



Inquiry into workplace bullying

Introduction

In my response to the inquiry I would like to focus on the following terms of reference:

- 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.
- Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying; the most appropriate ways of ensuring bullying culture or behaviors are not transferred from one workplace to another.

Submission background

As a former Australian and State Government employee who has worked within Human Resources and anti-bullying policy divisions and as someone who has experienced bullying and sexual harassment in my working history, I have analysed and researched the effects of bullying in the workplace over years. I have watched first hand the devastating health, personal (family and friendship) and professional impact that bullying has had on colleagues, employee cases and at times personally. This experience provides me with a strong background to make this submission for the committees consideration.

Criminal law deterrent against workplace bullying

This submission suggests that criminal legislation be developed and implemented to prohibit heavy and extreme bullying behaviors in the workplace. Workplace bullying is currently primarily addressed within civil law and this submission suggests that it is the lack of criminal repercussions on individual offenders, coupled with the need for employers to defend themselves against claims for financial compensation for victims of the behavior of individual offenders (management or otherwise) that prevents offenders from being held accountable for their actions and places employers in the position where they are required to protect offenders.

While workplace policy across Australian workplaces embraces zero tolerance towards bullying, this policy is at odds with the difficulty of its implementation, as the employer has a conflict of interest being both responsible for mediating and resolving grievances, as well as protecting the interest of the organisation against legal claims for compensation.

Inefficiencies in the current anti-bullying legal and policy framework

Workplace policy across Australia (particularly in government departments and agencies) adopts a very strict definition of workplace bullying that closely intersects with definitions of violence in the community which is criminally legislated against. While violence in the home and in the general community is prohibited under criminal legislation, workers do not have sufficient protection at criminal law from violence in the workplace. Rather, those who have experienced bullying at work which borders on violence, are encouraged to wade through often convoluted organisational policy steps to try and prove to the organisation that they need their protection. This submission suggests that criminal legislation be put into place, much like Brodie's Law in Victoria, which allows victims access to the protections that criminal law provides from serious levels of bullying in the workplace.

The inefficiency of the current legal and policy framework to address bullying results in massive costs on the taxpayer for the mental and physical health, family and professional breakdown of victims as well as massive costs for the loss of productivity across workplaces. Estimates by the Productivity Commission are at between \$6 billion and \$36 billion per year for the total cost of workplace bullying in Australia. This has to imply major inefficiencies within the system.

While workplace anti – bullying policy is disseminated across workplaces it is often the case that employees and even policy writers at times simply pay lipservice to it, due to the fact that it is a very difficult problem to solve through policy alone. Anti-bullying policy fails in that it sometimes presume the victim has rights and responsibilities at equal levels to those of the employer and often sidesteps of the complexity of the age old conflict in the relationship between employer and employee. Criminal legislation that prohibits violence in the home and community accepts that victims of violence are in a disempowered position and require immediate protections, civil law protections can not hope to do this.

While criminal law does prohibit violence in any location including home, community or workplace, the politics of workplace disputes often means law enforcement will direct victims to the civil law remedies and will not comfortably take on any active role in circumstances involving workplace abuses. Criminal law specific to workplace bullying would need to be compared with general criminal protections, and it would need to specify the role of enforcement.

It is accepted within anti-bully policy that bullies are often threatened by and target employees who they perceive are ethical, hardworking, efficient and often popular within the teams. Sometimes the assault on them inflicted by the bully can put them out of action for life with victims leaving the workplace where they have sometimes devoted their whole lives to service physically or psychologically disabled (or in some cases it can cause them to even take their own lives). These are the employees that Australia is losing from its workplaces, often the best and the brightest. The situation is compounded when there are other vulnerabilities including the now very common 'contract worker', or where age, sex or race goes against them in terms of acceptance in the particular culture. Can a dollar figure even be put on the cost of the losses incurred?

It is also thought that some bullies are of the belief that their use of workplace systems to isolate/undermine/ostracise or whatever the tactic used may be towards their target, indicates their superior management or other business skills. Some believe that setting up a 'survival of the fittest' workplace environment is a productive environment where they can excel.

Bullies are also thought to be often psychologically unwell or quite immature. Bullying or workplace behavior that is in effect equivalent to other violence in the community falls below basic civil standards of behavior in the workplace. However it needs to be made clear through criminal legislation that violence in the workplace is also 'criminal' behavior.

Victims mostly want perpetrators to simply stop.

Many victims are forced to go down civil law legal avenues to obtain compensation for loss, however if victims had access to apply for protections under criminal instruments which specifically addressed workplace bullying, workplace abuse and violence could be actually stopped before severe damage is done, and possibly without the need for compensation in many cases. As it currently stands, the employer bears the majority of the responsibility for employee behavior. While protections under civil law need to remain in place and the employer needs to continue to take responsibility for the workplace culture, workplaces have limited resources to spend on changing culture, and fighting/settling claims, and would be greatly assisted by the state assisting with enforcement at the more extreme ends of workplace bullying.

Criminal legislation that prohibits violence in the workplace will also impact more subtle forms of bullying in the workplace. Where there is a threat of criminal based restraints, perpetrators or potential perpetrators show greater

caution. This has flow on effects back down the line at the more subtle end, sometimes through fear that a subtle game of bullying could escalate and have serious consequences. Currently, there are few 'likely' serious consequences for experienced bullies or employees with anti social or malicious intent towards individuals or workplace culture. The current consequences are made 'unlikely', because victims are usually not strong enough (even if they hadn't just been subject to violence) to fight the workplace and the system to bring about justice for themselves.

This proposed legislation would also be an opportunity to address psychological forms of bullying that intersect with criminal prohibitions on non physical forms of threats or harassment in criminal law, which could clarify the line where the non-physical behavior becomes 'criminal' in a way that separates the rule from interpretations of what might be perceived as acceptable because of the particular cultural norm of a workplace. This might also be the way to provide a real and practical rule that workplace cultures can measure themselves against.

Recommendations:

It is my strong recommendation that the following is considered:

- The development of criminal law to address bullying in the workplace that falls into the more serious end of abuse and violence, introduced at a national level where possible.
- The development of national law reform which would recommend state legislatures criminally legislate against workplace bullying and harassment in line with Victoria's 'Brodie's Law'.
- The formation of a committee to analyse the effect of Brodie's law in practice and receive recommendations on how this could be improved and adjusted to suit state legislatures.