Submission Number: 102
Date Received: 11/7/2012

Submission by NTEU Branch

to

House of Representatives

Standing Committee on Education and Employment

Inquiry into Workplace Bullying

For further information, please contact

NTEU Branch has long been concerned about the occurrence of bullying in the workforce. Being a trade union, NTEU well understands that we are approached by our members when things are going poorly and that this may well skew our perception – at least in relation to the prevalence of the problem. This submission has been prepared by the NTEU University Branch alone. Very late in preparing this document we read the submission from our National Office, which well sets out the general policies and positions of the union. This submission looks closely at what happens on the ground, basing this on specific examples and case studies at over the last 5 years.

We have observed at that:

1. Having good policies against bullying on paper does not automatically translate well into good practices.

2. When hierarchy is a feature of bullying claims, which in our experience are nearly all about a subordinate claiming to be bullied by a superior, there are two key elements in what happens next:

    a. The "superior" claims their actions to be legitimate management action; and

    b. The employer (generally via its Human Resources Division staff) backs the "superior".

3. This makes the situation highly contested and leaves the complainant with few options.

4. The University operates under the belief, which it communicates to its line managers, that performance management legitimizes behaviour that is otherwise distressing to its recipient. NTEU does not disagree with the proposition that there is a legitimate and at times important role in the proper use of performance management. But the term must not provide a cloak of invisibility for bullying behaviour. Bullying and performance management can and must be distinguished from each other. We have observed the imposition of performance management in response to allegations of bullying. This is unacceptable. Moving the performance goalposts so that the individual is never able to reach them is actually a form of bullying, yet that is what often happens in these situations. So, too, is setting unreasonable criteria for effective performance – another common occurrence.

5. Even when a Hazard and Incident Report about bullying is lodged as an instrument under the OHS Act 2004 (Vic) it is often not responded to. The frequency with which this has occurred makes it clear that it is an unofficial policy to ignore (or at best place low priority upon) this type of incident.

6. Where a strong case of harm arising from bullying is made, there is usually a financial settlement that ends employment under guise of redundancy and includes a condition of confidentiality and non-disparagement amongst its terms.

7. Thus, rather than actually tackle a genuine workplace issue, University makes a payment for silence and then increases at taxpayer expense its received value. It is also makes it a condition of the settlement that should the ATO visit the financial arrangement and rule that tax has been underpaid, the tax liability is with the recipient of the money. Thus, the taxpayer is subsidizing bullying at and the victim bears the financial cost if the employer's claim that the departure is a redundancy is overturned by the ATO.

8. In an institution that employs as many as 14,000 individuals and educates over 55,000 students annually, it beggars belief that no bullying occurs at University. Yet that is the official picture as we understand it. Certainly as we have witnessed it.

It has also been our experience that we have been most effective in dealing with these matters when groups of employees have tackled the issue together rather than pursuing bullying as a series of individual matters each in isolation. In such cases, local managers who bully their staff may find themselves moved – sometimes to areas of responsibility without staff.

However many employees who suffer bullying just leave their employment because they cannot stand the experience any more.

Those who stay in work and seek proper treatment in the workplace (if only to protect their health but often also from principle) may suffer greatly without likelihood of an easy resolution and perhaps with no real resolution at all. It is important to realize that many academics have specialized in particular areas of knowledge so that alternative employment in Victoria is hard to come by, so that the facile suggestion "If you don't like it, why don't you just leave?" is easier said than done.

In considering how NTEU Branch might contribute to this committee's enquiries, we comment below on some of the terms of reference. Mainly, we have focused on case studies and some survey material to illustrate the impact of bullying and importantly, to reveal something about the gap between policy and practice that exists in this well-resourced institution. We have no particular technical expertise to

offer around the terms of reference but believe it is important that our bullied members over the years have their voices heard via this submission.

In the following pages, we present

1. An overview of changes to the way University deals with bullying to obscure the visibility of complaints.

2. A number of particular cases that NTEU has dealt with, to illustrate various aspects of the form that bullying has taken and to further illustrate the inadequacy of the employer response.

3. We also provided our members with the opportunity to briefly say something about bullying and that material is provided

4. We distil and enumerate many issues arising from this material

5. We make a small number of recommendations

Should the Committee be so minded, we would welcome an opportunity to answer any questions that you may have. We thank you for this opportunity and now turn to addressing some of the terms of reference.

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:

University used to have *Procedures for managing incidents of bullying and occupational violence in the workplace* which were promoted to all staff and students and which were highly visible. Staff were advised that if they felt the need for information, support or some action to redress a grievance, they might consult one of the specially trained Grievance advisers, or an OHS representative, or a Safety Officer.

In 2008 all of those support staff were advised that bullying complaints would henceforth be handled by the Director of OHS and if they were approached by anyone, they should refer that person to the Director.

Previously, a staff member could consult with and be supported by someone from their own area, someone they knew. Henceforth they would have to rely upon just one very senior person. Apart from being a remote 'unknown quantity' to most complainants, that person had an obvious conflict of interest: it was his role to try to improve the OHS environment and to reduce the number of WorkCover claims. We speculate that he probably received performance bonuses on that basis.

In 2008 the *Procedures for managing incidents of bullying and occupational violence in the workplace* were replaced by the *Guidelines for responding to inappropriate, behaviour.* That document includes just 130 words - less than one third of one of its 28 pages - on Bullying. The few words on bullying conclude with "The university has a Bullying and Occupational Violence Policy and procedure. Contact the Community Care staff or Occupational Health and Safety for further information." There is no link to the Policy or the Procedure. Indeed, though the *Procedures for managing incidents of bullying and occupational violence in the workplace* are listed at

they cannot be readily found.

Objections to this change of policy were raised by many staff, but the University's representatives assured everyone that the new arrangement complied with the Victorian OHS Act (2004), and the change was pushed through. Its effect has been to hide bullying as an issue that can be addressed, and to discourage submission of complaints.

In reporting terms, the number of bullying complaints may appear to have been reduced without any effort being expended on strategies or measures to improve the workplace climate or culture. Renaming a problem to make it less visible does not deal with the problem.

With the more recent change in policy, even the Director of OHS does not deal with bullying complaints. It is no longer categorized as a health and safety issue so much as a human resources issue. This means that though some statistics about complaints about bullying are compiled (more about that later), there is no longer an OHS oversight of the bullying issues *per* se.

When a worker is bullied, the way that their problem will be handled should be clear. They should be able to receive advice on standard procedures, and make informed decisions about options at their disposal. When a workplace can make procedures completely opaque and make the complainant solely dependent on just one person – the Director Workplace Relations (who under this policy has the say in whether or not the complaint is to be described as bullying or not) then the victim of bullying faces an intimidating, rather than a supportive process. Such workplace-based policies and procedures only exacerbate the original bullying problem.

Misreported bullying statistics

Since the latest enterprise agreement commenced operation early in 2010, the NTEU has had an Observer position on the Occupational Health, Safety and Environment Committee (OHSPC) – the body with institution-wide responsibility for OHS at University. As its title implies, it is a policy committee rather than being deeply

concerned with operational OHS issues, though it receives reports of occurrence of reported Incidents.

The Enterprise Agreement says

> The parties recognise that minimising risks to the health and safety of staff is a legal responsibility of the University and that the legal framework for best achieving this is a consultative one. Accordingly, the University shall invite the NTEU to nominate someone to attend each meeting of the University OHS Committee. The University shall report to that committee its activity in relation to workplace bullying in particular, including claims of its occurrence and the Faculty or Division in which they arose.

The only OHS issue highlighted in the clause and reflecting the union's priorities in relation to OHS issues being poorly dealt with, was that of workplace bullying.

One of the regular reports to the OHSPC concerns the occurrence during the 3-month reporting period of various OHS incidents, reported by type and location. There is an annual consolidation of these figures.

When NTEU received consolidated figures for calendar 2010, we saw an under-reporting of claims of bullying, based on our knowledge of the number of OHS Hazard and Incident Reports of bullying of lodged which we had assisted a member to lodge. We number far less than 100% of the employees amongst our members; so to find statistics that understated the number of claims we knew our members to have lodged was incredible.

It took a lengthy period of interaction between NTEU and before corrections were issued. We remain unable to verify the accuracy of the figures presented to OHSPC since that time, but at least they exceed the very low bar of our knowledge of Hazard and Incident reports lodged. A copy of the dispute notification we lodged is attached as Attachment 2.

The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying:

At University, the standard response to a worker submitting a complaint of bullying is to attack that worker and ensure, within a few months, that they depart the workplace. Usually, they depart. Sometimes they depart with a "voluntary" departure (redundancy) package.

We will soon turn to illustrative cases and examples. However to contextualize even those, we make the following observations.

In each of these instances, the bullying suffered by the staff members within their workplace was distressing and damaging. The further bullying to which they were subjected after Workplace Relations became involved was often much more serious. Staff expect Human Resources and Occupational Health and Safety personnel to assist them, to help to resolve conflicts and to contribute constructively to their work experience. When this fails to materialize and instead becomes a new locus of bullying, this experience comes as a grave shock to complainants. Their treatment from quarters where they expect to find support can only be characterised as absolute betrayal and exacerbates the situation.

On the other hand, the alleged perpetrators of bullying behaviours were extremely well supported if they were managers. They experienced the public mantra of Workplace Relations that, in circumstances of any dispute between a staff member and their supervisor, "We support the supervisor." Complainants, like the rest of the university community, are unaware of other cases of bullying and may believe, or be told, that they are the only staff members who 'don't fit in' or 'make a fuss'. With Safety Officers and OHS Representatives cut out of the process of dealing with bullying complaints and Workplace Relations supporting those accused, the complainants were isolated and unsupported, plunged into a worse nightmare than any they experienced prior to lodging their complaint.

In the following section we describe several situations with which NTEU Branch has dealt. They illustrate some of the experiences of victims of various forms of workplace bullying. Because we understand that many of our assertions would be disputed and that in some cases, various claims remain untested, we have sought to anonymise the material at least to the extent that people not already knowledgeable about the matters described would not know who is involved. We apologise to the Committee for doing so, but regard this as the most appropriate way to tell these stories without damaging parties unfairly, given that this material becomes a matter of public record.

Case Study 1 – Senior Academic stripped of authority, witnesses not interviewed in investigation

Associate Professor A had worked at University for 6 years when she encountered some difficulties with her Head of Department. Associate Professor A submitted a bullying complaint, and 2 days later was informed that she would face a disciplinary hearing, as her Head of Department had accused her of a number of improper actions.

Some of the actions of which she was accused were trivial, and others were clearly unsupported by the facts. However, Associate Professor A's graduate students were advised to seek alternative supervision, and she was not assigned teaching in the following semester and she lost access to travel and to her corporate credit card (no abuse of it was cited). She felt quite isolated. Colleagues dared not openly support her, as they feared the treatment that might fall on them if they did.

Associate Professor A's bullying complaint was investigated internally by a senior and very experienced HR consultant. The finding was that no bullying had occurred. Two people who Associate Professor A had listed as witnesses were never questioned. Her query of why they had not been interviewed was never answered. When NTEU asked, we were told that they did not have to interview everyone.

Associate Professor A asked to be appointed a new academic supervisor, as has been done for staff in the past. The University announced a new interpretation of the relevant Clause, and the matter went to Fair Work Australia for Dispute Resolution.

The disciplinary complaint was investigated and a report presented to the Deputy Vice-Chancellor, but he didn't advise anyone, not even Associate Professor A, of the outcome of the investigation. This was contrary to the provisions of the Enterprise Agreement.

WorkSafe was advising Associate Professor A, but awaiting the outcome of Dispute Resolution at FWA. The tribunal member at FWA seemed loath to make a decision, as he awaited the outcome of the disciplinary process. He seemed to expect Associate Professor A to negotiate a departure package, asking repeatedly, over many months, whether such an outcome could be negotiated.

By placing Associate Professor A in a position where three different agencies were involved, the University effectively ensured that no-one would make a decisive move. It was as if everyone **knew** what the end would be: Associate Professor A would depart. They just waited and waited.

At an early stage, Associate Professor A had applied to transfer to another campus, and her approach was warmly received - and then stymied with no explanation.

Associate Professor A was very stubborn and struggled through for almost two years. She did eventually surrender, negotiating a "voluntary" departure package and going to another university.

Case Study 2 – Ignoring the evidence and complaints until health is destroyed

Mr B worked in a technical support area. Prior to this he had worked in the library and had worked for for three years altogether. He had been on prolonged sick leave due to stress-related illness manifesting as psychological stress. Though still

unwell, he returned to work in mid-2007 as his income had run out with his fully consumed sick leave. Subject to a Return to Work plan (RTW) and conciliation as part of settlement of a WorkCover claim, the NTEU official who attended a conciliation meeting reported to colleagues her shock that the employee's supervisor had said in such a meeting that upon his return, Mr B would be subject to even closer scrutiny of his work than he had been before he left (due to illness arising from the earlier level of scrutiny).

This points to a significant problem with "no blame" settlements under WorkCover. There is no correlation determined between illness and workplace treatment.

Mr B returned to his pre-injury workplace because despite this evident threat by his supervisor, this employer of some 7000 continuing and fixed-term staff was "unable" to find an alternative location for this lower mid-level member of the general staff to work in.

Soon after his return, Mr B began complaining of micro management of his times and movements (his job entailed him going to various other locations within the faculty). This included specific complaints about the installation of video cameras directed at him and his work station.

All this was ignored by staff such as the RTW coordinator, who apparently spoke only with the manager, who assured her everything was all right and Mr B's concerns were unfounded as the cameras were not operational.

Eventually with assistance from NTEU, Mr B lodged a Hazard and Incident Report on the day he left the university – as it turned out, he was too unwell to ever return. A settlement was reached in conciliation and his employment ended. Very soon after commencing with a new employer, he suffered a crippling mental health breakdown and has not worked for several years. It is unlikely he will work again.

NTEU officials conducted a workplace inspection using powers available to Authorised Representatives of Registered Employee Organisations (ARREO) under the Victorian Occupational Health and Safety Act. An anonymised copy of that report is attached.

It shows that:

1. Four video cameras were installed and a fifth was already in place.

2. At the time of inspection all five were operational.

3. Of the four more recently installed, two took in his workspace and one looked over his shoulder at his desk.

4. The stated reason for installation was security. The suite of rooms contained a storeroom with valuable audiovisual and computer equipment. The direction of the cameras given the layout of the suite of rooms made this claim of providing security ludicrous.

5. The installation was in breach of University policy regarding installation of video surveillance equipment. (Following an FOI request by NTEU to WorkSafe, we were able to establish that denied the existence of the policy that we had downloaded from the website and attached to the ARREO report.)

NTEU regards the employer's failures in this case to be so numerous and egregious that we persuaded WorkSafe Victoria to conduct an investigation into possible prosecution for reckless endangerment under the OHS Act. Whilst no prosecution ensued, we understand that a significant factor in this conclusion was that the chief witness, Mr B himself, was unfit for the grueling experience of being a trial witness. Another factor may well have been that though WorkSafe can investigate, they are unable to require people to speak with their investigators. We were unable to ascertain how this may have affected the conclusion not to prosecute but assume that potential witnesses were told not to speak to WorkSafe.

Case Study 3 – Bullying by marginalisation and refusal to enact decisions

Dr C had worked at University for 21 years when she encountered some difficulties with her Head of Department. After months trying to resolve the matter quietly, the union notified a Dispute and a senior University committee recommended that a new academic supervisor be appointed. That recommendation was not actioned and Dr C became more and more distressed. She had submitted an Incident Report following a medical incident related to the work situation, sure that OHS would step in and ensure her wellbeing, but that was not even acknowledged until she reminded OHS staff of it, more than 8 months later. Eventually, Dr C could not continue and went on sick leave.

After 24 weeks, she returned to work at two days per week. On her second day back she was summonsed to Workplace Relations and asked to engage in a Return to Work Program. As no-one from the University had contacted Dr C through the whole of her absence (so the University had clearly not complied with their own Policy so far), she was suspicious of the intent of the Program. She had not been on WorkCover and there was no formal requirement for such an arrangement. She was also advised, more than 7 months after it had been recommended, that she would not receive a new supervisor. She was directly threatened with being banned from the workplace unless she accepted her former supervisory arrangements.

A letter from Dr C's doctor specifying the need for a new supervisor was deemed insufficient grounds to make that change.

Workplace Relations formally advised that no willing alternate supervisor was available. This was untrue to the direct knowledge of Dr C, who had identified a suitable alternate supervisor. Further, none of Dr C's colleagues had been asked if they were willing to supervise her. An eminently suitable colleague offered himself, but was vetoed. He offered again 8 weeks later, and was vetoed again. As well, the Enterprise Agreement provides for appointment by the Vice-Chancellor of an "unwilling" supervisor, so in fact there was no impediment to appointment of a new supervisor.

Dr C received a letter giving a deadline by which she must acknowledge and accept her supervisory arrangements, or she would be banned from the workplace. As she had not engaged in any conduct that would trigger the Clause of the Enterprise Agreement that would be used to ban her, the union notified a Dispute. Until that was resolved, no further actions should have been taken.

Dr C sought advice from WorkSafe and was encouraged to submit a bullying complaint against her Head of Department. A week after she submitted her complaint, she was banned from the workplace. As that action should not have been taken, the union notified another Dispute - over breach of the Disputes Clause.

Under the Enterprise Agreement, a staff member can be removed from the workplace for their own good, to enable them to seek professional assistance (such as counseling), where their behaviour causing the employer concern may be attributable to a treatable medical or psychological condition. Dr C had not been subjected to this 6 months earlier, when she was clearly distressed and had sought assistance from Workplace Relations, the Dean of the Faculty and the Director of OHS. However she was directed to take such time away following her return to the workplace. This seemed punitive. Further, the removal had no end-date.

While the letter removing her was in transit and before she received it, Dr C submitted a second bullying complaint, against the University.

After 13 weeks, with no loss of pay or leave (as had been threatened by letter – another bullying episode), Dr C was permitted to return to work, with a new supervisor. A condition was that she engage in a Return to Work Plan. Her Return to Work Coordinator had one brief telephone conversation with her on the day before she met with her new supervisor for the first time. Neither he nor any other Return to Work Coordinator ever contacted her again. It seems that the insistence on her engagement in a Return to Work Plan was, as she first suspected, punitive. Certainly there is no apparent beneficial purpose to the employee in the employer's use of RTW.

Both of Dr C's bullying complaints were investigated by an external investigator. The finding was that no bullying had occurred.

Case Study 4 – Bullying of a group during organisational change

This concerns bullying behaviour observed at a group level in a department which had decided to 'downsize' its courses. Staff members responsible for coordinating postgraduate courses were called to a meeting, advised that all of their courses were losing money and asked to submit recommendations on how to improve the situation and return the courses to the black.

The briefing was extremely sketchy and vague as to what was wanted and no pro forma report or set of questions was supplied. As a result, coordinators submitted reports which varied widely in the level of detail provided. Those providing less detail were then publicly rebuked for not supplying information ***which had not been requested*** in the briefing.

After coordinators met individually with the Head of Department to discuss their reports, they all believed that their courses were safe at first. About a week later, they were phoned and told that the courses would no longer be run. This decision was taken after the courses had been advertised and places had been offered – a breach of contract with the students on part.

One coordinator then requested an interview for all the coordinators and affected staff with the Head of School as well as the Head of Department. This was granted, but the Head of School began the interview by a sustained attack on one of the coordinators present. In the course of his blustering and aggressive remarks he revealed that he had not bothered to read the detailed report submitted about the course in question. When he could make no headway there, he turned and began attacking other coordinators about decisions taken and course structures. In most instances the coordinators had had little if any say in these matters and they did not affect the viability of the course. The content of the reports was also criticised, though staff had had very little guidance on what was required. The extreme level of rudeness and aggression he directed at senior colleagues was very painful to watch and this witness experienced symptoms of emotional distress such as pounding heart and sweating palms.

The coordinators had hoped that there would be constructive discussion about the many revenue generating suggestions that they had made for their courses, but this was not forthcoming. All staff involved had been very committed to providing a high quality input to their professions and felt variously that they had lost something very important to them or that their efforts had been judged as unsatisfactory. This sense of loss was nowhere acknowledged or addressed by the Heads involved.

It was noteworthy that people at this meeting, most of whom were senior academics previously in good health, had a very high level of sick leave in the subsequent months.

In retrospect it seems that the decision to slash the courses had already been made when staff were called to the first meeting. The call for recommendations to address the financial situation and the aggressive blaming of staff for outcomes over which they had had no control were ploys to ensure demoralisation of staff, their subsequent feelings of powerlessness and their vulnerability to the offers of "voluntary" separation packages offered shortly thereafter. All the coordinators left but this was hardly a voluntary decision – when you are told that your course is inadequate and will not be continued, it appears that there is no role for you.

Case Study 5 – Refusal to consider obvious health risk

Mr E is a middle-aged man with a heart condition who was being "performance managed" by a relentless "Type A" manager. He had taken some prolonged leave in 2011 when hospitalized with this condition and taken other frequent shorter periods as a result of this condition and stress he was experiencing. His illness and it susceptibility to stress was well communicated to appropriately responsible staff of the University including a letter from his cardiac specialist to the Return to Work Manager. Nonetheless, he continued to receive harsh and unsympathetic treatment from his local (very senior) manager and no intervention came from HR. His health was so visibly deteriorating that some of his colleagues had expressed concern about this in writing and yet the treatment continued.

It was only when NTEU assembled some thirteen documents and attached them to a letter to the employer that the University finally acted in a responsible and compassionate way. However, the outcome was not a more reasonable working environment. Instead, another bullied staff member has now left with a confidential redundancy payment and the reputation remains "unsullied".

Case Study 6 – Ignoring responsibilities to deal with a disability issue and making it into a discipline matter threatening employment

Mr F is an academic with a long-term psychological condition that affects his behaviour. He commenced to work at in the 1990s. The condition was first diagnosed early in the following decade though it probably has been a life-long condition. From time to time he has come to the employer's attention (on one occasion substantially from the malicious intent of a colleague). When this happened in 2007, that sequence ended with a written statement from the employer that acknowledged his having a condition and included a commitment that the employer would do more to support him to operate effectively in the workplace.

Rather than support him, the employer did nothing. Late in 2011 two incidents occurred that caused various people concern about Mr F's behaviour.

These were first communicated to him five to six months later when he was charged with serious misconduct in March 2012. Serious misconduct is an allegation which, if substantiated, can lead to the dismissal of the academic concerned. Normally such action would entail convening a Misconduct Investigation Committee – a time-consuming and often attenuated process that can take several months of sporadic hearings to run its course.

NTEU pointed out in writing to the University:

- that the allegations were denied in their characterisation as serious misconduct
- that many of the allegations were denied in their substance
- that many of the behaviours referred to were likely to be expressions of the individual's disability as such was its nature
- that the employer was deficient in exercising its legal responsibilities under discrimination law (employer onus on reasonable adjustment) and
- NTEU offered to meet with the responsible senior management to pursue an alternative course than MIC.

The NTEU's offer to meet was rejected and the MIC was convened. Its Chairperson mediated a settlement that means that Mr F is a former employee with a redundancy package as payment.

While these are the cases we have chosen to focus upon by elaborating some of the details, unfortunately there are many more. Arising from the workplace stress surveys NTEU conducted in 2009, we approached the respondents who specifically gave us their contact details and advised them of this submission and invited them to write something brief about their experiences

Case Study 7 - Group bullying and mental health

Ms G, who has a mental health condition and was a supervisor of staff, was bullied by a group of staff after trying to modify their inefficient work practices. As a group they took a dislike to her and when they found out about her mental health condition – a condition that would be exacerbated by such pressure – abused her verbally. Though she advised her managers of the problems, they took no useful action and her well-being became threatened by the behaviour of her colleagues.

It is only when she took the extraordinary action of secretly recording their hostile and vicious conversation about her in her absence – an illegal action admittedly – that there became apparent sufficient management interest in her situation to commence to address these problems. The process began by counseling her about her illegal actions and it took a considerable period before she was securely redeployed.

NTEU understands that there has also been some intervention by the employer with the group who were acting in this reprehensible way. In this case, poor systems and lack of will on the part of local management drove a person to protect herself in a way that left her open to charges of breaking the law. Meanwhile her mental health deteriorated and her distress was only overcome by her strength. It was possibly a narrow thing.

Case Study 8 – Bullying and refusal by the employer to acknowledge its occurrence

As noted earlier in this submission, introduced a *"Resolution ″* procedure . The recent experience of three of our members is illustrative of why NTEU believes that this procedure is being applied to render it ineffective at ensuring a complaint about bullying and other inappropriate behaviour is even investigated, much less effectively resolved.

Two members each lodged hazard and Incident Reports about the same bullying incident – one as the target of the bullying (Ms K), the other as a witness (Ms L). In the case of Ms K, her Report listed the names of eleven other staff who had witnessed the event.

The reported incident involved the manager demanding that Ms K immediately attend a meeting in the manager's office about her Return to Work Plan (RTW Plan).

Since returning to work after surgery for a life-threatening condition approximately nine months earlier, Ms K had received between 10 and 15 such plans. All meetings about these Plans to that point had been conducted in the presence of the RTW Coordinator. When Ms K requested that the next meeting also take place with the RTW Coordinator in attendance, the manager became increasingly aggressive in the open plan office, finally shouting at our member and giving cause to think she was about to be physically dragged into her manager's office.

Because of the bullying behaviour in the lead-up to this incident, Ms K broke down and left the workplace. Her treating Doctor issued a Certificate of Capacity stating she was unfit for work and recommending she make a claim for workers' compensation.

Under the *"Resolution ″* procedure, the Director Workplace Relations (DWR) is charged with the responsibility of dealing with reports of workplace bullying (now called "inappropriate behaviour"). He provided a similar email response

to both Ms K and Ms L, stating he considered "*the incident you refer to occurred in the context of reasonable staff management.*"

The DWR did not speak with either of the complainants, nor, as far as we can ascertain, did he speak to any of the witnesses to the bullying before reaching his conclusion. It appears that the only person he spoke to was the manager whose behaviour had been the subject of the reports. He offered each complainant a meeting with himself and the manager.

With no investigation into any of the allegations, the DWR was not aware of the bullying that had preceded the incident about which the reports were lodged. The manager's behaviour had included:

- Insisting on between 10 and 15 different RTW Plans over the approximately 9 months our member had been back at work – with the most recent RTW Plan containing performance criteria rather than the provisions detailed in WorkSafe's Guidance Note for employers with employees returning to work after illness or injury.

- Frequent challenges to Ms K working only 3 days per week based medical evidence. This continual pressure to increase days and change patterns was applied despite medical evidence that she was not well enough to increase her hours.

- Contacting Ms K's former manager to question her integrity, asking whether he thought our member was genuinely ill and telling him that she considered our member was not being honest about only being fit for 3 days work and that she taking sick leave for other reasons.

- Contacting Ms K's doctor ostensibly about medical matters and outlining the "business case" as to why our member's work days should be increased. In a subsequent medical appointment, the doctor mentioned to Ms K and an accompanying relative, that Ms K might want to consider increasing the number of her weekly working days as the doctor had heard the business case and was concerned that Ms K could be branded a "trouble-maker" or lose her job. (Despite voicing concern for the employer's business case, this doctor indicated his own view was that Ms K was not up to working additional days and issued a further certificate of capacity for 3 days only per week.)

Ms L, who submitted the report about witnessing the bullying incident would have been able to provide considerable further information about the bullying our member had been subjected to had she been interviewed. She had seen the manager

- isolating our member
- giving contradictory instructions about asking questions and

- giving contradictory advice about from whom Ms K should seek assistance while on the RTW Plans.

Ms L could also have provided evidence that the manager's inappropriate behaviour extended well beyond that exhibited towards our member – examples given included

- the manager discussing her beliefs about the sexuality of another staff member with other staff,
- claiming that another staff member must have been abused as a child because that staff member asked that the manager not hug her,
- following into the toilet another staff member who was distressed at the manager's behaviour.

Ms L had a raft of other examples of totally inappropriate behaviour by this manager, but was not provided with any opportunity to give this background before the DWR reached his conclusion that performance issues were the "cause" of the manager's inappropriate behaviour and in effect dismissed the reports.

NTEU is also aware that prior to the two reports being made by our members, another report alleging bullying by the same manager had been received by the DWR.

This report detailed put-downs by the same manager with examples including

- "I notice your body language stiffens when your husband phones – is something wrong with your marriage?" and
- "You haven't adjusted to change and in my view you are suffering from depression – suggest you read a book titled "Death and Dying" to develop (a) coping mechanism".

There were also examples of undermining another employee, Ms M. For example the manager approved leave requests for staff Ms M supervises without discussing it with her, and then accusing her of failing to manage workload and resources.

A further example given related to the manager criticising Ms M for working excessive hours and then insisting on obtaining an annual leave form for her attendance at a one-hour professional development session.

Ms M, who had taken Long Service Leave to escape the bullying, received a similar response to their report.

The DWR offered each member the opportunity to attend a conciliation meeting he would convene with the manager. Having already received responses that indicated the DWR had formed an opinion about the manager's behaviour without any investigation, our three members had absolutely no confidence that the DWR was an appropriate person to convene or conduct such meetings.

The only resolution that has since been proposed was the relocation of Ms K (who had been the target of the bullying incident and was on the RTW on restricted hours) to a job at a different campus further away – placing a further penalty on this already highly stressed and unwell employee. There has been no indication that the manager has been subjected to any counselling or other action for her behaviour.

Despite receiving a report of bullying behaviour by the manager from one employee, a further report from a witness to that incident, and a third report detailing separate allegations about bullying behaviour by the same manager, the manager remains in the workplace that two of our members (Ms K and Ms L) are unable to return to because of her behaviour. The member who submitted the report about witnessing the bullying incident (Ms L) now considers she is being isolated and targeted by the manager for having submitted the report. None of these members have any confidence that there is a willingness at any level of University management to ensure that they are provided with a safe workplace.

It appears to NTEU that University management lacks an understanding of the cost to its enterprise of ignoring workplace bullying or not being seen to take seriously the need to visibly tackle the issue. When some dozen people have seen behaviour that they regard as inappropriate and after several months see no change, they lose respect for management and for their institution. And that is without starting on the health cost to those who become distressed by the bullying itself.

Case Study 9 – Age discrimination and bullying by isolation

Until early 2011, had among its statutes one that the University claimed required them to forcibly retire from continuing (tenured) employment each professor at the end of the calendar year in which he or she reached the age of 65. It is the view of NTEU that the actual purpose of the statute was to secure the employment of professors to at least that point in their lives rather than to require them to give up their secure employment. The University chose to apply the statute to force professors from their employment contracts at age 65 as a human resources management device.

Prima facie, this application of the statute breached the Commonwealth Age Discrimination Act and the Victorian Equal Opportunity Act. Generally forcibly "retired" each such professor and for those who it was willing to retain in employment, negotiated a fixed-term arrangement at reduced time fraction.

Such negotiations took place under time pressure and each professor was in a weak negotiating position. NTEU eventually forced to rescind the statute in March 2011 by lodging a dispute at Fair Work Australia that calculated (correctly in our view) that they would lose publicly and on the record. Though the statute no longer exists and its associated practices no longer operate, it was a hard fought battle over 3

years to remove from the statute books a flimsy justification for a clearly illegally discriminatory practice.

Here are two brief examples of its operation, before setting out a longer case study.

One professor was "overlooked" in the usual round of approaches commenced around March-April and the approach to her was made in September of the critical year. An unsatisfactory fixed-term reduced time fraction contract was hurriedly negotiated on terms that leave her bemoaning what was agreed.

Another professor reported that during the 18 months leading to her entering that final year, her manager was already talking of her forcible "retirement" and reducing her academic responsibilities. She has continued her successful academic career at another university.

The next case study concerns Professor J, who fought hard to keep his employment and was public about his battles to do so.

University was the last Australian university to force professors to retire at the end of the year in which they turn 65. During 2008, the year he turned 65, Professor J received a major three-year grant for US$300,000. His School Head asked how he was going to administer the grant as he would no longer be at University. Professor J responded that he had never indicated any intention to resign and that the statute was against both federal and state anti-discriminatory legislation.

As a senior academic with an excellent research, teaching and administrative record, Professor J is not easily intimidated, as he demonstrated. However, the Human Resources Office attempted to cut off all communications between senior academic administrators and Professor J. His Dean informed him that she had been told not to speak to him. Deputy Vice-Chancellors, with whom he had communicated in the past, no longer responded to emails. The University's consultant, with whom Professor J had been told to talk, frequently did not answer phone calls or emails.

During this period, an approach was made to the Human Rights and Equal Opportunity Commission. A conciliation hearing was scheduled but University representatives refused to meet with Professor J and the NTEU. Conciliation did not proceed. Subsequently, direct negotiations ensued between Professor J and the University Solicitor.

At some point in all this, the University consultant also made an "offer," which the University then withdrew. During negotiations, the School Head made public the content of private discussions between Head of School and Professor J during performance management meetings.

Late in the year in which he was to be "retired", University concluded a settlement with Professor J which enabled him to continue at University. Since then, he has received a major Australian Research Council Discovery Grant, published a major book and several refereed journal articles, supervised a number of PhD students to completion as well as taught first-year students successfully. However his employment remains fixed-term.

Ordering senior administrators not to speak to a senior academic is not behaviour characteristic of a self-described "friendly" workplace that markets itself as an "employer of choice". This episode well illustrates the bullying culture of the university at very senior levels.

The University Branch of the NTEU subsequently and anonymously received an opinion of the University's Legal Office suggesting that the University statute was illegal. (A copy of that opinion is Attachment 4.) Nevertheless, University preferred to obtain external legal advice to argue that they could continue with this practice – a practice maintained until early 2011.

Normalising workplace bullying

Where bullying behaviour becomes normalised, we have witnessed that its occurrence can become more prevalent there than in the rest of the university, with repeat cases surfacing. This most often arises in discrete geographic or organisational units that become isolated operationally from the rest of the university.

One member whose sensitive location requires that their identity be protected in response to our recent request for thumbnail sketches wrote:

> … 'bullying' is alive and well here. (I thought had a policy now that we can no longer even use the 'B' word?). And I don't think necessarily that it is lack of supports - it is more about having the strength to call a bully on their behaviour – no one wants to do that. So managers get to treat their employees like dirt, employees go through the proper processes and nothing happens – except maybe the employee walks out on stress leave or just leaves. The manager might even get a raise! We don't want to talk about it - we ignore it and *accept* behaviour that is demoralising, critical and threatening from those of higher rankings. It's pathetic, really. For me there is no second, third and fourth chances. If you bully someone then the wrong needs to be made right.

Another wrote

> "Because of bullying I had to change my whole career path as I just couldn't stay in the job I'd worked so hard for. It also made me lose belief in my

mentor who said that he wouldn't do anything and that taking it further to wouldn't achieve anything".

Whether there are regulatory, administrative or crossjurisdictional 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:

OHS law says that when a worker makes a formal complaint about bullying the employer must conduct an investigation. At where investigations are a management option, those investigations always have the same outcome: no bullying occurred. Often staff have obtained advice from WorkSafe before writing their complaint, so it seems surprising that they seem to get it so wrong.

Often the investigation examines each incident cited as a single incident, and the finding is that no bullying (repeated behaviour) occurred. Then the next incident is examined, with the same finding. NTEU is familiar with many bullying complaints and in not one case was bullying acknowledged to have occurred. This is statistically incredible.

If the complainant is not satisfied with the outcome of the investigation, they may ask WorkSafe to review the matter. WorkSafe checks that there was proper process – that witnesses were interviewed (though apparently they do not insist upon the complainant's nominated witnesses being interviewed) and records kept. They do not have the power to re-examine the matter. If they did, then perhaps staff would see something other than a sham investigation.

Importantly too, it means that the complainant rarely obtains an apology for the behaviour from which they have suffered. Though they may get large sums of money, the absence of an apology rankles and festers for a long time. It seems that corporate reputational damage is such a high priority that to say "Sorry" in an attributable way is a step too far. This damages not only the complainant but intimidates the staff who may have witnessed the bullying incidents but are never told of the resolution. For those who remain, it perpetuates the belief that there is no use raising the issue of being bullied as all that will happen is that the bully stays and you will have to leave.

The way that bullying complaints are dealt with in a workplace depends on the people in authority in Human Resources and Occupational Health and Safety. Addressing poor management practices is difficult. Getting rid of bullying complainants is much easier, as those people are already vulnerable and in almost all cases can withstand very little pressure in the wake of their complaint.

Perhaps the most useful approach would be to force organisations to *explicitly* treat bullying complaints under Occupational Health and Safety legislation. Then the views of

health service providers would be central to the management of bullying accusations and the needs of the complainant for relief of and support in their stressful situation would receive appropriate, urgent attention. Currently, complaints are technically, though not necessarily explicitly, lodged under the OHS umbrella, which must pass them on to Human Resources. OHS Representatives are then sidelined from the process.

In conclusion

No one likes to come to work to fight for their survival in the workplace, yet that is the daily experience of some of our members. Though our submission may appear to be harsh about University, the submission is made in hope that, taken with the many others that will come to this committee, some way forward will appear.

Generally, our members love and love that they work there. They have high ideals about what it could be and how they hope to contribute to that. So those times when considerable gaps appear between policy and practice, when they find themselves falling into them, are doubly distressing.

In preparing this submission we have distilled the following points. That they are so numerous indicates how complex and entrenched this problem of workplace bullying is.

Issues we identified in the course of this submission

The employer and bullying

1. Bullying claims are heavily contested by the employer rather than impartially investigated.
2. Attempts to nullify the complaint appear to be a default setting by Human Resources Department.
3. Claiming performance management excuses all bullying behaviour in the eyes of the employer.
4. Some performance management actions are designed to be a bullying operation in themselves.
5. Hazard and Incident Reports – though a means of conforming to the OHS Act 2004, are often ignored when a claim of bullying is made.
6. University buys silence about effectively substantiated claims of bullying rather than acknowledge that bullying has occurred. This is done generally by use of payments reported by the employer as bona fide redundancy for taxation purposes.

7. Conflict of interest appears to arise in the role of HR being responsible for dealing with bullying complaints lodged by individuals and their need to protect the university from appearing to have bullying managers. OHS has no role in dealing with bullying any more, yet bullying clearly falls under the OHS Act.

8. changed its policies so much while retaining this conflict of interest that it is now nearly impossible to find a meaningful policy document that refers to the term.

9. "No blame" settlements under WorkCover can hide what has occurred already and prevent detection of repeat offences.

10. The employer driving the injured worker to the point of economic necessity to compound the health issues makes unfair settlements easy to achieve and makes poor solutions appear attractive.

11. Large employers like should not insist on return to work to the same organisational location if there is an apparent risk to the worker's health, where the employee is fit to work elsewhere.

12. Even a large and well resourced employer can fail to deal with complaints. And if it is their policy to ignore such complaints that failure rate grows considerably.

13. Without a willingness to resolve a matter, even when a solution has been found, the matter will not be resolved. In Case Study 3, we saw that University refused to implement a solution that its quite senior representatives had agreed should be implemented. The matter dragged on for many more months as a consequence.

14. The implementation of Return to Work plans by appears inconsistent and in part applied to create a sense of being watched in an unwanted rather than cared for way. Case Study 3 again refers.

15. Health issues and the risks that the employee faces from bullying are ignored even though the employer is well informed. We do not know why this occurs and what systemic issues may underlie those occurrences. Case Studies 2 and 5 are illustrative.

16. will ruthlessly exploit its managerial strength when it chooses to do so.

17. The age discrimination example in Case Study 9 shows how an institution in which such discrimination is normalised allows the knowledge of that activity to become another weapon even in advance of actually reaching the age at which the discriminatory activity will be applied.

18. Case Study 9 in relation to Professor J also illustrates high level marginalisation.

19. The lack of any public acknowledgement by of the existence of this problem intimidates staff and perpetuates the cultural acceptance of the behaviour.

Actions by bullies and their weapons of choice

20. Bullying can take many forms.

21. Performance management, though certainly a legitimate management activity, must not be applied to cloak bullying and must be reasonable. In cases of bullying, it can be a major offensive weapon by the bully.

22. Academic freedom to undertake research and be supported by appropriate funding is a very important element of an academic's career and may well be the academic's passion. Such a person is very vulnerable to attacks on that freedom and its resourcing. Such attacks are frequently in the bully's arsenal.

23. Another important element of academic work is the supervision of Higher Degree Research (HDR) students. Case Study 4 provides an insight into how denial of access to such students was used as a weapon against a group of academics. It was also a factor in a brief example in the Age Discrimination references under Case Study 9.

24. Inconsistent requirements and directions and "changing the goalposts" is another commonly applied weapon of the bully. Again Case Study 4 illustrates some aspects of this.

WorkSafe and other external organisations

25. WorkSafe investigation powers do not include the power to require witnesses to be interviewed. This weakens the effectiveness of the investigatory body to do its work.

26. The Victorian Equal Opportunity Commission reports that complaints about disability discrimination are the most commonly made claims in their jurisdiction. Case Study 6 – where the condition is well known of by appropriate people and where the employer has access to high quality advice and generally obtains it – demonstrates an unwillingness to deal appropriately with its employer responsibilities in relation to mental health disabilities. Case Studies 5 and 7 also have elements of this.

27. Workload over-allocation is another weapon that is used. It can arise from unreasonable expectations by local managers who drive their staff (perhaps

labouring under inadequate resources) and may include exploitation of the commitment of the employee to the students, to their colleagues and to their research.

Recommendations

We recommend:

1. Make OHS explicit in bullying complaints.

Legislate to require bullying complaints be submitted first to an OHS Representative with OHS to retain an operational interest in the matter throughout.

2. Involve the ATO.

Ensure that the ATO scrutinises the payments of redundancy packages. The ATO could establish its own checking system to monitor abuse of the redundancy payment regime. It is important that such checking of individuals be done to monitor the actions of the employer rather than penalize those individuals, as it is the employer who uses the taxpayer to subsidise the value of its settlement payments and includes in its terms of settlement an indemnity for themselves against the ATO taking a view adverse to the former employee's finances.

3. Make institutional bullying illegal

In organisations above 100 staff, make HR personnel and CEOs (and Presidents and Vice-Presidents or equivalents) personally responsible for how bullying complaints are handled.