

Pens as Swords

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- Bullying can be found everywhere. Bullying was the No. 1 source of investigations for IAB Services from NSWG agencies.
- Bullies cost organisations money, although we can't know how much because there are no systems in place to capture all the direct and indirect costs. **Staff time; Overheads , Resources, Resource support –Performance and productivity, Sickness, Medical costs, Administrative costs etc**
- Bullies are relatively safe from prosecution, and can continue using electronic devices to bully and harass targets, without understanding the consequences of their action.
- It's time bullies and their bosses are made aware that they alone are the cause of the escalating costs of bullying deaths and psychological injury claims. Shouldn't any death or serious injury (including psychological) be investigated as breach of health and safety legislation?

Questions....

- What are the links between bullying, corruption and organised crime?
- What is the place of auditors and accountants, bullies and crims in each of the phenomena?
- Is [organised crime; corporate fraud/ bullying] growing /on the wane? Why?
- What can be done to address the spread of [organised crime; corporate fraud/ bullying]?
- What can we do as individuals? At the community level? At the macro level?
- What is the role of authors such as you?

FENCE SITTING

- “If you are neutral in situations of injustice, you have chosen the side of the oppressor.” – Bishop Desmond Tutu

- As cited by Professor Charmine Hartel, Department of Management, Monash University in a presentation on ‘Bullying in the Workplace: Cause and Cure. Presentation accessed on 14/7/2009 at www.charminehartel.com

INTRODUCTORY COMMENTS

- Australian Law in relation to workplace bullying is relatively untested
- Limited discussion/research linking bullying, corruption and organised crime
- Definitional and interpretational issues exist in trying to create definitive link
- Abuse of power and control appear to be common threads
- Links to deviance should be explored
- Creation of cultures of 'fear'

BACKGROUND

DEFINITIONS

- Bullying or harassment
 - No NATIONAL definition of bullying or harassment
 - Agree to disagree
- International definitions
 - Abuse of power and control, workplace violence, aggression
- Australian State and Territories
- Commonalities in words
 - Repeated, persistent, mistreated, victimised, intimidated, offensive, humiliating, threatening, aggressive, intent

BULLYING, HARASSMENT AND WELL BEING

- Bullying behaviours
- Short, medium and long term impact
- Compliance issues
 - Legislation, policy, procedures, reporting obligations
- Reputation
 - Individual and organisation
- Cumulative impact of bullying
- Resource allocation to 'problem solving'
 - Shift the victim or the alleged bully
- Resolution options
 - Individual choice
 - Doing nothing through to criminal prosecution
 - Investigations can be concurrent

Questions....

- What are the links between bullying, corruption and organised crime?
 - Bullying can be covert and overt in nature
 - Can involve abuse of power and authority
 - May involved one or more people in 'committing' the 'bullying behaviours'
 - May require one or more people to 'hold the party line' in defending an allegation
 - May involve the commission of criminal offences such as perjury, conspiracy
 - May result in the victim committing offences against the organisation in retaliation or revenge
 - May involve deviant behaviour on the part of a number of participants

WHAT IS CORRUPTION?

- Corruption is criminal conduct that can involve under or over using one's authority, or profiteering via one's authority



- *'criminal behaviour that may involve fraud, theft, the misuse of position or authority or other acts that are unacceptable to an organization and which may cause loss to an organization, its clients or general community. It may also include other elements such as breaches of trust and confidentiality'. (Criminal Justice Commission Corruption Prevention Manual 1993:8)*

OFFICIAL MISCONDUCT

Official misconduct is conduct that could, if proved, be –

- (a) a criminal offence; or
 - (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment (Crime and Misconduct Act 2001, section 15)
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- **Official misconduct** refers to any conduct by a public official, related to the official's duties, that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. The conduct must amount to a criminal offence or be serious enough to justify dismissal. <http://www.cmc.qld.gov.au/>

WHAT IS MISCONDUCT?

- **Malfeasance**

- Intentional commission of a prohibited act or intentional unjust performance of some act of which the party had no right
 - e.g. gratuity, perjury, misuse of organisational resources for personal use

- **Misfeasance**

- Performance of a duty or act that one is obligated or permitted to do in a manner that is improper, sloppy, or negligent
 - e.g. report writing, unsafe operation of a motor vehicle

- **Nonfeasance**

- Failure to perform an act that one is obligated to do either by law or directive due to omission or failure to recognise the obligation
 - e.g. security breach, failure to report matter

WHAT IS DEVIANCE?

- Deviance
 - is a much broader term than corruption
 - includes all activities that are inconsistent with norms, values or ethics
 - *'conduct that violates the rules of any given society or group'*
(Merton:1968)
- Corruption
 - Forbidden acts involving misuse of office for gain
- Misconduct
 - Wrongdoing non compliance with departmental or organisational procedures
 - Non compliance with Codes of Conduct and requirement to treat people with respect/dignity/courtesy
- Favouritism
 - Unfair breaks for friends or relatives (nepotism)

REPORTING OBLIGATIONS

- Federal and State legislation
 - No uniform approach across Australia
 - Harmonisation approach for OHS
- Public sector reporting requirements
 - May vary from State to State and from organisation to organisation
 - Official Misconduct
 - Misconduct
 - Breaches of Discipline
- Private sector options
 - Division of Workplace Health and Safety
 - Anti-Discrimination Commission
 - Industrial Tribunals
 - Police re criminal offences

ETHICS

- Ethics principles for public officials
 - Respect for law and the system of government
 - Respect for persons
 - Integrity
 - Diligence
 - Economy and efficiency
- Respect for law and the system of government
 - A public official should uphold the laws and carry out official public sector decisions and policies faithfully and impartially
- Respect for persons
 - A public official should treat members of the public and other public officials honestly and fairly, and with proper regard for their rights and obligations

CRIMINAL LAW

- Some bullying behaviours are not currently criminal offences
- Criminal offences can be committed by 'bullies'
 - Serious assaults
 - Assaults
 - Stalking
 - Intimidation of workers and employers
 - Misuse of telecommunications device
 - cyber bullying
 - breach of organisational IT policies
- Lack of Australia wide data on criminal prosecutions for 'bullying'
 - How are statements re 'cancerous growth' supported
- Civil standard of proof versus beyond all reasonable doubt
 - Need for evidence
- Lack of 'complainants'
 - Unwillingness or victim/target to be re-victimised through the Justice System

MENTAL HEALTH, BULLYING AND THE WORKPLACE

- Mental health impact
 - One in five in the workplace
 - One in twenty in society
 - Will have a mental health issue in their lifetime
- Mental health and bullying
 - Deliberate
 - Premeditation
 - Culpability
 - Diminished responsibility
- Mental health as a defence e.g. insanity
 - A defence to corruption?
 - Fitness for duty

Questions....

- What is the place of auditors and accountants, bullies and crims in each of the phenomena?
- Auditors and accountants
 - Need to be independent and recognised as corporate whistleblowers
 - Need to be resourced and supported
 - Need to broader scope of audits/assessments from just finance and IT to broader aspects of HR and operations
- Bullies and crims
 - Bullies need to recognise impact of their behaviour on themselves, their family/friends and associates, their organisations and their victims
 - Bullies need to acknowledge that they need help
 - To manage people
 - To change behaviours

Questions....

- Is [organised crime; corporate fraud/ bullying] growing /on the wane? Why?
 - Bullying is on the increase
 - More pressure being put on individuals at many levels
 - Greater demands to do more with less
 - People are time poor and lack management skills
 - Lack of leaders and managers, increase in administrators (paper shufflers)
 - Reporting of workplace bullying is on the decrease
 - Bad job is better than no job
 - Victims have seen how other victims have been treated
 - Bullies being rewarded for outcomes and promoted
 - Victims stories 'not believed' and vilified for reporting alleged bullies
 - Financial cost on victim for reporting workplace bullying

Questions....

- What can be done to address the spread of [organised crime; corporate fraud/ bullying]?
- Bullying
 - Needs a national approach
 - Need to have documented and implemented policies and procedures
 - Policies need to be integrated with other HR Management systems and processes
 - Managers and staff need to understand Job descriptions, performance management systems and industrial instruments
 - Need corporate and public heroes to stand up and speak out
 - Investigations to be conducted immediately by external investigators to prevent further allegations
 - Need to hold public forums involving academia, practitioners, medical and legal professionals, investigators and the media
 - Bullies need to be identified in organisations and performance managed until their behaviours change

Questions....

- What can we do as individuals?
 - Identify and become the change we want to see
 - Lead by example
 - Walk the talk and don't sit on the fence
- At the community level?
 - Agitate for change at a National level
 - Set community standards, stand up and speak out against all forms of violence
- At the macro level?
 - Put workplace bullying on the National Agenda
 - It will be like Domestic violence – it will take time and dedicated people

Questions....

- What is the role of authors such as you?
 - Provide readers with practical solutions and options
 - Generate debate and interest
 - Do some story telling and link the theoretical to the practical
 - Be realistic
 - Be passionate
 - Be heroes
 - Tell it like it is
 - Be prepared for challenges
 - Respect the view points of others
 - Participate in relevant discussions
 - Be prepared to share

KEY ISSUES

- Acknowledging that bullying is a form of corruption
- Criminalisation of bullying will change reporting obligations
 - May act as deterrent factor
 - May reduce incidence of deviant behaviours
- Mandatory versus voluntary reporting
- Onus of proof for prosecution
 - Mental health issues
- Role of victim in choosing resolution option/s
- Impact on reporting obligations in public sector

KEY ISSUES

- Criminalisation
 - may bring out more on bullying
 - could be used as 'revenge' or to set-up colleague
 - could reduce reporting rates
 - does not consider poor or incompetent management practices
 - does not consider perceptions that an individual believes they are being bullied
 - e.g. perception that *"As a matter of interest, what do you have on next week"* is unreasonable management
- Victims may be further traumatised by exposure to criminal proceedings
- Alleged bullies may have criminal record
 - Employment becomes difficult in public sector

KEY ISSUES

- Impact on criminal justice system
 - workload
- Manage organisation risks
- Conduct effective risk assessments
- Know compliance requirements
- Will require radical surgery
 - Need more informed debate
 - Self regulation of society and workplaces

EMPLOYER QUESTIONS

- How much income is earned as a result of any single workplace bullying incident?
- How does any workplace bullying incident contribute towards achieving the aims and objectives of the organisation/employer?
- How much business does a workplace bullying incident bring in?
- How does any workplace bullying incident improve service to customer?
- How does any workplace bullying incident increase productivity?
- How does any workplace bullying incident benefit shareholders, investors or taxpayers?
- What is the cost of preparation, dissemination, storage and archival?
- What could all these people be better doing if they didn't have to waste their time becoming embroiled in addressing a bullying situation?

EMPLOYER QUESTIONS

- What are competitors doing whilst workplace bullying incidents are taking place?
 - (in the commercial sector, the company's competitors, especially overseas competitors, must be rubbing their hands with glee at seeing the amount of time and energy committed to in-fighting, internal conflict, disciplinary and legal action between employees)
- What could people be doing productively if they weren't preoccupied with the paperwork involved in the preparation for tribunal hearings
 - finding, copying, then collating and distributing several copies of perhaps several hundred documents – these all have to be read by all participants
- How does the employer benefit from the adverse publicity surrounding workplace bullying?
- What is the effect on other employees who witness grievance and tribunal proceedings?
- Who and what are you defending?
- What will you have achieved at the end of it?

CONCLUSION

- Bullying behaviours fit into the category of deviance
- Deviant behaviours reduce the corruption resistance of agencies
- Bullying or harassing behaviours can be
 - criminal in nature
 - official misconduct and misconduct
- Public sector employees are obligated to report bullying and harassment

CONCLUSION

- Criminalisation of bullying may have positive and negative impact on organisations and individuals
- Criminalisation of bullying could have a deterrent factor
- Be proactive
 - Need to be cautious about 'knee-jerk reactive approaches
 - Need data and evidence
 - Management and supervisory OHS obligations
- Education is required
- Deviant behaviours such as bullying and harassment has to stop
- We will all pay a higher price if we do not eliminate deviant behaviours in the workplace

CONCLUSION

- Workplace bullying is a valueless and obsolete behaviour that is being imposed on individuals with increasing frequency
- Whilst only a small number of individuals bully, there are few victims, little perceived cost and insufficient objections to the behaviour
- Only when a sufficient number of people are effected will the problem be properly addressed, tackled and overcome
- Escalation of denial and increasingly vindictive measures being taken to threaten and intimidate those who dare stand up and proclaim the injustice can be taken as a sign of a threshold for change in society's attitude
- Courage, maturity and combined efforts are required to overcome the behaviour

QUESTIONS

- “We will have to repent in this generation not merely for the vitriolic words and actions of the bad people, but for the appalling silence of the good people.” – Martin Luther King Jr

- As cited by Professor Charmine Hartel, Department of Management, Monash University in a presentation on ‘Bullying in the Workplace: Cause and Effect’ Presentation accessed on 14/7/2009 at www.charminehartel.com



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