

## Submission to the Commonwealth House of Representatives Education and Development Committee's Inquiry into Bullying in the Workplace.

### Acronyms used in this submission

CISA: Commonwealth Independent Statutory Authority

PIC: Overall Person in Charge of the CISA

RM: Responsible Member

ISO: Independent Statutory Officer

RAH: Royal Adelaide Hospital

### Introduction

This submission is to the Commonwealth House of Representatives Education and Development Committee's Inquiry into bullying in the workplace. It describes a situation I was in, in 2011 in South Australia, as I attempted to carry out my role as a member of a CISA whose work related to I was appointed by the Governor General and was classified as an ISO, as are all members. In effect, the role was quasi-judicial. As such I was not a public servant as that term is understood in the relevant legislation, though I was covered by COMCARE if injuries arose in the course of my CISA duties. Given the nature of the role and that it occurred within a CISA, it is arguable that this makes the behaviour described below more egregious than might otherwise be the case.

It is also arguable that the behaviour raises probity and governance issues: (1) that it breached seriously the "Standards of Conduct for Tribunal Members" published by COAT in its *Practice Manual for Tribunals* (see specific reference below @ pg 6) and (2) (a) the apparent failure of the RM to deal with the matter when it was raised with him and what his apparent tolerance of the situation suggests; (b) the way the PIC proposed to deal with the issue when it was raised formally with him (see pg 8 below).

### Format of submission

My submission will describe the environment in which I was required to work, including examples of things done or said to me. Attached are two articles of mine relating to workplace bullying. These articles are provided in the typed format in which I submitted them. They were published in \_\_\_\_\_ in 2011-2012. A further two articles, which I no longer have in their original typed format, will be forwarded by post; these articles were published in 2010 in the same journal and were awarded a prize in \_\_\_\_\_ for 2010. As to my background, that will be covered briefly in the email text to which this submission is attached.

It is my submission that the serious accident I had in November 2011 was as a direct consequence of the cumulative bullying I experienced in the workplace. It is my further submission that the response to my complaint by the PIC was such that I had no option but to resign. I add too, that I have made a formal complaint to COMCARE about what happened to me and that some of the material herein has been forwarded to COMCARE previously.

Finally, I offer some observations on what I perceive as the failure of the PIC to deal adequately with the probity and governance issues.

As best I can, I have redacted some of the material so that persons are not identified. However, in the particular circumstances it would be hard for those in the know not to identify the persons involved. I therefore appreciate that, if the Inquiry wishes to use all or any part of this submission in its report, further redaction will likely have to take place.

I am happy to discuss this submission, or aspects of it further, with anyone related to the Inquiry.

### **The accident**

During the latter part of November 2011, the week following CISA duties in Adelaide, I was hospitalised in the RAH, as a consequence of a motor vehicle accident, caused when I blacked out while driving on Saturday afternoon, 19 November 2011, a day after the last of the November sittings of the CISA.

I was in hospital for 7 days and I was “out of action” until approximately the end of January 2012 because of the spinal fracture sustained as a result of the accident.

I hold the toxicity and the persons responsible for it, within the Adelaide “office” of the CISA, responsible for my circumstances. What follow are my reasons.

### **Personal responses to the accident**

Whilst in the RAH I was informed that the accident occurred on Botanic Road in front of the SA Wine Centre. I am unable to recall this, as I blacked out sometime after I turned into Botanic Road and consequently rear-ended another car. There were injuries to my back; fortunately there were no injuries to the driver of the car I rear-ended, nor to anyone else. I was unconscious for several hours and woke up in the emergency department at the RAH.

The thought that I could have killed or seriously injured someone, that I could have been killed or permanently injured continues to haunt me. I was lucky that I had chosen to go where I was going by the route I took. Had I taken my usual route and the blackout had occurred, then it is highly likely that fatal consequences may have occurred.

The incident in Botanic Road caused me physical, emotional and financial damage. It was not the only consequential incident related to the bullying.

A month or two prior to the above incident and prior to the following week’s sittings I had a severe panic/anxiety attack of which the symptoms were similar to those of a heart attack and which caused me to seek medical attention from the emergency department of St Andrew’s Hospital. That it was not a heart attack was confirmed by my cardiologist a few days later.

## Causes

It appears now that the cause of my blackout was due to intense stress, something suggested to me by a senior Consultant Psychiatrist who has spoken with me about some of these issues, the apparent causes of which follow. By way of transparency, I add that the psychiatrist is a personal friend and someone with whom I have worked in the past when I practised psychotherapy and in forensic matters when I acted for defendants. However, there is nothing to suggest that his comments to me after this accident were in any way slated to support me, because of the personal friendship; rather, his comments were professional and objective, as I have always found them to be.

The results of the various physical tests that I had after the accident, confirmed that there was no apparent physical explanation for the blackout which caused the accident.

Since the beginning of my time at the Adelaide office of the CISA it was implied, particularly by one of the ISOs, through his actions and things he said, that I was not welcome and that I should not have replaced the person I did.

The ISO was very critical of my work, in a manner that was not helpful. I acknowledge that at the start I needed some guidance, as many people new to an organization do, but the lack of professionalism in the ISO's approach both surprised and worried me. When I raised the issue with the RM who had responsibility for the Adelaide work his response was that he had total faith in the ISO and the ISO could do it. I know that I learnt far more from other ISOs interstate, when I worked with them, than I did from the ISO and the RM in Adelaide.

Also, given the fact that the RM usually left earlier than either the ISO or me, then generally I was left alone in a room with the ISO and that's when, for me, his behaviour became concerning. By way of example, when the PIC replaced the RM on one occasion he read a decision of mine, said overall it was quite good, but suggested that a couple of minor changes be made for completeness. I made those changes and put the decision on the table for signing. The ISO was critical of what I wrote and told me while the PIC wasn't present that the things that PIC had suggested were unnecessary and should be taken out. I didn't, but it appears that the ISO took them out later, given comments the PIC made later on when he was back in Sydney. I did not look again at the decision to check.

On a consistent basis the ISO screamed, shouted and swore at me. Examples include:

- You “                    well” do as you are told; you “                    well” listen to what I say and multiple variations on that at different times;
- On an occasion when the printer was not working correctly, he yelled at me “Go and tell [X] to fix it up. Go on, quickly, hurry up”. No please.
- When I asked the ISO on one occasion, as I recall not long before the accident, to please not speak to me in the manner in which he was (swearing and shouting), he screamed in response with “I've tried to treat you as an adult, but I am not going to do that anymore.” I responded quietly that I could see now why so many of his colleagues in Adelaide disliked him; he screamed “Get stuffed” and then stormed out of the room.
- After I had had the panic attack an appointment was made for me to be checked by my cardiologist late afternoon on the Monday. As a courtesy I told the RM that I would be going

at 3 o'clock that afternoon (the appointment was for 4 pm at Ashford). The ISO heard that and said "Where are you going?" I responded, perhaps a little rudely, "Mind your own business". (I point out that, as ISOs of CISA, there is theoretically no person in charge of personnel in the various states; the RM has responsibility to ensure legal requirements are carried out and the PIC has a responsibility for the overall efficient operation of the CISA. Legally, because members are all appointed as ISOs, then the PIC or any other member for that matter cannot direct a member what his/her decision will be, though suggestions can be made in a collaborative manner.)

- I then said with a voice raised in both stress and frustration that I had been in hospital with a panic attack over the weekend and the ISO shouted "I'm not responsible for it". The ISO then shouted that we didn't need slackers around here. When the ISO left the room, I told the RM what had happened over the weekend and said that I thought the ISO was bullying me. The RM said he disagreed and that the ISO treated him the same way. I didn't believe that comment then and I still don't. In any event, even if I am wrong and the comment by the RM was true, that doesn't excuse such behaviour. The RM also added that there was nothing he could do, as he was only responsible for the admin and law side of the hearings. Technically that is correct, given what I stated in the previous paragraph. Nonetheless, given that he has some authority, it would have seemed prudent to me that he would have raised the issue with the PIC. When I saw the cardiologist that afternoon I was in intense pain for which the tests done showed no physical reason. In retrospect, and my cardiologist agrees, I suspect it was another partial panic/anxiety attack.
- On another occasion, when the ISO asked me who my cardiologist was and I told him, he told me that the doctor wasn't a cardiologist. I replied that my understanding was that the doctor was. A while later the ISO said that he may have been thinking of another doctor. It was what was underlying that comment that is the greater concern.
- On yet another occasion whilst reading one of my decisions, the ISO made some corrections that were grammatically incorrect. What was written by me was a singular subject with a singular verb, whereas the ISO changed it to a plural verb. When I pointed out to him that what he had written was grammatically incorrect, he looked at it again and said "It's a moot point". It is hardly a moot point; the rule has been in place for yonks! It is just another case of the ISO behaviour towards me. At least on that occasion he did not swear!
- On another occasion, in a decision I wrote, I quoted something from Creyke and Sutherland and the ISO queried what I had quoted. He said it had to be a misprint by the authors and I should change it. I said that I did not think it was a misprint, but he told me to change it. I had used my own copy of the book. So, after he made his comments, I went to the cupboard in the room where the previous edition was to see whether there was in fact a misprint. The ISO saw me doing this, raised his voice and yelled "what are you doing?" I told him and he said "stop wasting time and change it". The said section was the same in the previous edition and my experience as an editor and proof-reader tells me that a misprint may make one edition, but it is rarely if ever repeated in a subsequent edition. It was just another example of the ISO's behaviour towards me.
- There was an email to various people dated 20 October 2011 where the RM has referred to me taking 5 attempts for me to write a decision. I queried the need to emphasise such information and found it somewhat offensive as it likened me to a real dumbo. 5 attempts! What actually happened was that I wrote the decision allocated to me. Then the ISO

changed things in it. So I made the changes to keep the peace. Then the RM read it and made further changes, including the ones I had already made and which the ISO said had to be made. Those changes were made. Then the ISO had another go and the RM had another go. That all looked like I was taking x attempts to write a decision. (While I am referring to one particular decision, this behaviour occurred on a very regular basis.) The reality is that the RM should read the decision first and, if he thinks changes should be made, suggest that and why. It should not be the case that the ISO and the RM play correction ping pong with a decision then add those up as “attempts” by me. That never happened on the occasions I sat interstate with other ISOs. The ISOs I worked with interstate all worked collaboratively to ensure a decision was correct in law and grammatically. The weeks I spent interstate were very happy ones, in the main. What the RM and the ISO were doing in Adelaide, I submit, was playing a bullying game designed to humiliate or undermine me. In the alternative, such behaviour was at best unethical and at worst unlawful, for reasons stated below @ pg 8.

- The other thing I picked up was that the RM and the ISO had phone conversations outside the sittings where things related to the hearings were discussed, including what they would give me to do. Ironically, at the last hearing before the accident, I was asked which decision I would do. I picked one and they actually let me have it! It turned out that the ISO had done a significant amount of it (before the hearing!); at least he sent me what he had done. Had I not been injured I would have completed it that weekend. Given that we were all ISOs, it has to be concerning that two ISOs were discussing and making decisions about what another ISO (me) would do. This should have been something we all did. Thus, it raises questions also, in my view, about probity and governance and also allows a suggestion that the process of independent review was actually not so. (see above & below @pg 8).

On another occasion the ISO suggested to me that people were critical of the fact that I was going interstate for hearings and I should be careful. No names were provided. My going interstate was a matter for the PIC to decide, not me making any request. In retrospect I think the comment was intended to unsettle or upset me.

It interested me also that in his email of 22 November to the PIC, the ISO referred to being “most disappointed at hearing of my misfortune”. Disappointed that I had a motor vehicle accident! What could he possibly be disappointed about? In any event, as I recall, I did not agree to the ISO being told of my accident and I doubt I would have or him being given my mobile number by the PIC. That the ISO made the phone contacts with me that he did (and upset me in the process) is surprising, given he was a doctor who with his experience should have understood that people in hospital often are far from being themselves and less so, if being prescribed strong painkillers, as I was. For the first few days I was in hospital I was very ill, disoriented and completely immobilised. Further, re-reading that email now, I find its overall tone quite patronising.

These are just a few examples of the things that were going on in Adelaide over the last 12 months.

In a submission I made to the PIC after the accident I stated many of the things that are above and made the following comments (though for purposes of this submission the comment has been slightly redacted to prevent identification of people):

*I would appreciate knowing what statutory authority [the ISO] has to “order me” to do anything. Why is it that he makes the decisions about what is and is not acceptable in a decision and then plays a game with [the RM] to discredit me?*

*In my opinion, this behaviour from [the ISO] is clearly in breach of the COAT “Standards of Conduct for Tribunal Members”, section 4” Respect for Persons; 4(a): Courtesy. I note @pg 56: “It is improper and unprofessional for a tribunal member to display discourtesy towards any individual. Discourtesy towards colleagues and staff impairs the effective functioning of any workplace. (My emphasis)\_I add that, after [the RM and the ISO] handed me that document at the end of the sitting week prior to my accident, I commented that I do not respond well to being shouted at, to which [the ISO] replied in [the RM’s] presence “I only shout when you don’t do as you are told”. I do not know whether [the RM] spoke to [the ISO] about the inappropriateness of shouting at other members after I had gone, but it did surprise me that he said nothing in response to [the ISO’s] comment after he had made it.*

*As you are aware, [the ISO] was pestering me whilst I was in hospital about decisions and when I got home. I asked you to ask him to stop. But one email he sent me is particularly concerning, given the implications; it concerns my driver’s licence.*

*[The ISO] suggested to me that my amnesia is likely to have been from a head injury, rather than a blackout. He suggested that if it were the latter, that could severely restrict my access to a driving licence. Even if that comment were well-meaning, it was made without [the ISO] examining me (and I would not have let him, if he had wanted to) and his comments are, in my view, irresponsible and could be construed as suggesting to me that I keep such information from the relevant authorities, which is arguably unlawful. The fact is the doctors who have treated me are uncertain as to what caused the amnesia; however, there is no medical evidence that I had experienced a head injury as a consequence of the accident. At the moment I have chosen not to drive for at least six months, in line with a recommendation from the Doctor who discharged me and a neurologist I have seen subsequently.*

What I found interesting was that the PIC did not answer any of my queries, but rather said he was going to refer the matter to an independent investigator. For reasons stated below, I did not find this satisfactory and so resigned.

#### **A final point in respect of the situation described**

One final thing needs to be raised in respect of the situation I have described.

One the last day of sittings, prior to the motor vehicle accident, I was handed a sheet by the RM and the ISO. This sheet contained a series of criticisms which were based on erroneous assumptions that were masked as facts. The issues had not been discussed with me prior to the writing of this screed. It was also sent to other people in the organisation interstate. These errors included that:

- I did not prepare work prior to sittings. **My Response:** *The reality is that I usually spent at least a week full-time prior to the sittings preparing the work through reading each file, which was evidenced by yellow post-it notes on most pages of the file, referring to what I considered was an important issue re the appeal.*
- That it wasn’t satisfactory for me to write comments on post-it notes. **My Response:** *Somewhat contradictory, given the above comment.*

- That I wasn't to query psychiatric evidence when it was agreed (by who not stated). **My Response:** *CISA is a first level appeal body. One of the reasons why I believe that I was appointed was because of my expertise in mental health issues, something I emphasised when I applied for the appointment and something that was checked by the PIC when he spoke to one of my referees. As an appeal body, I believe that, as an independent member taking seriously the oath I swore on appointment, I was required to raise the issue, if I had doubts about a particular psychiatric diagnosis. In that respect I had had previously published a couple of papers on Court decisions, relating to which rejected psychiatric diagnoses when evidence given to the Court did not match symptom requirements. At the same time, there seemed to be no problem with the ISO and RM amending the psychiatric diagnosis if it meant the applicant could get a benefit, he/she would not otherwise have got, if the diagnosis provide by the initial decision maker had been allowed to stand.*

### **Discussion**

This situation affected me considerably. I have described some things above. The following are also part of what I experienced as a consequence of the bullying. Prior to the motor vehicle accident described above and the anxiety/panic attacks:

- I had very severe bowel problems during and after sittings in Adelaide, which caused me to attend on my colorectal surgeon, who after examination put the problem down to severe stress.
- Usually in the week leading up to CISA sittings in Adelaide and during them, I experienced broken sleep or averaged about 3 hours per night, because I feared potential verbal onslaughts from the ISO during the sitting week.
- I experienced depression, though suicidal ideation fortunately was not a feature of it.
- The toxic atmosphere in the Adelaide CISO clearly affected my work performance, as I wrote constantly with the haunting thought that the ISO was going to be ultra critical again and probably scream and swear at me, if I had the temerity to raise questions with him about what he changed.

I consider that the behaviour towards me whilst in the workplace was completely unacceptable. I think it all the more egregious because it occurred in a CISO and the ISOs are independent members who are appointed by the Governor-General, for the particular skills and experience they are likely to bring to the authority.

### **Final Observations**

I have made this submission because I believe that the situation of what happened to me was serious and it clearly had a very negative effect on my health. It would be irresponsible of me not to say something. I have made no claim for compensation, nor instigated any legal action, other than the complaint to COMCARE. As the attached articles suggest, this is an issue for me that is beyond any claim for compensation: it's about civility in workplaces and the need to make them physically and psychologically safe.

In terms of the PIC, it is arguable that his failure to speak with me about my submission and by not listing me because of the memo of the RM and the ISO (referred to above), this is a form of

constructive dismissal that confirmed that the behaviour of these people is acceptable in the CISA (see for example *Dillon v Arnott's Biscuits Ltd* (1997); *Batton v NSW Police Service* (1999)). It also begs the question as to why, if the PIC believed that my allegations were serious, as he stated in an email of 14 March 2012 that he did not suggest he would stand down the ISO and the RM until the proposed investigation was completed, when he was prepared not to relist me until I had answered the memo referred to above. I found his approach to this issue wanting in many respects.

Therefore, it is also arguable that what happened with the CISA in Adelaide raises serious probity and governance issues. The probity issues relate to the behaviour towards me as an ISO by the other ISO predominantly. The statute conferred on ISOs independence, which meant assessing the material before CISA and reaching a conclusion about it. Generally, the conclusion reached would be the same as that reached by the other ISOs who were sitting on the particular panel, even if the style of expressing the conclusions may have been different. That is what I meant above, when I referred to working collaboratively.

What was done to me was in part an assault on that independence. My feeling at the time and subsequently was that I was being undermined by the ISO and the RM, in order to get results they pre-determined were the correct results, without consulting with the other member (me) as they were required to do. This may be an explanation as to why the RM appeared to choose to do nothing, when I raised the bullying issue with him. I raised this probity issue with the PIC in an email dated 26 June 2012 and stated that if there had been a Federal ICAC, I would have referred this issue to it. In his reply of 27 June 2012, the PIC appears to have chosen not to comment specifically on this issue. I note also that the RM had told me, at the start of my appointment that he had had to speak to my predecessor about some of his decisions (not conforming to those predetermined by the RM and ISO?).

Further, there were no materials provided to new ISOs at the induction seminar I attended, explaining what independence and independent statutory appointments meant and what was thus required of ISOs. It was my experience that the PIC was unable to differentiate between ISOs and the employees of the CISA.

The governance issue relates to the fact that what happened to me was allowed to happen, with nothing apparently done about it, particularly when I spoke with the RM (as described above@ pg 4). Further, the failure of governance at the CISA is compounded by the fact that there was nothing in the materials provided to new ISOs at induction related to bullying and who an ISO could approach if it were being experienced. Finally, in the context of governance, the response of the PIC to my complaint was, in my view, inadequate at best. Even before there was a suggestion of appointing an independent investigator, it seems to me that adequate management practice would have suggested that, at the very least, a discussion should be held with me as the complainant, before deciding what was to be done

In summary, I believe that the bullying was either a failure of human relations and behaviour in the workplace or a process to achieve my submission to what the ISO and RM deemed was correct. It follows that the PIC should have recognised this in the submission I sent him and stood down the RM and ISO until the matter was satisfactorily resolved, something he was ready to do to me, over something much less serious. That he appears not to have done so allows a conclusion that tacitly he supported what was happening. This is a reason why I was not prepared to trust or accept his



suggestion that an independent investigator (if the investigator was truly going to be independent!) be appointed; had he said he would refer to the matter to COMCARE for investigation, which I believe would have been the better course to follow, then I would not have resigned and would have agreed to the suggestion.

Finally, even if, for argument's sake I was the worst person ever to have been appointed to the CISA (which could also say something about its selection processes), that would in no way justify what I had to endure.

Notwithstanding what I had to endure in Adelaide, I retain a very strong and high regard for the work of the CISA and the majority of its members, particularly those I worked with interstate.

**July 2012**