



29 June 2012

Committee Secretariat
Inquiry into Workplace Bullying
House Standing Committee on Education and Employment
House of Representatives
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Canberra ACT 2600
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Dear Committee Members,

Personal submission

My purpose in making this submission to the Inquiry into Workplace Bullying is three-fold:

- 1) To outline my **personal experience** of a lengthy pattern of what I label “covert managerial bullying” within a state government department. My example illustrates (a) the covert nature of bullying that is common in larger organisations and, (b) the fact that a significant percentage of bullying is managerial, which raises major issues for management dealing with the behaviour in a just and fair manner;
- 2) To illustrate that bullying does not occur only with younger workers but is often something that is a **pattern of behaviour that workers of any age can be subjected to**. In each age group, the consequences can have different ramifications. For example, the bullying I have experienced occurred in the latter phase of my career and has made it very difficult – given my age – to get back on

track and finish my formal employment in a satisfying way.

- 3) To offer a few **suggestions** that the Committee may wish to consider that I would assist in reducing or preventing the type of trauma to which I have been subjected in a major government department in Western Australia.

The **covert** (i.e., under the guise of applying official policies and processes) **managerial** (i.e., by people in positions of power) **bullying and intimidation** that I have experienced began on 20 September 2010 and remains unresolved because the department refuses to deal with it according to its own policies and with any sense of integrity (including procedural fairness and avoiding conflict of interest). All aspects of my experience during the 22 months it has lasted have been recorded in detail in writing, mostly in formal, on-the-record documents.

Case example: Outline of bullying pattern

I appreciate it is not within the Committee's ambit to do anything to resolve my case. I put forward my experiences in this context only as a case example of one common type of bullying to assist the Inquiry as it examines bullying in workplaces. What I put forward about my case is a brief outline only, with considerable detail left out. The events that have occurred could fill a book or two.

During the 22 months since the beginning of the pattern in September 2010, I have experienced the following within the directorate in which I work:

- **Extremely badly managed changes to my position.** The bullying pattern occurred as part of the way chosen by a director to transfer my position within the agency, followed by the deletion of my position once I complained about the management of the proposed transfer (the leader in this second phase was the executive director of the directorate in which I work).

It should be noted that a significant part of the ongoing bullying pattern can also be designated as harassment following the submission of a complaint (something prohibited by the agency's anti-bullying and grievance policies).

- **A pervasive and systemic pattern of covert managerial bullying** at the level of director and executive director which has been aided and abetted by employees in other sections of the Department, including the chief executive officer and

Human Resources. The number of people who have played significant roles in the development and progression of the pattern indicates clearly the systemic nature of the bullying mentality.

During October 2010 I lodged a grievance reporting the early phase of this bullying pattern. The pattern then increased and expanded to include other staff – particularly the Executive Director to whom I had made the initial complaint – so I expanded my allegations formally during December 2010 to include that person. The bullying entered a third and more intense phase in January 2011, which has continued to the present. I updated my allegations formally in December 2011 to include the behaviour experienced during the third phase. In this latter phase of my complaints, I named those that I was aware of who I consider had aided and abetted the leading players to carry out the bullying pattern.

- **The Department responding to my grievance in a manner that is unfair, biased and destructive** (completely contrary to policy): This meant the manner of *responding to* my initial complaint became an additional component of the pattern of covert managerial bullying and intimidation. This included carrying out, at considerable cost, an external ‘investigation’ into my claims that reported to one of the people accused of engaging in the bullying (the conflict of interest was obvious). Once the report of that investigation was made available to me, it was very clear that it wasn’t worth the paper it was written on. The report was contaminated (put two issues together that should never have been combined, and to my detriment), completely lacking in procedural fairness (natural justice), and marked by conflict of interest. It had no credibility. Following independent advice, the department was forced to scrap outcome of that investigation. In essence, this extraordinary ‘investigation’ became just another element in the overall pattern of covert managerial bullying – using official-sounding processes to power over, intimidate and damage me, my career, and my well-being (psychological and physical)

In May 2011, following the completely unacceptable outcome of my grievance regarding phase 1 and phase 2, I submitted a detailed Breach of Standard Claim to the Department regarding the “unfairness” (and, hence, bullying nature) of the grievance procedure. The Department made no attempt to resolve this claim so, as required, forwarded it to the government body overseeing public sector standards.

- **Being subjected to a disciplinary allegation and charge.** Part of the second phase of the bullying involved a breach-of-discipline allegation made by the executive director named in my bullying grievance. The allegation eventually became a charge. I was found 'guilty' and formally reprimanded. The entire manner in which this was "investigated" (twice, as a result of my rejection of the charge) was unfair and biased – so the whole process became to me just another aspect of the overall pattern of covert managerial bullying. All I had done was asked that a scheduled meeting be postponed for a few days until the above mentioned investigation report was made available to me (I had made provision of the report a condition of agreeing to meet and it was available, was central to the meeting agenda). It was dangerous for me to attend the meeting without having read that report. I was within my rights in making that request and saying that I couldn't attend until the document was provided. The executive director (one of the alleged bullies) purposely withheld the report that covered allegations of bullying against her and placed me in an untenable position. The conflict of interest was profound. The abuse of power was profound. I didn't stand a chance. This was covert managerial bullying. A copy of the report was provided to me within hours *after* the time that the meeting had been scheduled – and, for the reasons noted above, it became obvious why such an incompetent and aggressive report hadn't been provided beforehand.
- **The failure of the public sector watchdog to hold the agency responsible and attend to its own duty of care:** My 25-page breach of standard claim, which was now with the agency overseeing public sector standards, provided detailed and unequivocal evidence regarding how standards and policies had been trampled in regard to my position and my bullying grievance as well as outlining the multiple damage done to me. When the watchdog's staff summarised my claim, it took three pages of succinct dot points to cover all the key points. I then chose the option of conciliation between me and the department, incorporating an external conciliator. When it became obvious that the department had no interest in engaging genuinely in conciliation, I opted to call a halt to that process and return the claim to the agency overseeing public sector standards. I was then advised by letter that the department had agreed to redo the formal investigation of my claims. That letter advised that the rules meant my case was to be handed back to the department – and into the hands of those that had carried out and/or aided and abetted the bullying in the first place. At no time did the watchdog body consult with me about this move. I advised the watchdog in writing that that its decision was akin to throwing Daniel back into the lion's den. Given that they

knew allegations of bullying were a core part of the context, this action completely trampled over duty of care obligations and thrust me back into even greater danger.

- **The tactic of character assassination** being used as a key component of the high-level intimidation and bullying (written evidence available to illustrate this).
- **A profound level of stress** experienced as a direct result of the managerial bullying, including a serious sleep disorder and periods of suicidal ideation (primarily during 2011).

I have been assisted throughout by my GP, █. His is very familiar with the impacts of workplace bullying and has been very supportive once he understood what was occurring and diagnosed the stress responses. As of 23 February, I had used up all of my sick leave, most of it in an attempt to roll with and survive the abuse – something that has never occurred previously.

Also, I have attended numerous sessions with psychologists from Employee Assistance Programs associated with the Department. This has been helpful.

I have never experienced anything like this pattern in a 40-year career. Based on my experience and observations, what appears to exist within the large directorate in which this travesty has occurred – aided and abetted by staff in other areas (e.g., high ranking Human Resources staff members) – is a culture in which:

- (a) it is acceptable for management to engage in intimidating-cum-bullying behaviour;
- (b) it is acceptable for management to contravene (blatantly and covertly) statutory requirements, Public Sector Standards, duty of care, disability obligations (I have a substantial hearing disorder and is has been completely ignored despite its relevance to my case), departmental policies (including key elements of its anti-bullying and grievance policies), and the much-vaunted ‘values’ of the Department when relating to employees;
- (c) the department and the public sector standards watchdog appear to have some sort of ‘understanding’ in order to avoid a fair, proper and just process occurring

when it is in a department's interest to avoid the issue;

(d) it is impossible to raise evidence-based allegations about inappropriate and destructive workplace behaviour by management and to have those issues and grievances dealt with in a fair and just manner.

For the Committee's information, I have included **Attachment A** which provides background about the specific people and agencies that I have referred to generally in my outline above. I have designated this attachment also as 'not for public display.'

Also for your information, and to provide a little of the flavour of what has occurred, I have attached two recent communications to me about this issue and my responses to each. These documents are contained in Attachment B and Attachment C. I request that both remain confidential (not available for public display and for use only by the committee):

- **Attachment B:** The first document demonstrates the refusal by the department to justly address my allegations – contrary to the department's own policies – and the shallow reasons given to justify that action. My reply shows how baseless the department's position is and summarises the problem with the department as I have experienced it. I have had no response to my reply (except the pseudo-duty of care response noted in Attachment C).
- **Attachment C:** The second document shows the only response I have had to my reply above – a barely disguised attempt on behalf of the department to cover its rear end concerning the complete lack of duty of care shown over an extended period. It involves one of the named bullies requesting to see my doctor due to their 'concern' about my safety in the workplace. My reply makes it clear how misguided this flimsy charade was. I have had no response to my reply.

These documents are living examples of covert managerial bullying in the workplace – and there is so much more concrete evidence that could be placed on the table to illustrate the same the pattern over the extended period of 22 months.

A systemic dynamic: bullying culture

While I have focused on my experiences of bullying, the systemic nature of what occurred to me would make it surprising if mine was an isolated case. I have observed the dynamic of a covert bullying culture primarily involving upper and middle management and I am aware of other staff being subjected to the same bullying *modus operandi*. I am sure there are numerous cases that I am not aware of.

If the Committee, through its inquiry, wants to make any headway to protect workers from such bullying it means addressing some very complex system issues. My experience is that the public sector system in WA is set up to support managerial bullying. Non-managerial staff members are sitting ducks.

I am happy to provide further evidence during the committee's public hearing on Perth on 8 August if the committee considers that doing so would assist the inquiry.

My immediate supervisor in █ was fully supportive of my work. She is dismayed and disgusted by the manner in which I have been treated. She witnessed some of the bullying firsthand and was subjected to various intimidating and aggressive actions herself. By accepting a university scholarship to complete her PhD, however, my supervisor was able to extricate herself from the ugly scene at the end of 2010. Her health improved rapidly and quite dramatically once she was out of the toxic setting. She is likely to be open to appearing before the committee during its public hearing in Perth if doing so was considered useful.

Since my most recent communication with the Department on this – involving the department completely avoiding both the issue and its liability – I have decided that during July I will submit a complaint to the WA Ombudsman about the woeful manner in which the department and the government body overseeing public sector standards in WA handled my grievance regarding managerial bullying.

Suggestions for consideration

I have three suggestions for the inquiry to consider as it examines bullying in the workplace:

1.

Genuinely independent structure: If allegations of bullying are made, particularly if those allegations involve managerial staff, there must be a structure in place to ensure that the departmental examination of those claims is fair and independent

and devoid of conflict of interest. That is not the case in the department I am employed by.

2.

Early mediation: Conflict resolution and mediation should be used early in the process in an attempt to stop the intimidation and bullying before the process moves into more formal phases. There was no attempt to do this in my case.

3.

Restore equality of public sector employees in accessing the WA Industrial Relations Commission: It has been the case in Western Australia for many years that public sector employees are not equal before the Industrial Relations Commission when compared to other employees. This systemic inequality promotes the occurrence of workplace bullying in the public sector. As part of minimising bullying, it is essential for this unfair situation to be corrected and equality restored.

Parts of Section 80 of the Industrial Relations Act 1979 preclude public sector employees from having the same rights as private sector employees to have their industrial matters dealt with by the Industrial Relations Commission. I became aware of this only in recent weeks and it helped to make additional sense of what has occurred in my case.

In the year that the bullying pattern against me began, the Industrial Relations Amendment Bill 2010 was introduced by MLA Nick Catania to correct this detrimental and discriminatory situation. That bill, however, did not progress and was discharged from Notice Paper under Standing Order 144A 11/08/2011. The current Labor Opposition Leader, Mark McGowan, recently renewed the push to remove Section 80E (7) from the Industrial Relations Act, with the first reading of the revamped bill tabled in State Parliament during June 2012. This is a first step to provide a better and fairer system for public sector employees and a genuine chance to have issues – such as grievances about bullying – resolved when genuine attempts to do so internally have failed (as they clearly have in my case).

As background to this issue, I quote below from a two-page memorandum outlining the nature of the proposed legislation when it was put forward in 2010 (*italics added*). The short memorandum is worth reading in full and can be accessed on the website of the WA Parliament:

When the Public Sector Management Act was enacted in 1994 it placed restrictions on the rights of public sector employees and public sector unions to have matters considered by the Western Australian Industrial Relations Commission (WAIRC). These restrictions did not exist for private sector workers covered by the same legislation.

The specific restrictions that apply to matters for individuals are any matter covered by public sector standards. Public sector standards cover such matters as: redeployment, grievances, performance management, acting secondment, transfers and recruitment.

The specific exclusion for the WAIRC to deal with the matters is found at 80E(7) of the *Industrial Relations Act 1979*. The IR Act was amended at the same time to support the establishment of the standards and the Public Sector Standards Commission (PSSC) [replaced in late 2010 by the Public Sector Commission]. It meant that a breach of anything covered by a standard could only be lodged with the PSSC as the WAIRC no longer had jurisdiction.

However, the PSSC could only find on procedural matters and could then only recommend that the employer change their processes in the future. This is unlike the WAIRC, which has the power to hear the merits of the case and provide for a finding for the individual.

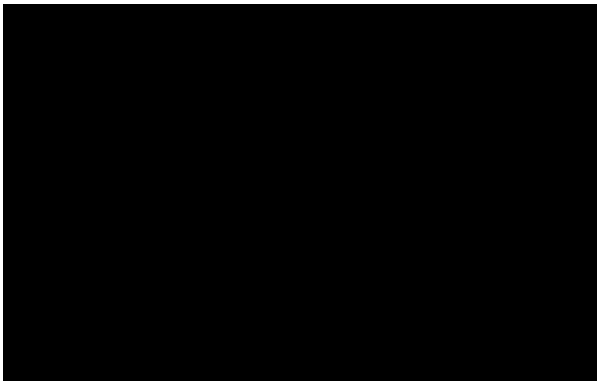
At present it is a closed circle. The public sector watchdog primarily looks after the interests of public sector employers – not public sector employees. My case illustrates that perfectly. If I have a genuine, fully-evidenced case against my employer, my experience informs me that I will get nowhere by going to the public sector watchdog. As I have put on the record (see my response in Attachment B), it is a paper tiger.

It is essential that someone in my position has the right to take their grievance about bullying to the WA Industrial Relations Commission and to have the case assessed independently. In the present closed circle, the employee holds no cards – and public sector employers know that. They act, therefore, as if they are a law unto themselves in the areas identified. Clearly, the system is set up to enable and encourage workplace bullying (amongst

other things). Those in senior managerial positions have an inordinate and unacceptable amount of power.

I wish the Committee well in its inquiry into workplace bullying and hope that my contribution provides food for thought about this complex and destructive aspect of the places in which we work.

Yours sincerely,



Attachments: NOT FOR PUBLICATION OR PUBLIC DISPLAY

(provided separately as PDF documents)

ATTACHMENT A: Background details about people and agencies

ATTACHMENT B: Departmental letter of 9 March 2012, with █ response

ATTACHMENT C: Departmental duty of care letter of 30 April 2012, with █ response