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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT

INQUIRY INTO WORKPLACE BULLYING

PRIVATE SUBMISSION

SUMMARY

I've worked in the Victorian public service for many years and have experienced and seen managerial bullying in every workplace but one. Brief narratives below. I've learned a great deal about how bullying happens in the modern corporate environment – ie the form it takes and why it happens - and about the damage it causes. Some of what I've learned is set out below.

I see the problems as being:

- Managerial bullying is extremely common. The recruitment of managers needs to be approached differently, if bullying is to be prevented.
- The host employer will resist acknowledging the presence of workplace bullying (esp on the part of a manager), because it exposes the employer to liability. So, complaints are extremely difficult to pursue. A better complaint pathway or forum needs to be developed.
- Bullying is often incidental – often just part of a general abuse of power.

INTRODUCTION

I am a Victorian public servant, and have been for some years. I am 55 years old and have been a public servant since I was 17 (ie since 1974). I studied Law at Monash between 1974 and 1978 and have worked in the VPS since, apart from a couple of stints with the Commonwealth.

I've seen and experienced what is now known as workplace bullying at almost every workplace. It has not improved. It has become submerged (relatively) and more sophisticated.

I've worked at several agencies. I do not see bullying at my current workplace. I am more productive here than I've ever been, but the absence of bullying makes it feel like a holiday.

My experience is with bullying of workers by managers or management. Also, I have worked extensively in the area of occupational health and safety. I have a close understanding of the legislation and about how it is administered.

The concept of "bullying", as the OHS regulators pursue it, is narrower than it needs to be.

1 The agency was sluggish about recognising bullying as an OHS issue. This was largely attitude. OHS legislation is a radical development of the old Factory Acts, in an era when the only "OHS" issue was a physical trauma (caused, eg, by plant) that left blood on the floor. It took ages for OHS regulators and OHS legislation to recognise and regulate soft-tissue injury – resulting, eventually, in the regulation of Hazardous Manual Handling (that could lead to musculoskeletal conditions). Psychological harm was even harder to recognise, and it took longer. Soft tissue injury and, later, psychological injury, had to contend with community-wide scepticism, which unavoidably affected the legislators and regulators. Psychological injury was even harder to recognise when it was caused by something less apparent than an obvious violent trauma. It was especially hard to recognise when that something was the behaviour of people at work.

2 There was also poor legal advice about the application of OHS legislation. It was widely believed by OHS regulators that the OHS Acts did not cover psychological harm and bullying. They had become too familiar with the concreteness of the matters they usually pursued. It took some effort to convince the regulator that bullying could be addressed by the legislation as it stood: it was just a matter of ensuring that the public understood this. Even the traditional thinking about hazard identification, risk management and risk control could be applied to bullying. A bullying manager is a hazard; the risk associated with that hazard can be assessed and various controls considered; then, as with any other OHS issue, the risk can be, "so far as is reasonably practicable" (SFAIRP) eliminated, or at least reduced SFAIRP. I'm not sure this is understood even now.

3 Once the word "bullying" was used, it became necessary to define it. This was necessary, in the interests of focus, but it had an unfortunate consequence. While bullying is usually defined as repeated inappropriate conduct, there is other conduct that can traumatise or cause fear or anxiety (and their flow-on effects). However Bullying is defined, OHS legislation is not limited to that definition. So, if possible it is desirable that the Terms of Reference for this Inquiry extend to what is ordinarily understood as workplace bullying and not be artificially confined by the statutory definitions.

My experience with actual workplace bullying is set out below.

PROSECUTION AGENCY (late 1980s)

I worked here before bullying was known about, at least by that name. There was one particular episode. My colleagues and I were solicitors preparing cases for prosecution in the County and Supreme Courts. In the late 80s, I was assigned to a police corruption matter. It went for years and the case, especially the conduct of the defendants and their counsel in court, became a notorious disgrace within the legal community. The Office routinely received visits from police detectives working with us on our cases. My file and I had to be segregated from everyone else to avoid the prying eyes and sticky fingers of

detectives sent in by my accused. I worked alone, and there were two locked doors (one with a combination) between me and the next human being. This went on for about 3.5 years (the case went on longer). The case was terrible in its workload and in what we had to endure every day in court for many months. The court process was utterly abused. The magistrate took to drink and had no control. Several people stressed out of the case before me, but eventually I did too. I was given leave. Up to this point, there was stress but no bullying: the stress was caused by the job, and I think my employer simply didn't understand how bad the job was. However, when my doctor made clear that it was critical that I not return to the case, and that I be assured of this while absent so I would not have to fear returning to work, my manager didn't like it. She said, "It's your case", while I said "No, it's the Office's case". I had to conduct a formal process to force the Office to agree to reassign me on my return. They reluctantly agreed but did not agree with the finding that they had conducted themselves badly. When I returned to work, after 2 or 3 months, I was reassigned. They assigned three people to the corruption case, to do the work I'd been doing. I was given no further support, only work; I became a second-class citizen; I left.

I would not have called this Office a bullying environment. This was one episode characterised mainly by neglect (caused by ignorance and panic), but it had an enormous impact on me and my life.

REGULATORY AGENCY (mid 90s)

The management of this place was unbelievably toxic. A lot of it reflected the personality and behaviour of the then Chairman. However, it became deeply inculturated (for want of a real word) and continued after his departure

I was a prosecutor working in the Compliance area. The manager was neither police nor lawyer, but a bureaucrat who wanted the organisation to take an aggressive approach to handling its cases. Many of us had worked on "real crime" (ie indictable crime, including homicide, sexual assault, robbery, fraud and drug trafficking) in the past and we knew there was a limit to how seriously this regulatory crime could be taken by the community and the court system. We knew that a more thoughtful, scaled approach was needed. The boss wanted to use a sledge-hammer on every defendant. He showed us what he meant in his behaviour around the office. Looking back, he seemed to be playing a role. He was enamoured of law enforcement: this was as near as he would ever get to it, and he was going to milk it. So, he stomped and shouted (when he wasn't whispering conspiratorially out of the side of his mouth). He would shout at you in front of everyone and cause maximum humiliation. Many people suffered: some cried, one turned to drink, several left. Several people complained to the manager's boss. However, the boss's executive assistant always tipped the manager off when one of his staff made an appointment: he would then get in first, with his version of events, so by the time the complainant reached the boss the stage was already set. Of course, nothing changed. Things got worse for me when a new head investigator arrived. First, he conquered his own staff by dividing them (I recall the performance review meeting of one began with, "Well, we can do this the easy way, the hard way or the very hard way"). He got close to the manager by playing to his fantasy that this regulatory crime had to be stamped out at all costs. Once they became a unit, my legal team and I became besieged. We were exercising our duty as lawyers by being responsible

about the way the work was done. However, our professional duty to the court was interpreted as disloyalty. We were cut out of loops and ignored. The situation deteriorated quickly and we left. This was an organisation that had no interest in fixing things. A staff member who had the ear of the Chairman was found to have child pornography on his laptop. The IT people cleaned it. It appeared again a few months later. Nothing happened. When you are a victim of bullying, and you see child pornography tolerated, you know the employer will not tackle the bullying.

REGULATORY AGENCY (late 90s and early 2000s)

In this agency, there were two legal areas - the prosecutors and my area that developed new legislation. Field staff (inspectors) needed advice on the legislation, and this role was not performed systematically. It had been provided ad hoc by some of the prosecutors when the legislation area didn't have any lawyers. However, once the prosecutor most inclined to assist field staff left, this left a vacuum. The organisation's top lawyer, who ran the prosecutions area, was notorious for not giving advice - not returning calls from the field, not replying to their emails, replying only verbally, giving "on the one hand / on the other hand" advice. So, the field turned to us for assistance, which we gave. The top lawyer must have felt that this made her look bad, because she went to a lot of trouble to ensure that advice was not given by my area, even though there was a need for it, we were competent and willing to give it and it was well received by the field. She was old-school - not at all customer or service focused, but deep in a comfort zone and very well connected within the organisation. I spoke with the boss and he directed her and me to meet to discuss how to share and manage the advice role. She dodged the meeting for a long time. Eventually, we met. I put my proposal forward, she refused to even discuss it or to meet again. A few months later, she took my legal staff and I could not perform the role on my own. This was permitted at high level.

The agency’s Corporate Counsel also caused a lot of stress among the agency lawyers. He was very close to the Chief Executive and Chairman. He pushed far too hard to ensure that other lawyers in disparate units across the Authority reported to him. He devalued our work and interfered in it, he was rude and at times outright aggressive. He had come in from the corporate private sector, a notoriously aggressive field of operation for lawyers, unsuited to the constructive work required in the public sector. This conduct caused a lot of distress. He was also dishonest, and even corrupt. Although there was a panel of private practitioners to send external work to, he sent almost all of his work to a particular firm and pressured the rest of us to do the same. Millions of dollars in fees went to that firm. We finally understood when we discovered that the agency’s Chairman was involved in an ongoing private commercial enterprise with a partner from that firm. Usually, corruption and bullying are regarded as separate wrongs. However, this corruption added to the distress. It is distressing in itself to be close to something so ugly, and it reminds you that there are no barriers for this person - he will do anything - which means it is dangerous to speak against his actions.

DEPARTMENT (mid- to late 2000s)

It was at this workplace that I learned most about how bullying develops and is sustained. A colleague ("John") at the previous agency went to the Department and recruited a number of his previous colleagues to populate a large legislation development unit. I was part of that unit. He chose us because he knew us, the quality of our work and that we are good to work with. He, too, was good to work with and looked like being an excellent manager. At the previous agency, he had been subjected to the most acutely aggressive bullying by Corporate Counsel.

We were in a Division of the Department. Things started well. None of us had worked under John before, but knew him as peers, and he seemed to be developing into a good manager. Things began well. He trusted his staff and only gave direction. He was comfortable in being candid about team members possessing skills that he did not possess (at least, not to such a high degree). His skills were in having vision, energising people by communicating the vision and in organising tasks and people. He didn't need the skills we had, nor did we need his. He reported to the head of the Legal Branch.

This changed. A new Legal Adviser came to our Division, but was not located in the Branch we were a part of. John and his manager (head of Legal) were not getting on. The manager found John too interested in the promotion of his projects and himself and too little interested in providing a legal service to the Department. John and the new Legal Adviser combined to make life uncomfortable for the head of Legal Branch and she left. The Adviser then became head of Legal, with John effectively as his deputy.

Unfortunately, the new head of Legal was also from the big end of corporate town. This was good for John, because a corporate lawyer knows nothing about legislating. John was able to increase his manager's influence by giving him access to the Minister (in the course of legislative work), while the manager showed John the effectiveness of aggression and dishonesty (even now, people don’t expect to be lied to) and also protected him. Together, they became a juggernaut.

When the Department's General Counsel wanted to know more about what was going on in our Division, they made sure she stayed out of it. She was reduced to tears by some encounters with them: they said so. When a new head of HR came on board, they were on Friday night drinking terms with her almost straightaway. They became buddies and she covered their backs and helped them take proactive steps to look good. The relationship was paraded for everyone's benefit: you could tell that there would never be any point complaining to the legal manager about John or complaining to HR about either of them.

All this power and adrenaline affected John. He must have been insecure to begin with, without us knowing, because he became more so and this seemed to be the cause of most of his bad behaviour. He forced everyone to work in the way he works. Almost everyone (there were one or two favourite exceptions) had to do this, whether it suited them or their skill-set or not. He seemed to need to control their work more than should be necessary if he valued their skills as much as he said he did. The work had gone well with less control earlier. He interfered with the work, exercising skills which we were more equipped with than him. He worked ridiculous hours - early starts to late finishes, home then back online again by about 10pm - every day. There was unspoken pressure to imitate this. He became

openly focused on personal loyalty. Disagreeing with him became dangerous. His decisions became based on emotion and his likes and dislikes rather than on what was right or what actually needed to be done. Those who could work his emotions, or work around them, fared better than those of us who preferred to focus just on the merits. He responded well to flattery, and he could also be intimidated. He seemed to regard the rest of us (who did not flatter him or intimidate him) as not being on his side. He took everything personally. If you made a mistake, or were late getting work done, he accused you of doing this deliberately and then accused you of being motivated by a desire to undermine him. A simple error or late action resulted in the worst conceivable accusations. He also seemed to become paranoid: anyhow, he would get some of those close to him to spy on those he didn't trust. Working with him became increasingly stressful.

The inner circle became a very significant phenomenon. You were made to aspire to it. To join it, though, you had to their type of character, willing to support and do whatever they wanted. In a sense, one was better off out of that inner circle, but you also knew you were vulnerable “outside”. The tension levels were enormous. Less work got done. As the legal empire expanded, more managers were needed: more bullying managers were spawned.

As John and his manager became more powerful, they took more ethical liberties.

John and his manager decided they didn’t like John’s executive assistant. The manager yelled at her, while John (her boss) refused to speak to her for several weeks.

John engaged a former colleague to carry out project management. It was a term contract, but the annual salary was $300K, more than the Secretary of the Dept. The contract and its ludicrous salary were renewed and went on much longer that term contracts are supposed to. After doing very little on the big project he was brought in for, the project manager was given the job of monitoring all projects - a job which could have been done by an employee paid much less. Still, he was a wily tactician and, by then, a willing spy and a member of the inner circle.

Sometimes, it is hard to distinguish between nepotism and the results of good networking. However, you know it's gone too far when the recruitment has no merit and is brought about on the sly or by force. John's manager wanted to recruit a friend into the Branch. He brought enormous pressure to bear on the recruitment panel, to ensure that this happened. The friend was recruited by this duress. The panel was not told of the friendship. The friend was recruited to carry out policy work. Lip service was given to this for a short time, but the friend didn't do this work at all well and, after a short period, the friend was moved (actually, promoted) into a job that was the same as the one he'd left to come to our workplace.

A lucrative contract was awarded to a firm of which John's wife was a member. John’s manager showed signs of being a sexual predator.

These are just samples. As with the previous workplace, knowing that the managers had no ethical barriers greatly increased the stress involved in working for them. Their behaviour was ethically disgusting, and you knew they'd do anything to defeat any complaint.

If you spoke up against them, you immediately became marked. Suddenly, they found fault with your work. Sometimes, they'd also act spitefully - for example, by denying you an amenity that was available to everyone else.

The legal managers' relationship with HR also made it hard to complain. They were able to get on the front foot by doing things that made them look like good people managers. They even made it appear that they were concerned about bullying by taking action against staff for bullying. Complaints against them, however, were addressed in mediation. It was always the same mediator, engaged privately by their friend in HR, and the mediator always concluded that the conflict was the worker's fault or, at best, a clash of personalities. Mediating these complaints was lucrative work.

Some of us complained to the Department Secretary. He was principled and sympathetic, but seemed unable to influence the behaviour of the legal managers, at least in the long term. The prevailing view is that he was intimidated by them: they love to fight, and he hates to. The best he could do (which was better than nothing) was to rescue some victims - by relocating them, with varying success.

Most of us have left, now. We were seriously hurt, and it is hard to say what the long term effects are. My wife still works there. She was treated so badly that she became clinically anxious and depressed - so much so that she was unfit to work. She was absent without pay for almost a year. She is trying to claw her way back to work, not in the Legal Branch but in the same Department. It is very, very hard.

In my case, John's spite extended to attempting to undermine my new role at my new workplace. I had to conduct a formal grievance process about this. He obstructed the process at every point, because he understands the effect of attrition on people who are unwell and because he was desperate to avoid any independent person hearing the matter. He was found to have acted dishonestly by going behind my back to my new employer.

IMPACTS

- Fatigue and tiredness.
- Insomnia. Go to bed, dog tired, and sleep. Awaken at 2.00 or 3.00am, unable to get back to sleep. Try sleeping pills. These are extremely addictive. I took sleeping pills almost every night for about 3 years. These pills just make you unconscious: you don't feel rested in the morning, you just know you weren't awake, and you don't vividly experience your waking hours.
- Anger and short temper. Flow-on effects in close relationships.
- Depression, just feeling miserable.
- Impotence, presumably resulting from feeling of no value. Tried hormonal replacement therapy. It achieved nothing. When Department Secretary warned managers off me for a period, the impotence disappeared immediately. It's difficult to describe how profound the effects of the sudden onset of impotence are. It goes to your very identity.
- Comfort eating. Weight gain. More depression. Became pre-diabetic. Long-term health effects.
- Wife extremely unwell (from similar cause), so energy spent taking care of her.
- Absence of her income created acute financial pressure, and consequently more anxiety and depression for us both. We've sold our home and bought a cheaper one.

- My wife's stress cost us our last fertility window. Again, it is difficult to describe just how serious this is to our plans for our life together.

WHAT I LEARNED

Pathology

Bullying managers are not necessarily people who have a strong ego and a positive enjoyment of power. In fact, most are the opposite. They are insecure. They didn't get the job on merit. They got it because they wanted it more than anyone else and because they figured out what was actually required to get it (as distinct from the documented credentials). Once in the desired position, they are at pains to persuade themselves that they deserve to be where they are, but part of them knows they've overshot and they become afraid of this becoming apparent. Anyway, they feel insecure. Much of what they do is about soothing this feeling. They feel out of control, so they over-control. They need to be surrounded by a wall of loyal people who, without looking too competent themselves, insulate the manager from questions and comments from below. They get rid of highly talented people, so their mediocrity is less apparent. If they can't get rid of these people (or, if they simply need them), they keep them on but keep them disempowered. This is easily achieved, by excluding them from any inner circles, bad-mouthing them, undermining their work to make them look bad (etc). They form alliances with similarly placed insecure managers, and they protect each other: each is highly motivated.

I believe a very high proportion of managers are like this.

The manager’s gender is irrelevant.

Another common pathology is busyness. We have too much to do, and too little time in which to do it. Look at the way people in cities (Melbourne, at least) drive: increasingly hurried, impatient, aggressive. Some are arrogant before they get behind the wheel, but many are just in a hurry and behave at their worst. Same with the workplace: way too much pressure and stress, so managers behave at their worst.

Complaining internally

Typically, the worker's life gets even worse after complaining about being bullied by a manager. In most organisations, the organisation closes ranks behind the manager. This may not happen if the manager happens to be of low value and the victim of high value. Usually, the choices are:

- put up with it
- leave
- take them on.

These are all poor options.

Independent scrutiny

This can work. However:

- It may not be easy to prove. Much bullying is covert: the tools used are bureaucratic, not physical. Colleagues may suddenly forget what they saw and heard.
- You have to find a forum. There's no way a WorkCover claim will be accepted. OHS regulators do not yet seem to be up to the task. Fair Work Australia is a better forum. Or, in the case of Govt, the processes based on the Code of Conduct. Also, a lower standard of proof.
- It's a war, which is stressful. The employer is now defending itself (because of the OHS and WorkCover premium ramifications of the dispute) and will do what it can to win. For example, it will attack, usually on the basis of some new spin on your work performance. It will protract the dispute to wear you out. You have to hold on to the hearing: then, they're in trouble.
- Even if you win, you may still have to leave.

HR

HR people come from business colleges. They exist to help the business, and this allies them with management. When it comes to addressing bullying by managers, this allegiance is very harmful. They are at pains not to conclude that the manager is a bully. The more senior the manager, the more reluctant HR is to draw this conclusion – because it reflects badly on the employer. If the conclusion is hard to resist, they speak of a clash of personalities. Then, to make the employer appear interested, they organise some mediation - with predictable results. Of course, it is not always like this. Some HR people are too good-hearted and ethical to behave this way, and will really try to understand the problem and really solve it. How HR behaves depends on the cultural signals given by the Chief Executive, but the basic pro-business posture of HR, while appropriate in many contexts, is not appropriate in the context of bullying by management.

I have seen a principled Chief Exec give the right signals and model the right behaviour. He apparently hoped he could lead by example, but was mistaken. He needed to follow up and insist, especially when he heard about bullying by managers.

The burden of being the victim

Being the victim of workplace bullying is pretty bad - even at the time, before you measure flow-on effects. However, it's not just the immediate impact - the feeling of fear and being of no value - it's the dilemmas you experience. For example -

- Will I fight back or complain about it? This will provoke my manager, and make him/her angry. Then, things could get worse.
- Who will I complain to? Is there anyone in HR who is not automatically on the manager's side?
- Will I lodge a WorkCover claim? My employer will deny the claim (the employer won't admit to having a bullying manager on staff because that puts the employer in breach of OHS legislation), and I'll have a war to wage. Do I have the energy for a war?

- Will I go to the media? Do I really want my name or picture in the media? I have a family, and I must continue to work.

If you do make a complaint to HR, and they say they believe you (a rarity), it's still hard. They still won't move against a senior manager. Instead, they attribute the problem to a clash of personalities. They work the victim. You'll be sent off for counselling, or to be taught tricks for dealing with anxiety (mindfulness, meditation, whatever) or taught assertive communication. They'll "encourage" the victim to "manage upwards", which usually involves pandering to the manager's personality. Or, they'll move you, no matter how much you love your work and how good you are at it. They won't move the manager. Or you'll find yourself in mediation, with a mediator you had no part in choosing. The manager will remain, unchanged. Even if HR try to illuminate the manager, they may not succeed. Then, instead of taking stronger action, they return focus to the victim. Why? Because the victim wants to talk, wants the problem solved, which makes the victim easier to talk to. It's just easier to work the victim.

Preventing bullying

It is important to prevent bullying from happening, rather than try to clean up the mess. We need to be far more careful in recruiting managers, placing people skills (even personality type) further up the list of selection criteria. And we have to mean it. No-one wants to be on an interview panel: we're very busy, panel work is perceived as not being real work and as getting in the way of real work, so we spend as little energy and time on the task as we can. The people who most want the job, and know how to work people and work rooms to get it, will often give an excellent interview. Panels too often allow themselves to be fooled by this. Referee checks are often very cursory. So, the wrong person gets the job. If we take more care at this stage, we can at least

HR needs to do the bulk of the work, not leave it to the line manager.

A high quality personality profile test might reveal some problematic traits.

We have to create a better forum for disputes. The WorkCover systems and OHS schemes don't seem to be able to handle workplace bullying, unless it is extremely overt.