

26.06.2012

INQUIRY INTO WORKPLACE BULLYING
TO THE COMMITTEE SECRETARY
HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
EDUCATION AND EMPLOYMENT.

To the Committee,

This is my say.

I apologise to the committee that this submission is not a lengthy academic rendering of all things ‘bullying’. But is a somewhat ‘earthy’ dissertation that might give some welcome relief to the committee. It comprises of short extracts taken from my diary about my experiences at the hands of a serial workplace bully, and my fight to overcome, which I eventually won against a host of government departments and agencies. I hasten to add that it is not just a litany of what the bully did, but more importantly it pinpoints each identifiable obstacle that I encountered during my recovery and claim. There were many of them, and they fall mainly at the feet of our out-dated government laws in place to cover

workplace bullying. I found that our Australian laws in this area actually encourage and promote workplace bullying, playing straight into the hands of employers. It is a rare occasion when we see a punishment handed down to either the perpetrator or the employer. What message does this send to a worker? And, What message does this send to an employer?

A victim of workplace bullying has to go to extraordinary lengths and must undergo disproportionate examinations in order to make their rightful claims 'stick'.

This inquiry is well overdue, and I applaud the Gillard government for making a start to silence the 'silent epidemic'.

I really do think that my small work here will serve any member of the committee well. It exposes the failures in the system, which as we know, should be protecting the worker, instead of aiding and abetting the employer.

Three years of bullying at my workplace took away my job, my health, my chances of further employment, my dignity, and cost the government a vast amount of money. From 2008 onwards I have often helped workers who are being bullied at work. Quite frankly, my general advice is usually for them to cut and run. Don't fight, it is not worth it, because the law is heavily weighted on the side of the employer! How much money have I saved the government is untold, but it would amount to over millions! But I am not here for this. I am here for this:

“The worst aspect of all of workplace bullying in Australia is that the perpetrators are still out there, unpunished, and still continuing with their vile work”.

A quick look through my booklet will highlight an entrenched social crisis with so many problem areas that urgently need to be addressed. For the reader short on

time, I will list them below, together with my views on reform. In writing this, I am assuming that the reader is fully conversant in the ways and methods used by these workplace bullies. We know that most cases of bullying at work lead to a stress claim, and where the victim shows not one single mark on their body, indicating that the perpetrator has used his or her expertise to subdue them by psychological means. This is extremely subversive and it takes a particular type of person to do this. Unfortunately, there are many of these individuals within our workplaces, male and female, and who generally appear to be amongst the more senior ranks of the workforce.

26.06.2012.

My submission:

Defining 'Workplace Bullying'.

This has not been done yet, even around the world, and is urgently required in order to make our laws watertight. I expect a law specific to workplace bullying, and not intermixed with sexual harassment, racism etc. This law should be Federal, and therefore effective across Australia, removing current costly duplication between states, and the chance of bullies slipping away into other states. For example in my case, I had to make my claim for serious workplace bullying, under a 'workplace injury', because in Queensland there was no provision for this type of crime. Subsequently, right from the start the name of the bully and the employer were erased from the picture. They simply handed my claim over to their insurance company to deal with. True, I was injured at work, but I was 'psychologically assaulted' repeatedly over three and a half years, and was never hit once. Because I was never 'touched' the crime becomes difficult to assess and easier to deny, although it was far worse than a physical assault.

A redefinition or clarification of the words 'workplace bullying', might give Australia the chance to lead the world in the control of workplace bullying, and with a clearer definition that actually works!

Under a revised and more accurate definition of 'Workplace bullying', the distinction between physical harm and psychological harm should be clearly defined. Thus to 'hit' someone repetitively over several months and years, could be construed as a physical assault amounting to workplace bullying. To assault a person repetitively with words and all the usual tactics used by a workplace bully, could be construed as 'psychological assault' amounting to workplace bullying. The two should be clearly demonstrated as being different, but each or a combination of them would amount to a workplace assault leading to stress. I do

not believe that these bullying assaults should always have to lead to sickness in order for a victim to be able to make a claim.

Changing the law.

Given that we now had a clear definition of “Workplace Bullying”, the laws can be tightened, making it harder for the offender to bully, especially under the umbrella of his or her employer. With workplace bullying, employers and employees often go hand in hand. Employers use them expediently to do their ‘dirty work’, thus making them as culpable as the offender.

A ‘National Register’ of convicted workplace bullies, and possibly schoolyard bullies too).

This would be designed to be used by future employers, who do not wish to employ one of these convicted bullies. For privacy it could be on a ‘yes or no’ basis. The law should also make convicted workplace bullies declare this at interviews when seeking employment. Failure to do so, should mean fines or penalties. An employer who deliberately employs one of these offenders (for obvious reasons) without notifying the National Register, and who gets caught, should be fined. The company official and employer should then be retrained in a robust manner. This might seem harsh, but every method should be used to stamp out this insidious crime. Also, this law would be used for education purposes i.e. used as a warning to potential offenders.

A single Federal Government body/office set up in each state.

This is a crucial element for supporting a new law. These anti-bullying offices would work independently from the state and their function would be to serve as education and complaint centres. Expertly trained and qualified staff would be employed here. Victims could come here to this one place for advice and help,

and so avoiding the 'Hot Potato' process which I went through. At times we are a nation of pretenders. The nice glossy brochures we produce in the thousands, brimming with advice against bullying, but sadly when it happens not much happens!

I defy any person on this commission to go and collect a handful from the plethora of well meaning 'Handling a Bully' brochures issued by nearly all government departments, and go and ring them up. Make a claim that you are being bullied and ask what to do. The response to this will be a salutary reminder even to the most sceptical member of the commission, as to why they are here today.

As things stand today, each state in Australia has their own way of dealing with this problem. They have their own brochures and forms etc. Insurance companies vary; some are Workcover some are not. This simply creates confusion and plays directly into the hands of employers and their bullies.

By having these offices, it should be a mandate to speed up the process. For example if my bully had been examined right at the outset of my complaint, and it was found that he was a serial bully, my claim would have been dealt with much faster and less costly to all concerned. Also I would have been less injured. I add here that I would most likely have gone back work, because the bully would have been exposed and removed.

Although QA was in place, it was a sham, and is probably still
the same today!

I had no one to go to within the company, even though it was in their QA books as an operating system. Most companies are similar to this, and often the Human Resources Departments try to avoid dealing with such complaints. My bully could do what he did because of this. In my view, the law was broken, and the

very QA stipulations that they had signed to were not there. The employer went unpunished. What is the very purpose of Quality Assurance?

Workcover.

Workcover is a 'cess-pit' of problems, and I hope that this inquiry brings these out into the open. There are a great many unsatisfactory aspects of Workcover, from the start, when it comes to making a claim, and right through to eventually suing them, because of the fact that they are the employer's insurance company. Thus, by Workcover being fundamentally an insurance company, their main endeavour is to keep their payouts of claims to a minimum, by whatever it takes. Naturally they are able to monitor big claims making their way through the system, and act accordingly. Workcover should not be involved in rehabilitation as it is a conflict of interest.

I found Workcover to be frighteningly overbearing, with a clerk case manager wielding power far greater than he was capable of, and as a consequence Workcover exacerbated my illness twofold. I had little dealings with them previously and was under the impression that they were the 'good guys'. Soon the realisation suddenly came to me that I was going to have to sue them, and not my employer or the bully who had caused all my misery. This came as a shock.

By trying to sue Workcover it was like a David and Goliath battle, and I only won my case because of my own sense of fairness. How many have been unfairly dumped by Workcover?, or simply given up their struggle, enabling the bully to continue with their vile work unhindered. If we knew this figure we would all be truly shocked! This includes their use of borderline doctors (in my case), or ones who suspiciously seem to process an unusually high amount of injury claims. I was warned not to go to one of these doctors, but how would I know who they were?

Workcover played many tricks on me (you can read about it in more detail in my attached booklet). Once I was past their first rebuff, I was in their sights, and was continually harassed by them. I felt belittled for daring to make a claim of a psychiatric nature which was hard to prove. One look at my background should have thrown on a neon light that there was something seriously wrong, and not with me! However, I fought them all the way. Why should I have to fight them? This is not right. The laws must be changed and Workcover completely overhauled. As time went by, I was reminded many times during my recovery that the government was not sympathetic to the plight of injured workers. Workcover became an agent for extinguishing as many claims as possible. That is my view and I shall not waver from it.

When I signed my claim form I was unaware that I had just given Workcover and its agents permission to search my background and interview my friends and work colleagues. Over three years they probed my past, took statements from my friends (who were given the impression that they were on my side), and took statements from work colleagues, some of whom made false statements, lied and omitted critical information their Statutory Oath forms.

There was never a time when my assailant was examined by doctors and psychologists, and psychiatrists. This was a mistake and also unfair. A good psychiatrist would have uncovered the truth quickly, and exposed this bully for what he was; a “serial workplace bully”. All the records that I forwarded to my lawyer and to Workcover about his previous bullying and court cases were ignored. Workcover simply did not want to acknowledge anything about this man’s background as they might lose the case, bigtime. He would definitely have been on Workcover’s books for previous bullying incidents, two of which I witnessed myself, where claims were made to Workcover and settled out of court. As you can see this is not a satisfactory state of affairs.

Workcover enjoys the practice of sending a stressed workplace bullied victim to different doctors and psychiatrists each time they require an assessment. This is an inhuman practice for the patients. The explanation as to why Workcover does this is vague to me, but it seems to be another sort of harassment, so they can glean as much information from the victim as possible, as well as grooming probable friendly medicos for their future use. It upsets the patient, especially if they are on a stress/psychiatric claim, because they have to recant all that has happened to them each time. This slows their recovery by bringing back the pain and memories of the past.

Q-Comp.

If it was not for Q-Comp, my claim would never have got past the first appeal. If there is anything good about the system it is Q-Comp!

Streamline the process, somehow.

Claiming for workplace bullying can be a slow procedure, and thus costly. By identifying the bullies early on in the proceedings by a psychiatric medical examination (see below), would be an obvious way of cutting time, cost and further injury to the victim.

No psychological examination for the perpetrators.

This is one of the key issues I want to bring to the table. Psychiatrists and Psychologists largely agree that bullies have a different make-up to normal people. Workplace bullies are generally categorised as ‘Psychopaths’ or ‘Socialised Psychopaths’, and this is what we are dealing with here. It is simply wrong that a person can make a bullying claim against another, and yet the ‘complainer’ is the only person subjected to massive psychological scrutiny. The accused perpetrator is never examined. They should be. This single action would snuff out a very

large amount of workplace bullying. Once the bullies are aware that they might be the subject of an examination (by a highly qualified expert in this area), they would cease their activities, or it would not be long before they were put out of action for good. If this examination was combined with a file of their previous bullying incidents, then even the most inexperienced of examiners would see what they were dealing with.

Once the bully has been identified, the case would proceed in a different direction turning towards the bully and his employer. The victim could then proceed with their recovery, unhindered.

Again, I experienced the unfairness of not being allowed to expose the past actions of my bully. My lawyer refused to carry out an investigation on the bully. I did, and it was not long before a pattern emerged. A senior position, leave suddenly, appear to have come from nowhere in the next job, five years later and leave suddenly again. He actually boasted of it! There were traces of intimidation, bullying and harassment. The worst thing is that he is out there somewhere today doing the same thing with impunity, his employers, on the surface unconnected, enjoying the rewards of his vile work.

Education.

In my view, this is the biggest, costliest and most long-term big ticket item, which needs to be addressed. 'Example' is a good teacher and costs little. Making an example of those workplace bullies who are caught would be a good start. Bullying is a social problem and we are aware it starts in the schools. Education starts here too. The more emphasis to stamp out school bullying the better, and I have to admit that this has already started in most schools in Australia. This means that we have to wait a full generation and a bit more in order to start seeing the results of campaigns at the school level in the workplace. If Federal government anti-bullying offices were in each state, one of their main duties would be to

constantly visit schools and educate. Explain their role and become friendly facilitators. When these children reach working age, they will know exactly where to go for help if they were ever being bullied at work.

‘Out of Court’ settlements. Out of Court settlements are the perfect way for a guilty party to avoid having their name exposed, and also leaving a record of their offences. Most bully victims, after going through the system and realising that they will never get proper justice, just settle out of court and are thankful that it is over and they have some money, but it is never what it should have been, after every one has had their feed of the trough. The law should clearly discourage this way of settling bullying claims. All claims of this nature must go to court, therefore providing the government with an accurate record, and exposing the offenders. There is no record and no conviction and no punishment when an out of court settlement is made. This is not the way to stop bullying.

The ‘gagging’ clause.

The most likely outcome of any bullying court case is an out of court settlement, when the victim would have been forced to sign a document forbidding them from discussing the case to anyone. This again is in favour of the perpetrators, and should be again disallowed. In this inquiry you might possibly not get to hear valuable evidence and views from thousands of past victims in fear of retaliation due to this gagging clause.

I noted that in my circumstances, the Workcover Court Lawyers gagging document was in favour of the perpetrator, with the wording as such that it was only me who had to keep quiet. This left the ridiculous situation whereby the unpunished culprit could go back to his workplace and say openly to his staff anything they liked about the case; such as ‘we sent him packing – he lost, and for any others of you thinking of doing the same thing, let that be a lesson to you!’ One has to know a psychopath bully to see this actually happening. This is a most

unsatisfactory situation. I noted this to my solicitor, who told me they were all like that! This is Workcover!

Falsifying Statutory Declarations.

I eventually got to see what others had written in their Statutory Oath statements through FOI. I was shocked, but could do nothing as it was all over and I had also signed a gagging clause. Two fellow employees had written lies upon lies about me. I wondered why, since they had no axe to grind with me. I saw the date, time and place of when the statements were written. They were all the same time and place, together with the perpetrators own statement. They were filled in in the same room at their workplace at the same time together with their supervisor (the bully). They were scared for their jobs, and had been intimidated by the bully, and my guess is that he read them too! These statements were completed at the behest and in front of a private detective hired by Workcover, who went to their workplace. I could not think of anything more sinister. I (myself a Commissioner of Declarations) was now made aware that people were able to make false legal statements and get away with it. A system of 'Conclusion Meetings' should perhaps be introduced. After all is done and the victim has seen all of the FOI papers, they can come forward, without prejudice, and point out (prove) any falsifications made. The perpetrators and witnesses would then be called to account. If this was in place it could be used to discourage future bullies who intimidated witnesses. It could also be used in the education process, and also to further tighten up the law when loopholes have appeared.

The Preclusion Clause & Centerlink.

After a case is over, a new blow strikes the victims usually without any warning and reaps a terrible psychological harvest. It is called the 'Centrelink Preclusion Clause'. This essentially allows Centrelink to stop any payments to the victim,

such as invalid pension, healthcare and other payments. On a large settlement, this can be devastating and works quite unfairly against the cases that take longer than usual to resolve. This calculation results in the cancelling of all payments from Centrelink to the victim. After going through all they have, they are forced to survive on their payout. This is cruel and discriminatory, and rarely ever anticipated by any person making a claim against a bully. I was told by Centrelink, when I complained, that it was to stop a person from spending the lump sum they received all at once at the casino, and then coming back to Centrelink for help. Personally, for what I went through to get what I got, it was harder work than digging ditches. There was no way that money was going to be spent in that way. The integrity and true grit of those few individuals who do eventually succeed over all the odds are not likely to do that!

And after its all over.

National counselling, conclusion meetings: these would have good use for victims to air any dissatisfaction, and could also be utilised for ensuring that the perpetrators and witnesses did not abuse the legal system.

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