

WISE Submission to Federal Government Inquiry on Workplace Bullying

Background

Established in 2001, Workplace Investigation Services Pty Ltd (WISE) is a workplace investigation and grievance management company based in Sydney and Canberra. It investigates and conducts management inquiries into a range of workplace misconduct including bullying allegations. WISE also advises on further management actions, reviews internal investigation reports, conducts risk assessments, manages mediations, conducts training and handle grievances.¹

For five to six years post inception, WISE's client base was mostly Commonwealth and State public sector government agencies that referred a range of matters, including bullying allegations, for independent investigation. More recently, Wise has also been engaged by private sector organisations to investigate bullying cases.

Introduction

Drawing on over ten years' experience in workplace bullying matters, WISE welcomes the opportunity to share its observations on the following terms of reference:

- The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying
- 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;
- 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;
- Whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms;
- possible improvements to the national evidence base on workplace bullying.

¹ For further information about WISE go to <http://www.wiseinvestigations.com.au/home.htm>

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

Since its inception, WISE has seen a marked increase in investigations involving allegations of workplace bullying. Wise believes that this increase is partly attributable to:

- rising public awareness about the inappropriateness of workplace bullying and avenues of redress;
- recognition of WISE's expertise in relation to these matters;

WISE has investigated matters involving allegations of bullying in various forms including:

- unfair and excessive criticism
- swearing, insults and use of aggressive language
- graffiti containing aggressive and derogatory comments about co-workers
- ignoring co-worker's point of view
- exclusionary behaviour
- constantly changing or setting unrealistic work targets and undervaluing work efforts
- inappropriate comments about personal appearance
- persistent, unreasonable criticism of work performance and/or management style
- undermining and belittling comments
- assault, both physical and threatened.

WISE believes the common factors in these types of behaviour are that: (a) the behaviour is unreasonable; (b) the victim has been intimidated, degraded or humiliated.

WISE requires evidence of both these factors to substantiate allegations of bullying.

The bully 'profile'

A bully is a person who uses strength or power to intimidate others.

Workplace bullies are generally workers who use power and strength to intimidate, degrade or humiliate another coworker. Whilst it is common for bullies to occupy higher levels of authority, such as supervisors and managers, WISE has

investigated a number of cases of 'upward bullying' where team members bully managers. A study conducted by Griffith University in southwest NSW revealed that nearly a quarter of Australian bosses are the targets of upward bullying (Branch, 2009).

This study noted that one of the main triggers for upwards bullying is organisational change. This may be a change of working conditions, management, or processes. Employees who are unhappy with the changes may blame their manager and respond by bullying them.

Upward bullying of managers is often characterized by gossip, back stabbing, disrespect, disobedience and a failure to comply with rules. WISE has found that co-workers may also be subjected to this type of conduct in workplaces where upward bullying is present.

The typical case profile of "upward" bullying would be a team in a remote or regional workplace of between 5-10 staff in secure positions (often government employees). It often occurs where one or two long-term employees become disempowered through some structural change. In an effort to reassert their authority they engage in behaviours that seek to undermine the management. The influence of these one or two disgruntled, negative employees can be profound and they often make the working environment unpleasant for the new manager.

In these cases, bullies may question the manager's competence and influence newer staff through misinformation. Then the team makes a complaint about the poor performance of the manager.

Unfortunately many managers are reluctant to report upwards bullying for fear of recrimination or because some feel they should deal with the problem themselves. Those managers who decide to confront troublemakers often trigger more bullying and undermining, which may lead to unfounded complaints.

Victims' experiences

WISE is regularly asked to make recommendations based on its investigation findings. These quite often turn on the impact of the bullying conduct on the victim. Bullying victims commonly report the following adverse affects to WISE:

- Stress, anxiety and tension
- Feelings of social isolation at work
- Loss of confidence and self-esteem
- Loss of concentration
- Loss or deterioration of personal relationships
- Headaches, backaches, stomach cramps, depression
- Interrupted sleep patterns

- Deterioration of work performance
- Anti-social behaviour, impact on family/relationships
- Loss of income; loss of potential income
- Panic attacks
- Reluctance to go to work

It is not uncommon for a victim's coworkers to also report some of these adverse effects of bullying conduct.

Many victims are reluctant to make complaints or report the behaviour for fear of a negative impact on their career opportunities. In WISE's experience these fears are justified. In many cases investigated by WISE where complaints have been substantiated, victims are labeled as 'weak' or 'problem' employees. Many more complainants resign before they make a complaint. The underlying behaviour is then not dealt with as it is perceived that the problem has resolved itself. Obviously such an approach does not change the behaviour of the bully. Even when complaints are substantiated, frequently the accused is not subjected to disciplinary action that changes their behaviour. This creates an unworkable relationship between the bully and victim. In most cases it is the victim that leaves the organization.

This is partially due to the bully's typology: a typical response by a bully to an 'attack' such as the lodging of a complaint is to deny and defend their conduct, and diminish and undermine the credibility of the victim. Given that bullies often occupy a position of authority and power, their strategies are normally effective. Bullies typically manage 'up' very effectively to the detriment of the victim who typically has not engaged in this high level politics within an organization.

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

The increase in bullying related investigations referred to WISE over the past few years suggests that workplaces are taking alleged incidences seriously.

Unfortunately businesses often engage WISE as a last resort in circumstances where the alleged bullying conduct is extreme and has occurred in a workplace environment where bullying has been tolerated for a long time. The fostering of workplace cultures where bullying thrives, appears to have its roots in acquiescence, confusion about what constitutes bullying and an inability to conceptualise this conduct.

WISE investigators often deal with matters where complainants have been subjected to inappropriate conduct yet they have difficulties describing and conceptualising it, even though they believe they have been treated poorly. This

either hinders them making of an official complaint or, if they do make a complaint, the complainant may not be able to properly describe the conduct to HR, or workplace investigators, lessening the probative value of their evidence. These difficulties usually point to a need for appropriately targeted training.

Furthermore WISE is often asked to investigate non-specific, broad allegations that one co-worker 'bullied and harassed' another. The specific conduct is not particularised and when complainants are interviewed they are often unable to describe the conduct in a manner that provides sufficient evidence to substantiate a claim on the balance of probabilities.

Workplace cultures and policies have an integral role in preventing bullying conduct. Senior management recognition and acknowledgement that this conduct can and does occur in their workplace is the first step in its prevention. A properly worded and communicated anti-bullying policy is evidence of management buy-in to the eradication of this conduct.

Anti bullying policies can provide a framework in which to conceptualise this conduct. A policy also helps with framing terms of reference for external investigators and questions to put to witnesses. It should also assist workplace trainers particularly with respect to modules directed at recognizing inappropriate conduct.

It is important that workplace policies address the gaps in conduct that isn't covered by anti-discrimination and sexual harassment legislation.

As a note of caution, whilst the most effective way to prevent bullying is for employers to send a clear message that workplace bullying is unacceptable, a 'zero-tolerance' approach to workplace bullying may be counter productive. An international study analysing information gathered from thousands of cases presented to an ombudsman over a 10- year period found that zero tolerance policies dissuaded some people from reporting misconduct. Such policies detail when and where misconduct should be reported and what action will follow. The study found that formal investigation and punishment were often regarded as too prescriptive. It also found that people who like to resolve their own problems and don't want to get others into trouble are less likely to report misconduct if a zero tolerance approach is in place (Rowe, Wilcox and Gadlin, 2009).

This study suggests that the key to an effective anti-bullying policy is to allow for flexibility within the complaints systems. One policy option would be to retain an option for a complainant to request mediation processes at any time after lodging a complaint for the purpose of attempting to repair damaged relationships.

Whilst anti bullying policies are necessary they are not sufficient to eradicate this behaviour in the workplace. Positive role modeling is required to effect cultural change. Managers need to respond immediately when they witness inappropriate conduct. That is they need to be seen shutting down inappropriate conversations and responding to hearsay and gossip, at least to the point of proper investigation and inquiry.

*** Whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms**

WISE believes that bullying conduct breeds in workplaces where victims do not have appropriate, objective, confidential and simple complaint mechanisms. Indeed the study by Rowe, Wilcox and Gadlin (2009) found that complaints systems that are difficult to understand or poorly communicated present a barrier to reporting.

Ideally, complaint systems should provide safe and confidential avenues to seek advice and support in addition to mediation options and self help. However WISE's experience, particularly with some Federal government clients, is that complaint mechanisms are often informal, ad hoc and subjective. Inadequate complaint mechanisms can have adverse implications well beyond the current investigation. WISE finds that witnesses who have been previously subjected to poor complaint processes are hostile and un-co-operative.

WISE strongly believes that independent third party bullying complaint hotlines and investigation mechanisms would assist victims in workplaces where senior management are committed to eradicating prevailing bullying cultures. Investment in these measure not only provides a 'safe' complaint mechanism for victims which fear reprisal, they send a clear message that allegations will be taken seriously, investigated independently and appropriate action taken when allegations are substantiated.

WISE also believes that the widespread acceptance of a prevailing an often quoted definition of bullying – that this behaviour involves *repeated* incidents of unreasonable behaviour, is problematic. This definition does not capture isolated or infrequent bullying behaviour, which can have just as significant detrimental impact on the victim as repeated acts. An effective definition of bullying should not have particular behavioural acts as its focus. Rather, it should focus on the adverse effects of that behaviour.

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

Current privacy laws present challenges to deterring workplace bullying. These laws require balancing the amount of information given to employees when an employer takes action, particularly in terms of penalties. Without adequate information about these issues, employees can get the wrong signals. They may incorrectly attribute an employee's departure to a redundancy or early retirement rather than to the consequences of a misconduct complaint. This can seriously damage trust in the company's policies and procedures.

*** possible improvements to the national evidence base on workplace bullying.**

The current evidence base on workplace bullying is best with the following problems:

- Bullying is often a 'hidden problem' – often there are no witnesses and victims don't complain for fear of reprisal
- There is little incentive for workplaces to keep statistics relevant to workplace bullying due to the adverse reputational effects of this conduct
- Confidentiality and privacy obligations owed to the respondent hinder the collation of data on bullying investigations and outcomes.

Bullying behavior has a negative impact on workplace productivity and the mental health of victims and coworkers. To improve organisational responses to complaints of bullying it is important to gather more information regarding complaints and substantive cases of bullying, the incidents, behaviours found to be bullying and the case outcomes for those accused and the victims. A longitudinal perspective would enhance our understanding of the holistic impacts of bullying behaviour on our work and social life.

WISE supports the compulsory reporting of bullying complaints in a similar vein to the reporting of fraud and maladministration in the government sector and Work Health and Safety reports to WorkCover agencies. Such a mechanism would encourage employers to undertake regular training and prevention practices to counter bullying conduct, respond early to conflict in the workplace and to conduct independent investigations when bullying complaints are made. It would discourage the promotion of aggressive ambitious behaviour, which has for a long time rewarded with promotion to senior executive positions.



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