Executive summary

I want to be clear that I, my management team and the Board are committed to providing a positive working environment where all forms of inappropriate behaviour—including discrimination, bullying, harassment, intimidation or threats—are absolutely not tolerated. It does not fit with our values or our culture. I know that stopping inappropriate behaviour in the workplace and the fear of it is a challenge. It involves both the complex interactions between people and the role the organisation takes to manage it at the case level and in systems and processes.

Dr Clark, CSIRO resolves to strengthen values and culture

Dr Megan Clark, the Chief Executive of CSIRO said this on 5 February 2013 when announcing my appointment to conduct an independent investigation into workplace bullying and other unreasonable behaviour in CSIRO. This is the report on Phase 1 of that Investigation.

I have been assisted in the conduct of the Investigation by a team from HWL Ebsworth Lawyers led by partner Ms Melanie McKean.

The Investigation was set up by CSIRO following the making of an Improvement Notice by Comcare directed to CSIRO, and in response to allegations in the media, on websites and to members of Parliament, by former CSIRO employees, who said that they had been the targets of bullying and other misconduct while employed by CSIRO. CSIRO was of the view that these reports did not accord with the results of its own evaluation surveys of staff perceptions of working in CSIRO. The Investigation was intended to provide an opportunity for people who considered that they had been affected to come forward and have their concerns examined independently of CSIRO.

The Investigation commenced on 26 February 2013. It is being conducted in two phases. In this first phase, submissions were invited from current and former employees and affiliates of CSIRO relating to their experiences in the CSIRO workplace. It was permissible for submissions to be made on a confidential basis. Submissions were received up until 16 June 2013. See Chapter 2 for the details of how the Investigation has been conducted to date.

We regret that efforts were made by some persons to dissuade others from making submissions to our Investigation, seemingly on the basis that they did not think the Investigation was independent of CSIRO. These people said that there should be a 'judicial inquiry' into CSIRO and the allegations of workplace bullying. There is no such thing as a 'judicial inquiry'. A judge appointed to conduct an inquiry has no greater power than any other person. If it was thought that there should have been a Royal Commission into the allegations that were being made, it would have required much greater detail of the scale, nature and likelihood of workplace bullying than the critics of our Investigation point to.

Our conclusions must of necessity be based on the evidence before us. If in fact there are many other persons who have been affected by workplace bullying, it is unfortunate that they did not come forward as the Investigation provided an opportunity for their concerns and any suggestions for changes in management of complaints to be aired in a forum that can make recommendations for action. We consider that those who dissuaded people from making submissions to our Investigation did a disservice to those they claim to represent.

110 submissions relating to 130 discrete allegations were received (see Chapter 3 for an overview of the submissions received). We have examined these submissions by taking a statement from

the person making the submission and obtaining relevant material from CSIRO. We note that CSIRO has cooperated in making material available to us.

At this point, the names of the persons about whom allegations of misconduct have been made have not been released and those people have not been approached to tell their side of the story. The comments in this Report are, therefore, based mainly on the information provided by persons who have made submissions and on our examination of relevant CSIRO records. However, some of the allegations have been tested during prior investigations (formal and informal) and we have taken that into account in our assessments. We have also had regard to current CSIRO policies and procedures.

In Phase 2 of the Investigation we will conduct a full investigation of the submissions made to the Investigation by former employees about the conduct of current employees whose cases we consider reveal a possibility of demonstrating that the former employee was the subject of bullying or other unreasonable behaviour.

We will not be giving further consideration to the position of most current employees who made submissions to us because they have the opportunity to pursue the grievance and misconduct procedures available within CSIRO. However, we have made specific recommendations to CSIRO in each case as to the manner in which their concerns should be dealt with and we make general recommendations in this Report relating to the implementation of the grievance and misconduct procedures. We have also recommended to CSIRO that a small number of cases involving current employees be referred to us for further investigation in Phase 2. We have taken the comments and experiences of current employees into account in preparing this Report.

In Chapter 4 of this Report we examine the issue and incidence of workplace bullying generally. We note that the incidence of bullying in the public sector seems to be increasing. The cost of workplace injury compensation arising from claims made to Comcare based on workplace bullying is disproportionate to the number of claims.

The Terms of Reference for our Investigation adopt as the test for 'workplace bullying' the definition of that conduct proposed by the Parliamentary Inquiry into workplace bullying that reported in October 2012. That definition was accepted as appropriate by the Commonwealth government and appears likely to become the general approach adopted by Commonwealth agencies. The definition emphasises that, to constitute bullying, the conduct must be repeated and must create a risk to the victim's health.

We have applied this definition in our consideration of submissions to us. However, our Investigation is broader than workplace bullying in that we are required also to consider 'unreasonable behaviour' having regard to the standards of conduct described in CSIRO's Code of Conduct. Thus our Investigation extends beyond workplace bullying.

In Chapter 5 we examine the nature of the CSIRO workforce and environment. The workforce is large—6,500 employees and a further 2,700 persons affiliated with the Organisation in varying capacities. We note that the workforce is different and perhaps unique in Australia. About one-third of staff hold doctoral degrees. The staff supervise 800 PhD students and 300 Post Doctoral Fellows work in the Organisation. However, the most distinctive feature is that staff are engaged exclusively in conducting or supporting research. This can give a focus to researchers' work that makes it hard for them to accommodate to changes in priorities and re-definition of activities within the Organisation. The problems of organisational change on the psychological health and well being of staff has been the subject of a significant report within CSIRO. We are not convinced that the findings and recommendations in that report have been absorbed by all managers in the Organisation.

In Chapter 6 we set out and comment on the application of the relevant CSIRO policies relating to workplace bullying and their application. We reach the conclusion that it appears that, historically, the practice within CSIRO has been one of over-reliance on the grievance procedures for investigating suspected misconduct when the separate misconduct procedure should have been activated and utilised—particularly so in instances involving allegations of workplace bullying. The relevant policies have (and still do) encourage this practice of using grievance procedures to respond to allegations of workplace bullying.

In Chapter 7 we set out the main themes that have emerged from our Investigation to date. The outcome of Phase 1 of our Investigation may be summarised:

- On the evidence before us there is no major problem of workplace bullying or other
 unreasonable behaviour in CSIRO and it is definitely not possible to describe the work culture
 at CSIRO as 'toxic'. There are pockets of concern and these need to be dealt with;
- The matrix operating model, the process for staff allocation to projects, funding pressures, performance management and redundancy processes involve stressors which contribute to poor behaviour. It is alleged that these operational processes are sometimes used as forms of workplace bullying and other unreasonable behaviour;
- There are shortcomings in CSIRO's policies and procedures for responding to complaints about workplace bullying and other unreasonable behaviour; and
- The application of the procedures for dealing with workplace bullying and other unreasonable behaviour has not been satisfactory. While we do not think it to be the case, it is possible that these procedural issues have served to mask a more significant incidence of workplace bullying than the evidence to us reveals. We make recommendations as to the way in which allegations of bullying and other unreasonable behaviour should be managed and we suggest that these recommendations need prompt attention by CSIRO.

We have noted a number of pressure points within the operating model and the nature of the workforce which increase the risk of bullying and we have seen aspects of the Organisation's *response* to workplace bullying that concern us. These concerns emerge most clearly in particular submissions, and groups of related submissions, that we have received. Our full assessment of those submissions is contained in the individual Summary Reports. Our examination of the procedures for dealing with allegations of bullying has also revealed that the documents setting out those procedures are complex and not always consistent. The guidance they should be providing is not always there. These concerns are set out in full in Chapters 6 and 7.

Our concerns do not require radical action in order to be addressed. They <u>do</u> require some adjustments to policies, associated training and better implementation.

Fundamentally, however, what they require is a shift in CSIRO's practical approach from dealing with workplace bullying as an individual victim's problem, to dealing with it as the Organisation's problem.

The following quote comes from a submission we have received. It aptly explains how bullying is perceived to be the individual's fault and the individual's problem:

More than once I was asked by colleagues, while still in [work area] and since, what had I ever done to [the perpetrator]. I now think of this question as akin to asking the victim of abuse or rape or some other violence or injustice, "what did you do to make this happen to you? Why was it all your fault? Why did you deserve it? Why were you the unlucky one?"

It's the wrong question, and shows a profound ignorance and misunderstanding of bullying by apportioning blame to the victim. Also, it reflects the bully's "success", as it were, in that the victim is seen as blameworthy, humiliated and weak, the loser.

To me the question also reflects a failure to capture how destructive bullying is, not only to the victims who suffer professionally and personally, but also to those around who witness it and are debased by it, who may wish to speak out but be too frightened to do so, or may be actively intimidated from doing so, who are perhaps too cynical of process to trust in grievance procedures, who align themselves with bullies and "favoured people" for complex reasons involving self-interest, fear and manipulation, who perhaps even may not actually know the difference between right and wrong, and, worst of all, who see it practised and condoned, and begin to learn that it is acceptable and sanctioned conduct.

While at CSIRO I feel I saw all these shades of bullying's nature and effects. Without wishing to sound too dramatic, I even feel I looked evil in the eye, and had a glimpse at how really bad things can happen to, and at the hands of, ordinary people.

CSIRO has a stated commitment to zero harm and we do not doubt the desire of the Organisation to eradicate workplace bullying. However, aspects of CSIRO's current policies, its approach to implementation of those policies when they are activated, and its first response at the coal-face to informal complaints about workplace bullying have tended to give the message that bullying is the individual's problem. Consequently, there has been an onus on the individual to fix it, although not without support from CSIRO.

We encourage CSIRO to make a small but very significant shift. We encourage CSIRO to make each and every instance and report of workplace bullying the Organisation's problem, in the same way that it would a physical injury. It should be the Organisation's responsibility to 'fix' the problem, although not without support from the individual.

To achieve this, there needs to be:

- Some changes made to CSIRO's policies; a different approach to implementation of policies; and a readiness at the coal-face (by managers and human resources staff) to adopt reports of workplace bullying as the Organisation's problem, rather than the individual's problem; and
- Increased preparedness of individuals to have their complaint, and the fact they have made a complaint, put to the alleged perpetrator for consideration, response and, if appropriate, sanction.

The latter cannot occur before the former and will take time and increased trust before it is achieved.

The need for a genuine commitment to take responsibility for workplace bullying has been summarised as follows:

A key theme that seems to be raised in almost all cases of workplace bullying that we deal with is the nature and quality of the implementation of control strategies. Many organisations have policies and procedures, and training in place. Merely having such strategies is not sufficient ... it is not just about having the procedures; it is about having quality procedures. What underlies that is commitment—real, genuine commitment—and an awareness of the fact that these problems are real problems, they are workplace

problems that organisations have a contribution to and a responsibility for. That recognition is not always there. ¹

In practical terms, what we most strongly recommend is:

- Continuation of the promotion of early and quick informal resolution as the first response, but couple this with improved monitoring of informal complaints and resolutions, so that the Organisation can respond more formally if there is repeat offending behaviour;
- Workplace bullying complaints, that cannot be resolved quickly and informally or that are
 more complex (including repeat offences) should be investigated and addressed by the
 Organisation through misconduct procedures, rather than by the victims through grievance
 procedures. There has been an overreliance on grievance procedures to deal with workplace
 bullying and we discuss this in Chapter 7;
- A review and changes to policies and procedures for responding to workplace bullying (see Chapter 6);
- Consistent enforcement of the Code of Conduct, with the same intolerance of proscribed conduct no matter the level at which it occurs, the 'personalities' involved or the work area; and
- Proactive monitoring by CSIRO of the implementation and outcome of resolutions of workplace bullying complaints, so that responsibility for ensuring the outcomes are implemented and required changes in behaviour are sustained rests, in real terms, with the Organisation, rather than with the individual.

A strong pattern emerges from the submissions we have received of people being unwilling to speak up to report workplace bullying. An aspect of this is that some people are willing to report workplace bullying confidentially to a trusted manager in the hope that they will be able to lend some support and intervene on a confidential basis, but they are not willing to have their identity, or the fact they have made a complaint, disclosed to the alleged perpetrator. This enables the manager to take some limited action to try to address the behaviour, but does not enable the specific behaviour to be put to the alleged perpetrator, nor for misconduct processes to be commenced.

Under-reporting of workplace bullying is prevalent in all workplaces and generally stems from reasons including fear of reprisal and adverse impact on career. We comment on this in Chapter 6. It is not unique to CSIRO and there is no easy solution to this problem. However, we believe that if CSIRO makes the shift recommended above—and shows every day at every level that it will own and respond to complaints about workplace bullying—then over time reporting will increase, misconduct will be sanctioned and the incidence of workplace bullying will decrease.

We also believe that making the shift, so that each report of workplace bullying becomes the Organisation's problem rather than the individual's problem, will help to address another significant concern which has emerged from the submissions we have received. We have seen not many, but enough, cases in which common sense and empathy are lacking. We readily admit that this concern stems from cases in which the underlying circumstances are complex and often involve underperformance or psychological illness. We do not say that lack of common sense or lack of empathy is a widespread problem. However, we have seen enough very difficult cases in

Workplace conduct in CSIRO

¹ Dr Caponecchia quoted in Parliament of Australia House of Representative Committee Report: *Workplace Bullying: We Just Want it to Stop,* November 2012 (the **Parliamentary Inquiry**), p 78.

which the situation has become complex because there has not been sensible, impartial Organisational intervention early enough.

Too often, an individual who *feels* bullied is left to deal with the situation without adequate support. They are told to resolve it directly with the 'bully', or they are told that it is simply a personality difference and to just ignore it, or they are told that the problem is really their own underperformance. For a vulnerable person who *feels* bullied—regardless of whether or not they have actually been bullied—this offers no comfort and no solution. The problem grows, positions become entrenched, in some cases mental wellbeing declines and the situation becomes intractable. At this point, the corporate area or senior Divisional staff intervene with a more formal approach, but it is usually too late to secure an outcome that is genuinely satisfactory to the individuals involved. Good people are hurt, good managers become demoralised and a disproportionate amount of senior and corporate time is spent dealing with these matters.

We do not expect that the problems we have referred to above are unique to CSIRO. We do not say that CSIRO is any better or any worse at responding to workplace bullying complaints than any other organisation. It has simply not been our role to measure comparative performance.

We are giving thought to the appropriate way to manage complaints about bullying and associated issues generally and in relation to recommendations based on our assessment of individual submissions both in Phase 1 and Phase 2 of our Investigation, in particular. As we have indicated in Chapter 6, we have concerns about the way in which such conduct is presently being dealt with. We think that this stems largely from the fact that it is the responsibility of line management to deal with the issues. This has the effect that the people about whom the complaint is being made are closely associated with both the victim and the alleged perpetrator. This issue has not been alleviated by the involvement in the process of Human Resources officers. Many of the submissions that we have seen have been very nearly as critical of the actions (or inactions) of Human Resources officers as they have been of the persons whose conduct they have complained about. We acknowledge that workplace bullying is difficult to deal with, and that some people may have unrealistic expectations of what Human Resources' role is in such matters, but we see a clear opportunity for improvement here.

We consider that for complaints that are about conduct of such gravity as to need dealing with under CSIRO's Preventing Workplace Discrimination and Bullying Procedure, and that cannot be properly resolved quickly, there needs to be a distancing of decision-making relating to the investigation from the immediate area where the complaints arise. We think too that decisions relating to such matters should not be dealt with in the ordinary course of Human Resources day to day business and should be managed by persons with particular expertise. We note that CSIRO has recently established a Staff Welfare Incident Management Team (SWIM) which is beginning to take on this role for some cases.

We are inclining towards recommending to CSIRO that it establish a discrete Conduct Integrity Unit to manage workplace bullying, other significant inter-personal misconduct and issues relating to scientific integrity. We provide our initial thoughts about such a Unit in Chapter 7.

The recommendations we make are as follows:

Recommendation 1

For non-confidential submissions—We recommend that CSIRO should, where appropriate, inform the person who has made the submission what action it is taking in consequence of the Summary Report. This is particularly important where CSIRO's action will result in disclosure within CSIRO (beyond the Chief Executive and her core advisers) of either the fact the person has made a submission or the substance of the person's allegation or both.

For confidential submissions—We recommend that CSIRO should inform us (so that we may, where appropriate, inform the person who made the submission) what action it is taking in consequence of the Summary Report.

Recommendation 3

If, on our recommendation, CSIRO intends to disclose the substance of an allegation made by a person who consented to release of personal information for Phase 1 but not for Phase 2 to an alleged perpetrator, CSIRO should first check with the person who made the submission that they are comfortable with their information being used in that way.

Recommendation 4

We recommend that CSIRO:

- requests the Investigator to monitor its response to Phase 1 recommendations in Summary Reports;
- informs people as much as possible about processes and outcomes in relation to Phase 1 recommendations;
- proactively supports current employees whose submission may now move into grievance or misconduct processes;
- continue to provide support to current and former employees who are affected by the outcome of Phase 1 or the conduct of Phase 2 or both, including continuing the extended EAP access; and
- preserve records relating to matters raised in the Individual Summary Reports.

Recommendation 5

We recommend that the Terms of Reference for the review of the Matrix Structure should expressly encompass the staff welfare aspects of 'matrix management arrangements and capability allocation'. The reviewer should, at least, consider the impact of any recommendations the reviewer may make (including recommendations to maintain the *status quo*) on the psychological health and wellbeing of staff.

Recommendation 6

We recommend that the CSIRO management review the Psychological Health and Wellbeing Report and reconsider the Report's recommendations and whether there should be any further or different management acceptance of those recommendations.

Recommendation 7

We recommend that the Workplace Bullying Procedure be revised and amended to strengthen the link between the Grievance Procedures and the Misconduct Procedure, including clearer guidance as to when a complaint should transition from one to the other and who is responsible for that transition.

Recommendation 8

We recommend that the Misconduct Procedure be reviewed and amended to ensure that the roles and responsibilities of those managers tasked to administer the misconduct processes are consistent with the Terms and Conditions of Service.

We recommend that the Misconduct Procedure be reviewed and amended to ensure that the processes outlined in the Procedure, in particular the formal inquiry processes, are consistent with the Terms and Conditions of Service.

Recommendation 10

We recommend that clearer guidance be included in the Misconduct Procedure as to processes to be followed — including making it clear as to who does what and when and what the outcomes can be.

Recommendation 11

We recommend that CSIRO amend its Misconduct Procedure and the Workplace Bullying Procedure to provide clear guidance to managers as to the threshold for starting a misconduct action when a suspected breach of the Code in the form of workplace bullying arises. It should also be made clear <u>who</u> is responsible for initiating the misconduct action.

Recommendation 12

We recommend that training be provided to managers to empower them to make informed and effective decisions when considering whether to commence a misconduct action.

Recommendation 13

We recommend that CSIRO task us during Phase 2 in conjunction with CSIRO to review the suite of policies and procedures relevant to complaints of workplace bullying to clarify which procedure should be applied, including that suspected breaches of the Code (including a complaint of workplace bullying) require investigation under the Misconduct Procedure and not the Stage 2 Formal Grievance Procedures.

Recommendation 14

We recommend that in the interim, CSIRO make it necessary that during and at the conclusion of every grievance consideration be given by the senior manager on the grievance as to whether action is required under the Misconduct Procedure. We also recommend that the SWIM team have oversight of this process and the SWIM Team be consulted when considering whether misconduct action is required.

Recommendation 15

We recommend that CSIRO task us during Phase 2 to review the existing suite of documents relating to Grievance and Misconduct Procedures (including resource tools and other guidelines for staff) in conjunction with CSIRO to ensure that a streamlined, clear suite of documents exists for staff.

Recommendation 16

We recommend that training be provided to managers and other staff responsible for administering the Misconduct Procedure so as to increase awareness as to the differences between the Grievance and Misconduct Procedures.

Recommendation 17

We recommend that CSIRO establish a centralised database for recording both informal and formal complaints of workplace bullying and other unreasonable behaviour so that CSIRO can monitor and track those reports. This should include the centralised collection of any action taken under both the Grievance and Misconduct Procedures.

As an interim measure, we recommend that CSIRO require a copy of all records held at the Business Unit level relating to complaints of workplace bullying or other unreasonable behaviour, to be provided to a central location. We suggest in the interim that the Staff Welfare Incident Management Team (SWIM) have responsibility for oversight of this interim centralised collection and analysis of misconduct records.

Recommendation 19

We recommend that any new record keeping obligations should be reinforced with training.

Recommendation 20

We recommend that a unit within the SWIM Team be established as soon as possible so that an interim audit of all current <u>informal</u> grievance complaints relating to workplace bullying and other unreasonable behaviour can be commenced and appropriate action taken.

Recommendation 21

We recommend that CSIRO make it necessary that during and at the conclusion of every grievance process, consideration be given by the Senior Manager on the grievance as to whether action is required under the Misconduct Procedure. We recommend that the SWIM team have oversight of this process and are consulted when considering whether further misconduct action is required.

Recommendation 22

We recommend that the current Whistleblower Procedure be reviewed by the SWIM Team to clarify what is meant by "employment matters" and whether it is intended that staff can raise allegations of workplace bullying and other unreasonable behaviour under the Whistleblower Scheme.

Recommendation 23

We recommend that further consideration be given by the SWIM Team and a Whistleblower Disclosure Officer to the intent and operation of the Whistleblower Scheme so far as it fits within CSIRO's current complaints handling framework for responding to reports of workplace bullying and other unreasonable behaviour.

Recommendation 24

We recommend that, in addition to the matter referred to in Recommendation 5, the reviewer should consider the impact of the matrix on interpersonal conduct and should address the impact of any recommendations the reviewer may make (including recommendations to maintain the *status quo*) on the likely incidence of and effective responses to workplace bullying or other unreasonable behaviour.

Recommendation 25

We recommend that training be provided to all managers in how to deal with staff who are suffering from a psychological illness. We recommend that further expert advice be available as and when needed (such as from a clinical psychologist) for managers who need advice on how to deal with people who are mentally ill in relation to difficult issues such as return to work plans, performance management, redundancy and interpersonal conduct.

We recommend the Chief Executive convene a small panel within the SWIM Team (comprising human resources, workplace relations, legal and managerial members) to consider what lessons can be learnt from past cases in which there has been a combination of workplace bullying allegations, performance issues (whether formal or informal performance management or sustained low allocation which might reflect performance issues) and psychological illness.

Recommendation 27

We recommend that managers and Human Resources staff be routinely trained in how to recognise and support employees who suffer from a psychological illness.

Recommendation 28

We recommend that reporting mechanisms be put in place for staff who become aware, or have reason to be concerned, that another staff member is experiencing mental health issues, to report their concerns to Human Resources or management, so that the person can be appropriately supported.

Recommendation 29

We recommend that all Human Resources staff be reminded (including through refresher training) of CSIRO's requirement (under the Code of Conduct and related policies) to report and action *all* complaints of workplace bullying and other unreasonable behaviour and that a failure to do so may of itself result in misconduct action being taken. An informal response to a first report of workplace bullying (such as manager intervention or mediation) may be appropriate in the first instance, but consideration should be given to promptly taking more formal action if the situation is not resolved quickly.

Recommendation 30

We recommend that the Chief Executive issue a clear directive to managers and Human Resources that external investigations of formal grievances, not internal investigations, must be used in accordance with the enterprise agreement and the Grievance Procedures.

Recommendation 31

We recommend that all CSIRO Human Resources staff undergo immediate refresher training as to the scope and application of the Grievance Procedures. We also recommend that Human Resources staff members be given clear guidance as to the use of investigations under the Grievance Procedures.

Recommendation 32

We recommend that clearer guidance be given to staff at the outset of any Grievance Procedures as to the scope and limitations of the Grievance Procedures so that they are clearly aware of the limits of those procedures.

Recommendation 33

We recommend that CSIRO reviews its policies and practices in relation to collection of personal information during complaint resolution processes (including grievance and misconduct processes) and disclosure of information about the outcome of reports of workplace bullying and other unreasonable behaviour, with the aim of ensuring that its policies and practices contain appropriate obligations to advise people about outcomes and permit an appropriate level of disclosure of personal information.

We recommend that all staff be provided with clearer guidance and training as to the interplay between the Grievance and Misconduct Procedures and the scope and limitations of each.

We offer this report and our recommendations in an attempt to help CSIRO to address workplace bullying and other unreasonable behaviour.

We commend CSIRO for candidly examining its own performance in this difficult area. There will be detractors who rely on extracts from this report to lambast CSIRO. They should not do so, because no parts of this report can be considered in isolation.

We sincerely thank the people who have shared their accounts with us. We know that this has been a difficult thing for many people to do. Overwhelmingly people have told us their stories out of desire to help CSIRO to address problems and so as to prevent other people from suffering in the way that they have. It is the contribution which these people have made that will best enable CSIRO to learn and to improve.