

Inquiry into workplace bullying: Submission Challenge Bullying Inc. June 2012 ©

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Description of our business

Challenge Bullying Inc is a non-profit incorporated organisation run by a committee of extensively experienced and professional practitioners. We:

- provide information, support and referral to those who have experienced bullying
- educate workplaces, the community on the cultural issues, impact and consequences of workplace bullying
- deliver specialist expertise and consultancy where necessary to workplaces/ workers, on aspects of workplace bullying (including organisational policies, procedures and cultural change).
- provide practical, positive, culturally focused alternatives to workplace bullying
- lobby government on workplace bullying issues

Challenge Bullying Products and Services

- Help Line support
- Support group
- Advocacy
- Mediation and grievance narrative work
- Workplace restorative conferencing
- Workplace bullying investigations
- Workplace Bullying Awareness training
- Strengths-based communication training
- Coaching especially around contemporary workplace relationships, conflict and leadership
- Community seminars, talks and presentations

Introduction

The following describes our concerns in relation to the current approaches to workplace bullying, including those required under legislation and, further offers a range of different approaches and options to those currently being applied to address and prevent it.

The concerns come from our experience working with individuals in an advocacy role and working with organisations where we have been appointed to address allegations of bullying and/or to recommend and implement a range of preventative strategies.

We have been actively involved in the area of workplace bullying for the past 15 years as practitioners, advocates, consultants, mentors and mediators. It is from these positions, from this work, that we make a number of offerings as alternatives to the attempts made to date to address and prevent workplace bullying.

Concerns and Considerations

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Workers Rehabilitation and Compensation in Tasmania

It is from our advocacy work that we have become aware of how this legislation is being applied particularly by employers to dispute claims for compensation where workplace bullying informs the claim. There is no current legislative mechanism that specifically relates to workplace bullying and so claims of bullying are heard within a worker's compensation framework.

There are flaws to this system:

- The workers compensation system appears to favour employers
- This favouring comes from the limited numbers of claims upheld in favour of employees which is the result of the system rather than the merits of the claim
- The system from our experience:
 - Facilitates the initial dispute of the claim by employers regardless of the context or evidence
 - Lawyers representing employers using S25 (1A) of the legislation to support the disputation
 - If the focus is on S25 (1A) then it is not about whether a person has experienced bullying or not and therefore has an unintended consequence of allowing employers to 'get away' with having unsafe work environments
 - Employees often withdraw their claim at this point due to the cost of appointing a lawyer to represent them at the tribunal
 - Where employees make the decision to proceed and the tribunal upholds the employers S25(1A) dispute then the onus falls to the employee to appeal the decision
- The system is not a level playing field for both the employer and the employee with the financial impost deciding whether the employee should proceed with the claim or withdraw
- We know from our work that employers are being advised to use S25 (1A) because of the low number of claims that are upheld when this occurs and therefore becomes a "get out of jail free (well almost)" card.
- In addition to all of this the claimant who has experienced the devastating effects of bullying finds that there only way to get justice is often more devastating than the practices that prompted the claim:
 - The onus of proof falls to them (unlike anti-discrimination law where the employer is asked to prove that discrimination/harassment did not occur) to prove that their illness has occurred as a result of bullying. Furthermore, the illness is required to a recognised mental health issue.
 - The process of making a workers compensation claim often involves re-telling of the story of the experience of bullying on several occasions which has the effect of retriggering this experience resulting in ongoing trauma
 - The adversarial system is not a user-friendly process. It is divisive and reproducing of the very behaviours that were in the first place called bullying. Furthermore, the process of proving their trauma often leaves the claimant feeling as if they have done something wrong
 - It pre-supposes an understanding of formal and quite complex civil proceedings which frequently leads to claimants feeling alienated and frightened
 - The system does not make it easy for people to stand up for their rights when the onus is on them to prove their psychological trauma is the result of an unsafe work environment. This is especially contradictory and confusing when the law says the employer must provide a safe work environment yet

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they find themselves defending their psychological damage. Additionally, people who find themselves at their most vulnerable are required to prove their damage when they are least able to do so

- The tribunal system is weighted in favour of those who have significant financial resources or deep pockets. It is not weighted in favour of the complainant who may have lost their job; resigned, be too sick to work or have limited financial resources to hire legal representation

Organisational approaches

There are a number of questions that we invite organisations to consider when approaching the issue of workplace bullying:

- Do they have a code of conduct and a set of values that support respectful and appropriate workplace behaviour and if they have, were they developed through a process of consultation with all staff?
- If they do, do each of these have a set of behaviours or practices that clearly state how all employees should engage with one another
- What policies and procedures are in place?
 - Are they informed by the code of conduct and the values and related behaviours?
 - Are complaints, if upheld, treated with a punitive outcome or a restorative one?
 - Is induction a comprehensive and structured process that clearly includes what is behaviourally expected of new employees, and the consequences if these behaviours are breached? Clearly outlines organisational values and how the organisation maintains and promotes these. Outlines the code of conduct and appropriate policies and procedures; complaints and resolution processes as well as rights and responsibilities. Gives information on support mechanisms and uses a signed-off process.
- What training do the leadership have in workplace bullying and how do deal with it and any conflict?
- How do they role model preferred behaviours and how is this measured? (KPI's etc.)
- How do they know their strategies are working, that is what is the extent of workplace bullying in their organisation?
- Do they understand the operation of power in bullying?
- Do they know and understand indicators, risk factors and danger zones?

We invite consideration of these questions as we have found the following in our work:

- Managers/Leaders do not understand their duty of care or the characteristics of workplace bullying
- They expect the sort of tangible proof similar to that where there is physical workplace injury
- There is a lack of understanding on how power operates in workplaces and the impact of hierarchy and entitlement
- Early intervention is avoided where it is a conflict or workplace bullying due to lack of knowledge and experience or competency, in how to deal with it
- Adversarial approaches, such as investigation, are adopted to deal with allegations of workplace bullying which are divisive and reproducing of the behaviour that informed the allegations and are very costly

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- Policies and procedures often offer a stepped process such as talking to the person directly in the first instance, which ignores how power operates and is extremely difficult for the person who is already experiencing the effects of bullying to take that first step particularly as they have already been silenced by the practices of bullying
- Performance reviews are often undertaken in a way that triggers a claim of workplace bullying because of the way they are approached, and how poor performance is raised
- Role modelling of respectful behaviours are not present, are not part of requirements of the job and are not measured for employees or leadership
- A risk assessment approach, while applied to physical risks in the workplace, are not applied to gauge the presence of workplace bullying and to assess its psychological impacts and related risk

Criminalising Workplace Bullying

We take this opportunity to express our concerns and considerations about any proposal to make workplace bullying a criminal offence.

These concerns and considerations again come from our experience in working in this area:

- Criminalising focusses on the individual when this is an organisational behavioural issue and cultural problem
- To date organisations have not adequately satisfied their duty of care by providing a safe workplace for all staff
- Criminalising removes responsibility from the organisation to create a culture of respect and collaboration and to satisfy their duty of care
- The subject of workplace bullying has been to date understood by the single voice of those making claims of workplace bullying, we have not taken into account the voices of those who the claims are against
- The cost of workplace bullying by criminalising it will materially increase with the ripple effect broadening to families and communities

Challenge Bullying Inc work with people experiencing bullying:

Over the last two years Challenge Bullying has supported, advocated and provided expertise to people who have experienced workplace bullying in Tasmania.

We have kept statistics and the following provides a snap shot of those experiences:

- The majority of people made official complaints to the management about the bullying
- In all but 7 cases there was a reactive response to the complaint of bullying and the outcome further cemented the existing trauma to the complainant as well as contributing to a hostile workplace
- 73 % of victims reported being bullied both by managers and colleagues. It can be argued that the colleagues followed the example of their leaders. Victims reported that 71% of the managers were male and 29% were female managers
- 10% had very poor outcomes for the bullied individual. Poor outcomes included: breakdown, post-traumatic stress disorder, on medication, lost their job, had to leave their job because nothing was done, and in 3 cases the bully was promoted

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- 10% had very good outcomes resulting in a whole of organisation response, or complaints were taken seriously and acted on immediately, or the person participating in bullying behaviour was sacked
- Just over 30% had good outcomes for the individual. However in many cases this included the victim getting a new job or taking time off to recover rather than a committed organisational response to the issue
- Outcomes for the nearly 50% of victims were poor. For those who identified a poor outcome this explanation included: wilful blindness by the workplace to deal with or recognise the severity of harm caused by the issue; managers not having the expertise to deal with the issue; not dealing with the issue early enough; workplaces and individuals taking sides, those experiencing bullying not being believed; or not saying anything etc
- A little over 50% of victims were from local, state or commonwealth government departments. This high percentage may be reflective of increased levels of awareness of what constitutes bullying in the public sector
- Nearly 30% of victims were from the business sector and the rest were from the NGO sector
- Nearly 70% of the victims were women but this statistic is not clear whether women are targeted more, that women report bullying more often or that men think they should 'put up with it'
- Nearly 40% of victims were in their 40s. Almost 15% of victims were in their 30s. People in their 20s and 50s reported being victims about 12% of the time. 5% of people under 20 identified as being victims. The lowest level of bullying occurred for people in their 60s, less than 3%. It could be argued that young people have no confidence or awareness of what to do or where to seek help. Older adults are more likely to have higher levels of awareness about bullying and have enough life experience to make a complaint or report. The lower statistics of people in their 60s reporting bullying may be reflective of less people of this age group in the workforce. However, caution may be needed in drawing early conclusions
- Some organisations paid scant attention to policy and procedures around workplace relationships, bullying, grievance procedures or code of conduct

Alternative Approaches

Our work in this area is focussed on a whole of organisation approach. We provide a workplace risk management approach to identify, reduce and prevent workplace bullying and improve workplace cultures by developing practical organisational conflict competences.

Currently the prevailing methodology for dealing with workplace bullying is reactive and results from a failure to see workplace bullying as a preventative issue. Australian workplaces (in the large part) work toward creating a physically safe workplace but the same practice is not applied to psycho-social safety. As much as 18% of workplaces still do not have adequate or comprehensive policies and procedures around bullying, grievance resolution or codes of conduct.

It is a misconception that those who experience bullying will heal once they are out of the bullying situation. In fact, these people are likely to carry this trauma into a new workplace if they do not seek professional specialist help to recover. Research tells us that in a third of

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cases the very people who experience bullying who do not heal are more likely to participate in bullying behaviour themselves.

Challenge Bullying understands these issues and realises that the current focus does not work. We repeatedly see for ourselves the extensive harm caused to individuals, their families and to the workplace as a whole. Despite the wider public attention this issue has received in the last few years' workplaces are still not implementing preventative or proactive protocols, procedures or strategies into their workplace.

Challenge Bullying works with organisations to build respectful, inclusive and aware cultures that anticipate bullying hazards. We focus on educating and skilling up workplaces to assess risk factors and implement *bullyproof* strategies before inappropriate behaviours become problematic and harmful.

Our particular way of working with small to medium organisations is outlined as follows:

- conducting an organisational risk assessment audit looking at potentiality of psycho-social risk factors
- discovery into genesis of any existing conflict or bullying
- interviewing key relevant people
- understanding the current organisation response and knowledge of conflict
- policy and procedure health check
- examination of risk indicators and danger zones
- analysis of management and organisational capacity to effectively deal with conflict
- measurement of employees competence to deal with conflict
- health check of support mechanisms for victims of conflict
- analysis of risk

Our responses and recommendations may focus on:

- building organisational and individual capacity and competence to deal with conflict
- reworking policy and procedures
- leadership training and conflict coaching
- organisational values work
- conflict coaching for other identified employees
- workplace education around conflict and workplace bullying
- provide customised and needs-based training
- working to restore the harm caused by conflict and re-building damaged relationships through specialised training and mediation practices
- Evaluation and review practices

Two Case Studies to illustrate our work

Disclaimer: due to legal and confidentiality issues the following case studies contain no identifying characteristics.

Case study 1

Background

This community-based organisation has approximately 150 staff plus volunteers. Its core business is around advocacy and protection. A previous organisational audit found the organisational culture utilised "a combative management style" and has a recent history of

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high staff turnover, resignations, sick leave and low staff morale. Complaints of bullying were numerous but anecdotal. Very few had made formalised their complaints until now. The organisation has had several executive management changes in the last 2 years particularly following a change in strategic direction. A recent unfair dismissal case found in favour of the complainant.

The new HR manager contacted Challenge Bullying Inc to investigate several formal complaints of bullying against one senior manager who used a “verbally abusive and bullying management style”.

The complainants had been with the organisation for at least 5 years and none had previously made a complaint.

The HR manager agreed to Challenge Bullying use a risk assessment approach to the issue.

Report recommendations

The report identified that the change in strategic direction was not handled well and created an upheaval that created major risk factors for employees and the organisation. The restructure was badly devised and poorly implemented. It did not provide enough consultation at the beginning nor during the process. Employees were left feeling disaffected and marginalised. This led to reduced levels of trust and lowered morale. Discretionary effort plummeted. Staff turnover increased and in this uncertain climate so did bullying. It was found that the present cases of bullying developed as a result of this uncertain culture. Few policies existed to protect workers and a grievance procedure while it existed was not commonly known about nor used. Management practices became directive and authoritarian in an attempt to impose new changes. Organisational values were not enacted nor role modelled by management. Informal complaints of bullying increased but were ignored. Few reasonable steps were taken to ensure psycho-social employee safety or legal compliance.

The report recommended:

- that as a matter of urgency policy and procedures be overhauled and redrafted
- that the relevant policy and procedures include extensive easily understood definitions of bullying (both covert and direct) and examples of bullying behaviours also be identified
- that the relevant policy and procedures be introduced to staff so that everyone understood them
- that policies be placed on the organisations intranet and be available in hard copy format for easy access
- that a support system of contact officers be implemented
- that an induction process be implemented and to include a sign off for organisational values; code of conduct, and relevant bullying policy and procedures
- that a performance review structure be implemented that would also include key performance indicators around appropriate and professional behaviours
- that management commit to a bullying zero tolerance policy, develop ‘nip in the bud’ strategies and actively role model appropriate respectful behaviour
- that management be up-skilled in best practice strategies and conflict competence for effectively creating a respectful workplace
- that complaints of bullying in future be taken seriously and acted upon promptly
- the complaints against the senior manager were upheld and that conditions for ongoing employment be required to be met

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- that the senior manager to attend coaching to develop contemporary communication, workplace relationship, leadership practices and develop competence around dealing with conflict
- that a process of restorative workplace conferencing be undertaken to give a positively controlled environment for employees to voice the harm caused and to begin to rebuild workplace relations

Outcomes

All report recommendations were accepted.

Of particular note is that the senior manager (that the complaints were made about) has acknowledged that his behaviour was inappropriate and caused harm. Up until this point he repeatedly denied this.

He reluctantly agreed to commit to the coaching process and readily acknowledged that he has made significant progress. Coaching is on-going and was evaluated after 4 sessions. He has voluntarily opted to continue with coaching for extra sessions.

The workplace has had a fundamental shift away from a negative and harmful survivor or complainer status and is now moving toward the repair and rebuilds stage. Employees feel their concerns have been heard and agree that management is now moving in the right direction.

Case study 2

Background

The HR manager/coordinator of a small non-profit organisation with 26 employees received a letter of complaint from a retail worker. The letter alleged on-going bullying by a co-worker but failed to state concrete information about the incidences. The co-worker was seen as a strong personality and was known to be problematic to work with. Despite off the record discussions with HR no one had put in a complaint about this person. The organisation has two retail outlets selling second hand goods. There is little money to train staff and little attention has been paid to policy and procedures around workplace bullying, communications, grievance procedures, and code of conduct, customer service charters or legal compliance. The organisation has a strong value base and employees are employed for a value fit but the values while congruent with respectful and positive working relationships have not been linked to code of conduct, or policies around bullying. A salary are not high and while there is a high discretionary-effort worker status this was put under pressure when strong personalities were able to convince other employees that 'their way was the best way'. Staff turnover was common. Employees attempted to frame behaviour that was 'right and respectful' but this was not supported by polices and if the strong personalities did not agree with this then conflict ensued.

The HR manger/coordinator contacted Challenge Bullying and asked us to investigate.

The organisation agreed to use a risk assessment approach.

Report and recommendations

- The report found no evidence of bullying but found incompatible communication styles that resulted in conflict

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- Very few organisational reasonable steps were in place and the organisation was legally non-compliant
- There was a lack of clear policies and procedures around communication protocols
- There was a lack of organisational vision around customer service
- There was no organisational code of conduct
- There were unclear policies and procedures around bullying and the grievance procedure
- The danger zones that existed created a workplace culture that was negative and encouraged covert behaviours such as rumour, innuendo and gossip. This led to an impact on both workers and the culture

Recommendations included a prioritisation of the steps needed to be legally compliant

- The organisation needed to draft and implement clear policies around bullying ; including a grievance procedure and resolution process
- Training around policy and procedure implementation
- Workplace bullying awareness training
- Development of a customer service charter
- Development of an organisational code of conduct
- Implementation of worker code of conduct agreements
- Expand induction to include code of conduct; customer service charter and the new policies
- Restorative workshop – impact and repairing harm

Outcomes

The outcome to date is that the board agreed to all recommendations. Initial drafting of policy and procedures has occurred. The respondent has left of their own accord which has resulted in a positive culture shift. This has created an opportunity for the organisation to move forward with a new emphasis on building respectful relationships.

The work is ongoing with this organisation.

Funding issues

At this time there are limited specialist services in Tasmania for those who have experienced bullying or for organisations that do not have the in-house expertise to effectively deal with bullying. This is surprising given the recognition of the harm bullying causes. Suicide is an extreme consequence and research indicates that approximately 7% of all suicides can be related back to workplace bullying. Harm is both physical and psychological. Mental health conditions outlast the physical injuries and are prevalent. Relationship deterioration, lowered self esteem and self confidence, depression and post-traumatic stress disorder are common responses. Unfortunately, the damage of bullying far extends beyond the individual and research now tells us that it has a ripple effect that extends into the whole workplace as well

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as into the victim's family and community. It is a common misconception that those experiencing bullying will heal when they get out of the bullying situation. People who experience workplace bullying and its effects need specialist services who understand the type of harm caused and the relationship between the operation of power and bullying. Challenge Bullying has found it difficult to secure funding to provide services such as a phone helpline; counselling; advocacy or general support for individuals or web-based information. We continue to provide these services (albeit in a limited capacity) through the dedication of a small group of committed volunteers.

We believe there is a misunderstanding that sees existing services as both adequate and appropriate. This lack of understanding is probably not helped when common misconceptions surrounding bullying are repeatedly spread through the community and workplaces. In our work it is common to hear the responses that focus on those experiencing bullying such as: "people need to toughen up"; or they need "to get over it"; or they should "speak up or shut up". The wide ranging and often insidious execution of a diverse range of tactics are not easily understood. Employers often tell us that there is no tangible evidence. Sometimes, the acts of bullying are rationalised as being productivity issues or disguised as performance management issues. As well, we see organisations make excuses or participate in wilful blindness by excusing those who participate in bullying behaviour even though it is habitual patterned behaviour that has been occurring over months and sometimes years.

None of these responses are helpful. There is a lack of investment by governments and funding bodies to support organisations and workplaces to more deeply understand the damage caused by bullying. Equally, until organisations such as ours are supported through adequate funding arrangements people experiencing bullying will receive limited help. The unintended consequence of this is that victims of bullying will continue to experience the devastating effects that the bullying long beyond the bullying.

Challenge Bullying Inc Board Members

Caroline Dean – President
Ruth Batge - Secretary
Debbie Dunn - Treasurer