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29 June 2010

The Honourable Amanda Rishworth MP
Committee Chair
House of Representatives Standing Committee
on Education and Employment
PO BOX 6021
Parliament House
CANBERRA ACT 2600

Dear Ms Rishworth

Inquiry into workplace bullying

Please find enclosed the Office of the Employee Ombudsman's submission in relation to workplace bullying.

I look forward to discussing our submission in further detail at the public hearing on 7 August 2012.

Yours faithfully

Stephen Brennan
EMPLOYEE OMBUDSMAN

INQUIRY INTO WORKPLACE BULLYING

1. The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying.

The Office of the Employee Ombudsman (OEO) estimates that in the 2010-11 financial year, 10% of a total of 4,000 clients had issues which directly related to workplace bullying. In addition, a further 20% – 25% of clients raised issues which manifested themselves into issues of workplace bullying.

Case Study 1

A labourer contacted the OEO claiming that he had been unfairly dismissed. He initially contacted the Fair Work Ombudsman but was advised that they had no grounds upon which to become involved. He then contacted SafeWork SA, who referred the client to our office. The client said that he felt had been unfairly dismissed because he had made a complaint to his employer about the employer's failure to provide appropriate safety equipment. The client was told that he was being argumentative and difficult. His employer said that none of the other workers made such requests. After making these requests over a period of one week, and being publicly ridiculed by the employer for asking, the employer told our client that he should leave and not bother coming back.

In this instance the matter was initially raised in the context of unfair dismissal but the underlying issue, we assert, was a question of workplace bullying.

The OEO submits that the prevalence of bullying is widespread throughout Australian workplaces, and is the source of considerable and unnecessary human suffering.

2. 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.

The OEO asserts that failure to appropriately manage conflict contributes significantly to the escalation of workplace disharmony. Across the full

spectrum of Australian workplaces, the skills required to appropriately manage conflict are in short supply. In the OEO's experience, aggrieved employees rarely utilise formal complaint mechanisms when confronting workplace conflict. There is evidence to support the view that expeditious and appropriate management of conflict will dramatically reduce workplace injury and illness.

Case Study 2

The OEO is aware of the frequent use of functional capacity assessments to prevent people from returning to work, despite doctors' opinions stating otherwise. One client was required to undergo a psychiatric assessment following allegations of underperformance due to mental illness. These allegations followed a complaint made by the client to her employer that she was being bullied in the workplace by the Director of the Unit. The client was not able to return to work for over 12 months wrangling over doctor's reports and the subsequent psychological injury arising out of the accusations of mental illness.

In the OEO's view, workplaces need to redefine the way in which interpersonal conflicts are dealt with. It is our considered opinion that early and appropriate intervention is the most effective way to deal with workplace bullying.

3. 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.

Whilst there is some guidance on the identification of the issue of bullying, that there is still a profound failure to grasp practical interventions for dealing with conflict. In the OEO's view, education and support services should focus on capacity building on how to prevent and respond to workplace bullying.

Publications are inclined to provide information on legislative frameworks and definitions, but very little practical advice on how organisations can build the capacity to combat workplace bullying. The OEO asserts that across the workforce, managers and leaders are poorly equipped with the necessary skills required to deal with conflict. Our considered opinion is that poor conflict management skills increases the probability of complaints of bullying being received, and decreases the likelihood of those complaints being dealt with appropriately.

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

Currently in South Australia, complaints of bullying escalated to the inspectorate are rarely subject to comprehensive investigation. Some matters are referred to the Industrial Relations Commission for mediation or conciliation. Since the inception of the provisions of the *Occupational Health, Safety and Welfare Act 1986* associated with workplace bullying, there have been no successful prosecutions. This is despite a heavy burden of costs to the workers rehabilitation and compensation scheme resulting from incidents of workplace bullying.

Despite the prolonged absences and the severe disability arising from cases of workplace bullying, the health and safety inspectorate is unlikely to investigate the claim accepted by the workers compensation agency.

Case Study 3

Five days into his employment with a building company, a young casual worker suffered a serious injury to his hand. The employer claimed that he was on work experience, and refused to pay him. He was unable to work for 7 weeks. The young worker was initially denied workers compensation because the employer denied that he was an employee. The behaviours of the employer are symptomatic of bullying conduct. At no time did the various agencies involved coordinate an appropriate intervention to assist to the vulnerable young worker.

5. **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.**

Prescribing responses to the issue of bullying is known to be a difficult task. Evidence indicates that regulatory responses are yet to satisfactorily address appropriate interventions for workplace bullying.

The prevention of injury and illness arising from incidents of workplace bullying are likely to be achieved by improving the capacity to deal with expressions of dissatisfaction. Responsive and emotionally intelligent management can be learned, and such learning can be promoted through regulation and codes of practice.

6. **Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying.**

The OEO submits that the existing regulatory frameworks do not provide a sufficient deterrent against workplace bullying. Further, the problem with existing frameworks is that many are nothing more than 'best practice' guides, which offer very little assistance to victims of workplace bullying and fail to deter the perpetrators. However, in our view, workplace bullying arises due to poor management, more so than a failure on the part of current legislation.

In the context of South Australia, the OEO is not aware of any workplace bullying matters which have given rise to prosecution. The OEO understands that in the 2010-11 financial year, only one matter was referred to the Industrial Relations Commission by SafeWork SA under the relevant section of the *Occupational Health, Safety and Welfare Act 1986*.

Case Study 4

Repeated claims by a worker alleging bullying were unsatisfactorily managed by a school. The bullying led to a significant amount of time off. Subsequently, further allegations of bullying were levelled against the same team leader. Despite formal complaints, accepted claims for workers compensation, and significant human and financial costs, no enforcement action has been taken by the regulator against the employer or the perpetrator.

7. **The most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another.**

We assert that it is not uncommon for bullying behaviours to be rewarded and promoted in organisations. Until we develop a framework which focuses on early and appropriate intervention, and encourage workplaces to adopt policies and procedures to support this, it leaves open the possibility for bullying cultures or behaviours to be transferred from one workplace to another.

8. **Possible improvements to the national evidence base on workplace bullying.**

The OEO asserts that there is an epidemic of underreporting in occupational health and safety matters generally, but in particular, there is an epidemic of underreporting in workplace bullying.

Case Study 5

A retail worker contacted the OEO complaining that her employer was forcing her to comply with a return to work plan that she and her doctor considered to be unreasonable. She considered that the employer used threats of non-compliance with workers compensation law to make her undertake work she was not capable of doing. In this particular example, the power and knowledge of the health and safety regulatory framework was manipulated to the client's disadvantage. The client felt that if she made a complaint about the conduct of the claims officer, her situation would only get worse.

In our view, improved data collection is warranted and necessary. The OEO suggests that there should be collaboration between governments and the various workplace safety authorities in order for improvements to be made to the national evidence base.