

House of Representatives Inquiry into Workplace Bullying
PO Box 6021 Parliament House
Canberra ACT 2600
15 July 2012

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Dear Honourable MPs

Workplace bullying additional comments

I would like the Committee to consider this letter in addition to my previous submission. I attended the public hearing in Sydney on Tuesday 10 July 2012. I found the whole day interesting, but I would like to concentrate on the session you had with Work Cover NSW. I will copy this letter to Mr _____ who spoke on behalf of Work Cover NSW at the public hearing.

PREVIOUS EXPERIENCE WITH WORK COVER NSW

Firstly I would like to explain my experience with Work Cover NSW prior to the public hearing. When my employer, the _____ refused to provide me a safe working environment, and actually forced me into an unsafe environment, I approached the _____ Employment Relations person responsible for my return to work, Ms _____. I explained to her that I believed that the University was required by law to provide me a safe working environment and if that was not provided I could go to Work Cover. Ms _____ shrugged and said something close to, "do what you want, the University won't care. The University will pay the fine and move on, you will still have no job." I rang Work Cover. This was about 18 months to 2 years ago. The person I spoke to I felt was quite negative about me reporting work place bullying. They told me that all Work Cover could do was see if there were policies in place to deal with bullying. I said that the policies were corrupted in process. The response was that a claim would be too difficult to prove as it was my word against the University's. I was quite upset, but basically was told there was nothing I could do as an individual in this circumstance.

WORK COVER NSW COMMENTS AT THE SYDNEY PUBLIC HEARING

I felt my experience was reinforced at the public hearing. The comments made clearly indicated to me that Work Cover did not investigate bullying UNLESS it resulted in physical injury or death or a successful suicide. I took the opportunity to discuss this briefly with Mr [redacted] during a break. I asked him why Work Cover had not investigated my previous workplace [redacted] when this workplace was clearly negligent in preventing injury from workplace bullying and mobbing. I said something along the lines of, “it is a shame my suicide attempt was not successful, perhaps then Work Cover would do something about what it happening at the [redacted]” He recommended that I “call the 1300 number”. I told him that was exactly what I planned to do, and would mention his name.

I am hoping the Committee would join me in my current experiences with Work Cover which I feel demonstrates that Work Cover NSW **HAS NOT** established a positive system to deal with bullying in the workplace.

LEGAL ADVICE ON WHETHER MY CASE IF LITAGABLE

Prior to phoning the “1300 number” I visited a solicitor from Carroll and O’Dea who had 30 years of experience in this field. I asked him whether or not pursuing Work Cover would affect my legal proceedings, to which he explained that it would not, but could cause the [redacted] to stick their heels in further regarding my claim and make this more arduous. Having already been told the previous Vice Chancellor of the [redacted] had announced he would make “an example of me for speaking publically” I decided that was not a deterrent. I then asked the solicitor whether or not he felt the [redacted] was negligent in my case, and without hesitation he said yes. He also said that it was his opinion and observation that Work Cover usually selects only the easy cases to litigate, and workplace bullying was not easy.

RINGING THE “1300 NUMBER”

On Friday 13th July 2012 I rang the “1300 number”. I was put through to a Mr [redacted]. I explained to Mr [redacted] I was going to record my experiences in my reporting process for the purpose of documenting them for submission to the Parliamentary Inquiry into

Workplace Bullying. I will highlight what I consider the relevant aspects of the process.

1. When I spoke about workplace bullying Mr [redacted] explained that it was a difficult area to investigate because it was dealing with “he said, she said” scenarios.

I agree with the comments made by a delegate during the “Impact Statements” that if this is what is understood to be workplace bullying then workplace bullying is not understood. Work place bullying is a much more insidious narcissistic process. I therefore suggest to the Committee that perhaps Work Cover NSW does not fully grasp the nature of workplace bullying and mobbing.

I replied to Mr [redacted] that I understood that but my case had gone through the Workers Compensation Commission where it was determined that I had a compensable workplace injury, and therefore it was my opinion that the bullying/mobbing was not under question, but rather the [redacted] was negligent in allowing the injury to occur. I recorded he said something along the line of; the Workers Compensation Commission does not make a decision about whether or not bullying occurred, but rather whether the injury sustained was compensable. I understood he was telling me that I had to prove the whole cause (ie the bullying) of the injury all over again.

This does not make sense. If there is a workplace injury there must be a workplace cause, and my statements to the Workers Compensation Commission clearly indicate bullying, victimization and harassment. If it is the case then I suggest to the Committee that this is an inappropriate process. Once proven in one jurisdiction it should not need to be proven in another.

2. Mr [redacted] did explain to me there was a Workplace Bullying number I could call for advice on bullying. He explained that this advice would help me know what to do about the bullying, how to get help etc. I declined.

My situation had gone far beyond this stage.

3. Mr [redacted] explained to me the process of how Work Cover would investigate my complaint. He explained the first step would be to refer the case to the [redacted] office.

4. Mr [redacted] then proceeded to take notes on my case. I informed Mr [redacted] I had already spoken to Mr [redacted]

5. I asked Mr [redacted] whether it would be helpful if I told Work Cover of similar cases to mine. He explained that each case is investigated independently.

I agree that cases should be investigated independently, however in workplace bullying/mobbing I think it is also valuable to examine to big picture in the organization, and similar cases should be linked, especially when the alleged bullies are the same staff. I think what is poorly recognized is that psychological injury from bullying is different from a workplace accident or physical injury. It needs to be dealt with differently.

RESPONSE FROM THE [redacted] OFFICE

On Tuesday 17th July 2012 I received a call from a Mr [redacted] from the Office of Work Cover NSW.

*This was **the most valuable contact** I have had so far in Work Cover. For the first time I actually felt I was speaking to someone who wasn't just "brushing me aside."*

1. Mr [redacted] explained what his role was in the process. Importantly he explained he could not investigate anything that occurred more than 2 years ago. This legislation needs to be reconsidered in respect to workplace bullying.

Workplace bullying/mobbing has an accumulative affect. The psychological damage sometimes takes years to present. In my case the bullying started in 2003, and I didn't become seriously unwell until 2008. My case was not finalised in the Workers Compensation Commission until 2012.
2. Mr [redacted] explained to me that what I had made was a "Request for Service." He further explained what that would involve. Mr [redacted] was able to attend the [redacted] and ask to see if the [redacted] had policies and procedures that were adequate, transparent and fair in respect to the way it dealt with work place bullying. He was able to also interview people in respect to my claims, but he could not initiate legal action against the [redacted].
3. I explained to Mr [redacted] that I wanted Work Cover to investigate the [redacted] and to litigate. I explained that in my case the [redacted] was negligent, and now I have a permanent injury. Mr [redacted] said, "Work Cover does not decide to litigate because they could, but rather because they should." He said most cases were litigated

because of “significant public interest”. He explained that the only way Work Cover NSW can litigate is to take the matter to the Supreme Court, and so with limited resources cases are usually selected for strategic outcomes.

I note that at the Sydney public hearing, Work Cover NSW could not give one example it had pursued litigation in respect to a psychological injury caused by workplace bullying/mobbing. I refer back to my original statement I made to the Committee where I say, “there is no deterrent to workplace bullying.”

4. Mr [redacted] explained that in a successful litigation process fines could be \$1-2 million dollars.

There are two issues here. If litigation can only proceed in the Supreme Court, these fines seem insignificant in comparison to the cost of the process. This amount of money is insufficient to many industries. I am aware of this type of money being used by the [redacted] just to “get rid off” or just “shut up” staff. I also refer to the comment made by Ms [redacted] in respect to Work Cover fines (see above).

5. Mr [redacted] then spent considerable time in helping me with my inquiry on how to pursue Work Cover in respect to the litigation. He explained that by ringing the “1300 number” was not the right approach in my case. It was explained to me that I needed to request a “Strategic Investigation”, and a decision as to whether that would occur would be made at a formal level by a decision making panel in [redacted]. He suggested I contact the General Manager, Mr [redacted]. Both Mr [redacted] and I agreed there was nothing else he could do to help my situation at this stage.

Isn't it interesting how things come full circle. The one person from Work Cover NSW who could make an impact into psychological workplace bullying/mobbing I felt was so dismissive of me when I approached him in Sydney with his comment, “ring the 1300 number.” I now will approach Mr [redacted] directly and will provide the Committee with his response.

6. It is worth noting Mr [redacted] seemed very sincere on the phone, and I felt he genuinely was trying to be helpful. I felt his ability to help was limited by both the legislation and resources. He made a comment that if all the reported cases of

workplace bullying were to be investigated, the office alone would need “another 750 people”.

I note at the public hearing, when asked by the Committee whether Mr believed Work Cover NSW was sufficiently resourced to handle workplace bullying, he said yes.

FINAL COMMENT TO THE COMMITTEE

Several of the delegates in their “impact statements” said you were our last hope. I support that. I will pursue Work Cover NSW to litigate my case. This is not because I think my individual case is important in the big picture, but because I know that the only way to deter bullying and mobbing in the workplace is to make employers answerable. In NSW, Work Cover has been given that power, let’s see if they will use it.

I will provide all further correspondence in respect to my Work Cover process to the Committee.

I support the Committee in making all my submissions public.

Yours sincerely

17th July 2012

cc. Mr General Manager, Work Health and Safety Division. (by email)