

From 'outstanding performance' to bullying and unfair dismissal

In all the time that I had worked in the education sector, I had never experienced bullying nor had I faced any work performance issues. Indeed workplace bullying was foreign to me. All this changed when I made an email request (not a demand) to my supervisor (the Head of my Department) for a review of classification because my classification was at a lower level than some of my colleagues in other departments and I thought this to be unfair.

My request for review should not have been unexpected, given that prior to my arrival in the Department a consultant report had recommended that the department introduce an additional higher level position, in addition to my senior administrator role. There were to be two senior administrator roles. The report indicated that my position would focus on the overall day to day administration including management of an administrative team and the proposed new higher level position would focus on budget management, strategic planning, policy, infrastructure, assets, resourcing, new programs/courses and the interface between the department and beyond (developing networks, memoranda of understanding, marketing etc.) **The higher level position was however, never introduced and I was left to continue the duties of both levels but at the lower classification.**

Due to budgetary constraints I had waited to request a review of classification. There was also the need to have one of my team's position upgraded which I accomplished a year earlier. Finally, when I requested a review of my position, my supervisor emailed me to confirm that she had received my request and had sought advice from one of her supervisors (the Director) who had informed her to take up my matter with the senior manager who had oversight for administration and classifications across all departments. I assumed that my supervisor was interested in supporting my request which is why she had progressed it. Otherwise, I assumed she would have discussed the matter with me.

Once my request progressed from my supervisor to the senior manager responsible for classifications, my work environment suddenly changed. My request placed me in the direct path of a workplace bully who suddenly found herself in a position of 'power' because she had oversight of administration across all departments and was also the Chair of the Staff Committee which considered reclassifications. (This senior manager was not my supervisor but since her arrival about 1.5 years earlier she had been trying to be a direct (additional) supervisor of senior administrators of departments.) Within a month of my request for reclassification, bullying had commenced in earnest.

Until this point in time I had got on well with my supervisor who had joined the department only some 11 months earlier and I received 'outstanding performance' ratings from her. My supervisor had come to the department from the same section where the perpetrator worked. **Once the bullying commenced, my supervisor abandoned her supervision responsibilities to me in order to support the perpetrator.** I suddenly became dispensable and my supervisor began to ignore as well as intimidate me.

My request for review of classification was also ignored.

Over the subsequent months I was incessantly bullied and I became sick but I tried to appear normal in the work place as I feared losing my job. A list of bullying incidents with evidence was provided to Comcare/AAT in support of my worker compensation claim that I had become sick as a result of bullying.

When the bullying which included intimidation escalated, I requested a meeting with my supervisor and also followed up in writing that I was being bullied. I wanted my supervisor to be aware of what I had been going through but she took no action to provide a duty of care to me as is legislated under the Health and Safety Act 2011 and also the Fair Work Act 2009. Nor did my supervisor refer me elsewhere for support. On the contrary, my supervisor began to increasingly have me contact the perpetrator or vice versa. **This was extremely stressful and day by day my work environment became more unsafe and I felt mentally battered. Many senior staff within the department as well as my staff noticed how I was being treated.** Later, after I had been removed from my position, affidavit evidence revealed that a senior long term staff member of the department had already advised the Director (my supervisor's supervisor) via email that I was being bullied. At the time I was at work but unaware that people were concerned at the level of bullying to have reported this higher up the ranks!

I also reported the bullying as well as the reclassification issue to the union believing at the time that the union could help me. Much later I discovered that unions have minimal resources to provide the depth of service which individual members require with bullying and unfair dismissals.

My view at the time I was being bullied was that bullying and unfair dismissals can't happen in Australia where there are laws to protect workers. My view of the world was somewhat simplistic - I thought democracies worked, people in democracies had a voice and that Enterprise Agreements (EA), Codes of Conduct, unions, HR departments and the various government legislation are there to protect workers and that I would receive those protections. I was dead wrong!

Evidence in affidavits suggests that the main perpetrator had strategically implemented the plan to remove me by working through my supervisor and my supervisor's supervisor (the Director). This was so that the main perpetrator would not be seen as the person who sought to remove me.

The union advised that I lodge a fresh request for a review of classification which I did. It took 3.5 months for the request to be heard and then declined. Much later (via Court affidavits), I was provided a copy of my supervisor's memo to the Staff Committee (Chaired by the perpetrator) which advised that I was not performing higher level duties. **If I was not performing higher level duties, who exactly had been managing the administration of the department? Put another way: Had the Department been functioning with less administrative capability and if so, why was there no evidence of this?** My supervisor had also not discussed my reclassification request with me. There was much evidence that I had been performing higher level duties; I had no performance issues and my supervisor provided a reference confirming that I had 'satisfactorily performed' my duties. **How could I have 'satisfactorily performed' the senior administrator role in the department and yet not have met the administrative requirements of the department which included the higher level duties? (Refer page 1, para 2.)**

The bullying eventually led to a mob bullying exercise and the staging of mock HR processes. The evidence with the timeline suggests that the perpetrator (the main bully), my supervisor and her supervisor created a 'narrative' which circumvented HR processes to remove me from my position and this was sanctioned by the HR Director.

A supposedly `new' position was created and my position was disestablished through a change management process. The change process suggested compliance but the evidence indicated that it was a mock process with a predetermined plan to remove me from my permanent position through an interview process. There was absolutely no evidence at the time of `new' higher level duties, only of the high volume of work in the department. Moreover the Enterprise Agreement required that there be consultation before a change process is developed. **Yet later evidence obtained in affidavits revealed that the main perpetrator had already sought and received agreement to establish a new position on the basis that my position would be disestablished and this was done 2 months prior to the department and the union being consulted which contravened the requirements of the Enterprise Agreement. The evidence indicated that my position had been deliberately changed to disadvantage me which is in contravention of the FWC. Despite all the objections, the change management process went ahead.**

I was provided first opportunity for an interview as per the enterprise agreement, for the supposedly `new' position and then denied the position. **I had managed the department's administration with 5-7 staff over a number of years, had outstanding references, no performance issues and the quality of the department's administration had not ever been questioned or found to be lacking. Moreover all referees, including 2 previous heads of department confirmed support for my appointment to the new higher level position on the basis that I had already been undertaking the higher level duties.**

In confidential selection panel notes (included in affidavits), mention was made that the local HR manager (who was supervised by the main perpetrator) had noticed that I appeared sick when I presented myself for the interview. **Yet the HR manager did not ask how I was feeling either at, or after the interview as is required under `duty of care' provisions in the *Health and Safety Act 2011*.** I was sick because I had been sick for some time due to the bullying that I had endured for almost 7 months until that time and when I went to the interview I felt like I was walking into a lion's den! I was well aware that after the sustained bullying, the stage had been set for an interview process which would suggest compliance, but that I would be losing my job.

The confidential selection panel notes (referred to above) also indicated that a number of untruths were spoken about me including my supervisor taking credit for some of the administrative work I had performed in the department. This was quite shocking to me as I had undertaken those duties during the entire time that I had been managing the administration of the department and long before my supervisor had even arrived to head the department. As per these notes, my supervisor also advised that two staff members left the department due to me, yet one went for an internal promotion and had contact with me after she left and the other went to a position in her home State and I was one of her referees and she continues contact with me. I was not called in by the Chair for an explanation; **it appears that the Chair was compromised and the sole purpose was to discredit me.**

I was then advised that I was in the redeployment pool as a result of my failure to gain the `new' position through the interview process. I was also advised that the new position would be advertised. **Some senior and long standing staff of the department sent an email to the Director (my supervisor's supervisor) and expressed serious concerns about the way in which matters were handled to remove me from my position in the department through a change process. This was ignored.**

The HR Director provided false information in affidavits. For example, she advised that she had offered me several positions during the redeployment phase which she said I had not accepted, and therefore she had had to make me redundant. **This was totally false as the evidence indicated that I was asked to**

apply and not offered the positions. There is a difference. I was also not psychologically able to apply and compete for positions and my trust in a system that was supposed to have had a 'duty of care' to me, no longer existed. **I was well aware from the evidence that the HR Director was abusing her executive powers and was complicit in the wrong doing.** I had sought the HR Director's support in requesting a review of the classification decision and advised her that **I was being subjected to adverse action. She ignored my request.**

I wrote to the CEO and deputy of the organization raising concerns about bullying and the use of 'change management' as a tool to remove staff. I received no immediate reply.

The Union submitted a formal Dispute to my employer but it took the Director HR almost 3 months to respond to the Dispute and the response was strategically sent on the day that she provided 5 days notice of redundancy with the advice that I would be prepaid the 6 week notice period as a lump sum. The late response to the Union Dispute was strategic so that I would not be left with any time to have the union further negotiate matters on my behalf or have time to request a review of redundancy.

I then contacted the Fair Work Commission (FWC) about the 5 days notice and my need to seek a review of my redundancy as per the enterprise agreement. **The FWC advised that there was nothing they could do to stop the process as 5 days was too little for the FWC to act** and that I would need to seek a Federal Court injunction if I wanted to undertake the review under the enterprise agreement.

At considerable cost, I appointed a solicitor to act on my behalf. I sought an injunction from the Federal Court so that I could work the notice period and seek a review. The Court agreed to my request. **I was not aware at the time when I was seeking a review under the enterprise agreement that the HR Director who approved the redundancy is intimately involved with the review process.** For example, the Director HR, asked that I submit all documentation to the Review Panel through her which was a conflict of interest. Also, the review panel consisted of one union member (appointed by the union) and two members appointed by the HR Director and one of those members who was the Chair of the Review Panel also reported to the Director HR. **There was absolutely no contact between the Review Panel and myself. I was not provided details of when or where the review panel were to meet.** Later evidence suggests that the review process as per the enterprise agreement is somewhat flawed as there are serious conflict of interest issues in relation to the HR Director's involvement in the review process.

The level of collusion from the Director HR was confirmed when before my notice period would even commence (and before the redundancy was to commence), I was cruelly removed from my workplace one morning in front of some of my staff by the perpetrator with the support of the Director HR. There was no opportunity to farewell many of the wonderful people I had worked with over the years. This was the level of bullying I experienced in my work place which is a publicly funded organization. **Furthermore, in defiance of the various legislation, the Director HR gave approval to the perpetrator to advertise and fill the 'disputed' position with an external candidate who had no relevant administrative experience, while the Court requested review was still underway.**

Also, before I was walked off the job, my supervisor had emailed the department staff that I would be leaving and that arrangements were made for a temporary staff member (who had previously reported to the perpetrator), to come to work in the department and that they should go to her (the temporary) for work that they normally came to me for. **This provided even more evidence that the duties of senior administration (my role) had substantially remained the same. The temporary staff member was paid at the higher level. While I was denied the correct salary, a reclassification and also bullied**

and being removed from my position, a temporary was being brought in to undertake my duties and paid at the higher level.

What I discovered is that nothing will protect a worker from bullying or an unfair dismissal if the HR Director is complicit in the wrong doing. The corruption in my workplace went all the way to the top.

I pursued matters in the Federal Court and the Fair Work Commission.

As I had been sick for some time, my doctor provided documentation for me to submit a Comcare workers compensation claim on the basis that I had become sick in the work place as a result of sustained bullying and I provided evidence to Comcare of the many bullying incidents that I had been subjected to in my workplace. My matter became public when the media released a story about my Federal Court matter.

When due to my health and legal costs, I decided not to pursue a review with the Fair Work Commission (FWC) and instead concentrate only on my Federal Court and Comcare/AAT matter, my employer asked that I sign a deed of release to walk away from both the Federal Court case as well as the FWC and threatened that if I did not do so, they would take a cost order against me in the FWC. **I refused and my employer sought a cost order against me in the FWC.**

I successfully defended the cost order and the FWC denied my employer's application (for a cost order).

What I discovered during this journey is that my employer had a fortified HR and Legal department prepared to bring in external solicitors and barristers, simply to protect the organization's reputation so that they are not exposed in a Federal Court, Fair Work Commission or the Tribunal for their contraventions of the *Fair Work Act 2009 (FWA)* and the *Health and Safety Act 2011 (HSA)*. **In bullying me, and changing my position to disadvantage me while also making me sick in the workplace, the evidence indicated that my employer did contravene the FWA and the HSA and that the Director HR was complicit in breaking workplace laws. Moreover she supported others do the same.**

I also discovered that perpetrators within a public sector organization had unlimited taxpayer funds at their disposal which permitted them to contravene government legislation. My employer was able to provide many affidavits (with legal costs covered by the taxpayer) containing untruths, contradictory or totally irrelevant information to Comcare/AAT and the Federal Court. This then forced me at considerable legal expense to provide Affidavits in response, correcting the false statements. A few examples:

1. An affidavit to the Court and Comcare/AAT from my supervisor included a 'secret' reference to the Chair of the interview panel which was not the same reference that was included in the selection panel report. I had not seen this reference before. **This reference advised that the 'duties in administration' in the department had not changed but the volume of work had. If the duties had not changed, there was no need for a new position or a change process which disestablished my position and created the new position.**

At the same time an affidavit provided on my behalf to the Federal Court (copied to Comcare/AAT) included an email from the Director who had introduced the change process and confirmed that it was due to 'equity' that he was introducing the change process as two

other senior administrators in other departments were paid at a higher level than I was, while I had already been undertaking the `same' work. If this was the case, the reclassification should have been approved and there was no need for a change process. Importantly, why was a public sector employer not paying me at the correct salary level?

2. An affidavit was provided by the individual who is now permanently appointed into the position which was considered `new' in the department (but the evidence indicates it was my old job, albeit I was being paid at a lower level). **In her affidavit (written some months after taking up the position permanently), this individual referred to how she managed the department much better than I had but this individual had never worked in the department during my time, nor had she ever been my supervisor. Her affidavit was totally contrived and irrelevant.**

Indeed this individual who was previously supervised by the main perpetrator, used the opportunity of an affidavit, to provide a self aggrandizing portrait of herself while also stating many, many untruths about me, including the fact that she thought I was not electronically savvy to capture all the new technological developments being phased in by my employer. This individual could not have been aware of my background, qualifications and work experience.

It baffled me that my employer would have personnel that are irrelevant and perhaps even incompetent (given the false information), provide affidavits which were contrived. This is the level of mob bullying which I endured at the hands of a very corrupt HR Director/individuals who would provide whatever affidavits they could to ensure that my Federal Court and Comcare/AAT cases would be devalued or have no opportunity of success.

Eventually my employer and I settled my Federal Court matter with a `deed of release'. My employer's decision to settle after almost 2 years in the Federal Court system and just before the matter went to trial suggests that my employer had something to lose by going to trial. I agreed to the out of court settlement of my Federal Court matter as I was advised by my solicitors that the penalties to employers for contraventions of the FWA are very low and if I do not accept settlement, and the amount awarded to me in the Federal Court is less than what my employer was prepared to pay me, then I would risk a court order even after winning. In other words I was advised that I had no choice. I did not quite understand this process at the time as I was quite sick so I felt somewhat pushed to accept my solicitor's advice. **At the very least, 88% of the settlement went to pay my legal costs and I felt some vindication that my employer was forced to pay these costs.**

Comcare also accepted liability that my injury was substantially caused by my employer. My claim to Comcare was that I had suffered a psychological injury as a result of being bullied in the workplace. This too was vindication as Comcare had accepted liability.

The Australian taxpayer funded my public sector employer's settlement and litigation costs in relation to my Federal Court matter, and also the Comcare liability for making me sick in the work place (salary and the cost of medicines, doctors and psychologists and my comcare solicitor).

With the exception of the main perpetrator, the remaining perpetrators (my supervisor and her supervisor) and importantly the Director HR all of whom contravened Commonwealth government legislation and placed my health and safety at risk have been allowed to remain in their positions.

There was no apology from my employer despite my losing my job as a result of workplace bullying.

During this challenging period in my life I was blessed to have had the support of an incredible family, and many staff of the Department and even some that had left the department and remained in touch. Had my matters proceeded in the Federal Court/AAT, some current senior staff were to appear in Court to provide testimony on my behalf and I will forever be grateful for their support.

The result of the sustained bullying, the unfair dismissal and being physically removed from my workplace has left me challenged when it comes to facing the outside world without medication. I had planned to work the next 7 years until I retired. I suffer from panic attacks as I recall some of the bullying events at work and being removed from my work place in a very deliberate manner. **After a long time in the education sector, my health and well being (including my sense of security) have been compromised due to workplace bullying.** What happened to me also impacted my family.

The only place I now feel comfortable at is my home. I draw some comfort in my ability to write about my experiences with the view to making the workplace safe for others. **I have been advocating for changes to workplace laws and greater accountability from employers. I have been writing to relevant government agencies, policy makers, parliamentarians, researchers and law enforcement, seeking a 'whole of government' approach to ensuring that the *Fair Work Act 2009* and the *Health and Safety Act 2011* are not merely rhetoric in enterprise agreements and codes of conduct, and policy makers are able to develop more robust policies which will protect workers from toxic employers. Such measures will also stem the waste of public funds as there will be less likelihood of toxic public sector employers contravening workplace laws.**

I reported maladministration to the Commonwealth Ombudsman under the Public Interest Disclosure (PID) Act 2013. My PID advised of the loss of substantial taxpayer funds as a result of my employer breaking Commonwealth workplace laws. **The Commonwealth Ombudsman accepted material I provided as a PID** and requested the CEO at my former place of employment to carry out an investigation. I was informed by the CEO that he would not carry out the investigation as my PID was vexatious as I had signed a deed of release. **Rather than use the opportunity to investigate maladministration which led to wasteful Commonwealth Government spending, the CEO at my former place of employment had the view that the deed of release provided immunity from investigations of any wrong doing. I wrote to the Commonwealth Ombudsman advising that no public sector employer should be immune from PID investigations on the basis of deeds of release because it is in the public interest that maladministration is investigated.** The Commonwealth Ombudsman advised that the Ombudsman is 'precluded' from investigating PIDs in employment related matters but that **I could seek a review of the CEO's decision under the Administrative Decisions (Judicial Review) Act 1977. As a result, I am considering my further options in relation to the PID.**

I am providing my story so that others feel motivated in reporting wrong doing in the workplace because good governance requires that employers, particularly public sector employers are held accountable and not provided immunity when they operate above the law or against public policy.

It is in the public interest to report when our laws are not working.

I am also hopeful that my story helps others understand that workplace bullying can happen to anyone and it can be particularly 'brutal' when those meant to protect all staff in the workplace (e.g. HR Departments) actually protect perpetrators holding leadership positions in defiance of the Fair Work Act 2009 and Health and Safety Act 2011.

IN SUMMARY -

A report advised that the Department required an additional higher level position, in addition to my position. This did not occur. *I carried out both sets of duties since my arrival at the Department. My predecessor confirmed that she too had also undertaken those two sets of duties. It was also not possible to manage administration without both sets of duties being undertaken.*

I sought a review of classification as I had been carrying out higher level duties.

Immediately after, I became subjected to bullying, initially by one individual and then a mob.

The bullying led to the establishment of a new position on the basis my position would be disestablished and this happened before the change process and consultation took place in the Department and the union. My position was changed deliberately to disadvantage me through a change process. This was despite the Director in an email stating he was introducing the change process to upgrade the position as I had been undertaking the same duties as other administrators who were paid at a higher level.

I was interviewed and denied the new higher level position. I was a lifelong learner and had a degree in administration, extensive administrative experience as well as excellent references.

On a normal work day I was walked off the job by the main perpetrator (supported by the Director HR). This was before my redundancy had commenced.

A temporary appointment was made at the higher level and my supervisor advised all staff that they should go to the temporary for work that they previously contacted me for. These were my duties and it confirmed that I had been working at the higher level. Evidence also backed this claim.

While matters were in Federal Court and a review was underway, the Director HR gave permission for the appointment of an external applicant with *no prior relevant experience* to the new position.

The taxpayer footed the bill when my employer settled in the Federal Court and Comcare accepted liability for my claim that I had been made sick in the workplace as a result of bullying.

AN UPDATE - (SINCE I WAS REMOVED FROM MY WORKPLACE)

While my position had been disestablished, the same level position was reintroduced in the department. This was in addition to the higher level position established as 'new' and denied to me as a result of workplace bullying.

There are now two senior positions in the department. This was exactly what the consultant report had advised - refer pg 1, paragraph 2 of this story.

I was underpaid and bullied out of a position which I enjoyed; my career came to a standstill and my health compromised. The bullies supported by the HR Director who was complicit in breaking workplace laws, had made a mockery of the Fair Work Act 2009 as well as the Health and Safety Act 2011.

It is a travesty of justice.

SUBMITTED ANONYMOUSLY 22 August 2017.