

To:

Clerk Assistant (Committees)  
House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
Phone: (02) 6277 4397  
Fax: (02) 6277 4034  
email: [committee.reps@aph.gov.au](mailto:committee.reps@aph.gov.au)

House of Representatives Standing Committee  
on Education and Employment

## **Submission to Workplace Bullying Inquiry**

**June 28<sup>th</sup>, 2012**

Workers Health Centre

Contact:

Michelle Burgess – Director

Industrial Health and Research Foundation t/a Workers Health Centre

Phone: (02) 97497666

  
Suite 2, Ground Floor,  
133 Parramatta Road Granville NSW

# **Submission on Workplace Bullying**

## **Workers Health Centre**



**Contact:**

**Michelle Burgess – Director  
Industrial Health and Research Foundation t/a Workers  
Health Centre**

**Phone: (02) 97497666**

**Suite 2, Ground Floor,  
133 Parramatta Road Granville NSW**

## **Background**

The Workers Health Centre is a not for profit organization established over 30 years ago and is Australia's oldest workers rehabilitation and health and safety service.

The Centre operates facilities in both Granville and Newcastle. Workers Health Centre and is Work Cover accredited to provide Rehabilitation Services.

The Centre is used by workers, trade unions, employers, local government departments and community organisations to provide injury management/rehabilitation services. Workers Health Centre interacts regularly with the ill and injured in the community.

A Board of Directors drawn from over 21 affiliates governs the Centre. WHC provide rehabilitation assistance across a range of industry including manufacturing, transport, construction, health, maritime, public service and the community service sectors.

WHC play an active role in contributing to the development of policy and legislation that will affect the rights of the ill and injured and those disadvantaged within the community.

In 2011 the Injured Workers Support Network (IWSN) was established .The Networks prime purpose is to assist injured workers in meeting the adjustment needs, psychological issues and re-employment challenges during their injury or illness. The network is able to offer advice in gaining the services for which they are entitled.

The network offers-

- Peer support – opportunity to meet other workers who face the same difficulties and challenges
- Supply information regarding the NSW workers compensation system
- An opportunity to be supported whilst dealing with their injury, illness or disability

The IWSG Mission is to assist and support workers who have sustained work related injuries, illness and disabilities:

- To provide and share information and experiences about the workers compensation system and the rights of injured & disabled workers.
- To form networks between injured workers and other organisations that have similar aims and objectives.

- To assist and encourage injured workers to establish links within their local community health system, Government Departments, organisations and other individual support groups who can assist injured workers.
- Advocate for a fair system of workers compensation for injured and ill workers and their families

Earlier this year the IWSN distributed a survey aimed at gathering evidence regarding injured workers experiences whilst on workers compensation in an attempt to identify areas of concern and improve the Network's services accordingly.

The results are attached for your information and form part of our submission. The IWSN agree to have this document made public in the interests of all injured workers.

### **Introduction:**

The Workers Health Centre (WHC) welcomes the opportunity to make an submission to the Bullying Inquiry. WHC are agrees that bullying is an occupational health and safety issue and should be dealt with in the same way as any other activity or workplace situation that exposes employees to risk of illness or injury.

Workplace bullying is defined as repeated, unreasonable behaviour directed towards a person or group of persons at a workplace, creating a risk to health and safety.

Australian workplaces are experiencing these issues with most workers having experienced workplace harassment at some time during their careers.

WHC have a view that Australia lacks any comprehensive legislative scheme that expressly protects employees from workplace bullying.

WHC has hundreds of examples of workplace too numerous for this submission paper but will seek broadly cover the main issues in this paper.

Should the Inquiry wish we are able to provide detailed evidence from individuals to demonstrate our assertions in this submission.

### **Bullying an Occupational Work, Health and Safety (WHS) issue**

The Work Health and Safety Act 2011 may be viewed in some quarters as an effective means of raising awareness of workplace bullying as a WHS issue, and of stopping it, before it escalates to the point of workers' compensation and discrimination claims. The evidence however is a stark comparison.

WHC see on a daily basis the results of existing ineffective mechanisms used to address bullying and harassment of employees in the workplace. Mechanisms that fail to support workers resulting in injury and illness that has a dramatic effect on themselves and their families All too often it appears managers struggle to identify and deal with bullying in the workplace. Overwhelming evidence shows that the perpetrators are frequently themselves managers or in senior roles and

so bullying is far more likely to take place when the 'bully' is in a position of power. The "clever bully" will often disguise their actions by arguing that their actions are fuelled by productivity requirements or performance management.

The outcomes are costly to all stakeholders.

### **Bullying as a workers' compensation issue**

Workplace bullying can have a profound effect on all aspects of a person's health as well as their work and family life. It also has significant flow on effects for the community and the economy.

The Productivity Commission Report 2010 estimates the total cost of workplace bullying in Australia at between \$6 billion and \$36 billion annually.

According to Comcare, claims associated with mental stress have risen 54% since 2006-2007. Work related mental stress is of concern in the Comcare scheme, especially in the APS. The number and proportion of worker's compensation claims as well as the cost of psychological injury claims, has increased over recent years. Work pressure accounts for around 50 per cent of psychological injury claims. The next most significant category for Australian government organisations is harassment/bullying combined' – which accounts for around a quarter of psychological injury claims.

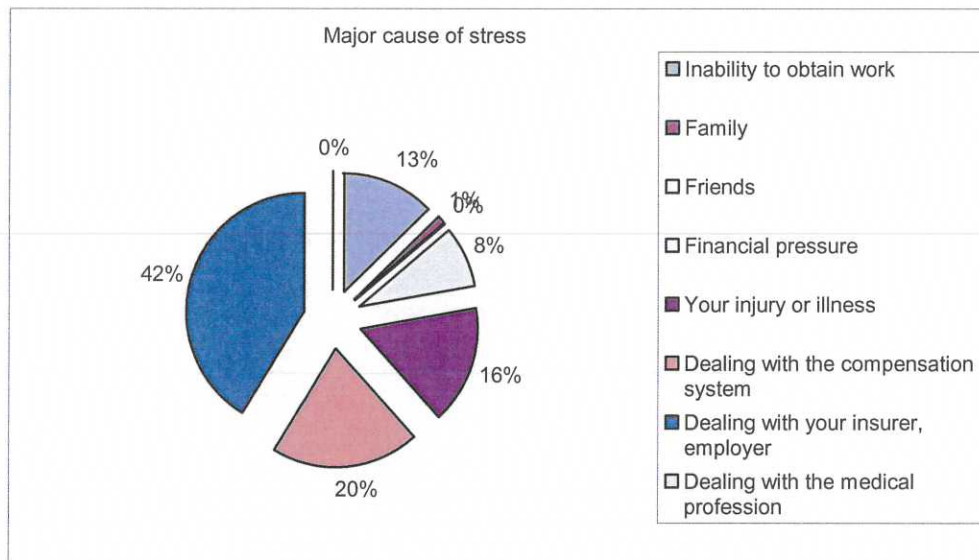
The WHC has seen a 62% increase in the past 3 years for rehabilitation of injured workers suffering mental illness as a result of workplace bullying.

Secondary to the initial workplace bullying is the added bullying and harassment extended to workers by aggressive employers and Scheme agents as a result of progressing a claim.

A recent survey conducted of injured workers clearly shows that injured workers, some of who had psychological injuries resulting from bullying were then exposed to additional bullying during their by the employer and insurer

Uncaring and hostile employers and insurers, along with inadequate compensation have been consistently cited as a major obstacle for most injured workers. The pressures resulting from these failures impact on other areas of injured workers lives which further hamper attempts at recovery. In too many cases, injured workers report that employers do everything they can to stop them from returning to work and that insurers attempt to bully them and their treating doctors into treatment schedules that ignore medically accepted treatment standards.

As is highlighted in the survey findings many are concerned more with the poor and hostile treatment they continually receive from insurers and their employers than focusing on recovery and returning to the workforce.



There are reported cases this has resulted in additional levels of psychological injury.

**Cadbury Schweppes Pty Ltd v Davis [2011] NSWCCPD 4 (31 January 2011)**

The survey articulates clearly that this has a flow on effect with 59 % of workers reporting they have contemplated suicide in the preceding 6 months as a result.

**Legal means of recourse**

Whilst recent codes of practice exist around the issue of bullying, Australia has no prescriptive legislation that adequately provides legal recourse for those with psychological injury as a result of bullying.

Some of the mechanisms currently used with varying degrees of success to assist victims of workplace bullying include:

- Claims /prosecutions under occupational health and safety legislation
- Discrimination claims under the anti-discrimination regime
- Workers compensation claims
- Unfair dismissal claims
- Claims for breach of the contract of employment

These mechanisms usually prove very costly both financially and in terms of increased health risks for the victim.

NSW and Federal anti discrimination laws appear inadequate to deal with bullying behaviour in the workplace.

For example the Equal Opportunity Act 1984 -The laws operate only *after* the event and are not a preventive measure and so cannot be used to effectively stop bullying behaviour in the workplace.

Additionally the bullying behaviour must relate to a specific designation under the legislation, such as age, breastfeeding, gender identity, impairment, industrial activity, marital status, parental status, physical features, political beliefs, pregnancy, race, religion and sexual preference.

In the context of workplace bullying, it often proves to be difficult and costly to prove conclusively that the bully's behaviour is based upon one of the prohibited grounds.

Workers compensation claims processes restrict the ability of workers to bring claims in relation to the stress incurred as a result of bullying ,if such stress was caused from reasonable administrative actions by the employer.

Likewise workers are required to show they have suffered damage in the form of a recognised psychiatric injury rather than discomfort or persistent annoyance by the perpetrator, to have a claim accepted.

Often it simply proves to be "too difficult " for workers to lodge or pursue claims.

### **Remedies:**

1. An enforceable or consistent legislative mechanism that specifically relates to workplace bullying.
2. Introduction of Federal legislation that replicates the existing Victorian legislation known as "Brodies Law".
3. Prevention through promotion and education to the workforce, employers and Scheme agents on identification and handling of workplace bullying issues.  
Specific guidance material/promotion and training on workplace bullying that educates employers of their duties under the WHS legislation. Promotion of the understanding that they must take all reasonably practical steps to monitor the health and safety of their employees. Further, the direction would help employers to reconsider their perceptions of a 'hazard' in the workplace to include psychological risks, not only the physical risks that are commonly recognized.
4. Intervention at a workplace level to prevent the bullying behaviour from occurring. Supported by enforceable legislation that assist parties in the first instance and penalizes those who do not comply.

5. Highly trained Regulatory Officers to have authority to investigate bullying and pursuing enforcement actions is necessary for a cultural shift in workplaces across all sectors.

Ability to categorize workplace bullying as a work health and safety issue validates the inappropriateness of the behaviour for the victim, and demonstrates the severity of the issue to the bully, which should ultimately lead to at least the beginnings of resolution. The lines between management of employees and bullying is often blurred and so involvement of an objective third party, such as a Regulatory investigator/enforcer could assist help to clarify these boundaries and assisting the parties in resolution of issues.

6. Education and training of Scheme Agents that seeks to have them reconsider their perceptions of a 'hazard' when handling claims to include psychological risks, not only the physical risks that are commonly recognized.
7. 6.Compulsory Tertiary education and or experience in allied health domains for Scheme agents handling Psychological cases to ensure all aspects of these cases are handled appropriately and do not inflict further injury to the client.

WHC thanks the Australian Government for its insight in identifying the issue of bullying and launching the Bullying Inquiry and for the opportunity to make a submission .WHC is prepared if necessary to appear to give evidence if required.