

**Submission
No 23**

INQUIRY INTO ALLEGATIONS OF BULLYING IN WORKCOVER NSW

Organisation: Industrial Health and Research Foundation t/as Workers Health
Centre

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Workers Health Centre

**Submission to the NSW Parliamentary Inquiry
August 2013**

Allegations of bullying in Work Cover NSW Inquiry

**Submitted by Michelle Burgess on behalf of the
Industrial Health and Research Foundation t/as Workers Health Centre**

**Suite 2. Ground Floor, 133 Parramatta Road,
Granville NSW, 2142
PO Box 123, Granville NSW, 2142
Phone: 9749 7666 Fax: 9897 2488**

Introduction:

1. Industrial Health and Research Foundation trading as Workers Health Centre is a not for profit organisation that provides rehabilitation and injury management services for injured and ill workers, government, business and the community. Our clients are predominately workers from the manufacturing, transport and logistics, warehousing, construction and essential services such as Police and Fire.
2. The Centre has been in operation since 1976 and we are a small business. The business is genuinely committed to the fundamental principles of Delivering quality rehabilitation services in accordance with the HWCA Nationally Consistent Approval Framework and Principles for workplace rehabilitation providers.
3. The Workers Health Centre welcome the opportunity to make a contribution in our capacity as a NSW Work Cover accredited Rehabilitation Provider in relation to the NSW Parliament Inquiry in relation to Allegations of Bullying in Work Cover NSW.
Workers Health Centre believe our role as Workplace rehabilitation providers is an important one - to identify and address the critical physical, psychological, social, environmental and organisational risk factors, which may have an impact on a worker's ability to successfully return to work.
4. Workers Health hold a strong view that one of the critical factors currently influencing outcomes of injured and ill workers having a successful and durable return to work is the unnecessary bullying tactics utilised by Work Cover NSW Scheme Agents(may also be referred to in this document as "the insurer").
5. For the purposes of this submission Workers Health Centre rely on the definition of bullying as outlined in the Safe Work Australia Draft Bullying Code of Practice :

"Workplace bullying is defined as repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety. Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time. Unreasonable behaviour means behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening."

The Relationship:

6. A direct relationship exists between the NSW Work Cover Authority and the Scheme Agents(the insurers)
7. In NSW the seven Scheme agents are appointed by Work Cover to:
 - issue workers compensation insurance policies

- determine and collect insurance premiums
 - manage workers compensation claims
 - provide support for injured workers, including rehabilitation
 - pay workers compensation benefits to injured workers
 - manage any third party service providers
8. A scheme agent is appointed under section 154G of the Workers Compensation Act 1987 (No 70) to act as agent for Work Cover (the Nominal Insurer).
Scheme agents issue and administer policies on behalf of Work Cover.
9. A scheme agent is, in the exercise of functions under an agency arrangement entered into with the Nominal Insurer, is subject to the direction and control of the Nominal Insurer as provided by the terms of the agency arrangement. Work Cover will act for, and exercise the powers of, the Nominal Insurer.¹
10. Given the relationship Work Cover as a PCBU in accordance with Work Health and Safety Act 2011, has a primary duty of care to ensure workers and others are not exposed to a risk to their health and safety.

A primary duty of care is owed by a PCBU when it:

- directs or influences work carried out by a worker
- engages or causes to engage a worker to carry out work (including through subcontracting)
- has management or control of a workplace.
- Contributes something towards the work being done.

The PCBU must meet its obligations to provide a safe and healthy workplace for workers or other persons by ensuring issues such as:

- safe systems of work
- a safe work environment
- notification and recording of workplace incidents
- adequate information, training, instruction and supervision is given
- compliance with the requirements under the work health and safety regulation
- and effective systems are in place for monitoring the health of workers and workplace conditions are complied with.

All issues directly relevant to the prevention and management of bullying in the workplace.

Workers Health Centre contend that Work Cover NSW have not only a duty and responsibility to their immediate employees but to Scheme Agents and claimants within the NSW Work Cover Scheme.

11. Work Cover has been the subject of media articles relating to allegations of workplace bullying and harassment of its own employees dating back to the late 1990s.
12. On 28 September 2010, the DPC engaged PricewaterhouseCoopers (PwC) to undertake investigation, analysis and make recommendations in relation to allegations of workplace bullying and harassment in Work Cover.
13. The report detailed responses from 60% of the employees at Work Cover and verified the allegations of systemic bullying within the organisation. The report stated :

¹ Work Cover Authority NSW website

“A significant number of interviewees shared their belief that they had suffered and witnessed behaviour which they considered bullying and harassment. Many also reported that a culture of bullying and harassment has existed and in many cases still does exist within Work Cover. These interview findings tended to be supported by the survey results where 40% of respondents indicated they had been bullied or harassed in the workplace.²

14. More recently is the widely reported case of a Work Cover employee who had been bullied in the workplace. Deputy Industrial Relations Commission President Harrison ordered that the man be reinstated with no detriment in a decision which was wholly damning of the manner in which the disciplinary matter had been handled. DP Harrison stated that in all his time on the bench he struggled to find an example where someone was dealt with more unjustly and that Work Cover’s handling of the matter was an “absolute disgrace”. DP Harrison further stated that the conduct by Work Cover, the Safety Regulator in NSW, was “shabby and disgraceful. It lacks any objectivity and has the characterisation of institutional bullying.”³

15. **Current Culture within WorkCover:**

Despite recommendations made for improvements in corporate leadership and cultural change, policy and procedure in the PwC 2010 Report and a number of claims by Work Cover of “improvements” it is evident the culture of systemic bullying remains largely unchanged.

16. A systemic dysfunction yet to be successfully addressed.

In fact what has now transpired is that the inability for Work Cover to deal with matters of bullying in a meaningful way internally has now caused the behaviour to have spread like a “poison” through to Work Cover Scheme Agent staff.

It is not surprising that Work Cover has struggled to effectively deal with bullying complaints of injured workers by Scheme Agents when it has been unable to control bullying behaviour within its own office.

17. **Rehabilitation clients experiences:**

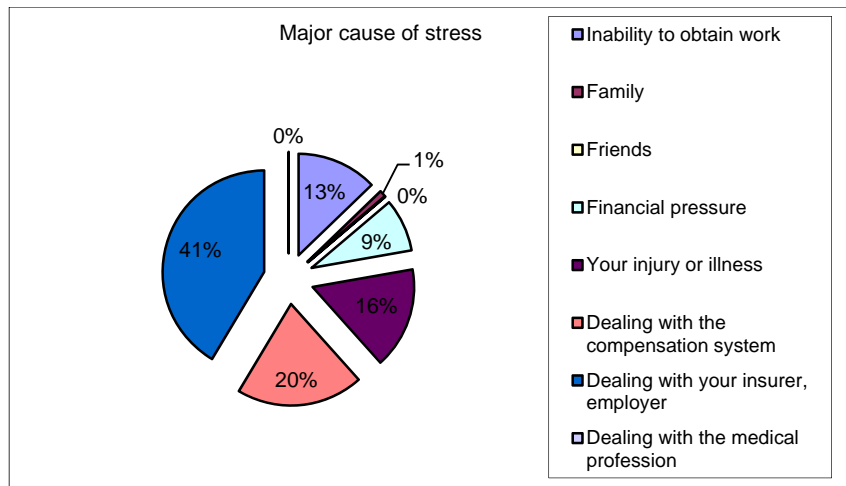
Our experiences on a day to day basis working with injured workers and Scheme Agents exposes a variety of issues that are considered to bullying in accordance with the Safe Work Draft Code of Practice definition previously mentioned.

Evidence exists that some Agents have employed various bullying measures to injured workers. A survey of injured and ill workers conducted by the IWSN in 2012, showed 42% of respondents reported that dealing with the insurer was a major cause of stress in their recovery.⁴

² PwC NSW Department of Premier and Cabinet (DPC) what would you like to grow? Page 23

³ Public Service Association website

⁴ Injured Workers Support Network Survey Findings May 2012



“There appears to be a distinct lack of awareness within the current scheme as to how to better manage these types of psycho-social hazards. In fact, it appears that the system creates many of these types of hazards by failing to provide healthy environments that promote rather than thwart rehabilitation and recovery. Most prevalent is the reporting by injured workers of the disrespectful and aggressive treatment directed to them from insurance case managers...”⁵

18. **The current climate:**

Changes to the Workers Compensation laws in 2012 have been met with new gusto from Scheme Agents, with widespread reports from clients of bullying and harassment from insurers and the unwillingness of Work Cover staff to assist.

19. Discussions with clients reveal significant concerns about mental health and social relations as a result of bullying by Scheme Agents.

Both are crucial for recovery and rehabilitation needs of injured workers. Many injured workers have developed what are often referred to as secondary psychological injuries. These symptoms of anxiety and depression often cited as a major barrier by injured workers as they struggle to overcome their injury or illness. Aggressive treatment and a distinct lack of support offered by Agents rather than the injury itself that triggers these types of symptoms.

When some workers complain about poor behaviour they report there is little follow up or positive action taken to assist them.

20. In short, evidence suggests most clients despite being encouraged to do so by their provider, will not make a complaint to Work Cover about their Scheme Agent.

21. With a public perception that the Work Cover Authority are a toothless tiger with a poor public record themselves regarding bullying, the majority of injured workers won't waste their time reporting the behaviour to the Authority.

⁵ Injured Workers Support Survey Network Findings May 2012

Client DB stating “the insurers work for Work Cover why would I report it – so Work Cover can investigate Work Cover!

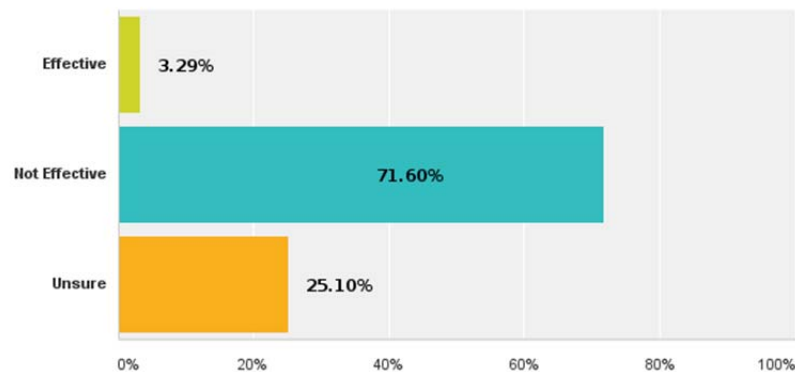
Client JJ reports “I have a psychological injury from workplace bullying and now I’m being bullied by my insurer!

Not letting me know if my claim is approved for weeks, no income for 11 weeks now, harassing phone calls and misinformation, not returning calls or email. I tried to complain to Work Cover but that was just a waste of time and left me anxious for a week and unable to sleep”

22. A further survey conducted by the Injured Workers Support Network in 2013 supports the ineffectiveness of the regulator finding that 30% of participants stated that whilst they would feel comfortable raising bullying matters with their employer, almost 71% answered that they had no faith in the Work Cover as the regulator in dealing effectively with bullying complaints.

Q6 How effective do you think State WHS regulators (WorkCover/WorkSafe) are when dealing with workplace bullying complaints?

Answered: 243 Skipped: 0



6

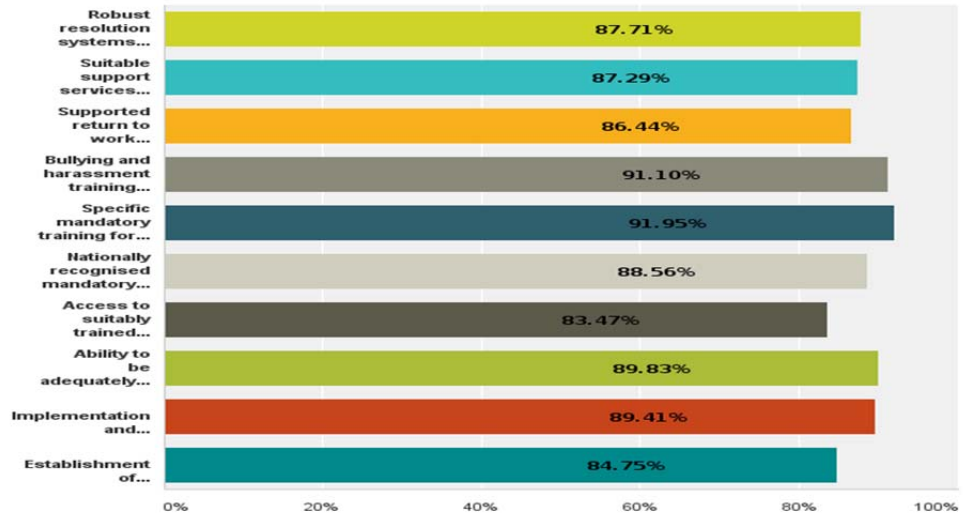
23. Interestingly in a new world of dealing with bullying in the workplace , 89.4% of respondents supported the notion of a developing a Code of Practice with robust Implementation and enforcement of workplace bullying and harassment policy and procedures by Work Cover⁷

⁶ Injured Workers Support Network Survey Findings Bullying CoP 2013

⁷ Injured Workers Support Network Survey Findings Bullying CoP 2013

Q9 Please tick whether you agree with the following (check all statements you agree with) A code of practice must include:

Answered: 236 Skipped: 7



24. Likewise the very thought of making a complaint about their Scheme Agent case managers bullying behaviour is abhorrent to most injured workers who fear reprisals and further grief from the case manager.

Cases exist where workers have reported the poor behaviour of their case manager to a more senior manager within the Scheme Agent with the result being further aggressive behaviour and/or isolation from the case manager. The spectrum of retribution wide ranging from Isolation in the form of not returning calls or emails, withholding payment for reimbursements for medication and travel to delaying approval for medical treatment for weeks.

Workers often left unable to comprehend why they are being vilified by the Agent simply for asking to be treated in a fair and reasonable manner.

“The insurer refuses to pay for this (my physio and hydro) and that despite my doctor and other specialists who tell them the treatments are necessary. The insurer can’t even keep track of my paperwork. You’re just a number on a roundabout controlled by the insurer .If only I could get off.” IW1

“The insurer case manager knows I made a complaint about her , now she is making my life a misery. Ringing me every day for no real reason other than to annoy. It’s really getting me down”IW2

25. The following quotes are reflective of the treatment workers are currently receiving and are often in contravention of the Workers Compensation Act:

"do what your told-we are in charge of your claim and you will do what we say-like it or not we can cut you off "

"Suck it up and get back to work then"

" other people have far worse injuries than yours, you're alright so get back to work and neither of us will have a problem" (Psychologically injured worker who had just been released from 3 weeks in a Mental Health Unit)

"I live in a regional area, no public transport; no income for 11 weeks now, requested financial assistance in getting to my IME appointment .No reply from the insurer after many attempts to contact and so I couldn't attend because I had to means of getting here. Insurer then cuts me off for being noncompliant!"

"Be clear you need to do what I say the new laws mean we have the authority to cut you off from benefits. If you want to feed the family it will be much better if you just go back to work."

"Other people have had this treatment and it did not work for them so it will not work for you".
"If you want the treatment and want to get better you should use Medicare or your private health insurance to have the treatment".

Get your priorities right by returning to work as soon as possible, especially if I would like to keep the family home".

26. Unfortunately these behaviours are not isolated incidents. Evident is the lack of empathy in relation to the psycho social issues resulting from the decisions made by Scheme Agents. This bullying behaviour from insurers place unnecessary stresses on the lives of ill and injured workers who are already struggling with existing psychological or physical injury and pain.

This has a dire effect not only on the wellbeing of the injured workers and their family but often adds cost to the claim.

These types of unnecessary and inappropriate pressures run counter to injured workers recovery and rehabilitation needs and do not uphold the fundamental principles of the management of injured workers within the Work Cover Scheme.

27. Work Cover publications promote the importance of effective injury management yet the practices utilised by bullying Scheme Agents is far from the advice given in their own publications.

Effective injury management relies on the cooperative efforts of all participants – employers, workers, insurers, doctors and other health practitioners.

The key principles underlying the safe, early and durable return to work of injured workers include:

- Key parties working together.
- having systems in place to ensure everyone at the workplace agrees, understands and knows what to do in the event of an injury
- early reporting of injuries and early intervention
- the workplace being the most effective place for the majority of workers to recover from their injury⁸

⁸ Work Cover publication Guidelines for Employers' Return to Work Programs'.

28. Workers Health Centre Experiences as the Provider:

High levels of aggressive behaviour are currently being experienced by Centre staff when dealing with Scheme Agents in pursuing referral approval and providing case injury management.

- Aggressive behaviour and language from Scheme Agent staff
- Lengthy delays in receiving approvals for rehabilitation services causes immediate delays in triaging clients and organisation of return to work programs adding stress to Centre staff and our clients.
- We regularly experience documents being “lost’ in the Scheme Agents internal systems and unnecessary conflict regarding the client’s choice of provider.

Common feedback from insurers regarding our referrals includes:

- “We can’t approve the services because you’re not on our panel”.
- “The doctors didn’t make the referral so we can’t approve services”.
- “Why has the injured worker has chosen us as their provider –it’s our (the Insurers) job to send them to one”.
- “This worker doesn’t need a provider”...
- “We can find a provider closer to where they live”.
- “They were referred by their Union, not us so we can’t approve services.”

29. There is considerable evidence to support the concept that initial engagement of key parties (worker, employer, doctor, insurer and other providers) in implementing an injured worker’s return to work improves social and health outcomes for the worker concerned and significantly reduces the duration and associated costs of claims. Refusal of treatment regimes and aids for injured workers suggested by medical professionals is a common frustration. It is the view of the Centre, underpinned by the legislation that if a suitably qualified practitioner certifies and requests particular aids or treatment regime that will assist an injured worker, then approval should not be unreasonably withheld. Again these delays add unnecessary stress to both my staff and our clients.

30. The staffs of Scheme Agents appear also to be suffering from internal bullying behaviours being given huge unworkable case loads, being subjected to unreasonable monthly targets to achieve bonuses and being managed out if the targets are not reached. Case managers have complained and in recent instances have broken down in tears to Centre staff contending that they are “frustrated and overworked,’ need to reduce the cost of the claim or Close the case to ensure their “targets/bonuses” are reached, are worried about their job security if they don’t and are trying to manage in excess of 100 cases.’

31. Drs and allied medical practioners are not exempt. We are aware of some Drs who have chosen not to take on Work Cover clients as it is “too hard”.Drs report being yelled at and bullied by Scheme Agents into sending workers who are still injured and ill back to work too soon against their professional advice, having treatment regimes denied, their bills being questioned and unpaid for long periods of time, to name a few.

32. The bullying and harassment being allowed to occur and grow within Work Cover is at epic proportions. All stakeholders within the NSW Work Cover regime are at risk and/or suffering - Staff within the Authority’s own offices ,Scheme Agents staff ,injured

workers, GPs and Surgeons and allied health practitioners all being subjected to the bullying in one form or another.

33. Remedial Actions:

To complement the Fair Work measures that will commence on January 1, 2014 that relate to bullying and as a first measure in restoring the public and injured workers faith in the Work Cover Authority the NSW government must:

1. Immediately seek consultation and co-operation with injured workers, their representatives and Scheme Agent representatives to develop new operational guidelines and directives regarding the management of ill and injured workers within the Scheme.
 2. These should include as a minimum respectful and dignified methods of communications in dealing with clients, clear explanation and engagement with workers of processes within the Scheme that are closely aligned to the philosophy of workplace rehabilitation - creating a positive environment that delivers durable return to work outcomes for all stakeholders. Clear methods of reporting bullying by Scheme Agents to the regulator for investigation and actioning will be key.
 3. It is imperative that these agreed operational directives then form part of the Scheme Agent Renewal Deeds due to be renegotiated in 2014. Specifically the new practices must be recognised and like other key issues must form part of agreed performance measures.
 4. Support the making of the Prevention Bullying Code of Practice thru Safe Work Australia that is fundamentally based around the use of established risk management processes and shareholder engagement and education.
 5. Re-establish /reform the disbanded the Workers Compensation and Work Health and Safety Council as a further tool in supporting both the Work Cover Authority generally, reporting to and advising the Minister and NSW government on related matters and as a means for Worker Cover employees, Agents and workers to raise concerns at times when internal systems are inappropriate for handling of bullying issues.
34. It is integral to reform and the eradication of bullying within Work Cover and its Agents that a further review must be taken that includes:
- Review of the functions of the leadership of Work Cover and their ability to successfully carry out their functions under the terms of the legislation. Moira Jenkins, PhD, A Risk Management Approach states the following of 'Where to start with Workplace bullying ...' 'The first step is having a strong management commitment to the risk management approach. The organisations leadership team needs to be motivated to prevent bullying from a systemic and proactive perspective rather than a reactive perspective or nothing will change.'⁹
 - Review of the Policy and procedure within both Work Cover, including their Scheme Agents.

⁹ Moira Jenkins, PhD, "A Risk Management Approach"

35. An appropriate approach would be to follow the guiding principles of Wyatt and Caponecchia¹⁰ who list what is expected of a PCBU with regard to meeting their duties regarding the prevention of bullying:
1. To be informed about workplace bullying and other unacceptable workplace behaviours.
 2. This would include understanding the employer's responsibilities in relation to controlling the hazard of workplace bullying. Employers should also know what constitutes best practice in relation to managing workplace bullying.
 3. To commit resources to the prevention and management of unacceptable behaviours at work such as workplace bullying
 4. To develop, maintain and continuously improve a risk management system in relation to workplace bullying
 5. To obtain commitment from senior staff to thoroughly implement and continuously improve the risk management system.
 6. To formally consult with employees at all levels about the development of prevention policies and procedures in relation to workplace bullying
 7. To undertake ongoing risk assessment and hazard monitoring in relation to bullying behaviours at work
 8. To promote awareness through the provision of training, instruction, information and engagement for example through discussion, meetings and supervision
 9. To ensure the provision of appropriate risk controls through various initiatives including the development of early notification systems and the handling of complaints in a competent, impartial, confidential and timely manner
 10. To provide support and advice to all stakeholders as required using internal and/or external services
 11. creating cultural change that restores public confidence
35. Establish revised robust zero tolerance approach policy and procedure in relation to prevention of bullying in the first instance. In the event that bullying is identified the use of risk management processes are employed.
36. Establishment of a dignity and respect charter mirroring the Unions NSW latest model.
37. Work Cover jointly with the Public Service Association of NSW as the principal union should conduct an annual bullying in the workplace survey of all Work Cover's workers. This survey should continue until such time as both parties no longer believe bullying is an issue.

¹⁰ Wyatt and Caponecchia "Preventing Workplace Bullying: An Evidence-Based Guide for Managers and Employees"