

# A slow poison

Behind the alarming statistics on workplace bullying are personal stories of grief and hardship, revealed during a parliamentary inquiry.

STORY: JANE FAURE-BRAC

**J**ohn McPhilbin spends his day on the phone helping people who've been injured at work. But these are not just physical injuries, more often they are psychological injuries as a result of bullying.

People come to the Injured Workers Support Network with nowhere to turn; broken, depressed and humiliated. John is a very sympathetic ear to them. He knows exactly how they feel. He was one of them.

John considers himself a lucky survivor of workplace bullying. Countless others lose their job, family, self-esteem and in extreme cases take their own lives. Now with a degree behind him and in a job where he feels valued by his employer, John wants to try to change the system which pushed him to the brink and prevent others from going there too.

"You just can't underestimate how damaging a psychological injury from bullying is. I was depressed, I couldn't sleep, I couldn't get out of bed, I couldn't go into work. I'd just stopped functioning," John says.

That was nine long years ago, during which John fought a bitter battle for justice after being bullied at work.

As an ex-military man, he understood the importance of protecting staff in the line of duty, which was one of the reasons he took a job with a security firm when he returned to civilian life.

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John loved his new job as operations manager. A natural problem solver, John was good at his job and got results. He soon found himself promoted to a national role, but that's when things started to go wrong.

In the new role John says the workplace culture was driven by profit margins and bonuses and he saw safety being compromised.

"It was definitely a case of the workplace culture engendering the behaviour," he says.

"Once the change from safety to profit was entrenched, there was no going back. In one month, the profit



**HARD TO SWALLOW:**

*Many people are suffering psychological damage from bullying*

margin was 14 per cent. The following month, the managers had to increase their profit margins by 18 per cent and they were told if you achieve this, you'll get a bonus."

When John saw safety breaches happening in the name of cost-cutting, he told his superiors.

Instead of taking up his concerns, two senior managers stopped listening and started what John says was a two-year campaign of covert bullying, isolating him from other workers, undermining his work and reputation in the firm and excluding him from important meetings he should have been at.

"The French have a saying when they refer to workplace bullying; they call it the 'slow poison' and that's literally what it was like," he says. "There were a lot of passive aggressive moves made behind my back and it was very Machiavellian. You know you're being attacked, but there's very little you can do about it."

Unfortunately, John's story is far from unique. Bullying exists in all types of workplaces across the country and the Productivity Commission estimates it's costing the Australian economy between \$6 and \$36 billion a year.

The issue has been under scrutiny by the House of Representatives Education and Employment Committee, which has been conducting a wide-ranging inquiry into workplace bullying, looking at prevalence, how workplace cultures respond to bullying and whether there are regulatory, administrative and cross jurisdictional policy gaps that should be addressed.

And it's had an overwhelming response, taking evidence in every state and at each hearing making time for targets of bullying to tell their stories.

"A lot of what we are hearing is just what a devastating impact workplace bullying can have on people's lives," committee chair Amanda Rishworth (Kingston, SA) says.

"At face value, bullying can appear to be a situation between a number of people at work, but what we are hearing very strongly is that it can also be the result of systemic workplace culture and bad culture. A culture in which bullying is allowed and permitted and the organisation may even encourage it. We need to recognise some of the systemic issues around this."

Estimating the prevalence of bullying in Australia is problematic as there are no large-scale Australia-wide studies in place. Also, bullying is very much an under-reported problem.

Dr Carlo Caponecchia of the University of NSW has written extensively about workplace bullying. He says people don't report bullying for fear of a negative impact on their career.

"The data in Australia has been collected from public sector agencies which do regular surveys of their workforces," he says.

"Different public sector agencies from around the country are indicating that between 15–25 per cent of their workforce report they have been bullied in the last 12 months and that has been pretty stable over the last few years."

Davidson Trahaire Corpsych (DTC) is a leading national organisation which deals with difficult workplace issues. It's due to publish the first Australia-wide survey for some time into workplace bullying early next year.



**"You know you're being attacked, but there's very little you can do about it."**

Chief executive Michele Grow says 70,000 people a year present to them with some form of workplace grievance like harassment, perceived bullying or major inter-personal conflict.

"Focusing solely on bullying, we see 10,000 cases that relate to workplace bullying per year. That means roughly one in three employees in the workplace have experienced some form of bullying or poor behaviour and one in two have witnessed it," she says.

"So in context, every person you encounter today, one or other of you will have experienced bullying in the workplace and that's a damning statistic."

DTC's research shows that for every case of bullying reported there are between eight to 20 actual cases going unreported. "What worries me more is that of the people who do report bullying, 44 per cent say their organisation does nothing to resolve the issue and another 18 per cent say that the organisation made the situation worse," she says.

At present, bullying falls under state occupational health and safety regulations. Dr Caponecchia says this means organisations should treat bullying like any other safety risk in their workplace. It requires a risk assessment and preventive measures to be put in place.

While it may be easy to install a rail or guard on a machine to prevent a physical injury to a person operating



**FEAR AND LOATHING:**  
*Bullying goes unreported because people are scared of negative consequences*

it, organisations often struggle to understand that bullying is a product of workplace culture.

Cutbacks, restructuring, workplace change, pressure to deliver results and bottom line figures can all contribute to conditions where bullying may thrive. Similarly, more stressful workplaces have high incidences of bullying.

During his time working at a security firm, John says he was badgered by his bosses and threatened with dismissal. He says the workplace culture was so toxic, there was no-one to stop the senior managers who'd cast him as a "whinger" and a "trouble-maker".

John was eventually so damaged by the treatment he couldn't do his job properly. He left work ill on stress leave and launched a claim against the firm for psychological injury.

"They made my life miserable. I thought I could tough it out, and for a while I did, but after 12 months of this treatment, I was knocked flat by it," he says.

"There was no other avenue open to me apart from the workers compensation system and I was forced into that scheme because I needed to get back some of the wages I'd lost from being off work. I spent the next 12 months going from psychiatrist to psychiatrist to have assessments done in order to have my claim heard through the workers compensation commission."

Just as Australia doesn't have a uniform safety scheme, so it has a disparate series of workers compensation schemes. The ideal is that accidents are prevented at work, but if they occur, there should be compensation and a system of rehabilitation and bringing the injured worker back into the workplace. But it rarely happens that way.

"Unfortunately, the compensation system is heavily run by insurance interests," says Michael Harmer, chairman

## Stress factors

- The highest prevalence of bullying comes from four different industries: public administration, education, health and defence.
- The most common form of mistreatment is around verbal abuse: shouting, swearing, malicious sarcasm and intimidating behaviours.
- One in two people who experience bullying then suffer an extreme version of a stress related complication: stomach ulcers, tachycardia, hair loss, dermatitis, panic attacks or irritable bowel syndrome.
- Over 70 per cent of the perpetrators of workplace bullying are deemed to be managers, yet managers are often protected in the process.
- 'Inadvertent bullying' can happen where people are demonstrating bullying behaviours because they are inexperienced, they are untrained, they are unsupported or they are emulating the behaviour of others whom they see are successful in the organisation.
- In almost 50 per cent of cases, the bullying behaviour has gone on for more than a year.
- Around one in five people do not have faith in the complaint process – whatever that complaint process looks like.
- 90 per cent of people being bullied make the comment: 'I just want it to stop.' They don't want to go down a formal path, but just want the behaviour to stop.
- Stopping the bullying behaviour needs to be the end goal.
- About 30 per cent of bullying occurs in 'mobbing' where the behaviour is carried out by more than one person.
- An apology can go a long way in dealing with bullying, but an apology is useless if the behaviour does not change.
- It's rare to see 'contributing to creating a dignified and respectful workplace' as part of the core competencies of training for a manager.



*Based on data collected from 5,200 bullying cases in Australia. Source: Davidson Trahaire Corpsych*



of Harmers Workplace Lawyers, which specialises in industrial law.

“There’s a great interest in denying liability and sometimes the rehabilitation process is not seriously undertaken and so people get into that treadmill unfortunately of: ‘you’re on workers comp so you are in some way tainted’ – and you get your redress through that minimal recompense, which has got a massive gap between what’s received and your income you would be receiving,” he says.

Michael Harmer has been practising industrial law for more than 30 years and describes Australia’s current laws for dealing with bullying as totally inadequate.

There is no single stand-alone law which prohibits bullying. Consequently he is forever trying to shoe-horn bullying cases into existing legislation like racial discrimination or unfair dismissal.

“It’s a matter of fitting it into the existing legal boxes – and some cases of pure bullying don’t fit neatly into any one box – so it’s very difficult to take that matter forward on a viable basis. You’re really left scratching.”

His submission to the parliamentary inquiry suggests a separate law against bullying, with punitive penalties to discourage the conduct, as well as efficient and timely access to a court or tribunal to enforce them and punish the conduct.

Mr Harmer has seen some very high-profile organisations ignore bullying because the perpetrator earned the company millions of dollars. He recommends that companies are fined the amount of profit made for them during the time the bullying occurred.

He also believes Australia should go the way of Victoria and criminalise bullying. After the tragic suicide of 19-year-old waitress Brodie Panlock and the ensuing outcry at her atrocious bullying at work, the state amended the Crimes Act of Victoria.

Brodie Panlock’s three tormentors were given punitive fines. To date no prosecution has been made under the year-old law, but Michael Harmer says there’s a lot of extra value in Brodie’s Law.

“As with so many laws you don’t enact them in the hope that you’ll catch a lot of people bullying to the point of suicide. But now people know that if you conduct yourself

**“We have to take bullying seriously because there are a lot of highly productive people who’ve had their lives destroyed.”**

in a certain way, you can be jailed and you can be fined,” he says.

Once in the workers compensation system, John McPhilbin says he felt bullied a second time – this time by the system. His bullying claim was denied outright by WorkCover NSW on Christmas Eve 2003. He found the investigation process adversarial and humiliating.

“These people were really hostile and didn’t give a damn. They treated me like I was a fraudulent malingerer,” John says.

Michele Grow agrees that going through any kind of formal process is extremely difficult and people need to be prepared for what may lie down that track.

“From our experience very few people want to go down the path of formal complaints and litigation,” she says.

“People end up in that space when they feel there are no other options, but 90 per cent of people just want the behaviour to stop.”

She says the best way for companies to prevent bullying is for every employee from the top down to embody respect and dignity in the workplace.

At the committee’s hearing in Perth, Unions WA told the inquiry calls about workplace bullying had increased by 70 per cent in three years.

Sue Pethick, industrial organiser for the Australian Services Union, told the inquiry they are spending too many resources helping people exit the workplace after a bullying case. This results in costly re-hiring and re-training of staff.

The WA Chamber of Commerce and Industry represented employers at the Perth hearing. While its employee relations consultant Paul Moss agrees health and safety legislation needs “tidying up”, he’s against additional legislation to deal with bullying.

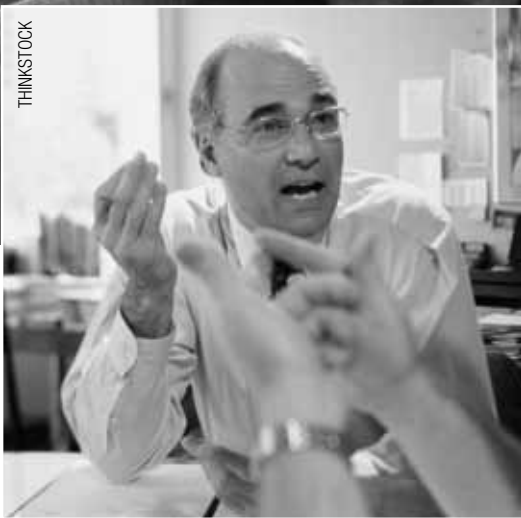
“The more legislation you have the more complex the issue is. Employers in running a business have an awful lot they need to be aware of and comply with so the more legislation we add in the greater the chance of non-compliance is going to be,” he says.

The lack of a national definition for bullying was raised as a problem by the chamber of commerce.

Definitions do differ across states, but Dr Caponecchia says quibbling about definitions avoids the issue.

“We’ve actually had definitional criteria in some jurisdictions in Australia for almost 10 years now,” he says. “Those criteria have been in the guidance material that the safety regulators have put out.”

Essentially, bullying behaviour has to be repeated, it has to be unreasonable and the behaviours have the potential to cause a risk to people’s health and safety.



#### MIXED MESSAGES:

*Different rules and interpretations of bullying cause confusion*

“The three criteria are really quite conservative, so I think we’d be in a much better place if we understood what they mean and secondly if we apply them consistently.”

Dr Caponecchia has been advising Safe Work Australia in its development of a national code of practice for preventing and responding to workplace bullying. A draft produced late last year and sent out for public comment is now being re-worked.

Safe Work Australia was established in 2009 as an independent statutory agency responsible for improving occupational health and safety and workers compensation arrangements across Australia. It has been working to harmonise the states’ various legislation into a national model of work health and safety legislation.

The model laws were adopted in NSW, Qld, ACT, and NT on 12 January 2012. Tasmania deferred its commencement date until 1 January 2013, but Western Australia is reluctant to sign up because its mining sector has specific elements not covered by the model laws. It also objected to proposed penalty levels among other things. South Australia passed the legislation in November 2012 with a commencement date of 1 January 2013.

South Australia’s own health and safety legislation offers a bullied worker the option of taking their complaint outside the internal process to the Industrial Relations Commission of South Australia.

Giving evidence to the inquiry in Adelaide, executive director of SafeWork SA, Bryan Russell, recommended that the federal regulator, Safe Work Australia, develop a national training program to ensure a consistent approach to investigating bullying complaints across Australia.

This would have been ideal for John McPhilbin. Instead he says he lobbied politicians, appealed to the media and sought help from the government to investigate his claim and force WorkCover to act.

Finally something changed and in 2009 John got a call from the same insurer who’d initially denied his claim. They apologised for past failings and appointed him with a rehabilitation counsellor. Together she and John discussed a career change and convinced WorkCover to pay for his re-training.

At a cost of around \$60,000 to WorkCover, John completed a degree in applied social sciences earlier this year and secured his job with the Injured Workers Support Network. It was a nine-year struggle for justice, which nearly cost him his life and his family.

“I was lucky. And I have to stress I was very lucky, this is not a normal occurrence,” he says. “We have to take bullying seriously because there are a lot of highly productive people who’ve had their lives destroyed.” •

The House of Representatives Education and Employment Committee released its report into workplace bullying on 26 November 2012. The report, *Workplace bullying: We just want it to stop*, is available at [www.aph.gov.au/ee](http://www.aph.gov.au/ee) or for more information email [ee.reps@aph.gov.au](mailto:ee.reps@aph.gov.au) or phone (02) 6277 4573.