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**Community and Public Sector Union  
State Public Services Federation Group**

**Submission**

**to the**

**House Standing Committee on Education & Employment**

**Inquiry into Workplace Bullying**

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## **Executive Summary of Recommendations**

**Recommendation 1:** Return to no fault workers compensation principles and law, removal of reasonable management action and associated legislative get out provisions for all injuries and disease.

**Recommendation 2:** Presumption in favour of workers compensation injury claims backed by general practitioner and psychiatrist reports that such injuries arose in the course of work. Insurers would need to show exceptional circumstances to a tribunal or court to deny such claims.

**Recommendation 3:** WHS Acts and remaining pre WHS Acts to contain a definition of bullying as 'inappropriate or unreasonable behaviour towards a worker'.

**Recommendation 4:** WHS Acts and remaining pre WHS Acts to contain a broad psychosocial regulation and code of practice.

**Recommendation 5:** SPSF recommended psychosocial hazard prevention based approach - to be endorsed as a major WHS Regulator psychosocial hazard elimination campaign by COAG, with Safe Work Australia co-ordinating its tripartite design, development and implementation.

**Recommendation 6:** WHS Regulator psychosocial hazard elimination campaign to be integrated into the Australian Work Health and Safety Strategy 2012-2022 and drive greater alignment with pre-existing jurisdictional strategic prevention plans.

**Recommendation 7:** Governments as employers must be best practice employers and engagers of workers in implementing the WHS Regulator psychosocial hazard elimination campaign.

**Recommendation 8:** Governments to ensure co-ordination of the Australian Taxation Office and state payroll tax agencies to eliminate sham contracting and so set clear lines of WHS duty.

**Recommendation 9:** Safe Work Australia to establish a database of in progress WHS prosecutions in liaison with the Australian Securities & Investment Commission to prevent corporate restructuring once a prosecution is launched.

**Recommendation 10:** Workers and their unions must have the legal right to sue for compensation to fully redress workers' work and personal loss, both financial and psychological.

**Recommendation 11:** Workers and their unions must have the legal rights to prosecute PCBUs and their Officers for their failure to proactively and systematically address workplace hazards.

**Recommendation 12:** WHS Inspectors and health and safety representatives to make broad use of improvement notices to require hazard prevention and risk management of psychosocial risks.

**Recommendation 13:** Default Safe Work Australia procedure that triggers the issue of a WHS Regulator psychosocial improvement notice whenever a bullying complaint is lodged with a Regulator or Inspector and upon confidential request by an HSR.

**Recommendation 14:** Consideration should be given to the general issuance of WHS Regulator psychosocial improvement notices to all PCBUs in the worst affected sectors, departments, authorities and agencies.

**Recommendation 15:** Under the implementation plans for the Australian Work Health and Safety Strategy 2012-2022, consideration should be given to a general issuance of psychosocial improvement notices to all employers in the worst affected sectors, departments, authorities and agencies.

**Recommendation 16:** A unified Safe Work Australia national information technology system that links all WHS Regulators - to track and evaluate the progress of HSR and WHS Regulator notices and hazard prevention generally.

**Recommendation 17:** A foreshadowed tripartite 'Dignity and Respect in the Workplace Charter' should be endorsed by all the WHS Regulators and their governments for default inclusion in modern awards, collective agreements,

PCBU WHS policies and related governmental WHS policies. Including foreshadowed sectoral implementation plans under the National WHS Strategy.

**Recommendation 18:** Workers in WHS Regulators to be covered by a nationally harmonised psychosocial hazard memorandum of understanding (MOU) negotiated with the workers involved, their unions and the WHS Regulators through the auspices of Safe Work Australia - to deal with complaints of inappropriate and unreasonable behaviour within WHS Regulators.

**Recommendation 19:** To facilitate the formation of the WHS Regulators psychosocial hazard MOU - all necessary legal changes to the legislation applying to the WHS Regulators to be identified by Safe Work Australia and implemented by governments.

**Recommendation 20:** WHS Regulators to establish well resourced psychosocial hazard inspectorates where they do not already exist.

**Recommendation 21:** Insecure public sector work in the form of fixed term contracts and long term casual employment are themselves an inappropriate and unreasonable behaviour hazard. Insecurely engaged workers are much less likely to raise WHS complaints for fear of losing their position. Governments must review and severely limit insecure work to cover exceptional short term employment events only.

**Recommendation 22:** Public sector grievance resolution procedures must be based in natural justice principles, subject to external review, have as speedy as possible time frames for resolution, be externally investigated and funded by a centralised agency (WHS Regulator etc).

**Recommendation 23:** Each jurisdiction to nominate a specialised tribunal, to hear and determine inappropriate and unreasonable behaviour complaints.

**Recommendation 24:** West Australian public sector workers to have access to the WA Industrial Relations Commission in relation to bullying issues by deleting Section 80E(7) of the *Industrial Relations Act 1979*.

**Recommendation 25:** Victims and their unions to have access to all inappropriate and unreasonable behaviour investigation related documentation and to advise on suitable potential witnesses.

**Recommendation 26:** In the event that an inappropriate and unreasonable behaviour complaint is upheld, at the volition of the target, permit a negotiated resolution with the PCBU.

**Recommendation 27:** All public sector workers to be educated on their rights under their OHS / WHS Act and their public sector code of ethics / code of conduct to deal with inappropriate and unreasonable behaviour.

**Recommendation 28:** Health and safety representatives and health and safety committee members to be given additional specialised training on psychosocial hazards.

**Recommendation 29:** Each jurisdiction's crimes act to be amended to allow for prosecutions of perpetrators and their PCBUs for severe inappropriate and unreasonable behaviour complaints.

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## **Attachments**

1. *Victorian State Services Authority Report - Trends in Bullying in the Victorian Public Sector - People Matter Survey 2004 -2010.*
2. *WorkCover (NSW) Review – Independent into workplace bullying and harassment.*
3. *Publicly Available Specification 1010.*
4. *Draft Australian Work Health and Safety Strategy 2012-2022.*
5. *WorkCover NSW Improvement Notice issued to the NSW Department of Community Services.*
6. *Dignity and Respect in the Workplace Participant Workbook.*
7. *Dignity and Respect Charter.*

## **Introduction**

The State Public Services Federation Group (SPSF) of the CPSU, the Community and Public Sector Union (CPSU: a Federally-registered union) consists of six State Branches representing employees of the Crown in Right of the States and other State public sector entities.

The SPSF appreciates the opportunity to make a submission to this Inquiry. The SPSF endorses the submission made by the Australian Council of Trade Unions and makes the following supporting points in respect to selected terms of reference set for this Inquiry.

The balance of the submission is made up of submissions from SPSF Branches regarding their experiences with inappropriate and unreasonable behaviour in their jurisdictions and with case studies from our members who have been affected by such behaviour. The WA Branch submission also gives the SPSF view on the utility of 'Brodie's Law'.

### **TOR 1. The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying**

Evidence from the SPSF WA Branch is that 70 to 80% of their member's Workers Compensation claims relate to stress and the majority of these cite bullying as the cause of this stress. A survey of CPSU/CSA members in WA, conducted in 2011, revealed that 35% of members experienced bullying and 58% reported that they had witnessed bullying behaviours in their workplace.

Evidence from the SPSF SA Branch is that claims arising from inappropriate or unreasonable behaviour constitute over 20 per cent of the Branch's activity with the Assistant Secretary responsible for workplace health and safety estimating that 60 to 70% of his time is spent dealing with claims arising from inappropriate or unreasonable behaviour.

It is reported that calls to WorkCover NSW for advice on workplace bullying have more than doubled from some 2000 in 2007/08 to just over 4500 in 2010/11.



A culture of inappropriate or unreasonable behaviour can take hold in any workplace. This includes the workforce of the WHS regulators themselves. In 2010 the Minister responsible for WorkCover NSW commissioned an independent inquiry following extensive media coverage of inappropriate or unreasonable behaviour at WorkCover NSW. The inquiry was conducted by PwC and their report found that:

- 779 (59%) of WorkCover's 1312 staff responded to a survey on workplace culture.
- 310 (40%) of these respondents "reported they felt they had been bullied and / or harassed in the workplace".
- 215 (69.4%) of those who reported being bullied and / or harassed said they were bullied by a manager / supervisor.<sup>1</sup>

***See attachment 2: WorkCover (NSW) Review: Independent Inquiry into workplace bullying and harassment***

Some real life case studies from WorkCover NSW that bear out these statistics are included later in this submission.

An analysis by the SPSF NSW Branch of the denied workers compensation claims from February 2011 to June 2012 shows that denied claims arising from psychological health injuries constitute 42% of all denied claims, with denied claims arising from inappropriate or unreasonable behaviour constituting 87% of these psychological health injuries.

All these denials by medically unqualified insurance company workers are made in the face of general practitioner and psychiatrist reports that such injuries arose in the course of work.

The Victorian State Services Authority published their '*Trends in Bullying in the Victorian Public Sector - People Matter Survey 2004 -2010*' in 2011 (***attachment # 1***). This found that 34% of Victorian public servants had witnessed bullying at work, 21% had experienced such behaviour at work. Disturbingly only 5% had submitted a formal complaint.

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<sup>1</sup> WorkCover (NSW) Review: Independent Inquiry into Workplace Bullying and Harassment, page 28

As is clear from the statement from our Victorian Branch [later in this submission] there are significant problems with WorkSafe Victoria's approach to handling complaints of inappropriate and unreasonable behaviour, both internally and externally.

The case studies in this submission show the human stories of those living with the consequences of inappropriate or unreasonable behaviour at work. They tell a story pointing overwhelmingly to their employer's failure to apply proactive and systematic WHS prevention or a total lack of such WHS processes in the first instance.

They also show that the effective fault basis for successful psychological injury workers compensation claims, condemns many to poverty, depression and anxiety with personal relationships splintering around them. The evidence is sadly only anecdotal, but suicide is the only option left to some – a truly horrific outcome for a worker living with either the failure, or absence of, a proactive and systematic duty of care from their employer.

**Recommendation 1: Return to no fault workers compensation principles and law, removal of reasonable management action and associated legislative get out provisions for all injuries and disease.**

**TOR 6. Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying**

**TOR 8. Possible improvements to the national evidence base on workplace bullying.**

The prevalence of inappropriate or unreasonable behaviour suffered by our members is nearly matched by the ability of so called no fault workers compensation schemes to require fault to be proven in the face of these denials. This fails to provide deterrence through increased insurance claims costs and increased premiums. WHS Regulators rarely if ever prosecute inappropriate and unreasonable conduct cases. This fails to provide general and specific WHS deterrence.

The existing workers compensation experience rating threshold in NSW excludes 87% of employers from increased premiums related to worker claims. This fails to provide a financial deterrent to non compliance with WHS laws.

The response to the prevalence of inappropriate and unreasonable behaviour has been to legislate to remove employer workers' compensation liability where it may be considered that the workers psychological injury arises from 'reasonable management action'. This distorts the true picture and imports a fault based element into the no fault statutory schemes. It has the unfortunate consequence of limiting cost related triggers that should focus an employers' attention on the prevention of inappropriate and unreasonable behaviour.

Whilst recognising that managers have certain rights to manage their employees, the manner in which those rights are executed can constitute bullying behaviour where an already stressful situation is compounded by the manner in which the actions are handled by a manager. Workers compensation legislation needs to explicitly provide for these situations.

Urgent reform is required so that there is a presumption in favour of workers compensation injury claims backed by general practitioner and psychiatrist reports that such injuries arose in the course of work. Insurers would need to show exceptional circumstances to a tribunal or court to deny claims in these circumstances. This would provide better specific WHS deterrence.

**Recommendation 2:                      Presumption in favour of workers compensation injury claims backed by general practitioner and psychiatrist reports that such injuries arose in the course of work. Insurers would need to show exceptional circumstances to a tribunal or court to deny claims in these circumstances.**

### **Psychosocial hazards, psychological health and the OHS & Workplace Health and Safety Acts (WHS)**

The WHS Acts at clause 4 Definitions, defines health as '*physical and psychological health*' furthermore, in Schedule 3 - Regulation Making Powers, clause 5, Hazards and Risks specifically mandates the making of regulations relating to exposure to any '*psychosocial hazard*'.

Despite these building blocks and the Productivity Commission evidence, neither the WHS Acts nor accompanying Regulations explicitly address psychosocial hazards. Legislating, defining and regulating for psychosocial hazards and their attendant risks should be addressed, to ensure that inappropriate and unreasonable behaviour is prevented. Good work related psychological health is best promoted and protected by the WHS Acts.

These issues cannot be subject to WHS Act Inspector or HSR enforced risk management / hierarchy of controls in the WHS Regulations as these can only be enforced on issues explicitly addressed in the WHS Regulations.

It is incomprehensible why a provision like clause 27A of the *Qld Workplace Health and Safety Act 1995* was not inserted in the WHS Act so that the risk management / hierarchy of controls model could be enforced and applied to all hazards including the psychosocial hazards related to work.

It is also greatly regrettable that Clause 9 of the *NSW OHS Act 2000 Regulations* was eliminated with the introduction of the WHS Regulations. This required employers to identify hazards arising from:

*The work premises,...work practices, work systems and shift working arrangements (including hazardous processes, psychological hazards and fatigue related hazards...the potential for workplace violence.*

The argument that the general WHS Acts duties of care provision section 19 etc will suffice, was clearly rebutted by the findings shown above from the Productivity Commission Report in 2010.

It is fundamentally the noxious use of 'management prerogative' expressed through inappropriate and unreasonable behaviour that is the central psychosocial hazard that the surviving OHS Acts and the new WHS Acts and their Regulations fail to properly address and implicitly shifts the psychological, physical and financial risks onto workers and the community in Australia. In terms of the burden to economic

agents, currently 5 per cent of the total cost is borne by employers, 74 per cent by workers and 21 per cent by the community.<sup>2</sup>

Only the South Australian Health Safety and Welfare Act's section 55A currently deals with 'inappropriate behaviour toward an employee'. As is detailed in this submission's statement from our South Australian Branch Assistant Secretary, the 'South Australian Experience' statement, and the Safework SA September 2008 report to their government, it awaits its first use in a prosecution after seven years of operation.

The experience with the South Australian Health Safety and Welfare Act's section 55A and its 'reasonable management action' exception shows what would be the fate of a similar limited response in other jurisdictions. The use of 'systematic' in the definition of section 55A requires a prosecutor to show intent, the use of what is otherwise the standard of proof for murder has effectively blocked its use since 2005.

The issue of psychosocial hazards was looked at in the Research Report produced by the Productivity Commission and published in March 2010<sup>3</sup>. It is ironic that this generally useful work arose out of an earlier Howard government initiative focused on identifying and removing what is thought to be "unnecessary burdens on business".

The key points were –

- *Psychosocial hazards such as bullying and harassment in the workplace are not given the same attention in OHS legislation, and by inspectors, as managing physical hazards such as hazardous substances (including lead and asbestos) manual handling and working at heights. This adds to uncertainty for business about the extent of their duty and how to address psychosocial hazards.*
- *Workplace stress claims which include bullying and harassment tend to be more costly on average than claims for less serious physical injuries, both in terms of direct costs and time taken off work.*

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<sup>2</sup> Safe Work Australia, The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community: 2008–09 March 2012

<sup>3</sup> Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety, Productivity Commission Research Report, March 2010.

Costs associated with workplace stress were quoted as directly costing employers in Australia in the order of \$10.1 billion<sup>4</sup>

The report notes from World Health Organisation sources that contributors to workplace stress include “factors (such as excessive hours, unreasonable demands, inflexible work arrangements leading to poor work-life balance), the physical work environment (such as noise or overcrowding or ergonomic problems), organisational practices including poor lines of communication and unclear roles and responsibilities, poor leadership, and lack of clarity about organisational objectives and strategies), workplace change (which contributes to job insecurity and high staff turnover); and, relationships at work (for example poor relationships of staff and supervisors, management and colleagues may contribute to bullying and harassment or violence).”

**Recommendation 3:       WHS Acts and remaining pre WHS Acts to contain a definition of bullying ‘inappropriate or unreasonable behaviour towards a worker’.**

Consideration should be given to releasing an integrated code of practice that addresses the overall management of psychosocial risks arising from workplace and work stressors, violence, bullying and fatigue. In February 2011 the British Standards Institution, with the participation of the World Health Organisation, released a ‘*Publicly Available Specification (PAS 1010)* that could serve as a basis for such a COP, addressing the overall management of psychosocial risks. A copy of PAS 1010 is attached (attachment # 2).

**Recommendation 4:       WHS Acts and remaining pre WHS Acts to contain a broad psychosocial regulation and code of practice.**

### **Proposed WHS Act prevention based approach**

A possible WHS Act prevention based approach using these instruments lies in this excerpt from the ACTU submission derived from comments provided by an SPSF Group WHS Regulator Inspector:

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<sup>4</sup> Estimating the economic benefits of eliminating job strain as a risk factor for depression, Anthony LaMontagne, et al, Australia, Victorian Health promotion Foundation (VicHealth), October 2010.

*All Australian workplace safety legislation should require risk factors for psychological injury to be systematically identified, assessed and controlled.*

*The identification tool should include consideration of position descriptions, standard operating procedures, differing understandings of job/ task requirements and priorities, use of email, sharing of information to those with a need to know, and procedures for meetings and decision making. Annual staff climate surveys must be required as a both means of risk identification and control.*

*Workers should be provided the option of a confidential means of reporting incidents of bullying and other risks of psychological injury. This will ensure that people are willing to report. Small businesses could use the risk manager of their workers compensation insurer.*

*Large businesses should use a psychological counselling service to receive reports. The person conducting the business or undertaking should only receive information from such confidential reports as is agreed by the reporter. The information from the reports, the annual climate survey and other risk identification tools should be used to develop a risk control plan.*

*All businesses must be required to have a documented plan to control identified risks. They must be able to demonstrate implementation of the risk control plan by a record of actions taken where necessary in regard to individuals, resourcing, training, supervision, communication, the working environment and systems of work.*

*Workers must see management commitment in action before they will confidently report and fully support the risk control plan.*

*Mediation may sometimes be an appropriate remedial action for relatively equal and willing individuals. It will not be acceptable as an adequate risk control or remedy on its own if risk factors not including the mediating parties are also at play. The PCBU must also identify, assess and control so far as reasonably practicable those non personal risk factors that are able to be controlled. A required risk control is that each business must have a statement of corporate values and a statement of respectful behaviours that persons must demonstrate.*

*These should be attached to each position description and included in performance appraisals.*

**Recommendation 5: SPSF recommended WHS Acts and pre WHS Acts psychosocial hazard prevention based approach - to be endorsed as a major WHS Regulator psychosocial hazard elimination campaign by COAG, with Safe Work Australia co-ordinating its tripartite design, development and implementation.**

### **Draft National Work Health and Safety Strategy 2012-2022**

There is a natural fit between these recommendations and the draft National Work Health and Safety Strategy 2012-2022 (*attachment # 3*). The Strategy targets 'mental disorders' as a priority disease in the Strategy and the following quote gives a good summary of a prevention based approach to inappropriate and unreasonable behaviour:

*It is more effective if potential hazards and risks are identified and eliminated during the design of new plant, structures, substances used for work and new jobs, work processes or systems. Good design will mean that the major biomechanical, psychosocial and physical hazards will be considered and eliminated or minimised.*

It is a vital part of the Strategy for all of the WHS Regulators to align their own strategic plans with it, to ensure that there are strong well resourced prosecutorial regulators and strong regulator support to work group formation and HSR election and operation. These will be the key strategies to drive deterrent and prevention to reduce the massively unacceptable toll of inappropriate and unreasonable behaviour at work.

**Recommendation 6: WHS Regulator psychosocial hazard elimination campaign to be integrated into the Australian Work Health and Safety Strategy 2012-2022 and drive greater alignment with pre-existing jurisdictional strategic prevention plans.**

In a broader sense, governments as employers must use their broader PCBU duties and existing procurement powers to really drive the National WHS Strategy relating to mental disorders in their workplaces and contracting workplaces.



Rigorous enforcement of no sham contracting in employment is required by the Australian Taxation Office and state payroll tax agencies. This will add clear lines of WHS duty and incorporate the true costs of employment into every government contract.

ASIC needs to cooperate by ensuring that proposed changes to company structure are not WHS prosecution related and blocked where they are found to be of that nature.

**Recommendation 7: Governments as employers must be best practice employers and engagers of workers in implementing the WHS Regulator psychosocial hazard elimination campaign.**

**Recommendation 8: Governments to ensure co-ordination of the Australian Taxation Office and state payroll tax agencies to eliminate sham contracting and so set clear lines of WHS duty.**

**Recommendation 9: Safe Work Australia to establish a database of in progress WHS prosecutions in liaison with the Australian Securities & Investment Commission to prevent corporate restructuring once a prosecution is launched.**

The story, time and time again, coming out of the case studies is that affected workers are lucky if they can manage a good transfer with the agent or agents of their toxic behaviour untouched or even promoted. If WHS Regulators will not prosecute then workers and their unions must have the right to seek their own legal redress either via a tribunal or court.

This right must extend to both seeking compensation to fully redress work and personal loss, both financial and psychological and to prosecuting PCBU's and managers for their failure to proactively and systematically address workplace hazards in general.

**Recommendation 10: Workers and their unions must have the legal right to sue for compensation to fully redress workers' work and personal loss, both financial and psychological.**

**Recommendation 11: Workers and their unions must have the legal rights to prosecute PCBUs and their Officers for their failure to proactively and systematically address workplace hazards.**

### **Improvement Notices**

Prosecutions are the end of the process and it is in prevention that HSRs are vital. Inspectors and trained WHS Act HSRs can currently issue improvement notices like that issued by Inspector Ingram to the Community Services Department of Human Resources NSW in 2010 (*attachment # 4: Draft of Australian Work Health and Safety Strategy 2012-2022: Healthy, Safe and Productive Working Lives*).

### **Australian Work Health and Safety Strategy 2012–2022: Healthy, Safe and Productive Working Lives**

1. *You must develop, implement and maintain appropriate and integrated Policy, Procedures and Programs to effectively prevent and respond to Bullying at work.*
2. *Bullying Prevention Policy, Procedures and Programs must be developed in consultation with Health and Safety representatives and committees.*
3. *Bullying Prevention Policy, Procedures and Programs should include:*
  - i. *Requirements for respectful behaviours in the workplace.*
  - ii. *Definitions of Bullying including direct and indirect forms of bullying,*
  - iii. *Procedures for the reporting, investigation and resolution of bullying complaints.*
  - iv. *The development and implementation of Training and Awareness Programs designed to meet the specific needs of Managers, Supervisors and Employees*
4. *Your attention is drawn to the detailed definitions of hazards to psychological health in the WHS Act, WHS Psychosocial Regulation and SWA Code of Practice- Prevention & Management of Psychosocial Risks in the Workplace ch.3 Preventing Inappropriate & Unreasonable Behaviour at Work (Copy Provided).<sup>5</sup>*

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<sup>5</sup> Titles are illustrative only, none of these documents exist.

## **The Respectful Workplace**

The issuance of this improvement notice to the Community Services Department of NSW led to better departmental policy and procedures. It was the case that this part of the department was the only area that had not previously received 'The Respectful Workplace' training programme. These tripartite training materials were developed by Unions NSW, the PSA of NSW, NSW WorkCover, the Community Services Department of NSW and the NSW Premier's Department. More details regarding the process that led to the development of the 'The Respectful Workplace' training programme is contained in the PSA of NSW's OHS Education Officer's statement, beginning at page 34 of this submission.

Despite the existence of NSW WorkCover guidance material and inspectorate training, this is the only positive action they have taken in response to union complaints.

Given the ubiquity of inappropriate and unreasonable behaviour in Australian workplaces, consideration should be given to a default SWA procedure that triggers the issue of such a WHS Regulator improvement notice whenever a bullying complaint is lodged with a Regulator or Inspector and upon confidential request by an HSR.

Improvement notices that cover a broad range of requirements (such as that issued by Inspector Ingram) will provide effective guidance for PCBU's who are not minded to resist compliance with the notice. However there also needs to be the option of writing more narrowly focussed notices because these can be more easily enforced.

If the inspector writes a broad spectrum notice, then the PCBU only has to comply with one of its requirements to prevent the NSW Regulator charging the PCBU with non compliance with notice. The regulator can overcome this resistance by a series of notices that separate requirements for identification, assessment and various forms of risk control.

**Recommendation 12:** WHS Inspectors and health and safety representatives to make broad use of improvement notices to require hazard prevention and risk management of psychosocial risks.

**Recommendation 13:** Default SWA procedure that triggers the issue of a WHS Regulator psychosocial improvement notice whenever a bullying complaint is lodged with a Regulator or Inspector and upon confidential request by an HSR.

**Recommendation 14:** Consideration should be given to the general issuance of such an improvement notice to all employers in the worst affected sectors, departments, authorities and agencies.

**Recommendation 15:** Under the implementation plans for the Australian Work Health and Safety Strategy 2012-2022, consideration should be given to a general issuance of psychosocial improvement notices to all employers in the worst affected sectors, departments, authorities and agencies.

Such a procedure would be best enhanced by a unified national information technology system that links all WHS Regulators to track and evaluate the progress of such HSR and WHS Regulator improvement notices and hazard prevention generally.

**Recommendation 16:** A unified Safe Work Australia national information technology system that links all WHS Regulators - to track and evaluate the progress of HSR and WHS Regulator notices and hazard prevention generally.

A good example of training and awareness programme implementation exists at Sydney's Taronga Conservation Association and the Western Plains Zoo. This was built around the Dignity and Respect in the Workplace Charter developed by Unions NSW, WorkCover NSW and the PSA of NSW (*attachments # 5, 6 &7*). More details regarding the process that led to the development of the Charter and associated training materials is contained in the statement of the PSA of NSW's OHS Education Officer's statement, beginning at page 34 of this submission.

A similar document should be endorsed by all the WHS Regulators and their governments for default inclusion in collective agreements, PCBU WHS policies and

related governmental WHS policies. Including foreshadowed sectoral implementation plans under the National WHS Strategy.

**Recommendation 17: A foreshadowed tripartite 'Dignity and Respect in the Workplace Charter' should be endorsed by all the WHS Regulators and their governments for default inclusion in modern awards, collective agreements, PCBU WHS policies and related governmental WHS policies. Including foreshadowed sectoral implementation plans under the National WHS Strategy.**

### **Workers in WHS Regulatory Agencies**

There is an urgent need to prevent inappropriate and unreasonable behaviour within the WHS Regulatory Agencies. This is both an historic and ongoing problem.

To prevent inappropriate and unreasonable behaviour within the WHS Regulatory Agencies calls for a nationally harmonised memorandum of understanding (MOU) negotiated with the workers involved, their unions and the WHS Regulators through the auspices of SWA, with all necessary legal changes to be identified by SWA and made to the legislation applying to the WHS Regulatory Agencies to facilitate the formation of the MOU.

In this process agreement should be reached on a national WHS Regulators Dignity and Respect Charter with an accompanying tripartite training and evaluation programme. The traditional 'sweep it under the carpet' approach must be replaced with proactive and systematic prevention and where that fails, transparency and justice in dealing with complaints within the regulator's own workplace must be done and be seen to be done.

The outcomes of this process could form the basis for broader action by PCBUs and the sectoral implementation plans under the National WHS Strategy.

However, the high prevalence (40%) of inappropriate and unreasonable behaviour reported by NSW WorkCover staff in 2010 (see TOR 1) suggests additional measures are necessary to manage this risk in a WHS Regulator's own workforce.

The NSW Dignity and Respect Charter was signed by the CEO of WorkCover NSW in September 2005. Step 1 of the charter required that an OHS Risk Assessment for

Bullying be conducted. This risk assessment was never conducted – before or after the signing of the charter. Remarkably, a risk assessment was not even done in response to the independent inquiry findings in 2010. Clause 9(2)(b) of the NSW OHS Regulation 2001, in force in NSW until 2012, specifically required employers to identify psychological hazards. Again, this was not complied with.

This experience raises questions such as who is the compliance enforcement agency for the WHS Regulators themselves? And what is the mechanism for investigating WHS complaints from the staff working in a WHS Regulator?

While these issues can be referred to a working group process it is worthwhile to note there is a manifest conflict of interest involved in a WHS Regulator appointing one of its own Inspectors to investigate a complaint of inappropriate and unreasonable behaviour within its own workforce.

Yet this is precisely what happened in NSW in 2009 and ultimately led to the NSW Government commissioning the Independent Inquiry of 2010. A complaint was made about inappropriate and unreasonable behaviours, and a senior Inspector was appointed to investigate within his own organisation. There were numerous problems with the complaint investigation methods, such as the investigation not following the investigation protocols of the organisation, with the case record being closed prior to witnesses being interviewed. No records of interview were prepared by the Inspector. Although much evidence was brushed aside, the Inspector's investigation report concluded that "a pattern of ... bullying had existed for years".

**Recommendation 18: Workers in WHS Regulators to be covered by a nationally harmonised psychosocial hazard memorandum of understanding (MOU) negotiated with the workers involved, their unions and the WHS Regulators through the auspices of SWA to deal with complaints of inappropriate and unreasonable behaviour within WHS Regulators.**

**Recommendation 19: To facilitate the formation of the WHS Regulators psychosocial hazard MOU - all necessary legal changes to the legislation applying to the WHS Regulators to be identified by SWA and implemented by governments.**

## CPSU/CSA West Australian Branch Submission

The CPSU/CSA covers approximately 16,200 members employed in the WA Public Sector and assisting members who report workplace bullying consumes a significant portion of our time and resources as a union, often without achieving a satisfactory outcome due to lack of early reporting and/or inadequate legislation and other procedures to properly address bullying complaints. We welcome the opportunity to contribute our experiences, concerns and recommendations to the SPSF submission to the National Inquiry.

While *'Brodie's Law'* may provide an avenue of addressing overt and physical manifestations of bullying behaviour, it is significantly less effective in addressing insidious forms of covert bullying and psychosocial harassment which plague many workplaces, more notably, the public sector<sup>6</sup>. Indeed a 2010 survey of the Victorian public sector revealed that one in five public servants experienced bullying<sup>7</sup>. A survey of CPSU/CSA members in WA, conducted in 2011, revealed an even higher incidence in that 35% of members experienced bullying and 58% reported that they had witnessed bullying behaviours in their workplace.

*Brodie's Law* does not introduce a new crime of workplace bullying, but rather seeks to expand the offence of stalking (S21A of the Crimes Act 1958 (Vic)). Its limitations appear to be that while it affords worker protection against other employees who engage in bullying conduct, employers do not appear to bear any criminal accountability in the matter.

With the narrowing of the divide between blue and white collar workers, psychosocial hazards are becoming a greater reality for many Australian workers. The problem of public sector workplace bullying is being exacerbated by the increasingly prevalent practice in the Western Australian public sector, and around Australia, of offering fixed term contracts or casual employment rather than permanent employment. This encourages a compliant workforce that is less likely to complain about bullying behaviours, or engage in collective action to deter these.

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<sup>6</sup> Linda Shallcross. *The workplace mobbing syndrome: response and prevention in the public sector*, refers Unpublished paper delivered at "Workplace Bullying: A Community Response" Conference in Brisbane 2003).

<sup>7</sup> Trends in Bullying in the Victorian Public Sector: People matter survey 2005-2010, Victoria State Service Authority 2011.

In disparate workplaces, (e.g. law enforcement agencies, where the dominant aspect of the workforce comprises police or paramilitaries supported by public servants, or who operate within quasi-military chains of command) it is not unusual for support staff to be exposed to psychosocial hazards, particularly bullying.

While some physical and peripheral aspects of bullying, or consequential impacts on victims, can in some cases be appropriately addressed by the criminal justice system, these aspects often represent the culmination of psychosocial harassment in the workplace over a period of time. In many cases, the impact of psychosocial hazards and the absence of any direct avenue of redress, serve to augment targets' feelings of isolation, marginalisation and hopelessness. These stressors often increase levels of despondency and depression, and can culminate in self-harm. Apart from actions in Tort, which tend to be outside the economic grasp of everyday workers, avenues for recourse are in the main convoluted, circuitous, or apparent rather than real. The toll this places on victims is best demonstrated by the stories of frustration, hopelessness and despondency, which feature in this submission's case studies.

Many WA State public sector organisations employ a generic grievance resolution procedure, which often fails in practice to adhere to natural justice principles, or to deliver effective, timely resolution to victims of psychosocial hazards which fall outside the purview of EEO legislation. This internal review system is generally not subject to external oversight or review, and victims are often subjected to lengthy periods of non-communication, inactivity and findings that usually support the managerial perspective, or are dismissed by the employer as "personality clashes". Investigations into these grievances are invariably undertaken by either an internal employee or a consultant contracted by the employer. While at best there is a perception of bias, given the disproportionate number of cases where findings are in favour of the employer rather than the target, the notion that a real conflict of interest exists is quite plausible. In the event that a finding is made in favour of the target, remedies offered to the target are generally inadequate and usually include transfer to another position or mediation. In most cases relationships and trust levels have deteriorated to the extent that mediation is no longer a viable option and/or the other party is not a willing participant in the process. It is rare that any action is taken against the bully. To be effective, grievance procedures must include:

- Time frames for resolution;



- Independent investigation by qualified consultants, who are managed and paid for by a centralised agency or fund; and
- Where bullying allegations are substantiated, requirement for a negotiated resolution that is acceptable to the target.

Any grievance procedures need to be underpinned by legislative provisions which specifically address bullying and provide for appropriate punitive action to be taken against the perpetrator. To be of benefit to public sector workers in WA, any legislation enacted nationally needs to be accessible to those in the State jurisdiction and/or must take precedence over State legislation. This is a critical aspect of any national response to psychosocial hazards in workplaces.

There is a significant failure in the WA public sector to view psychosocial hazards, particularly bullying, in terms of occupational health and safety. Even when identified as such, little recourse is available in terms of statutory enforcement under current OH&S legislation in Western Australia. Bullying is not specifically mentioned in the State statute, but rather is treated as any other workplace hazard. Apart from the issue of a provisional improvement notice (PIN) or a prohibition notice, there is little else by way of statutory deterrence to a public sector bully who is not breaching EEO guidelines, particularly if they occupy positions of power within a workplace. Covert bullying behaviours invariably re-commence with the lifting of a PIN or Prohibition notice, and the only effective recourse available is often for the target to transfer or resign. Some victims become so despondent that they then attempt self-harm. The cause of the problem (i.e. the bully) is sometimes transferred or promoted to a position of choice, or the target may be offered a monetary inducement to leave, subject to the execution of a confidentiality agreement. These inadequate responses ensure that bullying behaviours are unpunished, unnoticed and appear to be vindicated by the organisation. Once a target has been relocated, there is effectively no further action that WorkSafe (WA) can take, as the hazard has been addressed. Thus bullies remain at large to continue their misconduct in the workplace and victims leave feeling unheard, let down and with a significant loss of trust in their employer. This serves to fuel fear within the workplace, raise psychosocial impacts, impair employer-employee trust and negatively impacts productivity.

Given the general difficulty of the criminal justice system to deal with intangibles and the criminal standard of proof which poses a significant barrier to the prosecution of less tangible aspects of wrongdoing (e.g. collusive tendering, price fixing, insider trading and fraud) it appears that the timely and effective resolution of psychosocial hazards in the workplace should not, in the main, lie within the purview of the criminal justice system. It would further seem less than appropriate (given the perceived/real conflict of interest) for police to have major prevention and/or enforcement responsibility for what is fundamentally a workplace issue. Policing agencies generally are primarily reactive, acting post-incident and post-harm rather than in a pre-emptive or preventative capacity. A similar observation is possible of the criminal justice system.

Ample evidence exists to highlight the impact of psychosocial hazards on individual workers, their co-workers, and the general morale and productivity of workplaces. However, the major aspect for victims of psychosocial hazards is the absence of a one-stop shop for timely and independent resolution and/or enforcement of their rights against employers/managers who offend, or condone the commission of psychosocial abuse in the workplace. Due to the less visible nature of psychosocial hazards, victims are often challenged, stigmatised or marginalised thus compounding the stress already being experienced by the target. For example, many who submit a grievance suddenly find themselves facing accusations of poor performance, where the bully happens to be their supervisor or manager.

Victims also tend to see the Workers Compensation System as the only beacon of hope. Unfortunately, this process is frequently just as stressful for the target, if not more so, than the bullying itself. Claims are invariably pended by the Insurer and victims subjected to lengthy investigations into their personal and private life, as the Insurer attempts to find causal factors other than the workplace, to attribute their psychological injuries to. This process can take many months to resolve and victims also frequently suffer financial stress, deplete leave credits and are forced to resort to leave without pay arrangements. In at least one major State agency, reports abound of workers being misled into fitness for work examinations under the pretext of accessing therapeutic counselling.

Notably, the Workers Compensation System does not bring about any resolution of the issue, but merely seeks, where claims are accepted, to compensate the target for any loss incurred financially or in quality of life. Once declared fit for work, the

target may then be returned to exactly the same workplace situation, or transferred to another workplace. Once again, it is the target who pays the price.

In the experience of the CPSU/CSA, 70 to 80% of our member's Workers Compensation claims relate to stress, and the majority of these cite bullying as the cause of this stress.

Legislative recognition is required to acknowledge the existence of psychosocial offending, the significant damage that it inflicts in Australian workplaces, and to provide victims with a single avenue of complaint, investigation and redress nationally.

Psychosocial hazards impact the lives of workers in their workplaces, their families and the wider Australian community. The extent that this insidious abuse impacts and affects workers' daily lives, demands that it gain statutory recognition as an industrial issue, thereby enabling workers to seek protection, redress and enforcement via the industrial jurisdiction of our judicial system. This linkage gains cogency from the decision in *Sharon Dillon v Arnott's Biscuits Limited*, where the AIRC found the applicant had been constructively dismissed, as she was forced to resign because of the incessant bullying, abuse and harassment of her supervisor<sup>8</sup>.

In WA, access to the WA Industrial Relations Commission in relation to bullying issues is significantly hampered for State public sector workers, by a provision of the *Industrial Relations Act 1979* (viz Section 80E(7)). This section prohibits any matter which is the subject of a government standard or procedure being dealt with by the Public Service Arbitrator (the Constituent Authority within the WA Industrial Relations Commission system with jurisdiction over industrial matters in the public sector). As mentioned previously, bullying is most often dealt with via a grievance procedure. Grievance procedures in WA are underpinned by a public sector standard and therefore any recourse through the Public Service Arbitrator in relation to unfair process or outcomes is at best muddled, if not specifically precluded. While the CPSU/CSA is currently lobbying State Members of Parliament to remedy this situation by removing Section 80E(7) we are certainly not assured of the State Parliament delivering a positive outcome.

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<sup>8</sup> Dillon v Arnott's Biscuits Limited. Print p4843, September 1997.

## **Statement - Neville Kitchin, Assistant General Secretary PSA of SA**

### **Background**

The Public Service Association represents over 15,000 members in the South Australian Public Sector. Allegations relating to bullying are hard to quantify statistically because they could be entwined in a number of other Industrial issues such as harassment, unacceptable behaviour, performance management etc.

The effect on alleged employee victims of bullying behaviour is generally far greater than if the same situation occurred outside of the workplace. This is particularly so in situations where the alleged offender is at a higher classification level as a result of the impact caused by the imbalance of power and the perceived injustice of the situation by the target.

At best guess 20+ percent of all cases dealt with by the Association relate to allegations of bullying behaviour. South Australia is currently the only state which has a specific section in the OHS&W act, Section 55A, which deals with bullying.

The word "bullying" should be replaced with something like "inappropriate behaviour". When the word bullying is used it instantly causes a rift between the parties involved. It is a very emotive word and almost like being referred to as something akin to a paedophile.

The victims think it is relatively easy to prove because the wording in Section 55A states "that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the employee or employees to who the behaviour is directed."

The cases involve a combination of WorkCover and non WorkCover related matters. A separate report is being prepared in relation to WorkCover cases.

### **Current Issues**

As with all other states there are substantial differences in the way government departments deals with allegations of bullying. Timeliness, the skill and maturity of those Human Resources practitioners involved, the level of training given to HR staff, the amount of budget set aside for use in training and development in dealing

with bullying, the budget set aside for employee assistance providers, the relationship between the HR dept and the Union involved etc.

Bullying is by far the most time consuming and frustrating issue being dealt with. It consumes time, energy, resources and money for both the Association and the Government departments. At anyone time there would be in excess of 100 cases being dealt with by the PSA and at best guess around 500+ across Government.

Obviously the level of psychological distress caused to those individuals involved, far outweighs the above. There are current cases involving alleged offenders/victims who have been at home on full pay for between 6-12 months.

In general there is confusion about the difference between trying to prove bullying under Section 55A of the OHS&W Act as opposed to proving bullying under the Governments code of ethics policy. It is far easier to be found guilty of inappropriate conduct under the code of ethics than it is to be found guilty under S55A of the OHS&W Act.

To date there has not been a prosecution in SA for bullying under S55A of the OHS&W Act. Each Government department also has its own policy in relation to preventing bullying as part of its requirement to health and safety in the workforce and as part of a requirement under clause 14 of the SA Government Wages Parity Enterprise Agreement 2010 which is a specific section on OHS&W. This has been of use in dealing with less complex cases.

Government agencies expend considerable resources when attempting to investigate allegations of bullying including hiring outside companies to do the investigations. This results in the outside companies owning the investigation briefs, statements etc and the alleged target or offender attempting to get copies of documents via the state's freedom of information legislation. This of course can result in pages of blacked out information.

There have been examples of agencies directing outside investigators not to interview particular persons who could have provided important information either as a means to reduce costs or in a deliberate attempt to frustrate the investigation.

Agencies have also declined to provide details about who provided statements in particular cases leaving the alleged target with no alternative other than to try and lodge a formal complaint with SafeWork.

Members have been given misleading information by EAP providers who at the time may sympathise with the employee and agree that they are being bullied but will then not actually give any evidence on behalf of the employee because they were simply providing counselling and not there to judge a particular complaint.

In South Australia SafeWork Inspectors can refer allegations of bullying behaviour under Section 55A (3) (d) to the Industrial Relations Commission for conciliation or mediation. Of late Safe work inspectors have been referring more cases to the IRC. Such cases are again time consuming and difficult to manage for all involved. Although the Commissioners may have sweeping powers under the Act in dealing with these cases it would be rare to see an actual fresh trial of all the evidence.

There is the potential to improve this process if the new harmonisation legislation is introduced. This may occur in January of 2013 and would be a better alternative than existing departments paying for outside investigators and the limitation of those investigations as previously mentioned.

Employees in general do not understand the differences between proving Section 55A under the OHS&W Act as opposed to proving a breach of the code of ethics. It is particularly important for any employee to understand how the Act and the code of ethics actually work before lodging a formal complaint of bullying.

There is also a disconnect involving elected Health and Safety Representatives and Health and Safety committees in the workplace, their involvement or ability to be involved in bullying cases and the manner in which evidence should be gathered and presented (HSRs are not asked to be involved or don't want to get involved because they don't want to be seen as being against management).

For those with a good knowledge of the OHS&W Act they can have a powerful influence on an investigation by demanding pieces of information or issue default notices.

Some departments in SA, Correctional Services being one of them have also run specific 1 day courses, with Union involvement, about bullying and the 'code of ethics'. These have been well received. In particular there should be specific courses run for HSRs in relation to bullying, their powers under the act and the positive role they can play in any investigation.

Allegations involving senior staff are less likely to be investigated because of the defence relating to "reasonable administrative action" and Safe Work investigations frequently fail on the basis that the behaviour was not deemed to be "repeated and systematic".

In particular SafeWork inspectors state that unless they can prove "intent" then Crown law will not prosecute the file. In responding to formal investigations the letter sent by SafeWork to the employee is generally very short stating simply that the allegations of bullying could not be substantiated.

The main focus of their investigation being to determine if the department in question has a prevention of bullying policy and how they investigated the allegation. There is generally no reference in the letter advising the alleged target that they may be entitled to lodge a formal complaint under the code of ethics. Given that an employee can be formally disciplined and fined for a one off breach of the code of ethics, the same should apply in relation to bullying under the OHS&W Act.

Agencies or the organisations hired to investigate allegations of bullying can also adopt a process of using a particular definition of harassment or intimidation to nullify an alleged target's complaint.

An investigation is also currently under way in South Australia by the Office of Public Employment and Review in relation to Section 56 of the Public Sector Act which has been used against persons complaining of bullying behaviour by trying to prove that the alleged target is unreliable due to some form of mental incapacity. In a recent case the target of an alleged abuse of Section 56 took the matter to an external appeals tribunal where a finding of unjust, unfair and unreasonable behaviour was found against the department.

In cases where the departments have attempted to be proactive in protecting an employee from alleged bullying behaviour, or in order to reduce any potential risk during any investigation into bullying allegations, there has been great difficulty in finding alternative placements due to sweeping budget cuts throughout the public sector. The only alternative being to remove either the target or the offender by directing them to remain home with or without pay.

Employees are in general very reluctant to lodge WorkCover claims on the basis of alleged bullying because of the stigma they see associated with being on WorkCover and any perceived effect that may have on future employment.

Ironically it appears easier to win a WorkCover claim for bullying because the requirement to prove some form of intent on the part of the alleged offender is not required. Indeed because of WorkCover confidentiality an alleged bully may never be informed or aware of the fact that another employee has won a claim because of their behaviour and links between a particular offender and a number of victims is never realised.

Without previous knowledge on how allegations of bullying are investigated employees are at a considerable disadvantage, particularly if they are non Union members or make allegations prior to getting advice from their respective Union.

Some employees, both Union and non Union members have employed Lawyers to - advocate on their behalf only to find that they can not be represented by Lawyers at any grievance appeal hearings.

Given that just over half of those employees entitled to be represented by the Association are Union members then it is reasonable to assume that the number of issues involving bullying is roughly twice the numbers being dealt with by the Public Service Association. A reasonable estimate per annum in all of Government (about 100,000 employees) would be 500-1000.

Departments frequently try to isolate and shut down an alleged target or offender by instructing them that they are not able to discuss the matter with any of their fellow workers, family, friends etc.



This removes the individual's ability to seek supporting information from others while the facts of the case are still fresh in peoples memories. In any event it is generally extremely difficult to find credible witnesses who can provide first hand evidence in relation to the allegations. It is even rarer to have other evidence such as videos or sound recordings of the incident.

Nev Kitchin  
Assist Gen Sec  
PSA/SA

## **Statement – Dr. Pam Veivers - PSA of NSW OHS Education Officer**

I joined the PSA in September 2002 as an OH&S Education Officer with the primary role of developing and delivering a training program for members on the NSW OHS 2000 and on Workers Compensation under a WorkCover Assist grant.

When the pilot was delivered (and on subsequent sessions) the most raised questions by the participants were on bullying and workload issues. The PSA was aware of the effects of bullying on members and was the only Union at the time running specific membership training for Dealing with Workplace Bullying

These psychological hazards of workload and bullying were not in the grant brief nor was information available from WorkCover. The current view at that time was that these were IR issues and thus not under WorkCover's jurisdiction. Many of the stories I heard during those training sessions were very distressing.

One member described how her sister had suicided after pleading for help from her organisation to deal with the workplace bullying she was facing from her manager and some co-workers. Other members were attending the training in hope of finding a way to address their bullying or psychological hazards in their workplace. The damage that this behaviour had done to these people was clearly evident.

My major concern was that whilst it was clear psychological hazards were covered by the NSW OHS Act 2000 & Regulations 2001 (s.3 & cl.9) members were left unsupported and powerless from the OHS perspective. Some of the answers from the Human Resources department were also less than supportive e.g. "it is their management style" or the person is "being too precious" or it is just a "personality conflict". The only process available was the use of departmental grievance procedures.

The great difficulty in using these procedures was that they had no timeframes attached to them. Members have had to wait up to 18 months for action on their complaints under grievance procedures, however after the use of improvement notices in the CS department complaints have been dealt with much more quickly.

Grievance procedures are often very adversarial and lead to further trauma for the target of inappropriate and unreasonable behaviour. Often the outcome of grievance

procedures is that the perpetrator is moved to another area with no further WorkCover remedial action, exposing a new group of workers to this hazard. Another outcome is for the targets themselves to be moved, this can be seen as a warning to remaining workers not to raise complaints lest they be transferred as well. This can have the result that the resolution of one complaint can actually leave the remaining workers in a worse position.

I was a founding member of the Unions NSW working party that worked on the development of the Dignity and Respect Charter - which promoted a pro-active program on recognising the positive values we would all want to have in a workplace, as well as using a definition of bullying to help identify and therefore deal with these unacceptable behaviours. (*See attachment # 6*)

The effect of this campaign was incredible, with Workers Comp claims for bullying doubling in the first 6 months. This did highlight the lack of understanding in the workplace of when bullying was occurring and what could be done about it.

Following on from the success of the Dignity & Respect Charter, a working party comprising of Premiers, Unions NSW, public sector unions such as the PSA, agencies and WorkCover convened to tailor the Charter for the public sector, develop generic policy & procedures and an awareness raising training program.

This training program was designed as a half day session to promote positive workplace cultures, define and identify acceptable and unacceptable behaviours (including bullying) and highlight tools to deal with incidents as well as taking a risk management approach.

The PSA has promoted this program and in 2008 conducted sessions for a number of workplaces including Parliament staff and the Dust Diseases Board. In areas where bullying was regarded as commonplace or there were a number of ongoing cases approaches were made to those workplaces to run the Dignity & Respect sessions.

This coincided with release of WorkCover guidance material on workplace bullying - a valuable step in supporting members who wanted to raise issues but were fearful of the consequences or felt the IR models were not producing good outcomes.

However there has not been strong enforcement of this guide. Many outcomes from identified bullying cases have still resulted in the target being moved or sometimes the perpetrator being moved without any other intervention. The end result is simply another lot of workers who are then presented with the same bullying behaviours and so the cycle moves on.

The Taronga Conservation Society formed a partnership with the PSA to tailor and co-train the program as mandatory training for all staff at Taronga and Western Plains Zoos. The importance of co-training was to give strong emphasis on the fact that neither management nor the union condoned bullying behaviours in any format. All employees were required to undertake the training. See [attachment #5](#).

In 2008 a co-presentation of the Dignity & Respect program was organised with the Department \_\_\_\_\_ for the \_\_\_\_\_  
An agreement was reached with \_\_\_\_\_ that this training be mandatory for all staff and an "across the state" schedule was established to deliver it with a Director or equivalent level and a PSA Industrial Officer.

This program was updated after WorkCover issued 3 Improvement Notices on bullying and poor Return to Work Plans on a \_\_\_\_\_ workplace (Dignity & Respect training had not been undertaken in this region).

The Improvement Notices were a major step in getting focus by \_\_\_\_\_ on bullying, as \_\_\_\_\_ was required to develop, implement and maintain appropriate policies and procedures to deal with bullying and Return to Work programs as well a requirement for the development and implementation of Training and Awareness Programs. See [attachment #4](#).

As a result of these notices \_\_\_\_\_ has consulted with employees and the PSA to develop new polices and procedures. All relevant information has been made available on the Safe and Well at Work intranet site along with an online lodgement of grievances. The commitment by \_\_\_\_\_ o this training has seen the following locations across the state receive this training in the last two years.

All regions including the metropolitan area have received the program - Albury, Armidale, Ballina, Bathurst, Batemans Bay, Bega, Broken Hill, Coffs Harbour, Coniston, Coonabarabran, Cootamundra, Deniliquin, Dubbo, Goulburn, Griffith,

Hunter region, Kempsey, Lismore, Moree, Orange, Parkes, Port Macquarie, Queanbeyan, Shellharbour, Tamworth, Taree, Wagga Wagga.

All reports are channelled through a central point where decisions will be made on what action is to be taken and who will handle it. The data collection will be used to snapshot workplaces so that if there are a number of “single” incidents regarding one individual then it will be highlighted for further intervention.

It is hoped that this will support incident reporting, remove the fear of bringing issues up in the workplace and expose workplaces where workers may be targeted “one at a time”.

Specific training ‘*Handling Staff Complaints Training*’ has been delivered to managers to enhance their skills in dealing with bullying, discrimination and harassment issues. It is hoped this will address one of the major criticisms of raising issues - that management simply puts it in the too hard basket and hopes it will go away.

The PSA not only promoted the Dignity and Respect Training and the Dealing with Workplace Bullying programs but was taking a stronger health and safety approach. In 2009 another WorkCover Assist grant enabled the PSA to development materials around psychological hazards in the workplace to bring together a number of these elements in a format accessible to all members.

*This project was designed to reduce the effects of psychological hazards in public workplaces though raising awareness of psychological risk and injury management processes and therefore achieving more positive outcomes for members by reducing exposure and by improving handling of workers compensation and return to work programs. These objectives were met by developing guidance materials (hard copy and electronic format) and training to raise awareness of psychological issues in public sector workplaces. The need for such a program was demonstrated by the cost and prevalence of “mental disorder claims” noted in the NSW WorkCover 2007/8 Statistical Bulletin. The Association covers members in the top 10 industries where “mental disorder claims” are highest. This project has the capacity to benefit all public sector employers and employees and the broader community by reducing the*

*overall incidence and costs of psychological injuries, but the greatest benefit is not monetary or measured by statistics - it is the human cost - the trauma, the anguish of the employees and their families and the community.*

A survey was conducted on psychological hazards and injury management.

An eLearning module on Psychological Risk and Injury Management was developed and made available to the membership and to others by arrangement. In developing this module it was found that psychological hazards as such did not have an overarching definition but were treated separately e.g. fatigue, violence, bullying.

From the work on this module it became very clear that a large number of risk factors can contribute to an “unhealthy” workplace and that these should not be viewed individually but rather as a “whole of workplace”. Alone a risk factor may appear insignificant but when a number are combined the effect may be catastrophic.

An example would be a workplace undergoing a re-structure where communication is poor to non-existent. The uncertainty and fear will produce a negative environment, rumours fill the communication void, workloads may spiral as workers leave and are not replaced and bullying behaviours can establish especially where jobs may be on the line (“you’ll be the first on to go” threats).

The implementation of WHS legislation in NSW does reduce the focus (though technically not the duty of care) on psychological hazards as the use of the word “psychological” is limited to the definition of health in s.4.

Whilst this means psychological hazards do fall within the requirements for a safe and healthy workplace it also means that this has to be inferred whenever the term “health” is used and this may result in these issues slipping off the agenda.

## **Statement – Carl Marsich- CPSU – SPSF Victorian Branch – OHS Officer**

Bullying behaviour within the Victorian Public Sector is a significant health and safety hazard. Survey results from the Victorian State Services Authority report into Trends in Bullying in the Victorian Public Sector – People Matters Survey 2004 – 2010 show that there has been very little change in relation to that period with 34% of respondents witnessing bullying in their workplace; 21% personally experienced bullying at work; and of those 21% who personally experienced bullying at work only 5% submitted a formal complaint.

CPSU have over these years done a number of departmental agency surveys and have found similar, and on a number of times higher, levels of bullying in the workplace.

CPSU Industrial Officers (IOs) receive significant written complaints by members in relation to bullying behaviour within their workplaces. Many of these complaints also then get departmental management responses related to the individual's performance management issues. When employees are bullied in the workplace it is most likely to impact on their work performance and also overall morale within workplaces.

These bullying type of matters take considerable efforts to resolve by IOs and in many cases it is difficult to get a satisfactory outcome. A significant number of these cases also end up as WorkCover claims where, as required, members are provided with specialised advice from CPSU's WorkCover Officer.

On a number of occasions when IOs have sought WorkSafe Victoria's bullying inspectorate support or intervention there has been very little support or intervention by the regulator. This has significantly deteriorated over the last year with WorkSafe Victoria requiring a 10 page detailed statement identifying multiple bullying examples and evidence documented by the complainant before they even consider the matter.

This was highlighted in an "Age" newspaper article dated July 24, 2011 "*Most Workplace Bullying claims fall short*". WorkSafe's response in this article states that of the 6000 Workplace Bullying enquires it received over the past year, only 10% (or 600) were referred to the inspectorate of which only one in ten resulted in an inspector visiting a workplace to conduct further enquires. This equates to only 60

Victorian Workplaces visited by the bullying inspectorate in a year. There are approximately 8 WorkSafe inspectors in the bullying unit.

In most cases WorkSafe inspectors have only focussed on whether a department or agency had a bullying policy and procedure. They haven't considered if the policy and procedure is effective and resolving the bullying situation. Where WorkSafe inspectors have intervened, on one occasion they did issue an improvement notice on the length of time it had taken to have an independent investigation and findings into a serious bullying matter which took nearly a year to complete. On a few other occasions where there have been bullying claims and then counter claims WorkSafe's position was that the matter was too difficult to resolve.

CPSU is also one of the unions with industrial coverage of WorkSafe Victoria and there have been a number of internal bullying complaints against senior management and executives that has resulted in difficulties in relation to an agreed investigation process. The question that is asked is: who oversees the Regulator in this case?

WorkSafe Victoria first developed bullying guidance in February 2003. The guidance was in two parts – part one dealt with Bullying in the Workplace and part two, which still hasn't been updated, dealt with Occupational Violence.

WorkSafe original bullying guidance was focussed on a broader information and education approach. Whilst CPSU took up the guidance and started running one day training for Health and Safety Representatives and members; there was only ad hoc information and training provided to government department and agency employees.

WorkSafe Victoria updated the Bullying Guidance in March and then June 2009 (This incorporated NSW). The guidance material focussed on a risk management approach to workplace bullying by identifying bullying risk factors, assessing health and safety impacts and how to control bullying risk factors: Organisational Change, Negative Leadership Styles; Lack of Appropriate Work Systems; Poor Working Relationships and Workforce Characteristics.

Whilst this guidance was welcoming there was very little information and training provided to government department and agency employees. A very high number of



employees would not be aware if the department or agency had a prevention of Workplace Bullying policy and procedure. In a few departments they have developed conflict procedures with bullying as a sub set item.

In early 2007 the Victorian Ombudsman delivered a critical report into how WorkSafe Victoria investigated bullying complaints within The Police Association. This resulted in a WorkSafe response to the Ombudsman's investigation by Dr Gregory Lyon SC and Gary Livermore: *The Regulation of Workplace Bullying – July 2007*. The response contained 28 recommendations for WorkSafe Victoria action, which included more specialised inspectors to investigate bullying complaints.

Whilst WorkSafe have implemented almost all the recommendations there has not been any further independent assessment done to see how effective the implemented changes were in WorkSafe bullying investigation processes or outcomes.

There have been two successful prosecutions by WorkSafe Victoria in relation to Workplace Bullying. In 2004 they prosecuted a Ballarat radio station and one of its employees with a \$50,000 and a \$10,000 fine. In 2010 it prosecuted Cafe Vamp – MAP Foundation and the owner and employees were fined a total \$335,000. In February 2010 WorkSafe also achieved an Enforceable Undertaking against the Macedon Ranges Shire where an employee was allegedly bullied by a senior manager.

A majority of the bullying cases identified in the Lyon and Livermore report related more directly to occupational violence which resulted in physical injury. Psychological injury from bullying has been harder to prosecute. WorkSafe has undertaken a significant number of workplace bullying investigations over the past 5 years but most of these investigations end with what would appear to be no action being taken. To date there has been very little information released by WorkSafe Victoria in relation to the findings from these unsuccessful investigations.

Over the last few years there has been difficulty in obtaining government department and agency investigation reports into workplace bullying allegations by members. WorkSafe Victoria has not supported these investigations being made available to the complainant or CPSU even with any privacy matters removed. Therefore it is welcoming to note the WorkSafe Act based investigation into

compliance by the Canberra Institute of Technology (CIT) with its duties under the WorkSafe Act 2008 and the Work Health Act 2011 in response to allegations of bullying and harassment at the CIT.

This 22 page public report by a regulator is a positive way bringing in effective change within organisations rather than as previously identified privacy concerns expressed by the Victorian regulator which denies access to information that could result in effective reduction in health and safety risks and cultural change in an organisation.

Because of difficulties in getting investigation reports into bullying related matters of recent times, CPSU has been supporting an OHS Stress Hazard Assessment where a written report with recommended actions is provided. Whilst this report is broader than bullying it is still useful in having a report that is assessable by the CPSU, HSRs and members which could result in effective cultural change dealing with health and safety hazards and risks occurring within that organisation.

Finally, whilst there will be focus on individuals that may be responsible for bullying it is important to ensure that an organisation's responsibilities and "Duty of Care" is not overlooked. Employers have responsibilities in providing a healthy and safe workplace which includes being free of bullying behaviour and harassment by their employees.

The employer also must ensure changes that they make in a workplace that could facilitate bullying behaviour are also taken seriously by the organisation. This includes changes that could significantly increase workloads on employees which can significantly increase conflict and the degree of bullying occurring in that workplace.

Carl Marsich  
CPSU OH&S Officer

## **Case Studies CPSU/CSA WA Branch – Not Confidential**

### **Circumstances**

In a law enforcement area, a part-time administrative assistant, described by colleagues as enthusiastic and conscientious, queried an administrative practice that she considered illegal. She discussed the matter with senior colleagues who agreed with her conclusions.

On raising the matter with management, she was fobbed off and told that her reading of the legislation was incorrect. She was removed from the unit telephone directory, forced to 'hot desk', excluded from training and interaction with her peers and despite management knowledge of her stress-related illness, was subjected to ongoing psychological abuse, isolation and marginalisation. This occurred over a period of approximately 23 months.

Following a subsequent period of illness, she was subjected to 'guilt trips' about letting the team down and asked when she was going to be sick again. The constant stress of having to move and re-organise her work constantly, having her hours of work changed and ongoing marginalisation resulted in a relapse of her stress-related illness.

### **What happened to remedy or not**

In September/October 2011, the agency's Health and Welfare rehabilitation officer misled her into attending what she and her husband were assured was a therapeutic counselling session with the agency's psychiatrist, ostensibly to help her deal with her work stress.

At no stage did Health and Welfare acknowledge or seek to investigate/address her bullying claims. After approximately one and a half hours of avoiding any aspect of the target's bullying issues, the psychiatrist deemed her unfit for work for two months and put her off work without pay.

When the target broke down and asked the psychiatrist how she was expected to bear the financial burden, the psychiatrist showed her out of the office into the lift lobby area and left her sobbing. The union advised her to file a workers compensation claim which she did. However at the time of writing, she has not been

returned to the workplace nor received any compensation or remuneration since that day.

### **Short and long term consequences to worker and workplace**

The action of the employer's representatives destroyed the trust that the employee was entitled to have in the ethical standards of her employer, who happens to be the prime state law enforcement agency.

A supervisor who also believed the practice to be unlawful and who attempted to support the employee was sidelined to a project, and pressure was applied to him at a moment when he was emotionally vulnerable due to the loss of a child.

The supervisor subsequently suffered a breakdown, and was offered a lump sum settlement payout in return for a confidentiality undertaking.

The female employee has since been deemed fit for work by a medico legal psychiatrist appointed with the employer's agreement.

She has suffered depression, IBS symptoms and multiple allergies, feelings of hopelessness and extreme financial strain. To date she remains out of the workplace and has received no income for approximately 8 months.

### **Circumstances**

A Union delegate, who was a team leader in a law enforcement agency, queried the lack of meaningful consultation in a workplace restructure. She was threatened by her manager who when challenged by the Union, backed down.

Her position was one of the few that were not re-classified, and she was subsequently excluded from a selection process for a promotional position she had been asked to act in on numerous occasions prior to her query. She was increasingly marginalised and criticised by her management.

This over-performer who was enthusiastic and committed to the quality of her work was increasingly type cast as a '*problem child*' and difficult employee.

Due to her knowledge and operational experience, a senior commissioned officer from another branch requested her to comment on the veracity of agency data. Following her response to the request, she was instructed not to speak to police by her director.

This action effectively gagged her from revealing system anomalies she was aware of and had continually raised through her management chain of command.

### **What happened to remedy or not**

The target lodged a grievance but was denied access to any of the statements that were on file relating to her, effectively curtailing her capacity to defend herself against allegations made by management and denying her natural justice.

### **Short and long term consequences to worker and workplace**

The ongoing marginalisation and demonising of the delegate caused her significant personal stress, particularly as pressure was also brought to bear on some of her supportive subordinates. She finally succumbed to the stress and had to take stress leave.

While away from her workplace, she applied for another position outside of her workplace and won such a position. Although back in the workplace, she is still recovering from the effects of her stress and has had to resign as a union delegate. She is currently attempting to obtain employment outside the agency.

### **Circumstances**

A middle level manager in charge of a warehouse facility gave testimony in relation to a demarcation dispute between his union and the other dominant union in his workplace. On the day that he gave his evidence a senior police officer from his workplace attended the industrial hearing and observed his entire testimony.

While it had previously been intimated that his management were in favour of the dominant union gaining coverage, his testimony did not support this position.

Following the hearing, his A/Director began to undermine his authority. His professional advice was constantly ignored, despite his significant experience over that of the A/Director, who had recently been redeployed to the agency. Some of

this advice was actually based on security policy that had been promulgated by the A/Director.

The target was subjected to disparaging comments about his physical appearance, excluded from management activities, his area of direct responsibility was constantly interfered with, his decisions overridden and he was increasingly isolated and marginalised by his senior management group.

He was instructed to cease specialised training of himself and his staff despite the occupational safety risks in doing so, and contrary to long standing custom and practice. When he proceeded in the interests of safety, he was charged with misconduct.

#### **What happened to remedy or not**

The misconduct charge was subsequently withdrawn and the target was then subjected to a disciplinary charge for which he received a written reprimand. He was later transferred to another directorate of the agency.

#### **Short and long term consequences to worker and workplace**

The successful bullying of this manager has impacted on other employees in his workplace. At least three other employees have been bullied by the same A/Director. Of these, one resigned, while the other two lodged workers compensation claims for stress.

The remaining victims were offered cash settlements subject to confidentiality agreements. One has accepted, while the other has chosen to continue her struggle to expose the culture of bullying in her workplace.

These perceived injustices have augmented feelings of hopelessness and anxiety in the manager. He continues to suffer sleep deprivation, has experienced severe chest pains on at least two occasions and suffers anxiety when he drives past his former workplace.

### **Circumstances**

A data analyst working in a small team found himself being tasked with more difficult tasks and higher output requirements than his team colleagues. When the workload became unbearable, he attempted to have it shared. Management responded by increasing his workload, demeaning him and ganging up on him, causing anxiety attacks at work.

During this period he was forced to work on a virtual piece-work basis, having to request individual tasks from his management. Once completed, he had to report on the task and then request another piece of work.

Often hours would pass before he was given any work, and he was instructed not to commence any work unless specifically instructed to do so. He was forced to sit and wait for a task to be doled out to him, while his peers just worked from a job queue.

This situation continued for approximately twelve months and the stress build up resulted in the target suffering further complications.

When a new Divisional Officer took over the area, the bullying continued with his participation. The target's database work was denigrated but no specific aspect was ever raised.

The Divisional Officer referred the target to the Health and Welfare branch and he was subsequently moved from his substantive position to a project role. The day after this occurred, the Divisional Officer sent an Inspector to the target's home to demand a response to an email he had written.

The move impacted on the target's stress levels and his family relationships suffered. During this transfer, the target was able to verify that his database which had been previously denigrated had been running flawlessly without any changes for a year. At no time was job performance an issue.

### **What happened to remedy or not**

In December 2011, following a meeting with Health and Welfare, the target was referred to a counsellor who was to determine his return to his substantive position.

Although the counsellor formally supported his return to his workplace, the target was notified by Human Resources that he would not be returning to his substantive position as it was not in his best interest.

The target had no involvement in this final determination. The agency's Health & Welfare branch told him that if he failed to co-operate he would be placed in Rockingham or Mandurah.

### **Short and long term consequences to worker and workplace**

The target has consequently suffered multiple anxiety attacks, psoriasis, anxiety and insomnia, developed gastritis and has had to undergo 2 endoscopies and 1 colonoscopy as a result. He has undergone approximately 3 years of counselling privately and family relationships are distant. The HR Director has told him to "*look for another job*".

### **Female – Age unknown – commenced employment in January 2009**

February 2012, member left work in distressed state following a meeting between her manager and a work colleague to which she was initially invited but then told not to attend. Various accusations/allegations in relation to her work performance and practices were made to this work colleague in this meeting and member was not given the opportunity to respond.

When she tried to return to her workplace to access her email and personal belongings her security access had been cancelled. When she sought an explanation none was provided.

She was advised by other staff that they had been instructed not to have any contact with her and that her personal leave and how "sick" she was, were discussed in team meetings.

Member lodged a claim for workers compensation for stress caused by this incident which exacerbated her anxiety over an unmanageable workload and concerns for her personal safety (from a client).



She also lodged a grievance with her employer regarding the incident with her manager. Workers Comp claim was settled with a lump sum payment made but no admission of liability by employer. Member resigned employment and so grievance not progressed.

Short term consequences on member were stress and anxiety. She used up her paid leave prior to payout and so suffered loss of income.

Long term consequences are too early to tell but member has found a new position which required relocation.

Consequences for the workplace – they lost an experienced member of staff in a workplace which already has problems with a high workload. Incident with manager was known within the workplace as confidentiality was allegedly not respected.

May potentially negatively affect how other employees respond if they experience similar difficulties in the workplace.

### **Female – mid 50s – commenced employment in this role in 2008**

Member works in busy customer service area requiring face to face contact and telephone contact with customers. The team shares the counter work in between taking calls and undertaking paperwork.

Member came into conflict with manager when various options to resolve management of workload did not fix the issues. Also had conflict with work colleague appointed in 2009 who member feels undermined her with management and was treated favourably by management as a result – given acting and promotional opportunities.

Undertook another role outside of this area for 12 months and had positive performance assessment. When she returned to her role she says she was isolated by team, not given adequate training on new systems and procedures and overloaded with work compared to other employees.

In May 2011 after an altercation with a colleague she left the workplace in a distressed state and has not been able to return.

Member lodged an OSH incident report and a workers compensation claim. The OSH incident to my knowledge has not been investigated. Her workers compensation claim has been disputed by the insurer on the basis of conflicting stories being provided by other employees and she is currently receiving legal assistance with appealing against this with Workcover.

Consequences for member have been psychological, requiring treatment both through therapy and medication over several months. She was previously, in her own words, a strong person who was able to cope and problem solve. She has not been able to work since although is now participating in a return to work programme.

### **Prisoners Review Board**

This case involved a group bullying issue where the Chair of the Board (a judge) and her Registrar were accused of bullying and harassing staff through micromanagement, poor training, belittling of staff, favouritism in relation to promotional and acting opportunities and nepotism. The bullying occurred over a period of 3 years: 2009 – 2012 during the tenure of this particular judge.

Actions taken to resolve the issue included:

- Lodging grievances both individually and collectively with the Director General of the Office of Attorney General. This resulted in acknowledgement that there were problems, the transfer of several of the victims to other worksites, and appointment of a series of Office Managers which it would appear would be replaced if they showed support for the staff rather than perpetrators.
- An investigation by an external investigator appointed by employer which the union was not permitted to see the terms of reference or the final report.
- Requests were made to the Public Sector Commissioner for a special inquiry under s24 of the Public Sector Management Act 1994. Such requests were not acknowledged or acted upon.

- Approaches to the Attorney General failed to produce any positive outcomes.
- A change management group was appointed to survey staff and make recommendations on improvements. The survey supported the widespread bullying claims and made recommendations but these were not acted upon by the employer.
- Stories in the media also failed to produce any positive outcomes.

Consequences for staff included physical illness and emotional distress, with some requiring anti-depressant medication to enable them to cope. Staff turnover in this workplace was measured at 49% for the 12 months ending September 2011 with some resigning their employment and others requesting or being transferred to other parts of the organisation.

The consequences for the workplace have been a mixed. The judge did not renew her tenure as Chair, the Registrar is currently on leave and so the workplace has improved markedly.

Some of this improvement however can be attributed to the fact that the current staff are not the employees who were present during 2009 to 2012 and so have limited knowledge of and have not been negatively affected by the previous culture. It is also notable that of the 13 people who initially left the workplace, none have been able, or willing, to return.

### **Female - early 50's - commenced employment in 2010**

Member complained to her manager about the behaviour of two work colleagues (whispering, exclusion, belittling and condescending attitude). She also reported being subjected to differential treatment in relation to her work performance. Negative behaviour towards member escalated after reporting the problem.

She reported intimidatory behaviour by the CEO. Rather than being supported in trying to return to her position, she received disrespectful and belittling behaviour from the manager of the area to which employer tried to transfer her. Member left the workplace in January 2012 and has yet to be declared medically fit to return.

Member lodged a grievance against CEO. This was investigated by a consultant paid for by employer. The findings were that there was no evidence to support bullying behaviour.

The CPSU/CSA and the member have sought a copy of investigator's report to determine the basis of the findings but this has been refused by employer and we are now resorting to a Freedom of Information request. Member has also lodged a workers compensation claim with the assistance of a lawyer, which is currently still pending.

Consequences for member are that she is being treated for clinical depression via counselling and medication and she has not worked since January this year, so financial disadvantage has also been an issue for her. Anecdotally the culture in this workplace is one of bullying.

Other staff are intimidated and unwilling to speak out and this case has failed to provide them with any confidence that reporting the issue will bring about positive change, and in fact they may feel such action will result in negative consequences.

#### **Female - early 50's - commenced employment 14 years ago**

Member reported bullying by her supervisor. Behaviours included intimidation by shouting and threatening her with dismissal, physically standing over her, leaving her alone in the worksite in breach of security policies, use of sarcasm and publicly criticizing her work performance.

Member also reported that a number of other employees had resigned over the behaviour of this supervisor and she had witnessed the aggressive actions towards other employees.

Member lodged a grievance which took nearly 12 months to conclude and findings were that all issues were "unsubstantiated". Member lodged a workers compensation claim for stress also around 12 months ago – this has now been referred to our lawyers as a decision on her claim has still not been made by the insurer.

There was an attempt at mediation to resolve issue between her and her supervisor. This resulted in member leaving the workplace in tears and highly distressed, this was witnessed by a union staff member who attended as a support.

### **Female - mid 60s - commenced employment in 2008**

#### **Situation**

Employee was subjected to bullying in her workplace since early 2010. She was exposed to unfair treatment by management making it difficult for her to carry out her assigned task, duties were changed without consultation and she was directed to work hours which were not the hours she was employed for (despite regularly working longer hours of her own volition to ensure work was completed) and threatened with discipline if she did not comply.

She returned from a period of approved leave to find that her computer password had been changed, personal items were missing and pieces of her office furniture had been removed. She left the workplace in early 2011 following a particularly stressful meeting with her line management which left her distressed for the remainder of the day and has not yet returned to work.

#### **Attempts at resolution**

Employee has applied for workers compensation and this was accepted and eventually settled as she faced the cessation of weekly payments due to her age. A complaint has been lodged with her employer by the employee's husband in early June 2012, this has yet to be responded to.

Employee tried to resolve the issues herself by confronting the perpetrators when the various incidents occurred but this was unsuccessful and just led to further bullying and harassment.

#### **Consequences for employee and workplace**

The consequences for this employee was that she attempted to take her own life and is still being treated for major depression and on-going panic attacks. Prior to this series of events she was a normal, healthy person who enjoyed her work and had numerous awards and positive comments regarding her work ethic and performance.

This situation has had negative impacts on her family and social life as well. She is now being pressured to return to work at the same workplace but there have been no consequences for those involved and so it is likely she will be returning to a work environment which has not changed. Reportedly there are other employees who have left employment as a result of the bullying culture in this workplace and so the consequences for the workplace are high staff turnover and on-going conflict.

### **Female - mid 20s**

Employee made a complaint of bullying by her co-supervisor including unjustified and public criticism of her work performance, badmouthing her to co-workers, overloading her with work, micromanagement, ignoring and isolating her, undermining her and interfering with her personal property.

On the advice of her employer the employee attempted to deal with it on an informal basis, on two occasions the perpetrator was verbally warned about her behaviour by the employer.

However the bullying continued and employee, again on the advice of her employer, lodged a formal grievance. Employer dealt with the grievance as disciplinary investigation of supervisor using only 4 narrow terms of reference which resulted in a finding that it was a personality clash and not bullying.

However employee was denied a request for a copy of the investigator's report and was not entitled to know if any action was taken against the supervisor to address the problem.

Employee lodged a workers compensation claim for stress caused by bullying in the workplace which was investigated and accepted. She suffered, and was treated for, depression and was unable to work.

Current status is that employee is now fit for work but not at her original workplace. Employer attempted to place her in a new position which would entail excessive travelling from her home. Her rehab support team agreed this was unacceptable.

This employee has still not returned to work some 12 months later as her employer has still not found her a suitable position. She is now considering settlement of her workers compensation claim.

There have been minimal consequences for the bully who remains in their substantive role.

### **Female employee, with over 20 years experience in her field**

Employee was appointed as a director of a number of staff. Several of these staff reported a problem with another director they had to work with who had been bullying staff for some time. This had been previously reported and the director concerned had been sent on a training programme to address the problem.

The trainer was prompted to email the agency and raise concerns about the behaviour in the agency and advising that an internal inquiry should be undertaken.

Employee was concerned about the behaviours in her agency and wrote a protocol of expected behaviour for staff in the agency and sought expert legal opinion on the protocol. After she released the protocol a high level executive in the agency sought to block it, citing the references to bullying as being unacceptable.

Attempts were then made to restrict her access to other agencies and restricting her ability to do her work. Other employees became aware of her interest in the bullying issue and sent her unsolicited emails complaining about bullying behaviour in the agency. She raised these with her executive but was brushed aside. The agency had no grievance officers or OSH reps to raise the issue with.

In a separate matter this employee also became aware of a breach of EEO and felt obligated to report this. She was encouraged by executive staff not to take the matter further.

Employee was later subjected to two hours in a room with one member of the executive and a director, who berated her. She was not offered the opportunity to have a representative with her during this meeting. In this meeting she was accused of lying about the bullying issues.

Following the meeting emails were circulated widely amongst staff criticising this employee and her team. This process culminated with attempts to terminate her employment. The employee took the matter to the WA Public Sector Commission but did not receive a response. She also sought and continues to receive legal advice. She is now the subject of disciplinary action.



## **Case Studies – Not Confidential**

The following cases illustrate the particular problems of injury prevention and claims management within the Regulator's own workforce. A theme that emerges from these and other cases is that there is no "umpire" to complain to when staff are exposed to safety risks and when the claims process goes wrong. The Inquiry needs to consider options for addressing the conflict of interest held by WorkCover in its roles as a PCBU and as the WHS and WC Regulator.

### **Case 1**

I work in a very high pressure area of WorkCover where there have been numerous OHS problems.

A few years ago I was drowning in ridiculous workloads, like most of my colleagues. It was pointless going to management because the acting Director would just say things like: "these are perfectly manageable workloads that are comparable to private sector stress levels".

I began to have health problems because of stress at work. My doctor said that I should lodge a workers compensation claim.

After lodging the workers compensation medical certificate, I was contacted by the Return to Work Officer in WorkCover. He said that he was not going to accept my claim. He did not explain why my claim would not be accepted. The Return to Work Officer also attempted to discredit my doctor's diagnosis and advice.

Not surprisingly, this lack of support upset me even more and I went off on sick leave. I received treatment at hospital for my work-related symptoms. I did not understand the process of making a claim. To this day I still do not understand why the WorkCover RTW staff are authorised to summarily dismiss a claim from an injured worker.

I was injured at WorkCover because of poor OHS work practices and bad management. Then I suffered again when my claim was not processed without explanation. On return to work from sick leave I was targeted by management.

This is not fair and I had nobody to complain to because I work at WorkCover.

## **Case 2**

I resigned from my job with WorkCover, sold my house and moved interstate after being subjected to bullying, intimidation and impossibly high workloads.

When I attempted to lodge a workers compensation claim for work-related stress I was given no assistance by the organisation. The Return to Work Officer was only interested in dissuading me from lodging a claim.

Management was also hostile. They created the unsafe work conditions that led to my emotional and psychological injury in the first place. I gave up and didn't proceed with the claim. I decided that it was impossible to work for an organisation where management cultivated a work environment of bullying and unsafe work practices.

## **Case 3**

I left my job at WorkCover after receiving compensation for health symptoms arising from being bullied. There was no attempt by the employer to deal with the OHS problems in my area before or after my claim. The costs of my claim were entirely avoidable if the employer had acted responsibly and done what the OHS Act required.

I was not given a safe place of work and felt I had no alternative but to leave my job.

## **Case 4**

My claim for psychological injury was accepted and I have received compensation for nine months. The Director who helped create the bullying environment has left but there remains a toxic culture.

Myself and others reported the bullying to senior management in WorkCover years ago but nothing changed. So I feel that the claims costs are because management didn't do the right thing.