

House of Representatives Inquiry into Workplace Bullying
 PO Box 6021 Parliament House
 Canberra ACT 2600
 14 August 2012

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Dear Honorable MPs

Does the Work Health and Safety Act 2011 No 10 adequately deal with Workplace Bullying?

I refer you back to my two previous submissions dated 20 June 2012 and 15 July 2012. In brief, my submissions identify that I have a Workers Compensation Commission determined PERMANENT PSYCHOLOGICAL INJURY caused from WORKPLACE BULLYING, VICTIMISATION AND HARRASSMENT at the UNIVERSITY OF _____, NSW. The permanent injury was a result of prolonged bullying/mobbing by University management after I reported corrupt and unethical behaviour and subsequent bullying by colleagues. Even though the Workers Compensation Commission has awarded compensation the University of _____ still denies liability and refuses to act on University policy in respect to disciplinary action against the individuals who have caused my injury.

My submission here uses my personal case to identify the current weakness of the Work Health and Safety Act 2011 No 10 (THE ACT) in dealing with Workplace Bullying. I believe my experience will exemplify to the Committee that this current Law fails to provide any major assistance for most victims (if any) of Workplace Bullying where the injury is psychological in nature.

As a consequence of my letter to the Committee dated 15 July 2012 the following took place:

1. On the 16 July 2012 I emailed Mr _____, requesting that Work Cover investigate my case. I never received a reply from Mr _____ but was contacted by Mr _____, whom I meet with on Monday August 6 2012 with two other academics from the University of _____.
2. Mr _____ informed me, that Work Cover could not investigate my case, as it was more than 2 years since my case was reported to Work Cover.

Mr _____ spent considerable time and effort discussing my case and other aspects of Work Cover with me. The key elements of this discussion relevant to the Work Place Bullying inquiry are outlined below.

KEY ISSUES FOR THE COMMITTEE

1. Notification of Work Place Injury to Work Cover NSW.
 On the 31st March 2009, the University Insurer, _____ notified Work Cover that I had submitted a claim for Workers Compensation. The cause of the injury claim was given as: "Toxic (emotionally) Work Environment; Repeated Undermined And Suffer Personal Attacks."

On receipt of this information, Work Cover NSW elected not to investigate my claim.

- A) *In assessing the claims, Work Cover is provided with very little information.* The cause of the injury provided to Work Cover is what is provided on the medical

certificate and will significantly vary depending on how the treating medical professional words the claim. There is no standardised reporting of “bullying”.

A simple change to the Workers Compensation Medical Certificate format could assist in the collation of data on bullying. For example a box the treating medical professional could tick to indicate the cause is Workplace bullying.

- B) *Work Cover does not notify the person injured that their claim is not being investigated.* This is a significant concern at two levels. Firstly in my experience, most people do not understand the Workers Compensation/Work Cover process. Although information is available, a psychological injury usually incapacitates an individual to a level in which they could neither comprehend the process nor participate actively in the process. The Act requires the injured worker to be proactive in pursuing action at a time when they may not be psychologically or physically able to do so. Secondly the Act is not written in “plain English”. I have a degree and two postgraduate qualifications and consider myself educated. I struggle with interpretation of The Act, and in my experience even trained Work Cover Inspectors also do.

I believe Work Cover should notify an injured worker if their claim is or is not being investigated. I believe the injured worker should have an advocate who can explain their options, and this should occur only when the injured worker is well enough to understand what is happening. I believe that the notification date for limitation period for prosecution should be when the injured worker has had the options explained to them.

- C) Notification is a single event at the submission of the first Workers Compensation Certificate. This will be discussed further below in Section 2: Limitation Period for Prosecutions, however there are two issues here; the time period for declined claims to be heard and determined in the Workers Compensation Commission, and the nature of bullying and how the bullying process often escalates after the initial reporting, resulting in further and often more serious injuries over time.

Notifications should not be a single event, especially when the cause of the injury is not removed from the work place and there is evidence of subsequent injuries. There is scope under Section 232, Part 2 of The Act to deal with this. In my case (discussed below), I approached Work Cover regarding this and was told in writing: “What I can say is that “fresh evidence” relates to a matter that has been considered and rejected/dismissed for want of information/evidence available at the time, however “fresh evidence” would indicate a miscarriage of justice has occurred.”

2. Limitation Period for Prosecutions.

- A) The time for disputes to be addressed in the Workers Compensation Commission I will use my personal case to exemplify the issue here.
In March 2009 I submitted a Workers Compensation Claim. The University Insurer declined this claim. At this stage Work Cover, even if it had wanted to, could NOT have investigated my injury, as there was a dispute whether or not the injury was caused by the work place. My claim was accepted in the Workers Compensation Commission in February 2012. This was **almost three years after Work Cover was notified of my injury**, and it is outside the two-year limitation period for prosecution. In my case, I have never had the opportunity to have my case investigated by Work Cover, or the opportunity to pursue prosecution through

Section 231 of The Act. **The Workers Compensation Process has denied me my rights under The Act.**

The notification date of the injury should be the date that the injury is accepted by the insurer, or the date that a determination is made by the Workers Compensation Commission.

- B) Workplace injuries and events that occur after the submission of the Workers Compensation Claim

I will use my personal case to exemplify the issue here.

My symptoms escalated as the bullying increased after my initial report.

In August 2008: Diagnosed with depression and anxiety caused by bullying.

In October 2008: Returned to work on full duties.

In March 2009: Submitted a Workers Compensation Claim.

WORK COVER NOTIFIED

In October 2010: Panic attacks started

In March 2011: My case could no longer be prosecuted as it was outside the limitation period for prosecutions (Section 232 of The Act).

In February 2011: Attempted suicide in work place and hospitalised.

In October 2011: Developed Psychotic Depression and hospitalised.

Work Cover was not notified of my hospitalisations.

The University of _____ continues to undermine me publically in the media, even though I am no longer employed there.

If a work place injury is exacerbated or if further injuries occur after the submission of the initial Worker Compensation Medical certificate, the start date for the “limitation period for prosecutions” should be the date of the latest injury/symptom.

3. What constitutes a Category 1 Offense?

I asked Work Cover if my case would constitute a Category 1 Offense (Reckless Conduct). I believe that my case should be a Category 1 Offense on the grounds that the University of _____ took deliberate and premeditated actions to exacerbate my workplace illness leading to my medical termination. The response was:

“Category 1 offences are the most serious kind – usually equated with Industrial Manslaughter. The Supreme Court is very jealous of it’s time and money, and a respondent has to demonstrate to them that a matter is serious enough to warrant them hearing it. I do not believe they could be persuaded that this matter is a Category 1 offence – but as I said, I am not a Lawyer.”

CONCLUDING COMMENTS

After hearing Mr _____ evidence at the public hearing of the Inquiry in Sydney I felt it was his opinion that Work Cover NSW had the “workplace bullying issue under control.” As an academic, scientist and researcher I decided the only way to test this was to take the Committee through an example of the ability of Work Cover NSW to deal WORKPLACE BULLYING.

In addition to asking Work Cover to investigate my case, I also asked, if the outcome had been that I succeeded in committing in suicide in February 2011 would my case have been investigated? The response was it would depend on the Coronial report. Due to the time period involved, it is questionable whether a prosecution would have been successful or even if a full investigation would have been possible. In other words, had I succeeded in committing suicide because of the affect of workplace bullying, the University of would probably would have remained unanswerable for their actions. In contrast, had there been an accident, for example, had I “accidentally” killed myself in a lab explosion due to the failure of the University of to provide safe storage of flammable chemicals, then this could have been considered as “industrial manslaughter”, and prosecution would be likely. What is most shocking is that in my example of a lab explosion, even if there were only injuries and no death, Work Cover would have been notified and there would have been an investigation. An attempted suicide in the workplace, because of workplace bullying, is not even reported to Work Cover, and from the information I have been able to collect from Work Cover, even had it been reported, it is unlikely that an investigation would occur, even if the suicide attempt left permanent injury to the victim.

I believe my case demonstrates without reproach that the Work Health and Safety Act 2011 No 10 is not adequate when dealing with workplace bullying. I do not believe Work Cover has the regulatory power to adequately deal with workplace bullying under the current legislation.

I believe without reservation that, unless there is some form of intervention, there will be a death due to workplace bullying at the University of . From the information I have collected, unless this death is a “murder” it is unlikely that there would be any investigation or prosecution. Work Cover is supposed to be about intervention, but that is clearly not happening under the current legislation. Some of the many people “bullied” at of the University of have decided to speak publically, but that is all we can do. What we are trying to say is, the authorities that have the power to act can wait until there is a death, like there was with Brodie Panlock, or they can do something now. I believe that the Committee for this Parliamentary Inquiry does have the power to recommend an investigation into the workplace bullying at the University of . Such a recommendation is the only avenue for an investigation to be initiated, and for this toxic workplace to be made safe.

Yours sincerely,