

# Labor's Positive Plan **TO ADDRESS BULLYING** IN THE WORKPLACE

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## **WORKPLACE BULLYING**

There is a growing awareness of bullying in workplaces. Existing legal frameworks and institutions have proved unable to address this important problem.

All NSW workplaces should be safe and free from physical and psychological harm.

A NSW Labor Government will:

- Enact laws to protect all workers in the State, including injured workers, from workplace bullying;
- Ensure all investigations of bullying complaints within WorkCover are investigated independently;
- Implement a charter of rights for injured workers, to ensure they are treated with fairness and dignity by employers, WorkCover and insurance companies;
- Make the Industrial Relations Commission the independent umpire for deciding allegations of workplace bullying that are not resolved at the workplace or by an independent investigation; and
- Ensure WorkCover is properly resourced to deal with workplace bullying complaints.

### **What is workplace bullying?**

WorkCover defines workplace bullying as *'repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety'*.

This definition is also used at the national level, having been adopted by Safe Work Australia and is consistent with expert opinion.<sup>1</sup>

### **How big a problem is workplace bullying?**

A survey conducted across the NSW public sector as a whole found that 48 per cent of workers had witnessed bullying at work in the previous 12 months, with 29 per cent reported having personally experienced bullying during that period.

Of those who indicated that they had been bullied, 40 per cent reported that they were bullied by a fellow worker; 38 per cent by their immediate manager or supervisor; 35 per cent by a senior manager; 24 per cent by a group of fellow workers; and 8 per cent by a subordinate.<sup>2</sup>

<sup>1</sup>Carlo Caponecchia and Anne Wyatt, Preventing workplace bullying: An evidence-based guide for managers and employees (Allen and Unwin, 2011), p 3

<sup>2</sup>People Matter Survey 2012

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These figures are significantly higher within the WorkCover agency itself, with 40 per cent reporting having been bullied in the previous 12 months; 52 per cent by a manager/supervisor, 29 per cent by another employee and 18 per cent by both a manager/supervisor and another employee.<sup>3</sup>

In 2004, research by Melbourne-based health psychologist Toni Mellington, found that as many as 70 per cent of employees were currently being bullied or had been bullied in the past; also, just over 13 per cent had witnessed workplace bullying. Of the number that had been bullied, 38 per cent indicated that the bullying activity had occurred for over six months.

Additional research findings, also released in 2004 by the Labor Council of NSW at its launch of its Charter of Workplace Dignity, reflect Mellington's findings. Its survey of 840 workers found that 74 per cent of respondents had been targeted by workplace bullying, 56 per cent of respondents indicated a bullying culture at their workplace, and 89 per cent wanted workplace policy and procedures to deal with the issue.<sup>4</sup>

This is consistent with more recent surveys conducted of both the public and private sector workforce membership by Unions NSW affiliates<sup>5</sup> which estimates over 80 per cent had witnessed workplace bullying and over 30 per cent had been subject to it.

The prevalence of workplace bullying in Australia cannot be determined with any precision due to the absence of a nationally consistent set of definitions and a resulting evidence base. Consequently, there are widely different estimates of the prevalence of bullying in Australian workplaces.<sup>6</sup>

A commonly accepted estimate of the prevalence of workplace bullying in Australia comes from the Australian Workplace Barometer (AWB) project (2009-11). The AWB project found that 6.8 per cent of Australian workers had been bullied at work in the six months prior to being surveyed, with 3.5 per cent experiencing bullying for longer than a six month period.

This figure is supported by the Personality and Total Health through Life project, a longitudinal study on mental and physical health managed by the Australian National University. This study also found that 6.8 per cent of workers had been bullied at work in the six months prior to being surveyed. The survey data was collected in 2011.<sup>7</sup>

However, the prevalence of workplace bullying could be far greater than this statistic. The Assistant Commissioner of the Productivity Commission (the PC) stated that *'it is probably higher than that ... it could be over 15 per cent'*.<sup>8</sup>

A participant in the House of Representatives Standing Committee on Education and

Employment inquiry in 2012, Professor Maryam Omari, commented further that:

*"we are not capturing in whatever studies are done the actual rates of workplace bullying, which would be far higher than the 22 to 33 per cent that I have found."*<sup>9</sup>

<sup>3</sup> *WorkCover NSW Review: Independent inquiry into WorkCover bullying and harassment*, NSW Department of Premier and Cabinet and PricewaterhouseCoopers Report 2011.

<sup>4</sup> Australian Psychological Society. *Fighting back: Workplace bullying in Australia* at [http://www.psychology.org.au/publications/inpsych/workplace\\_bullying/](http://www.psychology.org.au/publications/inpsych/workplace_bullying/)

<sup>5</sup> *Unions NSW Submission 66* to Legislative Council Select Committee pp18-19 paragraph 45

<sup>6</sup> *SafeWork: Australia*, page 14 of its Submission to *Workplace Bullying*, October 2012, House of a Representative Standing Committee on Education and Employment

<sup>7</sup> *SafeWork: Submission*, p14

<sup>8</sup> Ms Sue Elaine Holmes, Assistant Commissioner, Productivity Commission, *Committee Hansard*, Canberra, 17 August 2012, p17

<sup>9</sup> *Committee Hansard*, Perth, 8 August 2012, p2

Similarly, a leading organisational psychological consulting firm, Davidson Trahaire Corpsych, has commented that every year they respond to 10,000 cases that relate to some form of workplace bullying. The Chief Executive Director, Ms Michele Grow, stated that the number who present or report their bullying is significantly higher than statistical analysis has found. Ms Grow commented that the figure is possibly closer to one in three workers experiencing workplace bullying.<sup>10</sup>

## The cost of workplace bullying

However it is defined, workplace bullying is a problem that the Productivity Commission estimates is costing Australia between \$6 billion and \$36 billion annually.<sup>11</sup>

At the workplace level, for employers the negative cost implications are far reaching and include decreased productivity, low workplace morale, mental health issues, increased workers' compensation claims, absenteeism, investigation costs, legal costs and reputational damage.<sup>12</sup>

For working people, the consequences include:

- post traumatic stress disorder symptoms;
- depression, anxiety, sleep disturbance
- suicidal thoughts
- chronic fatigue, burnout
- headaches, nausea
- feelings of anger, irritability and victimisation
- social withdrawal
- reduced productivity
- reduced job satisfaction
- dread of going to work
- decreased concentration, problem solving abilities and rational judgment
- reduced self-confidence and self-worth, and
- an increased propensity to leave the workplace.<sup>13</sup>

Concerns about the prevalence of workplace bullying gave rise to specific Commonwealth legislation in the *Fair Work Act*.<sup>14</sup>

However, many workers in NSW, including in the public sector, local government and those working for non-corporate employers, do not have access to these laws.

With no response mechanism to deal with bullying, their exposure to such behaviours will result in more serious traumatising, injury and absences from work.

<sup>10</sup> Ms Grow, DTC, *Committee Hansard*, 13 September 2012, p1

<sup>11</sup> Productivity Commission, *Benchmarking Business Regulation: Occupational Health and Safety*, March 2010

<sup>12</sup> Australian Industry Group, *Submission to House Standing Committee on Education and Employment - Inquiry into workplace bullying*, 1 July 2012, p4

<sup>13</sup> General Purpose Standing Committee No. 1, NSW Legislative Council, *Allegations of bullying in WorkCover NSW (2014) (Allegations of bullying report)*, pp20 and 21. These findings were reflected in the House of Representatives Standing Committee on Education and Employment Workplace Bullying report of June 2012.

<sup>14</sup> *Allegations of bullying report* pp23, 24

## Bullying in WorkCover

WorkCover, in its role as work health and safety regulator, responds to bullying in workplaces across NSW.<sup>15</sup> Despite its statutory role as the work health and safety regulator, WorkCover has for many years itself been the subject of media and parliamentary scrutiny in relation to alleged bullying and harassment within the agency itself.

As a result of these public concerns, and doubts over its capacity to perform its role as the workplace regulator, in 2010 the then Minister for Finance, the Hon Michael Daley MP, initiated an external review of bullying and harassment in WorkCover by PricewaterhouseCoopers (PwC). The report of the PwC review was published in early 2011 and the Minister undertook to accept and implement all the report's recommendations.<sup>16</sup>

The change of government as a result of the election on 26 March 2011 prevented this from happening and the new Coalition Government failed to follow through.

In June 2013, more than two years after the PwC report was released, the Industrial Relations Commission made a number of highly critical findings in relation to the unfair dismissal claim of a WorkCover employee, Mr Wayne Butler. The findings included that WorkCover's dismissal of Mr Butler was '*harsh, unreasonable and unjust*' and had the '*characterisation of institutional bullying*'.<sup>17</sup> Further, the IRC described the investigation as a 'witch hunt' and speculated that it was motivated by '*malicious intent*'.<sup>18</sup> Following the IRC decision, the Legislative Council launched an inquiry into allegations of bullying in WorkCover NSW.<sup>19</sup>

### Parliamentary Inquiry

In June 2014, the Committee handed down its report, entitled *Allegations of bullying in WorkCover NSW*. In the report, the committee found that WorkCover had a significant and longstanding organisational problem with bullying at a cultural level. It also found the organisation had been ineffective as a safety regulator in dealing with bullying in other workplaces across NSW.

Evidence was also received of mistreatment of injured workers by the staff of Scheme Agents<sup>20</sup> and WorkCover.<sup>21</sup>

The committee made 12 recommendations to the government.

In one of its recommendations, the committee undertook to review the government's implementation of the inquiry's recommendations in late 2014. As a result of that review, a further *Review on the inquiry into allegations of bullying in WorkCover NSW* was tabled on 11 December 2014, with further recommendations made.

Labor supports the work and all the recommendations of the Legislative Council select committee into allegations of bullying in WorkCover - in both its reports.

<sup>15</sup> *Allegations of bullying report*, p1

<sup>16</sup> Media Release, Hon. Michael Daley MP, Minister for Finance, 'Statement on WorkCover Bullying Report', 3 March 2011

<sup>17</sup> *Wayne Butler and Safety Return to Work Support Division* [2013] NSWIRComm 45 (21 June 2013), paragraph [316], [319]

<sup>18</sup> *Wayne Butler*, paragraph [293], [318]

<sup>19</sup> NSW Legislative Council *Minutes*, 27 June 2013 p22048

<sup>20</sup> The insurance companies contracted by WorkCover to investigate and manage workers' compensation claims in NSW

<sup>21</sup> *Allegations of bullying in WorkCover NSW* (2014), Chapter 8, pp107-118

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## Labor's positive plan

A NSW Labor Government will ensure that:

- **Parliament enacts laws to protect all workers in the State, including injured workers, from workplace bullying.** These new laws will be based on the National Occupational Health and Safety Commission's Draft National Code of Practice and will make the codes of conduct for WorkCover and Scheme Agent staff enforceable by workers, including those injured and not at work;
- **All investigations of bullying complaints within WorkCover are investigated independently.** Labor shares the concerns expressed about how the Baird Government proposes to achieve this, with investigators from the Department of Trade undertaking the investigations and overseen by the Office of Finance and Services ("OFS").<sup>22</sup> Those concerns relate to the skill-set of Mining Inspectors to undertake this sensitive work and the independence of OFS. If these concerns cannot be satisfactorily addressed within a year, Labor will work with stakeholders to develop and implement a proper, independent mechanism, to be located within the WorkCover Independent Review Office;
- **A charter of rights for injured workers is developed and implemented,** building on the existing Code of conduct for WorkCover and scheme agents staff;
- **Complaints by injured workers against *WorkCover staff and employees of the insurance companies*<sup>23</sup> under the Charter are independently investigated;**
- **The Charter is enforceable by individual workers and their representatives.** Financial penalties will be among the range of remedies that will be available if breaches of the code are established;
- **The IRC is the independent umpire** for deciding workplace bullying complaints not resolved at the workplace or by an independent investigation; and
- **WorkCover is properly resourced to deal with workplace bullying complaints.**



<sup>22</sup> *Review of Allegations of Bullying*, pages 14, 15

<sup>23</sup> The Scheme Agents contracted by WorkCover to manage claims