

***IN CAMERA* 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
12 FEBRUARY 2014**

At Sydney on Tuesday 10 December 2013

The Committee met at 10.00 a.m.

PRESENT

The Hon. F. J. Nile (Chair)

The Hon. C. E. Cusack

The Hon. M. Ficarra

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

The Hon. A. Searle

Mr David Shoebridge

The Hon. M. S. Veitch

MARK ROY ROBERT LENNON, Member, Safety, Return to Work and Support Board, sworn and examined:

CHAIR: Thank you very much, Mr Lennon, for agreeing to be a witness for us today.

Mr LENNON: That is all right, Chair.

CHAIR: We thank you for accepting our invitation. As you know, we are dealing with these delicate issues about bullying so-and-so. Please note that you are bound by the confidentiality of today's proceedings. Please be aware that the Committee has the power to subsequently publish today's evidence, if it so chooses. The Committee's decisions will have regard to the confidentiality attached to certain documents and the sensitivity of certain matters that may be disclosed or discussed today. Should the Committee desire to publish some or all of the transcript, the secretariat will consult you regarding potential publication. However, the decision as to what is or is not published rests with the Committee. Would you like to make a brief statement for a few minutes?

Mr LENNON: I would, Chair. I have not got a prepared statement, but I think I put on record my concerns as a board member, but also generally as a union official and member of the community at large, about the general issue of bullying and how we as a society and a community are trying to address it. There is no doubt that it is very foremost in the minds of, I think, most people in the workplace or most practitioners in the workplace over the last 10 years. I think in the light of a few high-profile cases, in particular the Victorian case, that has been very much foremost in the minds of the community at large for the past five or six years. There is a lot of information, a lot of research, a lot of details, lots of reports, lots of inquiries, lots of recommendations, lots of policies and lots of procedures on how to deal with bullying, but I do not think that we as a community at large have actually come to terms with it because the concept is so wide. That is the difficulty.

My experience in workplace, health and safety is clearly where there are physical accidents, such as a guard missing from a machine. It is easy to see—it is not easy, but it is often straightforward enough to see—cause and effect. When it comes to the issue of bullying and when it comes to the issue of personal relationships, cause and effect is somewhat different or more difficult, and that is the problem. I think there is a lot of good will out there in the community at large, in workplaces at large, among employers, among unions and among parliamentarians to resolve the issue of workplace bullying but I think we all as a collective are struggling to be able to do so. I think that is the case with regard to WorkCover itself, not only in terms of the issue at hand about internal issues within WorkCover but also how it deals with the matter in the workplaces of New South Wales and among the 3.6 million employees in New South Wales. It is not, from my experience, for want of trying. It is just a question of how we as a modern society—where we now have 75 per cent of the workforce in white-collar jobs, where most workplaces now involve a lot of human interaction and when issues such as bullying or differences of view or arguments will be on the increase—all deal with it. I do not have an easy answer.

I just note your remarks, Chair, about these proceedings being in camera. I hope that is the case and that we can have a full and frank discussion on that basis because I think that would best serve everyone's interests—particularly, I think, the employees of WorkCover and the workers of New South Wales who want to see WorkCover be able to fulfil its role when it comes to regulating workplace bullying.

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CHAIR: One of the questions in the back of our minds is how active the board was in carrying out its role in this area. It seems that they do not get involved.

Mr LENNON: In terms of workplace bullying?

CHAIR: Yes, or some of these situations that are occurring in WorkCover.

Mr LENNON: Let me just say that in the case of bullying itself in WorkCover we can go back to 2009 when the first event occurred. Prior to that of course WorkCover had been a signatory to the Dignity and Respect Workplace Charter since 2004. My recollection is, if we go back to 2009 when the bullying response service was put in place in my recollection, we then of course move along to the PricewaterhouseCoopers inquiry and the response to that. That is still an item very much on our agenda, including an update on responses to that yesterday in the board meeting.

CHAIR: The board has been discussing these and keeps monitoring these situations month by month in its meetings?

Mr LENNON: I would not say month by month, but certainly on a quarterly basis, Chair.

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The Hon. CATHERINE CUSACK: On the issue of the alleged culture of bullying within WorkCover generally, of which this is one of a number of allegations—

Mr LENNON: Yes.

The Hon. CATHERINE CUSACK: —what role does the board have, in your view? Should we see the board as playing a role in resolving the issues or oversighting a resolution for the so-called bullying culture?

Mr LENNON: Absolutely.

The Hon. CATHERINE CUSACK: As a member of the board then—

Mr LENNON: Let me just draw—

CHAIR: Let him just answer and say what he wants to say.

Mr LENNON: I just draw exception to the term "culture" of bullying. I think that is something that has been used. The question is: Is there a culture of bullying? That is the question in WorkCover.

The Hon. CATHERINE CUSACK: Okay, yes. Is there?

Mr LENNON: My answer to that is no. I do not believe there is.

The Hon. MELINDA PAVEY: What did the PricewaterhouseCoopers report say in relation to that?

Mr LENNON: The PricewaterhouseCoopers report said that 779 employees responded to the survey and 40 per cent of them said that they had witnessed or had seen bullying of some sort. When you drill down into it though, then you get the different sorts of forms of bullying—and this refers to my opening remarks—nitpicking, aggressive body, what do you call it?

CHAIR: Body language?

Mr LENNON: Thank you very much, Chair—and then people being abusive. It was a wide range. The PricewaterhouseCoopers report also said in its opening remarks words to the effect that the majority of people who are working for WorkCover are happy working there.

The Hon. CATHERINE CUSACK: Do you think people understand what bullying is, or do you think there may be a loose definition out there?

Mr LENNON: No, I do not think there is a loose definition but I think, as in my opening remarks, we are all struggling with it. I think one of the big dangers of bullying, personally, is the sin of omission. People do not understand that the fact that you leave one person in the room and do not invite them to lunch and the rest of the team goes out to lunch and you do not tell them why they are not invited to lunch or why they are not invited to drinks or why they are not part of the general discussion around the room, et cetera, that is bullying, or can be.

The Hon. CATHERINE CUSACK: Yes.

Mr LENNON: No particular reason.

The Hon. CATHERINE CUSACK: Yes.

Mr LENNON: It is mixed and varied. No, we do not all understand it.

The Hon. CATHERINE CUSACK: But it has been suggested that maybe as the public service tries to move towards a more performance management culture, a difficult conversation around performance can often give rise to bullying allegations and that is a bit of a fine call.

Mr LENNON: Absolutely. I agree.

The Hon. MELINDA PAVEY: Or those conversations do not happen, for fear of hurting someone's feelings.

The Hon. CATHERINE CUSACK: And not wanting to be subjected to a bullying allegation.

Mr LENNON: Yes, I agree. That can be part of the case. The problem I think for WorkCover, in that regard in particular, is there has been so much change, and not just the present administration, shall we say, over the last—I do not know—five to 10 years: the move to Gosford, which I think was a great move and I support it wholeheartedly and I think it has been great for the staff but there is the move to Gosford, changes to legislation, restructuring, people acting in positions, chief executive officers acting in positions. There is so much uncertainty when it comes to questions such as, "Now I've been told my performance is bad. I do not even know what section I am in this week", sort of thing.

The Hon. CATHERINE CUSACK: And that is very stressful.

Mr LENNON: That is not uncommon generally in public sector reform; it happens all the time. I am sorry but governments of the day, whoever they are, want to make changes; they want to implement their policies. They have a right to do so but it creates a lot of uncertainty.

The Hon. CATHERINE CUSACK: Is it possible that the system itself can do the bullying rather than individuals—that, for example, an environment of constant change, reapplying for your own job, that has been driven by forces? No individual seems to be in control of this process that has been going through with WorkCover, but just that process leaves people devastated.

Mr LENNON: It could do, yes.

The Hon. CATHERINE CUSACK: And people really struggle with that uncertainty.

Mr LENNON: Yes, it could do. I think the process leaves people feeling insecure and then it leaves them feeling more vulnerable and feeling that because they have been told they are not doing something they feel more and more vulnerable and that they are being picked on.

The Hon. CATHERINE CUSACK: Has that contributed to sections of—

Mr LENNON: I do not know. I do not want to make that judgement call for WorkCover; I am just making an assumption there. But, do not get me wrong, there is no doubt that bullying has taken place in WorkCover. It would be silly to ignore that. But the question: Is there a culture of it in WorkCover? My answer to that is no. Are there pockets of bullying in WorkCover? My understanding and my belief is yes, but it would not be different to any other organisation that has a thousand or 1,100 employees and is undergoing constant change.

The Hon. CATHERINE CUSACK: What expectation should the public have of the board of WorkCover in relation to resolving these matters? What would be a reasonable expectation for the public? Secondly, have you been disappointed that the board has not performed that well maybe because you have not been put in the loop as you should have been in relation to briefings?

Mr LENNON: No, I am not disappointed with the board. The board now knows very clearly, as of November last year, its obligations under the Work Health and Safety Act. We are clearly officers—I reckon you could probably define it some other way, but we are officers and therefore we are obliged to ensure we undertake due diligence when it comes to work health and safety and the general duty of care under the work health and safety legislation. As a consequence of that, the board implemented that we have get a report in February this year, as I recall, as to how WorkCover's compliance with the legislation is going. We are getting regular quarterly work health and safety reports, so therefore, in answer to your question, I think that the expectation is that firstly we have to meet our obligations as responsible officers under the legislation. But clearly there is always an expectation on WorkCover as the regulator to be best practice when it comes to these issues.

The Hon. CATHERINE CUSACK: Just on the issue of the board, you are getting reports but what are you doing?

Mr LENNON: The reports are telling us what is happening with our Grow program. We had the report yesterday on self-reporting on bullying, we also have updates on the implementation of the six recommendations of the PWC.

The Hon. CATHERINE CUSACK: Do you just note the reports?

Mr LENNON: Yes.

The Hon. CATHERINE CUSACK: Do I take it therefore that you are quite satisfied with the programs that are underway in WorkCover and that you had satisfied yourself?

Mr LENNON: In light of the events that came out of the PWC report, yes I am at the present time. It does not mean that we cannot improve.

The Hon. CATHERINE CUSACK: Wearing your other hat as a union member, the union has come to us and complained bitterly about the processes. Just as a genuine question, because you are so well placed, are the unions not understanding how good the work of the board has been or is the board not understanding how—

Mr LENNON: No, I think the board, in terms of making sure that strategies and policies are in place when it comes to the issue of work health and safety, have done their job. The question is whether operationally it is working, and clearly there is evidence that has come forward and that is why I say that clearly there are pockets of workplace bullying within the organisation. Clearly, operationally we need to do more; there is no doubt about it. It seems to me that the issue is that the problem is trying to get a handle on the actual nature of the bullying, where the key problems are and what are the particular solutions. I come back to the question about is it to do with personal relationships? Is it to do with particular people who are motivated to bully for whatever personal reasons?

The Hon. CATHERINE CUSACK: What is the board doing about that?

Mr LENNON: We are monitoring the responses that we are getting with regard to the program.

The Hon. CATHERINE CUSACK: But if you feel more needs to be done what are you doing to ensure more is done?

Mr LENNON: The major thing that the board has decided to do is set up a human resources subcommittee so it has better oversight of the operational practice.

The Hon. CATHERINE CUSACK: It has not had one up until now?

Mr LENNON: The board has only been going for 14 months. If you look at the board structure and its role, clearly there was a key focus in the first instance to look at things such as investments—

The Hon. CATHERINE CUSACK: Seventeen billion dollars.

Mr LENNON: Yes, and the implementation of the workers compensation reforms. This year, of course, a lot of time has also been taken up with the proposed changes to third party CTP, which of course did not proceed in the end.

The Hon. CATHERINE CUSACK: So it is a new subcommittee?

Mr LENNON: Yes.

The Hon. CATHERINE CUSACK: Have the unions been complaining to you in the past about this problem?

Mr LENNON: Not directly.

The Hon. CATHERINE CUSACK: Because you are meant to be their representative on the board.

Mr LENNON: No I am not.

The Hon. CATHERINE CUSACK: Are you not appointed as the union representative?

Mr LENNON: No. If you have a look at section 4 of the Act it says that the board has six members plus a CEO ex officio, appointed by the Governor on the recommendation of background or skills of law, finance, marketing, work health and safety, and investments.

The Hon. CATHERINE CUSACK: If I can ask: What were your skills?

Mr LENNON: Marketing. I am joking, I am sorry. Two things: first of all, clearly work health and safety; secondly, given I had been on the previous board for some years clearly I have learned a bit about the insurance aspects of workers compensation itself and I have got a law degree, and I understand investments because I have been a trustee of super funds on and off for 20 years, although I am not presently on the investment committee.

CHAIR: So there is no union representative as such on the board?

Mr LENNON: No.

CHAIR: There is no position?

Mr LENNON: No.

CHAIR: You mentioned the CEO. Does the CEO attend all the board meetings?

Mr LENNON: Yes.

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Mr DAVID SHOEBRIDGE: In terms of the Butler case—you are aware of the Butler case?

Mr LENNON: I am.

Mr DAVID SHOEBRIDGE: How has that been reported to the board?

Mr LENNON: We have had now, I think, three reports to the board, including yesterday, that the original matter had been taken as an unfair dismissal, we then had the response to the actual decision and then yesterday we had an update with regard to the investigation into the process.

Mr DAVID SHOEBRIDGE: If I could ask you about the first one? We have got the briefing note here; it is annexure D to one of the answers on notice from WorkCover. That is the briefing that you got? Is that a fair summary of the briefing as you remember it?

Mr LENNON: In fairness yes, but it is 12 months old.

Mr DAVID SHOEBRIDGE: I understand. Were there any documents handed up about it?

Mr LENNON: At that board meeting?

Mr DAVID SHOEBRIDGE: Yes.

Mr LENNON: Not that I recall.

Mr DAVID SHOEBRIDGE: So it was basically an oral briefing?

Mr LENNON: Yes.

Mr DAVID SHOEBRIDGE: I think four days after the Butler case was handed down there was another report from the CEO. I will show you the notes from 24 June.

Mr LENNON: That is right.

Mr DAVID SHOEBRIDGE: That was another oral report?

Mr LENNON: Yes, that is my recollection.

Mr DAVID SHOEBRIDGE: Does the CEO normally provide written reports?

Mr LENNON: Yes. Sorry, in fairness, they are the minutes you are looking at?

Mr DAVID SHOEBRIDGE: Yes.

Mr LENNON: She provides a written report.

Mr DAVID SHOEBRIDGE: I will ask you about that first one. When the case was first brought was there a written report for that do you remember?

Mr LENNON: There would not be a separate written report but there may be additional information that would have been part of her general report.

Mr DAVID SHOEBRIDGE: Ms Newman says that her report on 24 June, after the case, was oral—that second one I showed you. Is that your memory?

Mr LENNON: Yes.

Mr DAVID SHOEBRIDGE: The report she gave yesterday, was that a written report or an oral report?

Mr LENNON: It was an oral report.

Mr DAVID SHOEBRIDGE: Do you not find it peculiar that you have got these substantial issues about bullying in the organisation yet you have not had a written report from the CEO about these matters?

Mr LENNON: Can I just say in relation to the CEO, I think Ms Newman has done an excellent job.

Mr DAVID SHOEBRIDGE: That was not the question I asked you.

Mr LENNON: I know but I will come back to you.

Mr DAVID SHOEBRIDGE: Could you answer the question, Mr Lennon?

Mr LENNON: I think she has done an excellent job—

Mr DAVID SHOEBRIDGE: Could you answer the question?

Mr LENNON: —in relation to her job as CEO. She has been asked to bring together oversight—

Mr DAVID SHOEBRIDGE: But my question was about the absence of a written report.

CHAIR: Let the witness finish. He wants to frame his answer.

Mr DAVID SHOEBRIDGE: He has indicated he does not want to answer the question.

The Hon. ADAM SEARLE: No, he said he will come back to you. Let him finish his answer.

Mr LENNON: So we come to the question of Wayne Butler's case. I did ask the question yesterday myself how many terminations have we had this year and the answer, I think, is one and we may have had one other. Obviously there have been a couple that have resigned. In that regard it was an unusual case, but I think in terms of reporting to the board generally on these sorts of issues, it was not out of the ordinary the way Ms Newman reported it.

Mr DAVID SHOEBRIDGE: Did she tell you she accepted the findings of the Industrial Relations Commission—the factual findings?

Mr LENNON: Of the commission?

Mr DAVID SHOEBRIDGE: Yes.

Mr LENNON: In terms of?

Mr DAVID SHOEBRIDGE: Did she accept the factual findings of the Industrial Relations Commission about Mr Butler in Mr Butler's case?

Mr LENNON: That the deputy president's findings in terms of—

Mr DAVID SHOEBRIDGE: About there being a witch-hunt and a whole series of very critical findings.

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Mr DAVID SHOEBRIDGE: Did she tell you she did not accept the findings?

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Mr DAVID SHOEBRIDGE: They have not appealed it.

Mr LENNON: I wonder why we have not appealed it at the present time because it is now subject to a parliamentary inquiry.

The Hon. ADAM SEARLE: The board on which you serve, and the WorkCover board before it, had no operational control over WorkCover management, does it?

Mr LENNON: Again, I have noticed the comments when the chair was here. If you look at the Act the answer is that ultimately the Minister has direction and control and clearly the Public Service Commissioner has control of staffing matters in that regard, given everyone is employed under the Public Sector Management Act, is my understanding.

The Hon. ADAM SEARLE: In that case the accountabilities that a board usually has over an organisation are not present?

Mr LENNON: You would not call it a normal commercial board.

The Hon. ADAM SEARLE: No.

Mr LENNON: But we clearly have, as you say, responsibilities to ensure that we help the organisation set strategic direction, put in place appropriate policies, as is clear in the legislation. There is no doubt the structure of the legislation as it stands is we have enormous responsibilities when it comes to oversight of investments.

The Hon. ADAM SEARLE: Yes. That would be a major focus of the board?

Mr LENNON: There is no doubt that is why the government of the day, as is its right to do so, merged the entities under the one umbrella.

The Hon. ADAM SEARLE: As a board you only have the information that is provided to you by management and you have to accept that in good faith unless you have got some other source of intelligence; you have got to accept what management tells you?

Mr LENNON: Yes, that is right.

The Hon. ADAM SEARLE: If you set in place policies, or improve policies, or you sign off on courses of action that you are told are going to take place, again you have got to accept that in good faith as being true?

Mr LENNON: Yes.

The Hon. ADAM SEARLE: But it is really an operational matter as to whether management actually delivers on those things?

Mr LENNON: Yes, and I see the problem and it comes back to the question from Ms Cusack about what is happening operationally. There is a lot of material out there in WorkCover about how we deal with work health and safety and how we are dealing with bullying. You can ring the Employee Assistance Program and the bullying response service. You can seek to have consultation of the matter. You can take it to your health and safety representative. You can take it to the committee. There is a fund of ways of dealing with it. That comes back to your question: What is the board doing? What I can see from the board's perspective is we have a lot of opportunities in place for people to deal with the bullying question. We cannot oversight what is happening on a day-to-day basis—no board can and no management can.

The Hon. CATHERINE CUSACK: You can expect disclosure and I am not sure that you are getting it.

Mr LENNON: If you look at the figures—I am sorry to go off your question, Mr Searle, I will come back to it—they should not be taken as gospel, so to speak. But I think this year we have had four mental stress claims, two of which went to the issue of bullying. Bullying is a serious issue—I do not underestimate that—but we have other occupational health and safety issues in WorkCover as well that need to be addressed.

The Hon. MICK VEITCH: I refer to the Employee Assistance Program. As a matter of interest does the board have a role in the appointment of the organisations that undertake the EAPs on behalf of WorkCover and/or is the board apprised of the review process of how good they are?

Mr LENNON: My answer to that is no.

The Hon. MICK VEITCH: In a general sense all government instrumentalities have employee assistance programs which are often contracted out. I am concerned about how good they are, how often they are reviewed and how often their performance is monitored. Are you aware of any other government agencies, apart from WorkCover, that might conduct a review of the EAP process and the organisations that conduct those counselling sessions?

Mr LENNON: No, I do not. But what I can say is that I think the staff utilisation rate of our EAPs is 12 per cent, which is higher than other agencies. So the staff are definitely aware of it but I cannot comment on the provider themselves.

The Hon. MICK VEITCH: With regard to the performance of the chief executive officer does the Minister consult the board? Is there an annual performance appraisal process of the chief executive officer?

Mr LENNON: No, not the board itself. I think the chair is engaged in some appraisal of the chief executive officer with the Minister.

The Hon. MICK VEITCH: Who appoints the chief executive officer? Does the board or the chair involved in the appointment of a chief executive officer? Is advice taken on board—

Mr LENNON: As I recall in relation to the appointment of Ms Newman there was an interview process for a new chief executive officer. I do not think we found one, or we did not. Ms Newman was encouraged—I think she was keen to move on—to stay on.

The Hon. MICK VEITCH: Having sat on a couple of government-appointed boards, I am keen to delve a bit deeper into the nature of the reports that are provided to board members. Is it a written report with an officer's recommendation and then that recommendation and report is noted? What is the governance process?

Mr LENNON: For most issues, yes.

The Hon. MICK VEITCH: Do you have something like a dashboard indicator for things such as finances?

Mr LENNON: Yes.

The Hon. MICK VEITCH: A dashboard indicator for, say, workplace health and safety reports?

Mr LENNON: Not dashboard for workplace health and safety but because, as I say, we are doing this on a quarterly basis now. We are probably going to tighten it up. As you can see yesterday we had a report, for instance, basically the workforce profile survey that comes out every quarter just telling us how many staff they are. That went to issues about in the recent quarter how many workers compensation complaints. It is in draft form but it is not in our dashboard format that we have red, green et cetera that we have for finances.

The Hon. MICK VEITCH: How often does the board meet with the Minister?

Mr LENNON: Not often. In my seven years I do not think I have seen a Minister at a board meeting.

The Hon. MICK VEITCH: Not in a board meeting—

Mr LENNON: The board itself: not often. I do not think I have met with a Minister in the capacity and this is the third or fourth I have got and that goes across the political spectrum.

The Hon. MICK VEITCH: Is that a good thing?

Mr LENNON: Probably not, but then again it is not a reflection on Ministers. They are very busy people.

The Hon. MICK VEITCH: I understand that.

CHAIR: They have confidence in the board.

Mr LENNON: They do. I must say over time the chairs of the board, Greg and Michael, have met with the respective Minister on a number of occasions.

The Hon. MICK VEITCH: That is appropriate?

Mr LENNON: Yes, absolutely.

The Hon. MICK VEITCH: The legislative arrangements upon which you operate as a board and yourself as a board director recently changed but in light of what is happening at the moment with regard to this inquiry and the Butler case, do you think there is any need for legislative enhancement for the board?

Mr LENNON: No, but I think it needs to be clearer on the responsibilities and direction and control of staff if we are going to go through this issue because clearly they are employed by, as I say, part of the government service and the responsibility of the Public Service Commissioner. In that regard, even though it says, "We determine the policies" they are sitting over here and the commission is also putting place a series of policies. As you know, the commissioner has asked all the agencies including us, WorkCover, to report on our bullying and our dealing with bullying and we have done that this year. Again it comes back to the issue that there is a lot going on. There is a lot of procedural stuff going on with bullying. The question is how we are dealing with it operationally.

The Hon. ADAM SEARLE: Is the scope of the board too large? I know that this is a matter of government policy but now the board overshadows what is WorkCover, motor accidents and a number of other bodies and it has all now been brought under the one umbrella. There is a pronounced focus on finances. Those two factors would make it very hard for you to meaningfully supervise any management group of any agency on things like how they are dealing with human resources or the like.

Mr LENNON: Yes. Quite frankly I think the problem for the board—and I think this was a problem previously—is that if you look at the nature of what we are doing, we have got a couple of agencies where we are dealing with insurance schemes in effect. Then you have got work health and safety sitting over here. I think if anything else happens—and this is me as a board member but practitioner—work health and safety needs to have a separate governance practice.

Mr DAVID SHOEBRIDGE: Quite a different set of issues?

Mr LENNON: Yes, because it is a different set of issues. What happens in the boards—and this has happened in the previous board—it is no-one's fault but insurance issues are time consuming because of all the operational matters about scheme agents, premiums and things of that nature, return to work programs, et cetera and work health and safety ends up as sort of the poor relation because there is nothing to actually have to make a decision on a week or month basis about. We get good reports. The figures look good but my major concern is that we should have 315 inspectors and have we got them in the right place at the right time?

The Hon. ADAM SEARLE: It is my understanding of your evidence that in your view there needs to really be an insurance board for those insurance schemes dedicated to that task of the finances and then everything else could be left to a different board?

Mr LENNON: I think that would be appropriate because they are two different roles. I think that is the model in South Australia, as I understand it. South Australia WorkCover covers workers compensation; it does not cover work health and safety.

Mr DAVID SHOEBRIDGE: Could that not be done by establishing a subcommittee and really focus on effective subcommittees?

Mr LENNON: I do not know that it would still get the attention it needs, to be quite frank.

The Hon. MICK VEITCH: What subcommittees of the board are there now?

Mr LENNON: Audit and risk, and investment, and now human resources.

The Hon. ADAM SEARLE: Are all board members part-time?

Mr LENNON: Except the chief executive officer.

The Hon. ADAM SEARLE: It sounds like an awful lot of work for a group of people who are not charged full-time with these important responsibilities?

Mr LENNON: It is, I agree. I take your point but I think a separate government structure for work health and safety would be a good move.

Mr DAVID SHOEBRIDGE: But if you do not get that from government the subcommittee structure is a way to deal with it in the interim?

Mr LENNON: Absolutely.

The Hon. MICK VEITCH: The chief executive officer is ex officio. At your board meetings what other senior management does the chief executive officer bring to the meetings to support the reports and the decision-making processes of the board?

Mr LENNON: All the senior managers come in to give reports to their relevant section of the agenda or their relevant agenda item. You have clearly John Watson for work health and safety, Greg Barnier for people and culture, Genevieve is on leave at the present time but the head of workers compensation division et cetera. So that is how it is done and that is common practice on every board I have been on.

The Hon. MICK VEITCH: Yes, that is right. Who conducts the performance appraisal of the chief executive officer over a year? Who monitors the performance of the chief executive officer? Is that the responsibility of your board or is it a joint responsibility between the board and someone else within the public service, or is it someone else within the public service?

Mr LENNON: My experience with chief executive officers is it has been done through the Minister and the Minister of the day—and I stand to be corrected—in conjunction with the chair.

The Hon. MICK VEITCH: The chair acts on behalf of the board.

Mr LENNON: Yes.

The Hon. ADAM SEARLE: In relation to the Butler matter, I think you gave some evidence about it being reported at the time when an action was being taken for unfair dismissal. Do you remember any matter to do with Mr Butler being raised at board level prior to that?

Mr LENNON: My recollection is that the issue was first raised in November last year but it was to do with the unfair dismissal, or dismissal and the unfair dismissal. I cannot recall it being raised prior to that.

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The Hon. ADAM SEARLE: They have not refused, they are just coming back to you.

Mr DAVID SHOEBRIDGE: Did you ever get a copy of the Butler case from the chief executive officer?

Mr LENNON: No.

Mr DAVID SHOEBRIDGE: Did you ask for one?

Mr LENNON: No. I have got it now. I have read the case myself. As a board dealing with a range of matters, I do not think it is appropriate for a board to look at an outcome of a particular unfair dismissal case. That is an operational matter. If, now, as is becoming evident, or may become evident there are systemic issues about how it is being handled that is a matter for the board, but the question of an individual case—

Mr DAVID SHOEBRIDGE: Sorry, the board was told you were getting a systemic response to the matters raised in the Butler case and that you had ticked off on getting a systemic response to the systemic issues that were raised in the Butler case. It was not just about one issue. There were a whole lot of systemic issues.

Mr LENNON: That has been dealt with by an investigation.

Mr DAVID SHOEBRIDGE: It goes well beyond one case where there are systemic issues, which is what a board is meant to be—

Mr LENNON: I can tell you that the board resolved yesterday to undertake an inner review of the Butler case as opposed to the process. The board resolved that we should make it very clear that we are undertaking an independent review of the Butler case.

Mr DAVID SHOEBRIDGE: Was that following an oral report from the chief executive officer?

Mr LENNON: No, it was with regard to a report that we had yesterday with regard to the Internal Audit Bureau about the investigation process.

CHAIR: You were engaged to consult and conduct that investigation?

Mr LENNON: We have not yet, but we resolved to do so.

CHAIR: You do not do it?

Mr LENNON: That is right.

Mr DAVID SHOEBRIDGE: There was a written report from the chief executive officer that addressed all those matters, which you then noted and with a recommendation that was signed off on?

Mr LENNON: No.

Mr DAVID SHOEBRIDGE: It was an oral report?

Mr LENNON: Yes. It was a decision of the board to seek the review.

CHAIR: Thank you very much for appearing before the Committee. We appreciate your help. You have been very helpful.

Mr LENNON: Can I make a closing statement?

CHAIR: Yes?

Mr LENNON: I want to place on record that I can tell from the tone of the questions there are concerns about the performance of the chief executive officer. Ms Newman has done a good job over many years. She first came to WorkCover as the chief financial officer and helped sort through the finances, not that there were problems with the finances per se, but there were problems with the structure of finances and understanding them in terms of how they were presented and things of that nature, and she has done an excellent job.

The Hon. MELINDA PAVEY: She was a great chief financial officer.

Mr LENNON: She was a great chief financial officer and I think she has been a very good chief executive officer in trying to pull together three agencies plus a few other bits and pieces around the place that we dealt with and in trying to ensure that the structure of the new board and the structure of the new organisation deals with those issues. The particular matter with regard to the Butler case and human resources issues, as a chief executive officer she has put in place programs through our growth program and people of culture program, et cetera, and she has progressed those issues. There is no doubt, in my experience, having looked at the Butler case, there are some difficulties there, which is why we sought the independent review. Overall, in regard to how she has performed over the past 14 months I think she has done a very good job.

CHAIR: Thank you very much.

Mr LENNON: Thank you very much.

(Luncheon adjournment)

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

GREGORY RAY BARNIER, Chief Human Resources Officer, People and Culture Group, Safety, Return to Work and Support Division, on former oath:

CHAIR: Thank you very much for agreeing to appear before our inquiry again; we appreciate the time that you give to us. Please note that you are bound by the confidentiality of today's proceedings. Please be aware that the Committee has the power to subsequently publish today's evidence if it so chooses. The Committee's decision will have regard to the confidentiality attached to certain documents and the sensitivity of certain matters that may be disclosed or discussed today. Should the Committee desire to publish some or all of the transcript, the secretariat will consult with you regarding potential publication. However, the decision as to what is or is not published still rests with the Committee. Would either of you like to make a brief opening statement?

Ms NEWMAN: I would. I acknowledge that as long as individuals are raising concerns about bullying we have more work to do to address the issues of bullying. I also acknowledge that there will be instances where, although we have not received reports of bullying, employees may feel that they have been subjected to unreasonable behaviour or that they have been bullied. We need to continue to build our employees' trust.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

Mr BARNIER: I have no statement to make, thank you.

The Hon. MELINDA PAVEY: One of the questions we had during your previous evidence was how the board was kept up to date with information as to what was going on within the workplace. Can you update us now on what you have addressed in the Todd report?

Mr DAVID SHOEBRIDGE: This was not the order we agreed to.

The Hon. CATHERINE CUSACK: I am sorry, you were out of the room when we thought we might go first.

CHAIR: The Deputy Chair can ask your question.

Ms NEWMAN: That was a question that was taken on notice and I am just looking for—

The Hon. MELINDA PAVEY: It was more what have you updated the board on since our hearing last time?

Ms NEWMAN: Since then there has been a lot of discussion at the board meeting. In fact, we have had two board meetings since the inquiry commenced. The board discussed in some detail how we conducted the Butler case and they have been through that with us step by step and we were required to provide to the board or remind them, the documents we provided on the progress through the PricewaterhouseCoopers recommendations et cetera and an update on that.

We had a further meeting yesterday, where there was further discussion. The Internal Audit Bureau report was discussed in some detail and we are required to report back to the board at the February meeting with regard to the actions we will take with regard to the recommendations. I have asked that the Director, Corporate Governance, take responsibility for reporting back to the board on those recommendations, which takes it away from people and culture.

The Hon. MELINDA PAVEY: Have you taken an opportunity to discuss the wider concept of bullying and how to manage allegations with the Public Service Commissioner?

Ms NEWMAN: No, I have not recently. I had a conversation with the Public Service Commissioner at the beginning of this calendar year and, following that, the Public Service Commissioner wrote to all directors-general or agency heads with regard to what they were doing with regard to bullying. Those two reports were provided, one in May and one in July, and we reported those back.

The Hon. CATHERINE CUSACK: I thank you for your opening statement and for your responsiveness. I felt that the last hearing that we had was a very robust one and we were all very fresh on the issues and it is not the job of this Committee to be believed when we are enquiring into bullying, obviously, and we certainly do not want it to be a witch-hunt. Upon reflection—I can only speak for myself and not for the other Committee members—I am concerned that it might have felt like that. I appreciate your responsiveness.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

The Hon. CATHERINE CUSACK: I can imagine it might have been quite devastating. It is our responsibility to treat all witnesses respectfully and on that occasion I think we might have let ourselves down. I appreciate your cooperation and your opening statement is appreciated. I speak for myself in saying that.

Ms NEWMAN: Thank you.

The Hon. CATHERINE CUSACK: What we are trying to investigate—and we are very limited in the questions we can ask because we do not know what material we have in confidence, we do not know what your knowledge of that material is and that therefore limits our ability to ask you questions about that.

Mr DAVID SHOEBRIDGE: As Donald Rumsfeld once explained.

The Hon. CATHERINE CUSACK: Can I ask you a general question: Do you feel that you have been fully in the picture about enough issues to actually—are you feeling fully informed, for example, by the Public Service Commissioner about those matters which you are now before a parliamentary inquiry trying to answer questions about?

Ms NEWMAN: I am not feeling fully informed by a number of parties, actually. I was somewhat surprised at the submission by the Australian Manufacturing Workers Union [AMWU]. I sit beside Dave Henry 11 times a year and not once has he taken those issues up with me. Certainly, I would have been more than willing to have that discussion and I have already taken action on the injured worker piece because that is something we can do without doing any sort of inquiry, we can put better practice in place and that is underway now.

The Hon. CATHERINE CUSACK: What have you done in relation to that?

Ms NEWMAN: What we have done with regard to that, the whole of the WorkCover customer service area has got a new operating model in place. So, back in about May, if I remember correctly, the Customer Service Charter was put in place across the whole division. We have now put an operating model in the customer service centre using technology that we should have been using before about streaming calls and directing people to those subject matter experts, because we have a number of different lines of inquiry. The other thing that we found is that there were so many points of entry into WorkCover, there was no standardisation of the response and no closing out the issues for individuals and they were left hanging without that. So we have done that.

In our customer service model we have also got what we call our Customer Care Hub. And that is where, on the spot, we can escalate to somebody who can take them longer, who knows more about the subject, to actually have the discussion with the individual and then do the feedback piece to them. It has also been set up to support the Ombudsman, WIRO and certainly the Workers Compensation Commission. That is what we have done within WorkCover. It is still fairly new and we are putting in place what measures we can now, performance measures, in order to evaluate that particular model.

Something that has come up recently that we are looking at with variation of the model is actually the bullying piece and that is how we triage as they come in and having a specific group that actually does that, who can really talk to them and go through that before it goes out to the inspectorate, but also have the follow-through piece. That customer service framework has been communicated to the scheme agents and they are expected to operate in a similar manner.

The other thing we are doing is that we are in the last year of the current deed. A code of conduct is under draft now that will be put in place in the next 12 months. The new deed, we are going through the procurement for that now. It will have, in the deed itself, a code of conduct. They will be required to apply customer service standards—the Australian standards and the New South Wales Ombudsman standards and there will be remuneration tied to that particular.

Mr DAVID SHOEBRIDGE: That is your deed with the scheme agents?

Ms NEWMAN: Yes, so that is what we are doing in that space.

The Hon. CATHERINE CUSACK: Can I reserve the rest of the questions until later?

CHAIR: Yes.

Mr DAVID SHOEBRIDGE: Ms Newman, thank you for the material you have provided on notice. You briefed the board on 26 November last year—

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: —about the initial unfair dismissal claim that was being brought by Mr Butler and I will show you, if you like, the extract from the CEO report you provided.

Ms NEWMAN: Do you want me to read it?

Mr DAVID SHOEBRIDGE: Is that the full extent of the written report that you gave?

Ms NEWMAN: That is the full extent of the written report, yes.

Mr DAVID SHOEBRIDGE: Did you give an oral report in addition to that?

Ms NEWMAN: Yes, I did.

Mr DAVID SHOEBRIDGE: What was the content of your oral report, as best you can recall?

Ms NEWMAN: As best I can recall I would have—in fact I believe I gave the particulars of the case but I cannot remember in detail exactly what I gave the board on that particular occasion.

Mr DAVID SHOEBRIDGE: Do you have an idea of how long it took?

Ms NEWMAN: No I do not, I am sorry.

Mr DAVID SHOEBRIDGE: Half an hour, five minutes?

Ms NEWMAN: I really cannot. It would not have been half an hour, it will have been less than that but I cannot quantify it further.

Mr DAVID SHOEBRIDGE: The decision was handed down on 21 June of this year and then three days later you made an oral report, did you, to the board about it?

Ms NEWMAN: Yes, I did.

Mr DAVID SHOEBRIDGE: Did you put anything in writing to the board at that point?

Ms NEWMAN: No, I did not.

Mr DAVID SHOEBRIDGE: In the material that you have provided since then there is no actual reference to the Butler case specifically in your reports to the board. Is that right?

Ms NEWMAN: No, there is not but there has been quite a bit of discussion.

Mr DAVID SHOEBRIDGE: At the time that you provided the answers to us on notice last Thursday you had not provided any further information to the board about the Butler case. Is that right?

Ms NEWMAN: Not in writing, no.

Mr DAVID SHOEBRIDGE: What about orally?

Ms NEWMAN: Orally, yes, we have had discussions. I see that that is a weakness in what we are doing in the board in that we are not putting out some written material that we should and we are not reporting in the minutes as fully as we should be.

Mr DAVID SHOEBRIDGE: Since you put those answers on notice there was a further board meeting on Monday. Is that right?

Ms NEWMAN: And there was one a fortnight prior to that.

Mr DAVID SHOEBRIDGE: The fortnight prior to that would have been before you gave answers on notice.

Ms NEWMAN: And there was extensive discussion. In fact, there was about an hour's discussion.

Mr DAVID SHOEBRIDGE: You did not include that material in your answers to questions on notice?

Ms NEWMAN: No, but I can provide that.

Mr DAVID SHOEBRIDGE: Then you had further reporting yesterday to the board?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: Can you provide the Committee with a further set of answers in detail providing the information you gave to the board and any written reports?

Ms NEWMAN: Do you want me to do that now or can I take that on notice?

Mr DAVID SHOEBRIDGE: Can you do that now?

CHAIR: Or you can take it on notice; it is up to you.

Mr DAVID SHOEBRIDGE: I assume they were oral reports?

Ms NEWMAN: There were oral reports yesterday. There were also reports that went up to the board with—

Mr BARNIER: We talked about the Internal Audit Bureau report.

Ms NEWMAN: We talked about the IAB report in some detail.

Mr DAVID SHOEBRIDGE: You have given us a copy of the IAB report.

Ms NEWMAN: Yes, I have.

Mr DAVID SHOEBRIDGE: Was there a written report that went with that?

Ms NEWMAN: Yes, there was a written response to the interim report, which I can provide to the Committee.

Mr DAVID SHOEBRIDGE: Thank you.

Ms NEWMAN: There was also a covering brief that went out with the final IAB report as well.

CHAIR: Is that written report with you now?

Ms NEWMAN: No, it is not but I can provide it.

CHAIR: You will take it on notice?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: And the covering letter.

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: There was an oral update yesterday. What was the substance of that?

Ms NEWMAN: The substance of the oral update yesterday was what we are doing with regard to the issues that the Deputy President raised in the Butler report. We have committed to come back to the board with a response to all those issues as per the record of the hearing.

Mr DAVID SHOEBRIDGE: This is something like five months after the decision. How do you explain that delay?

Ms NEWMAN: We have been doing quite a bit around. May I refer to my notes?

Mr DAVID SHOEBRIDGE: Of course.

Ms NEWMAN: Thank you. To date around the findings or the outcome of the hearing we have done the administrative review, which is the IAB report. We have released a new code of conduct. We have continued to review all the employment policies and we are part way through that. We have put in place management practices training for all managers, which is outlining their accountabilities as managers as opposed to leadership training. There are two components to that. We are in the process of developing fact sheets to provide clarity on policy intent and application. We have improved access to all policies on the intranet. It was very hard to find policies; they are now all residing in one place and there is a single entry point into the intranet.

I initiated monthly meetings with Ms Jeffries. Those meetings are with me and Mr Barnier and they are very much informal meetings to allow free discussion about issues. There have been a number of issues that we have talked about. The most predominant issue has been the grievance and bullying management policy. Certainly, having listened to some of the evidence and read some of the submissions and also had further

discussion with Ms Jeffries, there is more that we can do there with regard to moving it initially more to a risk-management approach on a work health and safety basis. We have committed to do that with Ms Jeffries over the next month and Mr Barnier is working on that.

We have implemented a service and advice model where we are triaging concerns and complaints that come in so that it is not with the employee relations team; it is with the front end of the HR team. In the first instance where there is the ability to do it—and it is not what I would call a critical issue in that somebody really was at risk—we are referring that back to management and working with management so that they can resolve those issues at the local level. Also I am doing regular case reviews with the people and culture group to provide some guidance. That is what we have done to date.

Mr DAVID SHOEBRIDGE: Part of that was engaging IAB to do a review?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: Did IAB speak with you at all about whether they have been involved in other matters regarding WorkCover?

Ms NEWMAN: No.

Mr DAVID SHOEBRIDGE: Do you know if IAB has been involved in any other reviews for WorkCover?

Ms NEWMAN: Not for WorkCover.

Mr DAVID SHOEBRIDGE: The December IAB review that you provided, I think it is annexure M to your answers on notice, has an attachment 4, which is a page and a half review of the investigation into the case of Butler. Do you remember that?

Ms NEWMAN: Yes, I do.

Mr DAVID SHOEBRIDGE: Do you have it in front of you?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: It is about the third page from the back. Under the heading "Consideration of judgement" the author says he reviewed the comments made by Deputy President [DP] Harrison when he handed down his decision. Then he says:

I believe the comments provide an opportunity for the SRWSD to address the process issues raised by Deputy President Harrison. His comments reflect on the need for SRWSD to move forward and adopt the best practice approach to the discipline process. I am confident from the information provided in the course of the overall review that SRWSD is implementing processes to address any deficiencies identified by DP Harrison.

Did you tell the investigator that you did not accept a number of the findings of DP Harrison?

Ms NEWMAN: No.

Mr DAVID SHOEBRIDGE: Because in your previous responses to this Committee you made it clear that you accepted that there was a finding of unfair dismissal but a series of the factual findings, including the fact that there was a witch-hunt, were not accepted by you.

Ms NEWMAN: I believe that what I did not accept was the witch-hunt with malicious intent. I do not believe that I did not accept individual findings with regard to weaknesses in our systems and policies, et cetera. I accept that.

Mr DAVID SHOEBRIDGE: The witch-hunt and malicious intent findings are pretty core to the judgement of DP Harrison. I invite either Mr Barnier or you to say why you do not accept that statement.

Mr BARNIER: It is not that we do not accept it. In fact, in the cool of the evening after the last time we all met I had yet another read of the decision to go through that piece by piece and I looked at each

individual criticism that was raised by Deputy President Harrison. In looking at that I can well understand on the information provided to the commission exactly why he came to those conclusions and I do accept that.

Mr DAVID SHOEBRIDGE: That sounds to me like you think on the information that you have that you would form a different conclusion.

Mr BARNIER: The conclusion I had was around whether there was a purposeful witch-hunt. From my observations of the process—what we had was external legal advice, we had involved in there as well and we thought we had a first class investigator coming in being a former deputy police commissioner. Following all of those things you would hope to do to make sure you do it right, on the advice that we were running on we thought we were doing it right. I do accept Deputy President Harrison had another view of that.

Mr DAVID SHOEBRIDGE: Do you accept his view? Other than accepting that he has it, do you accept it?

Mr BARNIER: Yes, I do.

Mr DAVID SHOEBRIDGE: Including the witch-hunt and the malicious intent?

Mr BARNIER: I accept that he came to that conclusion.

The Hon. MELINDA PAVEY: On the evidence that he had before him.

Mr BARNIER: On the evidence he had.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

Mr BARNIER: He also did not have the six volume report of the investigation.

Mr DAVID SHOEBRIDGE: That was in your gift, was it not?

Mr BARNIER: Yes.

Mr DAVID SHOEBRIDGE: Why did you not tender it?

Mr BARNIER: That was on the advice of the external legal provider.

The Hon. MICK VEITCH: I have some questions that have arisen from testimony we have gleaned from board members and the board chair. My first question has to do with the governance structures. Since you were last here with this robust Committee have you had an opportunity to talk with the chair of the board about its governance processes?

Ms NEWMAN: There has been considerable discussion at both board meetings since the hearing.

The Hon. MICK VEITCH: Does the board have an annual board appraisal process?

Ms NEWMAN: There has been a discussion about that for the last couple of months prior to the inquiry. The chairman has requested that we source somebody to do a review of the board. He has undertaken a similar review where he is the chairman at Pillar and we were looking to adopt that.

The Hon. MICK VEITCH: It is quite a common thing in the commercial world.

Ms NEWMAN: Yes. That research is underway now.

The Hon. MICK VEITCH: With regard to the board structure, has there been any discussion about enhancing or strengthening the roles of the subcommittees?

Ms NEWMAN: Yes, there has been. The board moved on the meeting before last to establish an HR subcommittee and that will come into place when they resume in February. We are currently scoping that up and doing the terms of reference for them.

The Hon. MICK VEITCH: Has there been any discussion at the board level or between the chair and you or the board and you about the frequency of meetings between the board and the Minister?

Ms NEWMAN: No, there has not. There have not been frequent meetings. They were frequently with the previous Minister with regard to the investment performance but that is what it was about; it was not about other undertakings of the board. The chair and I met with Minister Constance about four weeks into his appointment. It was a short discussion about the role of the board. I am not sure whether or not the chair has had further discussions with the Minister. I know that he does meet with other boards but whether or not he has discussed it with this board at the same time, I do not know.

The Hon. MICK VEITCH: You may not want to answer this next question and I will not be offended if you do not. Having been the chief executive officer of an organisation, I am wondering about support mechanisms for you in your role by the board, and whether there are some external supports for you as well as the chief executive officer?

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

The Hon. MICK VEITCH: Every chief executive officer, no matter what the organisation, should have availed to them opportunities for external support. I just want to go on to the Employee Assistance Program. The last time you were before us my recollection is that you were looking at appointing a new provider for that service.

Mr DAVID SHOEBRIDGE: They have. They have provided that on notice, Mick.

The Hon. MICK VEITCH: That is okay, David. I am just working through a process here. Can I ask about that process? What was the board's involvement?

Ms NEWMAN: First of all, the board did not have any involvement in that one, no. Can I please ask Mr Barnier to outline the process because he conducted it?

The Hon. MICK VEITCH: Okay.

Mr BARNIER: We went out for government tender using procurement panelling and doing all of the methodology there, particularly looking at not just the Employee Assistance Program but also the bullying response service and we also had a service with the Critical Incident Support Program—three very different ones. In addition to that, which is outside of the people and culture or the human resources function, is the support we provide to the claimants who have lost loved ones and so on and are in a grieving process. That was part of the tender that went out for those four different services. That took some months, obviously, to work through. In terms of the Employee Assistance Program, we have actually ended up with the same provider for that particular process. For the bullying response service and for the Critical Incident Support Program, that has gone to another provider and that has brought about also a change in our expectations of how we run particularly the bullying response service.

You may recall from the last time we got together there were concerns about confidentiality, which was part of the provision under the last provider. We have had to do a fair bit of research to find out how it morphed

into this. First there were concerns that were raised to you by submissions around a breach. The other thing we found in the research was that there was a clause in there that said that if an employee, in talking to the bullying response service, had determined they wanted to go to mediation, obviously the provider would contact the manager to arrange the mediation, so there would be an exchange of information there. The provider we have brought in is Converge International, effective from 1 August. The only time that there will be discussion of the actual matters raised independently to the bullying response service is if the provider feels that there is a risk of harm to an individual or to their colleagues under the Work Health and Safety Act. We would alert the manager of employee safety and wellbeing just to give them a heads-up there so that we would take action, as we should, as an organisation.

The Hon. MICK VEITCH: There have been some lessons learnt from the process?

Mr BARNIER: Absolutely. We have been listening for quite a while to the feedback on this and the change in contracts gave us the opportunity to put that into effect.

The Hon. MICK VEITCH: These people have been appointed on a contract for how long?

Mr BARNIER: I would have to check. I think it is three years.

The Hon. MICK VEITCH: That is okay. Perhaps you could take that on notice.

Mr BARNIER: It is two or three years.

The Hon. MICK VEITCH: Are there review processes built into that where you can actually sit down and have conversations—obviously not about individual cases—but in general about the operation of the service?

Mr BARNIER: Yes. Generally the contracts would always have a regular review period in there. With the last provider we had quarterly reviews and I intend that we would keep doing that.

The Hon. ADAM SEARLE: In picking up on a point that the Hon. Catherine Cusack began with, I must reveal that my impression of our last meeting, and having reviewed the transcript, was that the evidence of all of the people from WorkCover was unconvincing, lacking in candour and frankness. When you revealed anything, you did so most reluctantly and I felt that your evidence was characterised by a failure to really accept the findings of the Industrial Relations Commission in relation to the Butler matter. I just wanted to disclose that in a spirit of openness—

Mr BARNIER: Thank you.

The Hon. ADAM SEARLE: —before I ask you some other questions. I can understand, having now received your further material, perhaps your reticence on a couple of the points but I wanted to just explore a couple of matters. The volumes of the investigation into Mr Butler that were not tendered on the advice of your lawyers, that was material that he had obtained or generated in the course of his investigations into the allegations against Mr Butler. That is correct?

Mr BARNIER: Mr Madden had investigated?

The Hon. ADAM SEARLE: Yes.

Mr BARNIER: Yes.

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Mr BARNIER: External legal advice as well. If I can add to that, because there were some questions about Mr Devine's role in this, Mr Devine is still substantively the Manager, Employee Relations and Policy. He is in another role at the moment as part of the return to work program. His role really is as the coordinator in making sure that in the appointment of the investigator the investigator knows the scope of the investigation and handles the paperwork for that and follows the procedures and that the coordinator was getting the legal advice. Mr Devine is not a decision-maker in the matter; all he has to do is follow the chapter 9 procedural guidelines to coordinate that process. He is also the poor fellow then who had to appear at the commission to defend some of those things without having the report and other things available, and also I believe a number of the managers who were involved in the Butler case were no longer with the organisation. So the poor fellow was the man required there.

The Hon. CATHERINE CUSACK: It does give me the sense though that the absolute priority on being scrupulous in these matters can mean that the matter can take on a life of its own and affect almost people being—

The Hon. MELINDA PAVEY: Too scared to make a decision.

The Hon. CATHERINE CUSACK: Not too scared but very constrained in the latitude that they feel they have in these matters.

Ms NEWMAN: That would be fair comment.

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The Hon. CATHERINE CUSACK: Would you say that the findings of the commission reflected poorly on the way your case was presented in court?

Mr BARNIER: I have no doubt that is the case.

The Hon. CATHERINE CUSACK: Is there any accountability with your lawyers? Did they make any comment? Were they embarrassed?

Mr BARNIER: They were certainly surprised. In terms of looking at ongoing services from that provider we have been allowing them to finish a couple that they were doing and we have been getting most of our advice now from the Crown Solicitor.

The Hon. CATHERINE CUSACK: Has the Crown Solicitor offered anything from that, or is that not his job to review? Lawyers do not like reviewing each other, do they? I have noticed that. What about the investigation you had by the former assistant commissioner of police? Did you feel that that process stood up?

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

Mr DAVID SHOEBRIDGE: The IRC found none of them—not one of them.

Mr BARNIER: That is right.

Mr DAVID SHOEBRIDGE: So you still have confidence in that initial response even though it got eviscerated in a public hearing?

Mr BARNIER: I think the issue there is about the information available. However, what I do see there are some matters about our investigative process, including internally. As the CEO mentioned before, we have been working since January to change the way we do our investigations. Certainly I have been doing a lot of work with my team in understanding the definition of misconduct and certainly understanding then whether we triage the matters a lot more carefully and how we would do that. How I would keep a lot of these matters away from the industrial side and have a look at it is to have a chat with the manager and say is this a performance management issue and how do we manage that situation a lot better before we leap into it?

The Hon. CATHERINE CUSACK: Thank you very much for giving an explanation to the Committee about your perspective on the Butler case, because it did seem rather baffling. I appreciate your checking on what you could tell us; I feel we have got an explanation from that. Whether people like it or not it is good to have an answer, so thank you for that.

CHAIR: Just on some of the questions and the concerns we have over the employees of WorkCover who have put in complaints of bullying and some of whom appear to be having health problems as a result of the bullying, how are you planning to deal with those people and help them? Under WorkCover you are to help the State's businesses meet their work health and safety responsibilities. How are you doing it with your own employees?

Ms NEWMAN: I think what I should say is to respect that employees who have put in submissions have put them in under parliamentary privilege and a number of them are not named. I respect that. I have spoken to my general managers and asked that they be very much aware of current and emerging issues without breaching parliamentary privilege. Mr Barnier has also had some discussion at the Health and Safety Committee and I would ask him to relay that.

Mr BARNIER: The Health and Safety Committee meeting was about two weeks ago from memory. It has got health and safety representatives and delegates from all of our work groups for all of the State in our Return to Work and Support Division. One of the agenda items was "Can you let us know about the process of the inquiry and how that works?" So I relayed my understanding of that. I also took the time to make it clear to the committee and have a discussion with the committee around the fact that obviously people who have been making submissions, who attended and gave evidence, are going to feel that they need support in some way and that if they are aware of people that need support if they could possibly either provide the support or direct them to our employee safety and wellbeing team to make sure that we could provide them with EAP or other interventions that we need to do to support them.

CHAIR: I appreciate it is difficult when you do not know who they are. It would be a challenge as to whether there is some way they could trust the organisation and come forward. Have you considered some procedure of saying, "We want you to come forward because we have now got these procedures in place to assist you because we want to restore confidence in our organisation and our relationships" and not leaving this up in the air, as it seems to be at the moment?

Ms NEWMAN: We will certainly do that.

CHAIR: You have not done that yet though, have you?

Mr BARNIER: We have certainly mentioned in all of our communications regarding the inquiry the various avenues: the Bullying Response Service, the EAP and the employee safety and wellbeing team. The employee safety and wellbeing team do have a very good relationship with the members of the Health and Safety Committee, so I am sure that they are working now. I know that some employees have contacted them and, of course, the employee safety and wellbeing team would not give us the details of anyone, and I do not expect them to, but they provide some support. We were planning in early January to do the relaunch of the Bullying Response Service and the Employee Assistance Program, to have a major communication to help people pick up those things. I think there is a brilliant opportunity for us to remind people because I think it does go back to my evidence back on the eleventh on the issue of rebuilding trust, how do we get people to trust.

There still appears to be, through a long chequered history, an issue for some people is trust with people and culture our HR function and I personally wonder is that the entire people and culture function or is that the old industrial relations piece that does the investigation versus the rest? There have been significant changes in the staffing over the last year and a half to two years in the people and culture function. We need to continue working on that and we need to work hard on building that trust. I mentioned that in discussion with the PSA industrial officer the other day to help engage about how we might do that further.

CHAIR: In lots of these social issues now there is a sort of crisis. We are seeing this with the Catholic Church at the moment and the royal commission. Have you considered whether there is a point where the organisation should really say a big sorry to all the employees in some way, whether by some personal letter to all the employees—obviously not all of them have been affected—to say, "If you have been affected we say we are very sorry. We have now put in new processes. We would like to start off afresh"? Have you done that or are you considering doing that to try to build a bridge again?

Ms NEWMAN: No, we have not done that. We have not necessarily considered that approach but I am certain we can. Yes, we do need to do something that builds that bridge and restores confidence. The other thing too about the bullying response service is taking away that non-confidentiality piece of it. How it morphed into that I do not know. This was before our time but it would be very difficult to provide a service without providing that assurance of confidentiality. A lot of that service is about helping that individual work through what the issue is, and the approach for them to take and give them the confidence to do that.

Mr DAVID SHOEBRIDGE: I suggest that you read Dr Carlo Caponecchia's submission to this Committee which addresses much of what the Chair was saying about the role for an organisation to say "sorry"; to accept there were problems and then as a key part in building that confidence and trust. I said it at the last hearing but the failure of any communication from the senior leadership team of this organisation about what were clearly defects in the Butler case means you have a bunch of people who do not feel like you are treating their concerns seriously. That is a step WorkCover needs to take. On the evidence the Committee has from Dr Carlo Caponecchia that would be a very valid organisational step. I think the Chair has raised a really important issue.

CHAIR: I am saying it because obviously you both have a very caring attitude and I think the staff need to know your hearts, so to speak. They need to know there is a new regime and a leadership approach to staff.

Ms NEWMAN: It has been more than a tough journey, I guess, because we picked up some challenging issues and challenging culture post previous management.

Mr DAVID SHOEBRIDGE: Part of the issue is you do not even know the full extent of it?

Ms NEWMAN: No, I agree with that.

Mr BARNIER: We have tried to be part of the solution but it does have its difficulties in doing that. We have helped lots of people with their personal and work issues and obviously there would probably be different people who are raising the concerns. I do not doubt the people who raised the concerns are telling the truth and they are genuine. If we are aware—that is where we have to build this trust so that we can help them through. We take your advice on board.

Mr DAVID SHOEBRIDGE: Mr Barnier, I think you are the author of some of these further answers on notice one of which is about the discussion with the Ombudsman about conflicts of interest?

Mr BARNIER: Yes.

Mr DAVID SHOEBRIDGE: You attended with the Ombudsman to discuss conflicts of interest. You were talking about the resolution of internal work health and safety disputes, which is obviously an issue if WorkCover is the regulator. You say:

Part 5 division 5 Issue Resolution and division 6 dealing with disputes of the Act makes reference to requests for assistance from the regulator. It was proposed that although WorkCover as the regulator could adequately and appropriately respond without exposure to a conflict of interest, it was agreed to seek the advice and guidance of the New South Wales Ombudsman.

Who resolved that you could deal with internal disputes without a conflict of interest when you are the regulator?

Mr BARNIER: In discussion with the Deputy Ombudsman he was quite clear that the regulators within—

Mr DAVID SHOEBRIDGE: This is before that. This is the discussion that you had with the general manager of work health and safety division. The two of you got together and said that there was no conflict of interest, is my understanding, and you then took that issue to the Ombudsman. Am I misreading what happened?

Mr BARNIER: No, you are not misreading it. That certainly was the view of the general manager as the person who acts for the regulator and has most of the regulatory responsibility that under the Act, as an employer, we still need to comply with the regulations.

Mr DAVID SHOEBRIDGE: The Act says that the employer can reference the regulator in this process.

Mr BARNIER: Yes.

Mr DAVID SHOEBRIDGE: Obviously if the regulator is external there is no conflict of interest but you have the unique problem of being the regulator. How did you form the view that that was not a conflict of interest? It is mystifying to be honest. I cannot work it out how you can form the view it was not a conflict of interest.

Mr BARNIER: I think it is when you seek the assistance from the regulator who typically would be an inspector, is using an inspector who does not feel conflicted and is able to act under their capacity to work with us as the employer.

(Short adjournment)

Mr DAVID SHOEBRIDGE: Before the adjournment I asked how you formed the conclusion that there was no conflict of interest.

Mr BARNIER: Yes.

Mr DAVID SHOEBRIDGE: I understand your answer is that if the inspector personally does not feel there is a conflict of interest then there is not one?

Mr BARNIER: Because they have to carry out their duties accordingly still.

Mr DAVID SHOEBRIDGE: Do you think that is a next-to-impossible position in which to place an inspector?

Mr BARNIER: That is why I went to get some advice from the Deputy Ombudsman.

Mr DAVID SHOEBRIDGE: The Deputy Ombudsman said, "Well, look, the police investigate themselves so why can't you?"

Mr BARNIER: They are not the exact words but that was the intent, yes.

Mr DAVID SHOEBRIDGE: You know there is a formal role for the Ombudsman in overseeing police complaints which is not there for your organisation?

Mr BARNIER: Yes.

Mr DAVID SHOEBRIDGE: Did they explain that to you?

Mr BARNIER: No, they had a very strong view that as an employer we have to follow the existing regulations and that we had a right as an employer to deal with the matters as the employer first, and then we refer. The issue is about maintaining that an inspector who is acting in the inspectorate capacity would still be carrying out their duties appropriately and did not feel conflicted. And if they felt conflicted then, yes, to make other arrangements.

Mr DAVID SHOEBRIDGE: In terms of the parallel with the police did they talk to you about the fact that there is also the Police Integrity Commission, which is a separate investigative body over the police, which you do not have?

Mr BARNIER: That is right. They mentioned it.

Mr DAVID SHOEBRIDGE: The parallel with police is very imperfect, is it not, because you do not have the Ombudsman and the Police Integrity Commission looking over your shoulder?

The Hon. CATHERINE CUSACK: They do, do they not?

Mr DAVID SHOEBRIDGE: Not in a formal process like you have with police complaints.

Mr BARNIER: No.

Mr DAVID SHOEBRIDGE: Since then what steps have you put in place to ensure that you have resolved that conflict of interest or have you just got the independent inspector model?

Mr BARNIER: No, as Mr Watson said when he was here on the eleventh talked about making arrangements with another agency.

Mr DAVID SHOEBRIDGE: Which has not gone anywhere yet?

Ms NEWMAN: I have exchanged correspondence. I have written to Primary Industries with regard to formalising discussions with regard to an arrangement to bring some independence into issues referred to the regulator for WorkCover issues.

Mr DAVID SHOEBRIDGE: Will you provide the Committee with that correspondence? Have you received a response from Primary Industries?

Ms NEWMAN: I certainly will. I cannot recall but I will certainly provide a response if we have it.

CHAIR: Will you take that question on notice?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: In terms of that model, are you thinking of the mine investigators that Primary Industries have?

Ms NEWMAN: Yes.

Mr DAVID SHOEBRIDGE: Do you really believe they are the appropriate organisation to be looking at internal bullying matters? I accept that you are looking around for an independent body and I am not criticising you for doing that. Do you think that mine inspectors are the appropriate independent body to be looking at bullying and those kinds of matters?

Ms NEWMAN: I think both of us here today do not understand what the full responsibilities are for the mines and whether they do investigate bullying. That is part of having discussion about what are the possibilities. I know that previously discussions had been had with other State regulators as to whether it was more appropriate for another State to provide the independence to WorkCover. I am unable to comment on how far those discussions went but certainly I can look to provide any information that we have on that.

Mr DAVID SHOEBRIDGE: That would be good if you could do that. Have you looked at other jurisdictions for a best practice model?

Ms NEWMAN: I cannot comment on that but my understanding is, and I would have to confirm this, that they operate in the same way that we do but I will confirm that for you.

The Hon. ADAM SEARLE: In relation to the Butler matter and the issue of the witness statement you could not use, does that relate to what was termed "allegation one" of Mr Butler having misused his position by seeking to procure IT equipment at a discounted commercial rate. That allegation involved two persons—Mr Sawkins and another person.

Mr BARNIER: I cannot recall the names. I think there were two or three individuals.

The Hon. ADAM SEARLE: That is the allegation.

Mr BARNIER: Yes, that is.

The Hon. ADAM SEARLE: And those are the persons. The actual decision by the Industrial Relations Commission states at paragraph 305:

In respect to the first allegation concerning the item of computer equipment WorkCover chose to ignore the information provided by Messrs Sawkins and Davies that they never expected anything from WorkCover.

That certainly implies that the commission had before it some information from those two persons that was contrary to the organisation's allegations against Mr Butler and would seem to be contrary to what you have told us today. I am happy for you to take this question on notice. I am disturbed on two fronts: first of all, let us assume that what you have told us is factually correct.

Mr BARNIER: That is my understanding.

The Hon. ADAM SEARLE: I am not disputing that. That is what you have said, but it does not explain why the rest of the six volumes did not go into evidence, and what it does not explain is why your organisation persisted in the other allegations against Mr Butler. I will choose one as an example: the allegation that he did not obtain approval for secondary employment when that secondary employment was unpaid and he was not required to do so. Even if proven, that allegation could never have amounted to much and a number of the allegations fall into that category. Despite everything you have said and everything you have written, I am struggling to understand the big gap, as I see it, in the allegations against Mr Butler, which even if proven still do not warrant this. What you have told us about this first allegation, and I can understand if you have problems proving that matter you would not persist in it, but if you could not prove it, say you could not get this person to give evidence, first of all what is in the Industrial Relations Commission decision seems to be contrary to that. It seems to suggest that there was material before the commission from those persons, and I do not know in what form—if might have been a letter, it might have been a document—for it to reach that conclusion. If you lack the vital evidence, how could it be that you ever persisted in that allegation against Mr Butler? Again, having heard and seen everything, I am still struggling to understand how it got to this. I know you have told me it is not the case, but it is like something is missing. To be frank, it is like the organisation felt it had to get rid of this person but it could not prove it, so it just went with what it had. It really does smack of some other agenda.

Ms NEWMAN: I appreciate that comment, and we can take that on notice and we will come back and answer that question.

Mr DAVID SHOEBRIDGE: Mr Searle is saying that you address not only what was not before the commission. There was positive evidence before the commission from those people who are alleged to have been enticed into this that that was not the case, and how did you address that positive evidence and still terminate his employment?

CHAIR: In some situations it is the accumulation of issues rather than one specific issue that influenced WorkCover.

Mr BARNIER: Certainly in Mr Watson's summary of what he considered the events as the delegate he makes a comment about the accumulation.

CHAIR: That is what I thought he said. It is not what you do in a court of law; it is what has happened within an organisation.

Mr BARNIER: I recall reading that in his decision.

The Hon. CATHERINE CUSACK: In relation to the voluntary work approval, as I understand it from your explanation, that became an issue because there may have been a conflict of interest in relation to a procurement issue and that was why that was investigated?

Mr BARNIER: Yes, there was that—

The Hon. CATHERINE CUSACK: That was the connection. I hear what my colleague is saying about some bits that are missing, but to me that is the answer to the missing bit. That is how it related had it been on the allegation—

The Hon. ADAM SEARLE: Catherine, let me be frank. What I am saying is even if all of these matters were proven, it still does not warrant termination, and so the gap is across the whole of the evidence.

The Hon. CATHERINE CUSACK: The issue that we have been talking about was the allegations regarding procurement.

The Hon. ADAM SEARLE: The allegation was not that there was a conflict of interest. The allegation was that he needed approval for secondary employment.

The Hon. CATHERINE CUSACK: Yes, but that arose in the context of a procurement issue. It related to that allegation of the procurement issue.

The Hon. ADAM SEARLE: I agree, Catherine.

The Hon. CATHERINE CUSACK: That has been answered.

CHAIR: Your argument is the connection between the procurement and the secondary employment?

The Hon. CATHERINE CUSACK: It was a connection—

CHAIR: We have to ask the witnesses whether there is an association between the procurement and the outside employment that related—

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 12 FEBRUARY 2014]

Mr DAVID SHOEBRIDGE: On the secondary employment issue, there was a suggestion in the decision that you have changed your policy and that you now require permission for any kind of secondary engagement, including voluntary, is that right?

Mr BARNIER: That is not correct. There was a draft at the time where people were considering that. That draft was looking more at the issue that the executive of the organisation had around people who have multiple roles, whether they be in voluntary or work, coming to work fatigued and other concerns. Originally in a draft we had that out for consultation. Then, to be honest, common sense prevailed and we said that is not going to work. If people are coming to work fatigued then that performance—

Mr DAVID SHOEBRIDGE: I am glad to hear you have not progressed—

Mr BARNIER: So that would be performance management or an issue, but that was the original intent. That is why it got raised. What do we do when people come to work very tired?

CHAIR: That situation arises with police officers who want to do security work after hours, and they have been stopped from doing that.

Mr BARNIER: It certainly did not progress.

The Hon. CATHERINE CUSACK: There is an issue of conflict of interest. If somebody has an outside activity that has a bearing on their decision-making, you would want that disclosed?

Mr BARNIER: That is a requirement in other policies—

Mr DAVID SHOEBRIDGE: I understand there will be a roundtable discussion in January on the issue of bullying. Have you been in any way invited to that roundtable discussion?

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Mr DAVID SHOEBRIDGE: It is another one of these Rumsfeld moments—is that confidential? I suppose it is. Check your local papers.

The Hon. ADAM SEARLE: Perhaps we could ask this question—

The Hon. MELINDA PAVEY: An interesting answer, though, maybe directors-general might know.

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CHAIR: A very unusual situation.

The Hon. CATHERINE CUSACK: We are looking at the way forward and I appreciate the answers that you have given about the inquiries you are making about—because I am sure you do not like having to sit here and answer questions about how you are investigating yourself. So, if there is a solution to that, it sounds like you are seeking one. Is that right?

Ms NEWMAN: Yes.

The Hon. CATHERINE CUSACK: And you are researching one at the moment, which is appropriate. Did the Ombudsman ever write to you about the matter?

Mr BARNIER: No, no, the Ombudsman did see our response and confirmed the recollection that I had of that meeting.

Ms NEWMAN: By email.

Mr BARNIER: That has been the only written communication.

The Hon. CATHERINE CUSACK: The reason I am asking is not because I have a shadow of doubt. One of the things that the Ombudsman would like all agencies to do is to improve their performance and resolve issues internally, so that they are not escalating outside the organisation. So I understand where you are coming from but I was just feeling that, if there was something in writing that there might have been some extra reasons they gave that might have—

Mr BARNIER: No, the only written communication was an email.

The Hon. CATHERINE CUSACK: Ultimately, as you search for that, we do still want organisations to resolve matters internally in the proactive way that we have discussed. I also, I suppose, understand that WorkCover has tremendous responsibilities—\$70 billion under management, a whole lot of staff and issues that you need to address and a period of change is underway to ensure we reduce costs to employees. So, those challenges are going to continue. You do need to move to a more performance management system.

Some of the evidence we have received is that sometimes people have a performance management meeting with a staff member and that it is possible that bullying allegations become the result. And so I guess what I am flagging is that perhaps there needs to be a balance so that the managers at WorkCover can still manage their staff. We need to not overreact. We need a balance, if I can put it like that. Do you have any comments?

Mr BARNIER: That is certainly an approach we are trying to take. So, obviously, the staff engagement survey of 2012 was quite clear about concerns that all employees had around leadership, management and those sorts of things and that became our key focus. We have had leadership summits around that. We have tried to describe in a lot more detail, as I mentioned last time, about getting managers to understand their role as a manager of other team members and so on. We have run a management practices

program which is mandatory for all our managers and we are pursuing that. At the same time, just like the rest of the public sector, we continue to do the work to get people used to the idea of what a performance management framework looks like. We have set in place this year about the mandatory setting of individual performance objectives, how to have regular meetings around that. And obviously, we need to continue to coach managers on how to have those discussions, as well as the expectation of employees to understand how they contribute to the organisation, how the framework should work.

The Hon. CATHERINE CUSACK: There needs to be an ability for managers to give feedback to employees without the manager being terrified that they are going to be targeted with bullying allegations.

Mr BARNIER: Yes. So, part of what we need to do as we continue to work on the prevention of bullying and harassment policy that we are still consulting on is again, although the current policy is clear on what is bullying and what is not, to be very clear on that and to continue to educate people that a reasonable management action or a discussion of performance is not bullying and so on. We need to continue working on that.

The Hon. CATHERINE CUSACK: Because there is a lot of scope within the definition of what bullying is, isn't there?

Mr BARNIER: Yes.

The Hon. CATHERINE CUSACK: And there needs to be proportionality.

Mr BARNIER: And that is the challenge.

The Hon. CATHERINE CUSACK: And the manager under pressure who yells at something, I do not think that is a good idea but is that bullying? Do you know what I am saying? It could come across that way to one person. So these are going to be fine calls, is what I am saying. I do not know if you have heard about fragging and what happened to the American officer class in the Vietnam War; you can look it up—where the servicemen started murdering officers that they thought were giving orders—

Mr DAVID SHOEBRIDGE: It is not quite at that stage in WorkCover.

Mr BARNIER: It is not under consideration.

The Hon. CATHERINE CUSACK: It got to the stage where there were more officers killed by their own men than were killed by the enemy.

CHAIR: I do not think you need to go down that pathway, it is not relevant.

The Hon. CATHERINE CUSACK: We need the managers to be able to manage, that is the point that I make.

Mr BARNIER: And there have been some comments from management. One of the trends we have been seeing, which I think is consistent with other organisations and it is mentioned in Dr Carlo's book as well, is this notion of bullying upwards, the upward bullying. It does occur and that is challenging. And I think it goes back to the work about understanding what is bullying and what is not. Also what are reasonable expectations when I report bullying? The reason we have not put in place a new bullying policy yet is perhaps my fault, that I want to go into extensive consultation, I am looking for something that is better than what we had and more contemporary. And the bit that is missing and we have talked with industrial officers from the Public Service Association about that is, when I report bullying, what does that really mean? Everyone is very good at demonstrating policy to say, "We do not tolerate, prevent, do this, do that" et cetera.

The Hon. ADAM SEARLE: There is a lot of paper.

Mr BARNIER: There is and the whole issue now is the expectation. So, if I report bullying, what will happen? No, it is probably not disciplinary action as a default, it is probably about let us first keep you safe and understand what we are going to do about that. And that is where the complexity arises and being very clear in the policy of what is and what is not bullying. I thank you for the observations.

CHAIR: One of the challenges you have, I think we have discussed it before, is the technical staff who obviously should have the opportunity for promotion within WorkCover, moving from that technical department to where they are handling staff and lack the management skills.

Ms NEWMAN: It is a whole of public sector issue.

CHAIR: We do not want to have a barrier where they cannot be promoted because they are technical people.

Mr BARNIER: No, it is about what support you give them.

CHAIR: How can they cope with that new role and the whole new relationship?

Ms NEWMAN: That is part of the management and practices approach.

The Hon. ADAM SEARLE: I have a specific question about that which I am happy, obviously, for you to take on board. It is this: Based on a lot of the information we have received, and I accept it is not limited to WorkCover, there does seem to be a continuing theme that people might be very good at what they do, in a technical sense, but they may not be appropriately skilled to deal with people—to manage them, to lead them, to support them, however you want to put it. And I guess I would be interested to know what the organisation is doing on two fronts: One is that, when you do recruit people into new positions how you are going to place a renewed emphasis on that component; and the second thing is, what steps is the organisation taking to support existing managers to develop those skills? Again, I do not expect an immediate answer, I am happy for you to take it on notice.

In relation to two other matters, WorkCover is a very diverse organisation, it has a lot of different accountabilities and different obligations and one of the questions that I have asked other witnesses is whether or not the organisation could better be separated out into a number of other organisations.

Mr DAVID SHOEBRIDGE: By WorkCover, you mean the safety, and return to work—all those bodies together?

The Hon. ADAM SEARLE: All the bodies that currently constitute WorkCover.

Ms NEWMAN: Particularly WorkCover if it is regulatory—

The Hon. ADAM SEARLE: Yes, should it be broken up into its component parts and would that lead to happier, better-focused organisations? If you have got an answer, take it.

Ms NEWMAN: No, I do not because I think it is something that needs to be well thought out.

The Hon. ADAM SEARLE: I am hesitant at promoting it because I know there is a lot of change fatigue.

The Hon. CATHERINE CUSACK: If you promote it, it will not happen.

Ms NEWMAN: It is a question that has to be asked and needs to be explored and answered because it constantly comes up.

The Hon. ADAM SEARLE: I know there has been a lot of change fatigue but it is a question that naturally suggests itself. My last question is, with the board now essentially being the board of a number of different component organisations, there is a very heavy emphasis on the finances, say, of the Workers Compensation Scheme and the Motor Accidents Scheme and that would take up a lot of the board's time and attention and creative energies. Is that a function that should be reposed perhaps in a separate, dedicated board, so that the board could better focus on all of the other issues facing the organisations over which it has oversight?

Ms NEWMAN: I would have to take that on notice.

The Hon. ADAM SEARLE: Of course, and that is the purpose of my outlining those questions.

CHAIR: Has there been any thought that if some of the WorkCover employees have emotional or mental health problems because of the bullying, whether there is any facility for compensation to those people under workers compensation? Have you given any thought to that?

Mr BARNIER: They would just fall, the same as everyone else, under the normal workers compensation. We do provide additional support for people and we do return to work programs for people, whether it is a workers compensation claim or not, for anyone who shows signs of illness or injury, which is probably double the size of that team.

CHAIR: Could part of that sorry aspect I was raising earlier be considered—to let employees at WorkCover know that that avenue was open to them, if it can be obviously shown through medical tests or whatever is required?

Ms NEWMAN: Yes. The other thing too is our Employee Assistance Program. About 60 per cent of the services are provided for nonwork-related issues and we very much encourage that and it also extends to the families.

Mr BARNIER: It is an interesting observation that because we have gone so far to encourage people to talk to us, you do see what looks like an imbalance, but we actually encourage that because both the CEO and I have a strong belief that you cannot really separate work life from private life. It is evident whether you are at home; it is evident whether you are at work. So we just do that to support our people.

Mr DAVID SHOEBRIDGE: You got the Butler decision in June and you got some advice on appeal prospects. I assume you did not have strong appeal prospects, is that right?

Mr BARNIER: The advice we got was that to appeal you would want to have an error of law and I am not sure there was an error of law.

Mr DAVID SHOEBRIDGE: Then you got the Internal Audit Bureau review. You wanted to have a review to see if anything went wrong.

Mr BARNIER: To understand particularly around the process, yes.

Mr DAVID SHOEBRIDGE: And the IAB review has come in and it has not critiqued the Butler case, it has not critiqued the decision of the Deputy President, as I read it.

Ms NEWMAN: No, it has not. In my earlier statement I made the statement that the scope of the IAB review was to look at the application of chapter 9 and it looked over a range of investigations.

Mr DAVID SHOEBRIDGE: But the day after you gave evidence to this inquiry you expanded the scope of the Internal Audit Bureau review.

Ms NEWMAN: I did.

Mr DAVID SHOEBRIDGE: Could you provide us with the material you gave about the expansion of the scope?

Ms NEWMAN: I certainly will.

CHAIR: The witness will take that on notice.

Mr DAVID SHOEBRIDGE: Are you instigating some further review of the Butler case? Are you doing any further review of the Butler case?

Ms NEWMAN: The board had some discussion about that on Monday.

Mr DAVID SHOEBRIDGE: What is happening?

Ms NEWMAN: That motion is still to be finalised.

Mr DAVID SHOEBRIDGE: Because I would be deeply troubled for there to be yet another review of the Butler case to find out if you can justify the initial decision rather than doing what I think is far more important, which is just to accept it, apologise and get on with working with your employees. Could you provide an answer to the Committee about whether the board is or is not having a further review?

Ms NEWMAN: Certainly.

CHAIR: And what form the review will take.

Mr DAVID SHOEBRIDGE: Indeed.

Ms NEWMAN: Can I just add that with regard to the scope of the current IAB report I took note of your questions quite specifically as to whether—

Mr DAVID SHOEBRIDGE: I am not criticising you.

Ms NEWMAN: No, but I actually went back and asked for some more detail to be put on the record because we needed to know and it needed to be transparent to the Committee.

Mr DAVID SHOEBRIDGE: I assumed it was probably for the good but, as I said, I would be deeply troubled if the board is going along and you are seeking to justify the initial decision rather than accepting the outcome, talking to your employees, saying sorry and getting on with it.

Ms NEWMAN: My personal opinion is exactly what you are saying: we need to get on with it.

The Hon. CATHERINE CUSACK: I think we need to acknowledge the responsiveness here.

Ms NEWMAN: And I was going to have a further discussion with the chair. It was a pretty emotional meeting, the two of them have been with the board, and I wanted to go back and have that discussion as to whether or not that was appropriate because I agree we need to get on with it. That is really all we want to do.

Mr BARNIER: I think it goes back to the question of the eleventh that you raised: What have we learned from this?

CHAIR: If you could take that question on notice. You do not have the answer at the moment but if you do get the answer in the immediate future as to what the board proposes to do you could let us know so we can include that in our deliberations.

Ms NEWMAN: I had every intention of having a further discussion with the board—with the chairman.

CHAIR: If you could let the Committee know the outcome of that discussion.

Ms NEWMAN: Certainly.

CHAIR: We thank you both for coming.

Ms NEWMAN: If I could just say it was in great fear that we came back but I really thank the Committee for inviting us back. It has been an opportunity in a much easier environment for us to talk about it. I do not mean to sound to be obstructive or avoiding the issue, because I am not. I asked for the opportunity to work longer with WorkCover because I have been there for some time. I appreciate it, I know what the issues are and I certainly want to continue to do that because it is really important.

The other thing that was important to me at the time was the constant disruption at the start by having a change of leadership. At least I have been there for some time. I have been in a senior role and we had a period there of a couple of years where leadership was a real issue. That is something that I have attempted to do while I have been there. I think it was important. Also when I was first appointed I made it quite clear that there was a deadline on all the restructures finishing because the constant disruption was not acceptable. And it is now

finished, except for a few little people on the fringe. I firmly believe in the organisation and what they do and their staff.

CHAIR: Thank you. Give them a chance to produce the results.

Ms NEWMAN: I can understand what is going on. I can understand the staff feeling as though they cannot report. It is a very long journey to change culture and culture is not changed by putting in policies.

CHAIR: Thank you again for appearing before our inquiry. We appreciate your attendance and your answers to questions. Witnesses normally have 21 days to answer questions on notice but that will make it Christmas Day and so we will extend the deadline to 31 January.

(The witnesses withdrew)

The Committee adjourned at 3.49 p.m.