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Clerk Assistant (Committees) House of Representatives Committee Inquiry into workplace bullying PO Box 6021 Parliament House Canberra ACT 2600 Email committee.reps@aph.gov.au



Submission to the House of Representatives Committee Inquiry into Workplace Bullying

Condemnation of an Employer and WorkSafe in a Bullying Case

My name is **the second second** (retired) and I make this submission on behalf of **the second**, a workplace bullying victim. I do this on her behalf because she is still so dreadfully traumatised by her experiences. She is still suffering from Post Traumatic Stress Disorder and still has suicidal tendencies. I have closely followed this ongoing five year saga, and the failure of the systems that should have, and were intended to have, the prevention of such things happening to anyone.

I have known for over eleven years. She was a very bright, bubbly, optimistic, successful, financially secure, very competent, well travelled, slim and active person with a very real joy of life. She has received many awards for excellence and many job promotions, both in Australia and overseas, in various commercial or philanthropic organisations.

Today she is a suicidal recluse and has been reduced to penury by workplace bullying and the subsequent involvement of various Public Authorities.

I was very pleased to read that the Federal Government was holding this Inquiry, and also pleased that I was a person who could make a submission. I have come to realise that it will take a major attitudinal shift by Governments, Public Authorities, Major and Minor employers, Company Directors, executives and senior staff to bring about the very important changes needed to reduce and preferably eliminate the very high incidence of workplace bullying.

During my working life I spent 18 years in industry followed by over 30 years in private practice. Never have I been confronted by such an utter systemic failure by an employer and the Authority responsible for stopping workplace bullying. Never have I seen such utter destruction wrought on a human being by others, both in the workplace, and from the Authority charged with protecting the rights of the victim.

From experiences that I have often witnessed, I have come to understand not only the massive unnecessary wasted cost to business but also the massive unnecessary human cost to innocent individuals caused by workplace bullying.

I will seek to address many of the terms of reference of the Inquiry. However I ask for your forbearance since most of what I write is what this victim of bullying has experienced and the failures of the institutions created to protect her. I will summarise later what I sincerely hope are your Committee's aspirations that have brought this Inquiry into place. I will humbly put my point of view as to how I think how these aspirations may be achieved.

I seek to outline experiences that have destroyed her and turned her into the suicidal person she is now. There are many individuals, organisations and Authorities that hold various levels of responsibility for the scourge of bullying. I will try to deal with each these that have so affected events over the past five years under the following general headings.

1

The actual workplace bullying that took place at of one of our Major Financial Institutions (MFI), namely the

The subsequent treatment given to her by the Management, Executives and Directors of MFI.

The involvement of WorkSafe Victoria

Her legal attempts to get redress through the Federal Courts.

Her legal attempts to seek redress through the Victorian Civil and Administrative Tribunal (VCAT)

Her attempts to seek redress through the Victorian Ombudsman.

Her attempts to seek help from various Victorian Government Parliamentarians and Ministers

Nobody in this whole experience who was, and still are responsible, has made even the minutest effort to right the wrongs done to **sector**. Every single one of them has failed in their responsibility towards her. If is not just a bullying victim, a statistic, a file number or a nuisance factor. She is in fact more importantly a human being.

Unfortunately some of these areas are so intertwined that it has been too difficult for me to separate one from another in a meaningful and systematic nature. However I will try.

was employed under a Partnership Agreement between the and MFI as the State Coordinator of the program . This partnership was called and was managed by and a Junior CEO (JCEO) of MFI. The agreement was set up to promote the involvement by young people in their own local communities. The Government paid for her salary but she was physically located in the MFI's offices in Bendigo where she worked under the supposed care of the JCEO.

Over the next 22 months this JCEO bullied her endlessly. The Manager was fully aware of the way was being treated and was being treated and had told her that she needed to be moved away from the JCEO for her health's sake. The manager chose to do nothing about it. Practically every definition of "Bullying" found in WorkSafe's publications and MFI's Policy Documents were breached by the JCEO. That is "Repeated unreasonable behaviour directed toward an employee that creates a risk to health and safety"

This bullying affected the enormously requiring medical and psychological help and she needed to take all her sick leave entitlements (under medical certification). All of her accrued annual leave was used when her sick leave entitlements ran out. She repeatedly asked the Human Resources Manager at MFI to move her from the bullying environment. The HR Manager would not do this. The JCEO had a protective screen around her based on the relationship she was having with a senior Executive of MFI

. The JCEO was untouchable. The made a formal written complaint on the 28th May 2008 regarding the bullying behaviour to Human Resources department of MFI.

After nearly2 weeks she had received no response to her formal complaint from the HR Department. In desperation reported the bullying to WorkSafe Victoria 11th June 2008. Despite their rapid response policy in serious injury cases (which to WorkSafe means only physical injury) where they are required to visit the workplace within 24 hours. It took WorkSafe TWO WHOLE MONTHS to attend the workplace and speak face to face with the MFI. WorkSafe did not understand that bullying can cause serious psychological injury and that any time delay in acting could make the effects of the injury worse. In case it did.

This 'grace' time (given to MFI by WorkSafe) gave MFI the time to rapidly concoct the Constructed Dismissal that occurred on 23rd June 2008 under the guise that her position was redundant. This was a spurious redundancy. In fact the position continued under the partnership and was filled by the bully's own mother who was employed the very next day after the position continued dismissal. Because of psychological injury caused by the bullying and WorkSafe's failure she has not been able to work ever since. She has needed ongoing psychological care and often been on suicide watch by family and friends.

Returning to WorkSafe and its treatment of

On June 11th 2008 contacted WorkSafe outlining her complaints and requesting their urgent intervention. On August 7th 2008 two WorkSafe Inspectors contacted workplace and spoke to the Occupational Health and Safety Manager contacted with the Inspectors merely did a "Systems Review" which asked whether the MFI had formal bullying procedures in place. They did not ask to see the documentation, or ask whether these procedures had been employed in practice. They did not seek to speak to the bully or the HR manager or any witnesses of the bullying. It did not help contacted to the the OH&S manager and Inspector were on a first name relationship in the same town of being a town with a strong Old Boys network and a strong culture of accepting bullying.

If WorkSafe had acted promptly and thoroughly **accessed** could still have her position and the bully would have been dealt with. WorkSafe could not be bothered to investigate her case at all because they knew had been dismissed by then for raising Health and Safety issues and they thought she could not seek an Internal Review of their actions as I will explain later.

The Inspector in charge (IIC) **and the second of the secon**

was not told of the negative decision, that she had not been bullied, for weeks and then only because she kept chasing the WorkSafe Bullying Department. MFI had been told immediately of the decision on the7th August 2008 at the end of the meeting above.

asked for an Internal Review of the WorkSafe decision. This request was granted by the Senior Lawyer in the independent Internal Review Dept **Sector 1** of WorkSafe, on the grounds that the Inspectors had not followed the correct procedures and had not interviewed relevant witnesses. Some weeks later was contacted by the WorkSafe bullying unit manager (WBUM) basically saying what WorkSafe would not do on a return visit to the workplace. She would not allow the Inspectors to do what the Internal Review Senior Lawyer had told them to do. **Sector 1** responded fully, and strongly, putting her point that it was obvious that the return visit was not intended to do any actual investigation of her complaint, but was merely going to be a furtherance of their paperwork "Systems Review".

In response she provided WorkSafe with the names of 14 persons who were either direct witnesses or persons who were fully aware of what had transpired during her employment. In that response also requested that she be interviewed before any decision was arrived at. She posed many questions and put many specific points to WBUM. The sponse was ignored in its entirety by her and WorkSafe.

After the chased up WorkSafe again, a Senior Inspector (SI) was given the task of conducting the second visit to the workplace, wrote an email to the workplace was made in order to put her complaints fully before him. She also specifically put the names of witnesses who were most relevant to her case in the email.

The return visit to the workplace took place 8th December 2008. This visit was specifically conducted to actually view the MFI's bullying policy documents. The visit was adjourned for 4 days in order for the MFI to provide hard copies of them. WorkSafe also asked MFI to arrange for them to be able to speak with the witnesses listed by **Sector** when they returned four days later on 12th December 2008. The Inspectors were SI and IIC. Note that IIC had done the first "Systems Review" and was on first name relationship basis with at least the OH&S manager who they met with. It was the IIC's failures at the original visit to the workplace 7th August 2008 that the Senior Lawyer of the Internal Review Office had pointed out that he had not followed the correct procedures or interviewed relevant witnesses. This return visit could therefore not seem to me to be an independent and fresh investigation.

The only person from the list of witnesses that **a sector of** had provided and the Inspectors met with was the JCEO who was not questioned but read from a written pre-prepared statement (according to WorkSafe notes of the visit obtained under FOI). Three other major and very direct witnesses either were not available or chose not to be interviewed. Despite having the authority under the OH&S Act 2004, these persons were not pursued as were the other 10 remaining witnesses not pursued. At the conclusion of this visit SI told MFI that the original decision IIC would not be overturned. Two affidavits obtained later show conclusively that SI had told them this on 12th December 2008

was not told of SI's new decision and continued to press for an interview before the decision was made so that she could clearly put her case before him as she had constantly requested.

Eventually the SI agreed to meet with **basis** is the second of the basis of the three most direct and relevant witnesses. On being pressed he admitted he had spoken only to the JCEO, saying others were not available or refused to speak to him. As the meeting progressed it became very obvious that **basis** was not going to be allowed the opportunity to present her side of the bullying claims and it was obvious the meeting had only taken place so that WorkSafe could say such a meeting had occurred.

In WorkSafe documents later obtained under a FOI request SI has also stated that the had not provided any witnesses. **Another direct and provable untruth from SI**. At a later date told (WorkSafe CEO) about these untruths by the Senior Inspector but he was disinterested.

was not told of the second decision for some 5 weeks and was very distressed and appalled. She went deeper into depression. Once she had recovered a little she put in a request for a second Internal Review. WorkSafe chose to refuse this request on the grounds that as she was no longer employed, she was therefore not eligible to obtain an Internal Review under the eligibility criteria in the OH&S Act 2004. Note the WorkSafe Internal Review lawyers Office has the discretion to allow such a request.

then applied to VCAT and was granted a hearing before Deputy President **Constitution**. Despite having thoroughly researched and cogent arguments relating to the quirks in the wording and interpretation of the Victorian OH&S Act 2004. She was unsuccessful, mainly because a precedent had been set by a previous VCAT decision by another Tribunal member in an entirely different WorkSafe case. It was deemed irrelevant that **Constitution** had made her initial approach to WorkSafe before she was Constructively Dismissed as above.

Again was flattened psychologically. Later she wrote to the WorkSafe Compliance Coordinator regarding the failure of the WorkSafe Inspectors to properly investigate her bullying complaint and other issues. This was a very thorough document filling 9 typewritten pages. No reply has ever been received although many weeks later was told that the Compliance Coordinator had not replied because her complaint did not involve the actions of the Inspectors. **Yet another direct and provable untruth by WorkSafe**.

Because of this lack of response after several weeks provide the WorkSafe executive responsible for the Bullying Department for the Bullying D

On the advice of her treating Psychologist the second had copied the WorkSafe Staff Psychologist with her letter of complaint to the Compliance Coordinator. He responded much later saying as a result of an internal meeting at WorkSafe that he had been asked to organise a meeting with to "sort things out". The meeting was subsequently arranged by him for 3rd April 2009. Tried to get an agenda for this meeting together with a list of the participants. Neither of these eventuated. Only that the new Manager of the WorkSafe Bullying Department (MWBD) would chair the meeting. I was present at the 3rd April 2009 meeting as support and scribe for the second stream of the scribe. Only and the scribe workSafe.

As a meeting to "sort things out" it was a disaster. With MWBD refusing point blank to answer any relevant questions or to allow any proper investigation of **Sector 1** case or into the Inspectors failures to do their job properly. On being pressed MWBD said that she would only re-open the case if **Sector 1** could provide actual "HARD FORENSIC EVIDENCE". We all took this to mean Video Taping of events or medically visual evidence such as photographs or Xrays etc. that showed physical injury had occurred. Evidence of psychological injury, attested by psychologist and medical reports were not sufficient "hard forensic evidence" in her eyes. Unfortunately we do not yet have the means to photograph or Xray psychological injuries. **Sector 1** has often said to she wished the JCEO had physically assaulted and injured her. WorkSafe may then had have acted appropriately.

MWBD also would not entertain the idea that the employer was in breach of many other requirements of the OH&S act 2004 such as removing **activity** from a harmful work environment, or monitoring her health situation, or other record keeping failures, sacking **activity** for raising Health and Safety issues. MWBD said that **activity** should take this last issue to Industrial Relations despite this issue being clearly in WorkSafe's responsibly under their charter, the OH&S Act 2004

I cannot remember the date, but **a second of** and I attended a public workshop meeting in Ballarat that WorkSafe had an organised for interested persons to explain the WorkSafe publications on the subject of workplace bullying. Most of the attendees were involved in their firms OH&S Departments. The only thing that we got out of this workshop was a quote from the person who was responsible for writing these publications, She said words to the effect that the bullying usually stops when the person leaves the job. An open imprimatur for any employer to make life so difficult for the victims that they would resign!!!!!

WorkSafe has never employed any Specialist Inspector or Manager in its bullying department with any

WorkSafe has never employed any Specialist Inspector or Manager in its bullying department with any qualifications in the area of psychological injuries. They have many Specialists in physical injuries in areas such as electrical, building, mining, chemical etc. etc;

Despite over 10 thousand cases reported to them over the past few years WorkSafe has never prosecuted any psychological bullying case to conclusion. They have prosecuted approximately ten firms in cases involving serious physical bullying. These are WorkSafe's own figures. In the words of a WorkSafe executive, in an unrelated case, **"cannot do anything unless there is blood on the floor"** This epitomises WorkSafe's attitude that Psychological Injury is not Serious Injury. If you cannot see it, it cannot be serious. WorkSafe certainly pays lip service towards psychological injury in its publications but does nothing about it in practice on behalf of victims. The proof is in the pudding so to speak. The fact that psychological injury was included in the Victorian OH&S Act 2004 seems to have eluded WorkSafe.

In her desperation for some semblance of justice did two other things.

A. Firstly she put an application to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) claiming that WorkSafe had discriminated against her on three grounds. That they had treated her differently because her injury was psychological rather than physical. That she was treated differently because she was a female. That she was treated differently because she was over the age of 24. WorkSafe has different procedures if the bullied victim is under 24.

VEOHRC agreed with **Sector 1** application and referred the matter to VCAT for decision. At VCAT WorkSafe was successful in arguing that they had no jurisdiction because they did not provide a "service" under the Equal Opportunity Act and therefore could not be charged with discrimination. The Judge (Lavaca) said that if he allowed the case to go ahead VCAT would be swamped with similar cases. What he was saying to WorkSafe was that they could discriminate against each and everyone seeking their help with his blessing. By inference this same ruling now applies to every other Victorian Public Authority. The Judge's ruling went far beyond any previous ruling that had previously meant that only activities that were of a quasi judicial decision making nature were exempt from being discriminatory. It meant that any public authority could discriminate in any way it chose towards any member of the public who sought their services as they did in case. The Victorian Minister responsible for WorkSafe, **Sector** has shown no

concern about this state of affairs.

B. Secondly applied to the Victorian Ombudsman to investigate that WorkSafe had denied her Natural Justice in that she was not allowed to know what the bully or any other MFI employee had said to WorkSafe, thus having no opportunity to show the real truth of the matters.

Part of the application was that when taken as a whole, WorkSafe's Procedures denied Procedural Fairness. A further part of the application requested that the Ombudsman look into the collusion that had occurred between WorkSafe and MFI

Initially the Ombudsman and the refused application. It took great effort on my part to get him to change his mind. An Investigator was eventually appointed. The Investigator did not take any steps to talk to any steps to refuse or myself, except for a short clarification that I will remark on later, The Investigator also did not allow to know just what WorkSafe had told her thereby also not allowing to show the real truth. Again a further denial of Natural Justice.

The Investigator phoned me regarding the non provision of witnesses as claimed by the WorkSafe Senior Inspector. I specifically and clearly told her of the names of the principal witnesses **and the senior** had provided to WorkSafe and how they had been provided. The Investigator then asked me if she could phone directly to ask her the same questions regarding the provision of witnesses. I was present when the Investigator did phone **and the senior** and I did hear the conversation that took place. It was centred entirely on who the witnesses were and how the names were given to WorkSafe. I certainly and clearly heard reiterate the methods used and the names she had provided to WorkSafe. The methods used were by direct letter and email and (all are readily available if needed).

It would appear that the investigator discounted everything that both I and the bad had said specifically told her regarding the witnesses and the provision of the names, and that she had not asked WorkSafe for the correspondence involved. The Investigator's final report said that, as no witnesses were provided by the Ombudsman would take no action and that no further correspondence would be entered into. **This was yet another palpable untruth by a public servant**. There was nothing in the investigators final report that mentioned any investigation into the Denial of Natural Fairness or of the Denial of Procedural Fairness or of the collusion between WorkSafe and MFI. It was apparent that the 23 page detailed application plus dozens of pages of attached documentary evidence also containing a mass of detail was grossly ignored by the Investigator. Correspondence and phone calls between me and the Ombudsman's Office (OO) and others, clearly showed that no real investigation was ever going to be allowed into take place on OO's instructions to the Investigator.

I may yet seek, on **a second set of** behalf, through FOI just what discussions the Investigator had with WorkSafe, what she was told and what paperwork she was provided with by WorkSafe together with her notes of the telephone conversations she had with me and with **a second set of**. I would also seek the instructions given by OO that thwarted a proper investigation. The final report beggars belief with regard to its veracity

Concurrently to all of the above going on, **sector and an and an anti-sector and anti-sector anti-sector and anti-sector anti-sector and anti-sector anti-sector anti-sector anti-sector anti-sector anti-sector anti-sect**

I attended the compulsory mediation conference to support **and the set of the state** who was going through a very low period emotionally and under immense psychological stress. The MFI legal team were fully aware of the state she was in and took full advantage of it. They treated **and the set of the state** in a way that would never been allowed in any court. I witnessed the most disgusting treatment I could ever believe possible from members of the legal profession. The MFI legal team did everything they could to destroy **and the state** in a psychological way, even threatening her with counter claims. They were very successful in their endeavours. They sent her into a complete nervous breakdown quite cold-bloodedly and deliberately. She had to abandon her case. All members of the MFI board are fully aware of the treatment meted out to by the bully, their HR manager, their executives, their legal team and thereby themselves. All are responsible to this victim. None of them accept any responsibility.

Various Victorian Politicians including the relevant Ministers have been kept apprised of what has been happening to source of the past 4 years. All have simply ignored all correspondence to them. Perhaps if I had to single out one of them, the Minister for WorkSafe, source of poor treatment at the worst for his lack of concern. He was also made very aware of source of poor treatment at the hands of WorkSafe by another parliamentarian, in an adjournment debate some nine months ago but has still not responded.

WorkSafe avoided all responsibility to someone who only asked them to do their job and put the OH&S Act into effect. Tacitly they support the employers every time in cases of psychological bullying reported to them.

The Ombudsman also failed her unbelievably by not doing the job it was created for in looking into the activities of Authorities such as WorkSafe on the public's behalf. To them it was not in the public interest to expose the inadequacies, lies and failures of WorkSafe in dealing with a very straight forward case of workplace bullying.

All of the foregoing addresses issues that concern the terms of reference of this Inquiry particularly in the areas of regulatory, administrative ...gaps etc; in the systems. **Second and a second and**

Many others in workplace knew of what had happened to her and were very fearful of raising any bullying issues with management. Other's had already left their jobs because of bullying.

At present there is no incentive for employers to do anything about preventing and responding to psychological bullying in the workplace when the Authority responsible does so little to sanction them when they are clearly guilty. In the only case I can find to date where WorkSafe has prosecuted an employer (a very recent case), the company was not prosecuted because they were responsible for psychological bullying of its staff but because they did not have the correct policies and procedures in place to deal with workplace psychological bullying. A mere \$6000 fine. The fate and distress of the victims was not and has never been a consideration to WorkSafe.

If this Inquiry finds there is a real need to deal with workplace bullying from the top down, then all the existing laws, systems and Authorities responsible must be changed. At present there is no actual anti bullying law in Australia. There is no satisfactory way for a victim to be heard and redressed for the injuries suffered. There is no one to turn to. They are just cast adrift and treated as industrial waste and become burden on the taxpayer instead of a valued tax contributor.

The inclusion of bullying into the Victorian Stalking Law is now shown to be a complete and utter failure now that bullying is outside the jurisdiction of WorkSafe and in the hands of the Victorian Police who say they have no resources available to do this and no staff trained in psychological injuries.

It is of interest that both WorkSafe and the Victorian Police have many current internal workplace bullying cases levelled against themselves. According to WorkSafe figures there are thousands of cases of workplace bullying reported to them each year and yet they have a zero track record in the prosecution area regarding psychological bullying.

Humbly I would like to suggest the following initiatives to the Parliamentary Committee

An over arching Federal criminal law should be enacted to deal specifically and only with workplace bullying of both a physical or psychological nature. Any breaches of this law must have high penalties to act as a real deterrent. Any Federal law must also look after the financial and health interests of the victims, which are currently totally ignored. WorkSafe must be excluded from any association with any new law based on their total failure to date in the area of workplace bullying and particularly in the area of psychological bullying.

I believe there must be compulsory training, on a regular basis, of employers and employees regarding workplace bullying. This could be done by community based organisations but must include people who have been bullied, together with members of the psychiatric and psychological professions. For all the reasons above, WorkSafe must not be allowed to be any part of this.

All of this should be funded by the employers who after all are initially responsible for allowing bullying in the first place. In the end they will benefit greatly as will the forgotten people, the victims. Funds could also be withdrawn from the various state WorkSafe authorities that have so badly failed since they would have no further involvement in workplace bullying investigation or prosecution.

I have strived to tell nothing but the truth in this submission. There are reams of documentary paperwork available to justify what I have written if required. Anything else such as phone calls etc; can be given on sworn affidavit by and I, if necessary.

I respectfully ask that you will allow this submission to proceed in spite of its strength of feeling and general tone.

I would also like to appear at the Oral Inquiry to be held later if deemed appropriate by the Committee. At this point of time I am not sure if would be strong enough to appear. I can only hope so.

and I give permission for this submission to appear on your website for public viewing if the Committee approves its publication.

Thank you for this opportunity to write to you on behalf of **a second se**

Yours respectfully

