employee relations and wellness consultant in January 2013.

**Mr TUIT:** I am not aware of that person, who they are, what their qualifications are or what activities they have been involved with. I am on the SRWSD health and safety committee. That person has not been introduced to that committee. So I can offer no comment there.

**The Hon. MATTHEW MASON-COX:** That is interesting. There has been a sub-committee of the SRWS work health and safety consultative committee focussed on psychological wellbeing. Is that something you are familiar with?

**Mr TUIT:** Yes I am. I am a member of that committee.

**The Hon. MATTHEW MASON-COX:** How has that been operating?

**Mr TUIT:** I think to date it has had three meetings. There has been some tension around a proposal from staff representatives on that committee to develop a survey instrument that would look at the psychological stresses and the health impacts of the restructuring that has taken place in the organisation over the past 18 months. So we do not have a conclusion on that yet but we are still optimistic.

**The Hon. MATTHEW MASON-COX:** That is in its early stages.

**Mr TUIT:** Yes.

**The Hon. MATTHEW MASON-COX:** Provision of EAP on-site counselling to employees where required.

**Mr TUIT:** Generally in my experience where it has been required is where a member of staff has just been given some adverse news about their job security during a restructuring process. So have a box of Kleenex, a glass of water and a jug of water in the room next door where the counsellor is, so people would shuttle out if they wanted to have some grief counselling, basically.

**The Hon. MATTHEW MASON-COX:** The bullying response service. There is some confusion about whether that is still operating but WorkCover, in its submission, referred to it. What is your experience of that, apart from what you have just said?

**Mr TUIT:** It was a joint initiative. I thought it was quite a productive initiative. There was a lot of buy-in, I think it was fair to say. There was a lot of optimism that we might be able to get something going for staff. There was an agreement that the usage rates would be reported back to a consultative group. I think it was called the Bullying Working Group, a joint management-union initiative, a joint management-union working group. That reporting requirement just lapsed. I cannot tell you the last time we saw a usage report. I think two reports were tabled since it was initiated possibly some three or four years ago. So that [usage report] would have looked at usage rates, the numbers, the types of issues people were calling about and there was to be recommendations coming back to the organisation for systemic improvement. From these individual cases we were optimistic that the organisation would be able to learn from its experience and put in place control measures or interventions.

**Mr FRASER:** It was originally agreed with the bullying working party that the bullying response service would only report back to the organisation the level of detail that had been agreed by the reporter. The practice has moved away from that so it appears that nearly everything is reported. There has been very much an emphasis on the bullying response service steering people towards mediation. As you heard earlier, mediation immediately defines the issue as an interpersonal one when it could have a whole lot of other factors involved.

**The Hon. MATTHEW MASON-COX:** What about the employee assistance program or the manager assist program? How has that been going?

**Mr FRASER:** My experience of that is that managers do call on it and it is a valuable thing that the organisation should be given credit for.

**The Hon. MATTHEW MASON-COX:** Can I ask you about leadership training and the procedures that have been put in place? How is that working? Has that been effective, or is that just papering over the formalities?

**Mr FRASER:** The reports that I have received of the training is that the training has been very good but managers who have attempted to implement some of the learnings of that training have been pulled into line and not really allowed to implement the learning.

**The Hon. MATTHEW MASON-COX:** What do you mean by "pulled into line"?

**Mr FRASER:** They have been told that their proposals to implement some of the management practices just will not be accepted.

**The Hon. MATTHEW MASON-COX:** Who tells them that? Is that the culture of the program?

**Mr FRASER:** More senior managers tell them that.

**Ms JEFFRIES:** There is a disconnect between giving training to people. It is great to receive training and then following up. So we do not see the follow-up where those sorts of new expectations that you might have taken on board through the training to be then put into your key performance indicators and that sort of stuff, that part of the performance management process, so that there is a follow-up, monitoring, have you learned these behaviours? Have you begun to implement them? Has it become part of what we see? I think that is what we are saying; you can have the training but then we do not see the results of that.

**The Hon. MATTHEW MASON-COX:** So there is a disconnect.

**Ms JEFFRIES:** Yes.

**Mr DAVID SHOEBRIDGE:** That is recommendation 6 of PricewaterhouseCoopers; they just detail what the organisation should do.

**Ms JEFFRIES:** Yes.

**Mr TURNER:** Until you see a systemic change to the system and a change within WorkCover and the issue of bullying or grievances being addressed, then the training is not working.

**The Hon. CATHERINE CUSACK:** What role does the board of WorkCover play in all of this? They are ultimately responsible for performance reporting and overseeing the governance arrangements and that sort of follow-through you are talking about.

**Ms JEFFRIES:** I cannot answer that.

**Mr TURNER:** There is always that slight disconnect between the board. It is up to the chief executive officer to make sure that the managers below him or her implement what the organisation sees to effect, and they could be reporting to the board. I do not know what is reported to the board.

**The Hon. CATHERINE CUSACK:** The general manager is accountable to the board. That is why we have a board.

**Mr TURNER:** Yes.

**The Hon. CATHERINE CUSACK:** I think Mark Lennon has been on the board. Have you thought to engage the board or ask the board what is going on with the governance arrangements in the authority?

**Mr TURNER:** No, we have not.

**The Hon. CATHERINE CUSACK:** It fascinates me because all of this external investigation and inquiry, nobody ever seems to be talking to the board or questioning whether the board's performance is adequate in holding the management team to account and seeing through these changes.

**Mr TURNER:** That is my point. If you write to the board and if the board asks the chief executive officer, the managing director, what is occurring, the board could get the report of everything we have implemented to try to address the issues. The issue is then: is it coming through as a cultural change within the organisation? A survey shows it is not because the employees are still identifying as feeling unsafe in the workplace and it is that disconnect which needs to be looked at.

**The Hon. CATHERINE CUSACK:** When you say "write to the board" the question is: Has anybody written to the board, or has the board as a stakeholder in the governance arrangements for WorkCover been engaged in any way? They were not engaged by the PricewaterhouseCoopers report. I have seen instances overseas where there have been these sorts of internal problems and it has ended up with the chairman of the board being sacked for failing to do their duty.

**Mr DAVID SHOEBRIDGE:** Or the board has demanded a report, demanded a response.

**The Hon. CATHERINE CUSACK:** Exactly. My question is: Where is the board in all of this? These people are appointed and paid to stop this sort of thing escalating.

**Mr TUIT:** If the board has been engaged around the work health and safety performance of the organisation, that is not known to staff at large. There is no report back loop.

**The Hon. CATHERINE CUSACK:** I find that amazing. This has been a big issue for such a long time. What goes on in the board?

**Mr TURNER:** We as an organisation deal with the managers and the chief executive officer of the organisations and that is who we think it is appropriate to approach.

**The Hon. CATHERINE CUSACK:** But Unions NSW does have a representative on the board, so I guess that was one of the reasons I was hoping you could shed some light on this. What does your representative on the board say about all this?

**The Hon. ADAM SEARLE:** Except that as a member of the board they are bound by all the usual—

**The Hon. MELINDA PAVEY:** There is a stakeholder and these are the types of conversations that we have a board process for.

**The Hon. CATHERINE CUSACK:** You cannot share confidential meetings but certainly the unions are anxious about the issue. It was a union representative—

**Mr DAVID SHOEBRIDGE:** You are saying you could ask them to take it up on the board and find out what is going on.

**The Hon. CATHERINE CUSACK:** Yes, or get his advice on how to raise this. The board signs off on the annual report. That is now how we see things going on. You say these are our values. They are not our values. I do not understand. The board seems to be missing out of all the documentation.

**Mr TURNER:** We will consider that.

**The Hon. CATHERINE CUSACK:** Thank you. Thank you for this sector survey. You will probably concede that the WorkCover bullying reports are reasonably consistent with the rest of the public sector. The one that sticks out, though, is exclusion and isolation. Fifty per cent of respondents who were bullied said it was exclusion and isolation. I wonder if you could tell us what that is about, the nature of the bullying they say they are experiencing. It is 43 per cent of respondents everywhere else but in the authority it is 60 per cent.

**Mr TURNER:** I think it is dangerous for us to answer why an individual would answer that question in that way.

**The Hon. CATHERINE CUSACK:** It suggests there is a pattern of people in WorkCover who are bullied. When you take that group and break it down, 60 per cent of them are saying exclusion and isolation. To understand the nature of the bullying they are experiencing, can you tell us what that is about? It really stands out.

**Mr TUIT:** I think it could take the form of being excluded from meetings, development opportunities, a knowledge blockade, for example, just not knowing what is happening. You are getting a filtered version of what is taking place at more senior management meetings, just not feeling connected or part of the team. Those sorts of small daily behaviours could add up to that sort of survey result. It is quite a large figure, as you say.

**Ms JEFFRIES:** Thinking in my mind about some of the individual examples that have come to my attention, I guess it is some of the things like not being provided with enough information to do your job properly or things like that, not having access to information that you need. There are a few of those recurring themes.

**Mr DAVID SHOEBRIDGE:** Mr Fraser, you said there had been nine instances of bullying that you have been aware of this year, and I think six of which have been formalised in some way or another.

**Mr FRASER:** No. Nine instances reported to me but six who I categorise as complaining to me.

**Mr DAVID SHOEBRIDGE:** What about you, Mr Tuit?

**Mr TUIT:** That is a good question. I guess I would be speaking to people almost on a daily basis who feel they are not well because of some work experience. It could be work pressure, job insecurity. In some cases it could be being exposed to a pattern of behaviour that is possibly bullying behaviour.

**Mr DAVID SHOEBRIDGE:** Once those complaints have been raised with you, what is the process that kicks in at the moment with WorkCover?

**Mr FRASER:** The process is that people who have an issue are supposed to directly report it to their supervisor or a senior person in HR. I had issues reported to me so I reported them to the director of HR. I was then asked to chase up each of the people and say, "You should complain to HR." I think that is overstepping my role, it should not be up to me to go and round up people. They all know the procedure.

**Mr DAVID SHOEBRIDGE:** But they are all going through HR. Are any of them being dealt with through the work health and safety method?

**Mr FRASER:** They are not going to HR. The people report it to me, I give them the HR contact details and the people have not approached HR.

**Ms JEFFRIES:** I think that goes to the nub of the problem, that often people come to us to make a complaint so that they can filter their presence in the complaining, because they fear further victimisation if they are seen to have made a complaint. Going back to 2009, we asked for WorkCover to be undertaking a risk management approach to all of these things and, when each arise, we do the same thing and say, "There is a problem in this area, this is the nature of the problem and we would really like you to go in there and do a proper investigation of what the work environment is like there", a no blame investigation, et cetera.

**Mr DAVID SHOEBRIDGE:** But they insist on funnelling it through an HR model?

**Ms JEFFRIES:** They insist on somebody making a written complaint for it to be formal, and then that trips it into this alternate pathway of misconduct allegations and a disciplinary matter where it targets an individual. We say that is not a healthy approach to take.

**Mr DAVID SHOEBRIDGE:** Mr Fraser, you are saying the employees do not want to go down that path and when you say, "We are told to formalise this with an HR complaint", they just walk away from it.

**Mr FRASER:** Yes, and when I reported it I suggested that they should do a survey of staff, not to go down the disciplinary track at all but just do a survey to identify what the issues are so that nobody is feeling vulnerable, and it was not to be about an individual, it was about trying to identify the issues to seize opportunities for improvement, but they want to go down this adversarial work method of dealing with it, which frightens everybody.

**The Hon. ADAM SEARLE:** Your submission identifies quite a significant and widespread level of dysfunction within the organisation. What views does your organisation have about why the organisation is in the state it is currently in and the causes of these systemic problems?

**Mr TURNER:** I think primarily the fact that it will not systematically try and address the issues that are being identified is its biggest problem.

**The Hon. ADAM SEARLE:** You mean the denial issue?

**Mr TURNER:** The denial issue. There are those who say, once the PricewaterhouseCoopers report was done and the issue was identified, why was there not an apology to staff and then a moving forward, open recognition of the issues that had been identified, so that people could start to heal and move forward. The fact that there can be six processes identified and put in place to try to address the issue, and we then still hear that management broadly are not implementing the right processes to ensure that bullying is wiped out, let alone addressed when it is identified, is also a systematic problem which is not resolving the issue. That is why there really needs to be that systematic look at it externally, with some external recommendations about what could be

put in place, and identification—and I do not mean this individually too much, but individual managers' lack of training or ability, which could then be trained up to help those managers move forward, identify the issue and fix it.

**Mr DAVID SHOEBRIDGE:** Has there been an apology to Mr Butler or a public acknowledgement of what went wrong in Mr Butler's case?

**Ms JEFFRIES:** No.

**The Hon. ADAM SEARLE:** In the WorkCover submission to this inquiry I do not think there is any mention of the Butler matter. What conclusion do you draw from that significant omission?

**Mr TURNER:** That is why I said, a bit tongue in cheek, if that is not a PIN to WorkCover, I do not know what is.

**Ms JEFFRIES:** Yes, and the only thing we have had said to us quite directly is, "We will not be talking about that", and senior managers making comments that, "We are going to continue to have a difference of opinion about that"—and that is it, no conversation engaged in. There are some real lessons to be learned in that, which we think would be good to sit down and talk about.

**The Hon. ADAM SEARLE:** WorkCover did not appeal the Butler matter, did it?

**Mr TURNER:** No.

**The Hon. ADAM SEARLE:** That decision makes a number of fairly intense observations about the role of named senior managers.

**Ms JEFFRIES:** Yes.

**The Hon. ADAM SEARLE:** Are you saying that the feedback you have had from the organisation is one of essentially denying any wrongdoing?

**Mr TURNER:** No action has been taken to identify the issues raised in that decision and correct any mistakes made or address in any way the wrong actions undertaken by individuals that are identified in that decision, and that is a failing.

**Mr DAVID SHOEBRIDGE:** What about at a more fundamental level of just acknowledging that these decisions were wrong and that errors were made? Have you had any of that sort of acknowledgement?

**Ms JEFFRIES:** Absolutely not.

**Mr TURNER:** Nothing.

**Ms JEFFRIES:** In fact quite the reverse.

**Mr TURNER:** There is a silence.

**Ms JEFFRIES:** There is not even silence; I suppose it is worse than that. My attempts to engage in discussion about that have been met with absolute refusal, and certainly the impression that I have taken from that is that there is not an acceptance that there was any wrongdoing on the part of the organisation there, but we have a difference of opinion ergo there is no point talking about it.

**Mr DAVID SHOEBRIDGE:** So their position is that WorkCover is not wrong, but the Industrial Relations Commission [IRC] was wrong.

**Ms JEFFRIES:** That is right.

**The Hon. ADAM SEARLE:** Given they did not appeal the decision, surely that cannot factually be correct?

**Mr TURNER:** It cannot factually be correct and what it does identify is the failings of individuals in the organisation that could easily be addressed.

**Ms JEFFRIES:** And there are current examples where we can see those same problems that were outlined in the decision by Deputy President Harrison and the same decision-making has been put in place for matters that are currently underway, so we have lost the opportunity to learn from those lessons.

**The Hon. ADAM SEARLE:** The people adversely named in that decision are very senior managers in WorkCover. If that is their attitude, do you think that could well explain the lack of progress against the PricewaterhouseCoopers report?

**Mr TURNER:** That is what I am saying about these six processes put in place to fix it. If the very senior managers are not themselves, by their deeds and actions, learning from it and correcting themselves, and if they are not assisting the managers below them who are doing the implementation of many of the processes to change, learn and develop then we are not going to see change. It is that that needs to be removed and changed.

**Ms JEFFRIES:** And that goes back to one of the observations from the PricewaterhouseCoopers report, that a lot of people reported back then and in the corporate surveys that were conducted that they had concerns about favouritism and nepotism in the environment. One of the recommendations from that report related specifically to improving recruitment procedures to make those more transparent because that was seen to be one of the underpinning factors that creates this problem with the culture and the inability to deal with bullying issues that are raised, because if people are promoted within the organisation for reasons that are not about their superior skills then it creates a cultural problem and possibly you have people in those managerial positions that do not have the skills to do the job—certainly the people management part of the skills—and then those failings need to be covered up and—

**Mr TURNER:** Really it points to why there needs to be—and this is a question on notice so we will come back to you—an external body responsible for the change, because the individual managers who are very senior in the organisation who have been identified as being the problem will obviously find it hard to change themselves.

**CHAIR:** It would seem to be a lack of knowledge about staff management. You mentioned a moment ago that they are not trained in how to manage people.

**Mr TURNER:** That is right.

**Ms JEFFRIES:** I think they have had a lot of training on that—that is what the leadership program and all that sort of stuff was about—but they have not been held accountable for implementing that learning.

**The Hon. CATHERINE CUSACK:** Were you consulted in the drafting of the terms of reference for the PricewaterhouseCoopers report?

**Ms JEFFRIES:** Yes, we were.

**The Hon. CATHERINE CUSACK:** Were you consulted on the appointment of PricewaterhouseCoopers?

**Ms JEFFRIES:** No.

**The Hon. CATHERINE CUSACK:** So you do not know why PricewaterhouseCoopers was picked to do that job?

**Ms JEFFRIES:** No. In fact we actually challenged that appointment, saying that we felt that there was an inherent conflict of interest because they provided some sort of financial—

**Mr TUIT:** Actuarial advice.

**The Hon. CATHERINE CUSACK:** I am quite interested in why you would get a company that does the actuarial services for WorkCover. Why would they be the people you pick to do a bullying inquiry?



**Ms JEFFRIES:** We had that very question and we engaged in a lot of discussion around that point and other points related to the terms of reference, and that was why we extracted the commitment from the Department of Premier and Cabinet that it would separately investigate any issues that required follow-up. We were given the commitment in writing, as you can see in one of the attachments to our submission, that they would get back all of the information from PricewaterhouseCoopers and follow-up on those matters, and they would do it in a timely fashion. They would not wait until the end of the process; if something came to their attention, it would be passed over immediately and investigation process commenced. But not one investigation was conducted.

**Mr DAVID SHOEBRIDGE:** PricewaterhouseCoopers said it was not its job to pull together the individual information, so that feedback loop was never completed.

**Ms JEFFRIES:** Exactly.

**The Hon. CATHERINE CUSACK:** Could you, perhaps on notice, list the specific actions you would like to see our inquiry recommend?

**Mr TURNER:** Yes.

**The Hon. CATHERINE CUSACK:** It would be good to have guidance from stakeholders as to what specific things they think would work. I mean people often say better communication, but something more specific as to what that would look like—

**Mr TUIT:** Yes, what that actually means.

**The Hon. CATHERINE CUSACK:** Yes.

**The Hon. ADAM SEARLE:** At a very low level of abstraction, as concrete as you can—a how to guide.

**Ms JEFFRIES:** We have a lot of recommendations in our submission, of course, so we can look to perhaps categorise those and be a bit more specific about what we mean.

**The Hon. MELINDA PAVEY:** The PwC report recounts that the move to Gosford in 2002 resulted in a lot of the changes and challenges to the organisation. As a country-based member, I love to see organisations move from Sydney to other areas, and we have not seen this type of concern with other organisations that have moved from Sydney to regional areas—or not to the same level. Could you go through that with us, how the move led to some of the issues and how it could be better done?

**Mr TURNER:** There were many issues about the move of WorkCover from Kent Street to Gosford. There were significant changes to government policy at the time. It is a while ago now, so I am racking my memory, but I was involved in negotiating some of it. Previously, where you got paid transfer payments was to the north of Gosford, but then they defined it to the Brooklyn Bridge, so the people moving to Gosford did not get those transfer payments. Then there were issues around people being forcibly transferred when we felt there were other ways for it to occur. There was a lot of angst about that specific move.

**The Hon. MELINDA PAVEY:** Meeting numbers or targets that the Government had set.

**Mr TURNER:** That had not been applied in the past, including even discussion and the occupational health and safety review of the office being built at the time, which led to some issues as well that eventually got resolved. The social impact statement that was supposed to occur before such transfer happened did not happen, as I remember, for that particular move, and that caused some issues because it was the previous Government's policy that there would be a social impact study about the organisation, the community, and that did not occur as well. There were many issues that occurred at the time—the size of it was one of the issues as well—which led to a lot of angst and it all compounded. It was like a whole lot of colliding stars which led to more angst than normal in such moves.

**The Hon. CATHERINE CUSACK:** How many times has the average employee of WorkCover reapplied for their own job since the move to Gosford?

**Mr TURNER:** Many times, I would say.

**Ms JEFFRIES:** Yes, the organisation has been in a constant state of restructuring. Certainly in the work health and safety division, which is the biggest chunk of WorkCover itself, they have never finished one restructuring before the next one started.

**Mr TURNER:** I also got called up to Gosford to speak to the mayor because there was a fear that it was going to be moved out of Gosford and back to Sydney, and for 500 people that was a sudden fear that, "We have all moved up here, we did not like what was happening, but we have bought our houses and moved our families up here and now we have to try to re-enter the Sydney market."

**The Hon. CATHERINE CUSACK:** How many restructures and how many times?

**Mr FRASER:** I do not know how many times, but it is worth noting that a restructure is an opportunity for payback in some cases.

**Mr DAVID SHOEBRIDGE:** Is the constant organisational restructuring the elephant in the room, in part?

**Ms JEFFRIES:** There is no doubt that that creates a risk factor. It becomes something that can be used against people in these processes. It causes people not to make complaints about things or not to report wrongdoings in the workplace because they think—

**The Hon. CATHERINE CUSACK:** —that person is going to be on my selection panel next week.

**Ms JEFFRIES:** That is exactly right. In fact, we see instances—there is one happening now—that that is actually the outcome. You can quite clearly see this person has put in a complaint, suddenly this has happened and, "Oh, you are leaving now, are you? Sorry."

**Mr TURNER:** And we have just been through a similar restructure that caused all sorts of angst, even the deletion of positions amongst WorkCover inspectors. It is just unbelievable.

**The Hon. CATHERINE CUSACK:** In highlighting this issue of good external advice, PricewaterhouseCoopers did not pick up that issue in its report. It is quite obvious that has driven a lot of stress and distrust within the organisation.

**Ms JEFFRIES:** Absolutely.

**The Hon. CATHERINE CUSACK:** I question whether getting PricewaterhouseCoopers to do that report was a good decision.

**Mr TURNER:** It is a very good question.

**Ms JEFFRIES:** I suppose with each there is also the knowledge that whatever happens at the moment, when one little restructure is completed, there still have to be further savings the next year. So there is this constant thing that next year there could be another restructuring and we have to find more savings and more savings. The idea of the threat to your job simply does not go away anymore. It is a constant problem. It is an ever-present thing.

**The Hon. CATHERINE CUSACK:** It is awful.

**Ms JEFFRIES:** Yes. It certainly results in under-reporting and it certainly results in more reports coming to us as a way of protecting the person from being the face of the complainant. So we get a lot of complaints such as, "We need you to keep this confidential. Do not name me", that sort of thing. It is a very real risk for people that they can lose their job if they are seen to be a complainant. That is not necessarily an organisational thing, but it will come down to particular managers who are able to make those decisions, and it is about the relationships with those managers.

**CHAIR:** That brings us to the conclusion of our time. We thank you very much for your attendance and we express our sorrow for the suffering of any employee at WorkCover. It does not seem to be necessary or justifiable. We hope our inquiry will help rectify the situation.

**Mr TURNER:** I have four issues on notice to report back to the Committee. What is the time frame?

**CHAIR:** It is 21 days.

**Mr DAVID SHOEBRIDGE:** The secretary will have a separate discussion with you and will formalise those.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**VICKY DOROTHY LOVELL PEPYAT**, Injured worker, Injured Workers Support Network, and

**JANET CHAN**, Injured worker, Injured Workers Support Network, and

**ADAM GRUMLEY**, Coordinator, Injured Workers Support Network, and

**MICHELLE BURGESS**, Chief Executive Officer, Workers Health Centre; affirmed and examined:

**DAVID HENRY**, Work Health and Safety Officer, Australian Manufacturing Workers Union, sworn and examined:

**CHAIR:** We welcome our witnesses to this public hearing. Thank you very much for your attendance and your help. We greatly appreciate it. Any one of you has the opportunity, if you wish, to make a short statement.

**Ms PEPYAT:** I have a brief opening statement to make. My experience of bullying is as a target of vicious psychological workplace bullying as an individual as outlined in my submission, which is No. 17. I am here today as an injured worker on behalf of the Injured Workers Support Network. I lodged my submission and I am attending today to give evidence because I feel so strongly about the issue of workplace bullying. If I get emotional, bear with me. I can keep talking through the tears—I have learnt to. I feel so strongly about how injured workers are being bullied and de-humanised by WorkCover and the scheme insurers. Like other injured workers who have been bullied at work, I have experienced the horror of workplace bullying and the devastating impact on my life, and I see the impact on my friends and family. My life will never be the same again.

As far as work injuries go, I appreciate sometimes there are accidents, sometimes employers try to cut corners, but I invite the Committee to consider another scenario. A bully or bullies at a workplace decide an individual is their target. The target is hardworking, loyal, popular, good at what they do and the major generator of revenue for the business. What the bully or bullies do is intentional, planned, and is executed over time with the objective of causing harm to the target. Management lets this occur and even participates in the bullying. That scenario is the reality for some injured workers. That scenario is my reality. Injured workers with psychological injuries from workplace bullying then experience being treated by WorkCover and the scheme insurers as a different and lower class of citizen because, and only because, they are an injured worker.

People who are suffering major depression from workplace bullying—to the point that they consider suicide in their dark moments—face a system in which compassion, empathy, respect and civility are lacking. In the circumstances, how can an injured worker have any confidence in WorkCover to protect them or other employees from workplace bullying? And there is more. Complaining to WorkCover about workplace bullying should see WorkCover, as the work health and safety regulator, take appropriate investigative and compliance action. Reports of workplace bullying are not matched by reports of WorkCover taking enforcement action. Bullies are not held to account, even when the statutory framework is there to do just that. Injured workers who have been bullied at work and/or by WorkCover and the insurers want the nightmare to end. I hope this inquiry can help that to happen.

**Ms CHAN:** Basically the information given earlier by the Public Service Association showed that WorkCover reported only one complaint this year of WorkCover bullying. Actually, there were nine reported by the Public Service Association. Someone said there is a disconnect, a discrepancy in the figure. WorkCover is the executive arm of government. It is responsible for occupational health and safety and workers compensation. They are actually the same coin, but the flip side. If they fail in their job, it reflects poorly on government, because they are supposed to be implementing the policy and the law. When WorkCover itself has a problem, it cannot effectively implement the law.

In respect of workplace bullying, my research shows first of all that there is no legal definition of workplace bullying. There is only a policy definition. In other words, they decide how to manage it, not by law. There are three criteria, which is: repeated; unreasonable; and risk to health and safety. If they are the regulator in respect of health and safety, the focus should not be on injury but risk to health and safety. The court has been very clear that the nature of the occupational health and safety duty is to prevent workers being exposed to risk to health and safety, to prevent it, not for the injury to happen before it takes place. I have looked at all the court cases between 2000 and 2010 and that legal principle consistently comes through. I am really puzzled. First of

all, if it is the case that they are required to manage it proactively, why do they need it repeated—and "repeated" is not specified. It can be two to an infinite amount before they take action. Who decides that is very arbitrary.

In the meantime, when people ring up WorkCover to say, "I have got a complaint", the chances are they have not dealt with it. In 2010, the media released by WorkCover showed that they handled 1,000-odd complaints in two years, and there were 2,000-odd. When I looked at that I thought, "Hang on a minute. If you are managing it well, would it not be the other way around?" They have investigated 2,000-odd and only 1,000 went on to workers compensation. Straightaway the early indicators tell me that WorkCover is not dealing with it well and the consequences of injury or the negative impact on mental health is quite horrendous. There is clinical evidence that actually shows that it has happened. This is done by Heinz Lehmann, and this is not recent, this is in the 1990s and the 1980s.

**CHAIR:** Thank you. Does anyone else want to make a statement?

**Mr GRUMLEY:** Good afternoon. My name is Adam Grumley and I am the Coordinator of the Injured Workers Support Network. I deal with people who have been bullied in the workplace. I have been in the workers compensation system for around three years. I have been bullied myself. I believe in the old saying that if you stand up to a bully he will turn to water, but when it is an organisation or a culture of an organisation it makes it a little harder. I see workplace bullying as a form of harm. The definition of mental illness is anything that is repeated, harmful and extends for a longer period than two weeks. I have been in the workers compensation system for three years and other people here have been in the same system. Denial outright is on the increase. I read from a budget estimates inquiry that a scheme agent approved by WorkCover said there was one claim that was denied this year. I speak to a person every day whose claim is denied outright. The hostility towards injured workers under the care of WorkCover, I suppose you could say by the scheme agents, has increased. Thank you.

**Ms BURGESS:** I am here as Director of the Workers Health Centre at Granville. Our main game is rehabilitation of injured workers, so on a daily basis I get to see injured workers who have been bullied by scheme agents. In my belief, there is a direct link between the WorkCover authority and the scheme agents. The WorkCover authority are persons conducting a business unit [PCBU] under the terms of the Work Health and Safety Act. We believe there is a direct relationship. As a PCBU, WorkCover must—must—take some responsibility for the behaviour of their scheme agents. As I said, on a daily basis we see injured workers who are bullied to the point of tears. We had an unfortunate experience as recently as 2½ weeks ago. After some quite bad behaviour by an insurer toward one of our injured workers, the injured worker took the life of his partner and also tried to take his own life. This is not an isolated incident.

The behaviour towards our injured workers by scheme agents is far-ranging, be it from just verbal abuse over the phone that "Under the new Act we now have the power to take away your livelihood. We take away your livelihood, we take away your home" to simply delaying people's access to receive medical treatment and also to receive weekly benefits. We stand by the evidence that I have submitted in respect of our submission, and I am more than happy to answer any questions in relation to what is in my submission. I would have to say I am unsure as to whether or not there are any WorkCover authority people in this room, but I come here saying this with some trepidation, given the fact that we are WorkCover accredited. So our very livelihood may be taken away by us giving this evidence today. I feel very strongly about it. I feel very strongly that we need to make some changes, and I hope that this Committee will very seriously consider what we have in our statements.

**CHAIR:** Certainly you advise this Committee if there is any attempt to intimidate you for being here today.

**Mr HENRY:** I think the point that has just been made is valid. I ask the Chair's indulgence if there is a WorkCover representative present, whether they could identify themselves before we continue.

**The Hon. MELINDA PAVEY:** It is a public hearing.

**Mr HENRY:** I understand.

**CHAIR:** We do not know who is in the gallery.

**Mr HENRY:** That is fine.

**Mr DAVID SHOEBRIDGE:** There could be live streaming as well.

**The Hon. MATTHEW MASON-COX:** It is.

**The Hon. CATHERINE CUSACK:** Assume that WorkCover is here. They are everywhere.

**Mr DAVID SHOEBRIDGE:** Operate on the assumption they are here.

**CHAIR:** I am happy to ask the question. If there is a WorkCover representative here in the audience, would you put up your hand? Three hands have gone up.

**The Hon. CATHERINE CUSACK:** They are quite entitled to be here.

**CHAIR:** It is important that they are here because we are discussing their agency and they need to hear the evidence.

**Mr HENRY:** That is fine. I am just mindful of the bravery of people and the organisation in the context of what we are here to discuss. It can be intimidating. The AMWU is relying upon its written submission, which it presented. Michelle has given a link between the discussion. It was part of our submission around the treatment of claims managers from scheme agents and injured workers. That is a primary area of contact between WorkCover and our members. WorkCover is the organisation in control of the business or undertaking and those case managers are workers under the Work Health and Safety Act. So there is a direct responsibility by WorkCover in the way injured workers are managed.

The other area for us, of course, is that we have workers who raise safety issues and as per our submission we have identified that some inspectors are telling us that part of the reason some of our members are not so satisfied with that interaction on a proactive safety basis is that they feel their hands are tied as far as what activities and actions they can do in relation to non-compliance of the legislation. Clearly, this needs to be changed. What we are advocating for is an overarching cultural change in WorkCover. We believe that it has to start at the top and that it has to start, firstly, with an acceptance that there is a problem. Then there needs to be a strategy for change. We believe that there should be direct accountabilities by WorkCover to the workers in New South Wales with respect to their performance and behaviour. We would currently state that that is not the case.

I also take this opportunity to say that we believe that the New South Wales Government should reconsider its position with respect to a move towards codifying bullying behaviour and undo its recent decision at Safe Work Australia not to support the Prevention of Bullying code of practice, contrary to the evidence that was provided by Safe Work Australia that that code should have been supported. This would send a clear message not just in relation to WorkCover but to all of industry that bullying is not going to be accepted in this State. I had hoped that Omeima would be with me because she has a live story about one of our members who not only was bullied at work but then was bullied a second time by WorkCover. Acting as a support person for our member, she has had a direct involvement in the matter. I hope that when she does get here she gets that opportunity to tell that story because I think it is very powerful. It is worth noting also that this happened six weeks ago, not two years ago or five years ago. It is not in the distant past; it is six weeks ago, which is during the life of this inquiry. So it continues to be a real issue for us.

**Mr DAVID SHOEBRIDGE:** Earlier witnesses said that the failure of WorkCover to deal with bullying within its own ranks means that it lost credibility in dealing with bullying as a regulator across New South Wales. Would you or would you not agree with that observation?

**Ms BURGESS:** Agree.

**Ms CHAN:** Yes, I have to agree with that simply because if they are not working well and they have the problem itself, they are not dealing with it well. It shows the lack of knowledge and skill to actually implement the legislation. How could they work effectively as the regulator when they themselves have not dealt with bullying as well? One of the things is that when that happens there are implications for people. They failed. The implication is that people who complain about bullying have an unequal access to the protection of the law. In other words, someone rings up and says, "I need a mat because there's a slippery floor", WorkCover will attend to that, but when they ring up about bullying, they will not get the same treatment because they say,

"Well, you know, it could be performance management." It could be a whole host of things. So they do not investigate and the figures can substantiate that.

**Mr DAVID SHOEBRIDGE:** It is a second-class injury or complaint, is that how it is treated by WorkCover?

**Ms CHAN:** I think it is more the denial. It is the denial that this is happening: "Well, it is performance management you are complaining about." The other thing is that when we are talking we are saying that sometimes, like, I do not realise that I have been bullied until I sit back and think about it and say, "Hang on a minute. Come to think of it, that's really bullying." By the time you raise it, it looks as though, "Gee, you're really whingeing" and when you raise it and raise it again, they say, "You might be nutty" and you say, "No, I'm not. I am of sound mind and I am quite intelligent." I know of a regional university that a number of academics who have been bullied have been isolated and put out. One attempted to take his own life. So it is not as though WorkCover does not deal with it. That is the end of the problem; it does not. It translates into horrendous impact on people's lives.

**CHAIR:** The other witness has just arrived.

**OMEIMA SUKKARIEH,** Support Person, Australian Manufacturing Workers Union, affirmed and examined:

**CHAIR:** The other members had the opportunity, if they wished, to make a brief statement. Have you something you want to share before we question you?

**The Hon. MELINDA PAVEY:** Mr Henry hoped you would arrive to share a live story.

**Ms SUKKARIEH:** Yes. I am happy to do that. Would you like me to start?

**CHAIR:** If you could do so briefly because we want the opportunity to ask questions.

**Ms SUKKARIEH:** As super brief as possible. I am actually the manager of a local community organisation in Auburn and have been supporting a worker by the name of Vinnie. I will use his name because he has given me permission to do that. He is known as Lucky to his mates and workers. He has been experiencing bullying, harassment and victimisation in his workplace since March earlier this year. He has been with the company for over a year. Because of a lack of due process at the company in terms of dealing with his grievances—I will give you a very brief example: it took 11 weeks for the human resource manager of that company to reply to an email formally about his grievance—he was given advice by a health and safety rep at work, and I encouraged and supported that advice, for him to lodge a formal complaint with WorkCover.

Lucky has some language difficulties. He is quite articulate but he misses things. So there are lots of missed things in translation. I made the call on Lucky's behalf to find out what the process was on lodging that complaint. The first person who spoke to me basically led me to the web space where there is the complaint form and basically said to me, "Look, I would only lodge that complaint if it was very, very serious because WorkCover doesn't have the capacity to deal with all the inundated complaints that we've actually received." So I talked to Lucky about his whole issue about the seriousness of it et cetera, et cetera. Lucky finally lodged the complaint on 16 September. That was a Saturday. They would have received it on 18 September.

He got a phone call from a WorkCover officer on Tuesday 19 September and he called me after that phone call really distressed. He told me what the officer had actually said to him. I was a bit confused because I did not understand why he was so distressed in terms of what she could possibly have said or how could she have possibly said it. I then made the phone call to the same officer—he gave me the phone number—and it was quite horrifying in terms of the response that I got to my questions. I thought, "Well, maybe it's because something was lost in translation" but it obviously was not lost in translation. I will not tell you the details of that. I will wait for the questions I guess.

**Mr DAVID SHOEBRIDGE:** I think you better tell us the details otherwise it will not make sense.

**The Hon. CATHERINE CUSACK:** Tell us why you were horrified.

**Ms SUKKARIEH:** All right. She had said to me that what she had said to him was that she asked him, of course, to verify his identity, which he did. Then she asked him who was he employed by and he told her he was employed by a labour hire company. He mentioned the labour hire company's name, but he said he works for this company and she said to him, "Are you a casual employee or a permanent employee?" He said, "I'm a casual employee." She said, "Well, I don't think we can deal with your complaint." So he of course said, "Well, I don't understand. I'm lodging a complaint against this workplace for bullying and harassment and victimisation."

She said to him that she had to talk to the employer first and his employer was the labour hire company. She said she had to investigate the process and that she could only do that by talking to the labour hire company person who was responsible. She said to him that she had a duty of care to the labour hire company and the company that he was working for. It is not just him that she has a duty of care to. She also said, "Who pays you?" Lucky was telling me, the way he was talking, was that she was quite aggressive in the way that she was talking. "Who pays you?" "Who are you working for?" "Why don't you go and get them to give you another job or move you around if you're a casual employee? Why do you want to stay at this job?" So Lucky said, "The point is I'm being bullied at this employer. This is the company I'm being bullied at. Why should I go and get another job? I actually like my job."

So she said to him, "Just tell me what happened, I'm writing"—it was documented—"and what do you want from WorkCover?" Lucky said, "I want to stop the bullying. I don't want this harassment anymore. They're victimising me" and she asked, "Did you tell the agency?" He said, "Yes I did." She said, "Well, when did you tell the agency?" He said, "I told them" and he told her the date. So this happened in September and he would have told the agency in June formally. She said, "Why did it take you so long to go and tell the agency you were having problems if you didn't feel safe in the workplace?" Lucky said, "Because the person who is bullying and harassing me is my direct manager. Where am I going to go?" So he took the complaint to the human resource manager at the time.

One important thing too that I missed was that one of the very first things she said to him and she said to me was, "Why did you send me all this information? There's too much information in this complaint. I don't want that information. I just want the complaint form" and Lucky said, "But I can't give you the details of it in just the complaint form." I explained that to her as well. Lucky got off the phone with her because she said, "Look, I've got to go talk to your employer" which is the labour hire company. He called me. He was very upset by the way she was talking to him more than anything else because he actually did lose things in translation. So I spoke to her. I actually called her and she was driving because I could hear the car. She was on the mobile and she had me on speaker.

The first thing the WorkCover officer said to me was, "Who are you and why are you talking to me instead of Lucky?"—instead of Vinnie; she calls him Vinnie—"I don't understand." So I explained to her why I was actually calling. I told her that "I called because I think there's some stuff lost in translation and I wanted to know exactly what did you explain to him because he's quite distressed. So if I can actually speak to you and you tell me the information, maybe I can at least ease his distress. Maybe it's just something he missed." She basically said exactly the same thing. She was quite abrupt. She said, "The policy here at WorkCover is that we investigate the process and the grievance procedure needs to finish before we can investigate the process." She then said she cannot make her opinion until she contacts the labour hire employer and that that was what she had explained to Lucky. I said I thought he had misunderstood some of what she had said. She said that was not her problem as she was explaining WorkCover's policy.

She said the job was to protect everybody, not just my client. I said she had told Lucky that WorkCover was investigating the labour hire company and not the company he was working for, and that he did not understand why. She said, "It's not my fault he does not understand why; this is his employer." I said that on the WorkCover complaint form and website it says that WorkCover addresses bullying in the workplace, not the employer if the employer is a labour hire company. What had upset and confused Lucky was that he did not understand whether it was because he was a casual employee that he did not have a right to have the process investigated. To give you context, we are now in November and his workplace bullying is still continuing.

The process is a really bad one, not a good one. The only thing they say to him is that he has to follow up. I have usually drafted his emails because of the language issues. In a second phone call one week later, after she had said that she would investigate, he was even more distressed. It was a very brief phone call. She called him to say she had spoken to the labour hire company and the human resource manager at the company he was working for and had decided she would not take any further action as the process they had undertaken was fine.



She told him to get another job. Lucky was very upset. He immediately called me and said I needed to talk to her.

As a support worker, Lucky had made it clear to the human resources manager and to the labour hire company that he found their process to deal with the grievances amounted to more bullying on top of what was happening in his workplace. I had been privy to all the meetings, with the union representative present as well, and I made that very clear. The issue was so serious for me because Lucky was suicidal. I have been working in the community for 20 years. I have been part a mentor to individuals who have committed suicide because of bullying, or because they felt bullied, harassed or victimised. It is very upsetting. I have known Lucky for three years. He had never missed a day of work until the day he could not handle it anymore because he felt he was not being listened to.

When the WorkCover officers said that to him, he asked if they did not care about casuals and, if so, what that meant. I had a very brief conversation with the WorkCover representative. She was very upset that I had made the phone call and asked why I was following up. She said she had made it clear to Vinnie, as she called Lucky, that the case was closed. She said, "I have the authority in WorkCover to make the assessment and my assessment is no further action needs to be taken." I asked why she had to talk to him like that, as he already felt bullied. I asked her to explain the process to him. She said all the information is on the website. I then asked her about Lucky's right of appeal. At the end of the conversation, because I could not handle it anymore, she said, "I don't really care what he does; it's up to him."

That was it, although I was talking to her and I am quite an articulate person who understands processes. She did not direct me to a right of appeal or anything. My challenge was going back to Lucky to explain that the only thing I could do was to deal with it in a different way. He was distressed and he felt disillusioned and disheartened. He went three steps back. He has been on a mental care plan to deal with his issues and everybody who is part of the process knew that. He still does not feel safe in the workplace or that he has been taken seriously. He said, "I don't care if she does not take any further action, but I need somebody to listen to what had happened and take me seriously."

**Mr DAVID SHOEBRIDGE:** A theme of all your presentations is that there is bullying in WorkCover and its oversight of the system allows bullying in scheme agents and dismisses substantive bullying complaints in the workplace. Could you tell me about your experience of bullying by scheme agents?

**Ms BURGESS:** We deal with scheme agents on a daily basis. Injured workers are exposed to the behaviour of people from WorkCover and ultimately from scheme agents, as are my staff, who have been on the receiving end of what I could best describe as very aggressive behaviour. We ask whether injured people have faith in WorkCover as a regulator. From my experience, I could wholeheartedly say no. Particularly in relation to bullying, a lot of people I have spoken to have said if WorkCover were able to deal with this issue in an effective way then perhaps these people would not be as injured as they are. From my point of view, people who operate within the WorkCover authority are ill equipped to deal with bullying in any way other than to ask people with a claim to fill out a form. That is a stock standard answer.

**Mr DAVID SHOEBRIDGE:** Have you raised complaints with WorkCover about the bullying conduct of scheme agents? Is there a process for doing that and, if so, have you done that?

**Ms BURGESS:** I, like a lot of injured workers, have given up doing that. Yes, we have, but they are ultimately never followed up. They get lost in the paperwork. Like injured workers, we have learnt that WorkCover will not do anything about the scheme agents. The continual thing we are told is, "Go and escalate the matter within the insurance body." We do so and sometimes we get results, but more often than not we do not. If an injured worker raises those complaints, whether in writing or verbally, there has been quite severe retribution from scheme agents—whether by cutting off their payments or being told to "suck it up and go back to work", which sounds quite bizarre; those are the types of behaviour. They are told they will not be reimbursed for their medicals or their pharmaceuticals.

**The Hon. ADAM SEARLE:** You have given evidence of fairly aggressive responses from scheme agents and representatives of WorkCover in relation to occupational health and safety complaints. The Workers Health Centre submission talks about aggressive behaviour and language from scheme agent staff in your interactions with them as service providers. For a regulator charged with ensuring health and safety in the workplace, it is very concerning to hear this evidence about their attitude. Do you have insight into the underlying causes of this?

**Ms BURGESS:** I think it is multifaceted. On one hand, you have a regulator that is seen as a very poor regulator and its own reports of inquiries go to that. We have scheme agents, and particularly case managers working for those scheme agents, under a lot of pressure as they have huge workloads. In my view, they use their bad behaviour to achieve their key performance indicators and pick up their month-end bonuses—that seems full of conjecture but it is how the system works. They are usually young and untrained and are easily influenced by people higher up the scheme agent tree. There are clearly unacceptable behaviours operating within the scheme agents.

**The Hon. ADAM SEARLE:** What is the solution to addressing the behaviour of scheme agents as outlined?

**Ms BURGESS:** From my point of view, an initial coming together for discussions around policy guidelines on how people operate is the key to moving forward on this issue. I feel very strongly that it cannot continue as it is. We see casualties of these behaviours every day. Something needs to happen. In my view, the initial thing is bringing together the parties, so some procedural stuff is agreed on and accepted as the way to deal with these issues.

**The Hon. MICK VEITCH:** Do you think that WorkCover is broken?

**Ms BURGESS:** That is probably a looser term that I would use, but yes, definitely. Something drastic needs to change. We have had some drastic changes in workers compensation law to try to make things better. I do not think that all those changes were good, but more needs to be done. If we are going to stick with the workers compensation structure we have, then we have to have a compassionate and efficient way to deal with people when they are injured. That is not by avoiding, isolating or abusing them over the phone or cutting off their benefits when they raise issues. That totally defies the idea of rehabilitation and return to work. You will never get people to return to work if they are not supported adequately along the way. Support is not what we see.

**The Hon. ADAM SEARLE:** A number of the interactions between scheme agents and clients that you have detailed are pretty outrageous and confronting. Do scheme agents record these conversations? Every time I ring an insurance company there is a warning that the conversation may be recorded unless you ask that it is not recorded. What is their practice?

**Ms BURGESS:** From a rehabilitation point of view, when we have interactions with insurers, they record part or all of our conversation. We do the same at our end, so we take notes on the gist of the discussions.

**The Hon. ADAM SEARLE:** Have you raised with WorkCover problematic exchanges between clients and scheme agents?

**Mr GRUMLEY:** Yes, several times.

**The Hon. ADAM SEARLE:** What action has the WorkCover authority, as regulator, done to ensure that scheme agents behave appropriately towards clients?

**Mr GRUMLEY:** I am an injured worker and I was unemployed for two years. I was forever chasing information on when I would be paid next. It is very hard to budget on a compromised income; you lose more than just the use of your arm or shoulder. When chasing up when I would next be paid, they would say, "When we feel like it." I would then ring WorkCover and they would say, "We can tell them, but they won't do anything." If they cannot act on that, what hope does an injured worker have?

**The Hon. ADAM SEARLE:** You are saying that if an injured worker misses an appointment set by the insurer, the insurer can withdraw payments.

**Mr GRUMLEY:** Yes, without a doubt.

**The Hon. ADAM SEARLE:** WorkCover say they cannot do anything to discipline their scheme agents and make sure they are doing their work.

**Mr GRUMLEY:** Yes. For instance, if I were paid today I would not be paid for another 10 days. It is very hard to budget for a family when you are off work and only getting about \$500 a week. You can ring the insurer and they say they will process it later. They keep putting you on the backburner, so you ring WorkCover. They say there is nothing they can do and if you have not been paid in another three days then give them a call. By then your children are suffering and your bills are not being paid. You only have to look at the changes in the workers compensation system and work-capacity decisions to get workers off the system. There have been 21 reviews by the WorkCover Independent Review Office [WIRO], which has given binding recommendations, some of them at WorkCover to start prosecuting insurers for the way they are conducting themselves and getting people out of the system. Have they acted yet? I do not know. I do not expect them to.

**Ms BURGESS:** We also find that the story I just spoke about, the fellow who took his partner's life and tried to take his own, this man had mental health issues. We had very clear documented information that had gone to the insurer from both the employer and from us to say that this man was not to be contacted because we would worry that his condition would be aggravated by any phone calls from the insurer because they had been hostile to him previously. Despite all of that—despite the many emails and letters written by the employer to the scheme agent—they continued to operate the way they always do, that is, to do whatever they liked and continued to harass that person, which is exactly what they did. Whether the WorkCover Authority actually ever goes and looks at the way people are operating, the scheme agents, is of major concern to me. I understand that to get a contract and be a scheme agent you need to adhere to certain checks and balances, if you like.

**The Hon. ADAM SEARLE:** Clearly, if WorkCover wanted to, they could review the recorded conversations with clients if they were directed to?

**Ms BURGESS:** If, in fact, they are all recorded, which I doubt that they are.

**Mr HENRY:** I am not aware of too many conversations where I have been provided notice that the conversation is being recorded with a scheme agent.

**Ms CHAN:** Even if I am the scheme agent I would give them a good one. Why would I want them to review it—unless they have a very comprehensive of reviewing it? If you look at the performance indicators and look at how they actually evaluate the performance, they are not going to get the true picture anyway. What is driving them is to say that as long as you manage it, keep the costs low, that is all we need you to do. There is a system there, you can enter it onto that and we will take it that that is our audit. I can tick the boxes. I have done the audit checks.

**Ms PEPYAT:** Can I say, as an injured worker I have an absolute fear of contacting WorkCover or the insurer. I used to think I was a pretty articulate, confident person. I am a solicitor by profession and I thought I could handle most situations. But it is a different kettle of fish when it is about you and you are psychologically injured. Contacting WorkCover invariably results in me being blamed. If I am complaining about the insurer I must be misunderstanding something, I have got it wrong. The insurer's system would be doing it correctly, I have been told in the face of my having documented evidence supporting what I am contending.

Complaining to WorkCover is traumatic. I have been spoken to so aggressively over the phone for absolutely no reason because I can assure you I did not speak aggressively to the people. Even within the last few weeks a woman from WorkCover was so rude to me that I had to say, "Look, I am finding your tone very aggressive and it is distressing me, I may have to terminate this call." I did nothing wrong other than complain about the insurer failing to add the index increase to the payments that applied on 1 October. I had to keep agitating and pressing that I had a valid complaint—and as it turned out, yes I did and the insurer was wrong yet again.

If I contact the insurer they generally just disregard what I have to say. They have even threatened me. I have had the so-called psychological injury claims manager, or some grand title like that, bully me so much on the phone about a rehab service provider he wanted me to see when he was not giving me a choice to go to one initially that I was so distressed that I said to him, "Are you trying to push me over the edge?" That did not make him back down. I was at a point where he could have someone committing suicide on the other end of the phone and he did not back down. This is what people like me are dealing with. You cannot rely on WorkCover to help you. You cannot rely on anyone at the insurance company. Where do you go? That is how I got involved with the Injured Workers Support Network; I needed some support. I found them on the website and I just contacted someone who cares who is on the other end of the phone.

**The Hon. CATHERINE CUSACK:** I am very saddened by what has occurred to you. When WorkCover attended your workplace to try to investigate your claim I understand, from your submission, the employer had an unwritten policy on bullying?

**Ms PEPYAT:** It was not true. There was no policy. I was not in the workplace when the inspector went out. While I was there, because I was the principal solicitor but I was not the managing director, the managing director had a very autocratic style of dealing with things and point blank refused, because I asked on a number of occasions, about having an anti-bullying policy. He would say, "I have told you before, I won't do it".

**The Hon. CATHERINE CUSACK:** I understand the inspector then said to you that he cannot require him to have one?

**Ms PEPYAT:** He said he cannot make them have it in writing but he had suggested to them they should ramp it up to the next level and put it in writing. I understand after that that may have occurred but, as I have said in my submission, past a certain point I never heard anything more. It was very distressing for me to follow up with WorkCover.

**The Hon. CATHERINE CUSACK:** I understand. This is a small business that has had three proven claims—

**Ms PEPYAT:** It has had two claims that have had their liability accepted. A third claim was lodged after I left. I understand that person received provisional liability but after that liability was not accepted, so I do not know further details.

**The Hon. CATHERINE CUSACK:** I am not familiar with this area of law. When a worker is injured I understood that WorkCover would investigate that matter or there would be some report to it or some collection of that data?

**Ms BURGESS:** No.

**The Hon. CATHERINE CUSACK:** There have been two proven cases of bullying where liability has been accepted by the insurer and that did not trigger anything?

**Ms PEPYAT:** No. As I said in my submission, when I contacted the inspector again I did keep trying to follow up initially and one of his comments, after he had "missed" going out after my complaint, was that there was no danger to me because I was not physically in that workplace anymore. As I said in my submission, I was still being bullied by the managing director even though I was not physically there. I was the principal. I was the only solicitor there, there was still a lot of commercial contact in the sense of things to sort out. I was still being bullied. That seemed to be irrelevant even though I was still deemed to be an employee. There just did not seem to be any interest in helping any further at all.

**The Hon. CATHERINE CUSACK:** The obvious question anybody would ask themselves is, "Why did this happen to me?" The impression I have from your submission is that they were systematically working through people in the workplace?

**Ms PEPYAT:** Yes.

**The Hon. CATHERINE CUSACK:** Would you almost describe it as psychopathic behaviour?

**Ms PEPYAT:** Yes. After this happened, being an intelligent person, I tried to understand it and make sense of it. Invariably you get led to publications and media coverage of so-called psychopaths, sociopaths or snakes in suits—all that stuff which the media has jumped on. I am not qualified to say someone is or is not a psychopath. Obviously you would probably understand me feeling like saying that about certain people there sometimes but I am not qualified to diagnose that.

**The Hon. CATHERINE CUSACK:** Did it resonate with you?

**Ms PEPYAT:** It certainly did with me with other things that happened in that workplace. I appreciate every situation can be different but obviously that crossed my mind quite a bit. As I have said, I made the other

people feel the same. You are doing your job. I was the only source of income for the firm. I was making a lot of money for the firm and doing a really good job. I got on previously so well with my support staff that I really thought I was safe, I was too important, I was too good at what I did and that I could keep my secretary safe. I say to people, "If this can happen to me, it could happen to you." It is not about resilience. You have heard that already today. When I hear that it just makes me so cranky because I am resilient and it is not resilience. So you can imagine how I felt when the insurance company initially wanted to send me to a company called Resilia to try to sort me out with the rehab side of it before they told me I had a choice of the rehab service provider.

**The Hon. MELINDA PAVEY:** Mr Henry and Ms Sukkarieh, in relation to your roles with the Australian Manufacturing Workers Union and following our discussion with the Public Service Association, and Unions NSW is represented on the WorkCover board, what relationship or discussion have you had with your board member about your concerns about the WorkCover Authority?

**Mr HENRY:** Certainly as part of my role as the work health and safety officer, through Unions NSW, there is a monthly meeting of like officers from the other respective unions. That is the forum in which we have these discussions. This particular issue, as you can imagine, was an area of discussion when this inquiry was first announced.

**The Hon. MELINDA PAVEY:** I am talking about over the years.

**The Hon. CATHERINE CUSACK:** Unions NSW is represented on the board of WorkCover.

**Mr HENRY:** Yes, Mark Lennon is the director on the board.

**The Hon. CATHERINE CUSACK:** Do you meet with him?

**Mr HENRY:** He is not in attendance at that meeting. There is a work health and safety officer who is directly employed by Unions NSW who facilitates those meetings.

**The Hon. CATHERINE CUSACK:** Given that Mark Lennon is your representative on the board how is he accountable to you?

**Mr HENRY:** If we become aware of issues, I do not think any of us would have any qualms at all in directing a question to Mark.

**The Hon. MELINDA PAVEY:** Have you?

**The Hon. CATHERINE CUSACK:** Is he representing you on the board on this issue?

**Mr HENRY:** I cannot answer the question.

**The Hon. MATTHEW MASON-COX:** Have you ever picked up the phone and called him?

**Mr HENRY:** I have not picked up the phone to Mark but I have certainly through Unions NSW sent an email to the proper contact person for myself.

**The Hon. MELINDA PAVEY:** Is that since this inquiry?

**Mr HENRY:** I do not recall—certainly not only in relation to this issue may be a better way to put it. I do not recall when I have sent the emails but if there are issues that I think that Mark as the director may be able to address in his position, I certainly have a history of sending an email down to Unions NSW and asking if it can be raised with Mark.

**Ms BURGESS:** Certainly our group is separate to the AMWU but we treat union members. We have them come to us for rehabilitation. I think in the past what used to work for us was that there was a tripartite group, who I cannot quite recall, David might need to help me here, that had a variety of unions who we deal with on that committee. If we had issues about rehab that were going on in there we would actually go to the various affiliates and say, "We have got this problem and it is consistent across a couple of unions that we are dealing with" and things had an ability then to get resolved. But we do not have that. It was the advisory group.

**Mr HENRY:** It was the advisory council on which I sat. Historically up until June last year if I had issues in the way workers were being treated I had the capacity through the advisory council to raise those issues. Historically I did raise those issues and they were raised in that forum and as a result of that there was a lot of good work done in the development and delivery of guidance material particularly. But that capacity we do not have. With regards to, "Is there a long history of sitting there sending correspondence to Mark?" The answer is no, because I was able to formally do it directly through that forum but that forum is not there anymore.

**The Hon. MATTHEW MASON-COX:** What about the complaints procedure that WorkCover has, have you been through that process complaining to people in that service area?

**Mr HENRY:** Yes.

**The Hon. MATTHEW MASON-COX:** What has been your experience with that?

**Mr HENRY:** To be perfectly honest these days I try to avoid the complaints service through WorkCover as much as possible, particularly if I have issues with injured workers. I have got to admit these days I tend to focus on the system's deficiencies that have affected these workers. What I normally find is you do not need to dig too hard to find where the scheme agent has not treated the worker per the legislation. I will correspond directly with the insurer and seek them to address the matter but when they do not respond to me of recent if have been using the WorkCover Independent Review Office [WIRO] services as opposed to WorkCover?

**The Hon. MATTHEW MASON-COX:** What about the Ombudsman?

**Mr HENRY:** I have been dealing, as I said, to date with WIRO and certainly on the issues that I have dealt with WIRO to date they have been able to provide me with the assistance that I have required.

**CHAIR:** And you would like that advisory council to be reformed? Did you find it valuable?

**Mr HENRY:** We advocate that in the submission. We think that, firstly, it created a tripartite body where we were able to raise issues before they became problems and, secondly, and more importantly, it was an opportunity to resolve problems. It was not perfect as it was but it was certainly better than nothing, which is what we have today. I have had meetings over the course of this year—certainly one meeting at least that I recall—with the General Manager of Health and Safety at WorkCover talking about important issues affecting workers in manufacturing. But I just get no outcome. I do not get any feedback. I do not get solutions on the issues that I am raising. I get nods and winks, that sort of thing, but nothing is implemented and nothing is done.

**Mr DAVID SHOEBRIDGE:** A repeated theme we are hearing is that everyone is giving up.

**Mr HENRY:** People are giving up.

**CHAIR:** We are investigating whether WorkCover are bullying their own employees, but they appear to be bullying all their clients as well.

**Mr GRUMLEY:** Yes, without a doubt.

**Mr HENRY:** There are some really good people in WorkCover, and I am certainly not here today to throw a bucket of cold water over the entire organisation because there are some great people in WorkCover. There are some people in WorkCover who inspire me. They joined that organisation for the right reasons but they are not being allowed to do the job that I think they thought they were going to be doing because of the current culture. I think if we can address that then we can make it a better place.

**CHAIR:** You make a strong statement in your submission where you say that WorkCover regards the employers as their clients not the workers.

**Mr HENRY:** That is correct.

**CHAIR:** Is that the experience you have had?

**Mr HENRY:** Absolutely. In fact it is not just our experience; it has been openly said. WorkCover is not embarrassed in saying that. I find it confusing. I have read the objectives of the Work Health and Safety legislation—it is about protecting workers; it is not about protecting employers.

**CHAIR:** We are coming to the end of this session, and we do have other committee sessions and meetings to follow. Are there any urgent questions or questions that members would like to put on notice?

**The Hon. ADAM SEARLE:** I am happy for my next questions to be taken on notice, but it might save time if I can outline them to the witnesses present—with your leave, Mr Chair.

**CHAIR:** You can always put them on notice?

**The Hon. ADAM SEARLE:** I am happy for them to be taken on notice.

**The Hon. MELINDA PAVEY:** So you are verbally putting them on notice.

**The Hon. ADAM SEARLE:** Correct.

**CHAIR:** There will be further supplementary questions after the hearing.

**The Hon. ADAM SEARLE:** I would just like to put these questions on notice now to save time.

**CHAIR:** We are about to finish off, so could you just run through them.

**The Hon. ADAM SEARLE:** The questions go to the period of time over which your organisations have been experiencing the difficulties you outline in your submissions. Has that been over the last year or two years? How long has it been? The second aspect is, to pick up on the question from the Chair, you also talk about discussions had with inspectors about how they feel that their own autonomy in enforcing the legislation, has effectively been knobbled by management. Does that call for some legislative change to reinforce the independence of inspectors?

**CHAIR:** These are questions to be taken on notice because there is not time for them to be answered now.

**The Hon. ADAM SEARLE:** I am happy for them to be taken on notice if that is necessary, Mr Chair.

**CHAIR:** Mr Shoebridge, did you have a question on notice?

**Mr DAVID SHOEBRIDGE:** Yes, although I am happy to do it in the same form. WorkCover says that its response to the PricewaterhouseCoopers inquiry has been to develop in part this wellness model. Rather than focussing on addressing the cause of bullying it focuses on improving personal resilience—the physical, social, emotional and financial wellbeing of the person being bullied—to make them more resilient to the situation they are in. I wonder if that is your view of how they treat bullying more broadly, not just within the organisation but also for injured workers who have been bullied and the like. Are they focused on improving the resilience of the person being bullied rather than addressing the cause of the bullying in the workplace?

**CHAIR:** Witnesses will have to have that question on notice. We are due to finish this session now, and we have other commitments. I would like to make a point in relation to the concerns raised earlier regarding the possible impact on witnesses providing evidence today. I put on the record that at the beginning of this inquiry we approached the Chief Executive Officer of WorkCover, because there were some fears held by witnesses. We sought assurances from WorkCover that there would be no intimidation of witnesses who gave evidence to this inquiry. The committee said it would take it very seriously if there were to be any evidence of that relayed back to this committee by witnesses appearing today. I thank witnesses for their attendance today and for the work they have put into their submissions. There may be supplementary questions sent to witnesses by the committee. For questions taken on notice, witnesses will have 21 days to answer them.

**(The witnesses withdrew)**

**The committee adjourned at 3.00 p.m.**

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Evidence in camera by **WITNESS A:**

**CHAIR:** Do you wish to make an opening statement?

**WITNESS A:** Yes, thank you. I thank the Chair and Committee members for the opportunity to meet today. I am glad that you found my submission of interest. Before discussing the submission, I would like to make a brief statement and refer to a contemporary matter that goes to the heart of this inquiry. I am sure you have no shortage of materials to review, so I apologise for giving you a supplementary submission today. However, I think the supplementary submission will give you an important insight into the difference between the corporate position and the realities for staff when something goes wrong for them.

Trust is an important part of any relationship, including an employment relationship. I think it is fair comment to say that there is very little trust at WorkCover between staff and senior management. This is a constant finding in staff surveys. My feeling is that part of this situation is a legacy issue generated by low levels of commitment to work health and safety within the organisation over many years. This lack of trust in the internal work health management systems is visible in the 2012 People Matter survey, when only half of WorkCover staff agreed that "bullying and abusive behaviours are prevented and discouraged". That is an extraordinary finding coming from the workforce of the safety regulator—50 per cent.

I would like to emphasise that this finding is not simply the result of staff reacting to legitimate performance feedback, despite WorkCover management offering this explanation. In my view the survey finding is a reflection of poor management practices generally and safety practices in particular. In my submission I have suggested that a new mechanism for handling allegations of bullying needs to be created for WorkCover staff. This is because of the poor track record of having reports of bullying managed internally. There is also a conflict of interest in having an inspector review a safety complaint from within their own workforce or having a fraud investigator take a look at a workers compensation claim from one of their colleagues.

Similarly, health and safety representatives of WorkCover are able to issue provisional improvement notices and cessation of work orders, and these notices can be reviewed by a WorkCover inspector. Again, there is a potential conflict of interest. A minute ago I mentioned the poor track record of having reports of bullying managed internally. I would now like to speak briefly to my supplementary submission, which illustrates how this record continues, even today. I have some supplementary submissions to table.

**CHAIR:** Thank you.

**WITNESS A:** A member of WorkCover staff has requested that I bring her de-identified case to this inquiry as evidence of current problems with the investigation of bullying complaints. Tomorrow this person will leave WorkCover. She no longer has a job at WorkCover. She believes there is a direct connection between her lodging a complaint of bullying from her supervisor and now losing her job in a restructure. A one-page summary of the case is provided for members. While I will not read the summary, I would like to highlight deficiencies in the procedure used by WorkCover to investigate her report of bullying. Witnesses to the bullying were identified by the complainant in writing but they were not interviewed as part of the investigation. Throughout the investigation the complainant was not advised of any progress of the complaint or even whether it would be investigated externally or internally.

The complainant was not advised about the investigation procedures, nor of any specific findings, recommendations or actions taken regarding her complaint. These deficiencies mean that a proper investigation has not taken place. In addition, an external investigator was not appointed. Although this may not always be necessary, in this case it was because the WorkCover member of staff initially allocated to receive documentation from the complainant . Despite this fact, no conflict of interest was declared by the original staff contact for the investigation. It was left to the complainant to raise this issue when she became aware of it. Further, correspondence dated 26 September 2013 from the Minister for Finance and Services stated:

All investigations are currently undertaken by an external investigator. Complex investigations or investigations where there may be a conflict of interest will remain with external investigators.

I have given a redacted attachment there. Sorry, the letter is not redacted. The experience of the person leaving WorkCover tomorrow is inconsistent with the Minister's statement. Instead, her complaint was investigated



internally and there was also a conflict of interest. This case demonstrates, I believe, that there are continuing problems with WorkCover's management of reports of bullying. It is one of several problematic cases of which I am aware. I hope my participation in your inquiry helps you understand some of the issues faced by staff at WorkCover. I have some points of information to reply to some of the questions that were raised this morning. That is the end of my statement and submission. I am happy to take questions or discuss anything.

**The Hon. CATHERINE CUSACK:** Before we start questions, can we clarify the witness' wishes regarding the status of this document? For example, is it something that he wants kept in confidence?

**CHAIR:** The supplementary submission?

**The Hon. ADAM SEARLE:** Is it to be treated as completely confidential or as regular correspondence?

**The Hon. CATHERINE CUSACK:** Exactly.

**The Hon. ADAM SEARLE:** In particular, the Minister's letter.

**The Hon. CATHERINE CUSACK:** Can we just clarify his intentions in tabling this document?

**The Hon. ADAM SEARLE:** So we treat it appropriately.

**CHAIR:** The document you have just provided now, would you like us to keep that confidential?

**WITNESS A:** I guess in a sense I am guided by your advice. I think this is important information. I do not know how it is best used by this Committee.

**The Hon. CATHERINE CUSACK:** We can use this information but we would like to know—

**CHAIR:** Can we publish it?

**The Hon. CATHERINE CUSACK:** And obviously ask questions about this incredible letter but we would need to be able to provide that letter to the Minister.

**CHAIR:** To clarify one question, the lady you are referring to, do you have permission from her for it to be made public?

**WITNESS A:** Yes, I do.

**CHAIR:** What does she want? She has lost her position anyway so they cannot hurt her.

**WITNESS A:** Exactly. She is quite happy for it to be tabled here today. I do not know if there are any other issues. I am happy for it to be tabled.

**Mr DAVID SHOEBRIDGE:** To then be publicly available or to be confidential, like your confidential submission?

**The Hon. CATHERINE CUSACK:** So we can make inquiries about it.

**CHAIR:** If she is happy for it to be made public.

**WITNESS A:** Yes. I am happy for it to be made public.

**CHAIR:** That helps us.

**The Hon. CATHERINE CUSACK:** In relation to the other parts of the document you are tabling, so the supplementary submission—

**The Hon. ADAM SEARLE:** With the witness' name perhaps taken off the top.

**The Hon. CATHERINE CUSACK:** Just to be clear, it is the correspondence—

**CHAIR:** We will discuss it in the Committee meeting when we finish with the witness.

**The Hon. CATHERINE CUSACK:** I just need his wishes to consider what to do.

**Mr DAVID SHOEBRIDGE:** I assume you are okay with the letter—

**CHAIR:** I just said we will discuss what to do with the document at the end of the hearing in the Committee meeting.

**The Hon. CATHERINE CUSACK:** But I do not think he intends for the first part to be made public.

**CHAIR:** He said all of the document a moment ago.

**Mr DAVID SHOEBRIDGE:** Can we deal with them one at a time?

**The Hon. MELINDA PAVEY:** Are you happy for the whole document to be made public?

**WITNESS A:** Yes, I am. On reflection I am, yes.

**CHAIR:** That is what he said.

**The Hon. MELINDA PAVEY:** No, he did not. He said "on reflection".

**WITNESS A:** I think I would ask that my name be taken off the top of the supplementary submission.

**The Hon. ADAM SEARLE:** Can I also suggest that the very final document might be problematic because even with the proper blacking out of the name, given the subject matter it would be easy to identify the person.

**The Hon. CATHERINE CUSACK:** The documents I am interested in are the correspondence. You might like to give further thought to your submission but if we can look at the correspondence that would be helpful.

**CHAIR:** I will ask you before you leave today what you finally want us to do, and then we will discuss what we think we should do.

**WITNESS A:** Okay, thank you.

**Mr DAVID SHOEBRIDGE:** You say at some point in your submission that you helped people give evidence to the PricewaterhouseCoopers inquiry, but little of their evidence was translated into the report. Can you expand on that?

**WITNESS A:** I guess overall it was a very good experience for people to be able to go somewhere, to the people from PricewaterhouseCoopers, to speak of their experience. They had previously had no place where they could take their story. I thought the staff of PwC were quite sympathetic and had a good ear; they were very supportive. Several of the people broke down and were very upset, and I thought they were handled very sensitively, so there was good skill shown at that level, but in reflecting the experiences that they spoke of, it all just got screened out—a lot of that information, a lot of the detail, was just filtered away—and I think some of those people were very disappointed to see that there was no reflection of what happened to them in the PricewaterhouseCoopers report.

**Mr DAVID SHOEBRIDGE:** What about their actual complaints? people go to PricewaterhouseCoopers and give their personal stories. Those personal stories are not reflected in the PricewaterhouseCoopers report. What then happened to those individual complaints?

**WITNESS A:** A lot of people I suppose were re-traumatised, in a sense, they were upset again, they were reinjured almost, one or two people.

**Mr DAVID SHOEBRIDGE:** Did any formal process happen? What has happened to those stories?

**WITNESS A:** I would say about two-thirds of those people have left the organisation. I could tally it up, but it would take a little bit of time, I could not do it here and now. Most people left.

**Mr DAVID SHOEBRIDGE:** Maybe you could provide that on notice?

**WITNESS A:** Yes.

**Mr DAVID SHOEBRIDGE:** What about an investigation of their bullying complaints and any remedial action?

**WITNESS A:** There was no follow through. These people were left unsupported by both the inquiry and the organisation afterwards. There was no system in place to capture those people, to honour their experience. , there was a change of the director of HR—she went very quickly after the inquiry—and the new director coming in was the support person. She was quite good, I thought, but knew nothing of the experience of these people. She was meeting a lot of staff for the first time. A number of people did go because that was the only place to go to.

**CHAIR:** Had those people made official complaints to WorkCover before the inquiry?

**WITNESS A:** Some of them did, I am sure of that. I do not know of some of the other people directly. Some people go to a health and safety committee member for support and advice, some go to their friends, some go to the union. I do not know everybody's experience. A couple of those people I supported throughout the inquiry came to me because friends of theirs said, "Go and see be okay." I didn't know all of their case histories.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014

**The Hon. MICK VEITCH:** Has WorkCover ever conducted a survey or a review of the effectiveness of the Employee Assistance Program [EAP]?

**WITNESS A:** No, it has not. It is a pretty simple evaluation model, you just put a survey out to staff. It could be done in all sorts of ways, but they have never evaluated the service. I have used the service; I have had several different counsellors. They are quite variable, in my experience.

**The Hon. MICK VEITCH:** That is why I was asking, because that is the feedback generally.

**WITNESS A:** Yes.

**The Hon. MICK VEITCH:** It would appear that there has been an opportunity at some stage to refine and improve the Safety, Return to Work and Support division's complaints handling procedure. Do you know what those refinements or improvements may have been?

**WITNESS A:** EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014. There was a flood of them that broke a bit of a policy review drought,  
EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014

**The Hon. MICK VEITCH:** I am happy for you to take that on notice, have a look and come back to us. It is just to do with refinements and improvements to their complaints handling procedure in recent times.

**WITNESS A:** Okay, yes.

**The Hon. MICK VEITCH:** Often issues around bullying will talk about the management's right to manage, and often there is a conflict or perceived conflict between what is management and what is bullying. Has there ever been counselling of management and senior management about how they can manage personnel, because management itself is quite a difficult discipline?

**WITNESS A:** I am sure there has been management training in how to give feedback and performance review. I do not know if it is hitting the mark. I think most people who would come to me with an issue in that kind of area would say they feel they are being micro-managed or they are being handled quite unskillfully. Part of it is technique in giving feedback to people: you have to look for the positive. I think it is quite legitimate, it is one of the functions of management to manage, and that means doing it skilfully and carefully, coaching the person through.

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014

**The Hon. ADAM SEARLE:** In relation to page 4 of your submission, "High Corporate Risk Tolerance", where might we source a copy of the risk tolerance and rating matrix? Is it publicly available or is it something you could provide to us?

**WITNESS A:** It is on the WorkCover Intranet and I attached a copy of it as Appendix 1.

**The Hon. ADAM SEARLE:** I do not appear to have a copy, but apparently the secretariat staff has it. When was this matrix developed? How long has this been the case?

**WITNESS A:** I do not know when it was first developed. It is still in place; it is the current policy.

**The Hon. ADAM SEARLE:** When did you become aware of it?

**WITNESS A:** Probably about five years ago. It references an Australian standard and that standard was deleted in 2009, so there is not good housekeeping practice in terms of referencing back to the in-force Australian standard on risk management.

**The Hon. ADAM SEARLE:** At pages 11 and 12, subcategory [g], you make some observations about the culture of the safety inspectorate.

**WITNESS A:** Yes.

**The Hon. ADAM SEARLE:** To what extent do those cultural features of the safety inspectorate inform or underpin the other problems you identify with the organisation in this submission? For example, the personal experiences you outline—these are not themselves safety inspectors, but were some of them safety inspectors? Is there some general cultural trait that emerges from the inspectorate that has permeated the organisation and created this situation?

**WITNESS A:** Yes, I think it is a pretty simple industrial history that can help explain this. Until recent times WorkCover required that applicants for entry into the safety inspectorate have a trade certificate. This has since lapsed or been relaxed a little bit and they are looking for people with a broader range of skills, but if we reflect on the vintage of the leadership group, the age of the leadership group in the Work Health and Safety division, most of these fellows got their apprenticeship at a time when basic industry was pretty rough, there was a lot of victimisation and roughing-up of apprentices. We have all got an eye for that sort of period in history, it has not completely passed but we are very happy that our kids are not subjected to that sort of

experience. These are people who have come through that kind of industrial experience, they have entered the workforce as a safety inspector and they have risen up the ranks. My suspicion is that some of these people just do not get the idea about psychological pressure. Toughen up. Everybody got bashed up a bit in the workplace; it was just part of initiation rituals. I think that is a legacy that has carried forward and is part of the thinking.

Also, when we reflect on the scope of the Work Health and Safety legislation in force in New South Wales up to 1983, there was only the Construction Act as well as the Factories, Shops and Industries Act. All general industries were not covered. From 1983, when the Act was amended, all industries became covered and a focus on emerging psychosocial issues became prevalent increasingly from about 15 years ago when the Europeans who lead in work health and safety started to pay a lot more attention to this development. We have moved beyond the period of controlling physical risks to work health and safety, machine guarding, better designs of equipment and greater knowledge about the health effects of chemicals in the workplace—these sorts of things—so the emphasis has been on psychosocial issues: fatigue, bullying, occupational violence.

These sorts of issues have emerged and they are more costly injuries, and I think these are difficult for an old style inspector to get their head around—not impossible completely, but it is a bit foreign to the common practice of going and looking if somebody has edge protection or a safety harness on a building site. We cannot see these sorts of injuries. It is the constant, relentless grinding pressure that takes people down. That is what mental stress looks like. They are not used to dealing with these issues. They do not know how to deal with them. They might know it is a problem, but they do not know, in practice, how to deal with them. This has permeated their thinking—if I cannot see it, is it real problem?

**The Hon. ADAM SEARLE:** For example, if a piece of machinery is dangerous, you can put a guard on it. If a substance is dangerous, you can contain it.

**WITNESS A:** Yes.

**The Hon. ADAM SEARLE:** But psychological injuries, of which bullying may be one, are not physically tangible.

**WITNESS A:** That is right.

**The Hon. ADAM SEARLE:** Also, there has been an historic view there is a higher subjective element involved. What I perceive to be bullying may not be what you perceive to be bullying. Someone who is doing the bullying may not perceive that that is what they are doing.

**WITNESS A:** That is right. So the test of reasonableness comes into play, the test of foreseeability. We do not have a dose-response relationship between exposure to psychological risk and the health effect. For chemicals, we look to toxicology. We know how the science of poisons works because we have a dose-response relationship. We do not have that kind of model for psychological pressure.

**The Hon. ADAM SEARLE:** Does that mean the organisation's ability not only to respond to allegations of internal bullying but its capacity as a regulator to deal with bullying in the wider workforce is compromised because the organisation and its staff are not properly equipped to understand and deal with the notion of bullying?

**WITNESS A:** Yes, I think that is a fair comment. I do not know what the current staffing numbers are in Queensland, but about seven years ago I became aware that they had a psychosocial unit in their inspectorate. They were staffed up with final year psych students, professional psychs, and they gave specific training. They had about 16 people in that unit seven-odd years ago. One of their people came down and gave us a talk about some issues. We have struggled. We have had about 1.5 staff allocated in New South Wales to manage psychosocial risks. That says you are not going to make—

**The Hon. MELINDA PAVEY:** That is the silver bullet, in your opinion

**WITNESS A:** Resourcing and training would help, and acknowledgment. I think all of industry is struggling with this issue. The Australian economy is trade exposed. We have to compete with third world countries that do not follow safety practices. This puts pressure on industry—businesses here—to be competitive. How do they stay economically sustainable and adopt humane work practices? That is the conundrum we are trying to deal with. It is within that space that WorkCover has not been getting traction. The

drum in WorkCover is that it is really difficult to investigate bullying complaints. That is taken from an evidentiary standard, from an inspector's perspective. If you are going into courts to prosecute—and we have not got a strategic prosecution in New South Wales around bullying—it is far more gross physical violence, criminal assaults.

Some years ago an apprentice was wrapped in industrial strength plastic and they set fire to the kid. That is not your typical instance of bullying. That is something quite extreme. That is the space we are not getting traction. I think it is partly because we do not recognise that it is a serious problem. It can be difficult to deal with, to investigate, but we do not want a prosecution in every instance of a workplace where there could be some bullying taking place. We want a solution for that. We are not looking for a prosecution evidentiary standard. That is one of the obstacles. It is too hard to get into that evidence, but you want prevention. You want a simple solution put in place. You want some healing for the people who feel that they are under work pressure.

**The Hon. CATHERINE CUSACK:** I have to ask you about the constant restructuring that is occurring. It sounds to me that WorkCover is a toxic workplace, with everybody being routinely sacked and having to reapply and

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**WITNESS A:** It just buzzed through the Gosford building.

**The Hon. CATHERINE CUSACK:** It seems inevitable that behaviours such as bullying will emerge from a workplace that seems to be in so much turmoil—deliberately put into turmoil, if I can put it like that.

**The Hon. MELINDA PAVEY:** Can you put the answer in context for how long you have been there, and was it bitter before you went to Gosford?

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014

**Mr DAVID SHOEBRIDGE:** What date?

**WITNESS A:** EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014. You had a question about relocation and what effect did that have. I thought it sent a shock through the organisation. A lot of people knew things. They were networked, they had technical knowledge. They were operators; they knew how to make things work. They had to leave the organisation—

**The Hon. MELINDA PAVEY:** Great corporate knowledge.

**WITNESS A:** Almost a total wipe-out in some areas. It never really stabilised, in my experience. It had the shock of two Independent Commission Against Corruption investigations that followed into fraud in the licensing unit and fraud amongst certificate assessors who do assessments of competency of people operating high-risk plant. That left a large number of people in the licensing unit, in particular, quite distressed. They were not resourced to do the job properly. When it was found that a number of their colleagues had been selling tickets, that was just amazing. These were people coming to work, sitting alongside you, and the computer systems, for example, allowed a single person to operate a transaction from start to finish. There was no dual officer input. That integrity was required by the Independent Commission Against Corruption. That undertaking was given by WorkCover to the Independent Commission Against Corruption: Yes, we will put in a dual officer determination system. I have had reliable reports that that has dropped off. That is not a feature of the software now used to generate tickets.

My point is that this was on the back of the relocation and the Independent Commission Against Corruption inquiries in rapid concession. The restructuring methods have been very different at WorkCover in the past 18 months. There is now spill and fill on a grand scale. Previously there would be a bit of a corporate jumble, a bit of a restructure but everybody got a seat when the music stopped. That has changed completely. WorkCover is only one of two public sector agencies using a new system of applying for jobs. It has completely confused everybody. The risk now is that if you do not get your application right, you will run the severe risk of losing your job. That is a new restructuring method. It is a new method of applying for positions.

**The Hon. MELINDA PAVEY:** What do you mean by getting the application right?

**WITNESS A:** In the training of the new recruitment method, how to write your job application, some information sessions said you can apply in the old format—selection criteria, here are your claims against it. Other training sessions were told you cannot do that. Some people went forward, lodged their applications with the old criteria and they missed out on being considered. They were short-listed out. There was a lot of confusion generated, a lot of friction, a lot of job insecurity around these new techniques, I guess you would call them. The work health safety division, was pretty much in a constant state of change. Did we really get the previous restructure that wrong that we have to go through another restructure and another restructure? Staff often ask where is the evaluation? Where is the business case for this now being the best proposed structure for that division?

**Mr DAVID SHOEBRIDGE:** How many restructures have you been through?

**WITNESS A:** The past 18 months, probably three.

**Mr DAVID SHOEBRIDGE:** Over the years?

**WITNESS A:** Probably about six.

**CHAIR:** Are the restructures being used to get rid of staff?

**WITNESS A:** I did not think so. I did not think it was weaponised, if you know what I am trying to say. I do not think a restructure was used on a grand scale. Now I think it is being used to get rid of people. We have had the instance of the Wollongong office having some 15 inspectors—almost all of them were slated for demolition in the recent restructure. The peculiar thing is that having applied a staff freeze, I think that policy over the last half a dozen years has been problematic for the organisation as well because you do not control where the staff vacancies are happening. So you are always reacting to job loss, to knowledge loss rather than managing it proactively. That has been a problem. Having reaped the benefits of a staff freeze and having shovelled some inspectors out the door in the latest restructure earlier this year, we now have accumulated 50 inspector vacancies in New South Wales. That is the work of 50 people that has not been getting done. That is a lot of service to industry that has not been provided.

**The Hon. ADAM SEARLE:** In what period have those vacancies arisen?

**WITNESS A:** You can reliably say since the former Government's staff freeze was applied. I am guessing that is about five years ago.

**The Hon. CATHERINE CUSACK:** How many inspectors are there?

**WITNESS A:** WorkCover will tell you that they have 315 inspectors. That figure represents the number of authorities issued. Not all of those authorities are issued to a field-based inspector. Most people would obviously think when they hear the term "inspector" they are fieldies—they are a field-based inspector going from site to site, looking at what people are doing, responding to accidents, this sort of thing, doing safety audits, doing safety work in the field. From that figure of 315, you have to subtract probably about 10 authorities that are issued to people in management positions who will never visit a work site and use the authority. This is just a way of giving some managers a vehicle, as every inspector gets under the inspector's award. That is a tool of the trade. You have probably lost about 10. Then you have some authorities that are correctly issued to departmental professional officers—scientists, basically, toxicologists, whatever. They might need the authorities to subpoena documents and to get into a workplace to take, for example, air samples, something like that. The old chorus used to be WorkCover has more than 300 inspectors. The figure was actually 301 authorities that were issued. That was the case for many years—more than 300 inspectors.

**The Hon. CATHERINE CUSACK:** How many are there now?

**WITNESS A:** The number of authorities is 314. You are probably close to 300 real inspectors.

**The Hon. CATHERINE CUSACK:** And there are 50—



**WITNESS A:** Vacancies.

**The Hon. CATHERINE CUSACK:** —vacancies in addition to the 300?

**WITNESS A:** No from the figure of 314, you would have to subtract 50. You will have to ask WorkCover management on Monday how the arithmetic works.

**The Hon. ADAM SEARLE:** The question would be how many field-based inspectors are currently working today?

**WITNESS A:** Exactly.

**The Hon. CATHERINE CUSACK:** In relation to the board governance, the risk management matrix needs to be approved by the board as part of its governance arrangements?

**WITNESS A:** I would think so. Yes, that would be reasonable.

**The Hon. CATHERINE CUSACK:** Is there much awareness of the board and the role of the board? I look at the annual reports and the board is not even in the diagrams.

**WITNESS A:** It is a non-entity. It does not exist for most staff. We are asked to provide reports periodically, not everybody, . It is all going up. There is no news that comes down. We have no idea what papers the board receives, what decisions they are making, how they exercise due diligence as board directors. I have no relationship with these people. They are a mystery to me.

**The Hon. MICK VEITCH:** It is a board of governance?

**WITNESS A:** I think so. Sorry, I cannot be precise on that.

**The Hon. CATHERINE CUSACK:** This is an extraordinary situation. This whole situation in relation to the board is just gobsmacking.

**CHAIR:** I have some further questions before your session has concluded. Thank you again for returning to help us. On page 4 of your submission you refer to a joint consultative committee. Is that the same as the advisory council or is it a separate body?

**WITNESS A:** No, the joint consultative committee [JCC] is the formal process where the employer, WorkCover management, meets with staff representatives in the form of the union. These used to be held quarterly or as required. We have not had a proper JCC for two years now.

**CHAIR:** Have you asked for meetings?

**WITNESS A:** The organiser definitely has asked.

**CHAIR:** And management just says no?

**WITNESS A:** They told us at a meeting last week that they have a date for the next upcoming JCC.

**CHAIR:** On pages 9 and 10 of your submission you are very critical of the PricewaterhouseCoopers [PwC] inquiry and, by what you say, justifiably. The suggestion was that the inquiry was not going to be a fair dinkum inquiry because it was the body that services WorkCover—almost like a partner—or vigorous. You have listed all the things it did not do. On page 10 you said it never answered all the key questions you have listed.

**WITNESS A:** My feeling is that PwC is big enough and professional enough to quarantine off its actuarial services to the organisation and offer consultancy services with no conflict of interest. That is my personal view. Other people are far more concerned about that conflict not being managed properly. I think PwC should have been able to provide WorkCover with far more detail in its report about where things go wrong so that the organisation would be in a position to know what to do.

**CHAIR:** That is what I was getting at. Normally PricewaterhouseCoopers is very efficient but for some reason in this inquiry it seemed to be very inefficient.

**WITNESS A:** Yes, exactly.

**CHAIR:** Not its usual standard.

**WITNESS A:** I agree.

**Mr DAVID SHOEBRIDGE:** Can I ask one question about the Butler case?

**CHAIR:** Yes.

**Mr DAVID SHOEBRIDGE:** What have been your observations at the workplace about WorkCover's response to the decision of Deputy President Harrison in the Butler Case?

**WITNESS A:** Speaking frankly, the general manager of the Work Health Safety division was the delegate receiving the investigator's report. He was one of the four people who signed off on the dismissal of Mr Butler.

**Mr DAVID SHOEBRIDGE:** What is the name?

**WITNESS A:** The name? John Watson. John was lucky enough to have a holiday in Europe shortly after the Butler decision was handed down. Colleagues were in the room when the next management team meeting happened for that division. John opened the meeting with words to the effect, "Let me get one thing straight about this Butler decision. Let me just say that WorkCover and the IRC will continue to have a disagreement of opinion in that decision." End of story. No discussion entered into. That says a lot of things.

**CHAIR:** One final question. There seems to be a problem about access to emails and so on. Is it possible that WorkCover has some surveillance of emails? Many companies now are doing that to check employees are not using it for private purposes or for looking at internet pornography and so on. Is it possible that WorkCover has that system and you are not aware of it?

**WITNESS A:** WorkCover uses a piece of software called Blue Coat. It categorises all websites that are visited into certain predefined categories. That is quite okay. If you want to dispute the finding, if you are blocked from going somewhere, you can lodge a request for service and that category being blocked will be reviewed. That is okay. The employer needs to do that. It has legitimate authority to do that. But one of the issues that comes up constantly in investigations is that people in the employment relations team sit and study what people are doing in their emails and on websites for extraordinarily long periods of time. They will sit and go back five, six, seven, eight and 10 years to collect enough misdemeanours to then warrant a formal investigation proceeding. So the DPC guidelines for the misconduct investigations allow a preliminary investigation to go on pretty much forever. So someone can be trawling around in my emails for years looking for anything I may have done wrong to get the basis for some formal investigation going. I am not sure that is a reasonable use of time.

**CHAIR:** Thank you very much for your support. We congratulate you on your thoroughness and courage in continuing to do all you can to improve WorkCover on behalf of the staff.

**WITNESS A:** Thank you Chair. In closing, I would like to say that I feel that my personal values are in conflict with my organisation's performance. I see myself as a safety professional. I do not see my organisation's performance as acceptable for a safety regulator. I think a lot of people like myself feel tension or turmoil around their values being conflicted by the management of this organisation.

**CHAIR:** One last question regarding the supplementary submission, would you rather us keep it confidential as it may identify you?

**WITNESS A:** I am happy for that to be public with my name removed from the statement.

**The Hon. CATHERINE CUSACK:** Thank you very much. It is much appreciated.

**CHAIR:** If you are happy with that, thank you. And thank you again for your attendance.

**WITNESS A:** Thank you all. One last thing, I have two research articles for consideration by the Committee. One is about minimising mental stress amongst workers and the other is to do with the UK experience of having a tribunal make orders and findings around bullying issues. A number of people, including myself, have suggested that you need a new mechanism to deal with reports of bullying at WorkCover. From 1 January next year the Fair Work Commission will be able, all other things being equal, to have a rapid response mechanism to take on complaints of bullying. This is the most similar tribunal apparently operating in the world. So it is a commissioned piece of research and should be of interest.

**CHAIR:** Are you happy for those to be made public? They are simply research papers?

**WITNESS A:** Information. Thank you.

**(The witness withdrew)**

Evidence in camera by **HOWARD CHARLES BELL**, sworn:

**CHAIR:** We are pleased to have Dr Bell with us. Thank you for coming in. We appreciate your help. In what capacity are you appearing before the Committee?

**Dr BELL:** I am appearing as an individual but also as somebody who holds the position of Chair of the Public Service Association Delegates Committee. I have only just been elected into that Chair before I provided the written submission to the inquiry. I guess I am here in a hybrid capacity.

**CHAIR:** Would you explain further the committee you represent?

**Dr BELL:** Yes. I am a principal lawyer at WorkCover working in WorkCover's legal group. Of course, we now service the whole of the division, that is, the Safety, Return to Work and Support division. I am also a member of the Safety, Return to Work and Support Division Health and Safety Committee.

**CHAIR:** It is a WorkCover committee?

**Dr BELL:** It is a WorkCover committee, that is correct. I am also a Public Service Association delegate and I have recently, in the last week, been elected as Chair of that delegates committee. I am also sitting on the psychological wellbeing subcommittee of the Safety, Return to Work and Support Division Health and Safety Committee.

**CHAIR:** Do you wish to make an opening statement?

**Dr BELL:** I do, thank you. Thank you for the inquiry. I think it is a wonderful opportunity for people who are members of WorkCover to present some of the material they are aware of in relation to your terms of reference. I put together a written submission some time ago within the closing date I think, which was 24 August. I have reviewed that very briefly before coming here today. I have two items of additional material. I have prepared 10 copies of them. Perhaps I will give those to you now. I am not trying to bombard the Committee with additional information because I am sure you are saddled with more than enough evidence and information one way and another. The two documents I have tendered are, firstly, a document, which is stapled at the top called "Additional material tendered by Howard Bell". It contains a number of annexures.

The first annexure is a very short document produced by the Michigan Technological University Office of Institutional Equity. It defines workplace bullying in a way that does not require intention as an element. I think one of the issues the Committee may be exploring, having regard to the terms of reference, is whether there is an intention on the part of WorkCover executives to inflict bullying. My position on that is that it does not matter because the gist of bullying, the problem of organisational bullying, is the effect it has on people as distinct from the intention. I do not sit here and say that I think there are executives who wake up every morning and work out how they can go to work and monster everybody. I do not think that would be a realistic proposition to be advancing.

I advance that first item as a piece of research that defines bullying on that page, which is labelled at the bottom "4/13" as "Bullying being an intentional repeated pattern of offensive, insulting, threatening behaviour. It is an abuse which makes the recipient feel upset, threatened, humiliated or vulnerable". As you can see in that definition, there is no reference to intent and no reference to what the perpetrator or perpetrating organisation is trying to do. Nevertheless, within the context of that working paper, it specifies, on the left-hand side of that page, what they can do if there is a bullying problem. One of the things is apologising.

The essence of my submission is simply this: There needs to be a period of renewal and recovery within WorkCover. The very best way of initiating that is for there to be an acknowledgement of past harm. If you look at the benefits drawn out from the community at large, in terms of people's psychological wellbeing flowing from the apology to the stolen generations and the apology to forced adoptions in the 1950s, an enormous amount of learning can be gained from the positives and the benefits flowing from something like that.

Annexure B is an extract from the *Guarding Minds @ Work* website. I have not downloaded all the material, because being a bit of a computer numpty, as all babyboomers are, I was not able to figure out how to

download it. I extracted the 13 psychosocial risk factors, which appear as 13 dot points making up the analysis that the website has identified. This is a free web-based strategy helping employers to protect and promote psychological safety and health in the workplace. At the Simon Fraser University in Canada researchers have identified 13 psychosocial risk factors, and each one of them is dealt with on the website. The three particularly important ones in the context of this inquiry, the problems at WorkCover and my recommendations one, two and four—which include a public apology by the Premier on behalf of the Government on behalf of the people of New South Wales—are organisational culture, clear leadership and expectation, and civility and respect.

The third annexure is an extract from *ETUI News*, which was recently publicised by the European Trade Union Institute. It highlights a deal signed in France on 22 October this year. The French Government, with trade unions and representatives of public employers, signed a framework agreement on the prevention of psychosocial risks in the public service. My recommendation, with respect, is that a similar framework agreement be entered into between the New South Wales Government, the Public Service Association, and other unions with members employed within the New South Wales public sector, WorkCover and other safety, return to work and support division agencies and representatives of other public sector agencies in New South Wales. That framework should have in its preamble either an apology of the kind I have urged on the inquiry in my written submission or at least an acknowledgement of past and present harm.

Annexure D, the last annexure, is an empirical research note from Suzy Fox and Lamont Stallworth as part of the *Australasian Dispute Resolution Journal*, May to July 2006, so it is an old piece of research. It highlights the therapeutic and cathartic value of an apology. In the quantitative study, which is the most comprehensive I have found in the limited research I have done on the impact of apologies, this sample space, which is statistically significant, identifies on page 59 a finding that overall a significant majority—67 per cent of participating respondents, both targets and non-targets of bullying—agreed either strongly or slightly that an employer apology would make a difference to them in resolving a workplace dispute with bullying at the heart of it. I tender these documents purely as a body of material that may assist your deliberations, in terms of answering a question you may be asking yourselves: Is an apology or an acknowledgement of the kind that might be recommended by an inquiry of this nature to the Government worthy of closer consideration from the point of view of healing?

The other document that I tender is from *HR Daily* and it was published today. It is an example of state-of-the-art thinking about how to resolve bullying through codes of practice, templates and other mechanisms, which may encourage organisations to become kinder. The essence of my written submission is that it is not rocket science. As an organisation, all of us—that is to say, workers, executives, union delegates—have to become kinder to each other. If we can do that, and we have the power to do that within our organisations, it would significantly enhance the psychological wellbeing of organisations and their people. That would significantly address the psychosocial hazards, which have been neglected to date. The problem is that when you ask a lawyer to make a short submission, there is an inherent risk in how he or she might interpret the word "short". I apologise for taking up extra time.

**The Hon. MELINDA PAVEY:** There are plenty of lawyers in the room who understand that.

**Mr DAVID SHOEBRIDGE:** I refute it.

**CHAIR:** Was the material from the focus group from your legal department?

**Dr BELL:** Yes, that is right.

**CHAIR:** How many employees were involved in that?

**Dr BELL:** From memory, about 10 of us. Across WorkCover and the Safety, Return to Work and Support Division agencies a number of focus groups were stood up. The process involved calling for expressions of interest from people who wanted to improve some of the things that were subject of a people-at-work survey.

**CHAIR:** Was it run by WorkCover itself?

**Dr BELL:** That is correct, yes. The people who came forward had different levels of interest, but all of us had a common intention of coming up with some recommendations that might help. The big thing to come out of that was how we consult and the consultative processes. The thing that really bothered me and a lot of

other colleagues, who were in some cases part of that focus group, was simply this: One of the recommendations made was that there be better consultative processes. It is a cliché these days, but we recommend that attempts be made to improve the way in which we communicate with each other and that we seek people's input before significant decisions are made.

We put a lot of work into that—a lot of our own time, energy and passion outside working hours—because we wanted to come up with the most useful and constructive, albeit somewhat critical but constructively critical, recommendations possible about the way in which things are done. We provided that to our local managers. We were told that we would be consulted on it. We also provided our recommendations to the safety, return to work and support division people and culture group, and we were told there would be some sort of feedback, response or indication of whether they thought we had come up with a lot of rubbish or useful material. Nothing happened. As I sit here today, nothing has happened.

**The Hon. MELINDA PAVEY:** Do you understand there were managers who would have liked to have responded, or is there a complete breakdown between management and everyone else? Did some people in management attempt to respond?

**Dr BELL:** I understand the question, but I am not sure of the answer. I do not know. I think that a number of middle-level managers were suffering as much as we were, in the sense that they have to lead and be led. All of us have probably been in a situation where we are in a middle-management position and have to do what we are told by those above us while making sure that those below us do what they are told. In answer to your question, I still do not know whether some managers wanted to do something, but it was met with complete and utter silence.

**Mr DAVID SHOEBRIDGE:** In your role as principal lawyer, did you have any input to the Butler case?

**Dr BELL:** I had no input into the Butler case.

**Mr DAVID SHOEBRIDGE:** How was the Butler case run by the legal department?

**Dr BELL:** I do not know. My role in the legal group is that I am a prosecutor. I prosecute breaches of the work health and safety legislation and that is all I do. As far as I am aware that is all my colleagues in the litigation branch do as well: we prosecute regulatory offences. In terms of giving advice or conducting industrial matters, I suspect other lawyers within legal group, outside the litigation branch in which I am located, do that kind of work, or maybe it is outsourced to the private profession. I do not know the answer. I now sit on a committee with Wayne Butler, because we are both Public Service Association delegates, but until the Butler case was decided and the publicity surrounding it, I did not know Wayne Butler and I had no connection with him. It took me by surprise.

**Mr DAVID SHOEBRIDGE:** Have you seen an institutional response from WorkCover to the findings of the Butler case?

**Dr BELL:** No. The only WorkCover document I have seen, from memory, refers to it obliquely and that is the WorkCover submission to this inquiry.

**Mr DAVID SHOEBRIDGE:** There must have been a lot of discussion in the workplace about the Butler case. It would seem next to impossible not to have had conversations about the report and the judgement.

**Dr BELL:** Of course there was discussion about it.

**Mr DAVID SHOEBRIDGE:** In the absence of any managerial response, what happened to that discussion?

**Dr BELL:** The conversations that we had were primarily between peers. I was not party to any discourse with management about the Butler case.

**Mr DAVID SHOEBRIDGE:** Was there any response from management to the effect that problems had been recognised and were being addressed, or a denial that there were problems?

**Dr BELL:** No.

**Mr DAVID SHOEBRIDGE:** Was there a formal response?

**Dr BELL:** No.

**Mr DAVID SHOEBRIDGE:** How does that leave the workplace? There was a very public almost shaming of the organisation and then no response from management.

**Dr BELL:** Traumatized is how it left the workforce, because we are supposed to be the custodians of people at work. The Butler case demonstrated quite clearly that we were not very good at that.

**Mr DAVID SHOEBRIDGE:** The response to the Butler case aggravates the situation because obviously employees are hurting about it and there seems to be no respect or duty of care to the employees in the organisation about how the organisation deals with the fallout from the Butler case?

**Dr BELL:** There has been a series of chief executive officer intranet communications that have gone across to all SRWSD employees, predominantly concerning this inquiry and the fact that people may be feeling a level of unease as a result of it. I think in some respects those communications have been beneficial but the lack of hands-on care for people's concerns this year, not just because of the environment created by the Wayne Butler case and the sequela of that but also the restructuring and realignments that have been going on. That has been the really hurtful thing.

After our local focus group report was issued which asked for better consultative processes and better communication processes, and there was nothing done, and after that a realignment process begun which has to this day left my colleagues and peers traumatized and distressed because of the nightmare of uncertainty that we have lived through. I have raised that nightmare of uncertainty in local staff meetings, and without any authentic response, and in some cases with comments that maybe I am overreacting to the psychological impact of the behaviour of the organisation on its people. I raised it at the first meeting with the SRWSD health and safety committee which I attended as a member of that committee back in about March or April. I said to the committee, as best as I can recall:

We need to do something more about our health and safety within the organisation rather than just looking at how we avoid trips and falls and the usual physical hazards. We need to address psychological hazards. The reason why we need to do that is because as an organisation we do that appallingly badly.

I distinctly remember using that phrase. As a result of that and as a result of the concurrence that that criticism achieved from some of my peers on that committee, we then set up a psychological wellbeing sub-committee which is still sitting and still looking at how we better manage psycho-social hazards in the workplace. We have a long way to go but I am optimistic that if we continue to work together we may be able to make some progress in that direction. But I am the eternal optimist and I hope that optimism is not misplaced.

**The Hon. MICK VEITCH:** Your submission states:

In my opinion there has, over the years, been a serious failure to provide a culture of support and empowerment to workers and in its place there has been a culture of fear, micro management and punitive or sanction-based leadership behaviour. Senior managers, as far as I can determine from my attempts to conciliate and mediate and support staff, tend to lack real empathy with their staff and to be driven by a culture of fear which is manifested by a preoccupation with key performance indicators and corporate strategic goals.

That is clearly way outside the manager's right to manage employees. You have used harsh words. Do you say there has been a long-term culture of bullying within WorkCover?

**Dr BELL:** Absolutely. I have been in the organisation for about seven years, I think now. Let me say, I love the organisation. I love what we do. I love the fact that every day we go to work we contribute to a healthier and safer world for everybody, for us as workers, for our children, for our grandchildren, et cetera. Having said that, the thing that struck me when I first started there was this rush, rush culture, this culture of everything has to be done yesterday, a culture of "Let's play that we are in the emergency ward of a public hospital. Let's focus on outcomes" which is important. We are there to deliver outcomes, and we do not step back from that.

Even just in small things, for example, in the way people email each other there was never any salutation which I found absolutely astonishing. Within a couple of days I made comments to various people who managed me along the lines of, "Can we incorporate a bit more kindness into our emails?" I know it might seem like a small thing but it grows into big things. Where it grows into big things is where I sit as a support person to colleagues and peers who are the subject of either veiled allegations of wrongdoing or poor performance or alternatively where there is some major personality clash between the person concerned and his or her manager and I have rightly or wrongly tried to step in, mediate and try to help them find a bit of common ground which all old workers try to do. It is an old habit that we have.

In the middle of those kinds of discourse which are usually on an agenda and usually prepared very carefully by myself with the person I am trying to support, "Let's get together with the managers who you are feeling scared of and we will try to work out a way forward, a way of building peace and kindness and good working relationships, cordial relationships, kind relationships." On more than one occasion when I have tried to do that, particularly where there has been somebody from people and culture there—or human resources, the name changes from time to time.

The most dramatic example of that I have referred to in the early stages of my written submission. A particular highly capable peer in my opinion was psychologically destroyed by this culture of fear that you have asked me to talk about. In the course of a very lengthy attempt to mediate the tensions between him and those who managed him, the People and Culture person interrupted—this is a person who was ill who had been through serious medical treatment which may or may not have been work-related but it was a brain tumour and he had been very, very sick—and said, "I know this is not on the agenda but I am going to now tell you something which is going to cause you even more stress."

I thought "Bloody hell. We are here to try to build peace and kindness and this is going from bad to worse." The gentleman from People and Culture who I will not name because this is not about naming people then said, "I am going to have to subject you to an investigation because you are not performing to the standard that you should be performing."

**The Hon. MELINDA PAVEY:** The man with the brain tumour?

**Dr BELL:** Yes. I was a bit shocked. I said, "This is not actually on the agenda but can we have some particulars about this, please?" When my colleague had recovered his composure he also asked for particulars. They were not provided. Nothing was forthcoming. We continued to try to conciliate, negotiate the interpersonal issues unsuccessfully unfortunately; the tensions continued. When the meeting finished I then said to my colleague, who is not with the organisation anymore, "Do you want me to follow up? Do you want me to renew my request for particulars about your performance issues?" He deliberated about that and ultimately said, "No, let's just wait and see." Sometimes you're between the devil and deep blue sea in a situation like that. Let sleeping dogs lie or do you open up a Pandora's box?

The long and the short of it is that that particular issue was never put to rest. Ultimately it meant that when the restructure or the realignment that I have talked about in general terms came to pass this person came to me each day in a greater state of distress than I have seen in close to 40-something years in the workforce. I cannot remember when I started back in the 1970s. He said to me, "I am damned if I do and I am damned if I don't. If I apply for a position and win it they are going to monster me out of the place. I am better just not contesting it." This was a person of great talent, a person for whom I have enormous respect. He is a person used to, as a reasonably good robust practitioner would often bounce things off because I valued his opinion. He is the person I described as having been psychologically destroyed in my submission.

Because of the uncertainty that was created, particularly in the context of a realignment, the worst example of organisational bullying I have ever seen. And I have been a trade union delegate throughout my working life in the legal—law was a late career change for me—chemical industry and the retail industry before that. I have seen a lot of stuff that I would describe as bullying over the years and that is the worst one. The fact that I have seen it, whilst employed by an organisation which is designed to regulate that practise, there is no words for the distress and incalculable sadness that that causes me. But there are words for how determined I am to do my very best to improve the situation.

**CHAIR:** You talk in your submission about managers screaming and shouting at staff. It seems as though those managers need to be counselled and have a problem. Normally people do not scream and shout at employees in companies. Is there something with the selection or hiring process? Are they selecting managers



who may be good financial people but have no personal qualities of leadership or management? This has existed over a period of years.

**Dr BELL:** Sorry, my hesitation is because I know the answer to that question but it causes me a lot of grief to have to say it. Yes, in the selection criteria and selection practices historically—and I do not know about now because we are moving in a direction which is hopefully positive—the emphasis has been on technical ability as distinct from soft skills. What I mean by soft skills is the ability to bring out the best in people. I do not think there has enough attention paid to that in the selection processes historically. There may have been some changes to that over time since I was there—I do not know whether there have been; but I am optimistically hoping that there might have been.

I think part of the problem is a selection issue and part of the problem is a training issue. Ultimately we can be the best regulators, the best litigators, the best lawyers, the best investigators in the world or whatever it is but unless we can create an environment where people are empowered—where people are able to be their best, give of their best and contribute as well as their talents will allow them—we are selling everybody short.

**CHAIR:** I note that in your submission you recommended the appointment of an independent inspector general.

**Dr BELL:** Yes, that is my last recommendation.

**CHAIR:** And you feel strongly about that?

**Dr BELL:** I feel that that would be a very constructive thing to do. I think some of the current research in the material that I have circulated to the inquiry supports that, particularly that great little working paper in the first annex to my submission. It talks about three things. If you look at the third page of my stapled document, you will see there is a question. This is the document labelled "Annex A". It has "workplace bullying" on one side and on the other side it says, "What can I do?" It lists three things. There are three dotpoints where the bully is asking somebody, "What can I do if I am guilty of bullying my people?" Firstly, apologise to people you have bullied; secondly, if you feel like you are having trouble controlling your feelings then talk to a counsellor; and, thirdly, attend seminars, have training and increase your education to increase your knowledge and understanding.

I think the appointment of an independent office of inspector general would achieve all of those outcomes. I contend that we are dealing with an organisation that is intrinsically a bullying organisation—it is not necessarily an intentionally intrinsically bullying organisation but its culture has grown to that toxic level. The way to heal that and to heal its people—and to make it as an organisation better, more effective and more productive—is to set up that independent body. It would not be a body that would have to last for ever and ever; it would be a body which would arise, achieve its objectives and probably no longer be required after that.

**CHAIR:** Thank you. Are there any questions from Government members?

**The Hon. CATHERINE CUSACK:** Have you ever prosecuted a case involving bullying?

**Dr BELL:** I have not myself prosecuted a case involving bullying. I have advised on a number of potential bullying cases. In my previous role pre WorkCover I was a Public Service Association [PSA] delegate for the organisation I was working for. I was in fact the secretary of the New South Wales Police Force branch committee of the Public Service Association. I assisted in negotiating with the Police Association of NSW an anti-bullying policy for the New South Wales Police Force. It was not ultimately signed prior to my departure from that organisation. But subsequently, with some great work done by others, including the Police Association, the Commissioner eventually signed a dignity and respect charter. It ultimately became a whole of government initiative. I think it is better to have policies which are called dignity and respect or caring for people policies. I think we have to grow out of the anti-bullying concept and turn it into something positive.

**The Hon. CATHERINE CUSACK:** As someone who potentially would be prosecuting a case, I am interested in your views on the legislation and how it deals with the issue. It seems a bit more explicit than the Victorian example.

**Dr BELL:** I think the old act was better in that regard. The old act, the Occupational Health and Safety Act 2000, had a regulation within it which required employers not just to provide a safe system of work but also

to have a plan for addressing psychological hazards. That included bullying, workplace violence and harassment.

**The Hon. CATHERINE CUSACK:** Did that have to be a plan which was written down or could it just be a plan in your head?

**Dr BELL:** To comply with the legislation it did not have to be written down. It was more as a union activist that I embarked on this kind of discourse with employers. Invariably I would ask the question, "Where is your plan for managing psychological hazards?" If they did not have one then that was one of a number of possible indications that they were not taking it very seriously. The strength of the new act, although it is not expressly set out there, is that section 19 of the Work Health and Safety Act 2011—which is new and flavoursome—provides a very general duty on employers to take all steps which are reasonably practicable to ensure the health and safety of workers and people associated with the employers.

There is also a due diligence requirement under section 27 of the new act. It requires not just directors of companies but also executives and people who are officers of the organisation to take all reasonable steps to ensure that the organisation is resourced and makes use of those resources—and is set up and makes use of those facilities—to ensure that the organisation, of which they are an officer, complies with its general duty of care. I think that is a really powerful thing. The only way to make it more powerful would be to have something specific in it about bullying.

**The Hon. CATHERINE CUSACK:** Why then is nobody highlighting the role of the board of WorkCover—and the directors on the board and their accountability for the wellbeing and performance of the organisation as a whole?

**Dr BELL:** I do not know the answer to that question. If I was asked to suggest a way of achieving that then I would suggest the following. Our primary means of engaging with the senior management of WorkCover through the union process is what we call the Joint Consultative Committee [JCC] process. That is a committee that works very well in some public agencies. It used to work very well in the police, where I worked previously. It does not work well in the WorkCover environment, in my experience, because it does not sit.

**The Hon. CATHERINE CUSACK:** What percentage of WorkCover employees do belong to the union?

**Dr BELL:** I should know the answer to that question as the chair of the Public Service Association of New South Wales Delegate's Committee. I can take that question on notice and come back to you with that figure. I will find that out for you. I suspect it is not a particularly exciting percentage.

**The Hon. CATHERINE CUSACK:** I am quite interested in the role of the board as the governing authority.

**Dr BELL:** The Joint Consultative Committee in my view would work best if it met on three levels—that is to say, firstly, if it had regular meetings with the board or a delegation of the board, and if it met with the CEO. That does happen on an informal basis—Julie Newman is very good at informal communication with all the senior union delegates. I have the good fortune of being able to speak to her in a very relaxed way, and with Greg Barnier. I find that very helpful. I know that Jann Jeffries also finds that very helpful. But if we had good regular, formal as well as unstructured dialogue with representatives of the board then I think that would be very helpful.

The reason why it would be helpful is this: We are under-resourced in legal services. Everybody is under-resourced, I know that. We are making our very best endeavours and working very hard to reduce the amount of time it takes to file prosecutions. So even though under the legislation we have a two-year window we agree that the best possible solution is to file any prosecutions as quickly as possible so that employers know where they stand, families of injured or deceased workers know what is happening, and the process happens with the greatest level of efficiency.

We have been, from time to time, the recipient of key performance indicators, which become part of our corporate plan, to reduce quite substantially. I think that is a good thing. But it is also about being able to go back and say, "Wait a minute, we think those key result areas are very important and we want to achieve those key performance indicators but we also really want the resource base to enable us to do it not just with the best

turnaround time but also with the highest quality." Because we are conscious of the fact that the quality of our work impacts on the quality of the overall contribution that we make as a regulator to the people of New South Wales.

**CHAIR:** We do have the Legislative Council Standing Committee on Law and Justice which supervises some of the activities of WorkCover—like compensation and things like that—but not the actual WorkCover organisation itself. Would it help if the law and justice committee had an oversight role for WorkCover as an organisation?

**Dr BELL:** I believe so. I believe that would be a very significant positive step.

**Mr DAVID SHOEBRIDGE:** Do you mean for the overall WorkCover authority itself?

**Dr BELL:** Yes.

**CHAIR:** Yes, over WorkCover itself.

**The Hon. CATHERINE CUSACK:** The issue is: Why is the board not working?

**CHAIR:** Our time is almost up. Are there any further brief questions?

**The Hon. ADAM SEARLE:** I have a brief question which I am happy for Dr Bell to take on notice and come back to us on. Dr Bell, you indicated two factors that may have contributed to the current deplorable culture—the selection of personnel being one of them. What, in your view, are the key ingredients in this? A lot of the conditions that have beset WorkCover are common to public sector agencies, but a lot of the information we are hearing about WorkCover seems to indicate that the cultural issues are particularly pronounced. In your view what are the factors that may have contributed over time to this current toxic environment at WorkCover?

**Dr BELL:** I will take that question on notice. So the two things I need to go back to you on are PSA membership and the factors you have just mentioned. I am happy to do that.

**CHAIR:** Was the apology that you mentioned from the Premier?

**Dr BELL:** Yes.

**Mr DAVID SHOEBRIDGE:** The question I would ask you to take on notice is whether there have been any WorkCover prosecutions on bullying? I am happy for you to take that on notice. I am talking about WorkCover prosecutions against third parties, or against themselves, if they have ever done that.

**Dr BELL:** The second part there has never happened.

**Mr DAVID SHOEBRIDGE:** I am interested in any prosecutions by WorkCover where the substance of the prosecution has been WorkCover bullying.

**The Hon. CATHERINE CUSACK:** We should ask WorkCover that as well.

**CHAIR:** We may send you some supplementary questions along with the ones you have been given already. You will have 21 days to provide answers but obviously the sooner you can reply the better. Your report will remain confidential.

**Dr BELL:** I know it is a matter for the Committee, but I am happy for anything I have said today to be made public. I am happy for any of the documentation that I have provided today by way of supplementary tender to be made public as well. I do not have any difficulty with any of that.

**CHAIR:** Thank you, that is a great help to the Committee.

**Mr DAVID SHOEBRIDGE:** Dr Bell, what about your initial submission? I assume you want to retain the confidentiality on that to the extent that we have redacted it. Are you comfortable with where it got to with the redaction?

**Dr BELL:** Yes, I am. The only reason I was concerned about the redaction was that some of the material I included in the early part of the submission identifies individuals, and that was not my intention. I just did not want this to become a forum to defame people for the sake of it.

**CHAIR:** I thank you again for your attendance and the valuable insight you have provided us with today from a very unique position. We appreciate your attendance here today.

**Dr BELL:** It has been my pleasure. Thank you for the opportunity and good luck with the rest of the work of the inquiry.

**(The witness withdrew)**

**(Evidence in camera concluded)**

**The Committee adjourned at 5.00 p.m.**

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