

# ***SUBMISSION***

**DATE:** 5<sup>th</sup> April 2019.

**TO:** PRODUCTIVITY COMMISSION

**RE:** INQUIRY - SOCIAL & ECONOMIC BENEFITS OF IMPROVING MENTAL HEALTH

**PREPARED BY:** **Joyce Noronha-Barrett** (Former Senior Administrator at an Australian public entity)

**\*\*\* This submission should replace my earlier submission of 3 April 2019.**

I am pleased to be able to contribute to your Inquiry.

*My submission is focused on the issue of mental health injuries resulting from workplace bullying in the public sector.*

*It is important to note that mental illness resulting from workplace bullying is not accidental. It is deliberate action which can lead to `psychological injury` of another human being.* Like other forms of mental illness, mental illness from workplace bullying also impacts lives, productivity and the Australian economy. However, what is of significance is that bullied workers who become mentally ill are more likely to recover from their mental illness faster (and return to the workforce), if they are provided support by the agencies that are entrusted with `duty of care` responsibilities to them, i.e. employers and their worker compensation agencies.

## **MY EXPERIENCE WITH WORKPLACE BULLYING AND MENTAL ILLNESS**

I have prepared this submission based on my experience of having suffered post-traumatic stress disorder (PTSD) due to workplace bullying and harassment at an Australian public entity in 2014 which led to the loss of my permanent position in early 2015. Hence, instead of being self-reliant and productive (as a Taxpayer, not drawing on Centrelink and contributing to the community in many ways), it is now more than likely that within 10-12 years of retirement, my

spouse and I will become fully dependent on Centrelink (the Australian Government) to support us. Currently, we are using our savings, liquidating assets and superannuation lump sums to manage our family. I should add that over the last 27 years I have managed a single income household which included caring for my sick and non-working spouse while also raising a family (of future taxpayers).

My experience suggests that:

- (a) Employers and worker compensation agencies usually distance themselves from workers who claim to have become ill due to workplace bullying. Employers and worker compensation agencies tend to counter claim that the workplace bullying incident(s) is/are actually *`reasonable administrative action, taken in a reasonable way'*, thereby doing everything possible to justify bad behaviour and deny medical care, rehabilitation and financial support to mentally ill workers.
- (b) Most mentally ill bullied workers require the support of family, friends and solicitors to access any form of support available to them. (Their employers and worker compensation agencies may suggest a *`supportive'* environment but their actions suggest otherwise.)
- (c) Support for mentally ill bullied workers by employers and worker compensation agencies is *grudgingly* provided and accessible only if the mentally ill individual has the financial resources and mental capacity to pursue options. (At the very least, they require supportive family, friends, medical practitioners and solicitors to help them access entitlements.)
- (d) The available statistics on mentally ill bullied workers are flawed for a variety of reasons including the fact that often workers have simply walked away from productive lives due to workplace bullying and the lack of support from their employers/worker compensation agencies. If these mentally ill workers are supported by spouses/their existing savings/assets, they would not even show up in the statistics for Centrelink (unemployment and sickness benefits).

<b>AN AUSTRALIAN PUBLIC ENTITY BREAKS WORK, HEALTH AND SAFETY LAWS</b>
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In my matter, the workplace bully at the public entity where I worked, was supported by the leadership, including the Senior Officer. In a matter of 11 months I went from *`outstanding*

work performance' to being bullied, made sick in the workplace and made redundant. *The evidence indicates that my mental health nor the 'duty of care' requirements (mandated through legislation) mattered to my employer.*

As a publicly funded entity, the Senior Officer was able to circumvent administrative processes (including contravening the Fair Work Act 2009 (FWA) and the Health and Safety Act 2011 (HSA) and the entity's Enterprise Agreement and Code of Conduct) and 'settle' matters at cost to the Australian Taxpayer. Simply put - the public entity was able to pay high profile lawyers to fight me in the Fair Work Commission and the Federal Court, settle with me (regrettably approximately 88.5% of my meagre settlement went to paying solicitors and barristers) and pass on workers compensation liability for my mental health to Comcare, all at Australian Taxpayer expense.

*My experience suggests that irrespective of government legislation which is aimed at protecting workers (FWA and HSA), currently public sector employers have very little incentive to do the 'right thing' when it comes to resolving issues of workplace bullying, harassment and adverse action.*

In theory employers can suggest compliance and accountability in ensuring fairness in the work place, providing a safe workplace and protecting Australian Taxpayer funds, but in practice some employers are able to 'rubber stamp' their various internal reviews/audits through Boards and Committees even when the evidence indicates cover ups related to bad behaviour. Employers are also able to pay 'independent' external auditors and reviewers to get the outcomes they seek. Often these very same employers are able to 'silence' mentally ill workers through deeds of release which accompany settlements (to end litigation). *News about the organization's bad behaviour seldom gets out and workplace bullies continue to undermine productivity while 'bilking' the Australian Taxpayer.*

<b>MEDICAL AND REHABILITATION SUPPORT FOR MENTALLY ILL WORKERS IS NOT WHAT IT SEEMS</b>
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In my matter after having been bullied, made mentally sick in the work place and losing my permanent job (due to a sham change management process), I had to fork out \$5800 to a solicitor for helping me with my Comcare claim for worker compensation.

In the first instance my worker compensation claim was denied when my employer provided false information in statements to Comcare. I then provided evidence to Comcare in relation to

my employer's untruths. This delay forced me to pay out of pocket for my medical expenses (after Medicare payments). *Within a period of 2 years, I had expended approximately \$10,000 out of pocket expenses (after Medicare) for doctor and psychologist visits.*

By denying my claim, Comcare took away my opportunity to receive regular medical treatment and rehabilitation support for my mental health. I staggered my medical appointments because without a job it was not possible to fund out of pocket expenses for the level of specialist appointments which I required. *(Psychologist visits cost \$225 (per visit), with Medicare covering approximately \$83 per visit for up to 10 visits per year at the time.)*

Despite reviewing my evidence for a second time, Comcare denied my claim. This left me no choice but to proceed to the Administrative Appeals Tribunal (AAT). Before the scheduled Hearing, Comcare accepted liability (over 1.5 years after a claim had been lodged) and agreed that my employer, (the public entity), had *substantially caused my workplace injury*. As stated above, the efforts of my employer and Comcare in continuing to deny my claim meant that I neglected to visit my doctor/psychologist on a more regular basis because I could not afford to pay for the level of care which I required at the time. My mental health was further compromised by my employer and Comcare.

**The Comcare Perspective on Mental Health:** Comcare provides an optimistic view of 'mental stress' injuries and states that claims *decreased* by 54% between 2012/2013 and 2016/2017 – refer

[https://www.comcare.gov.au/data/assets/pdf\\_file/0007/173059/04986\\_SM\\_WC\\_statistics\\_2016-17\\_v9.pdf](https://www.comcare.gov.au/data/assets/pdf_file/0007/173059/04986_SM_WC_statistics_2016-17_v9.pdf) (Table 3.8, pg. 18). There is however, ample evidence that in recent years Comcare has been working hard on 'pushing' mentally ill workers off their books, preferring to offer 'settlements' rather than ongoing support for medical treatment and rehabilitation. (When mentally ill workers have also lost their jobs due to workplace bullying, they are more likely to accept settlements and walk away from their entitlements.)

Refer also to section on 'How Employers Distort the Data ....' on page 6. (Redirecting claimants to seek 'sickness benefits' via superannuation policies is one way in which employers can reduce the number of claimants reported by the worker compensation agency.)

Some of my communications about Comcare tactics in denying claims are at:

[https://docs.wixstatic.com/ugd/896ea5\\_9d929f2031154394bc02d5f951328a6c.pdf](https://docs.wixstatic.com/ugd/896ea5_9d929f2031154394bc02d5f951328a6c.pdf)

Keeping injured workers without medical and rehabilitation support (and offering a lump sum to 'settle' matters) is a tactic which Comcare (with the support of employers) actively utilize to minimize claims. Such tactics provide a more 'optimistic' picture of 'mental stress' in the public

sector. While Comcare does all it can to minimize liability, the `damage` it does from using delay tactics to deny mentally ill workers access to medical and rehabilitation support is unconscionable.

How can mentally ill workers become productive again if they do not receive the support that is mandated in government legislation?

### **A WHOLE OF GOVERNMENT APPROACH IS REQUIRED TO DEAL WITH MENTAL ILLNESS FROM WORKPLACE BULLYING**

Unless there is a `whole of government` approach to dealing with mental illness in the work place (from workplace bullying and harassment), lives will be put at risk and the Australian Taxpayer will continue to be liable for costs associated with mental health - medical, settlements (example unfair dismissals), legal costs, worker compensation payments (in the case of public sector agencies) and Centrelink payments. Productivity will continue to be undermined.

Also, without a `whole of government` approach to addressing mental illness in the workplace, very little can be achieved by the efforts of a single agency; it is not possible to solve the issue of workplace bullying in the public sector and its impact on productivity unless all relevant governments agencies work together. This includes the Fair Work Commission, State/Territory Integrity Commissions, Comcare, State/Territory Health and Safety Agencies, Australian National Audit Office and the Fair Work Ombudsman.

*Identifying better ways to rehabilitate/support mentally ill workers should become a priority, so workers can heal from their mental illness and return to safe work places.*

### **THE COST OF MENTAL ILLNESS FROM WORKPLACE BULLYING**

*It is the Australian Taxpayer (not the employer or the workplace bully) that ends up footing the bill for mentally ill (bullied) staff who become `unproductive` due to no fault of theirs.*

I have a summary record of the expenses which have already been funded by the Australian Taxpayer in my matter (through the public entity settling court matters as well as Comcare medical and salary payments until settlement). The summary record also includes projections

related to the Australian pension as I expect to deplete my savings, assets and superannuation lump sums within 10-12 years of retirement because I have lost 7 years of my 'productive' working life with no income and superannuation. Costs associated with my ongoing medical are also included in the summary record.

*The workplace bullying which I endured in 2014 robbed me of my permanent position and compromised my mental health. This major event in my life also robbed the Australian Taxpayer who has already funded many costs in my matter and now likely to also be funding the aged pension for part of my retirement years.*

If required, I would be prepared to provide the summary record in confidence to your Inquiry.

**HOW EMPLOYERS DISTORT THE DATA ON WORKER COMPENSATION CLAIMS (INCLUDING CLAIMS RELATED TO MENTAL HEALTH)**

The evidence indicates that my former employer:

- (a) investigated the option of directing worker compensation claimants to the superannuation agency for coverage under 'sickness benefits' (instead of Comcare). This reduced claims to Comcare.
- (b) directed mentally ill staff to their superannuation agency for 'sickness benefits' while Comcare was the worker compensation agency.

*This evidence suggests that some employers distort the data on worker compensation claims, including claims for mental illness associated with workplace bullying.*

**LOOKING FORWARD –**

**SUGGESTIONS FOR DECREASING THE INCIDENCE OF MENTAL ILLNESS (FROM WORKPLACE BULLYING), INCREASING PRODUCTIVITY AND MINIMIZING AUSTRALIAN TAXPAYER LIABILITIES**

Below are some suggestions about a 'whole of government' approach to creating safe and productive work places which are likely to substantially decrease the incidence of mental illness from workplace bullying:

- The Fair Work Commission and Comcare should make data publicly available on the total 'adverse action/bullying' claims by name of employer for every financial year. This should lead to employers taking more seriously their legislative responsibilities to ensure safe and cohesive work places for all employees.
- The Australian National Audit Office (ANAO) should regularly carry checks of records available from agencies such as Comcare and the Fair Work Commission on employers who habitually breach workplace laws and 'hide' the high cost of litigation and payouts in HR and other budgets. *(These are taxpayer funds and deserve regular scrutiny.)*
- The Fair Work Commission and Comcare should regularly report to the Health and Safety Agency in the State/Territory, information on employers by number of accepted claims for workplace bullying. (Information on Safe Work Australia can be found at <https://www.safeworkaustralia.gov.au>) These health and safety agencies should impose penalties/fines on a sliding scale on public sector agencies that continue to undermine health and safety legislation. While accidental claims can be treated simply as 'accidents', claims related to mental health from workplace bullying deserve a penalty because this was deliberate action on part of a workplace bully.

Where a claim has been accepted and a 'bully' identified, there should be steps taken to remove these personnel from positions of responsibility. Alternatively, the Government has a responsibility to inform current and prospective employees that based on the evidence (from established claims) the workplace may be unsafe. It may be possible to consider a rating system for all public sector agencies which clearly shows their adherence to health and safety.

- Comcare should make data available on worker compensation premium charged by public sector agency (with historical information) and where necessary explain why there have been increases/decreases in premiums. Refer earlier point - The Government has a responsibility to inform prospective staff of any health and safety concerns within public sector agencies and where necessary, advise of remedial action taken.
- Comcare should re-assess the criteria which currently allows public sector agencies that have a large number of psychological injury claims to hold 'self insurance' licences. This

undermines the Australian Government's HSA as well as FWA legislation. *For information: Despite my former employer having a large number of psychological claims\*\*, Comcare/SRCC proceeded to offer a 'self insurance' licence to the public entity so they could manage their own worker compensation liability. While it is understandable that Comcare needed to reduce worker compensation liability for public sector agencies that have far too many claims, it is unethical to place the fate of mentally ill bullied workers in the hands of the very organization that undermined their mental health.*

*\*\* Claims are regularly reduced through settlement by Comcare to indicate a lower number of overall claims or shorter duration of claims. Refer also to the information on page 3 of this document as well as the section on 'How Employers Distort the Data ....' on page 6.*

- The *Safety, Rehabilitation and Compensation Act (1988)* which operates the *Safety, Rehabilitation and Compensation Commission* needs to be strengthened so that it holds employers responsible for costs associated with mental illness from workplace bullying claims as these are 'deliberate' actions taken by individuals. If employers become directly liable for their actions, there will be more work done to deal with workplace bullying and mental illness. It is time that employers who continuously contravene Commonwealth laws are held accountable.
- *Safe Work Australia, Comcare (or equivalent), Fair Work Commission, Integrity Commissions* should consider the reporting of criminal liability for perpetrators of workplace bullying who have caused mental injury to a worker, to *Australia's Federal Prosecution Service* (<https://www.cdpp.gov.au/australia%E2%80%99s-federal-prosecution-service>) which cover: **workplace safety, corruption.**

If perpetrators of domestic violence can be criminally liable, there is very little reason why perpetrators in the workplace can't be held liable for deliberately causing the mental illness of another human being. Employees are entitled to safe work places.

- *Centrelink* and/or the *Department of Human Services* need to establish mechanisms which would support mentally ill bullied workers with access to psychological support through health centers or hospital outpatient services. Or, there should be consideration given to increasing the Medicare rebate for psychological services. It currently takes approximately 1.5 years to progress rejected Comcare claims through the Administrative Appeals Tribunal (AAT) which means mentally ill, bullied and 'unfairly



dismissed' workers without income generally do without the level of psychological and rehabilitation care they require to become productive again. This impacts productivity.

- Worker compensation agencies, including Comcare should pay injured workers their total salary and superannuation for accepted claims. It is unfair that Comcare currently pays 75% for the first 45 weeks of illness and later 100% and absolutely no superannuation. *Where possible, employers should be asked to meet the differential as it is unfair for mentally injured employees who become ill due to no fault of their own to be further disadvantaged by not having their full salaries and superannuation entitlements.*
- Government legislation should be reinforced so that employers must report all cases of worker compensation, including those that are directed under 'sickness benefits' to superannuation agencies. It should be a priority to *collect data on all worker compensation claims*, irrespective of whether they were lodged with the worker compensation agency (such as Comcare) or under a 'sickness benefit' claim to the superannuation system.

Gathering accurate data on all worker compensation cases is extremely important if we are to better understand mental health in the context of workplace bullying.

Refer also to section on 'How Employers Distort the Data ...' at page 6.

- More work needs to be undertaken by Government in relation to the use of independent medical advisers who provide medical assessment on worker compensation claims. *There remains concern that assessors funded by Comcare and employers will look after the interests of Comcare/employers when making medical assessments on claims.*

I hope the information I have provided will contribute in some way to better understanding the impact of workplace bullying and harassment on mental illness which leads to reduced productivity while increasing costs to the Australian taxpayer.

You will also find some of the information provided at [www.workrightsmatter.org](http://www.workrightsmatter.org) useful to your Inquiry.

(consider signed as sent via email)

**Joyce Noronha-Barrett**