

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 1

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

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE ON PAGE 43

At Sydney on Monday 11 November 2013

The Committee met at 10.00 a.m.

PRESENT

Reverend the Hon. F. J. Nile (Chair)

The Hon. C. Cusack
The Hon. M. Mason-Cox
The Hon. M. J. Pavey
The Hon. A. Searle
Mr D. Shoebridge
The Hon. M. Veitch

CHAIR: I welcome witnesses from Unions NSW to the second and final hearing of the General Purpose Standing Committee No. 1 inquiry into allegations of bullying at WorkCover New South Wales. 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 we will be hearing from representatives of Unions NSW and WorkCover itself, as well as from the overarching governance body, the Safety, Return to Work and Support Division of the New South Wales Government Service. We were hoping to have Mark Lennon, Secretary of Unions NSW, but he is in Melbourne so we will negotiate another time with him.

It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of the evidence at this hearing, so I urge witnesses to be careful about any comments made to the media or to others after they complete their evidence as such comments will not be protected by parliamentary privilege if another person decides to take an action for defamation. 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.

MARK MOREY, Deputy Assistant Secretary, Unions NSW, and

SHAY DEGUARA, Industrial Officer, Unions NSW, affirmed and examined, and

MARY YAAGER, Executive Officer, Unions NSW, sworn and examined:

CHAIR: Do you wish to make an opening statement?

Mr MOREY: I would like to make an opening statement on behalf of Unions NSW. I thank the Committee for focusing on this important issue and providing Unions NSW with the opportunity to contribute to the debate around the hazard of workplace bullying. Unions NSW Secretary Mark Lennon is unavailable to appear today, as you noted, due to the change of date and a longstanding engagement he has in Melbourne. He asked me to advise the Committee he is more than happy to appear and he is able to be flexible to appear before the Committee subsequent to this evidence.

CHAIR: Thank you.

Mr MOREY: I would like to acknowledge from the outset that despite the current issues besetting WorkCover, the organisation has in the past contributed to programs addressing workplace bullying through tripartite initiatives with organisations such as Unions NSW. Examples of this include funding for the development of the Unions NSW Dignity and Respect Charter, which involved our affiliates, the then Premier's department and private sector employers. As a result of that program, two charters were developed, which we will talk about today. A public sector policy was developed and a training package was developed. Unions NSW and affiliates have delivered this training package in workplaces at the request of employers and usually free of charge.

Unions NSW believes bullying is not just about individuals or isolated workplaces. It is a community issue, which has significant health and economic implications. We are only just beginning to understand the significant impact that workplace bullying has on our economy, as a recent report by the Productivity Commission demonstrates. This report estimates the cost of bullying to employers to be in the billions of dollars. The productivity of workplaces is destroyed and in extreme cases significant restructure and closure are often the only means to remedy toxic environments as a result of bullying and harassment. What we say is most important is the resultant negative health effects on workers when combined with the unfair financial burdens they suffer. This causes not only family breakdown and enormous psychological injury but also the deaths of workers.

Whilst this inquiry is focused on the significant issues at WorkCover, our submission responds to the issues of the effectiveness of a regulator being able to address the hazard of bullying when it is not taking a leadership role in regard to providing a safe and productive workplace for its own employees. Inside the WorkCover authority and the public and private sectors there are a number of hotspots, or places where bullying behaviour is endemic because of toxic cultures going unchallenged. However, WorkCover addressing issues of workplace bullying within its own workplace is compromised. Unfortunately, this is not an isolated incident limited to New South Wales. The same problem has been played out very publicly in Victoria, and we are advised by our compatriots in other States that similar issues have also arisen with their safety regulators.

The union movement in New South Wales is concerned about the ramifications of this inquiry and its findings against WorkCover as well as the wider implications of possible findings. Employers and employees will no longer have confidence in WorkCover to appropriately deal with or give advice to organisations about workplace bullying. This is a fundamental issue for workers in New South Wales. WorkCover should have the highest standards and set the benchmark with regard to implementing effective risk management and pre-emptive procedures within its own organisation.

The Federal Government recently held an inquiry into workplace bullying and identified in its report that State regulators like WorkCover did not have the appropriate expertise or resources to deal appropriately with complaints about workplace bullying. The Federal Government responded to recommendations of the parliamentary committee by creating a legal mechanism within the Fair Work Act to allow the Fair Work Commission to investigate complaints and make appropriate orders. This commences on 1 January. For the first time there will be all-encompassing law which makes bullying conduct unlawful and provides the right of redress through the Fair Work Commission. It is a process that attempts to deal with the issue of bullying

quickly and effectively, and to be independent of all the parties involved. If these matters are allowed to go unchecked that will lead to organisations becoming dysfunctional and disputes becoming intractable in workplaces, which ultimately will have a significant toll on employees.

Unions NSW would like the Committee to consider making a recommendation to provide for a similar legal mechanism for employees, who are currently excluded from accessing the legal mechanism through the Fair Work Act. We do not necessarily believe that it has to allow those workers to access the Fair Work Commission, but there should be at least a parallel system operating within the New South Wales jurisdiction.

CHAIR: Thank you for your attendance and your cooperation. This goes to the heart and soul of why unions exist.

Mr DAVID SHOEBRIDGE: Have you had discussions with your delegates or your union representatives at WorkCover about WorkCover's response to the Butler decision? If so, what has been the response?

Mr DEGUARA: I have had discussions in my previous role, when I was at another employer 3½ months ago—the Public Service Association. I had discussions with WorkCover delegates about this topic over several years. Since Mr Butler's decision I have had discussions with some of the delegates.

Mr DAVID SHOEBRIDGE: What is the substance of those discussions?

Mr DEGUARA: What has and has not been done post the PWC inquiry in general terms and what were some of the approaches being undertaken to improve things.

Mr DAVID SHOEBRIDGE: Did they say that WorkCover has accepted the Butler issues, is moving on and has done wonderful things in management?

Mr DEGUARA: After the PWC inquiry they said there was a bit of movement for a while and then it slowed down. After the Butler decision they have set up a psychological committee, which is part of the health and safety committee. It has been meeting with some resistance to some suggestions. I cannot remember specifics of the suggestions they provided for that subcommittee. A subcommittee was formed over time, after the PWC inquiry.

Mr DAVID SHOEBRIDGE: Mr Morey, you said you were concerned that the results of this Committee may negatively impact on WorkCover's moral authority to be the workplace regulator on bullying. Can you expand on that?

Mr MOREY: Our concern stems from not just this bullying issue but a variety of workplace safety issues, which WorkCover has not been able to, for one reason or another, be it either political will or economic resources, to address key safety issues within New South Wales. Our concern would be that if this Committee finds simply negatively about WorkCover and cannot provide some constructive alternatives or a pathway forward, we will end with an organisation with no moral authority that continues to be unable to effectively investigate workplace breaches, be they bullying, harassment, accidents in the workplace, those sorts of issues, and that would leave workers further exposed in their workplaces, both in the public and private sectors. So our emphasis is that this needs to be not only about correcting what is wrong but providing a constructive pathway forward for how you can have an organisation responsible for safety that can fulfil its roles and protect workers in New South Wales.

Mr DAVID SHOEBRIDGE: But we need to make our findings based upon the evidence. If the evidence is that they are doing a wonderful job then that will no doubt be the nature of our findings, but our evidence is that they are doing an appalling job on bullying, then we need to make those findings that agree with that.

Mr MOREY: I did not say not to make those findings. What I asked is to make those findings but I think it is beholden on a Committee like this to come up with some constructive recommendations, given the amount of evidence it is taking, and plotting out some way forward for that organisation to become a constructive organisation in addressing these issues. We have poured millions of dollars into it; we should get some bang for our buck.

CHAIR: You should be confident that we will be doing that.

Mr MOREY: Thank you.

Mr DAVID SHOEBRIDGE: To put some meat on the bones of some of your recommendations, one of them is an oversight model put in place, some kind of oversight mechanism. Do you have any more thoughts about what form that would take? Would it be an inspector? Would it be an ongoing parliamentary committee? Would it be a separation commission? What are you thinking?

Mr DEGUARA: Part of the problem at the moment, I am aware of several staff members having complained to the Ombudsman and I think that is the only avenue for the work health and safety division. If you have any complaint inside WorkCover or outside in the general workplace about how they administer work health and safety laws, if you go to the Ombudsman there is no specialisation there. The level of specialisation you need to do a thorough investigation about whether or not something—

Mr DAVID SHOEBRIDGE: And I think we have received some evidence—some of it may be confidential—about those complaints, showing no effective response from the Ombudsman.

Mr DEGUARA: That is probably the case, and that is part of the problem we have. If you deal with WorkCover and you do not like their decision it is very hard to then seek some sort of remedy.

Mr DAVID SHOEBRIDGE: That is why I am asking you to give more particulars about the model of oversight.

Mr DEGUARA: It should be tripartite, because that is what the convention says should happen and it should be managed from an independent point of view. Whether or not it is through this Committee or alternatively through a standing body, it will probably be worthwhile having a standing body with a level of expertise able to deal with it.

Mr DAVID SHOEBRIDGE: With employers, the Government and unions on it?

Mr DEGUARA: Yes.

The Hon. MELINDA PAVEY: For all government agencies or just WorkCover?

Mr DEGUARA: For how WorkCover deals with issues, yes.

Mr DAVID SHOEBRIDGE: For WorkCover?

Mr DEGUARA: Yes.

Mr MOREY: I think a lot of the things that do work and have worked in occupational health and safety are a result of being tripartite, having all three groups there. We would not recommend it for every government department. Although the unions would like to claim expertise for a number of areas, we do not claim expertise for every area, but certainly in this area we have people who have long histories in it, as have employers, and we have worked cooperatively with employers in a number of areas. It is not always conflict; forming partnerships with government to ensure that workplaces are safe. And I think because of that success one of the things we are trying to build on is the expertise that does reside with government, employers and unions in this specific area.

The Hon. ADAM SEARLE: One of the notions that has arisen in earlier evidence is that there needs to be, as it were, a body capable of investigating and prosecuting occupational health and safety matters against WorkCover as an employer, kind of like a PIC for WorkCover. What does Unions NSW feel about that kind of model?

Mr DEGUARA: I have seen some of the solutions that have suggested other States be empowered with their respective role. I have seen in some other areas one request that they have some sort of independent body do that. You need to have accountability and there will be no accountability if no-one can gather the level of evidence required for proving that you are over accountable or not.

The Hon. ADAM SEARLE: In relation to the Butler matter, Mr David Shoebridge asked you some questions. Perhaps this is more directed to you, Mr Deguara, given your previous experience. Do you get a sense that WorkCover as an organisation accepts that Butler identifies a range of systemic and cultural problems, which they are now prepared to embrace and deal with, or is there a culture of denial, saying that this is just a one-off or they got it wrong and are just kind of moseying along?

Mr DEGUARA: You cannot say it is a one-off when there is a history of it.

The Hon. ADAM SEARLE: No, I am asking you what is your impression of the history of WorkCover.

Mr DEGUARA: I reduced my involvement with WorkCover when I came to Unions NSW. There has been mixed from different managers. There has been some level of not talking about it in some parts of WorkCover from what I have been told but it is all hearsay. Other areas take an interest in it.

The Hon. ADAM SEARLE: Could I put it this way? Has the organisation as a whole clearly identified that there is a range of important issues they have not done well in the past and they are committed to improving on and resolving for the future?

Mr DEGUARA: From what I have been told from the delegates I have spoken to, they are not fully opening up their doors to internal inquiries, et cetera, and revision.

The Hon. ADAM SEARLE: In the Unions NSW submission at page 7, paragraph 12 and a whole other bunch of other places, you identify not only the ongoing restructures that have caused some difficulties but you identify that although it is one body there are many different parts and some of those are quite extensive and detailed and specialist but they are all sort of different and that the competing managements in these bodies, the impression I got is that the competing structures and managements may have contributed to the cultural problems that WorkCover is experiencing. Is that a correct reading of your submission?

Mr DEGUARA: There can be that but there is also this constant change. If you are having to go for your job all the time, are you going to tell your organisation you disagree with their decisions? Or if you do disagree with them, are you going to feel safe in doing that as well? That is part of the thing. Also, it is like all public service agencies. There is generally goodwill from the people who work for the organisation but there is often a lot of change so there are changes of policy as well. What that organisation used to do is close to 700 prosecutions a year in the late 1990s. Now they have done less than 30 reported at the end of the August. They are changing their focus totally around. There is a hold-up that members of this Committee know about but generally it is a big shift in prosecutions so they are going from an enforcement regime to a hand-holding regime, and that is part of their philosophy. There are a lot of changes and people need to come to terms with that. Also, if you are constantly being restructured you always do not know who will be your manager and who will be directing you in the next six months.

Ms YAAGER: I deal with people in WorkCover in my campaigning role and recently I meet them on an ongoing basis and the employees there tell me that they are absolutely terrified of working. They feel intimidated and they are terrified at the moment working in WorkCover so there is this fear and intimidation. We can expand on that if you would like us to put further submissions to you.

The Hon. ADAM SEARLE: We understand that and that is reflective of a significant body of evidence this Committee has received in all different ways. I wanted to explore whether Unions NSW has a view about this. You do not have to answer now; I am happy for you to take it on notice. Having the multiple functions that it does, does this make WorkCover more difficult to manage and should it be essentially broken up into its different roles? You have an insurance function, a compliant function, an enforcement regime function, and other regulatory functions as well, including licensing, all in one organisation. Is this too much for one body and should it be separated out?

Ms YAAGER: Like it was previously where they had department of industrial relations with the inspectorate.

The Hon. ADAM SEARLE: Whatever the structure is, is it simply too big to be managed effectively so that managers can get a handle on what the organisation does below the level of senior and middle management?

Ms YAAGER: We can take it on notice and get back to you. The fear is—I mean, we have always said that it should be integrated like workers compensation and occupational health and safety if you are giving advice. If they are all separate you do not integrate safety with workers compensation. You have to seriously think about that.

Mr MOREY: I think the issue for us is if you have two functions where, as Ms Yaager says, you are looking at workers compensation and safety and you are using that as a constructive tool and trying to put those two functions together to get a safety outcome, then lining that up sitting next to a regulatory outcome where you are then prosecuting people, so one day the organisation turns up and says "We are here to help"; the next day the organisation turns up and says "We're here to sue you"—

The Hon. ADAM SEARLE: That might be an argument to have separate organisations.

Mr MOREY: Yes. It is not about whether you break it all up, and breaking everything up and duplicating things all over the place is an expensive process. But in this case the functions of compliance as opposed to the functions of education and working together with people are two not necessarily compatible functions in one organisation. I think that is what the problem is, because safety campaigns, safe workplaces and all that sort of stuff cannot occur and be developed and trust you need to actually do those because to develop a safe workplace you need people to put up their hand and say, "I've stuffed up. How can we learn from this?" and "How do we understand moving forward how we can make this a better place?" if you think you are going to get belted over the head as soon as you put your hand up. So I think for us the main concern would be having the regulatory attached to that broader constructive function that WorkCover does play and has played.

Mr DEGUARA: Part of the thing with bullying, I said I was trying to get some documentation from WorkCover and it has arrived, so I can hand out to the Committee the GIPA request and also the minutes of the Safe Work Australia Strategic Issues Group where they voted on the code of practice. You can see that if it is a workers compensation issue that we are talking about, bullying does not rate because a lot of them just get declined and rejected outright. That is what the statistics say in the GIPA request.

Ms YAAGER: We would like to come back to you and then think about that.

The Hon. ADAM SEARLE: I will formulate these in a bit more detail and put them on notice for you.

CHAIR: Maybe supplementary questions on notice.

The Hon. ADAM SEARLE: Yes. One issue that has been raised—it is not a new concern—is that from time to time there might be a view that inspectors independent applications or attempts to enforce safety laws may from time to time be interfered with, if I can use that term, by management, if I can use that term loosely. These have occurred over time with greater or lesser degrees of accuracy but does Unions NSW have a view about whether or not the enforcement arm should be more statutorily independent of Executive Government, say, like the Police and the DPP are?

Ms YAAGER: I think that we would have a view of that.

Mr DEGUARA: As far as bullying goes, a lot of inspectors have advised me that they have gone and taken the big step of putting an improvement notice down, only to find that they are taken off that portfolio or whatever and then have someone else come and remove it. So it has occurred from time to time. It is in the GIPA here the amount of notices that have been issued under the bullying or harassment category. You cannot have an independent inspector doing that. That is why there should be a review process as well of WorkCover's health and safety because of the fact that if it is just the internal disciplinary process that does it. Every time you put an improvement notice down or do some sort of enforcement action you get it cancelled or disciplined. That will not encourage much productive health and safety.

Mr DAVID SHOEBRIDGE: You said you cannot have an independent inspector.

Mr DEGUARA: No. That is why you should have an independent inspector and a reviewer of the inspector, not one who is tied to some sort of political aspect, one which is outside the directs of the department or the authority.

The Hon. ADAM SEARLE: You mentioned the idea of parallel laws to the new Fair Work Australia bullying laws. I am happy for you to take this question on notice. What is your view on whether the current structure of those Federal laws are sufficiently well formulated to achieve the objective or should the New South Wales laws take a slightly different form?

Mr MOREY: I think the difficulty is that it has not actually come into operation yet. I think it will initially be trial and error as to the process and how effective that process is with lodging disputes and getting an outcome. I think the significant fact is that it is now acknowledged as an offence. There is a body where people can actually lodge a complaint. From the briefings that we have had there is a fairly high hurdle jump over to get the complaint heard in the first instance, so it is not just about hearsay; there is a detailed process you have to go through in lodging your application. So there are some safeguards around those sorts of issues.

The Hon. ADAM SEARLE: It may not be readily accessible to the workforce?

Mr MOREY: No, I think it will be readily accessible.

Ms YAAGER: Yes.

Mr MOREY: My understanding of the forms that are being put in place at the start is to stop vexatious claims and to ensure that the claims that are being made are current and actually occurring. That will allow the commission to become involved quickly to address those issues. I think that is the significant point in relation to those laws; it is that there is a mechanism where people who are being bullied, and can substantiate that claim, have the opportunity to have that issue addressed quickly and efficiently. I think that is something that is very positive and should be supported and implemented in New South Wales.

Mr DEGUARA: I think we were in this very room with the Federal Parliament and that was one of the issues that we raised; the fact that WorkCovers around the country is not addressing these issues quickly. Most of the time bullying issues are not an injury, but the longer it takes, the more chance there is going to be an injury to someone's physical, psychological and financial health as well, for a lot of people.

Mr DAVID SHOEBRIDGE: Has the Committee formally accepted the tender of those documents?

Mr DEGUARA: I tender them. The Government Information (Public Access) Act documents are these ones and at the front of them is the summary of what we requested as far as statistics around bullying, complaints, concerns, calls and also a number of notices provided and the like.

Mr DAVID SHOEBRIDGE: Documents produced from WorkCover under the Government Information (Public Access) Act?

Mr DEGUARA: Yes. It is in several parts because they responded in several documents.

The Hon. CATHERINE CUSACK: Paragraph 13 of your submission refers to the fact that most of the academic literature described workplace change and job role certainty as risk factors that increase the risk of workplace bullying. Given the circumstances that have been besetting WorkCover for some years now, would you provide the references?

Mr DEGUARA: Can I do that on notice because I have a pile.

The Hon. CATHERINE CUSACK: Absolutely, it would be beneficial to the inquiry and it is certainly a useful insight for some questions. In relation to psychological injury that is undoubtedly an emerging huge issue for the workforce, do you accept that it is quite controversial amongst employers in particular that opening up the concept of psychological injury will cause a fear of opening up a Pandora's box of vexatious complaints? I think everybody would want to see genuine complaints addressed but it is quite complicated to disentangle vexatious complaints from genuine complaints.

Mr DEGUARA: Yes. Because it is a risk-based system you are doing stuff to proactively identify the risk in the workplace and where there may be issues. Before someone gets injured you are trying to nip it in the bud so that they do not end up being bigger than they are and that people get injured and people leave the workplace. The majority of people do not actually get injured; they just leave the workplace or transfer to another job somewhere else. It is about being proactive. There will be vexatious complainants and that will

occur anyway but I think part of the way that you are proactive is to educate people about what is workplace bullying, workplace violence or work overload and provide avenues on how to address them. If you provide those avenues when they start to see things—sometimes it is the perpetrator who will see that their behaviour is creating this sort of risk to people. The more education you have the more ways and avenues of addressing them and the more likelihood you will reduce the amount of it. The vexatious ones will probably be reduced as well. At the moment there are a number of complaints that unions get where they are just vexatious: it is just to get rid of someone else and move them out of the way so that there is a better promotional line for them or whatever. If there were proper investigations or knowledge of what is the complaint before they do it they would probably realise they are doing everyone a disservice by doing it.

The Hon. CATHERINE CUSACK: The people who do the bullying need to feel that that type of behaviour can be detected and they may be accountable for it which would then prevent it hopefully or reduce it. We want managers to be proactive about managing poor performance in workplaces and I think that is in every workers interests. If you have a colleague who is performing poorly that is hurting you and it is hurting the organisation. If that colleague can then say, "But I am being bullied" this will be the classic situation of a person accusing a manager of bullying. He says, "No, I am trying to manage poor performance." Equally managing poor performance may be an excuse or a shield for bullying behaviour as well. It seems opaque. Are there any decent tools that people can use to analyse what is bullying as that would be really helpful?

Ms YAAGER: Yes. We have a dignity and respect in the workplace charter. That is what we try to do. We define what is bullying. I think the Fair Work Act now has a definition of what is bullying and we also talk about legitimate management action or reasonable management action. It is educating people as to what managers can do, as long as they do it fairly and appropriately. I think the definition of bullying is out there. I think it is clearly defined globally and also in Australia.

Mr MOREY: You are right. There is a skill in taking someone aside and telling them that they are performing badly and they need to do better in the workplace. We often get complaints as unions. You have to talk the members through, "This is not about being harassed. You are not doing the job. You need to look at how you are doing it." But there are those instances where it is really clear-cut what is going on, be it in a workplace or a department, where individuals or groups of individuals are being targeted. The problem within organisations is they do not have the skills or the framework in place to manage those sorts of issues.

Some of that is a cultural thing where we say, "The guy is just having a bit of fun" or something like that. That is where there has to be education for the people who are in senior positions or running those businesses to step in and say, "That is not okay. That sort of behaviour is not appropriate." That is not easy and there will be no sure fix but the fundamental stuff is around providing education and people understanding what their responsibilities are in that workplace.

The Hon. CATHERINE CUSACK: What is not clear to me at all is the difference, for example, between harassment and bullying which would take an organisation down two different regulatory paths. Is it clear to victims whether they are being harassed or bullied, or clear to employers what they are managing?

Mr MOREY: It would be dangerous to be, I think, overly prescriptive on those sorts of things.

The Hon. CATHERINE CUSACK: Do we have to be?

Mr MOREY: Part of this is about judgement and about what is going on in that workplace, the circumstances and the people involved. It is a very complex situation to deal with. You need to have tools in place and definitions but at the end of the day there needs to be some way in which someone is independently, in extreme circumstances, able to make a judgement as to whether that is occurring in the workplace. There is a vehicle by which people who are truly being bullied have access to something where they can take that complaint and an independent person can say, "Yes, you are being bullied" or "No, you are not being bullied." Without that in place I think you end up in that mire of what is harassment and what is bullying.

Mr DEGUARA: They are not necessarily mutually exclusive. Sometimes you will have harassment which is bullying and sometimes bullying which has harassment elements to it as well. There are the Federal anti-discrimination Act grounds for harassment and also the bullying ones which are purely health and safety but sometimes they do mesh.

The Hon. CATHERINE CUSACK: I do not know why we do not take a holistic approach for behaviours?

Ms YAAGER: Yes, unacceptable behaviour. We are trying to do that with our dignity and respect in the workplace charter. That is what we say. It is all about what is acceptable and what is unacceptable behaviour.

Mr DEGUARA: The approach that we recommend is to try to resolve it as quickly as we can. That usually gets people back into a liveable environment where they can work with each other.

Mr MOREY: That is why that tripartite approach is so important because each of the three groups is sending the same consistent message to its constituents. If there is an agreed position we all say the same thing, that message gets out there one way or another and that is the strength of the tripartite approach to these matters.

The Hon. MATTHEW MASON-COX: You have lodged a detailed submission that takes a very regulatory and focused approach to dealing with this problem. I put to you another approach which might be complementary to some of the things you suggest. It is one that is focused on getting the incentives right and managing performance proactively. What is your reaction to the way that performance is being managed in the public sector over time, the ability of managers to manage and to deal with poor performance appropriately, subject to all the educational signals and the oversight issues that you quite legitimately raised but also ensuring that managers are held accountable through appropriate mechanisms such as bottom-up feedback, linking of their performance to performance pay, ensuring there is a culture of peak performance monitoring and a culture of feedback both upwards and downwards so that behaviours are identified early and action is taken when there are problems? What is your take on incentivising good behaviour rather than trying to regulate and force people to do things that they are not inclined to do anyway?

Mr DEGUARA: Just from a general approach, I think in safety the best incentive is to have a safe workplace. But I have also seen safety incentives in mines, and the like, hiding massive problems because they want to keep the long-term injury frequency rate down and those sorts of things. So it does not always work in the reporting of things. One of the things we talked about is reporting. On the issue of financial incentives and the like, one of the things they do not have in the public sector from my experience is generally training on how to be managers. A lot of managers are great technical people. They are good at what they do but they may not know how to deal with the people that they work with. They are good at the widgets they do or whatever they do.

Mr DAVID SHOEBRIDGE: As managers they are very good inspectors?

Mr DEGUARA: In WorkCover, yes. I have to say that applies to WorkCover but that is often what I have experienced as a Public Service Association official for 15 years.

The Hon. MATTHEW MASON-COX: What is your view on performance pay for rewarding top performance in relation to the management of people resources?

Mr DEGUARA: It is hard to do it in the public service context though.

The Hon. MATTHEW MASON-COX: Why is it hard to do it in the public service context?

Mr DEGUARA: Because at the moment they are not even paying people inflation rates. It is going to be very hard then to say "You have achieved above"—

The Hon. MATTHEW MASON-COX: They pay are paying above inflation rates, but let us perhaps leave that to one side.

The Hon. ADAM SEARLE: I think that might fall outside our terms of reference.

Mr DEGUARA: It is outside the reference.

The Hon. MATTHEW MASON-COX: Why cannot we have performance pay rewarding peak performances, benchmarking peak performance in the public sector?

Mr DEGUARA: You do at the executive level already.

The Hon. MATTHEW MASON-COX: So why cannot we extend that? Why cannot we actually incentivise people and identify problems?

Mr DEGUARA: It is about how much control does a 5/6 line supervisor have over the destiny of the department or whatever they are doing.

The Hon. MATTHEW MASON-COX: It depends on the culture you create, I suppose?

Mr MOREY: It is also about the power you are going to delegate to actually manage. Over recent years, over the last 10 to 15 years, I suppose, there is a culture where people manage up so that they are pleasing the person above them and not focusing on managing the people below them and when that sort of incentive is put in place, it becomes a very negative workplace. And I agree; it does not help people manage what is going on before them because they are worried about what is happening above them. Until there is a balance on those sorts of things and managers are empowered to actually manage in the public sector, it becomes very difficult. Whether you have an incentive bonus or not, if you believe you do not have the power to manage as a manager and you are going to get jumped on from above and you are managing up, that is not a culture where even incentives will work.

The Hon. MATTHEW MASON-COX: I agree there are some issues.

CHAIR: We will move on. In the document that you have tabled "Right Information Notice of Decision", did you also ask for the disclosure of bullying reports within WorkCover? This is covering the general area of the whole State for all industries? Did you actually focus on WorkCover?

Mr DEGUARA: We did not do that. The union that has coverage of that agency may have done it. We are not aware of whether or not they did that. We did not apply for WorkCover specific—

CHAIR: You are not aware whether the Public Service Association [PSA] did it? Could you take that on notice and inquire?

Mr DEGUARA: Yes, we will find out. I am aware they tried to find out this information through other means, through their statutory right of entry. I do not know how successful they were.

CHAIR: They did not have much success.

Mr DEGUARA: Okay.

The Hon. ADAM SEARLE: That matter is before the courts actually.

CHAIR: You stated earlier, a very positive point, that WorkCover in many ways has been the baby of the union movement to protect the workers in the State so overall, leaving aside the bullying allegations, is WorkCover actually carrying out its role effectively in New South Wales in all the other areas, that is, covering industries in New South Wales, taking up your point about being positive in our attitude?

Mr MOREY: I think it would be fair to say that the focus and resources available to the organisation over recent years have not equipped them or enabled them to do as broad or as effective a role as I think the union movement would wish, would be our response to that, Chair. I think it has become a very difficult environment for that organisation to operate, with the limited resources it has and the ability it has to run key prosecutions, which cost a lot of money and take sustained time and effort, and that is one of the areas that it is fairly disappointing for the union movement.

Mr DEGUARA: For instance, in the bullying area that we are talking about today, I have been involved in prosecutions where it has been the subject of workplace bullying and I am not talking about just going into a workplace, doing a site inspection, taking a few photos and showing the broken machine. You need literally shelves worth of folders of policies, procedures and statements before you can actually mount what is going to be a reasonable chance of winning prosecution in relation to workplace bullying. It does not just happen like that. At the moment they have got a requirement to churn and turn complaints really quickly. You

could not do a workplace bullying investigation in the time with the resources they have or the specialisation they do not have.

CHAIR: In your submission you make reference to the move to Gosford and the subsequent move back to Sydney, that this has disrupted staff and that you have lost a loss of experienced staff?

Mr DEGUARA: Yes.

CHAIR: How would you evaluate those moves and what effect have they had on the effectiveness of WorkCover, over which they have had no control?

Mr DEGUARA: It is probably not my position to say but I understand why they moved and decentralised. Governments have been doing it for ages. We need to have regional work. How they do it is another thing. The move back to Sydney for the workers compensation seemed a bit of a following the leader of the organisation at the time and that seemed to be the reason. They were of the view that there was more specialisation in Sydney. If you make a decision to decentralise, you really have to take the view of doing it but maybe not doing it in such a sudden way of decentralising to a region and also provide options for some people to still remain in either the city or a regional city as well.

CHAIR: So overall would you say it has affected their effectiveness as a worker?

Mr DEGUARA: It is disruptive. It is also a job security issue; how effective do you do your work? If you move your whole family to the Central Coast, Newcastle, Dubbo or whatever because of your career and then you find that the organisation that you have given your whole family to does not respect the fact that you have given so much to them, so that is the sort of problem that comes. It has to be done in a kinder manner, if it is going to be done.

CHAIR: Any other comments?

Mr MOREY: No, thank you, Chair.

CHAIR: I am interested as to when Unions NSW became aware of the culture of bullying. You have an affiliated union, the PSA, whose members that worked at WorkCover were aware of the bullying, were even involved in bullying or were victims of the bullying. When did Unions NSW become aware of the culture of bullying? What year? Can you put a date on it? Obviously there is bullying everywhere but when did you become aware of the culture of bullying?

Mr DEGUARA: There have been discussions and surveys have been conducted by the Public Service Association since about at least the mid-2000s and they have let us know about the results of the surveys over time. There was a PricewaterhouseCoopers [PWC] inquiry in 2010 as well.

CHAIR: Is that part of the reason why you said you produced a psychological risk management chapter?

Mr DEGUARA: That was developed by affiliates in conjunction with the Australian Council of Trade Unions [ACTU]. As part of the work, health and safety harmonisation program across the country there was a commitment to not reduce the standard of health and safety laws across the country and there was at least one other jurisdiction which had a health and safety regulation to do with workplace bullying and some others to do with violence and there are also codes of practices in various States. We said there should be something which is providing the mechanism to develop and prioritise health and safety around bullying and psychological risk management because otherwise it becomes a too hard thing for employers, workers and the regulator and you end up not focusing any attention to it. I think that part of the risk of the Safe Work Australia decision by WorkCover is that they could be seen as not taking it really seriously because they do not actually want to provide a code of practice which provides firm guidance to employers and workers.

CHAIR: You also state in your submission that there should be a prescriptive code of practice for workplace bullying?

Mr DEGUARA: Yes.

CHAIR: Has any progress been made?

Mr DEGUARA: That is one of the documents I tabled. At the Safe Work Australia strategic issues group, WorkCover NSW voted against the code of practice being made a code of practice despite Safe Work Australia's recommendation and voted for it to be simply guidance material, which we already have. I will let you judge how serious they view the issue.

(The witnesses withdrew)

(Luncheon adjournment)

JULIE ANNE NEWMAN, Chief Executive Officer, Safety Return to Work and Support Division, NSW Government Service,

JOHN WATSON, General Manager, Work Health and Safety Division, WorkCover Authority of NSW, and

GREGORY RAY BARNIER, Chief Human Resources Officer, People and Culture Group, Safety Return to Work and Support Division, NSW Government Service, sworn and examined:

CHAIR: Thank you for your attendance. We appreciate your cooperation as we conduct a difficult inquiry. It is certainly difficult for you as the investigation concerns bullying in your organisation. We thank you for being here and we hope that we can resolve some of these issues. Do you wish to make an opening statement?

Ms NEWMAN: I would like to thank the Chair and the Committee for the opportunity to provide an opening statement. I would like to start by saying that the WorkCover executive and I take workplace bullying seriously and we do not tolerate bullying. We have the same legal and work health and safety obligations as any employer. We are required to apply the work health and safety legislation in the same manner as all New South Wales employers. I understand the profound impact bullying has on people and both the executive and I regret that there are people who believe they have experienced bullying or feel that they have been bullied by WorkCover or WorkCover's service providers. Having reviewed the submissions and having considered the evidence that has already been publicly given I am concerned at what I am hearing.

Workplace bullying and harassment is a significant and widespread concern across Australia and is symptomatic of a wider social issue that is not limited to the workplace. Within the workplace context experts continue to work towards a common approach for addressing the significant concern across private, public and not-for-profit sectors. As our understanding of the issue grows new challenges continue to emerge. For this reason workers, employers and the wider community expect that management of workplace bullying is a continuous undertaking where risk must be continually assessed and addressed. As you can appreciate in matters relating to bullying and harassment it is very difficult to meet expectations and achieve closure for all parties involved.

The Committee will be aware of recent history and the PricewaterhouseCoopers [PWC] report. The report, which was released to the Department of Premier and Cabinet in March 2011, was detailed and extensive. It established that while the majority of employees found WorkCover an enjoyable place to work with a noble vision, a positive role in the community and generous conditions and benefits many had suffered from behaviour which they described as bullying and harassment. In workplace bullying matters there are often a range of perspectives involved. As the chief executive officer I have a duty of care for the work health and safety and wellbeing of staff and a responsibility to ensure natural justice processes are followed and upheld. If issues are addressed early this may prevent sustained repeated behaviour and the outcome may not involve disciplinary action.

When PricewaterhouseCoopers conducted its review it undertook 125 confidential self-initiated interviews of current and former WorkCover employees, received 13 written submissions, conducted an online cultural assessment survey, conducted a desktop review of existing and previous cultural assessments and documentation and reviewed relevant materials in relation to five then current and previous cases of alleged bullying and harassment. While PricewaterhouseCoopers acknowledged in its report that many organisational, structural and cultural changes had already commenced within WorkCover it outlined the need for more work to be done on clearer internal communication and engagement strategies, transparent recruitment processes, robust performance management, effective grievance handling framework and strengthened leadership capability.

In response WorkCover has implemented a number of actions to give effect to the recommendations, including improving the level of staff communication and engagement, strengthening recruitment practices, building leadership capability, improving the capability of staff in people and culture and improving grievance handling processes and support for employees. While the report did not substantiate any of the alleged bullying claims that gave rise to the review it was important to understand why and take action to address the perception that existed. WorkCover continues to build on the PricewaterhouseCoopers recommendations to achieve cultural change. Since the release of the PricewaterhouseCoopers report the way WorkCover responds to this issue has moved from a tactical to a more strategic approach. Strategic in the sense of a more holistic approach that promotes a positive, healthy, capable and engaged workforce. This approach incorporates the

PricewaterhouseCoopers recommendations. As the journey progresses we continue to build a proactive, agile and sustainable approach to managing and supporting our staff. We remain focussed on fostering our workforce's whole well-being and building its capability and resilience. In this environment there is no tolerance for workplace bullying.

Mr BARNIER: I do not wish to make a statement.

Mr DAVID SHOEBRIDGE: Thank you for coming today. Ms Newman, you say there is no tolerance for workplace bullying at WorkCover, so you must have been horrified when you read the decision of the Industrial Relations Commission in relation to what Mr Butler had been put through by your organisation?

Ms NEWMAN: Yes, I am concerned.

Mr DAVID SHOEBRIDGE: I will read you one of the conclusions that His Honour made about the investigation of Mr Butler by your organisation. He stated:

The manner in which the investigation was conducted and the subsequent treatment of Mr Butler is, in my view, deplorable. The decision to conduct the investigation was devoid of any common sense or fairness to Mr Butler. The conclusions reached and the logic behind them conveys an attitude of premeditation and witch hunt, not a process grounded in fairness or objective evidence-based decision making.

You say you are concerned. Surely you would be horrified by those conclusions about your organisation?

Ms NEWMAN: Immediately after the commission's determination I engaged Internal Audit Bureau Services to undertake a review of the investigation process. That report is currently with me in draft and will be finalised in the next few days.

Mr DAVID SHOEBRIDGE: Is that a review of the investigation process in relation to Mr Butler?

Ms NEWMAN: It includes the investigation process of Mr Butler and a number of other cases.

Mr DAVID SHOEBRIDGE: What else does it cover?

Ms NEWMAN: It covers the engagement of external investigators. It covers the process that we went through looking at whether we adhered to chapter 9 of the Public Sector Management Act and it looked at a range of about 15 investigations to look to see if our practices had been compliant and consistent with chapter 9.

Mr DAVID SHOEBRIDGE: What does the draft report suggest?

Ms NEWMAN: The draft report is showing that we have in the main followed chapter 9.

Mr DAVID SHOEBRIDGE: There was an independent review of the process in relation to Mr Butler by the Industrial Relations Commission and it was damning of your process. Do you accept the conclusions of the Industrial Relations Commission?

Ms NEWMAN: I accept the conclusions of the Industrial Relations Commission that there are a number of administrative issues that we need to look at which includes how we manage investigations.

Mr DAVID SHOEBRIDGE: Are you saying that a conclusion by the Industrial Relations Commission that your organisation engaged in a witch-hunt is an administrative issue? Is that your evidence?

Ms NEWMAN: I really do not know what to say to that question.

Mr DAVID SHOEBRIDGE: That is your response? You say there are a number of administrative issues raised by the Industrial Relations Commission. I have only read you one of the findings and that was that your organisation engaged in a "witch hunt"; that is not an administrative determination that is a damning conclusion about the conduct of your organisation?

Ms NEWMAN: The officers acted in accordance with chapter 9 of the Public Sector Management Act. I have asked to have the investigation procedure looked at. We are also looking at how we manage compliance with flex sheets, what the people and culture operating model is in order to support persons going through an

investigation process or any process, and we have also looked at, and have already, put staff into an accredited training course with regard to investigations.

Mr DAVID SHOEBRIDGE: What did you do in communicating with your workforce once this public decision was handed down? What communication did you make with your workforce to say there is a damning public document about our behaviour on bullying but rest assured we are taking care of you, we are taking care of the bullying and we are addressing those concerns?

Ms NEWMAN: I would refer that question to Mr Barnier.

Mr DAVID SHOEBRIDGE: I am asking you. What did you do as the chief executive officer once you saw that?

Ms NEWMAN: We did not put out a specific communication with regard to Mr Butler's case.

Mr DAVID SHOEBRIDGE: How could you not have done that knowing full well how this kind of document, with these conclusions, would run through your organisation and cause a great deal of concern? Why did you not, as chief executive officer, take action? Or did you just think it was not your job?

The Hon. MATTHEW MASON-COX: Let her answer the question.

Ms NEWMAN: It is my job; the organisation is my job.

Mr DAVID SHOEBRIDGE: What did you do?

Ms NEWMAN: As I said, we did not put out a specific communication. We have communicated on numerous occasions with regard to bullying and harassment in the workplace. We have a training program in place. We have a number of communications that go out to staff about support and how they can interface with the people in the culture area. We have done quite a bit in that respect.

Mr DAVID SHOEBRIDGE: You did nothing in relation to communicating with your employees about the Butler decision. What did the rest of the organisation do? How did the rest of the organisation allay the obvious concerns as a result of it? Perhaps Mr Barnier or Mr Watson could assist.

Mr BARNIER: I would like to provide a response. In relation to the Butler matter, we must remember that that concerned allegations of misconduct. As Ms Newman said, we have strict requirements in the investigation of misconduct that are set out in the Public Sector Employment and Management Act. There is an entire process to ensure that natural justice is offered to all players in the investigation. That is set out in chapter nine of the personnel handbook that we are obliged to follow.

In relation to the communication regarding the Butler case, which I understand to be the subject of the question, the decision handed down by the deputy president—which was a public document—was well communicated. We then had a period during which we were entitled to review the findings and decide whether we would lodge an appeal. We decided not to lodge an appeal; we accepted the decision of Deputy President Harrison. While we were considering whether to lodge an appeal this Committee came into being. Our communication, which has been quite broad across the organisation, then focused on this Committee, the rights of people who wanted to make a submission, the protection of those who wanted to appear, and ensuring there was no interference. The chief executive officer issued some seven communications regarding this Committee, and in six of them we also reminded staff about the bullying response service and the other support mechanisms available. There was substantial communication regarding this particular inquiry and the allegations of bullying by WorkCover. That is what we put in place.

Mr DAVID SHOEBRIDGE: My question was about the Butler decision.

Mr BARNIER: Right.

Mr DAVID SHOEBRIDGE: What, if any, communications have you had with your employees about the Butler decision? Was your answer a long way of saying nothing?

Mr BARNIER: No, it was not a long way of saying nothing. The communication around that case was in public documentation, and that was fine. We did not intend to get into a public debate about the decision. We accepted the decision; we did not appeal. I did not want to interfere with Mr Butler's privacy by making any other statements.

Mr DAVID SHOEBRIDGE: Can you provide the Committee with any communications you had about the Butler decision and about this inquiry?

Mr BARNIER: As I stated, we had no communications about the Butler decision.

Mr DAVID SHOEBRIDGE: I thought there was some ambiguity. Can you provide all the communications you have had about the Butler decision and this inquiry or Committee?

Mr BARNIER: Yes, we can do that. My understanding with regard to Department of Premier and Cabinet guidelines is that the House must refer the matter to instruct us to do that.

Mr DAVID SHOEBRIDGE: I am asking whether you will provide that information to the Committee. It is not a difficult question.

Ms NEWMAN: Yes.

Mr BARNIER: I apologise for misunderstanding.

CHAIR: That will be deemed a question on notice.

Mr DAVID SHOEBRIDGE: Was the manager responsible for the conduct of the Butler case the manager of the employee relations team? Was he the officer tasked with that?

Mr BARNIER: The manager of the employee relations and policy team was responsible for the management of the investigative process. That process was conducted by an independent investigator who was a former deputy police commissioner. To ensure there was proper and natural justice, we also had guidance from an independent legal adviser.

Mr DAVID SHOEBRIDGE: But the officer in WorkCover was the manager of the employee relations and policy team?

Mr BARNIER: Yes.

Mr DAVID SHOEBRIDGE: Do you understand that one of the primary issues at play in the Butler case was bullying conduct within WorkCover?

Mr BARNIER: I understand that Deputy President Harrison had some comments to make about that, yes.

Mr DAVID SHOEBRIDGE: It was one of the issues in the case, was it not?

Mr BARNIER: It was an issue in the finding.

Mr DAVID SHOEBRIDGE: It was one of the issues in the case.

Mr BARNIER: The case involved allegations of misconduct, not bullying.

Mr DAVID SHOEBRIDGE: Mr Butler's issue was that the manner in which he had been investigated amounted to bullying.

Mr BARNIER: That is certainly in the finding by the deputy president.

The Hon. ADAM SEARLE: No, more fundamentally that was Mr Butler's case in the Industrial Relations Commission. That was his allegation.

Mr BARNIER: The Industrial Relations Commission case related to unfair dismissal.

The Hon. ADAM SEARLE: On the basis that he was mistreated.

Mr DAVID SHOEBRIDGE: On the basis that he was bullied.

Mr BARNIER: Right, yes.

The Hon. ADAM SEARLE: The question is whether that is how your organisation views it or did it not understand that?

Mr BARNIER: I understand that.

Mr DAVID SHOEBRIDGE: Did you understand at the time that this was a bullying case?

Mr BARNIER: Personally, I did not.

Mr DAVID SHOEBRIDGE: Is it true that the manager of the employee relations and policy team, who was effectively running a bullying case for WorkCover, has had to be counselled for using the word "fuck" regularly in his communications?

Mr BARNIER: I am not aware of that.

Mr DAVID SHOEBRIDGE: Does he use that word regularly in his communications?

The Hon. MATTHEW MASON-COX: Do you? Where do you get this stuff from?

Mr DAVID SHOEBRIDGE: Does he use it? Have you had to counsel him?

Ms NEWMAN: No.

Mr BARNIER: I have not had to counsel him and he reports to me.

The Hon. MICK VEITCH: Ms Newman, you spoke about the review of the engagement of external investigators. What is the time frame for that review?

Ms NEWMAN: That report is with me in draft form and it will be finalised in the next day or two.

The Hon. MICK VEITCH: I refer to the board and its role. Do you report directly to the board?

Ms NEWMAN: No, I am an ex officio director.

The Hon. MICK VEITCH: Who is the conduit between the board and the organisation?

Ms NEWMAN: That would be me as well.

The Hon. MICK VEITCH: Who prepares reports for the board?

Ms NEWMAN: Each of the general managers. Subject matter managers also prepare papers for the board.

Mr DAVID SHOEBRIDGE: There are a number of agencies.

The Hon. MICK VEITCH: Yes. Were any reports about the Butler case prepared for the board's consideration?

Ms NEWMAN: We took the Butler case to the board and we discussed with the board what we would do in response.

Mr DAVID SHOEBRIDGE: Was that after the decision or during the course of the prosecution.

Ms NEWMAN: The board was apprised of the case in the Industrial Relations Commission prior to it.

The Hon. MICK VEITCH: What about after?

Ms NEWMAN: Yes, after as well.

The Hon. MICK VEITCH: What sort of information is provided to the board about workplace bullying or cases of workplace bullying in the organisation? Are any reports made to the board about it?

Mr BARNIER: Yes. We provide regular reports to the board about health and safety matters. The People and Culture Group normally appears in front of the board at a minimum two out of every three meetings, and quite often it is three out of every three meetings. We talk about a range of the issues. We have one meeting every quarter that is totally dedicated, from the people and culture perspective, to employee safety and wellbeing. We work through work health and safety data and results. We talk about workers compensation claims and trends in hazard reporting. Our hazard reporting has been quite consistent over the past three years—about 100 cases a year are reported—and that gives us trends and some valuable data.

We also talk about the things we are doing around culture and wellbeing. As I said, we provide data on hazards, incidents, injuries and claims. We also talk about the other things we use as lead indicators to understand what is going on in the culture. We talk about the bullying response service, the employee assistance program, the manager assistance program, and the critical incident support program. We talk about the support we are providing in terms of realignments, reorganisations and restructures within the organisation. We also talk about other indicators such as the data coming out of staff surveys and attrition rates. We look at a heap of indicators to try to get a feel for what is going on.

The Hon. MICK VEITCH: The general manager would prepare a report for the board. Do you make recommendations as seniors officers for the board's action?

Ms NEWMAN: Yes.

The Hon. MICK VEITCH: The board would then either adopt or modify the recommendations?

Ms NEWMAN: That is correct.

The Hon. MICK VEITCH: And an action list is produced for implementation?

Ms NEWMAN: Yes.

The Hon. MICK VEITCH: Who is responsible for implementing those actions?

Ms NEWMAN: The chief executive officer, and that would be me.

The Hon. MICK VEITCH: So it would be fair to say that the board knew about the workplace bullying issues within the organisation?

Ms NEWMAN: It knew about the Butler case.

Mr DAVID SHOEBRIDGE: It had whatever was in the report sent from management.

The Hon. MICK VEITCH: Would it be fair to say that that was done with the Butler case and in the broader sense with workplace bullying issues?

Ms NEWMAN: Yes.

The Hon. MICK VEITCH: So the board would not be able to say that it did not know.

Ms NEWMAN: No.

The Hon. MICK VEITCH: Reference was made to surveys. Who is the employee assistance program provider?

Mr BARNIER: It is now Davidson Trahaire Corpsych. We are in transition to new providers at the moment.

The Hon. MICK VEITCH: What is the transition process?

Mr BARNIER: The contracts we have in place are about to expire. We are finalising the new contracts and we will have different providers for each of those services mentioned based on their strengths. We did that using an outside panel.

The Hon. MICK VEITCH: What was the catalyst for making that change?

Mr BARNIER: First, the contracts were due to expire. We have been listening to feedback from people with experience of the various providers. We are required to conduct an open tender and we did so. Instead of having one provider delivering the separate programs, we looked at the providers who could best deliver them and those with the best strengths and reputations.

The Hon. MICK VEITCH: Did you conduct a survey of staff about their level of satisfaction with the service offered by the previous provider?

Mr BARNIER: No, I got that feedback from listening to various people.

The Hon. MICK VEITCH: It is anecdotal?

Mr BARNIER: Yes.

The Hon. MICK VEITCH: Did the organisation ever survey staff? You could do that anonymously and that is why I am asking. Did you survey staff about their satisfaction with the service being provided?

Mr BARNIER: I would have to check. I think the providers might do their own satisfaction reporting as part of their contract.

The Hon. MICK VEITCH: Can you take that question on notice? I would like to see the survey. How often is it conducted?

Mr BARNIER: I would have to check.

The Hon. MICK VEITCH: How long had the former provider been with the organisation?

Mr BARNIER: I believe it might be around the three-year mark. I would have to check.

The Hon. MICK VEITCH: The backlog of bullying cases within the organisation after—

Mr BARNIER: After the PricewaterhouseCoopers report?

The Hon. MICK VEITCH: Yes. What was the process for addressing that and has it been addressed?

Mr BARNIER: A range of things occurred. Obviously some communication went out following the report. The chief executive officer and the acting director responsible for the People and Culture Group talked to staff and communicated to the various work groups regarding the outcome of the report. It was put to the work groups that people with outstanding concerns regarding bullying and other any other issues could meet independently with the acting director of the People and Culture Group. A workshop was also run jointly with the Public Service Association about supporting people involved in discussing bullying complaints. I understand that the acting director of the People and Culture Group who preceded me met with a number of people who had been involved in the PricewaterhouseCoopers report and who had raised concerns. He worked with them and provided them with support. That took place over a couple of months.

In relation to the backlog of cases, we doubled the number of staff in the Employee Safety and Wellbeing Team to ensure we could provide more support. We have brought in a separate strategy, which is mentioned in the submission, regarding the wellbeing program. The wellbeing program is not aimed only at bullying; it takes a holistic approach to creating a workplace culture which is more positive, which is more empowering and accountable and which provides a safe workplace culture. When I came along in August 2011, I renamed the Employee Occupational Health and Safety Team the Employee Safety and Wellbeing Team. I also removed it from the reporting structure of the employee relations team. I made it a separate team reporting directly to me because I wanted a very strong focus on a holistic approach in line with the PricewaterhouseCoopers report. We looked at the staff survey data we had at that stage, some contemporary research on wellbeing theory, attrition rates and even work done by others with regard to the best workplaces. That was the formulation of the Grow program. We then increased the wellness and safety team to six, with the last person joining in January 2013, to focus on supporting people who were experiencing difficulties.

We have had a large number of people dealing with the employee safety and wellbeing team. We have found what is evident in the workplace—and it would not surprise me if this is the case in most workplaces—is that people present at the workplace personal problems as well as work-related problems. We cannot turn off personal problems when we come to work, and neither can we turn off work issues when we go home. We have had a great deal of focus and support on that. By increasing that team to six, we have worked through all of those and cleared any backlog determined as a result of the PricewaterhouseCoopers report.

The Hon. ADAM SEARLE: Ms Newman, when I read WorkCover's submission to this inquiry I was astonished that there was no mention of the Butler case or of any systemic implications that case may have identified. Why was there not a single mention of it?

Ms NEWMAN: The submission that we put in was about our results with regard to our work health and safety and workers compensation statistics as well as describing what we are doing now.

The Hon. ADAM SEARLE: We have received some evidence that suggests that there has not really been an acceptance by your organisation of the Butler decision, but you are seeking to assure us differently. Is that correct?

Ms NEWMAN: Yes, I am.

The Hon. ADAM SEARLE: The person from your organisation most identified with this decision is the manager of the Employee Relations and Policy team. Does the person who occupied that role in this case still occupy that role?

Ms NEWMAN: No.

The Hon. ADAM SEARLE: Were the facts that underlie this decision the reason for that person no longer occupying that role?

Mr BARNIER: No.

The Hon. ADAM SEARLE: Is there a reason for choosing yourselves to appear before this committee and leaving that person off your list?

Mr BARNIER: I am the senior executive accountable for that area so I chose to appear.

The Hon. ADAM SEARLE: In answer to some earlier questions, your evidence was about legal advice to make sure that natural justice was observed in that investigation.

Mr BARNIER: Yes.

The Hon. ADAM SEARLE: But the commission found, in paragraph 55, that the process was fundamentally flawed and denied Mr Butler natural justice. There are other even stronger conclusions, for example at paragraph 176, where it was concluded that there was a malicious intent against Mr Butler by the person who occupied that role. These are very serious matters. What specifically has your organisation done in connection with those damning findings?

Mr BARNIER: That is why the chief executive undertook an independent review looking at how we do our investigations of matters regarding misconduct. We discussed that in a previous answer.

Mr DAVID SHOEBRIDGE: If you accept the finding that there was malicious intent you need to act on that finding. What have you done about the finding of malicious intent?

Mr BARNIER: Since January 2013 we have been developing a complete review of how we handle grievances, investigations, bullying and a whole range of policies. We have been doing a full policy review and that has been going on since early 2012. There were complexities found in that review, including that we needed to consolidate all of the policies across all agencies to get a common view. We then had the legislative requirements of the work health and safety legislation for consultative arrangements. We have been developing a whole range of policies and having quite extensive consultation to look at better ways of doing things. One issue in relation to handling bullying matters and investigations has been trying to follow the fairly comprehensive requirements in chapter 9 of the personal handbook regarding misconduct and the natural justice provisions versus trying to do an early-intervention approach.

Mr DAVID SHOEBRIDGE: This finding of malicious intent was against one of your senior officers. What have you done about that finding? It was not in January this year; it was in June this year.

Mr BARNIER: In terms of malicious intent, I have reviewed the transcripts.

Mr DAVID SHOEBRIDGE: I am not asking what you have done to try to disprove the finding. What have you done about that finding?

Mr BARNIER: I do not believe there was malicious intent.

The Hon. ADAM SEARLE: You do not accept the decision of the commission in Butler?

Mr BARNIER: I accept the decision regarding the unfair dismissal and the matters carried out. I do not believe the individual had malicious intent.

The Hon. ADAM SEARLE: Despite the fact that after hearing all the evidence, the independent tribunal found there was, your organisation said, "No, we know better." Is that what you are saying?

Mr BARNIER: No, that is not what I am saying.

The Hon. ADAM SEARLE: That is what I am hearing.

Mr BARNIER: That might be what you are interpreting.

The Hon. ADAM SEARLE: Please disabuse me of this notion.

Mr BARNIER: I am saying the officer concerned followed the requirements in the management of an investigation and allegation of misconduct.

The Hon. ADAM SEARLE: Except the finding was that the officer did not. The finding was that natural justice was not accorded to Mr Butler and that the conclusions reached were not supported by the facts. When you review the different allegations, the impression from the decision is that each and every one should have been the subject of, at best, counselling or warnings rather than misconduct. Fundamentally the wrong path was taken. I will sharpen my question. Paragraphs 38 and 39 of the decision are about the person who occupied that managerial role and reported to you. That person was in the presence of Ms Newman when he received certain information. Certain comments are attributed to Ms Newman, which leads to the decision disciplinary investigations were to be undertaken. Ms Newman, were you party to the decision that there should be a disciplinary investigation into Mr Butler?

Ms NEWMAN: No, I was not the decision-making officer in that case.

The Hon. ADAM SEARLE: Who was?

Ms NEWMAN: I appointed John Watson, who is with me now.

The Hon. ADAM SEARLE: Mr Watson, was it your decision to commence a disciplinary investigation?

Mr WATSON: I was the decision-maker in the disciplinary matter.

The Hon. ADAM SEARLE: That was not my question.

Mr WATSON: I am authorised by a delegation from the chief executive to look at the matter from the point of view of the disciplinary issue.

The Hon. ADAM SEARLE: I will read out a couple of sentences:

Ms Newman, acting chief executive, who was with Mr Devine at the time of Ms Leckie's report commented that this could be a breach of the approvals. This led to a decision on the same day to commence a disciplinary investigation against Mr Butler.

Who decided to commence the investigation into Mr Butler? Was it you, Ms Newman?

Ms NEWMAN: It would have been me and I signed.

The Hon. ADAM SEARLE: It took some difficulty to get that answer out of you, Ms Newman.

Ms NEWMAN: I am sorry; I did not understand the question.

The Hon. ADAM SEARLE: On what basis did you form that decision?

Ms NEWMAN: There were a number of allegations against Mr Butler with regard to misconduct. There were further of allegations about procurement practices and he was the procurement officer in information technology at the time. There were issues with regard to mobile phones, flex sheets and a range of issues.

The Hon. ADAM SEARLE: Each one of which was comprehensively rubbished in the hearing. Did it never occurred to you or to anyone else in the organisation that a better course of action might have been to ask the person concerned about these matters and to seek some feedback prior to a lengthy and expensive investigation?

Mr WATSON: The officer concerned had ample opportunity to put matters to me, as the decision-maker. The person concerned spent more than an hour speaking to me and putting matters to me. That meeting was delayed to give the officer an opportunity to deal with personal circumstances in New Zealand. We went through the usual process that is set out in the handbook. Bearing in mind that, as a decision-maker, you can only take into account the matters in the report before you and you cannot go on a frolic of your own to gather the information, you only deal with the subject under review. The authorisation I am given as the decision-maker in these matters is limited to dealing with the officer concerned.

The Hon. ADAM SEARLE: Happily for you, the commission found that you were misled by the Madden report.

Mr WATSON: I made the decision based on the report. I pored over the six volumes of the report and concluded that the sum total of the matters was such that a dismissal was appropriate—as my findings report, which was included in the court documents, shows. The commissioners disagreed with my decision in the matter, and it is the role of the commissioners to do that. I am very happy to accept the commission's finding in respect of that.

The Hon. ADAM SEARLE: In your consideration you did not have regard to the contents of the personnel file of the officer concerned, did you?

Mr WATSON: I did not seek the personnel file; that is quite right.

The Hon. ADAM SEARLE: Is it fair to say that you did not properly take into account the totality of his employment with the organisation in reaching your conclusion?

Mr WATSON: I took into account the full detail provided to me by the investigation report. That was ventilated in the commission.

The Hon. ADAM SEARLE: The commission found that if there was an area open to criticism it was a failure by you to undertake any independent inquiry to test the Madden report. You said you are not entitled to do that. What systemic lessons have you and the organisation learnt from this specific instance such that it can never be repeated in your organisation?

Mr DAVID SHOEBRIDGE: The six-volume report.

Mr WATSON: I am happy to comment on the six-volume report.

The Hon. ADAM SEARLE: I would rather you answered my question first.

Mr WATSON: I thought that might be the case. Please repeat the question.

The Hon. ADAM SEARLE: You said to you could only deal with what is specifically put to you, and I therefore infer that the personnel file was not put before you. The criticism by the commission was that you did not test the Madden report or make any independent inquiry, and you say you could not do that because of the way chapter 9 works. Given what went grotesquely wrong in this case for the organisation and you as a decision-maker, what lessons have you learnt and what have you put in place such that Butler can never happen again in your organisation?

Mr WATSON: First, my understanding of being able to seek further information has been expanded. The commission's recommendations make that clear. If I am afforded the opportunity to deal with another matter then I will make further inquiries. When I hold meetings with people who have had allegations put before them, I have an open-ended view about how long a meeting needs to be and what matters need to be put before me. Committee members would understand the process is not to interrogate the decision-maker but to put matters before the decision-maker that may influence the decision. At that time Mr Butler had a clear indication of my thinking in respect of each allegation. He was able to put before me arguments to change my thinking. In the verbal submission he made to me there was information confirming my decision in some of the allegations, in my view.

I did not seek out the individual's file to look at his previous history with the organisation, which was not subject to the investigation, because I was only dealing with matters subject to the investigation. I would have had to reach back into his long history to seek out further information and then extend the investigation period to put those matters to Mr Butler to comment on. There is a tension between trying to deal with the matter for the individual as quickly and as robustly as we can and seeking other things with a potential of being accused of being on some sort of witch-hunt, which I did not want it to be.

The Hon. ADAM SEARLE: Which in fact is what your organisation is now accused of.

Mr WATSON: I am aware of the findings of the commission in this. I am absolutely aware of them. I have read them in detail. I returned from leave and read the material. Clearly I have an interest.

Mr DAVID SHOEBRIDGE: Do you accept them?

Mr WATSON: I accept that the decision I made, the commission has decided that the decision I made was too robust. My involvement in the matter was as the decision maker, bearing in mind that Mr Butler has never worked directly for me and does not work in my division. So I was independent in respect of that. The systemic issues that are commented on are issues that need to be addressed, and that is the work that Mr Barnier has already commented on. There is a great deal of work going on in that area, and that has been extended into my division. I am happy to take the time of the Committee now if you would like to talk about some of the cultural change processes that I have put in place as part of the GROW program, particularly under the leadership at the moment and moving more broadly to customer service. I will be led by the Chairman. If the Chairman would like me to go into that I am happy to do that.

CHAIR: Not at this stage.

The Hon. CATHERINE CUSACK: I want to inquire as to how PricewaterhouseCoopers came to be engaged to conduct that review that was released in March 2011.

Ms NEWMAN: I cannot answer that question. I was in a role in WorkCover at the time but I was not the chief executive officer. So I have no idea.

The Hon. CATHERINE CUSACK: Does anybody know the answer to that question?

Mr WATSON: No, I certainly have no knowledge of how that process was undertaken.

The Hon. CATHERINE CUSACK: Can I ask that that be taken on notice?

Mr BARNIER: Sure.

The Hon. CATHERINE CUSACK: The Committee has received evidence that two protected disclosures were made to the Ombudsman concerning bullying of the chair of the occupational health and safety committee, that those disclosures were made on 6 October 2010 and 6 February 2011, and that these were accepted and responded to by WorkCover. Are you familiar with those?

Mr BARNIER: No, I am sorry, I was not in the organisation so I have no awareness of those. Protected interest disclosures or public interest disclosures are normally quite secret.

The Hon. CATHERINE CUSACK: You were not in the organisation on 6 February 2011?

Mr BARNIER: Yes, I was contracting to the organisation at that time but I am not aware—can you repeat what the matter was again?

The Hon. CATHERINE CUSACK: It concerned bullying of the chair of the occupational health and safety committee within WorkCover. The initial complaint was made on 6 October 2010. Then the complainant was concerned that nothing had been done so a follow-up complaint was made on 6 February 2011. The evidence we have is that it was accepted by WorkCover and that it was responded to by WorkCover.

Mr BARNIER: The concern raises a bell. I certainly have some awareness of that. In relation to the treatment of the protected interest disclosure, I am not across that.

The Hon. CATHERINE CUSACK: The reason I am inquiring is because WorkCover's annual report states that no protected interest disclosures were made during that period. I am just wondering if that register of protected interest disclosures is complete.

Ms NEWMAN: Can we take that on notice?

The Hon. CATHERINE CUSACK: Thank you. Ms Newman, what do you see the role of the board being in overseeing governance arrangements for the investigation and satisfactory conclusion of these sorts of matters?

Ms NEWMAN: I see the board as having an advisory role for the chief executive officer with regard to ensuring that we have the right policies in place, that we are conducting our business with tight governance. We have an audit risk committee that is quite active that looks at a number of issues across all the agencies. The board is very questioning of what we do. We have a lot of report-backs to the board on a number of issues as they arise.

The Hon. CATHERINE CUSACK: Is the board ever asked to approve any administrative policies?

Ms NEWMAN: No.

The Hon. CATHERINE CUSACK: They pass no resolutions at all?

Ms NEWMAN: They do pass resolutions but not specifically on administrative policies.

The Hon. CATHERINE CUSACK: So you see the board as an advisory body, not as part of your governance system?

Ms NEWMAN: It is legislated as an advisory board but I see it more as very much part of our governance system.

The Hon. CATHERINE CUSACK: It is just that it does not appear on any of the diagrams.

Ms NEWMAN: No.

The Hon. CATHERINE CUSACK: Why is that?

Ms NEWMAN: It is the structure of the Act.

The Hon. CATHERINE CUSACK: So you are saying that under the Act the board plays no role?

Ms NEWMAN: The board has an advisory role. I am sorry, I am not quite getting the question. The board also has a role in audit risk.

The Hon. CATHERINE CUSACK: My understanding is that the board is accountable?

The Hon. ADAM SEARLE: Are you talking about the current board or the board that existed prior to the legislative change?

The Hon. CATHERINE CUSACK: I am talking about the current board at the moment. Equally these questions might apply—

The Hon. MICK VEITCH: I said both iterations, this one and the last one.

The Hon. CATHERINE CUSACK: Yes, absolutely.

CHAIR: It is a general question.

Mr DAVID SHOEBRIDGE: Perhaps the chief executive officer could take on board section 5 of the Safety Return to Work and Support Act, which states that the board has a function to determine the general policies and strategic direction of each relevant authority. How do you respond to that in your advisory role?

Ms NEWMAN: The board determines the strategic direction of all the agencies.

Mr DAVID SHOEBRIDGE: Determine the general policies and strategic direction—both. You say it is advisory.

Ms NEWMAN: It is advisory that the board does, as I said before, not necessarily approve the administrative policies. They certainly approve their policies on a number of other activities within the organisation.

The Hon. CATHERINE CUSACK: What does the board approve? What is the board responsible for, in your view?

Mr DAVID SHOEBRIDGE: You have not read section 5.

Ms NEWMAN: Sorry?

CHAIR: Can we take it one at a time? The witnesses are getting confused as to who they are answering the questions from. The Hon. Catherine Cusack is asking the questions. Just be specific.

The Hon. CATHERINE CUSACK: I have asked specifically what do you see the board as responsible for.

Ms NEWMAN: The board are responsible for setting the strategic direction in the organisation. They are responsible for the financial management of the organisation. They are responsible for the governance of the organisation. They are responsible for the decision making around a number of the activities being the workers compensation scheme—in fact, the workers compensation system—they are responsible for ensuring that we have the appropriate policies in place. Certainly with the implementation of the new health and safety legislation there was a lot of governance over that from the board on the organisation. They also have responsibility for ensuring that across and looking at what is happening with regard to our workforce, as Mr Barnier has described before, with regard to the activities of the work health and safety division and what is happening in business across New South Wales. So there is a lot that goes to the board. Yes, they do make recommendations.

The Hon. CATHERINE CUSACK: When you say "they are responsible" for making recommendations about those matters?

Ms NEWMAN: We make recommendations to the board.

The Hon. CATHERINE CUSACK: Is the board making recommendations to you or are you making recommendations to the board?

Ms NEWMAN: We make recommendations to the board.

The Hon. CATHERINE CUSACK: And does the board make a decision on those recommendations?

Ms NEWMAN: Yes, they do.

The Hon. CATHERINE CUSACK: That sounds a little more than advisory. Would you concede that that is more than advisory?

Ms NEWMAN: Yes.

The Hon. CATHERINE CUSACK: So my question is, and I suppose also taking on board the comments of Mr David Shoebridge in relation to the legislation, why does the board not appear in the organisational modelling that shows how the organisation reports to the Minister? Why is the board not—

Ms NEWMAN: I am not sure what model you are referring to.

The Hon. CATHERINE CUSACK: All the modelling in your annual reports.

Mr DAVID SHOEBRIDGE: The answers you gave earlier where you acknowledged they were not in your model because they were advisory, I think that was the substance of the question. How do you explain that?

Ms NEWMAN: I have always had them in the organisational structure. I am not quite sure. I would need to take that question on notice and come back with the diagram when I have had time to look at it.

CHAIR: You could table something in due course that shows the board's relationship to WorkCover.

Ms NEWMAN: Yes.

Mr WATSON: If I may talk a little about how the board's activities link into the development of strategic direction, because I think that might give clarity. It is a confusing arrangement. It is not a usual arrangement for a board. It is quite different from what you would have, for example, in a proprietary limited corporation. It is a mix of governance and advice. It is a bit of a strange arrangement, so it does take some explaining. But in practice what we do is a lot of work with the board about the strategic direction of, for example, WorkCover and we talk with them and provide advice to them about how we are intending to go forward in respect of the organisation, what strategic directions we will be talking over the next five years.

I meet with the board and talk with them. Indeed, we have had planning days involving the board because we have talked about the various agencies under the Safety Return to Work and Support Division that have made presentations about their directions. So they are very much involved in the setting of the strategic direction and it is in that environment that they have oversight, as our chief executive officer indicated, of the

financial arrangements around the various funds that the Safety Return to Work and Support Division administers.

CHAIR: This line of questions is because we have been concerned as to why the board seems to have taken no role in this whole situation building within WorkCover. If the board did, what action did it take?

Mr WATSON: It would be unusual, in my experience, for the previous board under the previous legislation to be directly involved in operational matters and it is not the way in which this current board operates. They are not directly involved in operational matters.

The Hon. CATHERINE CUSACK: But boards are accountable. If there is a pattern of complaints or a compliance issue, particularly allegations that the organisation is not complying with provisions of the Act that itself is meant to be administering and there is a pattern of those complaints, I would fully expect that matter to be discussed at board level.

Mr WATSON: And I would agree with the honourable member and that is why Mr Barnier has indicated the sort of reporting we do to the board so it is discussed at that level.

The Hon. MELINDA PAVEY: Now?

The Hon. CATHERINE CUSACK: Are you doing that for the board to give you advice or is the board actually making decisions in relation to that matter?

Mr WATSON: I think the fair thing to say is that individual board members come with their particular expertise and backgrounds. That is an important point to note.

The Hon. CATHERINE CUSACK: Yes.

Mr WATSON: They do provide advice to us about how we should deal with matters and what the priorities are.

The Hon. CATHERINE CUSACK: And there is a great deal of actuarial expertise on the board as I understand it.

Mr WATSON: There is, given that we are something like the third or fourth largest insurer in Australia.

The Hon. CATHERINE CUSACK: I understand that. The question is: Does the board have the skills and the expertise to actively fulfil its responsibilities in relation to overseeing this aspect of WorkCover's operations, given how it treats its own staff?

Mr WATSON: The work health and safety division, I have to say as the general manager, I am very happy with the engagement that I get from the board and the advice I receive from them is good.

The Hon. MATTHEW MASON-COX: I want to ask a few questions about some of the evidence that has put to us by a range of people. First, in relation to the bullying response service, it has been put to us that the bullying response service does not really operate actively within the organisation because there are some issues apparently in relation to some people who use that service having their name reported internally through, I understand, some invoicing process and then their name has been put back to their division and therefore they were put in a very conflicted position. Can you give us some background as to what is happening with the bullying response service and address those claims?

Mr BARNIER: The bullying response service is active. I think I mentioned earlier that even when we are talking about the functions of this inquiry we have made sure that on six out of the seven messages we have promoted that the bullying response service is still there. My understanding is the bullying response service had two different iterations and is about to go into a third. The first version of the bullying response service was to be a strictly confidential service. I understand that sometime shortly after the PricewaterhouseCoopers report it then moved into a different version which was not confidential but when people phoned in they would be advised of the case. The breach that I have read and the evidence that has occurred with the invoicing I understand occurred on one occasion sometime after the PricewaterhouseCoopers report where the names of the

individuals were on an invoice that was sent down to the finance area for payment. That issue was detected by one of the PSA delegates who was doing the payment and so that risk of identifying people was quickly contained and all invoices have had names redacted since then when they have been sent down for processing.

The reason it then moved into "not confidential" was also in response to one of the recommendations from the PricewaterhouseCoopers report which is about us trying to understand as an organisation the different avenues of how one knows whether bullying is occurring. That is why it moved away from "confidential" to employees being advised that it could be reported through. As I said earlier, we have done a new tender request for a proposal to change providers. The new provider will be on the basis of a confidential service except where there is an imminent risk or harm to individuals and they have legal obligations to report. I think it is under the Mental Health Act or something like that where people have got risks that they must report that. That is where we are moving with that. We certainly have no desire and no intention to get rid of the bullying response service. As it moves now into its new transition which should be over the next month or so we will be promoting it even further through the new provider.

The Hon. MATTHEW MASON-COX: How many people used that bullying response service last financial year?

Mr BARNIER: I do not believe I have the numbers.

The Hon. MATTHEW MASON-COX: Please take it on notice.

Mr BARNIER: I understand it was very low usage.

The Hon. MATTHEW MASON-COX: How long has it been in place?

Mr BARNIER: At least two or three years.

The Hon. MATTHEW MASON-COX: Will you provide the number of people who have used that service for each of the years it has been in place?

Mr BARNIER: Yes.

The Hon. MATTHEW MASON-COX: Have you had an opportunity to read the submission of Unions NSW?

Mr BARNIER: Yes.

The Hon. MATTHEW MASON-COX: A number of other submissions have also mentioned the idea that the regulator needs to be regulated. Would you respond in that regard and specifically to the suggestion that some other State regulator be put in place to respond to bullying claims within WorkCover so WorkCover does not respond to that and there is the potential for a conflict of interest? Indeed the suggestion has been made that an independent government body should be set up to review those sorts of claims.

Mr WATSON: If I may deal with that matter. First of all there clearly is a conjunction of roles in WorkCover. We are the regulator for work health and safety and workers compensation, return to work but we are also the person conducting a business or undertaking [PCBU] under the Act and we have offices, duties and responsibilities under the occupational health and safety Act. That is the same for every other regulator around the country. In respect of how we deal with matters, we do have matters raised with us routinely internally about all sorts of work health and safety issues. We just deal with those in exactly the same way we would expect another employer to deal with them.

Where matters are highlighted we set up an independent process separate from the unit that the officer may be in, particularly in my division where the inspectors are and most of the regulatory functions are carried out and we separate ourselves. So if the matter was in our Parramatta office, nobody who works in that geographical area would be involved in the matter. Indeed, we would probably bring somebody from the country to give us an independent view about that. That is how we deal with the routine matters. Mr Barnier and I have been having quite a lot of discussions. This has been discussed at the Heads of Workplace Safety Authority. I might just explain what that is, if members are not aware.

The Heads of Workplace Safety Authority is my equivalent from every jurisdiction in Australia and New Zealand. I chair that group. That group has various working parties set up under it to provide advice to regulators across Australia and New Zealand to deal with issues. As a part of the implementation of the work health and safety legislation when the harmonisation discussions were going on in Safe Work Australia and the development work was being done, we made every attempt to address the sharing of information between jurisdictions so we could share information about various PCBU's who might operate nationally. But the other aspect was the recognition that there would be occasions where we would need to appoint inspectors across jurisdictions.

This was really considered in relation to regulators such as WorkCover in New South Wales not being able to have every specialist available to it. There have been discussions. For example, South Australia has employed a specialist in plant and is training that person up. So that will be a specialist who will be available to us everywhere. The Acts across the country provide for us to be able to appoint individuals from outside our jurisdiction as inspectors in our jurisdiction. So that is a role for the regulator in each State to do that.

As we thought about how we would deal with the investigation of matters internally in the regulator itself, we have done some work with the Ombudsman. Mr Barnier and I have had discussions about this and we went to the Ombudsman and said, "What is the best practice model?" The view of the Ombudsman was that WorkCover could undertake those investigations itself. We do have a governance body within the division that looks after the performance of our inspectors in the field and whether notices are served correctly and properly and we do a snapshot of those across our activities each year.

The Ombudsman was of the view that we did not need to have some independent body. I have to say that both Mr Barnier and I were not comfortable with that—this is going back some 18 months or two years now. I think there needs to be a clear indication of independence and separation. I initiated discussions with a co-regulator in New South Wales and I have talked with my counterparts in other States. They are not comfortable to undertake the role for us at the moment and vice versa. We would be happy to do it for them but they are not comfortable for us to be doing that at this stage. So that relationship is not appropriate.

The co-regulator in New South Wales, of course, is the Department of Mineral Resources. Mineral Resources looks after mining and it administers the Act in mining. The model for that was really set in the Gretley case where WorkCover inspectors were authorised under the Mines Act to investigate the inrush of water in Gretley. A number of inspectors in our organisation were appointed—not work we normally do—and conducted the investigation. We are in discussions now. We have had an exchange of letters between our chief executive officer and the director general and I have had a number of meetings at the operational level to try to sort out a memorandum of understanding to allow us to assign matters that have been through the nationally agreed triaging process that we use for complaints that come to us, and then assign them to the mines inspectorate for investigation internally at WorkCover.

We need to work our way through some legal hurdles because under the Act the regulator authorises prosecutions. If we had a matter—and this is outside of bullying—we have to provide a safe place of work in addition to a whole range of operations that might be imposed. The regulator would then need to approve any enforcement action that was being undertaken. We would be subject to the Premier's memorandum, as other government agencies are in that respect.

CHAIR: Ms Newman, were you acting chief executive officer from December 2011 and were you appointed in October 2012?

Ms NEWMAN: Yes, that is correct.

CHAIR: Do you accept that cultural bullying is occurring at WorkCover? The Committee has heard that term used fairly widely but no-one seems to question it. Has there been a culture of bullying at WorkCover that is designed to deal with work health and safety in the workplace?

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Ms NEWMAN: I refer to my opening statement. I do not believe that there is a systemic culture of bullying. There are isolated cases which come to our attention but, no, I do not believe that there is a culture of bullying.

CHAIR: Is there a point when you realised WorkCover had a major problem with bullying if you do not accept the word "culture"? When did you become aware of it?

Ms NEWMAN: I was aware of but not involved with the PricewaterhouseCoopers report where this was initially looked at. We have monitored over time our staff surveys and our hazard reports, workers compensation, sick leave, et cetera, which have indicated this is not necessarily a systemic issue or workplace culture. I am aware of the statements that the reduction in workers compensation claims and the use of the employee assistance program have not been reflective of the prevalence of bullying in WorkCover and that people are too afraid to lodge a bullying complaint. Mental stress claims across WorkCover have dropped from 21 claims in 2010-11 to four claims in 2012-13—a reduction of 81 per cent. There were 10 reported bullying claims in WorkCover in 2011 and 2012-13—a reduction of 90 per cent. Reduction of bullying claims was the direct result of our risk management approach to work health and safety issues. Our employee assistance program is a confidential counselling and advice service for all employees and their immediate families to seek professional advice for any personal or work-related problems.

CHAIR: If people who are making bullying complaints are dealt with unfairly WorkCover staff would be reluctant to make complaints of bullying?

Ms NEWMAN: That is a possibility.

CHAIR: That could be like an iceberg below the surface?

Ms NEWMAN: Yes it could be.

CHAIR: Would that be a great number or small number?

Ms NEWMAN: I think it would be a small number.

Mr BARNIER: But any number is of significance to us.

CHAIR: Have you made any attempt to identify those individuals in WorkCover who have been accused of bullying? In other words, do you have a list of managers or senior staff who have been accused of bullying for you to deal with or counsel?

Mr BARNIER: No, we do not have a list of people. I am certainly aware of some hotspots. I am aware of a couple of matters where concerns have been raised that we are looking into in order to understand what it means. As you say, one of the issues is getting people to report. We have this conflicting data that we are trying to report to the board what is going on. We are using surveys, the bullying response service, the employee assistance program, attrition rates, hazard reporting, and a whole range of different avenues to understand. The data is not telling us that there is a broad systemic or endemic issue with bullying. But I think in any organisation at any given time there will be people who have concerns about bullying or working relationships or whatever it might be. I do not think we state that there is no bullying happening anywhere. We just cannot see it from the data we are getting and the level of reporting.

Clearly an earlier question related to what we were learning from it. After reading the evidence and the submissions we are certainly learning that the data we are getting is different from the information being provided to the inquiry. Obviously we need to do more to promote the bullying concerns and to make sure that people feel safe. There has been some history in the past where people felt they could not do that for various reasons; maybe it was the people and culture team, or issues with confidentiality or whatever. That team has changed remarkably in the past two years.

I mentioned earlier that I am very focused on early intervention and wellbeing. I have done some studies in that area and I am very interested in how we do that. I quite enjoy the discussions that I have with the industrial officer of the PSA where we are trying to look at how do we do, as she calls it, the inquisitorial approach to dealing with bullying versus defaulting to the misconduct and I think there has been great benefit in reading the submissions for this inquiry and some of the reports that are coming out, as well as the ongoing work we have been doing. As I said, when you asked before: what are the learnings we have got from that? Certainly building management capability to be able to have the discussion with an employee before it becomes something worse—and we have been doing a lot of training there with our management practices courses and our leadership forums to get people to understand what is the role of a manager, what are their accountabilities and what is or is not acceptable behaviour in the workplace. We have to get people to feel safe about doing the reporting.

Chair, as you highlight, if people are not reporting, we need to work out a way to encourage them to report. We certainly are getting reports of people with concerns in our hazard notifications and that does not seem to be a big issue that we are reporting through those to solve them. On the face of it you look at all these indicators and you think that it must be working because these indicators are not revealing anything but clearly this inquiry is hearing other reports of people who have got concerns or saying they do not want to report. We need to work out a way to address that. I think some of that comes down to a trust relationship between a different style of management from the past versus what we are trying to take us through today.

CHAIR: And you are only seeing the public submissions not the confidential ones that we have.

Mr BARNIER: Yes.

CHAIR: There is a great deal of concern amongst members of this Committee because we are getting evidence and information about bullying and the term "culture of bullying" does seem to be an accurate description of what has been happening, whether it has now been cleared up through your Grow program and so on, but it certainly has been existing. That is why I was surprised when you indicated that you do not have any measuring procedure to identify people who are carrying out the bullying and which managers have this problem that should be dealt with, counselled, investigated, disciplined or even removed?

Mr BARNIER: If I could just add to that, Chair? Certainly we have people who have raised concerns about some particular areas. I have a couple of areas in mind.

The Hon. MELINDA PAVEY: You said hotspots. Is that what you are referring to?

Mr BARNIER: Yes. If you look at our staff survey, it identifies where engagement is low and you can look at particular areas there. You can look at the questions relating to bullying and you can see there is some difference there in some discernible areas. We obviously talk about that when we are seeing those survey results to work through that. Obviously when people are raising concerns we are working through that. I think the other piece that we are taking action on—and the staff survey we did in 2012 was the same methodology used in the PWC report and gave us a good baseline; we have taken a decision as an executive to use the People at Work survey, which is currently in the stages of being rolled out. We planned this early in the year to take place in this half of the year. It is currently in progress.

The People at Work survey, which is a survey that we promote also as the regulator promoting it out to the public, is a piece of research with the University of Queensland and it has some extremely, one might say, confronting questions around the workplace, the attitude, the relationship with managers, the culture and a specific question on bullying. We are keen to get the results of that. We are putting that across a variety of our agencies right now. We expect to have the data on that early in the New Year and we are looking forward to seeing what that reveals, which one would hope—I do not know if I want to hope it—if these are the reports that the inquiry is hearing I hope it is reflecting them in the survey otherwise we still have not done something about the trust relationship to get people to feel it is safe to stand up and report.

CHAIR: If you have a manager in one of the departments and there has been more than one complaint about bullying, what action do you take with that person?

Mr BARNIER: There are two ways you can go with that. I think the traditional way that WorkCover has done it in the past is the formal: Let's look at the misconduct provisions and how that may work. We have been working with what we call an early intervention approach since January this year, which is how can we move away from dealing with such things as misconduct first and move more towards the space of an employee's safety and wellbeing or a work health and safety issue and how do we manage that rather than a disciplinary approach? Certainly in our early intervention programs when people do report to us issues or concerns, the first thing we are now working with them is saying: what are you looking for, because some individuals just say, "I just want it to stop. I just want to talk to so and so".

There will be some other individuals that would want the greatest penalty available but there are a range of things there, so we are consciously working with the people who raised the issue on what are the expectations and then what can we do with that to work with them. Obviously the people who have had allegations against them often feel aggrieved or may not be aware or may not have had intent so we need to

support all the people working through this. I read with interest the statement from the witness last Monday from the university and I have read some of his work in the past. I do not disagree with his approach.

More and more we are now working through how do we get our raising grievance and concern policy as well as our handling the bullying and harassment policies to line up more with let us treat it as a work health and safety issue first and if there are issues of intent or misconduct, how do we refer it to misconduct instead of defaulting to misconduct. I think there are some great learnings we have had out of that and out of this inquiry to help us work our way through that. We recently undertook a literature review to understand what is best practice for managing bullying issues in organisations, looking at academic work around the world and we are working through that as well.

CHAIR: I will come back to that later.

Mr DAVID SHOEBRIDGE: Mr Watson, you said you had some advice from the Ombudsman about how to deal with these internal complaints, is that right?

Mr WATSON: Yes, that is right. We had a discussion with him.

Mr DAVID SHOEBRIDGE: Could you provide that to the Committee?

Mr WATSON: We do not have written advice on that, I do not believe.

Mr BARNIER: I met with the Deputy Ombudsman early this year or late last year. The Deputy Ombudsman certainly had a view that as a regulator and an employer you should be trying to resolve the issues first as the employer and then if someone was dissatisfied with how the employer is dealing with their obligations under the Act then it could be referred to the regulator arm to do that.

Mr DAVID SHOEBRIDGE: But you are the regulator and the employer?

Mr BARNIER: Yes, so the view was if there was believed to be a serious concern—let us say the allegation was against one of the executives responsible for that area, there were a couple of other avenues to move to within the framework which could be either going to the Ombudsman's Office themselves or the Public Service Commissioner so there are a couple of other options.

Mr DAVID SHOEBRIDGE: Could you clarify the advice you got in an answer on notice?

Mr BARNIER: Certainly.

Mr DAVID SHOEBRIDGE: Ms Newman, you said that there had been two reports to the board about the Butler case, is that right?

Ms NEWMAN: As I recall, yes.

Mr DAVID SHOEBRIDGE: And then there was no doubt a response from the board after each report?

Ms NEWMAN: The response from the board after the report was: what were we doing about the findings in the Butler case of which we continued to report, not specifically around the Butler case but what we were doing with regard to the whole investigation process, how we support people or individuals while they are going through an investigation, any form of grievance; we reported all that to the board.

Mr DAVID SHOEBRIDGE: Could you provide to this Committee those reports you made to the board and the responses you got from the board both in relation to the Butler case and others?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: You said the board was an advisory board, is that right?

Ms NEWMAN: It is termed an advisory board.

Mr DAVID SHOEBRIDGE: In your role as chief executive officer have you had a look at the statutory framework within which you operate?

Ms NEWMAN: Yes I have.

Mr DAVID SHOEBRIDGE: Have you had a look at section 5 of the Safety Return to Work and Support Board app that sets out the functions of the board?

Ms NEWMAN: Yes I have.

Mr DAVID SHOEBRIDGE: It says that "the board has the following functions: (a) to determine the general policies and strategic direction of each relevant authority". That is a determination role not an advisory role", is it not?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: Do you agree that conflicts with your view of the board as an advisory board?

Ms NEWMAN: No, I do not.

Mr DAVID SHOEBRIDGE: The second function of the board is to oversee the performance of each relevant authority, and WorkCover is a relevant authority?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: Do you agree that overseeing is not an advisory role?

Ms NEWMAN: Overseeing, no, it is not an advisory role.

Mr DAVID SHOEBRIDGE: What about subsection (2) of section 5, which says, "In exercising its functions in relation to a relevant authority the board is (a) to ensure as far as practical that the activities of the relevant authority are carried out properly and efficiently". That is not an advisory role, is it?

Ms NEWMAN: No.

Mr DAVID SHOEBRIDGE: Do you accept that the Butler decision raises very serious questions about whether or not your organisation is carrying out its functions properly and efficiently? It raises those questions surely?

Ms NEWMAN: It raises a number of questions about the way we undertake what we are doing, yes.

Mr DAVID SHOEBRIDGE: I ask you a very specific question: it raises questions about whether or not your organisation is carrying out its activities properly and efficiently, does it not?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: What direction did you seek from the board in relation to that?

Ms NEWMAN: The direction that we sought from the board is looking at what we needed to do with regard to the findings that came out of the Butler case. Certainly the board agreed that I should proceed with the Internal Audit Bureau services report. That report will go to the board.

Mr DAVID SHOEBRIDGE: What about the conclusions of there being a witch-hunt and malicious intent? Did you get directions from the board about those matters?

Ms NEWMAN: No, I did not.

Mr DAVID SHOEBRIDGE: Is that because you do not accept those findings of the Industrial Relations Commission about there being a witch-hunt and about there being malicious intent?

Ms NEWMAN: I accept the finding of the commission that the dismissal was unfair.

Mr DAVID SHOEBRIDGE: You do not accept or you do accept?

Ms NEWMAN: I do.

Mr DAVID SHOEBRIDGE: But that was not the question that I asked you and you know that. Could you answer the question that I asked you?

Ms NEWMAN: I do not accept that it was malicious intent, no.

Mr DAVID SHOEBRIDGE: That was not the full extent of the question I asked you and you know that. Could you answer the question?

Ms NEWMAN: And I do not accept that it was a witch-hunt.

Mr DAVID SHOEBRIDGE: Did you seek direction from the board in relation to how to deal with those findings that you do not accept that are on the public record that are so deeply critical of your organisation?

Ms NEWMAN: I did not specifically request direction from the board on those, no.

Mr DAVID SHOEBRIDGE: Mr Barnier, you said before that there was perhaps a lack of trust with senior management which is why you were not getting these bullying complaints brought to you. Do you remember that evidence?

Mr BARNIER: Yes.

Mr DAVID SHOEBRIDGE: Perhaps the kind of response we have just had from your CEO about not accepting those deeply critical public findings of your organisation explains that lack of trust. Have you thought that?

Mr BARNIER: I do not believe so. The difficulty here is that there have been lots of allegations against WorkCover in the past. You have had a PWC report.

Mr DAVID SHOEBRIDGE: These are not allegations; these are findings. Please do not mischaracterise them.

Mr BARNIER: Sorry, apologies for that. So my understanding is that the findings were whether the dismissal of Mr Butler was unfair. They were the key decisions that were in there. The other findings that the Deputy President has, and I would appreciate some advice on that, but are they binding findings—

The Hon. ADAM SEARLE: You bet.

Mr BARNIER: —or are they observations?

The Hon. CATHERINE CUSACK: It is your job to know that.

Mr DAVID SHOEBRIDGE: What is your title?

Mr BARNIER: I am the chief human resources officer.

Mr DAVID SHOEBRIDGE: And you do not know whether or not the findings of a decision of the State's Industrial Relations Commission are conclusive in the absence of an appeal? You genuinely do not know that?

Mr BARNIER: I do know that.

Mr DAVID SHOEBRIDGE: You do know that.

The Hon. ADAM SEARLE: So you were trying to mislead us?

Mr BARNIER: I am not trying to mislead you. Obviously I have not been in a forum like this before so obviously I am quite anxious, so let me slow down in answer.

Mr DAVID SHOEBRIDGE: The best response would be to try and answer the questions truthfully?

Mr BARNIER: And that is what I am trying to do.

Mr DAVID SHOEBRIDGE: And without evasion, as we have heard time and time again in the answers that have come from all three if you today?

Mr BARNIER: I am not trying to evade any of the questions. If you would like to ask me the question again I would be happy to respond.

CHAIR: Can we return to the questioning. Mr Searle?

The Hon. ADAM SEARLE: Certainly. I will get straight to the pointy end. This decision of Butler is not only critical of your organisation but it is quite critical of you, Ms Newman, and of you, Mr Watson. I want to put something to you. Looking through the allegations against Mr Butler, one of them was that he misused his work telephone, although of course it was later conceded by Mr Watson that there was no evidence he had made personal phone calls over and above the reasonable personal use policy. There was another allegation he had engaged in unauthorised secondary employment contrary to the code of conduct and the evidence was there was no requirement in the code of conduct for him to obtain approval for unpaid secondary employment.

There were further allegations about forwarding work emails to home which again Mr Devine had to concede that was not covered by the policies; there was no prohibition on that practice. There were two allegations essentially about not keeping his timesheets effectively, although the evidence was this was a widespread practice promoted or condoned by senior managers. Leaving aside the last lot, there were a whole series of allegations that actually were not arguable but had no basis in fact and yet on the basis of those, Ms Newman, you have given evidence that you were the one who authorised disciplinary investigation and, Mr Watson when you received the Madden report you said termination of employment was justified. I am struggling here. This is a serious matter that goes to the heart of your professional judgements. You have made an evaluation of certain matters which have no substance. This decision calls into question your professional judgement, do you accept that?

Ms NEWMAN: No, I do not.

The Hon. ADAM SEARLE: Are you in denial?

Ms NEWMAN: No, I am not in denial.

The Hon. ADAM SEARLE: Please, tell us?

Ms NEWMAN: I relied on the information in the report by the independent investigator.

The Hon. ADAM SEARLE: For example, engaging in unauthorised secondary employment is a serious allegation but for the organisation to pursue an allegation of that nature against an employee in a disciplinary context when, in fact, there was no requirement for him to obtain that approval is appalling. For you to authorise such an investigation and for Mr Watson to act on that and to terminate employment, among other things, that is problematic. It might explain why your workforce is reluctant to come forward with their concerns if you are the senior managers. What do you say to that?

Mr DAVID SHOEBRIDGE: Nothing.

The Hon. ADAM SEARLE: The question is not to you, Mr Barnier

Ms NEWMAN: It is to me.

The Hon. ADAM SEARLE: It is to Ms Newman and Mr Watson.

Mr WATSON: I am happy to take the question. First of all, in assessing the material before me at the time and limited to that material and taking no account of what Mr Butler had to say to me in response to the allegations that we put—he did not refute the matters put to him—I made that decision I made.

The Hon. ADAM SEARLE: Talk me through the code of conduct matter, the allegation that he needed to obtain secondary employment approval when he did not?

Mr WATSON: Mr Searle, the point really is, as I sit in the public sector my approach to operating as a public servant is that my employer knows everything I am doing privately. I am involved in organisations privately and I declare that whether I get remuneration or not. The matter Mr Butler was involved in actually impinged on his time at work. It was not just a voluntary environment. On the evidence before me it was extending into his capacity to do his job at work. He is employed by the regulator. He is employed in an environment—he may not have been fully aware of that being in IT—where you need to be conscious about conflicts of interest and it was the issue related to conflict of interest that I was focussing on in making the decision I made.

Mr DAVID SHOEBRIDGE: What is the conflict?

Mr WATSON: The conflict can be seen in the first allegation if you want to go through the allegations one by one, but I am not sure that is what we are here to do. Here you have got a vendor manager vetting contracts on behalf of the New South Wales Government through the WorkCover Authority who is engaging in—I am reluctant to ventilate these things because I am aware this is a public hearing and I do not want to ventilate this level of detail.

CHAIR: Is that the purpose of your question?

The Hon. ADAM SEARLE: The substance of my question was about the judgement of Ms Newman and the decision maker in relation to the totality of matters that were pursued. Leaving aside the time sheet question, all of the other allegations were found to have absolutely no substance. What you term conflict, the fact that he was engaged in voluntary activities, there was no obligation on him under the code or anywhere else to disclose or gain approval and yet you held him to that standard. You said to him you did not get our approval and you should be disciplined about this.

Mr WATSON: I gave evidence in the commission.

The Hon. ADAM SEARLE: I understand you gave evidence.

The Hon. CATHERINE CUSACK: Mr Watson maintains that he is required as a public servant—

Mr WATSON: The ethics I bring to my position are such that I would declare any involvement I have outside work and I have done that. That is a responsibility when you are working for the regulator.

The Hon. ADAM SEARLE: What you were seeking to discipline Mr Butler about was his breach of the code of conduct and it was found that the standard you were seeking to apply to him was not found in that code or anywhere else.

Mr DAVID SHOEBRIDGE: Not your personal ethics, the code of conduct.

Mr WATSON: I understand that, Mr Shoebridge.

The Hon. ADAM SEARLE: I am trying to understand why these matters that were found to have no substance were matters rigorously applied against a long-term employee, to his very severe detriment, in circumstances where it was not arguable. It calls into question your judgement, do you not accept that?

Mr WATSON: I do not believe it calls into question my judgement. I judged the matter on the face of the evidence before me.

The Hon. ADAM SEARLE: Including the terms of the code of conduct?

Mr WATSON: I accept that the commission did not agree with me and I say there is more than one allegation here. I looked at the allegations as a whole and it was my view at that time that the appropriate penalty was a dismissal, with the exception of one of the allegations.

The Hon. ADAM SEARLE: Ms Newman, the commission was critical of the eagerness of WorkCover to undertake a disciplinary investigation as opposed to taking another course of action. As you evaluated the material before you, and given the nature of those allegations—failing to fill in time sheets, failure to seek approval for voluntary work, sending work emails to your home address, even though there is no prohibition in doing so—what was it about these matters that convinced you as the chief executive officer that a disciplinary investigation was the appropriate course as opposed to counselling of the employer or asking the employer about the matter?

Mr DAVID SHOEBRIDGE: Just asking the employer.

The Hon. ADAM SEARLE: Why did you embark on a disciplinary path, Ms Newman?

Ms NEWMAN: I embarked on that path because there were a number of other issues.

The Hon. MELINDA PAVEY: Are they issues that we are not privy to?

The Hon. CATHERINE CUSACK: What other issues?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: It was for an ulterior purpose?

The Hon. CATHERINE CUSACK: Let us just hear what the other issues were.

Ms NEWMAN: I cannot answer that question because there are other regulations that I need to consider. I will be happy to take it on notice.

The Hon. CATHERINE CUSACK: Which regulations?

CHAIR: We do not want allegations made against Mr Butler.

Mr DAVID SHOEBRIDGE: The long and the short of it is you are saying you engaged in this disciplinary process for an ulterior purpose?

The Hon. MATTHEW MASON-COX: No, she is not saying that.

Mr DAVID SHOEBRIDGE: There were other issues that motivated the process.

The Hon. MATTHEW MASON-COX: The witness has said there are sensitive issues and she will take it on notice and that should be acknowledged.

CHAIR: Is that the fact, it is on notice, Mr Searle?

The Hon. ADAM SEARLE: If that is how the witness chooses to answer. Can I clarify? These matters are not on the public record presently?

Ms NEWMAN: Yes.

The Hon. CATHERINE CUSACK: And not put to the Industrial Relations Commission?

CHAIR: You want the witness to take it on notice?

The Hon. CATHERINE CUSACK: Can you indicate that was a no?

Ms NEWMAN: No.

CHAIR: Can you take it on notice and indicate whether it should be kept in confidence in your answer?

Ms NEWMAN: Yes.

The Hon. ADAM SEARLE: Were these other matters ever put to Mr Butler?

Ms NEWMAN: Yes, they were put to Mr Butler?

Mr WATSON: It was not a part of my investigation.

The Hon. ADAM SEARLE: They are not connected?

Mr WATSON: They are not connected to the Industrial Relations Commission. We need to be cautious here because we have responsibilities under other Acts, which we do not want to breach.

The Hon. ADAM SEARLE: I would not want you to do that. Ms Newman, your evidence is sounding very much like you were actuated by considerations that did not form part of the disciplinary process. Were you actuated by matters that were not disclosed, and not part of Mr Watson's disciplinary decision?

The Hon. MATTHEW MASON-COX: Point of order: The member is making assertions. The reality is that the witnesses have taken the question on notice and are happy to give a confidential supplementary submission if that is indeed what is necessary to answer the question. It is appropriate in these circumstances. To go down this pathway again and again is counterproductive.

The Hon. ADAM SEARLE: My question is simple and I am happy for the witness to take it on notice. The question is this: There was a disciplinary process involving Mr Butler as a result of which the organisation terminated his employment. The issues were then ventilated in the Industrial Relations Commission. When you were making the decision about whether or not to go down the path of a disciplinary investigation were you motivated solely by those disciplinary matters or were these other non-disclosed matters you are now adverting to part of the motivating reason?

Ms NEWMAN: I would like to take that on notice and seek legal advice.

The Hon. MATTHEW MASON-COX: Saved by the bell.

The Hon. ADAM SEARLE: I will put them on notice.

The Hon. MATTHEW MASON-COX: Just to continue the discussion we were having before. Mr Watson, you mentioned that you had some discussions with the Mines Inspectorate to perhaps perform that role in relation to certain incidents that were reported within WorkCover should they need subsequent investigation after going through the normal processes. Is that something you expect to bear fruit in the next three or six months? What is the timetable?

Mr WATSON: I expect it to bear fruit within the next few weeks. I have had a number of meetings trying to resolve issues. The last advice I had from them was that their legal area saw some legal impediments to that. We need to work our way through that. We need to take some advice ourselves because of the way the Act is constructed in appointing the regulator as being the person that makes the decisions. The regulator under the Act in our New South Wales environment is Ms Newman and certain responsibilities are then appointed down to me and other officers in WorkCover to do. We need to work our way through that legal aspect. I am confident we will be able to do that. That may not be shared by our Mineral Resources colleagues but we will work our way through that.

I think I have a meeting this week to further progress this. It is an active matter. In the whole way in which we are structured we are conscious of getting a separation between decisions concerning ourselves and the administration of the Act even to the extent that within my division the governance area that watches over how inspectors' notices are appealed against is separate from the inspectorate activity where that is carried out and the managers that look after that report to our policy area in the division rather than to the operational

director. Normally you would think that is the way it would be done. I took advice in structuring the division to ensure that we had a separation there.

The Hon. MATTHEW MASON-COX: Victoria has had a number of reviews and inquiries and they created a specialist inspectorate to investigate psychological hazards. Have you had a look at what they have done there and what is going on in Victoria?

Mr WATSON: I am generally aware of what is going on in Victoria. I have not spoken with Denise Cosgrove recently about it, but the reality is that they have disbanded that approach. There are some real issues here. Our inspectors get involved in doing bullying matters in general workplaces and New South Wales Government workplaces all the time. They are incredibly intensive matters for inspectors to be involved in and so the risk associated with post-traumatic stress syndrome is increased in that environment. We have a lot of management of that potential load that people have on them. Hence, we try to rotate people around in the inspectorate away from work of that nature, the same as we do with the full investigation work where people might be going to workplaces where others have been killed or seriously injured. You have to manage that in the background.

As Victoria found, having an inspectorate specifically looking after bullying matters causes difficulties because those people end up with a psychological injury as a result of the work they undertake. That is one of the issues at the forefront of our mind in terms of how we do that. We have people in the inspectorate who have great expertise in dealing with those matters and who have, as it were, a robustness about them that means they are happy to continue to do that work. We monitor them very carefully, just as we monitor those doing investigation work. The Victorian inquiry related to a union where there was alleged bullying. The view was that it was not fully or appropriately investigated and recommendations were made about the structure. If the Committee makes recommendations we will certainly consider them.

The Hon. MATTHEW MASON-COX: You said that Victoria has done away with that.

Mr WATSON: That is my understanding.

The Hon. MATTHEW MASON-COX: The Unions NSW submission recommends that an independent government body be permanently established to review the performance of the WorkCover Authority. Do you have a view?

Mr WATSON: We are benchmarked against all other regulators. Through the Safe Work Australia arrangements, the comparative performance monitoring data is submitted each year and that extends into the workers compensation area as well. That allows us to benchmark whether we are performing well. The Public Service Commissioner has an oversight role and I have been encouraged by the approach that he has taken to making the public service more flexible and adaptable to the changing environment. We have a very changeable business environment now in New South Wales and across Australia, and the public sector needs to be adaptable and flexible to respond to it. That has been encouraging in respect of the Public Service Commissioner. That is where the oversight occurs.

The Hon. MATTHEW MASON-COX: I refer to your organisation's relationship with the Ombudsman. It has been put to the Committee that there is not sufficient expertise in the Office of the Ombudsman to review complaints from WorkCover. Do you have a view about that and can you explain whether the Ombudsman has raised any issues with WorkCover in that regard?

Mr WATSON: I cannot comment on the Ombudsman's expertise. Our interactions with the Ombudsman involving investigations associated with our actions externally have been very professionally conducted. In fact, I have given evidence before the Ombudsman on matters associated with our performance as a regulator in the field. From time to time the Ombudsman has made recommendations about what WorkCover should or should not do. I note that the Ombudsman has not overturned any of our actions. I do not have a view either way in respect of the skill or otherwise of the Ombudsman's staff. That is a matter for the Ombudsman.

The Hon. CATHERINE CUSACK: Employer access to people's emails is a sensitive issue. Does WorkCover have a policy governing access and interrogation of its employees' emails going back in time? If so, what is it?

Mr BARNIER: We do. We have a number of policies that deal with security of information, security of buildings, facilities and so on. Are you referring to looking at employees' emails?

The Hon. CATHERINE CUSACK: Yes. Who is authorised to do it and in what circumstances?

Mr BARNIER: The manager of our employee relations policy would have authority to do that when undertaking preliminary fact-finding or an investigation.

The Hon. CATHERINE CUSACK: Does he authorise staff to do that, or does he do it himself?

Mr BARNIER: He may authorise an external investigator or a member of his staff.

The Hon. CATHERINE CUSACK: How many staff in WorkCover are authorised to do that or is authorisation granted on a case-by-case basis?

Mr BARNIER: It is done on a case-by-case basis.

The Hon. CATHERINE CUSACK: Have there been complaints about apparently overzealous accessing of people's emails?

Mr BARNIER: I am not aware of any; I cannot recall any. I will take that question on notice.

The Hon. CATHERINE CUSACK: I would appreciate that. Can you provide a formal copy of the guidelines governing accessing email?

Mr BARNIER: Yes.

The Hon. MELINDA PAVEY: Ms Newman, you have been at the organisation since November 2011 and have been the chief executive officer since October 2012.

Ms NEWMAN: I have been at the organisation since May 2008. I was the chief financial officer.

The Hon. MELINDA PAVEY: The Committee has been told that the move to Gosford in 2002 was troublesome for many employees and that the spirit of camaraderie and strength of the organisation came apart a little following the move and the way it was instituted. Do you have any thoughts about that process and how people in the organisation dealt with it?

Ms NEWMAN: I do not know enough about that process; it happened well before my time.

The Hon. MELINDA PAVEY: Do you concede that it has been an ongoing issue in terms of turmoil and instability within the organisation?

Ms NEWMAN: I do not know that it is necessarily related to the move to Gosford, but there certainly has been some instability with regard to the chief executive officer. There have been several chief executive officers in a short period and the instability that has created has come through in our staff surveys. That does cause uncertainty. We have also moved some of the insurance functions back to Sydney so that they are closer to the stakeholders we are dealing with in the insurance space. Since I have been at WorkCover there has also been the need to comply with the New South Wales Government's budget adjustments. We are just as subject to them as anyone else. The labour cap is the problem at present. That causes a lot of instability. There are also constant rumours about the head office at Gosford being moved back to Sydney. That is not the case and has never been the case. We still have and exceed the original numbers agreed to with regard to establishing the Gosford headquarters. We have a lease out to 2017. That causes quite a bit of instability.

The Hon. MELINDA PAVEY: The PricewaterhouseCoopers report highlighted the Gosford issue as one that created instability, did it not?

Ms NEWMAN: If I remember correctly, yes.

The Hon. MELINDA PAVEY: Are you happy with the direction that the organisation is now taking under your stewardship? Are you happy with the improvement in morale in the organisation?

Ms NEWMAN: Yes, I am. I believe morale has improved considerably, not necessarily only under my stewardship. It has been a journey that WorkCover has been on for some time and it still has a way to go. Cultural change does not happen quickly; it takes years.

The Hon. MELINDA PAVEY: What is your strategy to get to that happy place?

Ms NEWMAN: My goal is that people feel good about coming to work and that they feel they can do their job well. We have spent quite a bit of time recently looking at innovation and the way in which people do their business. A lot of it is about being innovative and that has created some healthy discussion across the organisation. We must recognise the contribution that individuals and groups make and that recognition should be celebrated. The tools used to measure that could be called subjective, and they include the staff survey. We are using the same instrument that we used for the past two surveys, including PricewaterhouseCoopers early in the next calendar year. That is in addition to going through the people at work process. We will continue to do that. I enjoy going to Gosford and spending time on the floor talking to staff. There is a good feeling.

CHAIR: Mr Barnier, I am trying to clarify how you handle complaints of bullying and whether to resolve them you need to know who is doing the bullying, male or female. You must have some record of people who are the subject of one or more complaints.

Mr BARNIER: As I mentioned earlier, there is a multiplicity of ways that people can report concerns or issues regarding bullying or any other workplace matter. With the restructure of the People and Culture Group we have created a one-stop shop so that people do not have to understand our structure to know who to talk to. There is one team that will take reports and concerns and pass them to the centre of expertise or a specialist to address. We have put a case management system in place for our service and advice team to help us to better record incidents and concerns and to track trends.

CHAIR: I understand that. I simply want to know whether you have a list of people about whom complaints have been made.

Mr BARNIER: We certainly have records of issues raised and those concerned.

CHAIR: It could be that there are many complaints but that they involve only two or three people or a series of managers in WorkCover.

Mr BARNIER: It could be a mix.

CHAIR: Can you tell the Committee how many managers have had complaints made against them? Is it one, two or 10?

Mr BARNIER: Offhand, I cannot say. The data does not suggest large numbers. We have the couple of hotspots that I mentioned. That appears to be primarily about management style. What is happening in the public service—and we are not immune—is that many people in specialist roles have been promoted to management roles and have not received appropriate training to help them manage teams and to relate to people. That is not a surprise to anyone. The Public Service Commission has been doing a lot of work on capability frameworks and improving recruitment and selection processes. We have been trying to get to the forefront in that area, particularly given that recruitment was one of the big issues in the PricewaterhouseCoopers report. We are doing a lot more work with regard to training managers, helping them to understand their roles and ensuring that our performance management systems clarify what must be achieved and also the competencies required.

CHAIR: Are you saying that because people come from a scientific or engineering role they do not have human relationship skills and are not aware that they are bullying?

Mr BARNIER: I would not say that that is specifically true of engineers or other specialists. I found in private enterprise—

CHAIR: I am asking you what you meant.

Mr BARNIER: I would not say that engineers are all like that.

CHAIR: You said that they came from specialist roles—

Mr BARNIER: It is the difference between being a team member and being a manager or supervisor of others and how to engage. We are doing a lot of work around the engagement model. If you have a great day at work it is normally because your relationship with your manager or team members is good. We are focusing on trying to get people to understand how that works and giving them the skills, training, coaching, mentoring and practical training they need. That is in addition to providing behavioural standards. That is why we have taken this holistic approach.

CHAIR: I understand that. If there is a protected disclosure complaint, are you aware of the person who has been accused of bullying?

Mr BARNIER: Only if that is reported to me as one of the protected interest disclosure officers. Otherwise it would go to the director of corporate governance. I would not necessarily be aware of it because it is a protected disclosure. Only if it moved into an investigation would I become aware of it. I am not privy to all protected disclosures.

CHAIR: Again, people could be the subject of those protected disclosures and you would not be aware of them. Only the director would be aware. Who was that?

Mr BARNIER: The Director, Corporate Governance looks after the determination of whether a matter is a protected disclosure. If the determination is that it is not a public interest disclosure then the person who lodged it is made aware that it is not a public interest disclosure, but they have an option to raise that complaint with me although not as a protected disclosure. If that is the case then it would be known to me.

CHAIR: Who is that person?

Mr BARNIER: Mr Michael Saad is the person in our agency who determines whether it is a public interest disclosure.

CHAIR: He would be aware of certain people accused of bullying, but you are not aware of them. I assume nobody is aware of them because there is protected disclosure.

Mr BARNIER: No, if it is determined not to be a public interest disclosure, it goes back to the complainant for the complainant to be asked what they would like done with the complaint. They can raise it as a normal grievance or concern, which I would become aware of, or they can choose not to raise it. If they choose not to, I would not be aware of the issue. If they choose to take the matter up, I would be aware of it.

Mr WATSON: It is correct that he would bring to our attention those individuals, who may be managers, if it is appropriate for him to do so. That is an important point, because it is not as if it is a protected disclosure and therefore we do not know. We can know, depending on the determination of the matter.

Mr DAVID SHOEBRIDGE: A very small subset of bullying goes through protective disclosure.

Mr BARNIER: It is quite rare.

Mr WATSON: Yes, but there are issues when the union raises matters with us. I have had matters raised with me and the union asking who is involved. I have to say that I cannot tell them because it is confidential to the people raising matters with us. More recently, I have dealt with a matter where I wanted to get to the bottom of the issue. When I raised it with the union, the union has said they could not tell us who raised it with them because they did not want to go through more pain than they were suffering already. My view is that if somebody is perpetrating something, we need to deal with it and if we need information we cannot do it in the ether.

We need to deal with specific matters succinctly, so I have raised with the union the need for the union to understand that if people believe that their work health and safety is at risk then the union needs to inform us about that and if people are approaching us about such matters then the union should have that discussion with members when matters are raised with the union. That is an ongoing subset of these discussions. If you do not know who is doing what then you cannot deal with issues. It is not an unwillingness to deal with matters; it is a willingness to deal with matters, but we do not always get the information we need.

CHAIR: I have a question on notice in the upper House which is as follows:

Since 2007 have WorkCover whistle-blowers submitted protected disclosures relating to **[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE]**

Do certain people accused of bullying within WorkCover keep reappearing? If so, what action has been taken to assist those people? I am not saying they should all be sacked, but there should be investigation, counselling, et cetera.

Mr BARNIER: If names are reappearing, we look at a performance-management approach. We can deal with issues through the disciplinary approach or performance management. As I said earlier, through our enlightenment at the beginning of the year, we are working more towards how to work with people to resolve matters. Where such things happen, it is quite easy for us to deal with them using a performance-management approach, which is about counselling, being aware of standards and looking at what help is needed to achieve that. Do these people need training? How can we review that regularly? How do we seek that change? We would use this approach unless there was great intent, in which case we would move more towards misconduct.

CHAIR: Is **[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE]** assisting you today at this hearing?

Mr BARNIER: That is correct.

CHAIR: Are you aware that there has been disclosure regarding her? Do you think it is improper that she is involved in this hearing?

Mr BARNIER: That was before my time, so I was not aware of that.

CHAIR: That is why I think it is important that you have some system for identifying the individuals causing this situation between her and WorkCover. Thank you.

Mr DAVID SHOEBRIDGE: Chair, I have some questions.

CHAIR: We were due to finish at 1.00 p.m.

The Hon. ADAM SEARLE: We are finishing at 1.15 p.m. according to the timetable.

CHAIR: That is incorrect.

The Hon. ADAM SEARLE: It is the timetable we have and we would like to ask a few questions.

CHAIR: The hearing was scheduled to go for one hour and the witnesses were advised they would be required for one hour. The program contains a typographical error. Further questions can be taken on notice or as supplementary questions.

Mr DAVID SHOEBRIDGE: I thought we had another 15 minutes.

The Hon. ADAM SEARLE: We may need to ask the witnesses to appear again.

Mr DAVID SHOEBRIDGE: Some matters were canvassed that may need confidential submissions. We may need to consider having a confidential hearing in relation to some matters. I think many matters covered in the confidential submissions should be robustly investigated.

CHAIR: To keep the faith of witnesses, who were given the understanding this hearing would finish at 1.00 p.m., we will keep to the original program. I thank the witnesses for their attendance and for answering our questions.

(The witness withdrew)

(Luncheon adjournment)

MICHAEL CARAPIET, Chair, Safety, Return to Work and Support Board, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr CARAPIET: I am here in my capacity as the Chair of the Safety, Return to Work and Support Board.

CHAIR: Do you wish to make an opening statement to the Committee?

Mr CARAPIET: Yes, I do. I was invited here today in my capacity as the Chair of the Safety, Return to Work and Support Board, and I thank the Committee for the opportunity to make an opening statement. As you know, the Safety, Return to Work and Support Board Act 2012 replaced the boards of the WorkCover Authority, the Motor Accidents Authority, the Lifetime Care and Support Authority and the sporting injuries committee with a single governing board to oversee the schemes the authorities administer. The Act states that the board has general and strategic oversight for the various authorities, including workers compensation, the Dust Diseases Board, the lifetime care and support authority, the motor accidents authority, the WorkCover authority and the funding of the workers compensation commission. Just to go back to the Dust Diseases Board, we are responsible for their investment only.

The board is also responsible for determining investment policies for the investments of a number of funds totalling approximately \$18 billion. These funds are the workers compensation insurance fund, \$14.2 billion—I will only mention the main ones—the workers compensation dust diseases fund, \$840 million, and the lifetime care and support authority fund, about \$2.8 billion. The board comprises six external non-executive directors and the chief executive officer, Julie Newman. Much of the board's role is similar to what you would expect of a commercial/regulatory board. However, there are a number of areas of responsibility that place this board somewhere between what I term a normal commercial board and an advisory board. The last 14 months has seen the organisation go through much change and this continues today. The issues facing management and the board are many and varied, and the human resources challenge is one of them. The issue of bullying is a matter that has been on the table at WorkCover for quite a few years and we are trying to work as constructively as possible to make the organisation a more supportive, encouraging and motivating workplace.

CHAIR: In view of all the boards you just listed that have been combined into one board, it may be a good economic policy. Is it actually working in practice? Do you have the time to devote to each of those areas sufficiently?

Mr CARAPIET: The ones that take the most time—I will just give you a guide on this—are workers compensation and WorkCover are by far and away the majority of the workload. Probably next comes the motor accidents and then third would be lifetime care, and the smaller ones we do not spend terribly much time on. It is a once in a year, perhaps around the audit committee to sign off on the accounts but the key work is around workers compensation, particularly with the legislation that was passed last year, the number of the changes and the challenges and the investment policies and the changes with the staff as well. They have been quite significant.

CHAIR: How often do you meet?

Mr CARAPIET: We meet monthly and then the investment committee also meets monthly. The board meetings go from about 9.00 o'clock, half past nine until about five once a month, on average. Then we have a strategy day and the investment committee meets normally between nine and noon. Sorry, that is on the same day as the board meeting. So the investment committee starts until about 12, 12.30 and then the board starts at one and goes until about five, 5.30. The risk and audit committee meets separately but I am not a member of the risk and audit committee.

Mr DAVID SHOEBRIDGE: How long have been on the current board?

Mr CARAPIET: The current board, it was originally I think it was February 2012 that the advisory board was set up, and it was just an advisory board. There was a prior board there and some of the old members were still on the board. It was a separate advisory board and there was a separate investment board at that stage for all the investments. Then that changed when the legislation for passed for everything to be smooched together with the exception that the dust diseases board was kept separate but this board is responsible for the

investments of the dust diseases fund. That happened around August, and we have been going in the current set up since about—

Mr DAVID SHOEBRIDGE: So formally on the board since August of—

Mr CARAPIET: In 2012.

Mr DAVID SHOEBRIDGE: So a year and a couple of months.

Mr CARAPIET: And a bit, yes.

Mr DAVID SHOEBRIDGE: Were you on the previous WorkCover board?

Mr CARAPIET: I was there on the advisory board from February of 2012. I think it was February—six months previously.

Mr DAVID SHOEBRIDGE: So when you say advisory board you are talking about the previous WorkCover board, are you?

Mr CARAPIET: Yes. It was a similar set of responsibilities albeit a bit different but it was clearly just an advisory board, so there was, no, we did not have the level of responsibility that I think we have now, which is slightly more than what we had previously. It did not change the way that I necessarily behaved but it made it easier to do things than prior was the case.

Mr DAVID SHOEBRIDGE: So the functions of the board that have been exercised since August of last year under the new board go well beyond advisory, do they? You have an obligation to oversee the performance of the authority.

Mr CARAPIET: There are a whole heap of things that the board does when you talk about overseeing and there are some aspects, for example, on the investment bits, yes, we make decisions as to how the money will be invested and what the asset allocation is and who the fund managers are and the like. So basically you have a team and the team make the recommendations to the investment committee. There is a delegation from the board to the investment committee to make certain decisions and then those get either reported to the board or there are some decisions that the board has to make just on the investments. So that is the investment side. If we are just talking about the workers compensation scheme then there are things such as the premium setting. Again, that comes to the board from management, and we make a recommendation to the Minister so the Minister announces what the premiums are to be for the following year.

Mr DAVID SHOEBRIDGE: What about the oversight of work health and safety? When do you find time to do that?

Mr CARAPIET: That is a regular—John Watson comes to every board meeting for the work health and safety issue.

Mr DAVID SHOEBRIDGE: How long does that take a month?

Mr CARAPIET: It depends.

Mr DAVID SHOEBRIDGE: You have four hours for your general committee hearing.

Mr CARAPIET: No, three hours for the investment committee and about four hours for the full board.

Mr DAVID SHOEBRIDGE: So you have four hours on the board and you have to look at—

Mr CARAPIET: The agenda varies. My guess would be in the order of anywhere between 10 minutes and 30 minutes, depending on how the discussion goes.

Mr DAVID SHOEBRIDGE: So 10 minutes to half an hour to discuss the whole issue of work safe regulation across New South Wales, and that is about what WorkCover is doing in terms of its prosecutions,

what WorkCover is doing in terms of the regulation setting for work health and safety, as well as what WorkCover is doing internally for its own employees on work health and safety.

Mr CARAPIET: No. Then you have—if you just give me a second, if I may, I have brought some of the minutes because I did not have much time to prepare.

Mr DAVID SHOEBRIDGE: I appreciate you only got the call for this meeting last week.

Mr CARAPIET: To give you an idea as to how the meeting goes, you have the minutes: regularly as a matter of protocol the disclosure of interests, so you have your conflicts of interest. You then approve the minutes of the prior meeting and then you go through the action schedule, which are the key things that the chief executive officer has on their list. Then the chief executive officer gives you the report. That sort of covers a lot of what is going on in the organisation at the start of the meeting, and then the area specialists come in after that. So after that we have a finance report, we have the cash flow report. If I take September as an example, the motor accidents authority then comes in and gives a report on how they are doing.

Mr DAVID SHOEBRIDGE: This is all in that four-hour meeting.

Mr CARAPIET: Yes. Then the lifetime care and support, then we have the work health and safety report, which is John Watson, and it went from 2.37 to 2.52. So on that month, as I said—

Mr DAVID SHOEBRIDGE: Fifteen minutes.

Mr CARAPIET: Yes.

Mr DAVID SHOEBRIDGE: It is within your 10- to 30-minute range.

Mr CARAPIET: Yes. Then you have the actuaries come in to tell us about the workers compensation scheme valuation. That took quite a lot of time. Then the draft accounts have been done. Then the insurance premium order, which is the bit that the procurement officer goes through, the scheme agent deed. The workers compensation insurance division then comes in to talk about the premiums and the claims and the claims experience and how that is going. Then we had the HR people in. It keeps going.

Mr DAVID SHOEBRIDGE: This is all within the four-hour meeting.

Mr CARAPIET: Then there is the risk management policy; then we have the board charter review and this meeting closed at 4.55.

Mr DAVID SHOEBRIDGE: The HR people—what was that? Was that a separate agenda about HR within WorkCover or—

Mr CARAPIET: Yes, for the whole division. Noted the report and asked if any parts of the GROW program that were not on track. Management stated that performance reviews are currently being undertaken and there are some that continue until October for completion. Management practices were an area for improvement, training was being rolled out presently, which managers were required to attend. Management informed the board of the public sector leadership targets, as well as other industry targets in response to a question taken on notice at the prior meeting.

Mr DAVID SHOEBRIDGE: How long was that HR thing?

Mr CARAPIET: It ended at 4.30. The prior one, joined the meeting at 4.05 so that was 25 minutes.

Mr DAVID SHOEBRIDGE: I suppose it was public what the Chair asked you at the beginning. You have got an enormous scope of obligations.

Mr CARAPIET: Yes.

Mr DAVID SHOEBRIDGE: You have to look after the motor accidents authority, the lifetime care and support scheme, the workers compensation scheme, plus you have to look after the regulatory work of

WorkCover. Have you ever really had sufficient time to come to grips with some of these bullying issues and those questions about how WorkCover itself is working? Do you think you have had time?

Mr CARAPIET: That is a good question to be honest. When I first took on the chairmanship that was a point on which the previous Minister was focused. I think they had just got the PricewaterhouseCoopers report at that stage. Whilst my recollection was that PricewaterhouseCoopers had not substantiated any of the claims being made there were sufficient claims, based on the interviews they had done, that said that this was a problem. I think it was a big problem. One of the things the board has been asking management to do is to regularly come back and say, "How are you going based on the PricewaterhouseCoopers recommendations? What steps have you taken since you have had all those recommendations to improve things?"

Mr DAVID SHOEBRIDGE: And you have about eight minutes to do it. That is a problem for the board. You have a crunched period within which to do it.

Mr CARAPIET: There are periods that we set aside. Let me finish what I was saying about the response that management has given. All the statistics coming back, whether they were attrition rates, sick leave, all the normal red flags you normally get that mean you have trouble, have been improving over the past 12 months. It is fair to say that the board's approach was that this was a big issue. We want you guys focused on it. We asked you questions about it but it seems to be going in the right direction based on what we have seen.

Mr DAVID SHOEBRIDGE: Ms Newman is your key reference point for that?

Mr CARAPIET: No, Greg is the key reference for that. You have to remember when the board came together in August that of the 10 or 12 most senior executives no more than two or three were in permanent positions. The others were either acting or they were not there; they were consultants. So you had a scheme that was wildly in deficit. You had this bullying allegation, you had an HR problem, you had all these things coming together at one time and you had a brand new board which is also challenging.

Mr DAVID SHOEBRIDGE: It was a courageous decision to go on the board.

The Hon. ADAM SEARLE: Reflecting on your opening statement and on your evidence is it fair to say prior to the board of which you are now the chair, the previous board was not a corporate governance board? It was more of an advisory board? Is that the approach you took on that other board?

Mr CARAPIET: That was the role of the board. The board was an advisory board. It was termed an advisory board and that is what it was. But it really depends on how you see it. My view is that I have 2,000 weekends to go, if I am lucky, and the last 500 will not be particularly good, so I do not have a lot of time to waste. If I am going to do something I am going to do it properly. Whether it is called an advisory board or whatever it is called, in my role I have to try to make a difference. If I could, great, and if I could not someone else could do it.

The Hon. ADAM SEARLE: Were you here for the earlier evidence given by the chief executive officer?

Mr CARAPIET: Yes, I was.

The Hon. ADAM SEARLE: You heard her evidence about the way in which she saw the existing board?

Mr CARAPIET: Hence my opening comments that it falls somewhere between.

The Hon. ADAM SEARLE: There seems to be confusion between what she has said and what you are saying about the role of the board which reflects some uncertainty.

Mr CARAPIET: I will give you an example. When you look at the human resources side of it, we cannot sell human resources policy because this is part of the public service and that policy is set by the public service commissioner. The board does not review formally, which is what you would have on a normal board, the chief executive officer and the senior executives. We do not have that ability. We do not have the ability to hire and fire the senior executives.

The Hon. ADAM SEARLE: So the care accountability levers are not at your disposal?

Mr CARAPIET: No, it is not. We do not have any remuneration responsibility. We do not set the salary for these people. We do not have any ability to set any incentive targets. Remember that this is a huge organisation. This is premium income of over \$3 billion and investment income of over \$1 billion a year. This is a massive organisation.

The Hon. ADAM SEARLE: Is it not fair to say that the current board, like the previous WorkCover board, out of necessity has as its prime focus the scheme finances and their management?

Mr CARAPIET: That was one of the key things because you had a \$4 billion deficit.

The Hon. ADAM SEARLE: I am trying to establish what capacity your board has. Does it see as its role looking at the way in which the organisation is managed internally? Do you see yourself as having a role in overseeing that or is that really just a matter for the public service and the chief executive officer?

Mr CARAPIET: No, I would hope that we would over time. The approach that I have taken is to get some runs on the board and to do something constructive for the organisation before we start asking for government to change things or the way that they work. Whilst I have said that this is a varied and complex organisation and the like, there are lots of varied and complex organisations in the private sector around the world. They have boards and they operate quite well. I do not want to overestimate how complicated and how huge this is other than to say that it is complicated and it is big but it is not the most complicated or the largest organisation in the world.

The Hon. ADAM SEARLE: At the risk of overcomplicating things, is this not the simple point. Do you as chairman see your board as having a role in overseeing or influencing the way in which the chief executive officer manages the organisation?

Mr CARAPIET: I would hope so, yes.

The Hon. ADAM SEARLE: Or is that a matter for her?

Mr CARAPIET: No. I think, to be fair, Julie has taken on quite a few of the suggestions. In fact, I cannot think of one that she has not taken on that I have made to her. She has been accepting but she is appropriately challenged.

CHAIR: You said "suggestions". Do you say to her, "I am making a suggestion" or do you say to her, "This is my advice and I expect you to do it?"

Mr CARAPIET: Yes, advice. It is a bit of a challenge seeing that she does not report to me. It is like guidance, I think, in saying, "Based on my experience in other situations these might be the options you might want to consider" and she takes it on.

The Hon. ADAM SEARLE: Just pause for a moment. You say that she does not report to you?

Mr CARAPIET: No.

The Hon. ADAM SEARLE: It is not her function to report to the board and be accountable to the board for what she does?

Mr CARAPIET: No. She is on the board. She is a board member but she reports to the Minister.

The Hon. ADAM SEARLE: Ex officio?

Mr CARAPIET: She reports to the Minister but that has always been the case with this organisation. The head of the organisation has never reported to the board. It is not a new arrangement; it is the arrangement that exists. Whether or not it is the best arrangement is not my call.

The Hon. ADAM SEARLE: This Committee has received a large body of quite disturbing evidence of systematic poor management within WorkCover over time involving bullying. What knowledge of those matters do you have as chairman of the board? What knowledge was provided to you and over what period by management concerning those issues and the Butler proceedings in particular?

Mr CARAPIET: I will answer the first question which relates to the incidence of bullying. According to the statistics we have seen the incidence of bullying has not been that great.

The Hon. ADAM SEARLE: Just pause there. Those statistics are workers compensation figures, are they not?

Mr CARAPIET: Yes.

The Hon. ADAM SEARLE: Not every allegation of bullying, even if made out, would give rise to a compensable injury?

Mr CARAPIET: Yes.

The Hon. ADAM SEARLE: So people can be bullied and injured without being able to receive compensation?

Mr CARAPIET: Right.

The Hon. ADAM SEARLE: So those statistics you refer to would be grossly misleading?

Mr CARAPIET: The issue of bullying of epidemic proportions within WorkCover has not really come up to the board.

The Hon. ADAM SEARLE: It has come to the Committee.

Mr CARAPIET: I think it will be extremely helpful for the board to see the outcome of what you say and what we can recommend and what we can do. All the feedback we have got from management is that it was an issue, we are working assiduously to change the culture, to train it and to sort of prevent it. Frankly, I think Greg Barnier has been quite a big factor in changing the way managers manage within the organisation. Structurally you can change overnight but culture takes a long time to change. To assume that there was a big bullying problem two years ago and all of a sudden there is none is a bit fanciful, frankly.

Mr DAVID SHOEBRIDGE: Is that not what management has been telling you, that it is all sweet and that it is under control?

Mr CARAPIET: No, it is not all sweet. Yes, it is under control. There are no new issues coming up and we are training people to understand what bullying means.

The Hon. ADAM SEARLE: Just pause there. The Committee received evidence prior to today that indicated that at least on the ground the workforce felt that the organisation was in denial about the outcome of the Butler case; that it was not really accepting the organisation had gone wrong in that regard. Today the chief executive officer gave evidence as well as Mr Watson and Mr Barnier and pro forma they have said that is not the case; that they accept the outcome of that matter. But I must say for my own part, in close questioning the message I was receiving loud and clear was one of denial. Yes, we accept that the dismissal was unfair but every step that led to it was okay. There is a big disconnect between the message that your senior management is sending out to us and to the world. WorkCover's submission did not even mention the case. Did the board sight that submission before it was submitted?

Mr CARAPIET: No.

The Hon. ADAM SEARLE: I guess we are concerned about whether management is going to internalise it.

Mr CARAPIET: To give you a bit of perspective on it, the gentleman was sacked after an internal investigation but he was dismissed for improper practices, or whatever it was. What was the process? The process we had is they appointed a retired police commissioner. They had external legal advice.

The Hon. ADAM SEARLE: We have gone through all that. I do not meant to interrupt but—

Mr CARAPIET: I know. The question I have as chair is whether the process was wrong or whether the people implementing the process were wrong. Was it both? I do not know and I am looking to find out.

The Hon. ADAM SEARLE: Have you read the decision of the Industrial Commissioner?

The Hon. CATHERINE CUSACK: Can you let the witness finish? We are getting there.

Mr CARAPIET: Yes. There was a whole heap of things. What you probably heard from management today—and it is not an uncommon response in a sense—is that they accept the decision but they did everything right and really he was unduly harsh on some of the things he said about how they ran the shop. I do not think it is unusual. But as a board member, and as a parliamentary member, you can afford to take a step back and to say, "Hang on a second. You are in the weeds, you are fighting every day and you have 50,000 problems." This is a big one, it is embarrassing and you would rather it never happened that way. I think the task for us now is what do we do? We have the decision. It is pretty unambiguous as to what he thinks. You have to make sure you do something different because you cannot just do the same thing and expect a different answer. It is sort of like the height of madness frankly.

Mr DAVID SHOEBRIDGE: But you cannot expect that to happen if your key senior managers are not accepting that?

The Hon. CATHERINE CUSACK: Can you just let him finish.

CHAIR: It is Mr Searle's time for questioning.

The Hon. CATHERINE CUSACK: Have you finished, sir?

Mr CARAPIET: Yes, go ahead.

The Hon. ADAM SEARLE: What have you, as the chairman, and the board done since the Butler case to ensure that management reflects properly on the decision and does things differently?

Mr CARAPIET: I think management are appropriately, what is the right word, concerned, I think was the word they used, with what the feedback was on how they handled the whole investigation, how they presented the case, basically the actual decision coming back—and I have not read it in full detail, to be honest—but the theme was that not only was your process flawed but the people running your process did a terrible job and really bullied this guy because it was an unfair dismissal case. The investigation was where the bullying was; it did not have anything to do, in my opinion, with why he was terminated or the pre-issue was a separate issue and through the investigation the people doing the investigation apparently treated him very badly and should not have done that so how do you fix that? Do you change the process, do you change the people? I think you probably need to do both but I will wait to see what the experts tell me. I am not an expert at this but I know when there is an issue. You have to get experts to tell you what to do.

The Hon. ADAM SEARLE: So when you say "the experts", do you not really mean the people who themselves are implicated? Ms Newman and Mr Watson will be giving you advice on what they think should be done or, if it is not them, who are the experts who are going to advise you?

Mr CARAPIET: They said that there was a process set up and it is a process that is across the entire public sector, as I understand it, and the question was that that process, I think, was criticised as well and the people that they utilised to implement the process were more harshly criticised by the Deputy President's decision. First, you look at the process and then secondly you say: How do you select those people? Do you have a panel before you start? I do not know the answer to that.

The Hon. ADAM SEARLE: With great respect, that is not the question I asked you. You said you know there is a problem but you are waiting for the experts to tell you what the solution is. I asked you this

question: who are those experts? Is it the current senior management of WorkCover, Ms Newman and Mr Watson, who themselves are heavily implicated in that decision or are you and the board receiving external expert advice as to the solution?

Mr CARAPIET: No, there is an independent report coming in.

The Hon. ADAM SEARLE: Coming through the CEO though?

The Hon. MELINDA PAVEY: From the Internal Audit Bureau.

Mr CARAPIET: Yes, it is the Government's internal audit.

The Hon. ADAM SEARLE: That is the advice you are receiving?

Mr CARAPIET: Yes. If there are other options I am happy to hear them.

The Hon. MELINDA PAVEY: Ms Newman advised that the report is sitting on her desk.

The Hon. ADAM SEARLE: I understand that.

Mr DAVID SHOEBRIDGE: In draft.

CHAIR: We will move on to Government questions.

The Hon. CATHERINE CUSACK: Can I just come back to what you are saying earlier about the unusual role of the board being part advisory and not having governance responsibilities?

Mr CARAPIET: It has got some but not all.

The Hon. CATHERINE CUSACK: Is there a gap between what the legislation says is the responsibilities and accountability of the board versus custom and practice?

Mr CARAPIET: If you read it to the nth degree it says to determine general policies and strategic direction for each relevant authority but it does not say "except for X, Y, Z" but the reality is there are quite a few "except for" because we cannot just change, for example, the leave policy or the carer's policy or the remuneration policy because it is part of the public service so the board does not have discretion in that respect so, yes, we have to determine it.

The Hon. CATHERINE CUSACK: But with respect, whilst the board does not determine legislative policies it does have a responsibility to ensure those policies are complied with?

Mr CARAPIET: Absolutely.

The Hon. CATHERINE CUSACK: And does it have a system in place to ensure legislative compliance by the authority?

Mr CARAPIET: Yes. The executives and I meet the department, with the CEO, probably quarterly, if not more often, to go through the big issues of the day.

The Hon. CATHERINE CUSACK: So from a compliance point of view if WorkCover was not complying, would the board feel accountable for that?

Mr CARAPIET: I think so because the Auditor-General has to sign off on the accounts every year and I think this year we have a clean audit and he has got to sign off on everything. He has got to sign off on all the regulations, everything.

The Hon. CATHERINE CUSACK: Policy compliance as well as the fiscal position?

Mr CARAPIET: Yes. We want a clean audit opinion.

The Hon. CATHERINE CUSACK: I am curious about the governance issues because it seems to me that this issue within WorkCover has not been resolved internally, it has escalated and now we have a parliamentary inquiry into a staff management practice. Would you consider it a failure of governance that the system was not able to satisfactorily address and resolve this matter internally and it escalated out of the organisation to the Ombudsman and ultimately to a parliamentary inquiry?

Mr CARAPIET: I think management would say—I do not know what they would say but I would assume that they would say that they have the issue in hand. It is far from perfect but it is improving. We have to all appreciate unfortunately that changing the culture of this organisation is going to take a bit of time. There are going to be bumps in the road inevitably. This is not a short-term fix. It is not going to be fixed quickly. There are 1,400 or 1,500 staff across the whole organisation and we have quite a low attrition rate so you are not seeing a lot of change in staff members so something is going to have to change to change the culture. You have got to change the way you do things; you have got to change your policies and then you have got the constraints of the public service rules, which makes that a tad more challenging.

CHAIR: You have used the phrase "change the culture" a couple of times and the CEO said change the culture also but they denied a culture of bullying. I am just wondering what culture you are all changing?

Mr CARAPIET: Because you are running so many different styles of entities in the one department, so you have a regulator—the Motor Accidents Authority [MAA] is a regulator, the Lifetime Care and Support is a caring function with a large investment fund to care for seriously injured people. The workers compensation business is partly one of the largest insurance companies but also regulates the people who provide the insurance. It funds the Workers Compensation Commission so it also does work health and safety and has a bit of regulatory. The culture in the regulator needs to be a little bit different to the culture in the insurance business, which needs to be different to the culture in Lifetime Care and Support. That is quite challenging for the CEO and the human resources team to try to keep some sort of consistency but actually encourage slightly different behaviours depending on the role of the person. That is a not insubstantial challenge for staff.

The Hon. CATHERINE CUSACK: Can I come back to the governance issues because as you have indicated there are lots of big complex organisations. Where the board does not have time to spend, and I would not want the board to be spending two hours micromanaging a specific case or area of policy—that is obviously not going to happen—but you obviously need to have governance arrangements in place that give you confidence that the matter is being properly addressed?

Mr CARAPIET: Yes.

The Hon. CATHERINE CUSACK: So it must disappoint you that this matter has escalated to a parliamentary inquiry?

Mr CARAPIET: Very.

The Hon. CATHERINE CUSACK: Does that suggest that the governance arrangements are not in place for the board to be confident that it is being managed internally?

Mr CARAPIET: The internal management think that the actual processes have been followed. What we are trying to establish is, number one, were they followed and then if they were followed, are they the correct ones for our organisation because that is quite challenging.

The Hon. CATHERINE CUSACK: When you say "what we are trying to establish" you mean the board?

Mr CARAPIET: The board, yes.

The Hon. CATHERINE CUSACK: But because the board has commissioned her to get those answers, are you confident that that is independent enough? I am trying to point out that this is not working and has not been working because here we are today.

Mr CARAPIET: We could get in an external firm and spend some more money. We could get PWC in again, but I thought the Government's internal audit service was good.

The Hon. CATHERINE CUSACK: Is it the WorkCover internal audit service?

Mr CARAPIET: No.

The Hon. MELINDA PAVEY: The Internal Audit Bureau through Premier and Cabinet.

Mr CARAPIET: Once they come back to us, then we can decide whether we need to go to an external firm to get further advice or what to do but let the examination run, get the outcome and see what you people conclude as well.

The Hon. CATHERINE CUSACK: This will become part of it.

Mr CARAPIET: And then see what we need to do, if anything, to change, and I think change is inevitable frankly but I do not know what it is sitting here today.

The Hon. CATHERINE CUSACK: One other question regarding governance. It is wonderful to have such great private sector experience and such diverse skills base but is there any training for board members on the legislation and the corporate government principles and responsibilities for people appointed to boards, especially given the legislation changes?

Mr CARAPIET: This is a pretty experienced board.

The Hon. CATHERINE CUSACK: But experienced in the private sector. As you have said, it is quite different in the public sector.

Mr CARAPIET: It is.

CHAIR: Do they receive a briefing on how legislation has changed?

Mr CARAPIET: Yes. We got a briefing from the internal legal counsel on the legislative changes and what our responsibilities were, et cetera. They changed a bit from the advisory board but they did not change materially in terms of the briefing because we still do not have the fiduciary relationship with the organisation that you would normally have, for example, in a listed company.

The Hon. CATHERINE CUSACK: That is right. Do you feel accountable to the Minister, for example?

Mr CARAPIET: Absolutely.

The Hon. CATHERINE CUSACK: I cannot find you in the organisation structure in the annual report.

Mr CARAPIET: I think I am in the annual report actually. We took the photographs and all that.

The Hon. CATHERINE CUSACK: You and the board are in the annual report but you are not in the structure. It goes chief executive reporting to the Minister for Finance and Services.

Mr CARAPIET: Yes.

The Hon. CATHERINE CUSACK: And there is no board in there, even as an adviser. With the WorkCover Authority you are not there either.

The Hon. MELINDA PAVEY: This is in the diagrams?

The Hon. CATHERINE CUSACK: Yes, this is in the organisational diagrams which explain the lines of accountability and reporting, which are really important to members because we rely on those to understand corporate governance arrangements. The CEO said this morning that they might not be in those models but they are in her models, but the problem is she is the one who signed off on the annual report, so I do not know what model she is talking about.

Mr CARAPIET: I actually have a draft of the annual report for 2013.

The Hon. CATHERINE CUSACK: Are you in there?

Mr CARAPIET: Yes. On page 8 there is a whole diagram. We have actually put in how many meetings we all attended.

The Hon. CATHERINE CUSACK: But are you in the organisational diagram?

Mr CARAPIET: It says the Safety Return to Work Support [SRWS] board and the investment committee. We have a dotted line to the CEO and a straight line to the Minister. Yes, it is there.

CHAIR: And are you happy with that chart? That is correct in your opinion.

Mr CARAPIET: Yes, it is right. It is how it works.

The Hon. ADAM SEARLE: It still does not suggest that she reports to you?

Mr CARAPIET: She does not report to me. Let us not be ambiguous about that. She does not report to me.

The Hon. CATHERINE CUSACK: How can you be responsible for these things if management are not reporting to you?

Mr CARAPIET: That is the role. I did not create the role. That is a role; that is how it is structured and that is how it has always been structured. She is in charge of a government department.

The Hon. CATHERINE CUSACK: So is there a gap between your responsibilities and your authority?

Mr CARAPIET: Well yes, probably but I have not really looked at it like that. I have not had cause to complain to the Minister suggesting things that I was not getting any resonance on. There are parts of this organisation that might be better suited in a different corporate structure.

The Hon. CATHERINE CUSACK: Can I ask you in a plain way: for the Committee to understand who is accountable for compliance with occupational health and safety government regulations and with the smooth operation in WorkCover, do we turn to the CEO, do we turn to the board, do we turn to the Minister or do we ask all three?

Mr CARAPIET: All three.

The Hon. CATHERINE CUSACK: How would you see that responsibility dividing up though?

Mr CARAPIET: Personally, how I look at it is I think it is the board's responsibility. It is the board's responsibility but we do not always have the authority, so I have to ask for a bit of leeway otherwise it is a waste of time board. Frankly, I do not want to be on a waste of time board. There are quite a lot of good things happening in the organisation. In fact, there are far more good things happening in the organisation than people realise. You are having an inquiry on some appalling things that have happened, which is sad.

CHAIR: Could you argue that if the chief executive officer reports to the Minister the Minister is responsible and the Minister should have acted on the bullying complaints?

The Hon. CATHERINE CUSACK: Or is the Minister relying on the board?

Mr CARAPIET: I would think the Minister would be relying on the board. If I were the Minister I would be relying on the board.

Mr DAVID SHOEBRIDGE: You do not have the chief executive officer responsible to you so how do you exercise your responsibility?

Mr CARAPIET: Gentle persuasion.

The Hon. CATHERINE CUSACK: Does the board have subcommittees to consider specific difficulties as they arise?

Mr CARAPIET: We have not so far. There is a risk and audit committee and we have an investment committee but there is only six external members on the board, so we do not have a board of nine or 10 people where you can have lots of committees. Otherwise you would spend your life in committees. This is a challenging board.

The Hon. CATHERINE CUSACK: The issue is the oversight of good, rigorous, reliable, robust systems?

Mr CARAPIET: Perhaps, but I like to look at outcomes both good and bad because people will run different processes and you will have slightly different points of view as to how you get to the end result. I think if you agree on what the end result is then as a chairman at least I am happy to take a more liberal view on how you get there—as long as you get there in the proper way and you achieve the outcome. Yes, it is good to have processes and I rely on the New South Wales audit office to check on that. The risk and audit committee is conducting a full risk review as we speak, and have been for a couple of months, to identify the key risks in the various authorities and how you actually manage it.

The Hon. MATTHEW MASON-COX: Would bullying be one of those risks?

Mr CARAPIET: I would view it in the human resource risk context unless what comes out from this Committee is a systemic problem and, to use an analogy, we are only seeing the iceberg. It would be part of the human resources and risk management and it is a bit 50:50 to be honest.

CHAIR: Do you get copies of the WorkCover chief executive officer report that goes to the Minister?

Mr CARAPIET: The chief executive officer report comes to the board each month.

CHAIR: Each of the departments you supervise report to the Minister?

Mr CARAPIET: Yes, but it actually comes to the board. It is a formal reporting line in to the Minister. I could not tell you how often Ms Newman speaks to the Minister, I do not know.

CHAIR: It goes via you? It goes to you and you give it to the Minister?

Mr CARAPIET: I do not give it to the Minister.

CHAIR: The chief executive officer reports directly to the Minister and a copy goes to you?

Mr CARAPIET: It comes to the board. The whole board gets the pack.

The Hon. CATHERINE CUSACK: Mr Carapiet, it looks like you have 2½ kilograms of paper in that report: is that one month's report?

Mr CARAPIET: No. This is all the minutes of the meetings. I was just looking at it to answer the question Mr David Shoebridge asked about what we do every meeting.

CHAIR: You produce your own report?

Mr CARAPIET: Me?

CHAIR: The board?

Mr CARAPIET: No, I do not.

CHAIR: You do not produce a report to the Minister?

Mr CARAPIET: No, it is a Government department. The formality is that the chair does not get—in a normal company the chair would get a page.

CHAIR: Do you give a report to anyone?

Mr CARAPIET: Verbally.

CHAIR: It is not a written report?

Mr CARAPIET: Yes, a verbal report.

Mr DAVID SHOEBRIDGE: I have one question that I wanted to ask this witness but it is probably a matter that needs to be asked in confidential session. Could the witness stay back for 15 minutes for us to go into confidential session? It relates to a matter we previously discussed.

The Hon. MELINDA PAVEY: Our first priority is to see whether that suits Mr Carapiet?

Mr DAVID SHOEBRIDGE: I was hoping the chair would ask Mr Carapiet if that was possible.

Mr CARAPIET: I am at your disposal, Mr Chairman.

Mr DAVID SHOEBRIDGE: Ten minutes?

Mr CARAPIET: Fine.

CHAIR: There is a report indicating the board members and attendance at board meetings?

Mr CARAPIET: Yes, Chair, that is in the annual report.

CHAIR: That annual report is your report?

Mr CARAPIET: The attendance is in the annual report and there was only one item of note in terms of attendance: Unfortunately Gavin Bell had a heart attack during the year. He is fine now but he missed a number of meetings while he was recovering.

CHAIR: Did Mr Mark Lennon, the Unions NSW representative, attend all the meetings?

Mr CARAPIET: Mr Lennon attended nine out of 10 of the board meetings and three out of four of the audit committee meetings.

CHAIR: Very good.

(Evidence continued in camera)

(The witness withdrew)

(The Committee adjourned at 2.50 p.m.)

IN-CAMERA PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 1

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

At Sydney on Monday 11 November 2013

The Committee met in camera at 2.50 p.m.

Transcript published by resolution of the Committee, 21 November 2013.

PRESENT

Reverend the Hon. F. J. Nile (Chair)

The Hon. C. Cusack
The Hon. M. Mason-Cox
The Hon. M. J. Pavey
The Hon. A. Searle
Mr D. Shoebridge
The Hon. M. Veitch

Evidence in camera by **MICHAEL CARAPIET**, on former oath:

CHAIR: Thank you for cooperating.

Mr CARAPIET: That is fine.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE]

Mr CARAPIET: There was no doubt in my mind when I came on there was a lot of internal and external comment on bullying, but this is the first I have heard of that specific case.

The Hon. MELINDA PAVEY: The point has been made.

Mr CARAPIET: I have not heard of it before, I cannot comment on it.

The Hon. CATHERINE CUSACK: It has been an ongoing matter. Is there an expectation by the board that critical incidents would be reported to the board?

Mr CARAPIET: Absolutely.

The Hon. CATHERINE CUSACK: Is there a system for that?

Mr CARAPIET: What I have tried to do is have as normal a board as possible. In a normal commercial environment, or any environment, if you had a serious human relations issue, and I think bullying would be in that category, you would know. You have to report occupational health and safety near misses.

CHAIR: It may have been reported prior to your appointment.

Mr CARAPIET: Clearly, because I have no knowledge of it.

The Hon. CATHERINE CUSACK: The internal audit processes were going on after Mr Carapiet's appointment. The concern is that the board has not been kept apprised of it.

CHAIR: Are you sure of that?

The Hon. CATHERINE CUSACK: On the timing I am sure, yes.

Mr CARAPIET: I do not recollect ever being told.

The Hon. ADAM SEARLE: You only know what you are told?

Mr CARAPIET: Pretty much but if you are on a board you are relying on management and if you do not trust your management you change your management if you can.

Mr DAVID SHOEBRIDGE: I thought you might have chosen the Internal Audit Bureau because of its knowledge about what had been happening with the alleged bullying by **[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE]** ?

Mr CARAPIET: I had no knowledge of that at all.

CHAIR: Who appointed the internal audit?

Mr CARAPIET: Ms Newman. They had to do something. It was not the board.

The Hon. CATHERINE CUSACK: A complaint was made to the Public Service Commissioner.

The Hon. ADAM SEARLE: That is another field of inquiry.

The Hon. CATHERINE CUSACK: Which is why it is disappointing the board is not aware that there is an external inquiry into the organisation and it has not been informed of it. That is amazing.

CHAIR: Who appointed the Internal Audit Bureau?

The Hon. CATHERINE CUSACK: The Public Service Commissioner?

Mr CARAPIET: He has an important role in the human relations side. That is how the structure works pretty much.

The Hon. CATHERINE CUSACK: You would expect him to be aware of external inquiries into your organisations?

Mr CARAPIET: I would hope so, but I do not know what precedent there is. I would expect it but perhaps they do not have the precedent to do it, therefore they have not done it and they think they have not had to do it before. To be fair I have not said, "Tell me all the history." I have read the PricewaterhouseCoopers report and said, "Can you make sure that all these things are happening."

Mr DAVID SHOEBRIDGE: We have not inquired into things you do not know about.

The Hon. ADAM SEARLE: I am happy for you to take this on notice. Do you recall what briefings you and the board were given about the Butler matter before the decision and what briefings—I am referring to the content—have you been given subsequent to the decision in June this year? It is not a trick question; I am happy for you to go away, to look at the paperwork and to tell us what you knew and when.

Mr CARAPIET: I do not think there is any paperwork. What I can recollect is an employee had been dismissed for misconduct. We had an internal investigation that was headed, firstly, by Mr Watson and then by a former police commissioner. External lawyers were involved and they found that there was a breach and therefore the person's employment was terminated. The employee objected and it went to the Industrial Relations Court. That was the actual briefing. The result came out and we all know what that was. That was the briefing.

The Hon. MELINDA PAVEY: But there was evidence today that we are not privy to all the information.

The Hon. CATHERINE CUSACK: That was my question.

Mr CARAPIET: I do not have any information that you do not have.

The Hon. CATHERINE CUSACK: You said earlier that there was the pre-issue and the process, and it was in the process that the bullying occurred.

Mr CARAPIET: Apparently.

The Hon. CATHERINE CUSACK: What did you understand the pre-issue to be?

Mr CARAPIET: It was misconduct. He had another job, was using his phone, and a few other things. I must admit that because he was a junior to a middle ranking staff member I did not pay much attention.

Mr DAVID SHOEBRIDGE: Your characterisation of it was that there was a variety of allegations and then it was the process about the allegations that became the issue.

Mr CARAPIET: Yes.

The Hon. CATHERINE CUSACK: Are you aware of anything else that was not put before the Industrial Relations Commission in relation to that matter?

Mr CARAPIET: No.

The Hon. ADAM SEARLE: You have given the Committee some evidence about what you recollect you were told about the matter. There is a yawning chasm between management's view of the matter and what they did in relation to Mr Butler and what the Industrial Relations Commission established about the substance of those allegations. Were you and the board given any detailed briefings or did you have any discussions about the very real problems with senior management—that is, the concerns which have given rise to this decision? If you have read it, you would say it reflects very poorly on them.

Mr CARAPIET: Time will lead to growing acceptance that they could have made better decisions throughout this process. It is still a bit raw. They made these calls and they have been obviously and publicly damned. It is pretty clear that he had no doubt in his examination what the answers were. They are going to need time to get their heads around that. We will need to change the way we do things.

Mr DAVID SHOEBRIDGE: It has been five months and they are still denying it. As I heard their evidence, they are still denying the key findings.

Mr CARAPIET: You guys are an intimidating bunch.

The Hon. ADAM SEARLE: You have a great deal of private sector experience. If you were the chairperson of that board and you had received a report on management action of the kind encapsulated in the Industrial Relations Commission decision, and given how damning it is about the judgement calls, what would be the future of those senior employees?

Mr CARAPIET: I am looking at this holistically. They have been under huge pressure over the past 15 months to change [EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE] . It was in a \$4 billion hole. They had to change a lot of management practices and attitudes. You have to give them a bit of credit for having done a huge job in turning around this organisation. In the middle they screwed up a few things, and this is the most obvious case where the judgement could have been much better in hindsight. In the overall scheme of things, if another human resources issue came up I think the board would scrutinise management's actions more closely. I do not know whether this is a sacking offence for the senior staff based on what I have seen over the past 18 months. I would be giving them the benefit of the doubt, but I would scrutinise the human resources issues. What you find out about the iceberg might change my view.

The Hon. ADAM SEARLE: Is it true that Mr Devine was promoted after this event?

Mr CARAPIET: I do not know Mr Devine.

CHAIR: Thank you very much. We were trying to clarify the culture at WorkCover. Was there a culture of bullying?

The Hon. MELINDA PAVEY: What culture are you referring to?

Mr CARAPIET: I have not seen it personally and I have encouraged as many of the senior managers or the people standing in for them to come to board meetings to explain what they have done. We have strategy days and we had the WorkSafe awards ceremony the other day. Honestly, I have not seen any systemic problem. Any organisation of 1,400 people that has undergone so much change will have people who are not happy because there has not been attrition either. I can well understand that there might be a hotbed of discontent with change. Sadly, change is inevitable. The key is how you manage it. That is the biggest challenge: being able to manage it in a sensitive and understanding way rather than dictating to people how it will be. That is probably where a bit of skill is required.

CHAIR: Some submissions have suggested an inspectorate for WorkCover.

Mr CARAPIET: It is a question of how many regulators you want. Six or seven layers would be a waste of money.

CHAIR: Should WorkCover have its own board because of the complexity of its operations?

Mr CARAPIET: I think that would be a total waste of money.

Mr DAVID SHOEBRIDGE: I think it is fair to say that you do not think that the current board structure allows it to regulate this kind of conduct effectively. Is that what you are saying?

Mr CARAPIET: That is further than I would go. We could do it better with more power, but we can still do the job we are asked to do. There is nothing holding us back from doing the job we want to do. We do not have the responsibility or the ability to implement. We have the ability to recommend and so on.

The Hon. MELINDA PAVEY: It is up to the upper House to implement it.

CHAIR: Thank you again for making yourself available.

The Hon. MELINDA PAVEY: Thank you very much for your evidence and the way in which you have approached this inquiry.

(Evidence in camera concluded)

(The witness withdrew)

The Committee adjourned at 3.07 p.m.
