

## Submission to the Parliamentary Inquiry into Workplace Bullying

### The Authors of, and Contributors to this Submission

This submission has been compiled from text and information provided by members of the advocacy group, *Victims of* . The group was established to provide collective representation for current and former employees of who endured a culture of bullying, intimidation and cronyism while employed by

The group was formed in 2011 by a number of former employees after it became apparent through the exchange of information, that this was an endemic cultural problem that affected the entire management structure and organisation of . More information can be found on the website of the group at

### Contact Details of the Authors and Contributors to this Submission

Contact details are provided in Appendix G. Kindly note that this is a collective submission; several contributors to this submission intend to make additional, individual submissions to the Inquiry.

### Publication of this Submission and Confidentiality Requirements

All of the information not marked as 'Confidential' in this submission is drawn from publicly-available sources, or has been provided with the consent of the persons named. Short personal accounts describing the experiences of 54 current and former employees of are provided in the Appendices of this submission. Of these, 20 are provided on a non-confidential basis in Appendix B. These have been drawn from publicly available information or with the consent of the individuals involved (see Appendix H). A further 34 accounts are provided confidentially in Appendix F, which has been marked 'Confidential'. The authors of, and contributors to this submission are listed confidentially in Appendix G, which has also been marked 'Confidential'. The contents of Appendices F, G, and H **must not** be published, nor personal or other details disclosed outside of this Parliamentary Inquiry. Many of the named persons are vulnerable; disclosure could result in greater harm to them.

## EXECUTIVE SUMMARY OF THIS SUBMISSION

The key issues that this submission seeks to highlight are:

- The need for truly independent investigation of workplace bullying allegations and other accusations of serious misconduct within Federal Agencies like
- The need for national legislation to specifically address workplace bullying as a criminal matter without relying on Workplace Health and Safety, Discrimination and other indirect legislative instruments.

In support of these proposals, the submission also highlights:

- The long history and endemic nature of bullying, intimidation and victimisation within the ;
- The tacit support of such behaviour by Senior Executives within the organisation;
- The failure to protect plaintiffs from adverse action arising from their complaints;
- The protection of bullies within the organisation;
- The victimisation of complainants and whistleblowers within the organisation;
- The unjust and inequitable application of policies, to censure one group of employees whilst simultaneously protecting other employees;
- The deeply conflicted nature of the federal regulator and insurer, *Comcare*, in respect of serious allegations of workplace bullying, intimidation and victimisation;
- That *Comcare* appears to have had a default '*refuse-to-properly-investigate*' policy in respect of workplace bullying, intimidation and victimisation;
- The personal stories of lives and careers destroyed or damaged by workplace bullying, intimidation, and victimisation at

## I. INTRODUCTION

Behaviours constituting bullying, harassment, victimisation and intimidation amongst others, are a particular and serious problem within the [redacted] which can be traced back at least a decade.

One only has to look at the recurrent themes in the news headlines over the past decade to realise that there is a serious problem with the workplace culture in the [redacted]

In Appendix A, we provide summaries and extracts of the many newspaper articles and stories about workplace bullying at [redacted] over the last 10 years.

The frequency of occurrences, in particular those that have resulted in formal complaints or appeals to external bodies and the media, have increased significantly over the past 5 years. More and more it seems, those at the centre of bullying allegations are at a very senior level, with members of the [redacted] Executive Management Team and even the [redacted] board of directors implicated in the perpetration or covering up of bullying behaviour.

The employees subjected to bullying span the entire range of staff members, from junior ranks to senior scientists with high-profile international reputations.

In Appendix B (non-confidential) and Appendix F (confidential) we provide brief personal accounts of 54 current and former employees of [redacted] in this respect. Most are harrowing and distressing. The human cost of bullying in [redacted] has been and continues to be immense. It is also totally unnecessary.

In Appendix C, we tabulate the Divisions in [redacted] from which the 54 case-studies originate, and show that the problem of bullying and intimidation is widespread and exists throughout the entire organisation.

In Appendix D, we provide a case study of a single [redacted] Division engaged in basic scientific research that is unrelated to public policy matters. Half of its most highly-cited research group leaders were involuntarily separated from [redacted] during 2001-2009, compared to less than 9% of all other scientific staff. The only reasonable explanation for so remarkable a track record is an endemic culture of management intolerance.

In Appendix E, we provide a copy of a recent letter that, in our view, illustrates the origin of the problem in [redacted]. The letter, dated 4 June 2012, is from the Deputy CEO of *Comcare* to [redacted]. It admonishes [redacted] for apparently deliberately misquoting a confidential *Comcare* report to thereby mislead the Senate that there is no problem with workplace bullying at [redacted]. In fact, *Comcare* noted, the report had found the very opposite – [redacted] had engaged in multiple breaches of its legal obligations towards a bullied employee. Letters like this beg the question: If the most senior executives of [redacted] display, apparently, so little respect for the Commonwealth regulator, *Comcare*, and the Parliament and Senate of Australia, how much respect can they be expected to show to the staff at [redacted].

## II. A MANAGEMENT IN DENIAL

At the most recent [redacted], the CEO of [redacted] responded to questions on the subject of bullying within the organisation.

Under questioning from Senator Richard Colbeck, [redacted] denied that there was a serious problem with workplace bullying at [redacted]. She and the Deputy CEO of [redacted] said that they were unaware that there had been a significant number of bullying accusations.

These assertions by the CEO and Deputy CEO repeat what they have said many times before and what they continue to say to this very day. Such statements are, at best, psychological denial. At worst, they are cynical and disingenuous. [redacted] has, in fact, been in direct contact with numerous people complaining of bullying at the [redacted]. Some of the most recent examples include:

- [redacted], who discussed the issues of bullying and harassment reported in the press directly with [redacted] when the censorship of his work by [redacted] management became public knowledge. [redacted] later released a letter in the Senate via Senator Carr which made apparently false [redacted]

allegations against [redacted] and threatened him with punishment for misconduct in presenting his work at a conference. No such allegations of misconduct were ever discussed with or formally made to [redacted] and this move by [redacted] appears to have been an attempt at intimidation.

[redacted] was also directly involved in the attempts to censor the work by [redacted] and place pressure on him to change the substance of his work without question

- [redacted], who raised a number of bullying complaints by email directly with [redacted]. As noted in the Senate Estimates, it appears that one of his emails was inappropriately forwarded for response to the very person he had complained about. The following day [redacted] was informed by this person, about whom he lodged a formal grievance, that his position was surplus to staffing requirement.
- [redacted], who, on 31 January 2012, attended a mediation session with [redacted] and other senior executives. In the meeting, [redacted] rejected [redacted]'s assertions of a management culture of intimidation in [redacted]. His complaints arose as a result of his lodgement of a whistleblower report alleging illegal and criminal misconduct by senior [redacted] employees. Neither the allegations of criminal misconduct or the bullying experienced by [redacted] have been the subject of any reasonable investigation. [redacted] had previously written to the [redacted] Board of Directors in relation to the alleged illegal activity and subsequent bullying he received. The board failed to investigate the claims any further.
- [redacted], who engaged in extensive email correspondence with [redacted] and Deputy CEO, [redacted], on the subject of bullying from 16 February 2012 through to late April 2012.
- Other current and former employees not wishing to be named, who have also communicated with [redacted] on the subject of bullying within [redacted] anecdotally praised one former staff member for coming forward.
- The [redacted], in which, as noted above, [redacted] read from the confidential draft *Comcare* investigation report into the [redacted] complaint. The quote he extracted from that report was presented to suggest that the 'headline' finding of the investigation was an absence of systemic workplace bullying and harassment in [redacted]. However, *Comcare* in a subsequent letter to [redacted] ([Appendix E](#)) repudiated [redacted] citation as being "out of context" and stated that [redacted] had misled the Senate in failing to note that the report found [redacted] to have breached the OHS Act in their actions against [redacted]. *Comcare* demanded that [redacted] issue a correction to Parliament as soon as possible.
- Sophie Mirabella, the Shadow Minister of Science, who shortly after the [redacted] issued a press release entitled [redacted], in which she severely criticised and condemned the management of [redacted]

Further evidence of a systemic, management-centred culture of bullying at [redacted] includes the following:

- [redacted] was advised by a senior executive that the [redacted] Executive Management Team were aware of the inappropriate bullying behaviour of a former Chief Information Officer, but had chosen to ignore it. The executive suggested to [redacted] that he should follow the same course of action.
- [redacted] have been advised by *Comcare* of a number of other allegations (approximately 10 in total) which *Comcare* are in the process of investigating.
- The *Victims of [redacted]* group have recently forwarded a number of new complaints from former employees of the [redacted] to *Comcare* for investigation.
- The past three statements of claim issued by the [redacted] *Staff Association* during Enterprise Bargaining periods have included demands to address bullying within the organisation. The claims span a period of more than a decade.
- Questions relating to bullying within [redacted] have been asked during multiple Senate Estimates Committee hearings over the last 10 years, with especially serious allegations being raised in the past two Senate Estimate hearings.

### III. THE MANAGEMENT CULTURE WITHIN THE

We submit that the behaviour of managers within the actively encourages, promotes and protects a culture of bullying. Some of the key behaviours which facilitate it include:

- Denial of any problem at the highest levels. response to questions at Senate Estimates is a classic example of denial and exactly the reason that nothing has been done about it.
- The attitude of executives appears to be: "If you are not with us, you're against us". Legitimate questioning of decisions within the organisation is commonly treated as dissent. Issuing complaint is treated almost as a cardinal sin.
- This attitude has led to the apparent development of something like a secret workforce or secret police within This is evidenced by the discovery of enormous "behind-the-scenes" email traffic within about persons who are considered to be "against us". For example, in ' case, FOI results show that there appear to have been 12,000 pages of emails generated with his name on them but to which he was not privy, during the last 3 years of his employment. That equates to 11 pages of emails each day, every day, including weekend and public holidays, for 3 years. In the previous 8 years of employment, there were only 500 pages of documents of any kind, including emails, that had his name on them but to which he was not privy. Questions were raised in this respect at the Another scientist discovered that there were over 3,000 pages of emails generated about him in the 9 months before he was retrenched; retrenchment procedures are supposed to be 3 months. That, co-incidentally, also equates to 11 pages of emails per day. The email traffic was found to have been generated by a "team" of up to 12 people that had been created for his "case". The team strategized and considered how to "deal with him" in exhaustive detail before he was retrenched. Every item of correspondence with him was scrutinized, discussed, and carefully planned. The scientist thought he was emailing one person. In fact, there were a team of 12 HR professionals, lawyers, and other employees, on the other side. This sort of activity could potentially explain the hitherto inexplicable increase in expenditure on administration in from around the 20%'s in the 1980's to a reported 46.5% recently. is said to be an organisation with a commitment in respect of workplace bullying, but one is left to wonder whether the commitment is in the right direction?
- Failure to act decisively on complaints. Complaints of bullying are regularly treated as "personality clashes" with the behaviour being ignored or down-played.
- An apparent perception by managers that some behaviour is justifiable in certain circumstances; i.e. it's justifiable if it's in pursuit of a corporate goal or objective (collateral damage). An independent investigator's report conducted by Aequus Partners into the bullying complaints of , documented a number of comments from senior management staff attempting to justify such behaviour as being acceptable in the circumstance.
- Failure to reprimand culprits. Those identified as bullies are rarely disciplined and in a number of cases are repeat offenders. Not only does this permit perpetrators to continue with impunity, it sends a strong message to other employees that they will not be disciplined for engaging in similar behaviour.
- Failure to apply workplace policy. Policies are used as a means to discredit some employees whilst similar behaviour from more senior employees is treated differently despite similar circumstances. (See the cases of detailed in Appendix B)
- Victimisation of complainants. Complainants are regularly disadvantaged, discredited, dismissed, persecuted, victimised and undermined as a result of making a complaint (See the case of in Appendix B). Typical strategies employed by involve rallying behind the "preferred" employee, accusing the complainant of failing to perform or engaging in acts of misconduct, suggesting that the complaint is baseless and vexatious or by suggesting the complainant is somehow psychologically deficient.
- The "fob-off" involving responses such as: "We are dealing with this on an organisational level and are not prepared to address your concerns individually".

- Working on an assumption of guilt to thereby bias against the complainant and the fairness of any potential future investigation - i.e. suggesting the complainant somehow contributed to the inappropriate behaviour directed towards them.
- Stonewalling: Complaints are often pushed back down the management chain where they have failed to illicit any form of improvement. If it failed to be resolved at that level previously, it is unlikely to be resolved by subsequent attempts at resolution. This technique is often used to stall resolution and to insinuate that the employee has failed to follow the appropriate processes in dealing with the complaint despite the mechanism having failed the complainant previously.

#### IV. THE ORGANISATIONAL APPROACH

In 2009, the new Chief Executive Officer, announced with some fanfare a “Zero Harm” policy. In her maiden speech upon taking up the office of Chief Executive Officer, stated that as former Head of Workplace Health and Safety at she had witnessed the deaths of 6 employees in workplace accidents. She stated that “no deaths were going to occur on her watch”.

Her words have, however, proved hollow in respect of preventing psychological injury arising from bullying, intimidation, victimisation, and harassment. “Zero Harm” policy seems largely focussed on the protection of the organisation’s reputation. has, in our view, demonstrated on a number of occasions, that the reputation of the organisation is more important than the health and wellbeing of its employees. has actively ignored, denied or dismissed complaints of bullying within the .

Also in 2009, commenced a new Health & Safety initiative in the form of its “Psychological Health and Wellbeing” strategy. A committee of high-level employees from *Health, Safety and Environment* (OHS), and *People and Culture* (HR) divisions comprised mostly of senior management with a token staff representative (hard fought for), commenced investigation into psychological health and wellbeing issues within the organisation. The committee immediately attempted to discredit the involvement of the workplace representative, , by attacking her credentials and suitability to serve on such a committee. The committee received many detailed submissions from employees, little or none of which was considered in drafting the committee’s report. The report read as a very weak, watered-down document which concluded that there were “some issues” to be addressed and made non-committal recommendations on how to address them. Subsequent to the release of the report, no further activity has occurred in this area and psychological injuries continue to increase in frequency within the organisation. The report made little or no reference to the culture of bullying prevalent within the organisation. To date, the report constitutes the sum total of official commitment to the “Psychological Health and Wellbeing” of its employees.

#### V. THE COMCARE CONNECTION – AN APPARENT CONFLICT OF INTEREST

The Federal Health and Safety Regulator, *Comcare* has, we believe, been aware for some time of the existence of a culture of bullying within the . It was not until 2011, and under threat of legal action, that *Comcare* undertook a serious investigation into the complaints of bullying at

In 2009, Health and Safety Representative, issued a significant complaint outlining systemic bullying with . The complaint detailed: (1) numerous instances of sustained bullying behaviour towards individuals, (2) management complicity in the behaviour, (3) intimidation of injured employees not to submit compensation claims, and (4) the misreporting of notifiable incidents and injuries. The latter two appear to be driven by “Zero-Harm” policy, which involves a commitment to declining injury statistics.

*Comcare*, with minimal effort, declined to investigate the complaint, despite identifying anomalies in Health and Safety practices. *Comcare* failed to interview key witnesses before deciding not to proceed with the investigation. Most of the justifications offered by *Comcare* in its decision to not proceed

with the investigation, relied on responses provided by [redacted] whose veracity were never appropriately determined or tested. Other justifications for not proceeding with a formal investigation cited the internal policies of [redacted]. However, at no time did the *Comcare* investigator attempt to discern whether the policies had actually been applied appropriately in relation to the complaints.

A complaint lodged by [redacted] failed to be formally investigated by *Comcare* until [redacted] took legal action against [redacted]. Thereafter, *Comcare* initiated an investigation of [redacted] for breaching its duty of care towards him as a Federal employee. The investigation, eventually conducted by *Comcare* over a 12 month period, identified significant breaches of the *Occupational Health & Safety Act (1999)* in treatment of [redacted].

We submit that, if this has been the experience of one person, it has been common practice for *Comcare* to actively suppress allegations of workplace bullying at [redacted]. This has certainly been the general experience of our members.

A similar pattern of unwillingness to investigate bullying complaints appears to have characterised *Comcare's* handling of other Federal Government agencies [redacted].

As both the regulator and the insurer for the Australian Federal Government, *Comcare* has a significant conflict of interest, which affects its ability to function properly. The conflict of interest is quite simple: every time *Comcare* makes a finding against a federal agency, it has to pay out an insurance claim. Therefore, it is not in *Comcare's* interests to make findings against federal agencies.

It is, frankly, counter-intuitive to have an organisation act as both a regulator and an insurer. Imagine if RACV or NRMA were paid by the Federal Government to decide when a car accident is an accident and when it is not. In short order there would be almost no "official" car accidents in Australia. RACV and NRMA would then pay almost no claims, and the Government could highlight the "dramatic improvement in road safety". The whole thing would be a complete farce.

And that is precisely what the current situation with *Comcare* appears to be – a complete farce. *Comcare* has, effectively, pretended that there is no / little workplace bullying in government agencies and thereby avoided paying insurance claims. Government agencies, like [redacted] have used the resulting low statistics as evidence of their "commitment" to workplace health and safety. However, nothing could be further from the truth.

We ask the committee to consider the following:

- 1) *Comcare* has the highest rejection rate of compensation claims of any insurance scheme in Australia, with approximately 40% of all claims rejected on the first attempt.
- 2) Numerous appeals have been lodged with the *Australian Administrative Appeals Tribunal*, of which a significant number have resulted in an overturning of the original *Comcare* determination.
- 3) Many of the cases brought to the *Australian Administrative Appeals Tribunal* have been the subject of scathing criticism of *Comcare* by the Tribunal. The Tribunal has found in many cases that the matter should never have been referred to the Tribunal in the first place, because the original assessment made by *Comcare* was clearly and obviously in error. Such errors should have been corrected under internal review, not through the Tribunal.

*Comcare's* conflict of interest position raises particularly significant problems in jurisdictions where the only course of action in pursuing workplace bullies is through statutory breaches of the *Occupational Health and Safety* laws in those jurisdictions (i.e. Federal and most States/Territories). In those cases *Comcare* has a strong and driving interest to fail to properly investigate and regulate Federal agencies in respect of workplace bullying and to fail to uphold the rights of workers to not suffer bullying.

For this reason, we believe that the current system of addressing workplace bullying is compromised and entirely unsatisfactory. We urge the introduction of uniform national laws criminalising workplace bullying. Such laws will remove the need for workplace health and safety bodies to pursue resolution of workplace bullying claims.

## VI. RECOMMENDATIONS OF THE GROUP

A number of key changes clearly need to be made to address the deficiencies inherent in the current laws relating to workplace bullying. Significant changes are also required in relation to the powers to act and structures of existing regulatory and investigatory bodies which are clearly deficient, given the significant spike in the number of workplace bullying claims in recent years.

Our advocacy group, *Victims of* would like to make the following recommendations in addressing the problem of workplace bullying in Australia.

### 1. INTRODUCTION OF NATIONAL UNIFORM ANTI-BULLYING LEGISLATION

A number of states have recently implemented new legislation criminalising bullying (i.e. Brodie's Law in Victoria, South Australian legislation). A number of key proponents including focus groups, media and politicians, have called publically for new legislation. Under current legislation an employee has to either: (a) be injured (*OHS Act 1999*) as a result of bullying behaviour, or (b) unduly disadvantaged (*Fair Work Act 2007*) in order to be compensated as a result of bullying. It is manifestly unfair to require a victim to suffer an injury or loss under other legislative instruments in order to receive assistance.

We proposed that such new legislation should include:

- i. Criminalisation of bullying behaviour;
- ii. Introduction of penalties related specifically to acts of bullying;
- iii. A national definition of what constitutes bullying behaviour;
- iv. Prosecution of employers who fail to address bullying within their workplaces;
- v. Obligation on the part of employers to properly investigate bullying complaints;
- vi. Guidelines/Standards for employers investigation of bullying complaint;
- vii. Penalties for victimisation of employees as a result of raising bullying complaints;
- viii. The introduction of obligations for employers to compensate victims directly for injury or loss arising from bullying in the workplace, particularly where the employer has failed to reasonably protect the employee;
- ix. Implementation of separate statutory guidelines allowing victims to seek compensation. Current OHS/FWA remedies are manifestly deficient and require victims to pursue civil action to recover losses.

### 2. ESTABLISHMENT OF AN INDEPENDENT BODY TO INVESTIGATE WORKPLACE BULLYING CLAIMS

Current internal policies in most workplaces for dealing within bullying behaviour are deficient and are often applied inequitably or are drafted to intentionally bias any investigation in favour of the accused. Internal policies are also typically non-committal or silent on the appropriate sanctions to be used against bullies. More often than not, they fail to change the behaviour of the bully, fail to protect the employee from further direct or indirect persecution as a result of reporting the behaviour, and they do not succeed in rehabilitating either the perpetrator or the victim. State and Federal bodies like *Comcare*, *WorkCover*, *WorkSafe*, are often not adequately resourced or incentivised to properly address or investigate complaints of workplace bullying. Often the investigators lack the specific knowledge and skills to appropriately investigate claims of workplace bullying.

We proposed that in the establishment of new investigatory/regulatory body, consideration should be given to:

- i. Establishing an independent office, free of bureaucratic and political interference, to investigate complaints of workplace bullying within the public and/or private sectors;
- ii. Providing the body with the power to investigate Australian workplaces where allegations of bullying arise. This power should be non-exclusive – that is, the police and other law-

- enforcement authorities should also be enabled to undertake such investigations where appropriate;
- iii. Empowering the body to prosecute individuals and employers over instances of bullying in the workplace under national anti-bullying legislation;
  - iv. Empowering the body to oblige the employer to pay compensation to victims of workplace bullying.

### 3. REVIEW AND RESTRUCTURE OF THE COMCARE SCHEME

As noted above, the current *Comcare* scheme is ineffective. *Comcare* has a conflict of interest in its roles as both regulator and insurer of government agencies and other self-insurers regulated by the body. *Comcare* is under-funded and under-staffed and is incapable of successfully investigating all claims of health and safety breaches referred to it.

In recent years the *Comcare* scheme has been opened up to other NGO self-insurers. Whilst injecting additional investment in the scheme, this has stretched the resources significantly thinner as the scheme attempts to maintain viability while at the same time making more efficient use of its current resources. This has resulted in the regulatory arm of the scheme and, in particular, its investigators exercising their powers under the OHS Act in an apparently arbitrary way to decline to investigate allegations of serious occupational health and safety breaches. This has been particularly true for claims relating to psychological workplace injuries, which are often lengthy, highly-complex and resource-intensive investigations.

Our members cite numerous examples of complaints made to *Comcare* in relation to psychological injuries, which *Comcare* declined to formally investigate. Many of these complaints became the subjects of subsequent reviews both internally within *Comcare* and externally via a decision of the *Australian Administrative Appeals Tribunal*. The example of [redacted] is one in which *Comcare* did initiate a formal investigation, likely as a result of [redacted] lodging a Federal Court action against [redacted]. Currently another 9 complaints by our members are before *Comcare*. A number of these were previously dismissed by *Comcare* without investigation.

Our recommendations for review of the *Comcare* scheme include:

- i. Separating the regulatory (investigatory) and insurance arms of *Comcare*;
- ii. Clarifying the investigatory powers of *Comcare* officers and clearly defining the circumstances under which a formal investigation must occur; this is currently reliant on the interpretation of the investigating officer;
- iii. Improving the independence of the regulatory arm of *Comcare* which is currently perceived as an Australian Public Service agency with a *modus operandi* in which it protects other government agencies from prosecution.

### 4. IMPROVEMENT OF WHISTLEBLOWER PROTECTIONS

Current whistleblower legislation does not adequately protect from persecution, those making public interest declarations. This is particularly true in circumstances in which it is hard to identify a direct link between a whistleblower complaint and subsequent, seemingly unrelated adverse action against the employee in his or her workplace.

Our members provide numerous examples of employees being dismissed within a short period of making public interest declarations. In many such cases, the employee at the centre of the disclosure has been with the employer for a significant period of time.

One such case that illustrates the failure to protect whistleblowers is that of [redacted]. [redacted] was made redundant from the [redacted] within months of reporting alleged illegal and criminal activities by a number of senior [redacted] staff. This occurred despite his long history of achievements within the organisation and the blatant continuance and filling of his vacated role by a new appointee at the same time that he was dismissed. Whilst the [redacted] claims



his retrenchment was due to his position becoming surplus to requirements, it seems clear that his dismissal was aimed at suppressing the charges he raised and protecting the respondents from serious legal sanctions. His retrenchment was carried out by the persons he accused of the illegal and criminal activity. They also appointed a new scientist to continue his role at the time he was retrenched.

There are many such high profile examples of the                      summarily dismissing employees who either disagreed with the organisation in a professional and scientific capacity, or were critical of research undertaken by the                      major benefactors (eg. Monsanto, BHP Billiton).

Strengthening of existing whistleblower protection should comprise:

- i. Removal of involved parties from decisions affecting the ongoing position of whistleblowers in relation to their employment;
- ii. Provision of a genuinely independent investigator where perceptions of adverse action arise in decisions relating to whistleblowers by their employer;
- iii. Include an injunction against employers making decisions affecting a whistleblower's employment where bias or disadvantage can reasonably be perceived;
- iv. Providing whistleblowers with the ability to seek independent arbitration of employer decisions which disadvantage them prior to such decisions being actioned by the employer.

## **5. IMPROVEMENT OF EXISTING NATIONAL OCCUPATIONAL HEALTH AND SAFETY/SAFETY, REHABILITATION & COMPENSATION LEGISLATION**

The *Workplace Health and Safety Act (1991)* is largely focused on physical/physiological manifestations of injury and disease. It is deficient in areas relating to psychological/psychosocial injury or diseases. This particularly affects employees exposed to workplace bullying.

The act does not adequately cater to the sufferers of workplace psychological injuries as the impact of such injuries are not linear in their progression. That is, they often do not follow the linear, injury date -> recovery date progression that is generally seen with physical injuries. Employment-related psychological injuries can lie dormant, reoccur or intensify as a result of other factors, even long after the initial cause of the injury. The impact of a psychological injury can be visible long after an employee is considered rehabilitated or commences employment with another employer.

Often employers will elect to dismiss employees suffering work-related psychological or psychosocial injuries for un-related "operational" reasons as rehabilitation of such injuries is considered complex, expensive and lengthy in duration. Currently, the *Occupational Health and Safety Act* does not adequately protect injured employees from dismissal for spurious purposes.

We propose the following improvements to the act:

- i. Protection of injured employees undertaking workplace rehabilitation from termination, until after completion of an approved return to work plan, except where medical grounds justify transition of the employee to medical benefits.
- ii. Mandatory training for Rehabilitation Case Managers in the rehabilitation of employees suffering psychological/psychosocial injuries.
- iii. Modification of the *Safety, Rehabilitation and Compensation Act* to specifically address the transient nature of psychological and psychosocial injuries.
- iv. Recognition of related physical or lifestyle diseases with a direct relationship to stress and psychological injury as an immediately claimable component of the injury including:
  - i. Type II Diabetes Mellitus and associated complications
  - ii. Hypertension
  - iii. Renal dysfunction
  - iv. Digestive dysfunction

- v. Heart disease
- vi. Hypercholesterolemia
- vii. Weight/Diet problems
- viii. Other chronic stress related diseases (migranes, CFS, myalgia)

## VII. THE COST OF WORKPLACE BULLYING (both personal and financial)

What are the financial costs of bullying to \_\_\_\_\_ It is difficult to say. We noted earlier that \_\_\_\_\_ budget for administration had gone up to 46.5% of its expenditure in recent years. We further noted that this increase has apparent been accompanied by a rise in a workforce of people who are tasked to act “behind the scenes” to “deal” with employees who are considered to be “against” \_\_\_\_\_. We cannot say what the cost of that workforce has been. But the difference between the 28% of expenditure that was \_\_\_\_\_ administration in 1988 and the 46.5% that was recently reported, is 18.5%, which equates to \$222 million of \_\_\_\_\_ \$1.2 billion annual budget.

Whilst there is a large amount of publicity circulating in the media in relation to the financial cost of workplace bullying in Australia (estimates of up to \$16 billion per annum), the non-financial costs of permitting a culture of bullying to pervade Australian workplaces are, arguably, far greater and longer lasting. Victims of bullying behaviour often require years of rehabilitation, with some victims rendered incapable of ever returning to work as a result of the permanent psychological scarring.

This not only impacts financially in terms of the victim’s ability to retain employment and seek promotion or other opportunities, it often has profound impacts upon the families and the communities of victims.

A list of impacts, certainly not exhaustive, includes:

- Family and other relationship breakdowns;
- Removal of social and community participation;
- Associated emergence of psychological illness placing a drain on health resources;
- Suicide;
- Substance use and abuse (Alcohol, Illicit Drugs and Prescription Medication);
- Isolation of victims and their families from the community and other support networks;
- Reinforcement of social stigma relating to psychological illness particularly those related to workplace stress or injury. (i.e. the victim is weak, overly-sensitive or a “bludger”, or “not a team player”);

Failure to address workplace bullying on a national level within Australia also leads to the perception that employers, particularly those related to the provision of public services are “untouchable” and will not be held accountable for their actions or failure to act to protect their employees from inappropriate behaviour in the workplace. It also fails to create any impetus for workplace reform and effectively exonerates the behaviour of perpetrators, particularly those of a serial nature.

The inequity of current remedies available to the victims of bullying means that they are significantly disadvantaged as a result of their experiences in comparison with the victims of other crimes or misconduct such as those covered by Anti-Discrimination, Criminal (Harassment, Assault) Industrial and Occupational Health and Safety legislation.