

## **To the Committee Secretariat**

House of Representatives Committees

Standing Committee on Education and Employment

Inquiry into workplace bullying requested by the Minister for Employment and Workplace Relations, Bill Shorten, MP.

## **AUSTRALIAN SENATE JUNE 2012**

### **A UK PERSPECTIVE ABOUT WORKPLACE BULLYING**

Bullying is an international problem with very significant consequences and is unwanted by recipients. It can turn a workplace into a toxic environment requiring as much attention for the health and safety consequences and damage as many other industrial injuries. It can also be an indicator that other wrong doing such as fraud is being covered up. This paper is submitted because our studies conducted during 2012 in Australia indicated that the same problems regarding bullying are common in the UK and throughout the western world. We conclude with a list of recommendations which in light of our studies and experience we would with respect ask the committee to consider as part of this inquiry.

During 12-15 June 2012 we attended the 8<sup>th</sup> International Conference on Workplace Bullying and Harassment- Future Challenges, held at the University of Copenhagen. Australian interest in addressing the issues surrounding bullying was made evident by the number of attendees from Australia and obviously supported by their organizations. We have experience in governance, ethics and whistleblowing in both public and private sectors with particular interest in this field as we have conducted independent research regarding the health consequences of people who have been whistleblowers. Our studies involved members of Whistleblowers Australia whom we approached and the research was supported by the University of Wollongong. This constituted the final part of a Master of Science programme at the Institute of Psychiatry, King's College London.

We have also produced a report published in the open access journal Social Medicine (2012) regarding the health consequences of speaking out and drawing on some of the information from our studies in Australia.

### **A VIGNETTE FROM THE UNITED KINGDOM**

The bullying culture in a company comes from the top or with people knowing they are supported from the top often using the guise of "performance management". Take a ripe culture where a Chief Executive Officer says if you point a finger at someone, four fingers will point back. The will for change and better behaviour has to be set from the top of an organization, have legislative consequences and taken on board by all below. If not the typical scenario below can develop with bad consequences for all, that is the company, shareholders, analysts, customers, employees and families of employees. Bullying behaviour is pervasive and terribly damaging with health, welfare agencies and

ultimately the tax payer left to pick up a bill that is avoidable.

Take a hypothetical but typical case of whistleblowing – Duncan an employee with 20 years' service in a large company believes the actions he was told to do were improper and involved serious financial impropriety. At that time the employee Duncan is unaware of being a whistleblower. Duncan naively thinks that senior managers and Directors are unaware of the overstating of potential returns and it is a mistake. Duncan could just carry out the actions without question, not report what he was required to do or have been a bystander in what appears to be wrongdoing. However, he observes the organizations procedures and submits a report.

The more the concerned employee Duncan voices concern through the proper procedures the more his life is turned around. After initial subtle bullying it moves to mobbing where he is passed around a ring of people who also engage in similar actions. The behaviours become more vicious including attacks made about the quality of the quality of Duncan's work without any justification. Then an offer is made of being provided with a good or a very good appraisal, providing his allegations of wrong doing are dropped. More senior managers misuse the well defined procedures and an investigation takes place over years instead of the required weeks with external auditors kept well away from the investigations and there is no access to non-executive directors. The Chief Executive Officer notes the concerns that had been raised about corporate governance but expresses his satisfaction with the state of affairs.

Eventually Duncan makes representation to an Employment Tribunal and is forced to leave with his physical and psychological health broken as a direct consequence of the ongoing bullying behaviours and protracted timescales which place a financial burden, diminishing his savings. Duncan's solicitors state it was a company with seemingly sound procedures that could not protect a senior manager from the consequences of speaking up about wrong doing. It was explained away by the Directors as lax management rather than bullying and it would be a year later before the company had to face a huge write down by which time the Chief Executive Officer would have left his post.

*Peter*, a 40-year-old nurse, saw serious errors and malpractice to the extent that there were deaths that nurses considered unnecessary. He disclosed the problems to his manager expecting support. Suddenly he was allocated bad shifts and different work. Despite vague investigations nothing happened. He felt betrayed by the manager and colleagues and could not believe people were prepared to continue to let things go wrong. Eventually the issues were exposed in the media and the same practices continued. Peter moved to another country with his health damaged to the extent that he could not work.

The factor that ran through these 2 hypothetical scenarios was bullying in whistleblowing cases used as a way of suppressing the concerns. These incidents could occur in any country in the world, the impact is the same on the people concerned and involves a significant amount of workplace bullying or harassment. There are laws to protect people making public disclosures, there is the Sarbanes Oxley Act affecting the U.K. that should provide more protection. However, even if these are in place the damage is still left by bullying and legislative provision is essential if the impacts are to be reduced. Bullying is recognized as unlawful if it involves certain kinds of discrimination such as sex, religion or race.

While the UK has some protection against harassment available through the Courts - simpler methods through tribunals are needed. Unfortunately the UK seems to be moving in the other direction with one to one discussions on performance to be excluded from admission to tribunal proceedings. This will make it easy for bullying to expand unchecked.

## **AUSTRALIAN IMPACTS**

So how does this relate to Australia? Our interest arises from in depth studies we undertook in Australia with support from the University of Wollongong and King's College, London for Msc (Master of Science) studies. Two interrelated studies examined the effects of whistleblowing on mental health and coping strategies. Without exception those who had gone through whistleblowing where they had needed to leave their job had suffered the detrimental consequences of bullying as part of concerted workplace bullying and harassment that went unchecked..

There are costs of bullying – the loss of the person from the workplace, the misery endured by the person that was suffered alone or taken home to friends and family; the presenteeism that may arise; the risk of suicide ideation; the dangers of self medication through alcohol or over dependence on prescription drugs altering abilities for day today performance in the workplace. Medication even when prescribed by medical people was seen as something to be avoided due to anxiety about perceived stigmatizing effects. There are also costs to the tax payer regarding medical treatment and welfare payments and for some this extended to the families as well.

The conclusions were that the people interviewed had trusted that organizational procedures would be followed. The majority ended up with detrimental impacts on their mental health and well being at the time. The lengthy investigations while they were subjected to retaliation meant that their health and careers were ruined, while laws were found meaningless. One form of the bullying was social isolation and that was found detrimental. It was important that some good could come out of the negative experience and if bullying in the workplace was truly tackled that would be helpful to future cases. It became clear that although people had kept their self respect by doing what they had felt was right, it may have been wiser to have raised their issues in other ways and to have been less trusting of the organizational procedures.

The biopsychosocial aspects provided by Engel (1977; 1980) are important as the person being bullied for whatever reason does not stand in isolation from his or her family, friends plus career and has to try to go to work on an ongoing basis. There was research from Lenanne (1993) that the spouse of the whistleblower may need assistance. Our studies found the same and showed the impact on families that would be true to any group of people being bullied in the workplace. Although bullying had occurred in the cases we examined, the people who coped best with their situation were where the issue had been of relatively short duration. In many cases the health and well being of the individual involved had got worse over the years involved.

## **TRAINING**

There are coping skills that could be taught to people being bullied. In the bullying cases that we examined it had been essential to have support for the person to move on. It was not sufficient to have education about bullying. That has been provided by companies in the United Kingdom. However, there is a danger that such training could have a detrimental aspect as it highlights the barriers of how to carry out bullying and how and when to pass the bullied target to a new perpetrator so that technically they can claim their behaviour fits within the deemed acceptable management practices.

## **AGENCIES AND CO-OPERATION**

Insofar as health people and agencies are being brought together there is learning from the United Kingdom. In one case considered the occupational health group had tried to draw attention of a case to the directors. However, it was blocked from getting through. Untold damage was done by that and the protections that even in the UK that may have applied from the Sarbanes Oxley Act were lost. In the same way the UK Bribery Law will not work if the Directors can show there were reasonable measures in place. The real question for the Australians is: will the measures work or will they be designed so that they can be circumvented? One way round is for all cases to have a mandatory requirement to be reported to a regulatory authority and for any whistleblowing cases to be reported. In the United Kingdom there was a lost opportunity when it had been intended to consider all employment tribunal cases should be reported to the appropriate regulatory authority but it has now been left in the discretion of the person raising the complaint, where pressure can be brought to bear or where compromise agreements are used to hide the issues.

## **THE NEED TO EXIT AND A SAFE PLACE TO WORK?**

Perhaps for realism it is necessary for those being bullied to think of and to plan an exit strategy or at least from the team where the bullying is taking place. Legislation can be appropriate to ensure in large employers that some alternative employment at suitable level could be offered so the person does not need to come into contact with the perpetrators. By the time a complaint is raised it may well be too late and the harm is done. Some form of abuse therapy can be helpful as it is not as simple as assertiveness training. Sometimes the person is perfectly assertive but the power imbalance or motivations of the bully or bullies in cases such as corruption or other serious wrongdoing can be too great. Apart from the odd exception it is often much easier and cheaper for medium to large organizations even when in the wrong to fight a bullying case as the costs of doing so are relatively small, even when a court case is lost.

## **RECOMMENDATIONS**

1. Provision of legislative framework covering the responsibilities of employers towards all workers for bullying complaints – not just a voluntary policy.
2. For Government departments and organizations use of outside bodies for investigations. For private firms access to non-executive directors or external audit groups where serious allegations such as where safety and large scale fraud are involved.
3. All organizations and private firms to publish annual statistics of the number of bullying cases raised, the number found in favour of the complainant and the number rejected and the types of complaints. That is, for an open reporting system, such as in some UK universities where student appeals on marks are published on the Web by college name not student name this shows a pattern of perceived unfairness and if lessons are being learned.
4. Mandatory timescales for dealing with each stage of a bullying case with financial penalties including automatic loss of a case by an employer for delaying tactics which damage health or where employers try to outspend the target through loss of earnings.

5. For large firms movement of the bully to another part of the business or for the target to be moved to a place of safety within the business.

6. For an estimate to be made regarding the cost to organizations and the taxpayers of bullying and government targets established to lower the numbers and make savings with particular attention paid to health care cost- savings. These should take into account costs to families where the bullying has affected the health of spouses, partners and / or children.

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