Transcript

Safe Work Australia

Building a bully-free workplace

**Presented by:**

**Peta Miller**

Director, Strategic Policy, Safe Work Australia

**Panellists:**

Michelle Tuckey  
Associate Professor of Psychology at the University of South Australia

Bernadette Nicol-Butler  
Manager, Leadership and Culture, Workplace Health and Safety Queensland, Office of Industrial Relations

**Peter Hampton**Commissioner, Fair Work Commission

[*Opening visual of slide with text saying ‘Safe Work Australia’, ‘Virtual Seminar Series’, ‘Building a bully-free workplace’, ‘Commissioner Peter Hampton’, ‘Bernie Nicol-Butler’, ‘Assoc Prof Michelle Tuckey’, ‘seminars.swa.gov.au’, ‘#virtualWHS’*]

[The visuals during this webinar are of the presenter and panellists seated at the front of a room in front of an audience]

§ (Music Playing) §

**Peta Miller:**

Good morning, and welcome to Safe Work Australia’s Virtual Seminar Series. I’d like to welcome those of us who are present today and those who will be listening online. I’m Peta Miller, and today I’m going to be facilitating today’s discussion.

Firstly I’d like to acknowledge that we are gathered on the traditional lands of the Kaurna people, and I pay my respects to them, their Elders past, present and future.

Today we’re going to explore some really interesting areas around workplace bullying, and how to design a bully-free workplace. We all know, because we work in this field, and are familiar with the definition of workplace bullying, which is repeated and unreasonable behaviour directed to a worker or a group of workers and that creates a risk to health and safety.

On the slides that we’ve been having during our introduction some of the data that some of us are familiar with that remind us that workplace bullying remains a serious problem in Australia’s workplaces, and is something we must do something about. It has huge financial and human consequences.

Our panel today are experts and well respected in their fields. And I’m not going to do justice by talking their full biography with you today, so I’m going to do a brief introduction and suggest that if you’d like to know more about them go on to our website.

Firstly it’s my great pleasure to introduce Commissioner Peter Hampton from Fair Work Australia. Commissioner Hampton was appointed to Fair Work Australia in 2010 where he also is the head of the anti-bullying panel. He has a bachelor in business and majored in personnel and industrial relations, and prior to that worked as Director of Policy and Strategy for Safe Work SA.

And I’m very pleased to introduce our next guest, Bernadette Nicol-Butler, who is a health and safety expert who’s come down from Queensland to help us out today. Bernadette is currently manager of Leadership and Culture at Workplace Health and Safety in Queensland, and previously was the Chief Policy Officer for Safe Work SA.

And finally but not least, Michelle. Michelle is the Associate Professor of Psychology at the University of South Australia, and Michelle is a leading thinker in this field. And I’m sure that all three of our speakers today are going to give us some really useful insights into workplace bullying.

So Bernadette and Peter, could I just ask you first Peter and then Bernadette to start, what are we talking about when we’re talking about workplace bullying? Perhaps you could give some common examples from your experience as a Fair Work Commissioner, and Bernadette from your experience with the regulator.

Peter Hampton:

In terms of anti-bullying applications that the Commission deals with, we were exposed to a whole range of workplaces and scenarios. But what we certainly see is that where there are bullying allegations in place, or particularly where there’s bullying conduct that’s present, what you do see is an organisation that’s distracted from its main focus. In other words, we probably all understand the impact that bullying conduct has on the individual, but what’s often not understood is the impact that bullying conduct has on other people in the workplace and the workplace itself.

So for instance what we do see is organisations distracted from what they need to be doing. We see the poor productivity, we see absenteeism, we see a lot of dysfunctional workplaces. And I suspect the reason for that is that the bullying conduct doesn’t occur in isolation. It generally occurs in the context of a whole culture. And so when later on we talk about some of the solutions to that, we need to of course look at the organisational context and culture and some of those infrastructure things, because that’s ultimately how these matters are dealt with and prevented appropriately.

Peta Miller:

So even though it’s played out through dysfunctional interpersonal relationships, there’s bigger things happening in the organisation behind the scene.

Peter Hampton:

Not always, but almost always.

Peta Miller:

Right. Very interesting. And Bernadette?

Bernadette Nicol-Butler:

Yeah. I’d agree. If we look at the workplace culture outside of just individual behaviours – because individual behaviours, even when you look at them, you may just be working on what you see as an impact between two people, when in actual fact it is often supported by an organisational culture as Peter said that hasn’t got their eye on the ball for that. But also it doesn’t account for the harm that’s caused to people that work around them, their families and many other people, and the organisation as a whole. So productivity, loss of business, impact on their reputation. So there are impacts that are really broad.

And I think in terms of how people would see bullying and may make a complaint against bullying really ranges from anything where a person may feel that they’ve been isolated from particular meetings or work, that they have been treated unfairly and consistently. Because as you see, the definition will come up at some stage where it’s repeated and unreasonable behaviour, it’s not reasonable management action, right through to what is really common assault. So in some circumstances those bullying experiences really are matters for the police versus either the Fair Work Commission or work health and safety regulators.

Peta Miller:

So the examples in terms of bullying can go from assault through to disrespectful behaviour that’s repeated and undermining people.

Bernadette Nicol-Butler:

Yeah.

Peta Miller:

So Michelle you’re an international researcher in this space. As one of the opening slides we had some of the data about the prevalence in Australia. Is Australia worse, better, the same as similar OECD countries?

Michelle Tuckey:

So the prevalence rate for workplace bullying in Australia, based on the most recent data, is 9.4 percent. And if we look at the comparative data, particularly with Europe, that would actually place us sixth out of the 34 EU countries. So I’d regard that as solid evidence that the bullying prevalence rate in Australia is pretty high.

But, you know, one thing that might surprise people in this field is that we see bullying across a whole range of industries. So bullying amongst staff members, which is what we’re talking about here, we can find that between prison officers, we can find that in hospitals between nurses, between doctors, we can find that in schools between school teachers. We find it in the government, we find it in the private sector. So it really is a broad phenomenon cutting across all Australian industries.

There are some industries that are a little bit more at risk than others. Women tend to report a higher exposure to bullying than do men. Women also feature more highly in bullying complaints that might come to regulators. I’m not sure if that’s also true of the Fair Work Commission. And there are some pockets of industries that are consistently high risk whenever we look at the data in Australia or internationally. There are things like healthcare, community services, government and administration, sometimes education. Right now though kind of a high risk industry is the energy sector where we’ve seen a lot of change in Australia, and they’ve really increased in the bullying prevalence over the last five or so years.

Peta Miller:

So I guess that was to all of you, that it leads to the point is this particular – you’re saying it’s across all sectors but there are some sectors that are vulnerable. Are there particular individuals who are more vulnerable? So what are the characteristics of the people who are experiencing being bullied, or perhaps the characteristics of those who might be potentially sources of that undesirable behaviour? And I ask this to all of you.

Peter Hampton:

Well from my perspective I think it’s a very difficult question. My experience both in a work health and safety setting and also as part of the Fair Work Commission is that there are very few common characteristics. The reality is that bullying conduct is partly – it’s a question of the perception of the person who has an expectation about the way they be treated. In terms of the individuals named or the persons that are on the receiving end of in our case an application, there are no particular single characteristics.

I mean natural human behaviour is that people will have different expectations about the way they conduct themselves, the way they’re treated with people, and that’s what we’re dealing with. What’s important I think is not to spend too much time concentrating on the individuals but concentrating on the context in which conduct occurs. It always has a conduct, and like every work health and safety hazard – and bullying is another one of those – it’s a question of a systematic approach that accepts that individuals are different. They have different tolerances, they have different expectations, but the system needs to be designed to cope with that.

So if you look at a system whereby – so let’s look at a manual hazard. In a sense everyone would accept that you design a system, accept that individuals are different, they’re built differently, they do things differently. Sometimes they do stupid things. Sometimes they don’t act appropriately or rationally. But we design those manual systems that accepts that people are different. We need to take the same approach to the design of anti-bullying approaches, accepting that people are different, different tolerances, different approaches, different expectations. We need systems that accept that we’re dealing with humans and human beings…

Peta Miller:

They have a degree of tolerance for difference.

Peter Hampton:

Yeah. And so it would seem to me that I think any sort of study into the characteristics of the people that make complaints, or in our case put in applications or those that are on the receiving end of those applications, whilst that might be interesting from my point of view, I think that would be a distraction from the main game.

Peta Miller:

So the point that you’re making is that it’s seated within an organisation. So Bernadette and Michelle, so there’s some organisational factors that kind of give us some signs that organisations may be more or less likely to have bullying complaints arise?

Michelle Tuckey:

Yeah. Perhaps I can respond to that and respond to what the Commissioner has said. So there has been some research into the individual factors that might be associated with people experiencing bullying or not, but overwhelmingly what we see when we look across all of the scientific studies all around the world, we see it is the work related factors. We see that bullying arises as a product of the functioning of the organisational system. So if the organisation is functioning really well, we don’t see much bullying. But if it’s not functioning so well, and particularly in certain key areas, then we see bullying arise, we see absenteeism arise, we see low productivity and we see a whole range of effects.

So the focus really should be on understanding how the system is functioning, where it’s not functioning so well, and building that resilient system to support resilient workers.

Bernadette Nicol-Butler:

And to add to that, you know, when we look at the legislation, and particularly around work health and safety, we are expected to implement safe systems of work. So it really goes to what does that look like in an organisation, and every organisation will be slightly different. Every team will be slightly different and every industry has differences that need to be accounted for. So no one size fits all. So if we look at those organisational factors, it could be that – and even people.

For example when you assess psychological risk, you might look at job control, you might look at overload. What’s the work look like and what kind of work is it? Different people work differently with different workloads. For example I love challenging, complex work. That’s my sort of sweet spot. If I have one thing to do I may struggle over time, because I will feel like that’s not enough. It’s not challenging. I need more to do, whereas other people have different needs in their workplace.

And really I think when you’re looking at a WHS system, as Peter said you’re looking at physical hazards. The requirement is under the legislation to consult with the workers. If you ask the workers what are the hazards, it does a couple of things. It helps them identify the hazards, what are the peculiarities for your particular workspace. But it also helps them have some ownership about what that might look like, and the same can be done around implementing safe systems of work around psychological risk to reduce bullying.

Michelle Tuckey:

So you mentioned a couple of factors there I’d just like to touch base on with respect to the research. So what the research shows is that if the work is really fast paced, so there’s too much work to do and too little time, if workers don’t have a lot of control over when and how they do their work, that’s a risk factor for bullying. Red tape, too many layers of approval, too many work constraints with getting things done in a timely way, again that’s a risk factor for bullying. Perhaps the biggest risk factor in terms of the evidence is actually what’s called role ambiguity. So that’s when the boundaries of the role aren’t clear and people can be allocated all sorts of work tasks and asked to do all sorts of different things that may not really be legitimate or appropriate for their role. And we see this consistently coming out in the bullying research.

Peta Miller:

Is that something, the lack of role clarity, that you’ve seen Peter in your experience?

Peter Hampton:

Absolutely. Look, a reasonable proportion of the matters that the Fair Work Commission deals with in the anti-bullying area arise in the context of either workplace change or disciplinary or performance management. Now anyone working in this field would understand why that occurs. But what’s interesting is that a subset associated with that is not just the different perceptions as to what reasonable management action is as against unreasonable action, but this idea about role ambiguity, and in particular workers or managers not actually understanding their role properly, understanding the parameters, and they don’t understand therefore what they’re being measured against or the managers are not quite clear exactly what they’re measuring. So practical experience absolutely coincides with that research.

Bernadette Nicol-Butler:

Yes. I’d agree. In Queensland and across jurisdictions there’s a people at work tool, which is a psychosocial risk assessment tool, and it does measure role ambiguity, role conflict, autonomy and the supports that when balanced out really lead to a psychologically healthy and safe workplace. When there’s an imbalance it leads to an unsafe workplace, and therefore those factors can result in bullying. And sometimes when you have managers who are put in positions to manage teams who don’t have the right skillset and then don’t really understand not just their own roles but how to then work with the people they are managing or supervising, that really has the potential to escalate minor problems into bullying.

Michelle Tuckey:

Managers play an absolutely key role. So we analysed 342 bullying complaints that were lodged with the local health and safety regulator here, Safe Work SA, and we found that across all of those bullying complaints it’s really coming down to the way that managers are performing their role in three key areas. So how the working hours are administrated and coordinated, so rosters and schedules and leave and things like that.

Peta Miller:

Whether they’re perceived as fair?

Michelle Tuckey:

Absolutely. Is it fair? Is there input into the process? And particularly fairness across the whole work group, not just singling one person out. Performance management, as the Commissioner mentioned, is the second domain, and that’s taking up around 80 percent of those complaints, everything from role clarity to how tasks and workloads are allocated and managed right through to the issues of underperformance, which were around 40 percent of those complaints. And the third area is how managers go about building the relationships with individual workers, with the team, and also generally in terms of work health and safety, are they leading the way in terms of a healthy and a safe work environment.

Peta Miller:

So there’s a fairly consistent message I’m hearing here about organisational factors, but also management style and communication between workers. I’m hearing quite a lot about managers and the people they supervise, problems in their relationship, but what about worker to worker complaints of bullying? Is that something that you see a lot of, or is it more manager to worker relationships?

Peter Hampton:

Because of the definition of bullying that we’ve discussed already, there is no need for sort of a power relationship to be present, but it is fair to say that the majority of applications the Fair Work Commission deals with do involve workers, or employees in the traditional sense, and secondly in terms of the individuals named, overwhelmingly they are people in supervisory or management positions. So whilst it isn’t part of the definition, they are the nature of applications that have been brought to the Commission. That doesn’t of course mean that that is the only context in which either we deal with matters or the bullying occurs in workplaces, but that’s nevertheless the sort of sample that end up coming to the Commission.

What’s important about that I think is that we do see examples where all of the infrastructure is in place, and this is particularly an issue for larger workplaces – all the policies, the strategies and the training, the reporting systems that are in place – but particularly for larger organisations where they have branch offices or regional locations, you often find that there are sort of practices and approaches taken in the context of performance management or workplace change where in a sense the policy is certainly not applied in a practical sense and sort of local management don’t follow the script and don’t follow the approach.

Peta Miller:

So it’s back to Michelle’s point about sort of inconsistent and unfair application of procedures.

Peter Hampton:

Yes. And it’s probably because – and look, management is one of the hardest jobs in the world. It is a really hard job, and anyone that sits in a position like mine, I’ve been in that role, I understand how difficult that is. So I’m not sort of critical of management per se. I understand it is an incredibly difficult job. But one of the responsibilities is to manage people and to take care of people and to set up an appropriate culture in the workplace. So the example I’m giving is a result of the organisations that have the right infrastructure but they don’t live and breathe it. In other words they don’t drive it down through the organisation so that it sort of becomes part of the culture.

Look, for those of us that have been involved with work health and safety for some years, if we recall 30 years ago or so when we really got serious in this country about work health and safety, you’d go into an organisation and exactly the same dynamics would appear in terms of those sort of manual based hazards. So they sort of put in place policies but they didn’t really apply them, and you could go into a workplace and you’d know that this was not an organisation that actually sort of lived and breathed it. Whereas if you go into a lot of workplaces, manufacturing workplaces now, you know that they actually do take this really seriously. And every step of the process they take these risks seriously and they don’t just go through the motions.

Well I think in Australia and in other countries we’re only in a sense learning to do that with hazards associated with the management of people. But we’re on that journey. We’ve started, and research and practical experience are starting to contribute to that, so that I think hopefully in years to come we’ll see yes, you can go into an organisation and say this is an organisation that actually takes these things seriously. The policies, procedures, approaches and attitudes are actually hardwired into the organisation.

Michelle Tuckey:

Yeah. Managers have a lot of discretion in how they implement the policies, and so in a large organisation with multiple sites we have situations like this emerge. But I might just flip this for a minute and talk about what’s the positive side of that. And in our research what we’ve found is if workers feel really safe to voice out to their manager and their manager takes personal responsibility for addressing the bullying situation, then we can have a really good result. It can escalate and it can de-escalate really quickly. So workers need to feel safe, that they’ve got someone to talk to, and that that person can have a meaningful impact on the situation.

And in the case of managers who do take that really seriously, we can resolve things early on in the piece, which I think is really the only solution for bullying. Absolutely we should focus on prevention and then on early intervention, because after that it becomes really difficult to get a good outcome.

Bernadette Nicol-Butler:

Yes, and I’d agree. With bullying, by the time a bullying complaint or notification comes through or an application, a lot of damage has already been done. People are on both sides and around psychologically damaged more often than not. And I think if we can pull it upstream to leaders, if leaders of organisations are leading and demonstrating that they’re really clear and serious about a particular system – I use an example many, many times where you would not tolerate, none of us in this room would tolerate an unguarded saw going, like a tree saw, in the doorway. We just would not go near it. And yet too often we walk past appalling systems, appalling behaviours and we don’t do anything.

And I think if every person in an organisation – now you don’t have to be a manager to be a leader in an organisation. If every person in a leadership role can take a stand to what good systems and good practices look like – because some of us have a responsibility to speak up because others might not be able to. You may have young workers who don’t have the experience or confidence to speak up about systems, and that’s psychological risk in the workplace. If they don’t speak up, then those of us who can should. And I think if we can work as much upstream as possible then we prevent any of those. And some of that is managing the psychosocial risks. So they’re very clear. We’ve got so much research behind the systems and the assessment tools that say if you do these things then you will reduce the psychological risk in your workplace. That’s very clear.

Peta Miller:

So our thing today is around designing out bullying. So I’m hearing a series of messages coming through. Peter you were focusing a lot on management behaviour. I’m also hearing some messages about having the policies and procedures, and Michelle you started to introduce the idea about some of the antecedents, the precursors like workload stress. I’m wondering if we can delve down a little bit more about are there particular aspects of the work design that we should be focusing on to design it out, and how do we do that?

Michelle Tuckey:

So what we’ve continued after I spoke about analysing 342 bullying complaints and that it really revealed the risk pockets in organisations, we’ve actually translated those risk pockets into a risk assessment tool. And so this risk assessment tool was focused at understanding those areas of the organisation that aren’t functioning well. It’s got a really good evidence base behind it. We can discriminate between high, medium and low risk teams for a whole range of work health and safety outcomes. But it comes down to 11 core job activities, as I mentioned, right from rostering and scheduling through to the way that the work unit is led and the relationships with individuals, managing the tasks and workload and managing under-performance and so on.

So they would align really well with those broader psychosocial assessment tools that you talked about Bernie that assess demands and controls. So we can have a multilayered approach. So the tools are there. We can do evidence based risk assessment for psychosocial hazards in the workplace that can feed into risk control strategies.

Peta Miller:

How’s that information gathered? Is it surveys? How do you find out what people are actually thinking is going on in the workplace?

Michelle Tuckey:

Our particular tool is what’s called a behaviourally anchored rating scale. So it’s like a survey but it’s a graphical tool in a traffic light style. So we have red, yellow and green zones. So it’s really easy to use, but surveys are another approach.

Peta Miller:

So Bernie you mentioned that people at work tool.

Bernadette Nicol-Butler:

Yes. So the people at work psychosocial risk assessment tool. It’s available on the Work Health and Safety Queensland website. It was developed a number of years ago and it’s freely available. At the moment you can download forms and teams can do the particular assessment. It’s more suitable to businesses that have got at least 20 employees, but you could do it in a different way as a focus group for teams with less than, just to have the conversations. It’s freely available. We’re at the moment developing it as a digital tool to make it a little bit easier for people to use.

Peta Miller:

So Peter, you don’t use surveys do you, and how do you investigate the concerns that are brought to you?

Peter Hampton:

Well look, the Fair Work Commission is a tribunal. So we’re not a regulator. We don’t do investigations. We don’t sort of do research. Although our approach to managing anti-bullying applications and our approach to dealing with them, the recommendations we might make or orders we might issue, are informed by exactly the sort of research that we’ve just heard about.

So what we do is we deal with applications as a tribunal. In other words we are required to provide natural justice and to hear an application, not investigate a complaint. So all of that comes with that. We generally try and have early interventions, and in particular through more informal processes. And the reason for that is that our experience is that the earlier and more informally matters like this can be resolved, the higher the probability that there will be a working relationship left at the end of the process.

And the whole objective of the Fair Work Commission’s role here is to make orders or bring about preventative approaches. So it’s all about prevention. We do look backwards. In other words we do have to make findings about whether or not there has been repeated and unreasonable conduct that creates a risk to health and safety, but we only do that to find our jurisdiction – if you don’t mind the legal term. So we have to find our jurisdiction, but the reason we do that is only so we can look forward. Because what we need to do is actually look forward and say well, is there a future risk of repeated and unreasonable conduct, then what are the sort of preventative strategies and approaches that will be put in place.

Peta Miller:

And what are the preventative strategies that you recommend?

Peter Hampton:

Right. Well either by recommendation or orders. Look, the Fair Work Commission’s approach has been firstly to recognise that there are in a sense some immediate issues. There are likely to be some immediate behaviours that have brought about an application. So let’s assume that the Commission considers or it’s agreed that there has been unreasonable conduct. Then the first thing to do is to in a sense deal with the conduct. But secondly and much more importantly is recognise, as I said earlier, this all occurs in a particular context. So it’s all about infrastructure, it’s all about making sure the policy settings are right, the training is right, the relationships are right, the role definitions are right – depending on of course what it is in the particular context that arises.

One of the challenges of course is to have appropriate grievance procedures, and in a sense every organisation who wants to deal in this area needs to have a proper formal grievance process. But my experience and experience of other members has been that ironically what’s important as part of this process is that there almost needs to be permission given from the top for individuals that feel that they’re being bullied to raise matters informally and raise them earlier. Because the moment a formal complaint is made, it has particular consequences for the individual, for the organisation and for the person that’s named. And in a lot of cases that’s appropriate, because the behaviour is considered to be so serious it needs to be dealt with formally so it can be properly investigated etcetera. But there’s a whole class of behaviour that if it was actually dealt with earlier and more informally, the results are going to be much better, much better for workers, much better for the individuals who would otherwise be seen as the people conducting the conduct, and better for organisations.

So it’s really hard to sort of hardwire that into a policy. You can have it there. I’m actually talking about the culture of the workplace that accepts that it’s not the end of the world if a worker has concerns about the way they’re being treated. And they need to be able to raise that in a way that doesn’t sort of polarise parties. I accept it’s hard to write that down, but when you see it and when you see it in practice, you will recognise it.

Peta Miller:

And Michelle and Bernie, so we’re hearing Peter’s message that early interventions are key but also de-escalating things early and opening up conversations in workplaces.

Michelle Tuckey:

Absolutely. I couldn’t agree more with what the Commissioner’s said. Once it becomes too far escalated it’s really difficult to de-escalate it, and there’s good kind of qualitative case study research that will support that. We’ve talked already about the need to feel safe to voice out. So having a culture that allows people to speak up is really important, otherwise it just goes underground and then we don’t see it until it becomes too far gone to kind of resolve.

But it really does go back to the culture. It goes back to people speaking up or other people speaking up on their behalf. It goes to people being able to have really tough conversations early on to send the right signals. But what we haven’t really wandered towards is this prevention idea. So this is already talking about little things that are bubbling up and getting bigger, but we need to go right back to that prevention stage. Organisations need to actually assess the risk for bullying in their organisation. They need to assess the way work’s designed, how demanding it is, how much control there is. They need to use the tools available so that they can actually change the work situation. And then if we’ve got this resilient work situation we can have little conflicts and things bubble up, and they can be resolved without escalating into ongoing bullying.

So prevention is actually the number one message, and that prevention has to be assessed and targeted at those organisational factors.

Bernadette Nicol-Butler:

Yes. I’d agree. If we can prevent bullying – and for me it always comes back to the legislation requires safe systems of work, not that it’s about compliance with the legislation. But we know, as Commissioner said before, that with physical hazards we’ve really grown over the last couple of decades about how we identify, how we mitigate the risk, how we then review and we improve. So the legislation is structured like that, most occupational work health and safety legislation. So if we consider the psychological risks in a workplace in the same way, we can have those conversations, because the legislation also requires communication and consultation. So if we think about it from a prevention perspective, we want to identify and then mitigate risk. We talk to our teams, we talk to workplaces, talk to each other, and then set up the system that works. Because it’s not enough to just have a system, it has to be one that works.

And then if we can do that and then there is an issue and then something crops up that we may not have identified, it comes into okay, well what’s the review, what’s the process that we’ve put in place that allows people to say actually this doesn’t quite work so therefore what’s our process for reviewing that, having those conversations again, and implementing more effective controls.

Peta Miller:

To just ground this back into the law – so you get let off the hook for a moment and I’ll turn to my other two experts. So Peter and then Bernadette, would you mind just clearly articulating what does the law say in both those two jurisdictions?

Peter Hampton:

Well I’ll start. The Fair Work Commission and its predecessors has been dealing with alleged bullying circumstances probably its entire existence.

Peta Miller:

And when was it set up?

Peter Hampton:

Well over 100 years ago. So it’s a very longstanding tribunal, had different names and different remits, but effectively it’s the same tribunal from the Conciliation and Arbitration Court of the early 1900s. But what we now describe as bullying behaviour has been a factor of unfair dismissals and grievances and other issues for many years. In 2014 the Federal Act was amended to give the Commission what I would describe as a preventative anti-bullying jurisdiction, and so what that involves is the definition of bullying, which we’ve talked about a number of times. It allows an applicant worker to bring a claim if they genuinely believe that they have been subject to bullying conduct in a workplace, either directed to themselves or a group of workers to which they belong.

So that’s sort of the fundamental basis of the jurisdiction, but that involves claims about behaviour by individuals, either one or more individuals in a workplace. Those individuals need not be workers. That is the applicant has to be a worker, as an employee or a contractor or otherwise in the workforce, but the individuals that are claimed to have committed the unreasonable conduct, they are individuals. In other words they just need to be people, individual people. So generally in our experience they are workers or other people in the workplace, but they may not be. They may in fact be visitors to the workplace. They may be contractors. They may be clients. They may be in a residential care facility. They might be the partner or other relative of a client. And if they conduct themselves in a repeatedly unreasonable context, then that could be the basis for an application.

So it’s a very wide remit indeed, although the majority of matters we’ve dealt with are employees in more traditional workplaces. Our job is to try and get those matters resolved in a preventative context. That is trying to preserve the employment and contractual relationship, and potentially to make orders to do so. So it’s an entirely preventative jurisdiction. We don’t award compensation. We don’t make findings of guilt or otherwise. We don’t lock people up. What we do is we try and preserve and maintain or make safer ongoing workplace relationships. So that’s the remit of the Fair Work Commission.

Peta Miller:

So very precise but also reasonably restrained, whereas health and safety laws across Australia, how do they deal with this issue?

Bernadette Nicol-Butler:

The health and safety laws – the definition of bullying is the same as what’s used in the Fair Work Act. So repeated and unreasonable behaviour that’s going to present a risk to health and safety. So in most work health and safety legislation across Australia, even though it’s not all WHS, it’s consistent, particularly the WHS legislation. There is an obligation for a person conducting a business or undertaking to protect the health and safety of workers. Now health is defined in the WHS legislation as physical and psychological.

So that’s where bullying sits. It sits as a psychological risk. And business owners, persons conducting a business or undertaking it, have that responsibility to make sure. But also workers have a responsibility that they by their acts or omissions don’t impact others, and other people who come into a workplace, for example other contractors or visitors, also have a responsibility. It’s just not something that we’ve done as well as we should, and we’re not as a community as comfortable working through psychological risks which include bullying behaviours as we are with managing physical risks.

My observation is, and I’m sure across the panel would see, that more and more we’re asked by businesses ‘What can we do? We know that this is a really important issue. We know that we don’t want to psychologically injure our workers and we don’t want them injuring each other. So what do we do and what can we do as the first steps?’

Michelle Tuckey:

I might respond to that question actually. So bullying plays out amongst people in organisations, but it really arises from the organisational system. That’s pretty clear from this morning’s discussion. So we might work on how managers behave towards their workers. We might work on how workers interpret their role and their behaviour in relation to that. But that’s still leaving the solutions at the behavioural level.

So in addition to how workers interpret things and behave and how managers act in relation to their role, we need to look at the system factors. So that might be what is the actual supervision structure? Is it whoever’s most senior on the day or are there nominated teams that have good high quality supervision? We could look at the performance management system itself. So that could be really important in shaping performance expectations and giving people really timely feedback.

Peta Miller:

Role clarity.

Michelle Tuckey:

Role clarity. Absolutely. And if there is a performance problem, in managing that in a fair and consistent way so that the worker knows what they’re doing wrong and how to improve and is given a reasonable chance and support to do that. So there’s a whole range of things we can do with these organisational systems and structures.

I’d really like to see what happens if we have an organisation that rewards both performance against budget and other operational objectives, but behaviour as well. What would happen if we rewarded behaviour and conduct equally with those other productivity objectives? That would really send a strong signal that the way people behave around here is really important. So we need to map up the supervisor behaviour, employee behaviour with these structural aspects of the system if we’re going to have effective sustainable bullying prevention.

Peta Miller:

Through today’s discussion, all of you at some level have touched on the issue of performance management, and Peter I think you mentioned that it’s a common precursor to complaints that come to you. Is being bullied because you’re a poor performer or does it lead to a poor performer? What’s the evidence say and what are you finding in practice?

Peter Hampton:

Look, that’s a really difficult question. Can I say a bit of column A and a bit of column B? In reality it’s both. It’s both. There would be little doubt based on research and I think our collective experience that if a worker considers, generally considers that they’re being treated differently or being subject to unreasonable conduct, then they’re not likely to be concentrating on the main game. They’re likely to be distracted. They’re likely to be absent from work more often than they would otherwise be. So that will lead to performance issues, and then there will be a performance management process. And if you already consider that you’re the subject of unreasonable treatment, that will at least in part shape your particular lens. You’ll look at everything through that lens and then in a sense it’s a self-fulfilling proposition.

So that’s true, but look, it is also true that allegations of bullying are made in the context where there is reasonable performance management being conducted. That is some workers’ perception is that they don’t like negative feedback, they don’t like being told how to do something or when to do something, and so it’s in that context that allegations are made. So look, it is a bit of both.

Peta Miller:

I’m hearing something there. We all have performance agreements. We all have to deliver at work. So it’s something about how performance management process is done. Is that right? How the messages are provided to the worker?

Michelle Tuckey:

Absolutely. That’s a key risk area for workplace bullying, is the formal performance management process. So we might have a performance development framework which is setting expectations and having a review and allowing people to grow and develop, but when we turn to this formal performance management for under performance, the way that that process is stepped out, sometimes people perceive that as being used to bully against them. And sometimes there is reasonable performance management being conducted, which nevertheless coincides with the bullying complaint. But the way that plays out is a high risk area for the perception of bullying.

Peta Miller:

And I think I read in your research Michelle that a surprising number of places don’t even have performance agreements in the first place. So how would workers know what the performance standard is if they don’t have a performance agreement?

Michelle Tuckey:

That’s creates a big risk, and as we’ve talked about role ambiguity can emerge from that risk and lack of feedback and so on. It’s just creating this big risk area for bullying. So it’s definitely something to have in place. It has to be really clear for workers. It has to be discharged really fairly by managers. And giving feedback to people is not actually a really easy skill, so that’s a good area for training to support supervisors. So in a way managers are getting a little bit of heat here in this conversation, but organisations really need to be able to support their managers to do their job well, providing the right resources, such as the frameworks, and providing the right kind of training, like how to have difficult conversations, how to give really good feedback. And I think those sometimes are the ingredients that are missing in organisations.

Peta Miller:

I just want to briefly turn to the role of the person who’s witnessing this going on and if they have some duties. If I’m in a workplace and I’m seeing bullying going on, do I have some duties to report it, to do something about it?

Bernadette Nicol-Butler:

Yes. I believe they do, because under the work health and safety legislation and consistent legislation across Australia, workers have obligations for the health and safety of themselves and by their acts and omissions for other workers and others. So I think that as observers we have a responsibility, and as I said before, particularly when we know that the other person may be a more vulnerable person in a workplace. They might be a younger worker. They may be a new worker. They might be someone who’s inexperienced either in the industry or where their language skills are slightly different to the norm. And therefore that might add a layer of vulnerability that might not be the case for some of the rest of us.

And also some people are just not confident. So therefore I believe that as bystanders we do have an obligation to step in and identify, as we would for any physical hazard. If we saw a physical hazard that presented a risk to health and safety, we have an obligation as workers to actually identify that and report that, so as we should for psychological risks.

Peta Miller:

What’s the health consequences? Michelle, you’ve looked at the international literature. Are people…

Michelle Tuckey:

There’s really good evidence across many, many studies, in the order of more than 70,000 different participants across all of these studies. Bullying is related to a whole range of mental health problems for workers, from depression to anxiety, psychosomatic complaints like tummy problems and headaches, post-traumatic stress symptoms. There’s a whole range of effects on the mental health of targets. The most serious of course is contemplating suicide or suicide attempts, and that’s a really, really tragic circumstance but a real one that can arise after exposure to workplace bullying.

So we’re talking about a really, really serious issue here, and good quality international evidence on the severe health impacts that people face after being exposed to bullying and also from witnessing bullying. So witnesses to bullying as well, and being in that unhealthy work environment, maybe not feeling like you’ve got a voice to be able to speak out or that something that will be done, that also creates health consequences for individuals.

Bernadette Nicol-Butler:

WorkCover data shows that bullying complaints predominantly, but any psychological health claims really cost at least four times more than a physical injury claim will cost, and the recovery is four to ten times longer for a person if they ever recover, and if as Michelle said the outcome isn’t suicide, which unfortunately it sometimes is. Because for a person who suffers that psychological injury in a workplace, they can’t see a way past that and the outcome is suicide. So we need to make sure that we take this seriously. It costs businesses, it costs industry so much more, but it costs individuals in the workplace who are injured and then their families and their communities so much more than a physical injury.

**Q&A Session**

Q: Vicki Smith. I’m a WHS consultant with the LGA workers comp scheme. It’s more of a comment rather than a question, that we’ve used the analogy of physical hazards, so manual handling and that sort of stuff, but bullying is really, really difficult to report. I’ve been bullied myself and I’ve stood up for people who have been bullied and I’ve witnessed it. So we have to acknowledge it is something that’s very, very difficult, because it’s about relationships. So it’s very easy to report a physical hazard, but it is very difficult to actually report somebody that’s been bullying or that there’s bullying actually going on and to actually deal with it. We work with councils. We put together registers for hazards. Often psychological injury won’t be on there. I did work for Families SA for 20 years, and when we did some research on what our injuries were that were psychological, you would expect that it would have been from the occupational violence that we were working with, and one of the things we sort of discovered is that a lot of it was to do with bullying. So the psychological injuries were coming from bullying rather than from the clients. So it’s more about a comment. It’s actually really difficult to deal with and report, and you don’t want to upset your team and so there’s a whole…

Peta Miller:

Taking that comment on board, how do we encourage people to speak out?

Michelle Tuckey:

So prevention is absolutely essential. Because that’s a really good point that you make. It’s such a difficult – there’s a lot of stigma and fear associated with reporting, about becoming the next target or things getting worse, and people can put their head down and just try and keep going. So absolutely prevention by addressing those risks in the way that we’ve talked about.

Bernadette Nicol-Butler:

And I’d also like to add if we can move it upstream, if we can move those conversations upstream to prevent bullying or any other psychological injury in the first place, and have it as open discussions in workplaces, just make it a normal part of what we do, to talk to each other about how we will need to work, what do we need to do in a day together to work successfully. Because none of us go to work to be injured. Most of us go to work to do a great job. And if we can have those supports in place and have the risks managed as they should be, then we’ve got a much better chance of achieving that.

Peta Miller:

So Peter just before we go to our next question, you in one of your conversations with me were sort of saying so much of it’s about kind of not saying he said/she said but just saying can we see what’s needed to get this job done here in identifying that. Have you got some practical advice?

Peter Hampton:

Well, yes. First of all I want to acknowledge the comment is absolutely right. This is a difficult area. Anything that deals with human beings and human behaviour and expectations is inherently difficult, because there’s no one size fits all. There are no off the shelf solutions. I absolutely understand that. Also just to in a sense compound the issue, there’s a lot of focus on the sort of businesses that have sort of formal policies and structures and training.

The Australian business community is essentially made up of a whole series of small businesses, and of course those challenges are different and in some respects even more challenging because you don’t have the infrastructure, you don’t have sort of the management expertise. But it’s also much more difficult in a small workplace to raise issues, so you need slightly different solutions. But the nuance solutions there are about those informal processes. And indeed some of the strengths of the small businesses, because they don’t formalise these things, complaints or concerns can actually be raised in a way that’s far less threatening than it might be through a formal structure. So it’s not a no go area. It’s not something we shouldn’t be dealing with. But yes, we need to realistically accept there are challenges here.

*Q: Hi. My name is Jessica. I’m from the Tourism Commission. But this is from a kind of almost personal level. I guess as an HR practitioner one of the things that I face quite a lot is people asking my advice about what they should do in their own businesses or in their own workplaces, and touching particularly on that small businesses aspect. So I know of an incident for example where a worker has been injured and has gone to the manager in that workplace and asked for an incident report, and there’s nothing like an incident report and nobody has acknowledged that there’s been an incident or even so much as asked that person if they were okay. And my response to that of course is quite strong, because it’s my professional sort of standard that that kind of thing is addressed. So I guess what I would like to know is what advice can I give then to who they go to and how that kind of thing is addressed, because it’s then a more systemic problem throughout that organisation. And also going back to that manager, not having any management support or training and development, but it’s not my job to kind of step in and do that for another business.*

Bernadette Nicol-Butler:

I think your response in relation to – often times it is the manager’s capacity to understand people. Often times, as I said before, people are put in positions where they don’t really know how to manage people. It’s not one of their strengths. And unfortunately by virtue of just their work they get put into positions to do that. I think there are a number of resources across probably all of our websites that would potentially assist people to put some of those systems in place or at least have the conversations. And ultimately it really is if we can figure out how to communicate with each other in a workplace – what do you need to successfully do your job without an injury and what do I need not just from you but also what do I need from myself.

And I heard an example the other day where an employer said she’s got a team and she didn’t realise that when she’s challenged she behaves in a particular way, where she starts to sort of scurry around and she’s hurrying and she’s muttering. And she said she didn’t realise that she was actually stressing out her team until they had a conversation, and then they talked about okay, what’s – because she may not realise she’s starting to do this, because she’s going flat out, she’s challenged, she’s got deadlines herself. And they came up with an agreement that when she’s like that somebody will just say ‘Just breathe’. And it’s simple. They don’t have to come and say ‘You’re stressing me out. You’re making me feel bad’. It’s just ‘Just breathe,’ which says to her ‘Your behaviours right at this moment in time are causing me stress’. Now I appreciate that’s sort of a simplistic view, but for a lot of organisations it just might work.

For some – and I think these are the less frequent where people go out of their way to make people feel bad and they go out of their way – a lot of times it’s just that they don’t understand their own behaviours. So I think it has to come back to workplaces having those conversations, and they are I acknowledge really difficult conversations. I’ve had some of those myself with different outcomes. But I think that’s where we have to start, particularly small businesses.

Peta Miller:

If there’s one message you’d like to give our audience listening online, what is it about how we design and build a bully-free workplace? Michelle?

Michelle Tuckey:

I think there needs to be a fundamental shift in how workplace bullying is viewed. Let’s move away from the idea that it’s a personality conflict, that it’s an interpersonal problem, and let’s move to the reality that it arises from the organisational system and it needs to be managed proactively in that way.

Bernadette Nicol-Butler:

I completely agree. If we move it out of a space where it’s a personality conflict and look at it as a system that we can manage, we can control, if something doesn’t quite work we review it and we shift the controls, or if we introduce something new – like it could be a new team member – again we look at that, we have the conversations. But I think ultimately it’s about every workplace having a conversation about what systems would we need. So practically what do we each need to work successfully in this organisation and ultimately for the organisation’s benefit, that I will not be injured and the organisation will be productive and efficient.

Peta Miller:

And Peter?

Peter Hampton:

Difficult area. No off the shelf solutions, but really, really big payoff for workplaces, for individuals and for our society if we can get better at this.

Peta Miller:

I’d like to thank all three of you and our lovely audience from Adelaide for joining us today for what I think needs to be an ongoing conversation. I know that in our conversations the four of us have acknowledged Australia has come a long way in the last couple of decades, but certainly I think we’d all agree we’ve got a lot further to go.

So thank you very much, and I’d like to close now. Thanks.

(Applause)

§ (Music Playing) §

[*Closing visual of slide with text saying ‘Brought to you by Safe Work Australia’, ‘Virtual Seminar Series’, ‘seminars.swa.gov.au’, ‘#virtualWHS’*]

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