

House of Representatives Committees
House Standing Committee on Education and Employment

Submission to the inquiry into workplace bullying

Personal details

This submission to the inquiry into workplace bullying is made by [REDACTED] of [REDACTED] [REDACTED]. My telephone contacts are [REDACTED] (business hours), and [REDACTED]. My personal email address is [REDACTED].

This submission is made in my personal capacity. I am an employee of the Australian Public Service (APS) since 1974, and of the [REDACTED] since 1993.

I am a Senior Executive Service Band 1 officer. My SES roles at the [REDACTED] were General Manager, Corporate (from 1995); and General Manager, Human Resources (from 2010). Since April 2012 I have been on secondment to another Commonwealth Agency for reasons that will become apparent.

Terms of reference

I note that the terms of reference identify 8 points of focus. For the purpose of my submission to the inquiry I will focus on the first point – my personal experience of workplace bullying; and the fifth point – a regulatory gap that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying by and among senior executive APS managers, including through appropriate complaint mechanisms.

The purpose of my submission, is first, to bring to the attention of the Committee my personal experience of serious bullying by the most senior Public Service Act employee of the [REDACTED], [REDACTED] whose APS classification is SES Band 3 and whose job designation is Chief Executive Officer; and [REDACTED], whose APS classification is SES Band 2, and whose job designation is Executive General Manager, Corporate Division. While I would hope that my experience does not reflect the APS more broadly, it should not surprise the committee that it is more probable than not that serious bullying goes on in the senior management ranks of the APS.

Secondly, in view of its role in ensuring a sound and well-functioning public service to serve the government and the people of Australia, I propose that the Public Service Commissioner should have greater powers in relation to SES conduct and welfare – in particular, an own motion power to investigate any matter he thinks fit.

I note that the terms of reference refer to a research report of the Productivity Commission, 'Performance Benchmarking of Australian Business Regulation – Occupational Health and Safety' – 2010. It contains a chapter titled 'Psychosocial hazards', which advises that bullying is considered one of the major psychosocial workplace hazards in Australia. I note that the report discusses the direct and indirect costs of workplace bullying, including the

costs borne by victims. I note that where workplace bullying occurs in the APS, costs are also borne by the taxpayers (as distinct from shareholders).

Context

The [REDACTED] is a statutory authority with the responsibility to administer the [REDACTED]. It is a national agency and a multi sector regulator, with a staff of approximately 800 and an office in each State capital. It has a long established reputation for enforcing the law for

I joined the APS as a graduate in 1974, and worked in a variety of Commonwealth agencies. Including the [REDACTED]'s predecessor organisation, the [REDACTED]. I have a cumulative 22 years' service with the [REDACTED]. In 1994 I commenced duties as the [REDACTED]'s senior executive responsible for all corporate services. Over the ensuing period the organisation, which became the [REDACTED] in [REDACTED] grew considerably in size and function, and by 2009 its corporate services functions were distributed to 4 separate branches. It was decided to institute a divisional structure, and in 2010 the 4 branches, together with a new SES2 manager, constituted the [REDACTED]'s Corporate Division.

[REDACTED] was promoted to the [REDACTED]'s most senior APS position in 2000. As a SES3, he is the head of the office of the [REDACTED] and reports to the agency head/chief executive, the Chair of the [REDACTED]. He is an APS employee and senior manager of long standing. I reported direct to [REDACTED] from the time he commenced in 2000 until the time the new SES2 manager commenced in March 2010. From March 2010 I reported direct to the SES2 manager and through her to the SES3.

[REDACTED] transferred to the [REDACTED]'s new SES2 corporate services manager position from the [REDACTED], where she had been the SES2 manager responsible for corporate services. She is an APS employee and senior manager of long standing. She reports to [REDACTED]. I commenced reporting to her on her arrival.

The APS as a workplace

The APS as a workplace is highly regulated. Not only does it have to comply with all the Federal and State laws relevant to all workplaces in the country - it must also incorporate and uphold Values, and comply with a Code of Conduct, which are statute based (Public Service Act 1999). The core work of many APS agencies is to ensure that the law is complied with, and that citizens and corporate entities behave honestly towards each other, and conduct themselves, in an honest and ethical way. Each Commonwealth agency has an enterprise agreement, which usually contains aspirational statements, and a plethora of policies, guidelines and procedures to support the requirements of the APS Act and regulations, the workplace health and safety laws, the anti-discrimination and privacy laws together with procedures for dealing with failures arising under these requirements. The Australian Public Service Commission provides comprehensive guidance on the values and conduct requirements of the Public Service Act 1999, together with advisory and training services, and by means of its State of the Service survey, conducted every year, checks on leadership, capability, employee engagement, health and wellbeing, values, performance and conduct, among other things. The APSC is diligent in reminding APS employees of the standards required of them, and their obligations as public officials.

The ██████ as a workplace

As the senior executive responsible for corporate functions, including HRM, I was responsible for ensuring that the ██████ complied with the requirements of it as an APS agency. We participated in all central agency surveys and conducted biennial organisational health surveys. We rated well in the State of the Service Survey and our own biennial surveys. We had all the signs of good employee engagement and participation – high response rates to voting in the enterprise agreement, and the biennial staff survey. We had a strong and well respected tradition of consultative workplace relations. On her arrival to commence in the role of Corporate Division head in March 2010, SES2 launched an unprecedented level of activity in the psychosocial health, well-being and leadership space – Women’s Day activities, extensively distributed executive coaching, extensive use of personality/work preferences/team profile tools, enthusiastic observation of mental health focus week (RUOK day), institution of an organisational well-being committee, revised and re launched bullying and harassment/discrimination free workplace guidelines and seminars, benchmark surveys for corporate services, ‘pulse’ surveys, seminars on giving feedback honestly and appropriately, consultancies to investigate the organisational culture and make recommendations, and compulsory RESPECT workshops for all employees. In short, a frenzy of activity directed at the psychosocial and leadership space ensued through 2010, 2011, and beyond.

The ██████ states that it adheres to the APS Values and Code of Conduct, and additionally upholds the values of accessibility, transparency, independence and fairness (Annual Report 2010-2011).

My personal experience of workplace bullying

The Productivity Commission examined the definitions of bullying in all jurisdictions, and found that most of them used reasonably consistent definitions embodying the words ‘repeated unreasonable behaviour ... that creates risk to health and safety’. This is also unlawful behaviour. One jurisdiction specifies that the behaviour can include psychological violence. For my purpose, I would call it psychological assault.

For convenience, I will refer to these managers as SES3 and SES2 respectively, in detailing incidents that constituted repeated unreasonable behaviour that created a risk to my health and safety, and which took place while all the activities described in the paragraph above were being pursued with vigor.

In the months to October 2010 SES2 regularly disparaged me, and my colleagues, in meetings with her alone and in meetings with other staff. She disparaged me personally, my SES colleagues, work my branch had done, and our past record. These incidents concerned me, but I resolved to get on with it. We had several frank conversations which I believed cleared ‘misunderstandings’ and went toward building our working relationship.

In mid October 2010 SES2 delivered to me my half year performance rating. It was half the rating it had generally been over the preceding 10 years. She could not give me reasons commensurate with my role and experience. She said that SES3 was angry with me, and cited incidents in support of that which were insubstantial.

After 3 discussions which didn't produce any useful insights, I asked SES3 directly for the reasons. He denied that my performance rating reduction was due to his being angry with me; he said it was because SES2 had said I was very difficult to work with. I told him I considered that SES2 had been bullying me and he made a record to that effect.

He proposed a meeting between the 3 of us to clarify. The day before the date set for that meeting, he sent me a written record prepared by SES2 purporting to be a record of the reasons she had given me for my reduced performance rating.

As a record of a discussion between her and me, the record was false, and I said so. The meeting proceeded, but neither manager attempted to explain the basis of the rating. I thought SES2 had lied to me. However, SES3 didn't seem to want to clarify the matter. SES2 attacked me personally during the meeting, accusing me of being negative, hiding in my office, and being obsessed about my relationship with SES3. She also accused me of having told her to go away, when in fact, in a confrontation some weeks before, she had said to me, 'why don't you go away'. I felt that the performance appraisal system had been used to torment me, and that neither manager could, or would, account to me for me rating.

All 3 of us had work schedules that involved interstate travel over the next 2 weeks. I provided SES2 with a detailed report of my activities interstate over the forthcoming period. 2 business days prior to one of the scheduled activities, of which I had given her earlier notice, she challenged that it should take place, telling me, 'SES3 is very angry'. I told her why the activity was taking place and invited her to cancel if it she wished. She did not, and it proceeded. I was very upset at the manner in which she had treated me in connection with this, a normal business activity, of which I had given her appropriate notice.

Two days later, at a SES leadership forum she convened, she approached me at afternoon tea demanding to know the key outcomes of the activity. I told her that I couldn't discuss it then and there, I was too upset by the manner in which she had treated me, and that the minutes would be written up and provided to her.

That night she sent me an email accusing me of being evasive and abusive. She made false accusations about not being informed of the activity. It was an unseemly communication for one senior manager to send to another, and the accusations were false.

I went to see SES3 and told him that it was a hopeless situation, and that he should grant me leave, during which I would find another position. He said he would think about it and get back to me within a week.

He did not respond within a week. I did not respond to SES2's accusations that I was abusive and evasive. She was increasingly more hostile. SES3 did not get back to me and I believed (mistakenly, as it subsequently turned out) that he had left to commence a month's leave. (He went to

By now (early December 2011) unwell with anxiety, I consulted a solicitor. He sent me to a doctor, who diagnosed work related anxiety and indicated 4 weeks off work. The solicitor wrote to SES3 informing him I had been subjected to bullying by SES2, was unwell, and sought separation on just terms.

I informed SES3 and SES2 that I would be absent on sick leave. SES2 immediately sent an all staff message announcing that I would be on leave indefinitely.

A week later a solicitor responded on behalf of the [REDACTED] stating, among other things, that I was valued and respected and my return to work was desired. I immediately contacted the officer acting in SES3's position while he was on recreation leave, and arranged a meeting with her, giving her to understand that I was responding to the apparent overture in their solicitor's letter to return.

She subsequently cancelled this meeting on the pretext of legal advice.

In the following week, I was given to understand from SES2 that something in the nature of mediation was contemplated. I indicated my willingness. I remained at home waiting to hear further. As I did not, at the end of January 2011 I wrote to SES3 advising that I was well and ready to return to work.

SES2 immediately responded by telephone call and letter instructing me to attend a psychiatrist for assessment for fitness for work. She also instructed me not to attend the office, nor undertake any work. At the same time, although she did not choose to inform me either in her telephone call or her letter, she cancelled my office access pass, my blackberry and my remote office connection, and had the lock on my office door changed. I was immediately and without notice cut off from the office and communication with colleagues. She put me on 'other leave' until further notice.

I proceeded to attend the psychiatrist review, in February 2011. He reported that I was fit for work, but that the office environment posed a risk to me, and he recommended mediation to ensure harmonious working relationships prior to my return to work. He thought the prognosis was good.

Meanwhile, I remained locked out of the office and cut off from office communication. On 8 March 2011 SES2 wrote to me canvassing a range of options, including mediation for a return to work. SES2 persistently misquoted the psychiatrist report, stating that it stated I was unfit for duty. I was directed to remain on 'other' leave.

On 10 March SES2 had my office contents, packed and/or destroyed, without notice to me. In addition to office records, my office contents comprised reference material collected over my long career, diaries and workbooks. To this day, SES2 refuses to tell me what she did with my office contents.

I indicated I would participate in mediation, and the first meeting was arranged for 22 April 2011. At the meeting I pointed out that the actions taken since the end of January were even more harmful than the behaviour towards me in the preceding months and that the prolonged absence from my workplace was harmful to me. SES2 did not provide any explanation to the matters I raised. The outcome of the meeting was an agreement to have a further meeting.

The mediator was provided with a substantial number of documents, which were not provided to me. My privacy was breached in respect of some of the documents. When I requested the same documents, SES2 attempted to mislead me as to their existence. She then advised me that they were not available to me because they were exempt under FOI. When I

requested them under FOI, they were granted to me, except for legal advices, which were then granted on review.

During my enforced absence, my position was temporarily filled by someone on leave from another Commonwealth department. Although I sought to resume the mediation meetings, so that I could resume my duties, SES2 did not set another meeting until 22 July 2011. She informed me that my position had been substantively filled in my absence, and identified 3 options for me to consider. We agreed that if I did not accept the offer to retire with a benefit, the mediation would resume to discuss the other 2 options. Resumption of my duties as General Manager, HRM, was now no longer an option.

SES2 subsequently presented me with an incorrect version of the second mediation meeting, declaring that mediation had concluded and directing me to attend the psychiatrist again for a fitness for duty review.

In late October, the psychiatrist reported for the second time that I was fit for duty. He thought that the ██████ should honour the original proposal to consider the other 2 options. We agreed, however, that a secondment to another agency at the ██████'s expense would probably be the best option for me, and he recommended this action.

On receipt of the psychiatrist's report, SES2 wrote to me stating that I could no longer work at the ██████. She provided no reasons. She said that I should provide her with a CV so that she could attempt to place me somewhere else. I did not respond to this communication as I thought it unacceptable.

Another 3 months passed before the offer to support a secondment to another Commonwealth agency was made. I identified an agency I wanted to work for, and proceeded there on 2 April 2012.

By this time, I had been excluded from my workplace for 14 months. I consider I have been subjected to extraordinary ill-treatment. I consider that an unlawful and undisclosed agenda was pursued against me for some 15 months, namely, that I was never again to work at the ██████. The senior managers' actions constituted a conspiracy to subvert the objectives and requirements of the Public Service Act.

Regulatory gap - a recommendation

In the APS there is no lack of laws, policies, guidelines, circulars, training, seminars etc accessible to all, and it is the responsibility of managers to ensure compliance on the part of the employees they oversee, but above all, to model a high standard of conduct themselves. Misconduct by senior APS managers is all the more reprehensible, and inexcusable, for this reason.

The APSC oversees the SES from a number of points of view – work level standards, promotion, appointment and termination processes, numbers and levels in agencies. The APSC has responsibility for the Public Service Act, and ultimately for the good governance of the APS workforce. The importance of a professional, ethical and honest public service to the welfare of citizens cannot be underestimated.

I recommend that the Public Service Commissioner be given an own-motion power to investigate and inquire into management matters in agencies in the interests of the APS; and that such a power should be used where there might be a cause for concern that the APS Values and Code of Conduct might not be being upheld by the APS's most senior managers. APS employment arrangements provide rights of review and the right to report breaches of the Public Service Act (and any other Act) – but what is the practicality and will of an agency head to investigate allegations such as the conduct described above against his most senior managers?

Conclusion

It should not surprise the Committee that workplace bullying happens in senior corporate ranks. The desire to achieve legitimate and illegitimate outcomes, by legitimate and illegitimate means, is likely to be more pronounced amongst high achievers who have access to power, authority and resources and who may see themselves and the organisation as one and the same. There is a multitude of examples from corporate life to demonstrate that no amount of regulation will constrain those determined to achieve illegitimate outcomes by illegitimate means. And it would be no less so in the APS, notwithstanding that values and behavioural requirements are codified in statute.

The Committee will be aware that not many employees can afford to complain about misconduct by senior managers. The evidence is that those who report bullying, and those who whistleblow suffer personal consequences, financial, professional and/or emotional.

Over a sustained period I was subjected to a psychological assault of unreasonable and unlawful behaviour. The actions were directed at destroying my professional life and my role in the organisation,. They were detrimental to my health. They were committed by the most senior and experienced managers of the ██████, who have direct responsibility for employee safety under the workplace health and safety legislation. I suffered deeply from being cut off and cut out of the organisation to which I was dedicated for many years. I refused to take a payout and go away. I said I wanted to continue to do my job, and I meant it. The practical reality was that a move to another agency was in my interests – and I chose not to pursue reinstatement to my position at the ██████ through action under the Fair Work Act. Since April 2012 I have been on secondment to another Commonwealth agency of my choice, and will remain there for the balance of my APS employment (till June 2013). My terms and conditions, however, have been reduced by the senior managers. I have requested the head of the agency to review these decisions.

Should the Committee wish me to appear and give evidence, I would be willing to do so.

██████

████████████████████

████████████████████

████████████████████