

***IN CAMERA* REPORT OF PROCEEDINGS BEFORE**

GENERAL PURPOSE STANDING COMMITTEE NO. 1

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

At Sydney on Tuesday 8 April 2014

EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE

The Committee met at 10.30 a.m.

PRESENT

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

The Hon. C. Cusack

The Hon. C. J. S. Lynn

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

The Hon. A. Searle

Mr D. Shoebridge

The Hon. M. Veitch

GRAEME HEAD, Commissioner, Public Service Commission, on former oath,

STEPHEN HORNE, Managing Director and Chief Executive Officer, Internal Audit Bureau, sworn and examined:

CHAIR: I declare the hearing open. I thank our witnesses very much for accepting the Committee's invitation to attend at this in camera hearing. The Committee has determined that the hearing is necessary for it to thoroughly explore the terms of reference for its inquiry into allegations of bullying in WorkCover NSW. Both your cooperation and your attendance today are very much appreciated. Please note that as this is an in camera hearing you are bound by the confidentiality of today's proceedings. Please be aware the Committee has the power to subsequently published 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 discussed today. Should the Committee decide to publish 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 rests with the Committee. Mr Head, I note that you will be appearing on your former oath. Would either of you like to make a short opening statement?

Mr HEAD: No, thank you.

Mr HORNE: No, thank you.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 16 JUNE 2014]

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Mr HEAD: [EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 16 JUNE 2014]

We have a process in place, which I think is a very robust process, to deal with how these particular powers are exercised by the commission going forward. It is quite comprehensive. The reason it references all of those practice guidelines from the Independent Commission Against Corruption and from the Ombudsman's

office is that they will deal comprehensively with different parts of this, including who should be communicated with when. There is a hierarchy in the relevant documentation, or there are distinctions made between outcome-focused investigations and evidence-focused investigations. In a sense, there is a hierarchy of obligations in relation to who needs to be communicated with.

[EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 16 JUNE 2014]

Mr HEAD: Well, yes. I should explain that these guidelines will be adopted as a general policy of the board. While the board is an advisory board, these guidelines being adopted as a general policy would mean that the Public Service Commissioner would need to observe the guidelines in a procedural sense. They very specifically make linkages to the way those matters are addressed in the investigation guidelines issued by the Ombudsman's office. So, yes, those guidelines make clear distinctions between the type of investigation and who is communicated to about what at different points in the process.

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Mr DAVID SHOEBRIDGE: Both matters are of concern to me. The organisation needs to know what happened historically to it—starting at the top—but also those who spent their time and had their grievances aired need to know what happened.

Mr HEAD: If these guidelines were in place on the day the commission started and this process had been carried out in relation to those guidelines, then witnesses would have been communicated with and, to the extent appropriate, there would have been some reference to the organisation. [EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 16 JUNE 2014]

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Mr HEAD: I guess my view would be that there is not necessarily one perfect model for doing this, but I think matching the experience and standing of the individual conducting the inquiry would be that circumstances being inquired into are important. In fact, I have used models where I have appointed an eminent senior retired public servant with support from one of the professional services firms in respect of the analytical work, forensic accounting and those sorts of things as an approach to dealing with these sorts of issues. I would not say that it is always necessary, [EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 16 JUNE 2014]

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Mr HEAD: Well, I certainly think the system for dealing with these things is very complicated. That is why we have taken the approach we have in these guidelines of trying to make sure that, really, there is a very comprehensive set of heads of consideration for the Public Service Commissioner about what is the nature of this. Given the nature of it and the character of the person, or the office they hold, that is being complained about, who is best placed to conduct an investigation? Then that would suggest what conversations need to be

had in respect of whether I formally referred it to somebody or there were a set of discussions about relevant agencies about how the work would be scoped and about what the investigation plan would look like in terms of who is communicated to about what aspects. What we have tried to do in the guidelines is acknowledge that there is a degree of complexity and there is a degree of overlap, but that unless that is carefully managed you can end up with very suboptimal outcomes.

From the commission's point of view, we try to make sure that there is a framework for assessing these things against clear sets of heads of consideration and proper references to which of the frameworks, that are dictated by other watchdog organisations, are relevant. I indicated that the board has reviewed the draft. There are a couple of things that we intend to fine tune, one of which relates to your question: Notwithstanding the fact that there is a whole chunk of information in the Ombudsman's guidelines about investigations, we felt at the board that it was appropriate to emphasise section 4.8 of the guidelines and that we would reiterate what the obligations are in terms of who is communicated to about what, including witnesses about the process, et cetera.

The Hon. CATHERINE CUSACK: To me, a complaint about bullying is an industrial relations type of matter. Would you agree?

Mr HEAD: I do not think it is a straightforward as that. It might be, but there is the bullying roundtable that I mentioned when I gave evidence on 10 December, and which has met for the first time. One of the things it is looking at really is: How do we manage investigations about bullying? Often they are very vexed. Sometimes, for instance, you will have complaints about bullying which occur within the context of a discussion about performance management. Where, on the face of it, it might look like a reasonable discussion is being had by a supervisor with a staff member, but in an organisation that does not have a good performance management system it is perhaps the case that the first time somebody is having a discussion about their performance it is in the context of getting negative feedback. People often react very badly to that.

The Hon. CATHERINE CUSACK: Yes.

Mr HEAD: And the model itself, where a claim is made about bullying, tends to get people into a very adversarial situation very quickly instead of into a situation which is first and foremost focused on stopping anything that should not be happening, if it is happening, and then looking at what is producing those behaviours. If you read, as I have and I am sure people here have, some of the submissions to the House of Representatives inquiry on bullying as well as the submissions that came to this inquiry, this is a pretty vexed issue for most people who are trying to deal with that. That is why one of the focal points for working the roundtable is to try to really do some more creative thinking on how we have a process for examining these claims that focuses on getting the right outcome quickly and avoids, because of the nature of the issue in which people are in an adversarial dynamic anyway, the processes that seem to aggravate that fairly quickly.

The Hon. CATHERINE CUSACK: Is it fair to say that it is still an evolving issue and that a lot of work is going on to try to cope?

Mr HEAD: Yes, and not just here but everywhere.

The Hon. CATHERINE CUSACK: Everywhere, yes.

Mr HEAD: I think there is some very interesting work that has been done by the University of South Australia, which has been looking at both the preventative interventions but also how the actual problem is managed in the workplace. The research is about to be published and it has been the subject of some media attention recently. There is work happening that I think can help everybody to understand better what works and what does not work. That includes the model for investigating things like this.

The Hon. CATHERINE CUSACK: Is there a potential to have an intervention that will involve mediation?

Mr HEAD: Yes. In fact there are examples. I have had these examples and organisations I have run myself where people have made assertions about something where clearly there is something not working and where, with an early involvement of an independent third party, people accept that actually the issues are something else. Sometimes they confirm the issue and sometimes they do not, but if the issue is not really that genuine bullying is occurring, you are all of a sudden in a very formal investigated process. That often aggravates things without producing the outcome. I think one of the things that is likely to come out of this

process is some better guidance for agencies about what sorts of discussions need to happen, and with whom, when these complaints are first made. Often an agency's response straightaway used to be quite risk-averse and assume that there is going to be a complaint made of a different type unless they act, so they go straight into a formal investigation made straightaway.

I do not want to pre-empt the outcome of that roundtable. One of the things it has agreed to do is, over the next few months, work through the evidence base on what is working in organisations that have seen a reduction in prevalence. If you look around the country at Victoria and the Commonwealth, they have been measuring prevalence for a long time and they have had all manner of bi-level statements about prevention and zero tolerance policies, et cetera, but the one thing that has not really shifted very much is the prevalence rates. That tells us that, notwithstanding the fact that people typically say the right thing, the right thing does not translate into actions that prevent these behaviours from occurring or help people work through them once they do occur.

The Hon. CATHERINE CUSACK: One of the problems I have with the research is that when someone is asked about bullying, they are responding in terms of their definition of bullying.

Mr HEAD: Yes.

The Hon. CATHERINE CUSACK: It has been obvious in this inquiry that every witness and indeed every member of this inquiry has a nuanced view of what bullying is. Any research will need to have that in mind.

Mr HEAD: Yes. In fact, some of the interesting stuff that is being published is really about, I guess, a whole range of commonplace workplace behaviours that are not in and of themselves bullying but, because of the atmosphere that they create, might make it more likely that people will think, consciously or otherwise, that they can treat people disrespectfully. There is some evidence that in fact the focus on bullying rather than the focus on the conditions that allow for bullying to occur is not always the right focus because what people tend to produce are statements that every reasonable person would agree with—that this is a bad thing. That is not the same as looking at behaviours that give rise to a sort of toxic culture or a workplace where people are more likely to be disrespectful of each other. The definitional issues are a problem because, going back to you earlier question, when you get into a formal investigative mode one of the things that happens around bullying is a debate about whether the definition applies or not, rather than a conversation about the fact that something is not working.

The Hon. CATHERINE CUSACK: Yes. Just adding to that, could I put it to you that sometimes a person could feel bullied by a culture rather than a single person being identified as the bully in circumstances in which the whole thing is, to borrow your word, toxic?

Mr HEAD: Yes, and that can be for a whole range of obvious or less obvious reasons where people feel that there is a climate, for instance, where one professional viewpoint stands and, if they come from a different discipline, they are not free to speak; or it can be around more overt things to do with race, gender or other things but it is not confined to those issues.

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The Hon. MICK VEITCH: All I can see is carnage. No-one can be satisfied with this process; absolutely no-one. Actually, from what I am hearing today and have heard in the past, I am not confident that the way forward will provide some faith for the people who work for our organisation. I just cannot see how you actually have addressed this appropriately to provide the faith you need for the chief executive officers and those who work in the organisation. I am hearing some words, but it just concerns me that we are not accepting how serious this was for a whole heap of people. I want to hear what is the way forward. What are you going to do that will provide us as parliamentarians with the faith that the system will work?

Mr HEAD: Did you want me to respond to the bit that relates to the commission?

The Hon. MICK VEITCH: On behalf of your organisation, yes I would like that.

Mr HEAD: There are two broad areas of focus here at the moment. One is on all of our own internal processes and, to the extent there are weaknesses in the management of this process, the fact there are now a formal set of guidelines, which have the effect of requiring the organisation to work within. They deal with every aspect of an investigation, record-keeping, communication with stakeholders, compliance or alignment with various frameworks issued by other agencies in this space. That means that internally we now have quite a robust framework for those matters that we are involved in.

Mr DAVID SHOEBRIDGE: Are they the draft guidelines that are subject to further iterations before they are adopted?

Mr HEAD: Yes, but they are functioning already as the guidance document for the organisation. The refinements are, as I said before, not material. In terms of the rest of the sector, that work we are doing through the roundtable is serious work. We have Unions NSW, all of the public sector unions at the table, the secretary of the department that WorkCover is a part of and the Office of Industrial Relations, referring to Ms Cusack's earlier remark. There is a recognition that they do not lead on all these things; they are a party. The focus of that work is very squarely on two things: how do you prevent this from happening and when it is happening, how do you properly assess the issues and get the right course of action? There has not been that kind of process before of a dialogue with the public sector unions formally focussed on those things.

I think there has been some frustration in some of those quarters about the extent to which the Dignity Respect charter has been adequately taken up by organisations. I think that is very significant work. I expect an outcome by September this year. I do think that will have implications for organisations in terms of the way they manage these kinds of situations when they happen. My office is not the only office that may be required to examine something in relation to a , but typically if it was not my office it would be the Ombudsman or the ICAC, which have frameworks in place that ours will line up with. There is both an inwardly focussed exercise in the commission and one that is focussed across the sector. I think the engagement from the public sector unions has been pretty positive.

I think the other element is that we do measure and report publicly on prevalence. The issue of bullying and the extent of it in the sector was one of the things that I published on the first day of the sector report from the research we commissioned. There has been a discussion, including discussions with some of the public sector unions about the need for more granular data on the bullying issue, particularly mapping the assertion to specific behaviours—what is actually happening to people so when they have a perception about bullying, what are the behaviours they are concerned about and in what context are those behaviours occurring. That research gets repeated every couple of years. It is reported on a sector level, but we also issued the copy of the WorkCover report that was issued to this Committee with the supplementary questions. There were whole-of-

cluster reports that were issued by directors general and also agency-level reports provided at the time to almost every agency in the sector.

I think the fact this is being measured and reported on regularly and transparently is a check in the system about whether the various efforts that are being made are working. Part of the reason for the roundtable is when you look back at the Commonwealth experience and the experience in Victoria you do not see much movement in that prevalence rate. If you also look at the submissions that I am sure this inquiry has received as well as the House of Representatives' inquiry a couple of years ago, there is a theme about the fact that interventions to date have not worked and that the problem is perceived and experienced to be increasing in some sectors, including parts of the public sector because the industry I think with the most prevalent bullying rates in most of the stuff I have looked at is always the Health sector, which, in our context, is significantly a public sector environment.

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Mr HEAD: [EVIDENCE OMITTED BY RESOLUTION OF THE COMMITTEE 16 JUNE 2014] These guidelines are guidelines about how the Public Service Commissioner exercises powers under the Act which might include, through the exercise of those powers, the engagement of bodies. They are not a set of guidelines about how the Internal Audit Bureau does its business, but the guidelines do call up all of the things that specify how investigations should be handled.

Mr DAVID SHOEBRIDGE: But do they deal with one of the issues here, which is how you engage with the iterations back and forth between the IAB and the subject of that complaint? You have the two separate wings.

Mr HEAD: I believe they do through the way they formally call up the Ombudsman's framework on how you conduct investigations. I am happy to provide an additional explanation to the Committee if that would be helpful.

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(The witnesses withdrew)

(The Committee adjourned at 12.34 p.m.)