

## House of Representatives Committee

### Inquiry into Workplace Bullying

An Example of Senior Management Bullying – a Commonwealth Department

#### A – Outline of Major Points

1 – I wish to provide an example of workplace bullying and misuse of position and command or power by staff occupying senior positions in a Commonwealth Government department. It illustrates a number of points which I think are relevant to the Terms of Reference for the Committee.

2 – The issues my experience shows or raises are the following;

- (a) the difficulty of making complaints about very senior staff; ie, the higher up the perpetrator, the more difficult it is to make a complaint about bullying behaviour; it requires an admission of fault at high levels;
- (b) the unbalanced and very subjective manner of performance review processes, and their use or misuse by senior staff with poor interpersonal management skills;
- (c) nepotism and favouritism at very senior levels and inability to deal with this at senior levels;
- (d) the falsification of documentation by SES staff and lack of any follow up action; and
- (e) the total lack of any proper processes put in place by this Commonwealth department to deal with or call into order the above misbehaviour.

#### B – Background

2 – I work as a senior lawyer/in-house counsel in a Commonwealth Government department. An important part of my role is the instruction and briefing of senior counsel in Federal Court, Full Federal Court and High Court matters. The work is important, stressful, and often requires outside hours work. However, I enjoy the work I do.

3 – I hold a Master of Laws Degree from a leading Sydney University, and achieved high results in completing that course.

4 – I work in a small group of senior legal staff in this department. This group is responsible for the most complex matters affecting this Commonwealth department and its legal and proper obligations in the Federal Court system.

5 – This work group consists of (a) one senior manager – a band 2 SES; (b) some SES working staff (c) Executive level working staff; and (d) some assistant staff and personal assistants. I am at the Executive level, ie, (c). There is very little difference in the level and complexity of work I do at (c) as opposed to SES at level (b).

6 – Due to the accepted and admitted poor management skills of the Senior Manager, he decided to have all staff report in a very loose way – no terms were ever set out – to SES, ie, the next level of management. There are only about 14-16 people in this group. No proper guidelines about these arrangements were ever made.

7 – As a result, I was somewhat randomly allotted to a particular SES. The level and complexity of work that he and I did and still undertake in many ways overlap and are not disguisable.

### **B – Bullying Behaviour by (a) Senior Manager and (b) immediate SES Manager (“Manager”)**

8 – On one or two occasions, I had kindly looked after work for Manager at late notice, whilst he took holiday leave. In particular, I took over the carriage of an appeal in the Full Federal Court. I agreed, stupidly, to do this while involved in other proceedings. Accepting Manager’s work caused me considerable inconvenience, but I undertook it nevertheless.

#### *Performance Review Process*

9 – In each August, there is an end of year (ie, 30 June) review for allocation of performance pay. All staff in my area, including Manager, are to complete this review process with their manager by roughly the end of August. Performance pay was/is only ever paid at the end of each calendar year. If a person wanted more than a basic amount, they were offered the opportunity to make out a case to show that they had performed above the norm.

10 – Given the level of work I undertake, like most others, I wished to be given a fair chance to make a business case for a small amount more than the standard amount.

11 – The date for completing this each year has or is generally set for late in August, and now September. However, Manager wanted me to complete my own review in the week earlier than all others. I considered this somewhat unfair, as it can take time to review the year’s work and point out highlights (ie, to prepare a decent business case). I had of course had a busy year with difficult litigation work.

12 – I asked only that I be given the same time as all other staff to make out a case for the year’s performance review. That reasonable request was refused by Manager.

13 – As back luck would have it, in the reduced time given to me to put together material for my performance review, my wife burnt her hands on a stove pot late at night, the week before other staff were allowed to seek a sensible review. I took my wife to an emergency clinic for immediate treatment late that night, and was told she needed proper more long term treatment the following day to deal with hand burns.

14 – That night, mid August, the week of my year end review, I wrote to Manager from home via email to say that I needed carers leave – which was my proper entitlement – to take my wife to a hospital for proper longer term treatment the next day.

15 – The following morning, I received an email from Manager saying that I was being refused carers leave, and that I should attend work asap to deal with the year’s performance review. Apparently, that was more important than my wife’s burn injuries!

16 – I attended work that day, and left my wife to my father who was is in his 80s!

17 – On attending work that day, having been denied carers leave, Manager made no attempt, despite my requests, to discuss my year’s performance review.

18 – That night, I emailed Senior Manager and Manager stating that I was desperately distressed about the above events, and asked for the same amount of time to make out a business case for a year end performance review. That reasonable and proper request was refused.

19 – Accordingly, later that same week I had a performance review with Manager, and despite the acknowledged high quality of my work, I was given a poor rating by Manager. All other staff had until the following week to complete performance reviews.

20 – The performance review “interview” with Manager took approximately 45 minutes – hardly a detailed review of my one year’s work. At one point, it was suggested by Manager that I had not worked on certain four Federal Court cases. He said he could not find them on my list of work. The cases were all the subject of several weeks’ hearings in the Federal Court. This suggestion by Manager only shows how little he knew of and how little interest he took in my work. This only confirms how incapable this manager was of assessing my work abilities and the quality and nature of my work; yet performance reviews and pay for me was placed in his hands by Senior Manager. In other words, performance reviews of me were being handled by staff incapable of fulfilling proper managerial functions.

*Park Bench Option*

21 – Following concerns made by me the following week to Senior Manager about the above review process, the following week, the last week of August, I was called into the office of Senior Manager with Manager in attendance.

22 – During this meeting, I raised my complaint that I had been given a shortened period to put in a business case for a year end performance review; all other staff were given further time, as per the guidelines set down for all staff. I stated that I had had a difficult week with my wife's hand burn injuries, and that all I was seeking from Manager was the same time as all other staff for a decent year end performance review .

23 – Senior Manager told me (a) I should fit in with Manager's "part time" work arrangements, despite the fact that Manager had a home/work lap top computer and all others had until the following week for a year end review; and (b) I could face "the park bench option" if that's what I wanted. That is a direct quotation made by Senior Manager.

#### *Improper Mental Health Referral*

24 – In the first week of September, I was preparing to go out to a satellite office to deal with the legal implications of a matter worth \$75m. I had only just been allocated this case by Senior Manager, and needed to read up on it before meetings out of my office the next day.

25 – However, without my knowledge, Manager had already prepared a document which he had sent off to the Department's so-called Health & People section.

26 – That document stated that I required a mental health assessment. It was prepared by Manager.

27 – Crucially, the referral stated that it and the contents had been discussed with me, and I had agreed with it and its contents. The document was dated 26 August 2009. However, in subsequent communications, it was stated that I had discussed the document with Manager at a later date, but the document – which had already been prepared and completed - stated that I had agreed with it at a later date; ie, the dates don't even match up.

28 – I only in fact became aware of the document on 8 September 2009, when I received a notification about a pre-booked appointment with a Dr Jeff Bertucen, psychiatrist. The statement made by Manager, this an SES, concerning discussion of the medical referral document and its contents with me was totally and utterly false.

29 – I wrote to the Department's alleged Health & People segment asking about this. The junior staff member told me that she was only doing what she was told by to do Manager.

30 – I spoke to and wrote to the senior manager of the Health & People segment, and was told that I had no options, and was required to attend the appointment with the above psychiatrist. I was not allowed to cancel the appointment, and was told that only Manager could cancel or postpone the appointment.

31 – After some complaints by me about this, the appointment for a referral was deferred for a short while, but it was not cancelled.

32 – At this point I should say that the medical referral contained some highly insulting, incorrect and impertinent statements about me. Also, some of the questions about me put to the psychiatrist were rather insulting. Yet, the very same referral stated that I am "...a highly talented lawyer..." and that I undertake "...high quality litigation work...". Those statements and the fact of the referral for a medical assessment are difficult to reconcile.

33 – I add that a job reference was made available for me by one senior counsel, unsolicited. That senior is now a Justice of the Federal Court.

*The Medical Appointment – mix ups about cancellation*

34 – Of course, I was horrified to (a) receive a poor performance review by Manager and (b) the fact that I had been referred off for a mental health assessment without my knowledge or approval.

35 – In September, after discovering the above, I contacted the Merit Protection Commissioner, and started to prepare a complaint.

36 – I also raised my concerns about the above actions with the Department's own internal staff "Concern" section.

37 – Approaches to the department's Concern section turned out to be an outright waste of time for the following reasons;

- (a) the Concern section is only bothered about how one "feels" about being bullied; the answer to that is obvious;
- (b) the Concern section only records the name of the complainant, but not the name/names of the staff who act improperly; ie, so the recorded information on the internal departmental database makes the complainant look like the problem;
- (c) the Concern section is only staffed by a few volunteers who are generally in junior positions, and find it intimidating to approach senior staff about their management practices; and
- (d) the Concern section appears to have no ability whatsoever to take any action about or in relation to bullying.

38 – In despair, I gave up attempting to have the rotten behaviour dished out to me with internal processes.

39 – I then followed up my contact with the Merit Protection Commissioner in September. Of course, I was told that this Government department had its own internal processes in dealing with bullying behaviour. I was told of course that I should exhaust all my rights within the Government department.

40 – I prepared a draft complaint for the Merit Protection Commissioner, but continued to suffer further micro management by Manager throughout the whole of September and October.

41 – This daily and demeaning infringement on my Court and legal work required me to see my GP, and take some sick leave (stress) so that I could work from home and complete legal work uninterrupted by Manager.

42 – My GP suggested that I seek compensation. She was prepared to complete appropriate paper work.

43 – With great difficulty, it was eventually agreed (and with great difficulty) by Manager that the appointment for a medical assessment should at least be postponed. However, Manager would not agree to it being cancelled.

44 – A new date for a mental health assessment was arranged, and again I complained about the referral. In this period, I was handling quite complex legal and litigation matters for the department. I found it almost impossible to (a) deal with high level litigation matters and advice; and (b) at the same time suffer and be the subject of a mental health referral made without my approval or knowledge.

#### *Intervention by a Senior Colleague*

45 – The above persistent nuisance and daily interference by Manager was only stopped through the interest, concern and intervention by a high quality senior colleague. In other words, termination of persistent poor managerial behaviour occurred by accident and good luck, and not by design or internal processes.

46 – As a result of this senior colleague's concern, work and reporting arrangements were changed. This still took 1-2 months to fix.

#### *Mess up re mental health assessment appointment*

47 – As a result of the assistance by this senior colleague, I was then contacted by Senior Manager. He said that I was no longer required to attend a health assessment, and cancellation of an appointment would be dealt with.

48 – However, such is the appalling and notoriously bad management and organisational skills in this department, Senior Manager and Manager forgot to or failed to cancel a postponed appointment with the psychiatrist.

49 – In the clear understanding that I was no longer required to attend a medical appointment, I was then sent several emails about my failure to attend a medical assessment by a psychiatrist.

50 – Several things about this;

- (a) I was told quite clearly that I was not required to attend any medical appointment, and that it would be cancelled;
- (b) the failure to arrange cancellation of the appointment was then blamed on me, and it was stated that failure to attend had cost the department;
- (c) Senior Manager and Manger then denied that they understood this was a referral for a psychiatric appointment;
- (d) they both stated that they thought it was an appointment with a GP (if so, that is entirely inconsistent with the contents of the referral made by Manager); and
- (e) Senior Manager eventually accepted in an email to me that it was in fact a referral for a psychiatric appointment, but nevertheless told me that I was still the subject of a “reprimand”.

51 – Part of the referral to a psychiatrist was made on the basis that I had not complied with Manager’s (truncated) timetable for an annual performance review by mid August.

52 – I understand from discussions with other staff that although Senior Manager was to complete annual performance reviews by the close of August this year, 2012, he hasn’t even commenced them. Despite this, I don’t see anybody being referred off for a psychiatric assessment.

### **C- Summary and Terms of Reference for the Committee**

53 – It is clear from my recent experiences that bullying in the workplace, including large Government departments which allege they have this well under control, is thriving and very much alive and well.

54 – Internal departmental processes to deal with this type of behaviour are hopeless and totally ineffective. The more senior staff involved in ratbaggery, the greater likelihood that they will get away with bullying behaviour.

55 – There should be a proper mechanism which calls to account those staff, including very senior staff, who have no interpersonal skills and who are prepared to use their senior positions to bully and undermine the confidence and quality of staff. These people ought to be subject to review and proper accountability. At present, there is no mechanism for this. Senior staff members behave as they wish, and are only accountable to each other. Of course, they close ranks.

56 – This style of managerial behaviour causes and costs work place environments enormous amounts of money, much unhappiness and lost productivity.

57 – The above outline of events is only a summary – misuse of supposed power by one person over another is totally debilitating and undermining of the workforce. Most people I know in the area I work in want to come to work, do a decent job, and occasionally get some recognition. I am not the only person in this area who has complaints about rough-house behaviour.