

**House Of Representatives Standing  
Committee on Education and Employment**

**Inquiry Into Workplace Bullying**

**Submission of the  
Department of Commerce  
(Western Australia)**

**August 2012**

## TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>Introduction .....</b>  | <b>3</b>  |
| <b>Issues in relation to workplace bullying .....</b>  | <b>5</b>  |
| Is it really workplace bullying .....  | 5         |
| Complainant identity.....  | 6         |
| Timing of complaint .....  | 7         |
| The practicalities of examining a claim of workplace bullying.....   | 7         |
| <b>The Western Australian Legislative Framework .....</b>  | <b>9</b>  |
| Occupational Safety and Health laws .....  | 9         |
| Criminal laws .....  | 10        |
| <b>The Committee's Terms Of Reference .....</b>  | <b>11</b> |
| The prevalence of workplace bullying.....  | 11        |
| The experience of victims of workplace bullying.....   | 12        |
| The role of workplace cultures in preventing and responding to workplace<br>bullying .....                 | 12        |
| The capacity of workplace policies and procedures to influence the incidence of<br>workplace bullying..... | 13        |
| The adequacy of existing education and support services .....  | 14        |
| <b>Conclusion.....</b>   | <b>16</b> |

# SUBMISSION

## Introduction

The Western Australian Government's Department of Commerce works with the community to ensure high standards of safety and protection for workers and consumers. WorkSafe WA is a division of the Department of Commerce and has responsibility under the *Occupational Safety and Health Act 1984* (the WA OSH Act) for ensuring compliance with occupational safety and health legislation in Western Australia.

The Western Australian Government appreciates that workplace bullying can cause great difficulties for the people who experience such treatment. The Western Australian Government is also conscious that workplace bullying can have a significant impact within an organisation including having a detrimental impact on an organisation's level of productivity.

The Western Australian work environment can often be seen to be different to the work environment in other states or territories because of its mix of industries and geographical vastness. However, it is not different or unique in respect of the hazard of workplace bullying – unfortunately there are workers in Western Australia that are exposed to this hazard in the same way as workers in any other jurisdiction in Australia.

Workplace bullying is an unacceptable behaviour that constitutes a hazard within the workplace which is, under the WA OSH Act, the responsibility of the employer to deal with as with any other workplace hazard. That is, the employer is required to take whatever practicable steps are available to eliminate, or at the very least reduce, the exposure of workers to that hazard.

WorkSafe investigates instances where the person is still exposed to the bullying hazard, has exhausted all avenues to stop the bullying and resolve the matter, and is still employed at the workplace

The processes undertaken by WorkSafe WA to examine a case involving an allegation of workplace bullying is limited to ensuring that both employer and employees are

meeting their general duty of care obligations to ensure safety and health under the OHS legislation. This is achieved by–

- determining whether the workplace has adequate systems in place to deal with reports of bullying hazards; and
- checking if ‘due process’ has been followed where an investigation has been conducted by the workplace following a hazard report about bullying from an employee.

Where a finding is made that one or both of the above dot points is not met, then WorkSafe WA will take action to ensure that the situation is rectified. However, WorkSafe WA does not play an adjudication role in respect of workplace bullying.

It also needs to be recognised that instances of workplace bullying arise through the behaviours of those in the organisation such as workers bullying one another or managers acting in manners that cause bullying. The extent of the organisation’s (i.e. the legal employing entity) involvement in the behaviour is around the work environment which allows the behaviour to continue.

## Issues in relation to workplace bullying

The topic of workplace bullying contains a number of issues which mean that this topic is one of the more complex matters to deal with from a regulatory point of view. While separate comment has been made on a number of issues under headings below, the issues are often interrelated which can exacerbate the complexity.

### ***Is it really workplace bullying***

This issue commences with the determination of a definition of 'bullying'. The Western Australian Code of Practice on *Violence, aggression and bullying at work* defines bullying as –

repeated unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety.

The *Violence, aggression and bullying at work* code also observes that bullying does not need an intent to bully to be present, but its existence is determined by the effect of the behaviour. This again, along with the potential for the bullying behaviour to be overt or covert, highlights the complexity of the issue of workplace bullying.

It has been WorkSafe WA's experience that on many occasions where an issue of alleged workplace bullying is presented that it is in fact another matter entirely. The various issues which can be confused with bullying include –

- Discrimination or equal opportunity issues.
- One off events of workplace aggression.
- Legitimate management decisions.
- Staff performance management.

In respect of the last two dot points above, the issue ultimately comes down to the manner in which those matters have been executed and the quality of communication. However, having said that, there are numerous examples where appropriate management steps are being taken, which have been well communicated, that workers just do not like and are sought to be construed as workplace bullying.

It should also be noted that the line between some of these matters can be blurred. For example, an instance that perhaps commenced as discrimination can take on all the hallmarks of workplace bullying. The discernment between these two issues can be difficult to achieve.

WorkSafe WA has developed a 'worksheet' for use by call centre staff to assist in dealing with any enquiries concerning an allegation of bullying. Through this process WorkSafe has found that of the number of calls that are received that commence as an allegation of workplace bullying, approximately 14% become formalised as a workplace bullying complaint.

This is not to say that the issue of workplace bullying is being exaggerated; from WorkSafe WA's observations it clearly represents a hazard in workplaces and the awareness of the issue appears to be increasing. But it does highlight the extent to which issues can be called 'workplace bullying' when in fact they are some other issue entirely.

### ***Complainant identity***

When an allegation or complaint of workplace bullying is received by WorkSafe WA, it is not uncommon that the party who is the alleged victim of the workplace bullying wants to remain anonymous. If the request for anonymity is maintained, then ultimately it means that the complaint cannot be investigated with the consequence that if there is workplace bullying occurring it is left unabated.

When examining a physical hazard a WorkSafe Inspector can enter the workplace and undertake an examination of the hazard without identifying which worker has made a complaint about safety.

By contrast, the only way to examine a complaint of bullying is to identify the party who is allegedly being bullied so that the situation and procedures being adopted by the organisation can be examined. Unlike other hazards which can be physically observed, such as a lack of guarding, the hazard of bullying can only be observed if it is clear where the hazard and exposure exists.

## ***Timing of complaint***

The desire for anonymity generally arises where the complainant is still a worker within the organisation where the alleged workplace bullying is occurring. However, it is not an uncommon situation for a complainant about workplace bullying to only be made after the worker has left the organisation.

It is often the case that the worker has left the organisation because of the workplace bullying concerns and it is possible that the departure of the worker was the intended outcome of the behaviour. This demonstrates the impacts that this hazard can have on workers and also on productivity.

However, once a worker has left the organisation it often means that the workplace bullying has ceased. Consequently, the alleged hazard no longer exists and it is largely impossible for WorkSafe WA to investigate the existence of a hazard which has effectively been removed.

This highlights the impacts that workplace bullying can have on an individual through their decision to leave the situation while also demonstrating one of the practical difficulties for the regulatory agency.

## ***The practicalities of examining a claim of workplace bullying***

As alluded to earlier, workplace bullying is significantly different to other workplace hazards. Most other workplace hazards can be observed either by sight or by scientific measurement which then allows for prescriptive regulations to be put in place such as limitations on exposure to certain substances (exposure standards) or physical requirements (such as guarding).

These same approaches are not available in the case of bullying.

The role of a WorkSafe inspector conducting an investigation into an allegation of workplace bullying is to:

- ensure both the employer and employee are meeting their obligations under the occupational safety and health law, which is done by looking at whether adequate systems and processes are in place to deal with allegations of workplace bullying; and

- where the employer has received a hazard report about workplace bullying, check if 'due process' was followed and there was a response within reasonable time.

It is not the WorkSafe inspector's role to facilitate, mediate and/or carry out an investigation into the specific allegations.



## The Western Australian Legislative Framework

A recent re-examination of the Western Australian legal framework has shown that the coverage of workplace bullying parallels that within Victoria after the Victorian Government introduced the *Crimes Amendment (Bullying) Bill 2011* to ensure that bullying was within the Victorian definition of the term stalking.

The following paragraphs provide a brief outline of Western Australia's laws.

### ***Occupational Safety and Health laws***

As noted in the introduction of this submission, the *Occupational Safety and Health Act 1984* (the OSH Act) provides the legislative basis for regulating safety in Western Australian workplaces. Specifically, section 19 provides a general duty to employers to eliminate the exposure of employees to hazards and where that it is not possible, to take steps as far as practicable to reduce the risk of the hazard. This principle is expanded to apply to Contractor and Labour Hire arrangements in later provisions in the OSH Act.

The OSH Act is supported by the *Occupational Safety and Health Regulations 1996* (the OSH Regulations) which provide a greater level of prescription in relation to specific hazards and tasks. The OSH Regulations do not contain any specific provisions in relation to bullying.

In Western Australian, the tripartite Commission for Occupational Safety and Health has developed the Code of Practice on *Violence, aggression and bullying at work* (the WA Code). That code is structured in two parts with one part dealing specifically with workplace bullying as a discrete issue.

The WA Code defines bullying as –

... repeated unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety.

The WA Code has made no attempt to define what is considered 'repeated' as the development of that definition tends to lead to the use of words such as 'persistent' and 'on-going'. While these are certainly examples of where a repetitive behaviour would be exhibited, words such as 'persistent' generate concepts around regularity which do not need to be present for bullying to be occurring. Consequently the

preferred approach was not to narrow the scope of the definition by leaving the word 'repeated' undefined.

A similar approach was taken in relation to the information provided in the WA Code in relation to the element of behaviour. The WA code provides some examples, but in an ever changing world the behaviours and methods used to bully a person are also evolving. An example of such an 'evolution' is the advent of 'cyber-bullying'.

Essentially, each case needs to be considered on its facts. For example, the setting of work rosters is an everyday operational aspect of delivering a business outcome; but, work rosters could be utilised to systematically disadvantage a specific worker, or group of workers in a manner that constitutes bullying.

### ***Criminal laws***

Western Australia's criminal laws are contained in the *Criminal Code Compilation Act 1913* (the Criminal Code).

Section 338E of the Criminal Code defines stalking - 'A person who pursues another person with intent to intimidate that person or a third person'. Relevant definitions of terms used in that definition are contained in section 338D with a key term being 'intimidate which is defined as –

***intimidate***, in relation to a person, includes —

- (a) to cause physical or mental harm to the person;
- (b) to cause apprehension or fear in the person;

Consequently, behaviours that constitute workplace bullying can be treated as a case of stalking under the WA Criminal Code.

The consequence of this is that the laws that exist in Western Australia have the same effect as those introduced into Victoria with the *Crimes Amendment (Bullying) Bill 2011* (commonly referred to as Brodie's law).

This position has recently been confirmed through discussions between the Department of Commerce and Western Australia's Department of the Attorney General.

## **The Committee's Terms Of Reference**

The Committee's Terms of Reference list specific issues for consideration. While it is not possible for WorkSafe WA to provide comprehensive comments in relation to all of the items listed for examination, a few observations are provided.

### ***The prevalence of workplace bullying***

It is commonly accepted that there is a level of under-reporting that occurs in relation to notifiable incidents (specific workplace safety events that the laws state must be notified to workplace safety regulators). It is likely that this is reflective of the level of information received by occupational safety and health regulators nationally. Thus while WorkSafe WA has no way of knowing, it is not unlikely that there are many situations of workplace bullying that are not brought to our attention. Consequently it is not possible for WorkSafe WA to comment on this issue in an authoritative manner but only from the perspective of what the occasions of which it becomes aware.

WorkSafe WA receives a significant number of complaints about purported workplace bullying. WorkSafe WA's call centre receives approximately 35 calls per week which commence with the premise that workplace bullying is occurring.

However, on examination and by working through WorkSafe WA's worksheets, many of those complaints are not considered to be bullying behaviours and few fit the definition of bullying. Ultimately approximately five of those calls will be referred to a WorkSafe WA inspector for consideration.

WorkSafe has found that on occasions, while there can be the appearance of a repeated pattern of behaviour, the behaviour can nonetheless be found to be a legitimate activity such as performance management.

A not uncommon scenario is one where a worker is treated in a manner they consider to be inappropriate from which they then form the view that they are the subject of bullying. That worker can then develop selective attention and only focus on those behaviours by the alleged bully that fit their perception. At the same time if the original trigger was a performance issue, this performance problem continues, attracting more attention, thus further reinforcing a perception of bullying.

As already noted in this submission the main area of failing in these sorts of scenarios is skills around performance management and communication.

## ***The experience of victims of workplace bullying***

WorkSafe WA is not in a position to comment with any great authority on the experience of the victims of workplace bullying.

WorkSafe WA's observation is that there can be a great amount of trauma experienced by victims of workplace bullying. On many occasions this can be left unresolved where a worker has chosen to leave the workplace before making any complaint about the bullying behaviour. As noted earlier in such circumstances it is not possible for WorkSafe WA to examine the alleged behaviour as the 'hazard' has ceased to exist.

In many instances the experience of workplace bullying remains in a state where there is a lack of closure for an extended period of time. There are cases where those affected by behaviours in the workplace will be regular correspondents with WorkSafe WA and/or their local members. The inability to achieve a point of closure extends the period over which the bullying behaviours, which may have been for a comparatively short period, have an impact.

It is also WorkSafe WA's observation that these experiences are not limited to those occasions where there is actual workplace bullying, but also extend to those who have not been bullied but have a perception that they have, such as in the example outlined under the previous heading.

## ***The role of workplace cultures in preventing and responding to workplace bullying***

It is arguable that the workplace culture is the starting point for tackling workplace bullying and in some respects that has some truth. However, it must be noted that it is rarely observed, if at all, that workplace bullying is endemic in an organisation. More often than not it is a case of a small group, or possibly one individual, who is undertaking the bullying behaviour.

Consequently, it is unlikely that workplace cultures will totally prevent workplace bullying. While there may be a strong safety culture that has minimal or no tolerance for the behaviours that can constitute workplace bullying, that safety culture is unlikely to prevent it occurring.

It must be noted that the trigger for workplace bullying can be varied. It is not always the case that the offending party is a 'full-time' bully; the bullying behaviour could be

triggered by some event such as a perceived favouritism or the introduction of a new employee to the work environment.

However, the strong workplace culture will likely lead to a rapid and appropriate response to the workplace bullying which will then remediate the situation and limit the flow-on impacts.

Notwithstanding the above, it is WorkSafe WA's view that it is a reasonable hypothesis that organisations with the right culture and behavioural examples are far less likely to have an incidence of workplace bullying.

Consequently, while workplace culture is not going to eliminate workplace bullying it does represent the optimum method for minimising the extent to which it occurs and for responding to those incidences that arise. Arguably, workplace bullying (because of its triggers) is unlikely to be ever eliminated in totality.

### ***The capacity of workplace policies and procedures to influence the incidence of workplace bullying***

Workplace policies and procedures only provide an effective influence to the extent that those policies and procedures are enforced. Regardless of the hazard there are many occasions where an organisation has had a policy and/or procedure in place, where it is routinely not adhered to, where that non-adherence is common knowledge, and no corrective action is taken. In such cases the policy or procedure has no influence what so ever.

That is not to say that the existence of a policy and/or procedure is of no value, but it is to say that the critical element of having the workplace policy and/or procedure is the enforcement of it by the workplace.

This then brings the discussion back to the issue of organisational culture. The workplace culture in relation to the adherence to policies and procedures which is reinforced through the culture around dealing with non-conformance is the element that makes the policies and procedures influential.

From that perspective, policies and procedures are dependent on workplace culture, whereas, the reverse is arguably not the case (culture can be seen to have success without the policies and procedures, but the success of culture will be strengthened by their existence).

### A new approach required

One important issue to note in relation to policies and procedures in relation to workplace bullying is that the focus is generally about what the approach should be in response to an incidence of workplace bullying. This is essentially a 'curative approach'.

By comparison, the approach taken with other hazards is to set policies and procedures in place to ensure that the hazard do not create a significant risk in a 'preventative approach'. For example, when we see a container of chemicals we recognise that they could explode and have acute effects through exposures to high concentrations and long term health effects through low level exposures and thereby take steps to limit the chances of those outcomes.

In the case of workplace bullying, the hazard is inter-personal interactions and relationships in the workplace. In that respect, it is possible to take the view that we all potentially indulge in behaviours that, if were repeated and directed, would be workplace bullying (for example, ignore some people, treat some people better than others, gossip, have bad hair days, lose our temper, tell potentially offensive jokes).

To adopt this approach, the types of policies and procedures required would sit closely in alignment to the issue of workplace culture. Those policies would likely be the same as documents that exist in the public sector (e.g. public sector code of conduct) and would rely significantly on the willingness of everyone in the workplace to challenge contrary behaviours.

### ***The adequacy of existing education and support services***

WorkSafe WA is not in a position to provide any comment in relation to the adequacy support services.

WorkSafe WA provides various materials in relation to workplace behaviours matters which include training sessions. Those training sessions are about a broad range of workplace behaviour issues and are titled 'Workplace stress and bullying: common risk factors' and 'Workplace blowups: negotiating the minefield of occupational stress and workplace conflict'.

These sessions are well received and have historically been very popular. The challenge for WorkSafe WA has been having access to appropriate staff to present the sessions.

WorkSafe WA also has the following publications available on its website – ‘Code of Practice – Violence, aggression and bullying at work’ and ‘Guidance Note – Dealing with bullying at work’ (available in English, Chinese and Malay).

## Conclusion

Workplace bullying is a hazard in the workplace that needs to be removed to ensure worker health and safety is not compromised in the workplace. Failure to do so will continue to impact on the lives of workers (and their families) as well as impact on productivity levels.

However, WorkSafe WA is of the view that the issue of workplace bullying will not be resolved through the introduction of new laws. As outlined in this submission, Western Australia already has laws in place that provide a platform matching those which were introduced into Victoria in response to the tragic incident involving Brodie Panlock. Further legislation specific to the issue of workplace bullying is not anticipated to make improvements in the current situation, that is, additional laws are not expected to result in a reduction in the prevalence of workplace bullying.

The issue of workplace bullying is not dissimilar to the issue of discrimination with which workplace bullying can be confused, and the resolution of the behaviours that deliver both is found in the culture that prevails. Culture is not something that can be effectively legislated for but is developed through other processes which are largely educative in nature.

As observed in a recent television interview by Brodie Panlock's brother, Cameron, workplace bullying is the same as schoolyard bullying. The behaviours that result in bullying can emerge early in life and where those behaviours are left unchallenged they can become standard or common behaviour.

Therefore, it is likely that the long term solution lies in educational steps that transition behaviours at an early age before habits of poor behaviour become entrenched. This is particularly important in the context of rapidly evolving technology which has created a variety of 'new' avenues for bullying behaviour to be exhibited which extend well beyond the schoolyard or the workplace.

In terms of achieving change with the existing workforce and workplaces, the solution will rely largely on workplace culture. Good policies and procedures will play a part in that solution, but it is WorkSafe WA's proposition that the approach taken needs to move from a 'curative approach' to a 'preventative approach' based on acceptable



behaviours and workplace relationships. Such an approach would be consistent with the approach adopted for other workplace hazards.