

**House Standing Committee on Education and Employment
Inquiry into workplace bullying**

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I would like to have my personal details remain confidential. All the remainder of the submission is fine to publish, as I have deidentified the people and agency concerned and excluded any information which might tend to identify those involved.

This submission responds to several of the terms of reference and represents the views of an individual and not any organisation.

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

Abstract

This submission details an account involving a case of workplace bullying which extended over several years and represents a fairly typical organisational scenario. It highlights adverse behaviour by senior agency staff, providing an illustration of the various kinds of behaviours in organisations which are averse to recognising and dealing effectively with bullying. It also describes how a tenacious victim was able to achieve a reasonable result – eventually. Any legislative, regulatory or policy framework needs to take account of these kinds of scenarios in their formulation.

The submission included several recommendations covering legislation, regulation and organisational roles and responsibilities, along with a rationale for each.

Introduction

The following case study outlines experiences as an advocate and support person, supporting a female staff member of a state government agency, who had been subjected for several years, to workplace bullying by a more senior male staff member.

The workplace bullying had affected the entire work unit, where all staff were subjected to negative behaviours from the senior male staff member. The female victim, was targeted with a higher level of bullying than other staff.

As an observer and participant in the process but not the victim, I was able to see first hand the ways in which the organisation did its level best to avoid scrutiny of the behaviour and actions of senior managers and executives. The culture in the organisation was one where it was accepted that bullying was viewed as interpersonal conflict, rather than unacceptable behaviour breaching health and safety legislation.

I witnessed the clever ways in which senior staff directed or misdirected investigations to provide the appearance of complying with complaint policies, whilst at the same time actually ignoring the elements of the complaint which might lead to uncovering misconduct of middle managers and senior executives.

The breaches to procedural fairness and natural justice were significant and extensive, resulting in extensive delays, limited findings and ultimately departure of many staff from the unit.

Various officers avoided taking responsibility for action, or in some cases took deliberate action to ensure evidence of the bullying was not discovered or covered up.

The victim had experienced the bullying behaviour for some time before approaching management. There was an established pattern of behaviour such as shouting, invading personal space, discrediting and undermining comments, nit picking and treating the victim differently to others in the unit. This had led to a number of incidents, many of which involved other staff in the unit intervening to defuse the situation.

Verbal complaints

She spoke to various senior managers and executives seeking their intervention to address the situation, including her immediate line manager and the executive in charge of the division. Her line manager conceptualised the problem as simply normal workplace conflict and refused to concede that the behaviour was bullying, despite being provided with a copy of the legislation describing bullying behaviour.

The victim formed a view that a culture existed where this kind of inappropriate behaviour was considered just part of the cut and thrust of a normal workplace and was not worthwhile or necessary to address.

This was despite there being ample informal evidence of widespread discontent within the unit which was expressed in various quarters.

The first complaint

Eventually, following a verbal complaint again to the divisional executive, the victim lodged a formal complaint with him.

The divisional executive then assigned the conduct of the investigation to the very unit line manager who had refused to acknowledge that a case of bullying existed. The victim was concerned about the predetermined view of the line manager and the likelihood of being biased, based on his views expressed at earlier approaches.

The unit manager conducted an investigation which took almost 7 months to complete, and required numerous follow ups from the victim to complete the investigation.

The unit manager did not interview most of the witnesses named by the victim, as he said the victim would have 'schooled them up'. In addition, he wrote up fictitious notes of meetings which never occurred, to make it appear that he had interviewed all relevant witnesses.

He made a finding that there had not been any inappropriate conduct on the part of the alleged bully, but rather that the senior male staff member was acting appropriately in discharging his responsibilities and merely following up on administrative processes.

Prior to the completion of the investigation the victim became aware that a number of those named as witnesses to the bullying had not been interviewed by the line manager. She also believed that the unit manager had not been open to persuasion based on the evidence, and was simply using the process to reinforce his view that no such problem existed.

During the course of this first investigation, a joint staff complaint letter was written to the unit manager, expressing concerns about the bullying behaviour by this senior male staff member.

Internal review

The victim continued to be subjected to bullying behaviour at the hands of the senior male staff member. She then lodged a request for an internal review with the agency head claiming that the first investigation was flawed, and alleging that the witnesses named were not interviewed. This entitlement was outlined in the agency complaint policy.

Her request was referred to her division executive who had received her first complaint and to whom she had complained verbally on several occasions. For the internal review, the divisional head assigned the review to an officer in another unit in the agency within his division which had some investigatory expertise.

The relevant union also at this time wrote to the agency head to complain about workplace bullying by the officer concerned and sought an intervention. They provided further evidence of problems in the unit, citing extremely low scores from an organisational climate survey undertaken in the unit.

The officer, who conducted the internal review made a finding that all the witnesses had been interviewed, based only upon examination of the unit manager's report itself. No checking with the witnesses occurred despite the victim meeting with the officer concerned and reinforcing this claim.

The victim even took along one of the witnesses, who attested that he had not been interviewed in the course of the unit manager's investigation and therefore any statements to that effect in the report, were incorrect. One of the witnesses even phoned the internal review officer after the meeting to inform her that as a witness he had not been interviewed and if there was a record of an interview or a tick beside his name, then this was incorrect, because he had not been interviewed.

The victim formed the view that the division head had interfered with the independence of the internal reviewer and directed them not to speak with the witnesses to substantiate whether or not they had been interviewed.

She also believed that the internal review had been deliberately limited to a desktop review of the document itself, and therefore could not possibly determine whether the original investigation had been conducted fairly and appropriately.

She decided that the most likely explanation for these inadequacies was interference by the division head, to whom she had referred her complaint in the first place. She considered that it was his desire to avoid uncovering evidence of bullying and inappropriate handling of bullying complaints, which motivated such actions.

Once the internal review was completed, the agency head wrote to both the victim and the union, assuring them that all witnesses had been interviewed despite the fact that this was untrue. He also indicated that the original complaint investigation had been appropriately conducted, despite the review being limited to examination of a single document prepared by the unit manager. He again reiterated that the senior male staff member was not found to have engaged in bullying and harassment.

The bullying continued unchanged and unchecked, with no intervention in the workplace by any middle managers or senior staff, and this led to a shift in organisational norms in the unit where various other managers displayed the same behaviour as the bully because they believed no sanctions would be applied. When verbal complaints were made to unit middle manager, the victim was told "managers can do that".

Following a particularly distressful confrontation with the bully and another senior male manager, the victim was forced to leave the workplace and find sanctuary elsewhere in the building by negotiation with a former manager of another unit.

Second complaint

The victim then lodged a more comprehensive complaint consisting of six separate allegations covering workplace bullying, management failure to act and this time, allegations about misconduct by officers responsible for the complaint management process and internal review. This occurred two years after the first complaint and three years after the bullying first started.

The complaint was lodged with the acting agency head, who indicated his intention to assign the investigation to an internal unit and appoint a complaint manager from the same division where the victim was based and whose divisional head was the subject of one of the misconduct allegations.

The victim complained about this, concerned about the reduced likelihood of getting a fair hearing, given the problems experienced with the first investigation and internal review. She also had concerns about a complaint manager being appointed who was under the line management of the division

head named in her complaint as having interfered in some way with the internal review.

The acting agency head then agreed to appoint an external investigator, rather than refer the matter to the Government Investigation Unit, which did have the power to undertake this kind of work where a truly independent investigation was indicated. A complaint manager from one of the acting agency head's own teams was appointed.

The victim agreed to this arrangement, as she believed the relative independence of an outside contractor would ensure a thorough and fair process.

In the meantime, the unit manager at the time agreed to allow the victim to remain working in a different role in the unit in which she had sought refuge.

The private sector contractors were brought in to investigate the six complaints.

Over the course of the next couple of months they met with and interviewed approximately two dozen staff. They indicated that this was one of the most substantial complaints they had investigated and involved a significant number of witnesses.

The report

Following some delays, the victim met with the investigators to express concerns about the lack of finalisation of the investigation. The investigators advised that the complaint manager had been provided with a copy of a draft report, but that he was not happy with this version and required further editing.

The victim became concerned that this may indicate interference with the independence of the investigators, but elected not to raise the matter at the time.

She had by now formed the view that the members of senior executive may be influencing the investigation's conduct in concert with the Complaint Manager.

A full report was completed for the organisation head and a draft summary report was provided to the victim.

This proved very interesting reading.

Bullying not proven

The bullying allegation had been found not to be proven, although inappropriate conduct by the senior male staff member was proven.

Misconduct allegations partially investigated

The misconduct allegations against those involved with the first complaint and internal review had NOT been investigated. The report was written in such a way as to suggest that two of the three named staff were interviewed,

however upon further questioning by the victim, it became clear that these two officers were just 'spoken to' in order to provide some context. They were not interviewed to respond to misconduct allegations. This meant that the specific allegations were not put to them and no questions were asked about all aspects of the circumstances to establish the relevant facts.

Misconduct of the first investigation by unit manager established

Despite this limitation, the positive side was the finding that the first investigation conducted by the unit manager was seriously flawed. The investigators found interview file notes which appeared to be records of interviews with witnesses. These would have been made by the unit manager.

The investigators then interviewed the victim's named witnesses who verified that they had not been interviewed by the unit manager! At this point it appeared that the unit manager had created false records of interviews which did not in fact occur!

No examination or finding was made by the investigators regarding the potential bias of the unit manager who conducted the first investigation.

The victim was somewhat relieved to have her allegations of flawed investigations vindicated however, and there appeared to be sufficient indications that the fabricated interview notes would even provide evidence or criminal behaviour on the part of the unit manager, were they to be investigated properly.

Misconduct of the internal review

The investigators also established that ample evidence of the unit manager's questionable investigation had been ignored by the internal reviewer.

Statements were made by the internal reviewer that showed a clear bias against the business unit from which the complaint had arisen.

No questions were asked in relation to the role of any executives in limiting the review to a desktop audit or directing the officer to ignore evidence. The officer conducting the internal review was never advised of the misconduct allegations or formally interviewed to establish the facts. The report was silent on all these matters.

Discussion to address shortcomings in the investigation

The victim raised the issue of the failure to investigate misconduct with the complaint manager and investigators. The complaint manager argued the point indicating a view that there had to be some limits placed on what was investigated.

The victim asked for details of the rationale behind finding that bullying had not occurred. The investigators said that bullying is usually quite hard to prove, but agreed that the behaviours exhibited by the bully fitted the criteria of multiple behaviour types and formed a pattern over an extended timeframe.

The investigators argued that it was not considered to be bullying, because not all of the staff interviewed said they had witnessed bullying behaviour.

The victim pointed out that this was an argument based on the weight of evidence, and that where a majority of witnesses stated they had witnessed the bullying behaviours, the statements from a small minority should not be expected to outweigh what the vast majority had said.

The victim was told these claimed shortcomings in the investigation would be given consideration. No undertaking was given to investigate the specific misconduct allegations made about the three officers named in the complaint.

The victim wrote to the complaint manager indicating the problems with the report so there could no confusion about the shortcomings of the investigation. However, following another meeting with the investigators, only the factual errors in the summary report were addressed and a second version of the report provided. This still contained errors.

The complaint manager kept hedging and said he would consider the question of matters not being investigated, but did not direct the investigators to finish their work and investigate the misconduct allegations.

The complaint manager then contacted the victim advising her that he was leaving the agency for a new position. He advised that he had provided his recommendations to his line manager, who had been acting agency head.

The victim then wrote to the acting agency head outlining concerns about the deficiencies in the investigation, requesting appointment of another complaint manager and completion of the work to investigate all the allegations in her original complaint.

She indicated her views about the flawed arguments used in the report to support a finding that bullying had not occurred.

The senior executive with oversight of the complaint then wrote to the victim and advised that he had commissioned a recently retired public servant, now working as an external consultant, to review the second investigation and advise him regarding its veracity. He made no comments and provided no rationale for not appointing another complaint manager to address the claimed shortcomings and continue the complaint process to finalisation.

The victim requested to speak with the consultant, to ensure she was clear about all the matters about which the victim had expressed concern, given the time and complexity of these and the non-responsiveness of the complaint manager and senior executive. No reply ever came to this request.

Final letter regarding the outcome of the complaint

The agency head then wrote to the victim, indicating the findings on the six allegations in her complaint. Accompanying this was a copy of the consultant's report.

In relation to the workplace bullying allegation against the senior male staff member, the finding was that he had behaved inappropriately. No disciplinary action would be taken and he would receive a letter requesting compliance with ethical conduct and be required to access training.

The letter contained no reference to the misconduct of the unit manager who undertook the first investigation.

Neither was there any reference to the alleged misconduct of the internal reviewer, in ignoring overwhelming evidence of a problematic investigation of the first complaint.

The agency effectively dismissed these serious matters under the banner of 'a few procedural issues'.

The agency head advised that the victim would be found another position in another part of the organisation, though no specifics or timeframe were given.

The offer was made to the victim to meet with the senior executive with oversight of the complaint and the external consultant to explain the findings.

The victim considered this an unreasonable outcome and effectively to be punishing the victim, given that there had been no suggestion that her conduct had been anything other than professional and appropriate, and finally the Department had acknowledged the complaints did in fact have a sound basis.

On the plus side, the victim derived a measure of satisfaction that the bully's conduct was considered inappropriate, proving the first investigation to be flawed and inaccurate.

The consultant's report contained a number of errors of fact, but the more serious deficiency was the total absence of any comments to address the concerns raised by the victim about not investigating the misconduct allegations against the officers involved in the first complaint and internal review.

These major concerns were not even glossed over in the consultant's report; they were simply not addressed at all and the report did not even refer to them.

The report effectively provided a justification to continue to ignore the concerns the victim had raised with the process in verbal and written form over an extended timeframe.

The victim was left feeling victimized by the complaint management process itself despite making some progress in establishing that inappropriate behaviour had occurred and proving some of the facts in relation to unethical conduct of those with responsibility for the first investigation and the internal review.

Comments

The kinds of unethical behaviour and diversionary tactics used here are probably a reasonable example of the kinds of responses which occur in organisations which are resistant to dealing with bullying.

In this particular case they included the following sorts of behaviours, some of which are established and other conjecture at this point:

1. Executives appointing someone with a clearly biased view rather than someone outside the area to investigate allegations in order to maintain the status quo.
2. Failing to examine evidence when it appeared likely that this evidence would be damning.
3. Creating counterfeit witness statements to support the predetermined view of the investigator
4. Limiting an internal review to examination of the physical report of an investigation, rather than considering the overall adequacy of the investigation process in terms of procedural fairness and natural justice and compliance with policy.
5. Directing an internal review officer not to test the veracity of a report.
6. Directing an officer to ignore inconvenient evidence.
7. Discrediting the unit from where the complaint was made.
8. Appointing an external consultant company to investigate, but restricting the scope of investigation so executive and senior staff conduct was not examined and management actions were not open to critical examination.
9. Accepting a report which included disparaging and discrediting remarks about the victim which went beyond the brief.
10. Not responding to letters from the victim requesting to be interviewed.
11. Responding to letters selectively, omitting any reference to the specific issues of concern.
12. Meeting with complainants and indicating consideration would be given to concerns, but not providing a response or rationale for not considering the reasonableness to be established.
13. Executives engaging the services of a third parties to endorse the problematic investigation, rather than examining the documents and considering the concerns themselves.

14. Executives avoiding the issue by repeatedly stating in meetings, 'I am happy with the work the consultant has done', rather than actually discuss specific concerns raised by the victim.
15. In correspondence, consistently use the phrase, 'in accordance with agency complaint policy', as if this statement provides proof, when detailed examination might refute this.
16. Taking an extended time frame to investigate and respond, in the hope that the complainant wears thin and loses enthusiasm to pursue the matter.
17. Stating in the final outcome letter to the victim, 'Please be advised that this concludes this matter', at the end of each finding, as if this precludes the complainant from taking any further action.
18. Removing the victim from the workplace, leaving the bully in place, despite establishing that inappropriate behaviours occurred.

Terms of Reference: Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;

Terms of Reference: 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;

Recommendation: Create a stronger legislative obligation on organisations to put in place policies and procedures so there is clarity about the consequences for policy inadequacies, poor implementation and maladministration

Technically current legislation has provision of sanctions against bullies and those senior managers who allow their bullying to continue. In reality prosecutions are rare and only seem to happen in the most extreme cases.

I believe that much of the poor management response to bullying is directly attributable to the ease with which agencies and organisations can avoid prosecution. It is all too hard to pursue and they know that the likelihood of this is rare. Therefore they are much more likely to continue to engage in unhelpful behaviour such as dismissing complaints as workplace conflict, covering up bullying, maladministration or denial of procedural fairness.

I believe that the case study outlined above is much less likely to have occurred if managers were aware that they could very easily find themselves under the scrutiny of an external authority with the power relatively easily to apply sanctions where deficits were identified.

The author believes this case study provides a good example of the kinds of dynamics typically experienced in many organisations. Where there is a will and commitment to create and maintain a civil workplace, I believe policies

and regulatory frameworks can provide the necessary mechanism to support management action.

Where management is disinclined to act, there are so many ways to get around the policy and regulatory obligations it is quite difficult for a victim to achieve a good outcome.

Workplace bullying is challenging for many organisations to take seriously.

Managers in senior roles can have a strong sense of loyalty to their own senior managers which obscures any obligations to victims who work within the organisation. This can be sufficiently extreme that it can lead to taking steps to avoid the discovery of inappropriate conduct.

Where this is the case, the likelihood of unethical behaviour increases substantially. When the agency is the one that makes the policy and rules, that define how complaints should be managed, they can ignore and subvert due process, procedural fairness and all the things one comes to expect.

The problem I believe is partly one of consequences not being significant enough or likely enough to cause senior officers in an organisation to follow through with their obligations to act according to law and policy.

The first change is to create sufficiently strong legislative 'teeth' in addressing bullying in the workplace.

This should include significant penalties for any organisation which covers up workplace bullying or allows its officers to deflect examination of evidence or in any way misdirect attempts to investigate and address this kind of misconduct.

The officers responsible for the complaints involved in this case, probably behave quite ethically in most circumstances where there is no pressure to cover up the behaviour of colleagues. However, where one of their own cadre of managers is engaged in behaviour which would not stand scrutiny, I believe there is a strong temptation perhaps based on misguided loyalty or some other factor, to look the other way as much as possible or take deliberate steps to avoid detection.

In this case, the managers involved continued to look the other way for years, until the complaint was lodged. Then they realised they had to respond to a complaint. There was little choice about doing so.

They had to find ways to respond, but keep a lid on things so they were able to maintain control and keep the light from shining on those they wanted to keep safe.

In the end through the tenacity of the victim insisting on an independent investigation, it was finally established that the victim was in fact being victimized in a serious way by the male senior staff member. The investigation didn't make a finding that it was bullying, despite the abundance

of evidence to this effect. There was ample evidence, thoroughly documented, supported by multiple witnesses, that bullying as defined in the legislation was going on over several years. The finding that this was considered inappropriate conduct, a less serious matter, was based on flawed arguments around what constitutes sufficiency of evidence.

The staff of the unit were quite shocked at this finding and the view was expressed by more than one person, that if this kind of behaviour could not be established as bullying, it would be virtually impossible to establish bullying except in the most extreme of circumstances.

This illustrates the weakness of the SA legislation. Anecdotally many people with whom the victim spoke said that the legislation makes it quite difficult to establish bullying.

This is despite SA having one of the clearest definitions of bullying one could imagine. It is difficult to see how one could make it clearer.

So, the question has to be asked, why is it so difficult to prove?

I believe part of the story lies in the quality of evidence, as the case study illustrated. The victim had been subjected to both a range of bullying behaviours and a pattern of events over time. They were intimidated, colleagues testified that it was intimidating and inappropriate, and certainly did not meet the 'reasonable person' test. Yet the investigators elected to not make a finding of bullying based on the fact that a small selection of staff had not witnessed it.

This seems to ignore the 'on the balance of probabilities' rationale, upon which this kind of legislation is based.

It is not clear whether the investigators were pressured by the agency to draw this conclusion, or whether they genuinely believed it was defensible position.

The victim raised this during discussions with the complaint manager and investigators, and it was never addressed.

Perhaps this is an unusual situation. However, my point is that whatever legislative provision is made for workplace bullying, should address the adequacy of the evidence aspect, even though technically this should not be necessary.

When the investigation is in the hands of internal or external investigators, it needs to be sufficiently clear so that it is not necessary to have universal agreement in the testimony before a finding can be made of workplace bullying.

There is a strong argument I believe, given the widespread agreement that the current system is not working effectively, to create federal workplace bullying legislation, taking into account the aspects which have proved problematic in state based approaches.

My view is that the definition as set out in Section 55A of the SA health and safety legislation is perfectly clear.

My suggestion is that an analysis be undertaken of all the strengths and shortcomings in state legislation and its practical application. This should guide the formulation of a federal legislative change, to include addressing any of the definitional loopholes which make current workplace bullying legislation excessively difficult to apply.

There could be a graduated level of penalties for non compliant organisations, with organisations which have poor or limited policies and procedures being subject to penalties at the lower end of the range and at the higher end more severe penalties, where it could be demonstrated that the agency management had taken deliberate steps to obscure, hide or redirect investigations such that bullying was not identified and management failure was ignored.

Unless the phenomena of disinclined organisations is recognised in law, there are likely to consider to be serious inadequacies in any legislation.

This should improve the capacity to address both lower level bullying which is dealt with through agency processes, as well as the more serious kinds which end up in court.

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;

Recommendation: Provide enhanced powers to health and safety reps in organisations

The tightening of legislation provides a good foundation to address workplace bullying. This would assist organisation in their own investigations, but would be of particular value where an allegation of workplace bullying was brought before the courts, whether through a safety regulatory authority or some other means.

However, this still leaves the problem of how to deal with the relatively more common and less severe kinds of bullying, which may be amenable to be dealt with by management in an organisation.

It may be practical to have a second legislative element which provides greater power and authority to act on instances where bullying is alleged to have occurred.

The conduct of a workplace investigation by someone without bias is the only way to establish the facts and reach a judgement as to whether bullying has occurred. Once an organisation has instigated this, there is a much higher likelihood of resolution being achieved.

Currently in South Australia an organisation's health and safety representatives need to issue a default notice to invoke the attendance of a health and safety inspector. This is so heavy handed, that I imagine it is a step taken only rarely. This is too severe an action to address bullying.

It would be more practical and useful, to have an intermediate step, where a health and safety rep were to have the power to insist on a meeting with the senior manager in an organisation and provide whatever anecdotal evidence that bullying may be occurring.

This then raises the level of formal notification, creating a stronger sense of obligation to investigate and address the matter. The continued involvement of the health and safety representatives should also be part of the assumed operational norms, again so that the obligation to have a fair and transparent process is clear. This would also reduce the likelihood that the organisation might engage in unethical conduct to avoid the detection of management misconduct.

Where management fails to initiate reasonable action, then the health and safety representative could always issue a default notice. This would then be a reasonably gradual escalation leading to the involvement of the health and safety regulator.

This would require strengthening of the legislation to have this provision, and potentially would be problematic in some workplaces, for example small companies or where a health and safety rep cannot be identified.

Having said that, for most workplaces, this may be quite sufficient to increase the likelihood of reasonable and appropriate management action, without the need to involve regulatory authorities or indeed any outside entity.

Recommendation: Mandate organisations to have a bullying and harassment contact person

I tend to think also, that all organisations should be mandated to have a trained workplace wellbeing contact person whose role is to provide advice and support for victims of bullying. It should be mandated that information about this role and the commitment to eliminate bullying from the workplace, is also mandated through legislation as it is often in the worst workplaces where there is likely to be resistance to putting such roles in place.

This informal level of support would potentially assist with various aspects including raising the issue with management, with the consent of the victim, providing advice about complaint processes and the need to document. It would also provide a level of personal support, which may assist victims in coping and accessing employee assistance programs or other support mechanisms.

Bullying is a disempowering experience for victims. Taking greater control over their fate, with the advice and support of a colleague, is likely to have a number of positive benefits, including the victim realising they do not need to suffer the adversity alone.

Again, this might be problematic for some organisations, but at least for those where it occurs, the levels of risk of unchecked bullying may decrease.

Recommendation: Resolution within the workplace and victim's position maintained

In the case study detailed above, the victim was effectively victimized by virtue of having complained. She was temporarily assigned to work in another area while the complaint was investigated. This is a pragmatic response to keep a staff member safe during the investigation stage where the health and safety of staff is likely to be at risk.

However, at the conclusion of the matter, when a finding of inappropriate conduct was made against the bully, the victim fully expected to return to her unit where she was in a specialist role using her qualifications and expertise. Instead she was directed that she would work elsewhere in the organisation.

The decision by the agency, was viewed by both the victim, her colleagues and others in the agency, as punishment for complaining. There was a clear implication for any others who might consider similar action, that the likely scenario would be removal, with the risk of suffering whatever professional disadvantage or damage that may result from shifting out of an area of expertise.

In this case the decision to remove the victim was made with no reference to her or with any assessment being undertaken of the option to return. She was a strong and resilient person, who at no stage became vengeful, or bitter towards the bully. She simply wanted management to intervene to stop the behaviour. There was every reason to return her to the workplace and provide support and oversight as necessary.

The agency concerned has used this strategy in other cases and ironically, one of the most common justifications given is to protect the health and wellbeing of the employee.

A good example of closing the door, once the horse has bolted.

The default position should be to return the person to the workplace and in some cases, potentially to remove the bully where it is believed there is a strong likelihood of continued inappropriate behaviour.

There is every reason to suggest that this option should be the norm, potentially underpinned by a psychological assessment to provide a measure of confidence on the part of the agency that they are acting appropriately and balancing their obligations to the victim, the bully and other co-workers in the unit.

For each time the agency moves the complainant out and leaves the bully where they are, the message to staff is 'don't complain' or you will be considered a trouble maker and suffer negative consequences.

Creating a civil workplace culture

There are no doubt strategies which could be implemented in a workplace, which might reinforce the importance of a respectful workplace culture and the intolerance for behaviours like workplace bullying.

This relies on senior managers having a commitment to undertake some kind of promotion of respectful behaviours and offering training and information sessions.

Any proactive strategy like this is worth considering, and it may be that on a national scale activities are continued to reinforce this positive message.

One source of information which I would commend to the committee is the book by Robert Sutton, 'The No Asshole Rule'. Sutton wrote this following an overwhelming response to an article on the subject he wrote for the Harvard Business Review.

He talks about a workplace where effectively staff take collective action to create a workplace where inappropriate behaviour is seen as damaging and unproductive for the organisation as well as individuals.

He provides some great examples of the direct and indirect costs of workplace bullying.

I encourage the committee to access this very readable and entertaining text, to source some solid evidence upon which to inform their deliberations.

Robert Sutton is the primary originator of the evidence based management movement, which has resulted in a more scientific and robust approach in many domains.

I think in looking back at the situation above outlined in the case study, there were the beginnings of a positive workplace culture, and a shared view about the damage being done by the workplace bully.

The group did have some initial success in taking collective action.

They wrote joint letters to management and organised a couple of delegations to meet with management on the subject of workplace bullying and the incompetence which often accompanies it.

They had some wins in the short term. However, due to self interest, staff changes and the resistance on the part of management to take the issue seriously, interest in collective action waned and ultimately they lost momentum, leading to a deterioration in the workplace environment.

No strong leaders existed in the group to challenge the behaviour going on for any length of time.

Were the staff to have continued to take action, using a staff delegation on a regular basis, in my view, management would have been forced to take action earlier.

Any policy initiative which promotes a positive workplace culture should encourage people to make a stand for a civil workplace. It is not enough just to talk about respectful behaviours or have policies which advocate this.

Where bullying occurs, direct action is the only way to achieve resolution.

Nipping things in the bud rather than waiting in the vain hope of change is critical as well. Once destructive behaviour has been tolerated from a workplace bully, people easily become quite fatalistic about it and more readily accept that it will always be that way.

This kind of fatalism eats away at the resolve of people involved, and make it harder to initiate action to address the issues.

Postscript

To finish the case study, I need to say that the end of the story, at least to this point, is reasonable success. Those staff who could not stand the behaviour of the bully voted with their feet, won other positions, took packages or just whinged behind closed doors and tried to keep out of the way.

The organisation was eventually forced to do something due to complaints and dysfunctional practices which impacted on basic operations. Management eventually brought in an external consulting firm to undertake a functional review of the unit. This reinforced all the findings of the second investigation commissioned following the second complaint by the victim.

Ultimately this resulted in the unit be restructured and all the positions being spilled, with the bully being advised he would not be considered for a position in the new unit.

In a sense this was the ultimate vindication for the victim and those staff in the unit who had complained. This outcome took several years to achieve, and the cost to those staff who became casualties was significant.

The victim is currently still working in another area outside her expertise and looking for other career options, including outside the agency. She continues to be a resourceful and resilient person, and is pragmatic about the experience not resulting in expected outcomes. She continues to remain positive in her professional career and is highly likely to continue to find a successful pathway.

Were management to have taken the first verbal complaints seriously or even the first formal complaint, the outcome would have been quite different for many staff and in all likelihood the situation may have been resolved much sooner. This would have avoided the excessive direct and indirect costs of all the fallout which occurred at various levels.

It was due largely to the tenacity of a small group of individuals acting in various capacities, which finally achieved change.

The fact that the organisation was 'dragged kicking and screaming' to act after three formal attempts to get them to implement their own policies adequately, provides testimony to the tenacious and creative ways in which some managers will do whatever they can to avoid their responsibilities to maintain safe and healthy workplaces.