

**IRIQ PTY LTD**

**SUBMISSION TO**

**THE**

**HOUSE OF REPRESENTATIVES**

**STANDING COMMITTEE ON**

**EDUCATION AND**

**EMPLOYMENT**

*Review into bullying in the workplace*

14 July 2012

The Honourable Ms Amanda Rishworth MP  
Chairperson of the  
**HOUSE OF REPRESENTATIVES STANDING COMMITTEE  
ON EDUCATION AND EMPLOYMENT**

**By Email:** [workplacebullying.reps@aph.gov.au](mailto:workplacebullying.reps@aph.gov.au)

Dear Madam,

IRIQ is an organisation established in 2008 to provide workplace relations services to employers and employees.

The Team at IRQ bring a great deal of experience from the private and public sector, from employer and union perspective and at all levels of organisations from the most junior to the most senior executive. This unique mix of skill, perspective and experience has worked hard to advocate for a fair workplace for employers and employees.

Throughout this time we have advocated on behalf of both sides in numerous cases of workplace bullying as well as cases of reasonable management action that have been misconstrued by employees who had difficulty accepting their role in workplace difficulties.

It is fair to say that we see a need for change. A need for a fairer framework that can achieve long term improvements in this area and for this reason we decided that we should make a submission to your Committee on this very important issue.

We submit this brief submission and ask for your consideration of our recommendations.

Theresa Moltoni  
**Managing Director**  
**IRIQ Pty Ltd**

## Terms of Reference

Workplace bullying can have a profound effect on all aspects of a person's health as well as their work and family life. It also has significant flow-on effects for the community and the economy, with the Productivity Commission estimating the total cost of workplace bullying in Australia at between \$6 billion and \$36 billion annually.

The terms of reference for the inquiry will focus on:

- the prevalence of workplace bullying in Australia and the experience of victims of workplace bullying;
- the role of workplace cultures in preventing and responding to bullying and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying;
- the adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums;
- whether the scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying;
- whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms;
- whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;
- the most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another; and
- possible improvements to the national evidence base on workplace bullying

## Submissions

1. Over the last 4 years, IRIQ has represented and advocated on behalf of many employees who have been subjected to bullying in the Workplace. On the converse, IRIQ has also represented employers who have defended claims of bullying in the Workplace or who have tried to protect their employees from bullying in the Workplace by third parties.
2. At times the team have been deeply disturbed by some of the bullying their employee clients have been subjected to. The majority of cases that have come to IRIQ's attention have occurred over quite lengthy and sustained periods. These employees have demonstrated incredible staying power in putting up with these behaviours in the hope they would stop before seeking assistance. In the vast majority of cases, the issues have been raised with Management and simply not dealt with in a genuine way or worse, the reaction has been one of denial.
3. Over this considerable period, our experience has been that the impact of bullying on the individuals affected, their families, their colleagues and the workplaces in which they are employed, is more profound than most people realise. The impact on the employee's mental health, confidence and ability to deal rationally with the challenges it brings, are all significantly affected. In many cases we see severe depression, an unwillingness to discuss the matters with family members and consequential performance issues that are often mistake as the cause of the problem rather than a symptom of it. From a long term economic perspective we believe that each case brings about a reduction in Australia's labour capability.
4. In cases where the employee have told their partners about the bullying, indeed we have often found, their partner or spouse having doubts about whether the employee is really being bullied or if in fact there are performance issues. This of course then causes further pressures on marriages, families and further compounds the effects on the individual.
5. Our experience has been that bullying can be instigated by fellow employees, by Managers/people in authority or indeed by third parties such as clients, customers, patients or Unions.
6. A great many of those subjected to bullying in the workplace, despite present Safety laws, believe that they are unable to do anything. Worse,

many believe that if they do complain they will either put their job at risk by doing so, that their complaint won't be taken seriously or that the perpetrators will simply deny that anything is going on. In fact, we have observed many cases where the employee has seen their GP, a counsellor or psychologist and such beliefs have been reinforced. Indeed we had one case where the psychiatrist questioned why the employee was bothering to do anything, they should just accept that these things happen and leave the job.

7. We have seen particularly strong cultures of bullying in the healthcare professions, trades areas, construction and service industries.
8. Unfortunately, the only avenues to deal with the matters have been through health and safety pathways, unfair dismissal or adverse actions. The difficulty is that all of these draw a nexus from the bullying behaviour to something else which may or may not be a resulting outcome, cause or link.
9. It is an area of employment disputation that when raised, is not seen with the same respect that a complaint of discrimination for example may be seen.
10. Whilst we believe that regulation in the workplace should be light-handed, we believe that the area of Workplace Bullying is one that needs more focus on prevention and resolution when it occurs however we do believe that there also needs to be a legislated avenue for employees to bring claims, similar to the discrimination arena.
11. We believe that cultural change is required in Australian workplaces to move us towards a society where this kind of behaviour is abhorred. Once where employers refuse to allow their employees to be subjected to this kind of hidden violence and are prepared to make tough decisions in regard to dealing with its perpetrators, no matter how effective or productive the perpetrators may be at their jobs.
12. To achieve sustainable cultural change, we need a regime of regulation and compliance for a lengthy enough period that it becomes unacceptable in our society and our workplaces.

13. The hidden cost to workplaces is enormous and already well documented. Absenteeism, presenteeism, turnover, low retention levels, low levels of productivity and costly mistakes are all part of that hidden cost.
14. The cost to society is also enormous. Spiralling health and medical costs, mental health issues, suicide, divorce, domestic violence, crime and the impact on children who may be involved are all part of that hidden cost.
15. Australia needs to address these issues in a proactive way. We believe that should happen through proactive and reactive measures and we make the following recommendations:

## **16. Recommendations**

- a) In general terms, a range of requirements that Employers are expected to follow or meet. Once these are met, Employers should be recognised as fulfilling their obligations to provide a workplace free from bullying. It is unreasonable to ask employers to conduct proactive/reactive measures and then still hold them liable for the actions of those they cannot control.
- b) These requirements however should include:
  - a. A requirement that employers conduct regular education in the workplace about what is bullying, what is acceptable and what is not, what employees rights are if they are being bullied and what the consequences are of being bullied;
  - b. A requirement that employers have policies in place that are regularly communicated to all staff and are complied with;
  - c. A requirement that employers deal with bullying complaints in a prompt and serious way;
  - d. That those complaints are investigated in accordance with a guideline of minimum expectations for which employers are held accountable;
  - e. That where bullying is found to have occurred, that there is a stated requirement for action to prevent further bullying in the workplace;

- f. Where an employer knows that a particular person has had a history of bullying behaviours that they are required to proactively monitor their behaviour in the workplace.
  - g. Specific legislation around what kind of actions employers are required to take when they get a complaint and what action they are required to take when dealing with it.
  - h. That there be penalties in place for where it can be shown the guidelines for preventative strategies and for dealing with Complaints are not met.
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- c) The actual perpetrators of bullying behaviour should be individually held liable for their actions where the employer has taken proactive steps to educate them in the Workplace. This may mean recognition that such behaviour indeed constitutes the most serious misconduct in the workplace in addition to the perpetrator being required to provide financial compensation to the victim/s.
  - d) Those employees who are found to be subject to bullying behaviour should have certain rights such as the right to have the perpetrator moved, the right to stay in their job, the right to not have to work with that bully, the right to come to work and be genuinely free from bullying behaviours.
  - e) That a tribunal of approved specialists in this area be able to deal with these kinds of complaints when a dispute arises. Not after the ending of the employment relationship, that's too late. There should be an ability to have this dealt with while it is happening. Employees need to be able to access assistance to deal with these matters. Of course that means employees should be protected against adverse action brought as a result of making a complaint.
  - f) The tribunal or assisting specialist should have the power to make orders in relation to education and other resolutions in these kinds of cases.

- g) Were the employment relationship has ended, Tribunals should be able to make orders for compensation for pain and suffering that has realistic and fair caps. A paltry sanction is not going to achieve a change in behaviour. We would also advocate a sliding scale on the cap to reflect the size of the organisation and the level of expertise that they have access to.
- h) There should be some capacity for employees to get costs awarded where they are the victims of such behaviour and an employer has not handled it in accordance with the requirements.
- i) On the converse, where employees make unreasonable and costly claims against an employer for cases they haven't brought to the employers attention in the first instance, there must be a requirement to deal with them in the workplace first.
- j) In the event that an employee does bring a claim forward that is unreasonable, there should be a mechanism to limit the employer's costs where for example they are genuinely trying to manage an underperformer and it has been misconstrued.