

29<sup>th</sup> July 2012

Dear Inquiry Members,

We thank you for the critical role you are undertaking in addressing the serious issue of workplace bullying.

At this stage we would greatly appreciate our submission remaining **confidential**.

We have first-hand experience of workplace bullying. In both our cases this happened more than 5 years ago but it is still difficult to talk about. While we have been making progress in getting our lives back on track, we still feel highly vulnerable and are concerned about the consequences should our submission become public knowledge.

Some comments in relation to the Terms of Reference of the Inquiry follow below. Unfortunately we only became aware yesterday that submissions were being sought with a deadline of today, and so this submission has been prepared in a rush. We would be willing to prepare a more complete version, including published references to support our statements, if this would be useful for the Inquiry.

- *The prevalence of workplace bullying in Australia*

The organisation we can comment on is . We both worked at but in different research areas and in different States. When by chance we learned what had happened to each other, we realised that both of us had been victimised in a similar manner by the organisation for making complaints.

We know others who have left as a result of workplace bullying. We believe it could be very difficult to get accurate statistics on the size of the problem. People within the organisation are often afraid to speak up. People who have been bullied out of the organisation are hard to locate and/or for many reasons do not want to talk about what happened to them there.

One indicator that bullying may be at issue can be a high turn-over rate of staff under a particular line manager, but we note there are also difficulties in using this as an indicator.

- *The experience of victims of workplace bullying*

It is not an exaggeration to state that workplace bullying devastated our lives. We were highly productive and successful research scientists with growing international reputations. We were two of very few female PhD's who have remained in science past their mid-thirties. We lost everything right at the point where our careers were really taking off. We were bullied out of work by our line managers. In one case, the manager concerned reaped the rewards of years of hard work and enhanced his own career.

Research science was our passion. Neither of us are now research scientists.

- *The role of workplace cultures in preventing and responding to bullying and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying;*

There were policies in place at to address bullying. Our observation is that where the bully is a senior manager, i.e. a level or above, these policies amount to naught.

- *The adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums.*

We are not aware of any support services apart from private counselling and internet websites on bullying, both of which give superficial consolation to the target and may prevent suicide, but neither of which are effective in actually tackling the root of the problem.

- *Whether there is scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying;*

A regulatory process that requires organisations to report the number of complaints they receive each year, may encourage them to actively promote/encourage a workplace culture that prevents bullying. Having an agency responsible for further investigation into organisations with high rates of complaint would add further incentive for organisations to change.

- *Whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms;*

Statutory limits of 3 years in tort for personal injury means that this is unlikely to be a mechanism to counter bullying: bullying results in psychological trauma from which it is doubtful a person can recover from, let alone recover sufficiently to contemplate legal action, within 3 years.

Except where bullying clearly has a physical component, which we would argue is the exception in the workplace context rather than the rule, the burden of proof for bullying as a criminal offence makes it unlikely that criminal prosecutions in relation to most workplace bullying cases will succeed.

As things currently stand, if the government employee target (or victim) does take legal action against the government employee bully, then in effect they are taking action against the government organisation. Hence the target has to pay for legal representation whereas the bully will almost certainly be indemnified by the organisation: ie the taxpayer pays for the bully's legal representation. Legal advice as to the "deep pockets of " if legal action were to be commenced against the bully was a substantive reason as to why one of us did not pursue legal action in relation to her experience.

We suggest as possible solutions for government organisations either:

- 1) Establishment of a permanent, but completely independent, panel to adjudicate on bullying issues, or
- 2) That an equal level of legal services be provided to both parties in a bullying dispute not just to the bully.

While solution 2 is quite radical, in fact we believe that one of the advantages of solution 2 over solution 1 would be to deter potential bullies in the first place. It is in the nature of bullying that bullies prey on the powerless. By making it patently clear that all employees have got power, i.e. through equal access to legal representation (and not just to mediation) in the event of bullying, we believe that targets would effectively no longer exist, or at least be a lot harder for the bully to find. It is also likely that the risk of having to fund legal action on both sides would increase the organisational incentive to ensure that issues of bullying are actually addressed by the organisation and not just swept under the carpet.

We believe that equal access to legal advocacy and not simply mediation is required. Mediation has been widely criticised as frequently emphasising any power imbalances that already exist between parties, and such invariably exist between the bully and their target. We agree and feel that mediation in bullying situations often makes things even worse for the target.

The current system of external "independent" investigators to adjudicate grievances is fundamentally flawed because:

- 1) The investigators rarely have the required specialist knowledge as to the ethical and cultural issues that exist in different areas of government and that are often manipulated by bullies.
- 2) Contract investigators, no matter how independent they may intend to be, in consequence of being employed by authorisation from senior staff have a conflict of interest where the target is a more junior staff member than the bully, which is the typical dynamic of a bullying situation. Contract investigators want to keep their contractors happy so they will be re-employed so are likely to be implicitly biased towards findings that are 'comfortable' for senior staff.
- 3) The grievance procedures allow management to reject the findings and recommendations of independent external investigators. This was the case for one of our complaints. Accordingly, the issue was never resolved.
- 4) We are also not aware of the existence of any impartial measures of accountability for such investigators and this casts serious doubt as to the nature and quality of the services they actually provide. Serious procedural flaws in the investigation of one of our complaints were evident but never redressed by

- *Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;*

We believe that the evidence is overwhelming that they do not.

Thankyou for the opportunity to contribute to this Inquiry and we reiterate our commendations to the panel for tackling this serious issue,

Sincerely,