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About the author

David Lander is an experienced personal injury/compensation lawyer with 24 years practice in the compensation jurisdiction involving inter alia high profile bullying and harassment cases across Commonwealth and Territory agencies and most occupations and professions.

David Lander previously worked in the Territory and Commonwealth public sectors in some 10 agencies as well as in the Reserve Bank and in the private sector. He has had a diverse public sector career and an equally diverse career as a lawyer.

The writer holds qualifications in economics, psychology and law as well as a Masters Degree in Business Administration.

The writer is available to expand on his submission and to field questions.

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David Lander

SUBMISSION TO HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT: ENQUIRY INTO WORKPLACE BULLYING

EXECUTIVE SUMMARY

1. Workplace bullying is a pandemic in Australia characterised by misuse and abuse of power, lack of cultural leadership and awareness from the top of institutions and organisations, reflected in huge economic, social and personal loss and reinforced by the failure of governance and regulatory agencies to respond appropriately within the limited powers that they hold.
2. To reduce workplace bullying will involve massive cultural change, clear political and executive leadership, strengthening of sanctions including revisiting worker's compensation and common law rights and publication of "offences."
3. What we do not need are more layers of bureaucracy, more dysfunctional regulatory bodies or a lot more law.
4. What we do need is leadership, cultural awareness, effective remedies and better protections for the abused; we also need insurers to adopt more compassionate and realistic responses including shorter response times.

INTRODUCTION

Workplace bullying has grown with the advent of modern technology, managerialism, micro-management and performance management generally in the public sector in particular and in response to bureaucratic and organisational dysfunction.

Impediments to dealing with workplace bullying are widespread cultural resistance and organisational inertia in admitting that it occurs, in conceding that wrongs are created by it and in dealing compassionately and sympathetically with the victims. Too often the victims are made the culprits and further punished because organisations do not like to admit mistakes and hierarchical structures and policies obstruct proper investigation.

Insurers contribute to the culture by failing to understand and accept the existence and prevalence of workplace bullying and harassment. They know it happens but they do not want to admit to it. In particular, Comcare the largest public sector insurer, lacks insight into the prevalence and seriousness of workplace bullying both as a regulator and as a claims determiner.

Much of the cultural environment for the existence of workplace practices starts and ends with the chief executive and his or her team of executive members. In the larger institutions like the Australian Taxation Office and the Department of Defence, and in the large processing "factories" of government (Medicare, Centrelink, ABS, ATO to name 4) workplace bullying operates under the guise of performance management including micromanagement. The use and abuse of hierarchical and executive power both provides the mechanism for bullying and harassment and its justification. Almost all unreasonable conduct is dressed up by institutions as the exercise of reasonable supervisory power or authority.

REMEDIES

The carnage which bullying and harassment practices produces, does not readily lend itself to a single effective remedy. Broadly, education, cultural awareness, exposure without fear of retribution (adverse actions are common in large organisations), the reinstatement of common law rights providing an avenue for addressing the damaged caused by negligent or wilful bullying and publication of offenders in a public forum should all be considered.

What would work in a school or in a hospital may not work as effectively in a white collar government program environment. However, there are common threads that need to be addressed for all institutional settings.

WORKPLACE POLICIES AND PRACTICES

Most public sector (and indeed many private sector organisations) have established human resource based workplace policies in practice that purportedly deal with bullying and harassments. They are largely ineffectual for two reasons:-

- They are practiced more in the exception than the rule and the mere existence of the manual or policy handbook is used to defend and deny lack of action and inactivity in response to complaint or grievance.
- Investigations into workplace bullying are invariably and almost universally inadequate. Investigators start from the assumption in most cases that the organisation that is paying does not want to hear bad news and that bad news will ultimately reflect in no further contractual employment or engagement.

Legal advisors to organisations stress the importance of not making concessions or admissions at any stage of the process so as not to invoke any legal redress including commercial exposure.. This "insurance framework" only serves to perpetuate and sanction workplace bullying and harassment. The HR and legal frameworks therefore need cultural adaptations and overhaul if organisations are to reduce the incidence of the practices.

GOVERNANCE

The failure of governance, both internally and externally, to provide an independent, objective and fearless review or remedial mechanism dictates that both the legislative framework and in particular the protections offered victims and the sanctions available for abuse or misuse of power/authority need reform and modernisation.