

# **INQUIRY INTO WORKPLACE BULLYING**

## ***SUBMISSION BY***

*SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES'  
ASSOCIATION*

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## **Shop, Distributive and Allied Employees' Association (SDAEA)**

### **Submission to the Parliamentary Inquiry into Workplace Bullying**

The Shop, Distributive and Allied Employees' Association (SDAEA) is Australia's largest single trade union with over 210,000 members. Its principal membership coverage is the Retail Industry. It also has members in warehousing and distribution, fast food, petrol stations, pharmacy, hairdressing, beauty and the modeling industries.

The SDAEA has great concerns with the current system of preventing and addressing bullying in the workplace and is very interested in improving the effectiveness of bullying protections and making real progress towards eliminating the incidence of these behaviours. We are particularly interested in preventative measures being required in workplaces, and where breaches occur, having mechanisms which provide just, low cost and speedy resolutions to complaints.

The SDAEA believe this is an important opportunity to address the inherent failings of the current system. The issue of workplace bullying is a widespread across the retail industry and the impact of this behavior is significant and profound for the victim and the workplace culture in general. A jurisdiction for workplace bullying must allow for individual complaints resolution. It must be afforded greater powers of investigation with the ability to issue much higher penalties and be granted increased funding in order to address the widespread bullying which is occurring.

We welcome this opportunity to respond to the Parliamentary Inquiry into Workplace Bullying.

The SDAEA supports the submission made by the ACTU in relation to this inquiry.

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## **The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying**

1. The SDAEA has seen a dramatic increase in bullying incidents and complaints in the past 4-5 years. We are seeing more and more cases of physical bullying resulting in injuries ranging from muscular skeletal injuries to significant psychiatric injury including in some cases hospitalization and suicide.
2. While there has been an increase in community awareness and education it is our experience that the incidence of bullying is increasing and these incidents are more sustained, aggressive and violent.
3. The SDA has helped many of our members deal with bullying in the workplace. However the current process for dealing with these issues is incredibly frustrating, difficult and rarely results in a good outcome for the person experiencing the bullying behaviour. Unfortunately, it is our experience that raising a claim of bullying is likely to lead to further bullying and a very poor general outcome.
4. The current regulatory framework is ineffective, costly, biased, and slow and it rarely, if ever provides an appropriate outcome for the person affected by the bullying behaviour. In many cases further detriment is experienced when a complaint of bullying is made. This can be largely attributed to the lack of genuine and suitable remedies for those who are affected by workplace bullying, in particular the lack of effective dispute resolution procedures.
5. It is the experience of the Association that approximately 60-70% of issues raised with by our members involve bullying behaviour. Of particular concern to the Association is the substantial increase we have seen in the number of bullying cases relating to the treatment of injured workers. There is a disproportionately high degree of bullying behaviour experienced by injured workers, whether on a workers compensation claim or not. The SDA has also seen an increase in bullying behaviour experienced by employees with caring responsibilities and pregnancy.

## **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;**

6. The prevalence of workplace bullying is growing in spite of all the bullying 'policies' put in place by retailers in the past five years. Employers mostly put bullying policies into their 'workplace behaviour' policies. However, in doing so bullying is rarely considered and addressed from the OHS perspective. Most 'workplace behaviour' policies which include bullying, fail to include a reference to the Safety Committee or the HSR (Health and Safety Representative) or to the OHS Issue Resolution Procedure. The problem is never addressed as a safety issue, but rather is addressed as an individual 'personality' problem.
7. Bullying cases are rarely investigated adequately or from a risk management perspective even where it is obvious that the bullying behaviour is cultural and systemic in the workplace. There is a strong resistance from employers to really address bullying behaviour in the workplace. In most cases the bully is likely to remain in the workplace and the complainant will be moved to another workplace or is removed from the workplace altogether. On some occasions the bully will be transferred to another store, but they are rarely, if ever removed from the workplace altogether.

## **1. CASE EXAMPLE – DENISE (Treatment of injured workers)**

8. This case of bullying involved several employees, one of which is Denise, although that is not her real name. She described herself as a mother of 4 wonderful children and a wife to her loving husband of 25 years, with a home full of laughter and love.
9. Denise was a supermarket employee who after several years of happily working for the company, had injured her back and shoulder, as a result of a storage cage being over filled and badly stacked. She had to repeatedly request over seven weeks, to have an incident report made, during which time she was expected to continue with normal duties. This continued for the next 7 months, during which time she was having physio and injections. Her shoulder later required surgery. She made a successful worker's compensation claim for that injury, and was on a return to work plan. Her Return to work plan was totally ignored by her store manager, who instead constantly harassed and bullied her, including in front of customers and other staff, in an attempt to force her to leave.
10. He told her:
  - she was lazy, and
  - "You really should find another job"
  - "I was sent to this store to clean up the workers compensation problem"
  - "There's no place here for people like you"
  - "There are too many people on worker's compensation in this store."
11. Denise sustained another injury, which required another operation and was the subject of another successful worker's compensation claim.
12. Over a period of 2 years, Denise was continually required to do tasks which fell outside her physical capacity (such as fill heavy items ) and therefore outside her suitable duties plan. She continually raised with her store manager that she was performing inappropriate duties and he failed to respond and to rectify the situation. Instead, he changed her rehabilitation programs after they had been approved by her doctor, and encouraged other staff members to ask Denise to perform jobs which were outside of her suitable duties plan.
13. Denise was fearful and intimidated and didn't want to cause any trouble. Fortunately, she had kept a diary of all that happened to her at work. She finally called the union organiser 2 years and 2 months after her shoulder injury, because she was suspended, a decision made by the store manager and HR. She also called a lawyer. The organiser and Denise met with the regional HR and the store manager. Denise was a shaking mess. Due to the efforts of her organiser she retained her employment.
14. Several months later, roster issues were raised with the store manager. He threatened Denise with the sack as he said that workers with injuries are "non-productive" in front of staff and customers. She was in tears.
15. The store manager preyed on Denise's vulnerability and was intimidating and humiliating. He said he was the boss, not her. He said she had no right to speak to the union. He said he could do as he wanted.

16. He said if she couldn't work 5 days, she didn't have a job. She went home very upset and called the organiser, who advised her to call regional HR. This was a Friday and the regional HR wasn't available until the Monday. At this point, Denise called her solicitor.
17. A meeting occurred with the organiser, regional HR and the store manager. Denise had a panic attack before the meeting. The store manager's bullying and harassment was raised with the regional HR and Denise begged her to help her. She asked that she read her diary of events which had occurred over the previous 2 years and 2 months. The regional HR was not interested and stated "this is a workers compensation matter so HR cannot deal with your bullying complaint." Denise felt betrayed. She went home, tried several times to contact the regional HR to no avail, and had a mental break down. She didn't continue her diary.
18. She contemplated suicide. The union gave her the number of a counsellor. She had 4 sessions with the counsellor. Her statements from that time tell of no more laughter in her home, of the changed relationships with her husband and children, of being depressed most days, and having panic attacks.
19. The organiser had taken the matters to two levels of HR but nothing had been done. There were then a series of meetings and correspondence between the SDA and the company for a period of a year and 8 months. For weeks and months at a time, the Company wasn't reacting and did nothing. When HR finally responded, they were annoyed and defensive.
20. This case demonstrates the common company tactic of ignore and delay. It is an approach of "If I don't do anything, it might go away." It is also common for employers to try to wear the employee down with the hope that they will give up, withdraw the complaint and leave. By using delaying tactics, there is more opportunity at the store to pressure the worker, give negative performance feedback (whether deserved or not) and create negative rumours and innuendo. This of course, is very distressing for the worker.
21. It is also common that the union does not hear about these types of complaints, despite them being very serious, until the member's income is at stake. Then they feel at the mercy of the employer and they become extremely fearful that they will lose everything.
22. By that time Denise had become a recluse with severe psychological injury. She had had at least 30 shock therapy treatments, was depressive and anxious, and her quality of life and that of her husband and children was very poor. It is unlikely that she will ever work again. A further worker's compensation claim for stress was lodged and eventually approved.
23. Due to the nature of the complaints, the issues were taken to the highest levels of the company. Within 3 months, an extensive investigation had taken place in regard to Denise's case and that of 6 other staff members. It was found that the manager had engaged in bullying behaviour. The company response to the manager's repeated bullying of numerous employees was to demote him for a six month period; a grossly inadequate response to the widespread behaviour engaged in. The company refused to terminate the employment of the store manager because '*it is so hard to recruit store managers.*' It was the widely held view of employees in the store that the manager was not terminated because he was instructed by the company to 'clean out the workers compensation' employees and therefore was acting in accordance with company directives.
24. Letters of apology from the HR manager and the store manager were sent to Denise, for what they were worth. At that time, the company said that they had "performance managed" the

store manager and the regional HR manager and others, though they were reluctant to disclose what that entailed. Denise's health went backwards. She felt that the store manager had remained with the company in a position of power, while they had all lost their livelihoods.

25. During that time, the callous attitude of the senior State HR had been "Why aren't they happy? Why haven't they just gone away and got on with their lives?" which showed a complete lack of empathy and understanding of the impact of their actions on the members concerned.
26. It took a few more months and a great deal of persistence to get the store manager and the regional HR sacked, and others were moved out of roles with direct contact with store employees. This news helped Denise a lot, and her organiser reported that she had a bright spark in her eyes. Denise felt validated and that somebody believed her. She also felt that it was justice that the store manager should be punished for his behaviour.

## **2. CASE EXAMPLE – JANE (Pregnancy)**

27. Jane worked as a bakery assistant. Her job included cleaning the bakery, including scraping thick grime off the floor on her hands and knees, moving heavy machines, and flatbeds with up to 400kg of flour on them, and heavy benches to clean behind them. She was required, amongst other things, to empty large wheelie bins and scrub them out, clean out ovens, scrub dishwashers and push large crates (often stacked higher than her head with bread) out into the store.
28. The boots provided for her were man sized and she would frequently slip on the wet floor and trip when pushing heavy things around.
29. Not surprisingly, at 20 weeks pregnant, she was finding her duties difficult, and was experiencing stomach pain and false contractions. Her doctor advised that she be provided with light duties in a medical certificate. Her immediate manager was happy for her to slow down (but still continue with her duties). The 2IC continuously harassed her to hurry and to do more. When she didn't get everything done, he said "Just because you are pregnant, doesn't mean you can do a Harry half-arsed job." She continued with her job with the pains getting much worse.
30. Jane had low blood pressure and often felt faint and would be in tears by the time she got home.
31. At 27 weeks pregnant, her doctor gave her a week off work and her third certificate for light duties, when she returned. The response from the Store Services Manager was that if she wasn't capable of doing her job, she would have to resign. Jane had 3 other children and could not afford to lose her job.
32. Jane felt that there was nothing else she could do. She was scared she would lose her job, and so she thought she just had to put up with it.
33. At no time was Jane told about the provision in Section 81 of the Fair Work Act which provides that if a pregnant employee gives her employer evidence that would satisfy a reasonable person, that she is fit for work, but that it is inadvisable for her to continue in her present

position due to illness or risks arising out of the pregnancy, or hazards connected with that position, then the employer must

1. Transfer the employee to an appropriate safe job, if there is one available; or
  2. If there is no safe job available, allow the employee to take paid “no safe job” leave for the duration of the risk period. This could be up until the birth of the baby.
34. As the Act now stands, an employee is only eligible for this provision if she has at least 12 months service, and has provided her employer with written notice that she will be taking unpaid parental leave.
35. Jane had satisfied these eligibility criteria.
36. Each night Jane went home in a lot of pain and angry at the mistreatment she had to endure. She had tried many times to contact the company HR people and had been given the run around. By her 30<sup>th</sup> week of pregnancy HR intervened and she was moved to perishables. This involved getting up a step and leaning into fridges to pull stock forward. Jane used one hand to hold on to the fridge to support herself, but the 2IC insisted she use 2 hands to move the stock faster. Note, Jane had low blood pressure and was prone to feeling dizzy.
37. There were many other examples of the 2IC’s bullying behaviour.
38. In the 32<sup>nd</sup> week, Jane went into pre term labour. During the process of getting her to hospital the ambulance officers lost the baby’s pulse. Jane was given an emergency caesarean section, and the baby was revived. He spent a month in intensive care. The baby has done well, but required many medical appointments. It is still unclear as to whether he has sustained brain damage.
39. In the meantime, while Jane was recovering in hospital, she was told that she had a 4 cm split in her abdominal muscles, and would need to wear a stomach brace until she had healed. The pain she had been experiencing was her muscles slowly splitting and all the heavy work she had been doing had set off her early labour.
40. When Jane’s baby was 8 months old, she returned to work part time, out of economic necessity. She still needed to wear the brace and be on restricted duties because her abdominal muscles had not yet healed and she was still experiencing back pain. Once again she was being bullied and belittled in front of customers and other staff. She contacted the SDA. Fortunately her organiser moved quickly to stop the behaviour, and get a statement of all that had occurred to Jane. A Branch industrial officer had recognised the substantial breaches of the Fair Work Act and Anti-discrimination and OHS legislation, and sought a legal opinion as to potential remedies.
41. Head office of the company was contacted quickly and an investigation occurred soon after, but they came to the conclusion that it was all a matter of “poor communication” and that the 2IC was very remorseful and had not intended to upset Jane. The company refused to accept that pregnancy discrimination or bullying had occurred or that there had been any breaches of the Fair Work Act, and therefore was not prepared to discuss compensation for Jane.
42. Applications in the Federal Magistrates court followed and finally a confidential settlement was reached.

43. The Company would not agree to retraining of their staff as part of the settlement and this is still a matter to be pursued separately.

### **3. CASE EXAMPLE – X (Caring responsibilities)**

44. X was working in a supermarket on the morning shift. His elderly father suffered a stroke so he needed to travel approximately 7 hours (each way) by car to visit him each weekend to help with tasks and rehabilitation. He advised the company. Three weeks after this advice, he was handed a roster change which involved X working every night. On trying to negotiate to have at least the Friday night off and work Friday morning so he could visit his father, the store manager said NO.
45. This case ended up in the Queensland Industrial Commission with a workable resolution. However, once back in the store, fault was found with all of X's work; he was constantly criticised for 'talking' on the job; unrealistic tasks were set by his manager, and he was watched all the time. X became distressed by the behaviour he was experiencing.
46. X was forced to take sick leave and then lodged a Workers Compensation claim for stress and bullying. While awaiting the approval of his workers compensation claim, the company refused to allow X to take his accrued annual leave.

### **4. CASE EXAMPLE: M1, M2, M3**

47. Case involved Grocery Manager harassing (bullying and sexual) young men in the nightfill team and produce department.

#### **Male 1**

48. 22 year old working part time in the produce department. He was told by the grocery manager within the first two weeks of starting work in the store that he would never get annual leave. M1 thought he was joking, however two years down the track still has 121 hours owed in leave. When he and a co-worker applied for two days leave, a month prior to needing the leave, the co-worker's leave was approved on the day but M1 had to go and ask for his approval the day prior to taking the leave. The grocery manager was the person responsible for the approval. Grocery manager calls M1 belittling names and encourages others to do the same. M1 feels isolated from his co-workers.

#### **Male 2**

49. Constantly criticised for his work, belittling comments made about the amount of money he was earning and comparisons made to the type of car he drove verses the grocery managers. For example, the grocery manager said ' Look at my \$60,000 car etc., and boasted how many houses he owned. He called M2 'peasant' and made constant comments about his private life. M2 was told he would never go anywhere in this company and would never amount to anything. These work conditions became unbearable and started to affect M2's health.



### Male 3

50. On joining the nightfill team, comment made by grocery manager 'for initiating a new person in grocery we will gang bang you' and also said 'We'll hold you against the boxes and I will \_\_\_\_\_', and also said 'he would do this to my mother'. M3 found this to be extremely offensive and disturbing.

### ACTION BY COMPANY

51. HR transferred the grocery manager to the adjacent small town (30kms) and demoted him to trainee manager. There has been some history of similar behaviour in his previous store. The local police were also informed of the young men involved. These are not the only persons involved in this case; the union received 3 other written statements.

### Experience of victims of workplace bullying.

52. There are many physical and psychological symptoms suffered by those experiencing bullying behaviour. However for the purposes of this submission we would like to focus on the experience of victims who have been able to speak up and complain about workplace bullying and what they go through when trying to redress their workplace situation.
53. The experience of victims of bullying who try to raise a complaint is one of complete frustration and hopelessness. Employers simply do not address, investigate or deal with bullying behaviour in the workplace which in many instances further exacerbates the situation which in turn causes more harm and increases the likelihood of a severe psychological injury being suffered by the complainant.
54. A complaint may be 'investigated' internally; however suitable and appropriate investigation principles are rarely followed. In most cases the bully (who will be a manager in 95% of cases) will be asked if they felt they were bullying the complainant(s). They will say they 'never intended to bully them or they didn't know they were bullying them' and the case ends there! That is the end of the investigations as far as the employer is concerned. This will usually be the outcome regardless of the fact there is often more than one complaint or complainants. In some instances the investigation will conclude that bullying behaviour has occurred but the employer has decided that no action is required because the bully did not 'intend' to cause harm. Under the OHS legislation, 'intention' does not negate the need for the bullying behaviour to be stopped or the bullying culture to be addressed. The employer's duty of care is to provide a healthy and safe workplace and that means a workplace free from bullying behaviours. 'Intention' is not a defence for failing to provide a safe workplace.
55. It is evident from the case examples provided in this submission just how inadequately workplace bullying is dealt with, and the devastating impact it has on the victims of bullying, their families and work colleagues.

**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.**

56. There appears to be little effort put into preventing bullying in the workplace and eliminating the hazard at the source, or responding to a bullying incident or bullying culture.
57. It is our belief that the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying is negated by the fact there appears to be little will by the employer or workplace regulator to investigate bullying complaints. Most bullying policies and procedures put the onus on the victim to raise the issue with their employer, rather than set out the processes for addressing cultural and systemic workplace behaviours. The value of the policy is effectively “negated” as the victim is already in a vulnerable position, one by being bullied in the first place, then having to report the issue to a non-independent body such as the employer.
58. It has been our overwhelming experience that policies and procedures in place are rarely used and followed. When it is pointed out to employers they have not followed their own policies and procedures there is no interest in trying the remedy this. But why is this? It is because there is no incentive to get it right, there is no incentive to prevent workplace bullying, and there is no incentive to protect employees from the damaging effects of workplace bullying. Employers also know there is no real cause of action available to employees who experience bullying, so again there is no incentive to change current practices and attitudes to workplace bullying.
59. The lack of adherence to policies and procedures further creates a negative workplace culture because employees affected by bullying know that the company will not deal with the matter appropriately and in accordance with their own policies and procedures. Being bullied in retail is a double-edged sword; you are bullied at the workplace, then you report the incident and you are bullied all over again by the systemic failings of the present system.

**The adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums.**

60. Education and support services exist in most jurisdictions; however their usefulness is greatly diminished by the lack of effective resolution processes. Trade unions have been very active in campaigning on this important health and safety issue for over 10 years. The regulators, in all the jurisdictions have educational resources available, such as guidance materials or codes of practice. While it is important that further education and support services are provided, it is equally important to ensure that genuine resolution processes and outcomes are provided to victims to ensure that the incidence of workplace bullying declines.
61. It is important that there are effective support services in place to assist those dealing with bullying to minimise the risk of psychological injury, depression, guilt, anxiety and suicide. It is also necessary for adequate resources to be directed to preventing bullying in the workplace.
62. There has been a real focus in the past decade to educate employers about workplace bullying. However it is now time for better, stronger legislation, both in the O.H.S. and Workers Compensation jurisdictions and this must be backed up by strong punitive measures against those who engage in workplace bullying. Employers have had a decade to put in place effective measures for dealing with and preventing workplace bullying. They have failed to do so and it is now time for the regulators, educators and support services to insist on better outcomes in this area.

**Whether there is scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying**

63. It is the Association's experience that there is minimal genuine engagement between the regulator and employees affected by bullying. This is exacerbated by the policies and procedures devised by employers which effectively enable them to investigate themselves without the option for third party intervention, namely the regulator, even though legislation makes it clear that the employee has the option to bring in the regulator, there is a complicated process before this can happen.
64. In our experience the bullied employee effectively 'gives up' because the process they are required to follow is convoluted, slow and ineffectual. They must take the matter up with their line manager, area manager, regional manager, HR manager, head office etc. before the regulator can be involved. There is a 'wait and see' approach adopted by the regulator.
65. It is our experience in the Queensland jurisdiction that there is no engagement with the regulator. This is particularly evident when trying to deal with employees on workers compensation who have been subjected to bullying behaviour. Q Comp refuses to investigate or get involved in matters of this kind. It is very frustrating that there is nowhere to take workplace bullying issues and no remedies available to those who are bullied at work.
66. The Workers Compensation System in Queensland assists the employers to cover up the extent of this problem – the special provisions in the legislation enabling a claim for psychological injury to be rejected on the grounds that "management action was reasonable" is being regularly abused, particularly by those who are self-insured. This is evidenced by the number of legitimate stress claims from bullying which are rejected by the retail self-insurers due to the "reasonable management action" "loophole" described above, which makes it impossible to gauge the full extent of bullying.
67. The retailers are aided by the Government Regulator in Queensland (Q Comp.) which consistently refuses to provide the Union with statistics around the number of stress claims from bullying being made to the self-insurers and the percentage of these claims being denied due to the legislative "loophole" described above. Q Comp. will not release such statistics to us due to the "confidentiality" of the information.
68. The experience of the Victorian branch of the SDA is that Worksafe is very hesitant to get involved in a bullying matter until the employer's policies and procedures are carried through. This invariably leaves the victim of workplace bullying waiting months if not years to see a resolution or acknowledgment of the behaviour they have been subjected to.

**Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying.**

69. There is no deterrent against workplace bullying.
70. The existing regulatory framework is grossly inadequate.
71. A victim of workplace bullying has effectively nowhere to go in order to seek redress for the bullying behaviour they have experienced. They must first deal with an internal process of 'investigation' by the employer. The 'investigation' is not conducted by an independent party. It rarely, if ever adheres to basic natural justice principles of investigation. To add insult to

injury, where the victim has made it through the corrupted and bias process, the employer will then refuse to divulge to the complainant the outcome of the investigation and what action, if any, will be taken against the bully. Taking a complaint becomes a pointless exercise and further creates a culture of distrust which only serves to encourage a bullying culture because the bully always gets away with it.

72. In Victoria, the OHS legislation has no binding definition of bullying; the only reference to bullying is in guidance material which has no enforceable outcomes other than a “source of knowledge” that an employer / employee can access. Even though guidance material provided by the regulatory body does outline many strategies that can be used by the employer to minimise the likelihood of bullying, due to the fact that there is no legal enforceability with guidance material, the employer, using little or no consultation, effectively creates their own policies and procedures.
73. The regulator finds themselves in a situation where not only do they have to investigate a bullying claim, but before that step, they have to go through the bullying procedures of the company to see if they sufficiently address the issue of bullying, then compare the case with the company’s procedures, then make a decision.
74. Under the Model laws the Code of Practice on Bullying has yet to be released. The SDA did provide a detailed response to the Safe Work Australia Draft Code of Practice into Workplace Bullying. It must be noted that the Draft Code was an absolutely appalling document which, if implemented, would be a drastically regressive step in the management of workplace bullying. The SDA would be greatly concerned if that document forms the basis of any new national Code of Practice on workplace bullying. It is concerning to see the national safety body in Australia release such an ill-conceived document. It is questionable as to whether Safe Work Australia truly understands workplace bullying based on the draft code of practice put forward by them.
75. Employers hold a reasonable belief that they will never be the subject of an investigation into bullying by the Regulator. Employers also believe that if they have a bullying policy then they are meeting their duty of care. (This is despite the fact that they rarely, if ever follow their own policies and procedures.) However the reality is that employees are suffering more than ever which means more workplace injuries and illness because of the bullying behaviour experienced in workplaces.
76. The most significant way for bullying behaviour to be taken seriously is to provide individuals with a personal remedy. A victim of workplace bullying must be able to raise the issue and be provided with a remedy, rather than being left in the hands of the regulator. The person who is affected by the bullying behaviour should be able to seek personal redress. They should be able to take a civil action against the bully and the employer who has failed in their duty of care. In the current framework the victim is reliant on the regulator taking up the matter and pursuing a prosecution; the likelihood of which is minuscule.
77. We will not see a decline in bullying incidents unless and until an individual is afforded personal rights and remedies which can enable them a genuine and reasonable resolution.
78. Personal rights can be afforded to individuals along with appropriate and effective dispute resolution processes via the resources and expertise available in Fair Work Australia; both the Tribunal and the Ombudsman. This jurisdiction operates in the domain of the workplace and is

therefore cognizant of the machinations which exist in workplaces. FWA can also provide fast and effective dispute resolution.

79. If such a scenario were adopted it must be ensured that FWA has the expertise and resources to manage other jurisdictions such as OHS, worker's compensation and anti-discrimination. As noted earlier, workplace bullying cases often present with a raft of cross jurisdictional issues, such as pregnancy discrimination or injured workers.
80. Another concern with providing a remedy through FWA is the risk that bullying matters will simply lead to the use of unfair dismissal laws to 'pay off' victims of workplace bullying, rather than address the culture of the workplace. There must be substantial fines and other significant remedies available which act as a genuine deterrent rather than employers relying on unfair dismissal provisions to rid themselves of complainants. It is imperative that a jurisdiction is not created, like the anti discrimination jurisdiction, which results in the claimant, in 99.5% of cases, losing their employment while the perpetrator remains in the workplace.

### **Confidentiality and privacy**

81. Privacy and confidentiality are being used by employers as a means to preventing the complainant from knowing the outcome of bullying investigations and any disciplinary outcomes. When an employer does conduct an investigation, in most cases neither the complainant nor the Union is able to find out if the complaint was substantiated or, if it was not, why it was not, because the retailers hide behind "confidentiality" of the perpetrators to avoid divulging the outcome of their investigations. This really makes lodging a complaint pointless as the poor complainant can never get closure as it is impossible to find out what (if anything) has been done to the perpetrator. Further, the retailers' response of "Trust us – we have dealt with the matter" insulting, as it does not prove that they have done anything at all. There is no other jurisdiction where this situation is possible. It defies logic and defies the principles of natural justice and it fundamentally undermines and deters bullying complaints being made.
82. The use of "privacy" and a "duty of care" have become growth industries for employers to not involve Unions or Health and Safety Representatives in dealing with bullying issues, again creating an environment of isolation for the alleged victim.
83. In conclusion, it is time for the law to catch up to this significant and devastating health and safety issue. It is time that individuals are afforded personal remedies. It is time to amend the Fair Work Act to cover bullying and provide specific fines and remedies which ensure that employers address workplace bullying behaviors and cultures. It is time to give employers clear direction as to the reasonable steps they should take (much like those provided in the sexual harassment jurisdiction) when dealing with workplace bullying. It is time to put an end to the devastating effect bullying has on victims, families and workplaces.