

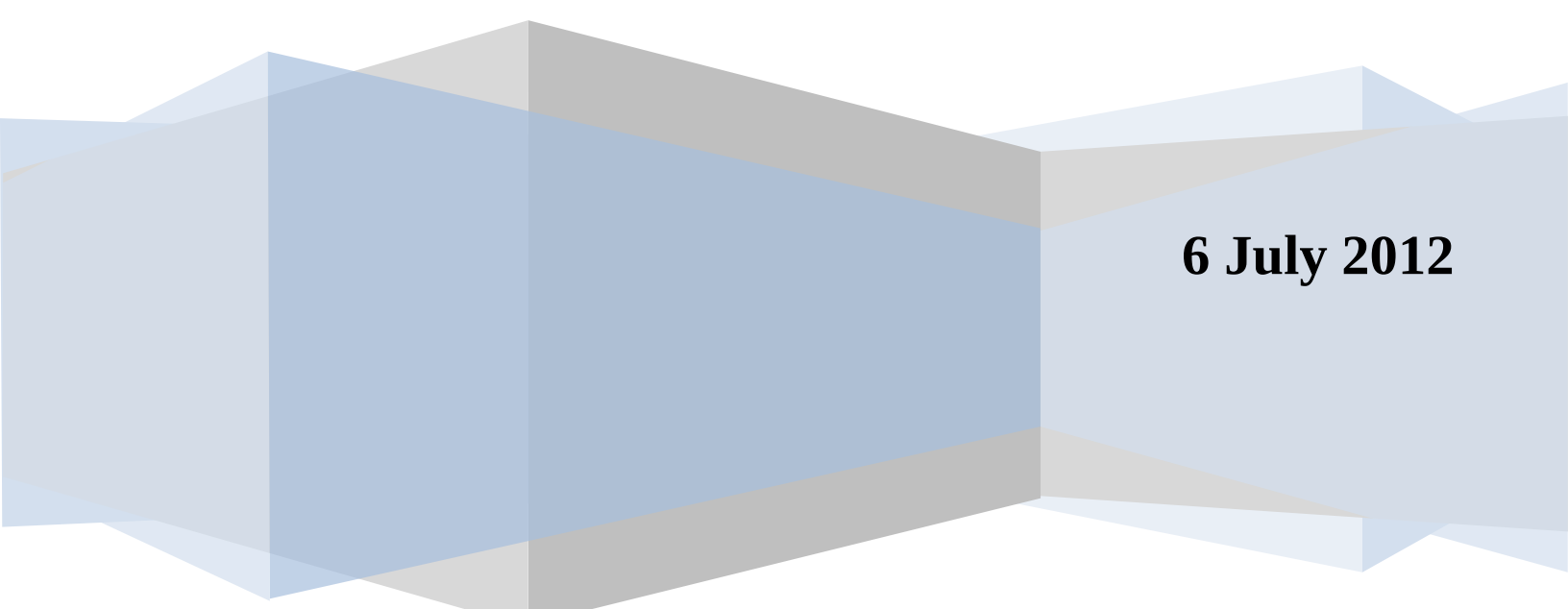
**SUBMISSION TO THE HOUSE OF
REPRESENTATIVES STANDING COMMITTEE
ON EDUCATION AND EMPLOYMENT**

Inquiry into Bullying

Whistleblowers Action Group Queensland Inc

Submission Coordinated by Secretary, Gregory McMahon

Submission Approved by President, Gordon Harris



6 July 2012

INTRODUCTION

This submission is directed at assisting the Inquiry with respect to the following terms of reference:

- A. The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying [hence termed the **Prevalence TOR A1** and the **Experience TOR A2**]
- B. The role of workplace cultures in preventing and responding to bullying and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying; [hence termed the **Culture TOR B**]
- C. the adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums; [hence termed the **Awareness TOR C**]
- D. whether the scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying; [hence termed the **Prevention TOR D**]
- E. whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms; [hence termed the **Gaps TOR E**]
- F. whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying; [hence termed the **Deterrent TOR F**]
- G. the most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another; [hence termed the **Transfer TOR G**], and,
- H. possible improvements to the national evidence base on workplace bullying [hence termed the **Evidence Base TOR H**].

The submission will provide this assistance by addressing, in turn:

1. Current definitions and understanding of the term *Bullying* as it applies in the workplace;
2. The distinction between individual bullying, group bullying also termed *mobbing*, and *organisational bullying*, as these forms of bullying apply in the workplace;
3. A critique of research information available from the literature on workplace bullying;
4. A case study that illustrates important points from the above; and
5. Conclusions and recommendations following therefrom.

THE CONCEPT OF BULLYING

Definitions.

Bullying was defined in the initiating publication, *Bullying from Background to Boardroom*, by McCarthy, Sheehan and Wilkie (1996: vii), as

the act of repeatedly and deliberately putting a weaker person under stress.

The book and its 2nd Edition (McCarthy et al, 2001) documented the thesis that there are clear parallels between the behaviours that constitute bullying in the schoolyard and the behaviours that constitute bullying in the workplace.

Author William Wilkie supplemented this writing with the principal guide *Understanding Stress Breakdown* (last revision 2004: Ch 7)

The definition includes a description of the behaviour of the bully, ***repeatedly and deliberately putting a weaker person under stress***, alternatively expressed as ***to persecute, oppress, tease, physically or morally*** in the Oxford Dictionary (1964).

The definition also describes the effect of the bullying behaviour on the bullied person, namely, becoming stressed.

What is not offered by the definition is the *raison d'être* of the bully, the state of mind that enables or compels the bully to exhibit this oppressive behaviour.

The Psychiatrist's View. Wilkie (2004: 69,70), as a psychiatrist, quotes a British colleague, Nina Coltart, who describes *precursors of bullying* as “...*the wish to be all-powerful*” and “...*to project the despised, vulnerable powerless parts of oneself onto another.*” These precursors are within humans as *part of normal development*. Wilkie also quotes another psychiatrist, Dr Shirley Waugh, that bullying has **antecedents**, in particular, “...*an unconscious belief that there is someone, either oneself or another, who has all power*” and who “...*never ever makes any mistakes*”, with a related belief in the “...*absolute uniqueness of that person*”.

The notions of the person exhibiting bullying behaviours, that a person can be all-powerful and absolutely unique are challenged by the notions of leadership.

A Leadership Perspective. A further perspective on the state of mind of persons exhibiting bullying behaviours is given by **Dr John Adair**. Dr Adair gained the world's first Professorial Chair in Leadership, also in the United Kingdom. He is currently the Chair of Strategic Leadership for the United Nations, and has taken on the challenge of fostering leadership into the political regimes of member countries of the United Nations. Some such nations have developed bullying to the level where governments are shooting at their own citizens.

Dr Adair recently toured five capital cities of Australia without attracting the attendance of one current member from Australia's many Parliaments, so his challenge is significant. He did, however, draw many questions from workplace participants, police, vice chancellors, factory managers and such, about how leadership could address the

oppression exhibited by governments in some African and Asian states. This interest flowed naturally to the issue of bullying in the workplaces within Australia.

Dr Adair (2012) put forward a number of concepts that may help this Inquiry to understand the path taken by persons exhibiting bullying behaviours, and thus how that path might be influenced.

The two concepts that contributed to ideas on bullying are ‘the person’ and ‘misleadership’.

The Person. Primary was the concept of ‘**the person**’, and of ‘personhood’ and ‘personality’ as he variously referred to this concept.

Adair distinguished the meaning of ‘being a person’ from the modern meaning of ‘being an individual’. He returned to the eastern, western and tribal traditions within humankind to derive three characteristics of ‘the person’ that may have been lost from current understandings:

Firstly, the Roman origins of the word was ‘persona’, a word that meant that the individual had legal rights. Not all individuals in Rome had rights, such as slaves and children. A person is an individual with legal rights.

Secondly, from the tribal tradition, ‘being a person’ had a relational meaning – it stresses relatedness and connectedness rather than being cut off or separate from other people. Being a person did not refer to something that was individual or unique. Adair related a concept held in a saying spoken by the Bantu-speaking tribes in Africa. The saying, **ubuntu**, stands for

I am what I am because of you, or, I am myself because of other people.

The word, **persona**, in the Western tradition, was also used to mean the mask that all actors wore in Roman theatre drama, again emphasizing the link of the word to

relations between the characters in the drama. Similarly, in Eastern traditions including the writings of Confucius, ‘the person’ is related to the concept of the person having ‘face’, which also links in with the idea of ‘mask’.

Adair explained that ‘individual’ originally used to mean ‘undividedness’, or being indivisible. Current usage of this word, however, indicates something else - someone who is distinct or separate.

Thirdly, the word ‘person’ meant something of value or worth. To illustrate this sense of significance, Adair quoted the second sentence to the **Charter of the United Nations**, asserting that one of the aims of the UN was to reaffirm

fundamental faith in human rights, and the dignity and worth of the human person

Adair, quoting Tolstoy, proposed that some people believe that there are circumstances where they can treat persons without love, but that there are no such circumstances. The tyrant in the nation and the bully in the workplace, Adair suggested, can only mistreat a person because they have failed to regard them as persons.

One has to degrade a person from their true status as a person before one can bully them.

Adair recited a Chinese proverb:

If a cat wants to eat its kittens, the cat must first come to believe that the kittens are mice.

From these ideas of Adair about ‘the person’, come two related notions relevant to bullying, namely that:

- A proper regard for a person requires an acknowledgement that that person has entitlements – rights, relatedness, and value; and,

- Disentitlement of the bullied person is a process that is critical to the *raison d'être* of the person engaging in bullying behaviours, because disentitlement of the bullied allows or enables the bully to:
 - Ignore the rights of the bullied person,
 - Break-off from the sense of relatedness to or with the bullied person; and
 - Disregard the value and worth of the bullied person.

Misleader. Leadership, as a discipline, is essentially about raising persons to levels of rights, relatedness and value that are their entitlements as persons. Adair has given the term 'misleadership' or 'misleader', not 'poor leadership', to the behaviour of the leader showing bullying behaviours. Bullying, Adair contends, has an impact on the person that is opposite to the effect from good leadership – this is because the 'misleader' puts aside the responsibility that the true leader has towards the team members that they lead.

Bullying thus is seen to be on a continuum of behaviours by the manager in the workplace situation, at the other end of which continuum is leadership.

Leadership challenges the bully's notion that a person can be 'all-powerful', because leadership states that the leader (or the person with power in the workplace situation) also has responsibilities. Those responsibilities direct the leader to use of that power towards building up other persons rather than bullying them.

CONCLUSIONS PART I

Bullying behaviour needs to be understood and treated for the three aspects:

1. The mental processes of the person engaged in the bullying behaviour;
2. The bullying behaviour used; and
3. The impacts upon the bullied person.

The notion of disentitlement can be employed to describe all three of these aspects.

The notions of leadership challenge the *raison d'être* for engaging in disempowerment.

The Methodology of the Bully

Types of Bullying Situations. Bullying situations can be of at least three dynamics:

- **Bullying One-on-One**, where the person displaying the bullying behaviour can act generally, or can target a particular person or category of persons in the workplace;
- **Mobbing** by a Group of Bullies or Bully Group, where a group of persons in the workplace display the bullying behaviour either generally or by targeting a particular person or category of persons;
- **Organisational Bullying**, where the hierarchy of the organisation engage in bullying behaviour generally towards all staff, or towards particular groups within the staff, or towards a particular person or persons.

This submission will focus upon the phenomenon of *organisational bullying*. The organisation as a bully can bully either or both its staff and/or its stakeholders and customers. This submission will also focus upon bullying of staff.

Much of what is presented on the bully organisation lends itself readily to an explanation of other types of bullying dynamics.

Organisational Procedures. Perhaps the greatest difference for bullies between the schoolyard and the boardroom is the scope in the organisation for putting a person under stress using organizational procedures.

In “the schoolyard,” most of a bully’s power is drawn from a personal physical power over or personal information about the bullied person.

In “the boardroom”, and in the organizational corridors and elevators leading therefrom, the bully can exercise positional power. This positional power is an attribute afforded to

the bully by the mixture of hierarchies and procedures in an organization that allow the bully scope for demeaning subordinates and clients through the maladministration of those procedures and through the abuse of those powers.

A Categorization of Bullying. The bullying that occurs in organizations through the medium of an organization's procedures for the conduct of its work and administration can exhibit structure or hierarchy. A categorization of bullying is attempted from the many anecdotes, cases, and complaints that have come to the knowledge of this submitter in duties as a manager, administrative officer, workplace representative, auditor, investigating officer, and executive member of a professional association, trade union and two whistleblower organizations.

In support of the bully continuum, “schoolyard to boardroom”, a categorization of procedural bullying in organizations is outlined using descriptions from school environment. These descriptions are:

- Gatekeeper bullying;
- Sandpit bullying;
- Toilet bullying; and
- King bullying.

The gatekeeper bully at school took up a strategic position, say, on stairs, the door to the library, the walkway across the creek, or the like, and decided who could pass.

In the organization, gatekeeper bullies deny their subordinates, without reasonable grounds, applications, priority, funds, meetings and/or briefings necessary for the subordinate’s work, training and experience necessary for gaining qualifications, and/or enjoyment of family life. Thus a subordinate may be consistently denied:

- Recreation leave during school holidays;
- Computer capacity sufficient for standard work software;
- Nomination for training that is a pre-requisite for promotion;
- Attendance at meetings related to their work.

Gatekeeper bullies are blockers or interceptors. Gatekeeper bullies establish barriers to be overcome and gauntlets to be run by officers in their working lives. **The Gatekeeper bully prevents a person from accessing an entitlement.**

An organization heavily influenced or dominated by gatekeeper bullying is relatively slow in the tempo of its operations. Indications can be lack of delegations to managers, a lack of initiative amongst employees, managers limited to working within boundaries, poor communication, little networking amongst staff and poor morale. A relatively large number of personal grievances are lodged within organizations dominated by a gatekeeper bullying culture.

The gatekeeper bully at kindergarten kept other children from entering or leaving the sandpit.

The sandpit bully, on the other hand, kept knocking down or otherwise ruining any sandcastles or other structures made by other children in the sandpit. This open behavior included forms where the bully would help build the structure only to destroy it before it could be used or admired. More secretive behavioral forms also occurred. Sandpit bullies stole pieces of the jigsaw puzzle others were putting together, threw the cricket ball into the creek, or ruined the display with graffiti.

In the organization, sandpit bullies are more proactive than gatekeepers. Sandpit bullies restructure successful teams in order to split them up, assign experts to generalist duties, send achievers on wild goose chases, re-assign leaders to tasks without purpose, and personally takes over projects when success is assured. Sandpit bullies also cancel holiday leave approvals without substantial cause, deny use of company resources for in-house training courses, refuse relief arrangements while the bullied are away from the office, give officers directions that are ruinous of the relations that the officers have with other staff.

Sandpit bullies are spoilers. **Sandpit bullies diminish or ruin the enjoyment of an entitlement.** Sandpit bullies undermine the progress, achievements, growth and success of targeted officers in their employ. The situation where the spoiling outcome is greatest for the bully is where the pre-existing condition for the employee is excellence or potential excellence.

The indicator that an organization may be heavily influenced or dominated by sandpit bullying is the presence of mediocrity. Mediocrity can be present at both the general level of organizational performance (productivity, client satisfaction) and also at the specific level of individual achievement (qualifications, publications, commendations, outcomes for clients). Achievers leave organizations dominated by sandpit bullying.

The most hurtful bullying at school has been largely associated with toilet areas and change sheds. These areas are where the school organization affords the bully the greatest degree of privacy and freedom from supervision and inspection. These most hurtful forms of bullying include head flushing, slanderous graffiti, physical torture, extortion, removal of clothing, king hitting, personal ridicule and open threats.

The toilet bully in organizations also prefers to operate where inspection by others is most difficult. The privacy of toilet areas and store rooms is not discarded, but with respect to organizational procedures, the “privacy” opportunities utilized by the toilet bully include the one-to-one interview or counselling interview, selection interview and the like. The area of greatest operation of the toilet tactics, however, is within the “privacy” of the **discretionary power** afforded to the superior officer by the organization in decision-making affecting the subordinate officer.

Instances of toilet bullying, as part of the procedures of an organization, include falsifications and vilifications in performance reports, punitive transfers and secondments, personal threats, ridicule and slander during interviews and/or “confidential”, “private”, or “off-the-record” meetings, unjustified referrals for psychological assessment, unfair and unsafe work assignments, hardship rostering

patterns, extortion of favours and/or coercion into cooperative bullying of others or into complicity with breaches of proper procedures.

Toilet bullies are vengeful. Toilet bullies remove or withdraw entitlements. Their focus is to leave a permanent and hurtful mark on the person rather than a denial of an opportunity or a temporary frustration on the person's work. Indicators that an organization may be heavily influenced or dominated by toilet bullies are a proportionately large number of personal grievances and complaints about supervisors and managers, made to external authorities rather than to the organization itself. There are also likely to be complaints from past bullied employees that they were "pursued" by the toilet bully in employment, business or professional respects after the bullied employee left the organization. Repeated performance failures are symptomatic of a toilet culture in an organization.

The most developed form of the organizational bully is the King Bully. At school the king bully had a gang, and they "expelled" the bullied person from the playground. The bullied person had to either join another gang or leave the school. Territories for gangs were defined, and rules were established, both within gangs and across gangs.

The king bully in an organization "expels" officers, expels them from locations, from careers, from favoured groups, from special projects/collaborations/committees, and from organizations. It will often appear that the reason for the expulsion is almost arbitrary, but can typically be for a slight affront. The expulsion, as it is delivered, usually carries with it the strong connotation of "never to return".

"It will be as though you never were"

is a quote from a movie portrayal of an act of a king bully (The Charge of the Light Brigade:1968).

Within organizations, the king bully is an organizational or locational chief or professional head, and operates in the open with apparent impunity. Other king bullies are accommodated, their "territories" even respected. There is no place, however, in the

king bully's domain for independents; only favoured officers and hired hands are allowed. Expulsions are effected by subordinate bullies in the organizational "gang", of the sandpit variety (or the toilet variety if the bullied person shows resistance); the "never-to-return" sentence is enforced by subordinate gatekeeper bullies.

King bully organizations are rogue organizations – they are out of the control of external authorities, such as the shareholders, or the membership, or the government.

King bullies are feudal. King bullies are possessed with a sense of 'ownership' of an industry, of a sport or other community activity, of the administration of a public policy. Indications that an organization is dominated by a king bully are the co-existence, on the one hand, of open and repeated breaches of procedures, with, on the other hand, zero or near-zero grievances by employees. Alienation of the 'clients' of an organization can develop with organizations ruled by king bullies. King bullies usually have attached to their history one of the classic whistleblower cases from that industry or jurisdiction.

The form of disentanglement of the bullied person is principally the separation or the dividing apart of the bullied person from the relatedness with others in the workplace to which Adair's *persona* is entitled.

Disentanglement. There are many ways in which the person exhibiting the bullying behaviour is able to disentangle, in their own minds, the target of the bullying from some or all of the entitlements – rights, relatedness and value – attributed to the person by Adair.

A typical example of a *raison d'être* used by a **gatekeeper bully** is with discrimination, where the bullied person's age, sex, nationality, language, colour, religion, handicap, etc is used to justify their exclusion from the entitlement. The disentanglement is generally applied in the cases of discrimination, rather than targeted at particular individuals.

The *raison d'être* for disentanglement at this level is also additive. Thus the army officer who is reservist, female, and a former warrant officer is more likely to be disentangled in

the thinking of the gatekeeper bully than the officer who has only one of these aspects to their background, and in two respects, is a permanent officer, a male, or from Duntroon.

A typical example of the *raison d'être* used by a spoiler or sandpit bully is where the culture is paternalistic or there is some other aspect tending to divide the staff into 'us' and 'them'. With paternalistic cultures, the staff can be divided into 'favoured sons' and 'hired hands', and the spoiling can be just the collateral impact of providing favour to the 'favoured sons'. In 'us-and-them' workplace situations, the spoiling can be more deliberate and pointed, pointed in particular to ensuring that the hired hands 'know their place'.

The *raison d'être* for the hurtful bully (or toilet bully to continue the schoolyard analogy) for disentitling a targeted person so as to justify the bully treatment, is usually an attribute that is assigned to the target by the bully. In cases of discrimination, by comparison, the attribute that draws the bully's attention is a part of the targeted person and is real. With bullying where discrimination is not at issue; the attribute that justifies the hurt in the bully's mind needs to be selected by the bully, and is very likely not real.

The common example is the response to the person who complains. Common attributes assigned to them include disloyalty, not being a team player, being a dinosaur, ingratitude, obsessed, self serving, and many alternatives. They all have, however, the characteristic of disqualifying the targeted person from having their entitlements, by:

- diminishing the worth of the person (e.g. they are disloyal or ungrateful, and are thus not worthy of further care);
- diminishing their rights (e.g. they are obsessed or are dinosaurs, so there is no sense in listening to them further); and/or
- diminishing their relatedness (e.g. they are self-serving, they are not team players, so they do not belong with us).

The expulsion bully (or king bully) typically disentitles the targeted person by massing the attributes used by the hurtful bully. Toilet bullies and king bullies can be, at least in

their own thinking, activating punishments or enforcements without going through any formal punishment procedures. Expulsion is the greatest form of punishment.

These methods used by bullies, and their disentanglement rationales, can be adopted by the bully acting alone in One-to-One situations, and by bully groups in Mobbing situations.

They can also be adopted by organisations, or by the bulk of the persons with power in an organisation or part of an organisation. Systemic bullying usually is led by a king bully.

CONCLUSIONS PART II

Within workplaces and organizations, employees can be subjected to the tactics of:

- Blocking, by the Gatekeeper type of bully;
- Spoiling, by the Sandpit type of bully;
- Hurting, by the Toilet type of bully; and,
- Expulsion, by the King type of bully.

The Gatekeeper prevents the target from accessing their entitlements. Examples of the bases used by the Gatekeeper bully to justify the disentanglement of the targeted persons can include age, colour, race, religion, part time status, sex, or similar discrimination.

The Spoiler or Sandpit Bully diminishes the enjoyment by the targeted person of their entitlements. Examples of the bases used by the Spoiler to justify disentanglement of the targeted person can include non-membership of a grouping or membership of an alternative or competitor grouping within the organisation

The Hurt or Toilet Bully removed entitlements from the targeted person. An example of the bases used by the Hurt Bully to justify disentanglement of the targeted person can include attributes assigned by the bully to the targeted person that disqualify the targeted person from their entitlements. The bully behaviour can be meant to be punishment.

The Expulsion or King Bully removes all entitlements. The bases for disentitlement of the targeted person can be a massing of the justifications used by the Hurt Bully.

The Organization as the Bully

The king bully and the rogue organization are examples of an individual bully and subordinates mis-using or abusing the procedures of an organization so as to exercise their collective need to demean targeted individuals. The organizations rules are being misused and abused, and the fault lies with the individual, not the organization.

The emerging pattern of bullying from case studies, anecdotal evidence, media accounts and law reports, of organizational behaviour in stress-prevalent situations, may be that some organizations and jurisdictions, at the highest level, are legitimizing and validating the “bullying” option. These troubled organisations may be legitimizing bullying as a frontline or fallback strategy for coping with problems faced by those organizations, industries, or jurisdictions. The facilitation of the bullying option is achieved by a deliberate “sapping” of the integrity of the procedures of the organization with defects that allow the bullying option to be mobilized.

The **Davies Commission of Inquiry into the Bundaberg Hospital**, and the (on-going) **Leveson Inquiry in Culture, Practice and Ethics of the Media** in the United Kingdom, may have had and may have this phenomenon before them.

With organisational bullying, the value system giving rise to the keeping of the bullying option “in the drawer” is not some residual psychiatric disorder from the school-yard days of the organization’s chief executive, but is the value system of the boardroom, led by that benchmark of values of executive management, namely *pragmatism*.

The resort to the bullying option out of a sense of pragmatism can be a boardroom response to “impossibilities” in governance experienced or perceived by the boardroom.

In the private sector, the perceived “impossibilities” can be:

- using ethical practices in a competitive marketplace; and
- complying with the law while meeting commercial expectations of shareholders.

The “impossibilities” can be remarkably similar for the counterpart doyens in the public sector:

- competing on a level playing field with the private sector, while held to the accountability burdens of the public sector; and
- enforcing laws that are detrimental to the commercial interests of major industries

Public Relations, Organisational Development, Human Resource Management, Chief Legal Officer, Equal Employment Opportunity, and Industrial Relations work units are expected to construct an edifice of compliance with the ethical, legal, accountability, and/or enforcement imperatives of the organization. For the bullying option to be taken up to ensure workplace compliance with the pragmatic strategies adopted by executive management so as to cope with these “impossibilities”, these compliance units also need to be aligned to the pragmatism.

The establishment of such a co-operation amongst major elements of the executive and the compliance units within an organisation is termed **systemic corruption**. This can be sustained by **systemic bullying** of who staff are seen by the organisation to be staying outside of that pragmatic cooperation.

Examples of systemic corruption may be readily recognized amongst particular political regimes in Africa. Guantanamo Bay may be an example of systemic disentitlement of persons, effected by an otherwise law abiding political administration. Within Australia, the response by the Queensland jurisdiction to the destruction of the Heiner Inquiry documents may be information tending to show that systemic corruption can occur in Australian political jurisdictions. Another example will be considered by way of a case study later in this submission.



Figure 1. A Model of Factors that can Transform or Coerce Organizations

The establishment of the bully option for the organization requires the same sophistications as for setting up the more respectable management control systems adopted by responsible executives. This ensures congruence by staff with pragmatic organizational goals. Aspect of such control systems include:

- Strategic planning
- Industry economics
- Organizational structure
- Managerial style
- Organizational culture

as set out in Figure 1, taken from Horngren and Foster (1987).

The parallels in establishment of the bully option include the following:

- Strategic planning and scenario development processes, using the results of analyses of the competitive environment faced by the organization, can be used to demonstrate the “impossibility” faced by the organization. This “impossibility” is then used to explain the need for the pragmatic solution. Debate can identify areas of opposition to the pragmatic strategy, and afford the organisation and its leadership opportunities to demonstrate how opponents to the pragmatic option will be treated;

- The formal organization's structure can be subordinated to the purpose of securing control of the implementation of the bully strategy. Restructuring can be used to release non-dependable officers. The procedures for restructuring can provide opportunities where candidates for key positions, including PR, OD, HRM, EEO, CLO, and IR, can be given acting appointments in these roles and then made to submit to 'integrity tests' concerning the implementation of the procedures of restructuring. These integrity tests give the acting appointees the opportunity to demonstrate their commitment to the pragmatic solution;
- The managerial style favoured by the need to implement the bully option can become essentially coercive, rewards and punishments being derived according to displays of "loyalty" or "disloyalty". Paternalism can develop, particularly towards those who are "found out" by external authorities because of breakdowns in the PR/OD/HRM/EEO/CLO/IR edifice; and
- The dominant emotion in the organizational culture can become fear, whether that fear be one of being "found out", or one of not complying with the pragmatic strategem. Executive chiefs can respond to the first fear by exercising displays of bully power so as to reassure the actively compliant, and to give reminders to the passively compliant.

A dynamic to the procedures of organizations implementing the bully option is the role in those procedures of what can be termed "innocent parties". Innocent parties are an essential part of the PR/OD/HRM/EEO/CLO/IR edifice behind which the bullying proceeds, for their innocence lends credibility to the façade. An innocent party is a party to the bullying procedure whose contribution to the procedure is without blemish, but whose contribution is only part of a total procedure, which total procedure contains the act of bullying. Particularly where the innocent party is at the downstream end of the process, without the opportunity to question the outcome of the procedures completed upstream of their contribution, that innocent contribution can be used to represent the total procedure. Consultants, external investigators, auditors, and staff can also find themselves in this innocent party role.

Examples of “innocent party” contributions to overall bullying procedures can include:

- Participating in public relations events, videos, and/or brochures that misrepresent or mislead in their presented form;
- Completing reviews and investigations, in conformity with prejudicial terms of reference;
- Participating on selection panels for positions already compromised by irregularities in the procedures effected earlier in the selection process (e.g. restricted advertisement, bias in the selection criteria);
- Provision of an opinion on the legality of a proposed action, to a brief based on information selected to avoid critical legal impediments; and
- Conduct of disciplinary procedures on an individual, driven or provoked to the breach of procedure by bullying, and/or denied a proper defence by the destruction of evidence or the intimidation of witnesses.

An indication that an organization is operating with the bully option may be any display by the watchdogs within an organization (for example, the governance board, auditor, safety officer, quality assurance chief, EEO ombudsman, environmental chief) of tolerance for or cover up of breaches by the organization in their respective areas of responsibility. An indication that a jurisdiction may have adopted the bully option is where the tolerance and cover up extends to anti-corruption bodies within that jurisdiction, its grievance bureaus, public prosecutors, ombudsmen and/or public information custodians.

CONCLUSIONS PART III

Within organizations, employees can be subjected to blocking, spoiling, removal and expulsion of their entitlements, through impositions upon their employment made by bullies using the procedures of the organization.

The experience of being bullied can arise from an organizationally led control stratagem to ensure compliance by employees with a rogue solution to the problems faced by the organization.

In such circumstances, the manager who is a ‘natural’ at bullying will have skills that meet the perceived needs of the organization, particularly in the central compliance units and in its management teams. Thus organizational cultures are developed that can become deep seated in the problems that bullying brings to organizational performance.

The consideration of “Bullying” within the context of individual bullies and individual victims of bullying does not expose the full harm that bully cultures bring to the effectiveness of organizations. The individual context encourages the bully problem to be seen as the province of the HRM Manager, and so it is, but only in small part.

In systemic bullying, the compliance units may have managers already tested and selected for their skills in gatekeeping, and one or two may have experience in the support of higher forms of bullying, including expulsion.

It is only with an understanding of the organization as the bully that full focus can be brought to bear on the disadvantages that bullying has for organizations. Then the pragmatism that might have launched the bully option may cause the management to oppose the proposal. Then the scope of the task of recapturing organizational governance from bullies and their culture may be fully understood.

What evidence, however, do we have that bullying, including systemic bullying, occurs within Australian organizations?

THE EVIDENCE BASE

The evidence base on bullying within the public sector workplaces of Australia may have been spoiled by the **Griffith University study into whistleblowing** conducted during 2005 to 2008. An enormous opportunity may have been missed.

Whistleblowers are a particular category of employee that, as a population from Australian workplaces, has been subjected to the worst instances and the severest forms of bullying. Their stories demonstrate what their colleagues, their managers, their organisations and their jurisdictions are capable of, in gatekeeping, spoiling, hurting and expelling employees who make disclosures in the public interest about wrongdoing within government and private enterprise organisations.

The ‘spoiler’ was the assumption, made by the University study at the inception of the study, that the organisation and its management were well-intentioned towards whistleblowers rather than ill-intentioned towards them. Other aspects to the study that contributed to the loss of relevance and usefulness of the report on the results of the study included:

- The further assumption, again made at the inception of the study by the steering committee for the study, that the watchdog authorities over the public sector organisations were performing their role well. It should be noted that the Steering Committee for the study was made up of representatives of these same watchdog authorities, including the Commonwealth’s Ombudsman Office and the Ombudsman Offices from Queensland, New South Wales, Victoria and Western Australia, and was chaired by Queensland’s Crime and Misconduct Commission;
- The use of a cross-sectional study perspective rather than a longitudinal study perspective, thereby omitting from the survey responses from persons who had already been terminated from their organisation, or who had already left the organisation because of stress loadings carried by persons from bullying at that workplace;

- The failure to analyse individual whistleblower cases of prominence, for the lessons that they provided, if only to assist the study in the design of their survey instrument.

A critique of the Griffith University study, with analyses that attempt to provide information on what the Griffith study either assumed away or failed to attempt, is set out at **Appendix 1**.

Appendix 1 attempts some repairs of the insufficiencies and misinformation left by the Griffith study, and outlines the insufficiencies that remain. Appendix 1 therefore will assist the Inquiry in evaluating the existing evidence base and of identifying the format for any future research study that attempts again this important information.

One of the errors made by the study, however, may profit this Inquiry into Bullying, if the problems with the study are understood by this Inquiry and thus avoided in its own analysis. That error was the definition used for whistleblowing, which acted to include, not only whistleblowing, but all forms of complaint that can occur in the public sector, whether related to public interest disclosures or not. The data set of original responses to the study's surveys thus contains a wider scope of responses than may have been needed just for the whistleblowing issue.

The analysis thus in Appendix 1 of information from the original data sets used by the Griffith study, including data on the bullying of whistleblowers, is relevant to bullying in general, not just to the bullying of whistleblowers (which should also be of interest to this Inquiry).

One benefit from this data set is the light that it brings onto the degree of systemic wrongdoing in the public sector of Australia. This aspect was assumed away by the study and its steering committee before the study commenced, such that the Griffith study excluded such considerations from its survey instruments. The sets of survey data

returned to the study demonstrated the error that the study had made, and returned the issue of systemic corruption and bullying into focus.

The analysis thus in Appendix 1 of information tending to show the prevalence of systemic wrongdoing and systemic bullying in the workplaces of the public sector, is an analysis that is relevant to bullying in general, not just to the bullying of whistleblowers (which should also be of compelling interest to this inquiry).

It is important to the Inquiry into Bullying, because of the relevance of systemic wrongdoing to an understanding of the bullying phenomenon in Australia's public sector. Its importance attaches directly to the terms of reference for the Inquiry on Bullying:

The Experience TOR A2: The raw data sets from the study of all complaints, provided by accident from the error made by the Griffith study with its definition, as brought forward in Appendix 1, sheds light on the total experience of public servants in their workplaces.

The Prevalence TOR A1: Systemic wrongdoing demonstrated by the raw data sets provides a rationale for understanding why bullying is so prevalent in the public sector. Appendix 1 provides an analysis of the indications of systemic wrongdoing in the public sector that can be drawn from the raw data from the Griffith study, which simply assumed the issue away.

The Culture TOR B: Culture is 70% Leadership, 20% Reward and Recognition, and 5% Communication, we have learned from management research (Rehn, 1993, attributed to O & B Mink, University of Texas). Systemic wrongdoing cannot exist without the involvement or willful blindness of the leadership of a public sector organisation and its watchdog regulators. Earlier in this submission, leadership was proposed as central to any strategy for dealing effectively with bullying in the workplace. The realisation of the degree of systemic wrongdoing in public sector workplaces, as developed in Appendix 1, will inform the Inquiry

of a primary cause of the bullying problem in public sector workplaces, and the size of the problem at that core.

The Awareness TOR C: The Griffith study has been given much publicity in government circles, and its results were welcomed by the organisations on the steering committee, whose performances in their roles as watchdog authorities have escaped inspection. The contrary view that might be derived from analysis rather than from assumption, and any consideration and debate of that contrary view, must improve community awareness of the workplace bullying situation.

The Prevention TOR D: A principal candidate for dealing with bullying is leadership. Leadership as a method will be most effective if that leadership is coming from the top of each organisation. Appendix 1 presents the information from the Griffith study tending to show that the leadership of some public sector organisations may be relying on bullying behaviours, or showing wilful blindness towards bullying behaviours in their organisations. The coordination practices between leaders of public sector organisations and their regulators may be acting to suppress complaints about bullying, the analysis in Appendix 1 may suggest.

The Gaps TOR E: The performance of watchdog regulators, and the apparent lack of influence by watchdog regulators on the treatment that is received by members of the public sector workplace, is analysed at Appendix 1. This realisation is important to any action plan that would try to address bullying in public sector workplaces, as any reliance on watchdogs might be putting the solution into the hands of bodies that already are a large part of the problem.

The Deterrent TOR F: The issue as to whether or not existing regulatory frameworks provide a sufficient deterrent may not be able to be fully addressed by the Inquiry. This may be the case where the experience of the public sector is that the leadership within public sector organisations and their watchdog

regulators has been *gatekeeping* persons in public sector workplaces from accessing these provisions. Appendix 1 gives examples of this phenomenon.

The Transfer TOR G: The whistleblower cases, because of the publicity that is often given to their treatment, whether by news media or public inquiry, are a mechanism by which other public sector workers learn the behaviours exercised in other workplaces. Unions and their communications systems also carry messages of reassurance where bullying is addressed and of alarm where the issue is not addressed. The spread of websites directing attention to bullying at specific workplaces is another mechanism. The need to deal with bullying rather than to try to isolate the problem has arrived, because, as Appendix 1 demonstrates, the problem is sizeable, and is growing despite the rush of policy and legislation.

The Evidence TOR H: A study of the size of the Griffith study needs to be done again, but in a way that avoids the biases and failings, explained in Appendix 1, that were incorporated into the assumptions and methodologies that misdirected the Griffith study.

CONCLUSIONS PART IV

Limited value can be gained from the raw data gathered by a Griffith University study into whistleblowing, if the errors in that study are worked around and developed as has been done in Appendix 1

It is strongly submitted that this Inquiry will be misled if it accepts the Griffith study summaries without the type of examination set out in Appendix 1.

The public sector in Australia appears to have been inflicted by systemic bullying allowed and/or encouraged by the organisations themselves in the worst instances.

Culture is 70% Leadership, 20% Reward and Recognition, and 5% Communication, and this understanding should be applied in schemes to deal more effectively with workplace bullying.

This reliance on strong cultures in relation to the leadership of the organisation works both ways. The leadership of some organisations appears to be cultivating a strong bully culture as part of their method for controlling their organisation.

The data that exists about the public sector workplace is tending to suggest that watchdog authorities are being ineffective in assisting the worst organisations from a dependence upon bullying.

In particular, the watchdog authorities appear to have no role and no intent in controlling gatekeeping forms of bullying by organisations against their own employees.

Whistleblower cases, when they gain publicity within the organisation or in the media, may be a principal means of transfer of the bully culture across organisations and across a public service, whereby employees are coming to feel pressured to comply with organisational bullying lest they suffer the same outcome.

A study of the size of the Griffith study needs to be done again, but in a way that avoids the biases and failings, explained in Appendix 1, that were incorporated into the assumptions and methodologies that misdirected the Griffith study.

THE CASE STUDY

Introduction.

Only one of the organisations who participated in the Griffith Study is known by name, and that organisation is the Australian Defence Force [**ADF**].

Appendix 1 makes the point that at the time of the Griffith study, the Senate had recently found wrongdoing within the ADF to be systemic, and management of the military judicial system was taken out of the governance of the ADF.

Appendix 1 also contains information of a case study of an officer allegedly bullied by the Army. The focus of this case study in Appendix 1 is upon the alleged failures of the relevant watchdog authority, the Defence Force Ombudsman [“**DFO**”], to assist that officer, but instead, its actions were in complicity with the ADF so allowing the bullying to continue and be unaddressed.

This case study is continued here in the main text, with a focus upon alleged bullying of that officer by officers of the rank of general.

The aim of this case study is to demonstrate:

1. how a bully culture becomes ensconced into the behaviour of the leaders of an organisation;
2. how powerful that culture may be in influencing even persons who have a strong respect for the entitlements of others, into a participation in that bullying; and,
3. the implications that therefore arise for the TORs of this Inquiry.

The Initial Trouble

Background. An officer with full time and part time service was allegedly subjected to gatekeeping (denial of promotion), spoiling (spiking the drink of the spouse, dispossessed of text books for a promotion qualification course), hurt (office cabinet broken into and papers removed leading to an attempt to charge the officer with the offence of insecurity) and expulsion forms of bullying (removed from corps unit and marked as never to return to any unit in his corps).

The bullied officer was, however, assisted by a steadfast permanent officer and administrator at that unit who, as the unit security officer, defended the officer during the hearing of the security charge. The steadfast officer and another showed the bullied officer a document (the bullied officer was not allowed to make a copy) that contained falsifications about the service of the bullied officer, and warned the bullied officer that senior officers were holding that the bullied officer had committed fraud.

The bullied officer lodged a complaint about all aspects of his treatment, but in this case study, only the falsification and fraud matters will be described.

The Entitlement. The officer making a complaint for redress of wrongs is entitled by Defence Instructions applicable to members of all the services, including the Army, to:

- A decision on each complaint;
- Detailed reasons including findings of fact:

Facts, evidence and other documents or factors relied upon in reaching a decision, including:

Findings on relevant facts, that are supported by the evidence;

Legal authorities, such as Defence Regulations and Ministerial Determinations;

Specialist advice, such as engineer, medical or legal advice;

Policy, such as contained in Defence Instructions and the ADF Pay and Conditions Manual;

Weight given to each of the material factors; and

Reasoning – the links between the facts or evidence, and the decision.

[Defence Instruction (General) PERS 34-1, annex G, para 23]

The Defence Instructions specifically forbid commanders from **gatekeeping** on these entitlements, by giving vague or general reasons in lieu of the detailed reasons:

“...It is not sufficient to simply state ‘no grounds for complaint’, ‘redress sought is not upheld’ or the like.”

[Defence Instruction (General) PERS 34-1, annex G, para 22]

If the bullied officer is unhappy with the decision and/or the detailed reasons by a commander, the officer can then request that the complaint be referred to the higher commander. Knowledge of the detailed reasons for the decision by the lower commander assists the bullied officer to make submission to the higher commander.

An officer also has entitlements when allegations of an offence like fraud are made against him/her. Those allegations need to be communicated to the accused officer, to be investigated, and to be subjected to formal hearing before any punishment, as may have been implemented by the falsified document, can be properly imposed. Failure to provide these entitlements is referred to as ‘rough justice’ or ‘off the record disciplinary punishments’.

Exchanges and Events. The bullied officer from this case study was subjected to **gatekeeping** with respect to these entitlements to fair processes, in both the administrative and disciplinary proceedings.

Regarding both the rough justice complaints against his unit commander, namely the fraud and falsification matters, the alleged gatekeeping by officers in the rank range of general was carried out to the following details:

- A. Commander of the 1st Division, a Major General, rejected the complaint without giving detailed reasons for his first decision. The reason he gave was:

“...I do not consider that [the bullied officer] has suffered any legal wrong or any injustice by the decisions of his Commanding Officer.”

No mention was made of the fraud or falsification matters in either the first or second decisions made by this commander. The Major General had to make a second determination when he was subsequently directed to comply with Defence Instructions by providing detailed reasons to the bullied officer for his determination. The Defence Force Ombudsman was able to force a second determination, but could not get the commander to address the fraud and falsification matters in the second set of detailed reasons.

- B. Commander Field Force Command, also a Major General, gave no finding of fact as to whether the document contained false statements. The Commander just stated that ***“...the allegation ...has been noted”***, and asserted that any

“...**irregularity**” was not the cause of any wrong to the bullied officer. This commander further dismissed the concerns that the complainant had about the fraud matter, stating that the complaint was “...**frivolous**” and based on “...**mere suspicion.**”

A regional commander, a promotions advisory committee and a corps committee all opposed a recommendation for the bullied officer to be promoted, without making any reference to the fraud matter. This was the case even though all these authorities had, or had members who had, participated in the rough justice. Rough justice comes under the category of hurtful bullying.

In lieu of opposing the promotion of the bullied officer on the basis of a past act of fraud, these authorities tried a **gatekeeping** approach.

These authorities argued that the bullied officer had not had service in a particular posting.

The decision-making authority, however, took an alternative view, and approved the promotion by stating in writing words similar to:

“...If the regional commander perceives a weakness in the officers ability to effectively cope in a regimental environment, it is unfortunate that he did not take steps to ensure the officer’s full career development needs were not identified at an earlier stage. The officer should not be disadvantaged because of what could be seen as poor career management on the part of the promotion advisory committee for that region.”

Analysis. While at the end of this initial trouble, the bullied officer obtained redress against actions taken to prevent his promotion, the fraud and falsification matters had been kept out of the process, and had not been addressed.

This was important in terms of controlling any further bullying, because the fraud appeared to have been used as the justification, held by the officers engaging in bullying behaviour, for disentitling the bullied officer from his entitlements under the Defence Instructions.

The challenge made by the bullied officer, against that *raison d'être* for disentitling the bullied officer, had not been allowed into the processes. The gate was kept closed.

This disentitlement, with respect to falsification of an application and recommendation to superior commanders, an alleged military offence, appears to have been supported or condoned by two major generals including a General Officer Commanding Field Force Command.

The Second Round of Trouble

Exchanges and Events. One or more of the officers allegedly engaged in bullying behaviour towards the bullied officer informed the bullied officers civilian employer of what was had been done to the bullied officer at the army and why. The civilian employer confronted the bullied officer with the defamatory allegations that had been made against the bullied officer.

The bullied officer sought an investigation from the Army into who from the Army had told what to his civilian employer. The General Officer Commanding Training Command, a Major General, was appointed the investigating officer.

Regarding the falsification matter, the Major General did not, during their interview, ask the Commanding Officer, who was alleged to have falsified the document at issue, about the falsifications. The Major General made no finding of fact on the falsification, and then used statements by the Commanding Officer who falsified the document to support findings adverse to the bullied officer on other matters.

Regarding the fraud matter, the Major General received evidence at different interviews that the fraud ‘finding’:

- Originated from the Commanding Officer;
- Was briefed to the successor Commanding Officer;
- Caused the regional commander to state that the bullied officer should have been court-martialled for the fraud;
- Was discussed with others by both Commanding Officers regarding the intent to inform the bullied officer’s employer.

The Major General did not put the allegations of fraud to the bullied officer. The Major General also refused the request by the bullied officer for the Major General to interview the steadfast officer who had informed the bullied officer of these matters during the initial trouble.

Here, the gatekeeping appears to have been applied to the conduct of the investigation. Gatekeeping in these circumstances is called willful blindness in legal terms

As explained in *R v Crabbe* (1985) 156 CLR 464, the High Court of Australia, which relevantly said at 470:

“...When a person deliberately refrains from making inquiries because he prefers not to have the result, when he wilfully shuts his eyes for fear that he may learn the truth, he may for some purposes be treated as having the knowledge which he deliberately abstained from acquiring.”

It is submitted that any display of wilful blindness reasonably goes to the issue of bad faith being shown by the investigation officer. In this case, bad faith was displayed by alleged **gatekeeping**.

The Major General did send all information received to the higher commander, the Chief of Army, a Lieutenant General. The Lieutenant General made a determination to dismiss the application for redress by the bullied officer without giving any finding of fact on the

falsified document or the fraud matter, and without informing the bullied officer of the information gained about the fraud matter.

The bullied officer only learned of these matters subsequently, from information provided informally to his legal officer (by presumably another steadfast officer). The legal officer obtained the full report and transcripts of interviews through the Minister for Defence.

The bullied officer sought a review of the actions by the Lieutenant General and the Major General from the higher commander, another Lieutenant General, the Chief of the Army.

This Lieutenant General also engaged in gatekeeping, by making a decision dismissing the complaint without giving detailed reasons. In one sentence, the Chief of the Army simply stated the previous investigation was not legally flawed and that it had adequately addressed its terms of reference.

This appeared to be in breach of Defence Instructions that stipulated:

“...It is not sufficient to simply state ‘no grounds for complaint’, ‘redress sought is not upheld’ or the like.”

[DI PERS 34-1, annex G para 22]

After multiple applications over 5 years, the Chief of the Army eventually released a briefing document and a legal opinion that indicated that the Chief also had not investigated the falsification and fraud matters, but had examined only whether the previous generals were required to have investigated and decided these two complaints.

The Chief did institute an inquiry across the Army into any evidence of a culture of systemic avoidance of due disciplinary processes. The bullied officer made a submission on the rough justice issue to this Inquiry, but it too failed to investigate the matters which was within its power, and failed to refer the matter to the Australian Defence Force,

which was also within its power. The complaint from the bullied officer went instead, at the end of the Inquiry's life, to the Inspector General of the ADF.

The Chief of Army then claimed that the matter was for the Inspector General to respond to, and informed the bullied officer of this, but the Inspector General decided that the complaint was for the Chief of Army to deal with, and did nothing to investigate the bullied officer's complaint.

The bullied officer then lodged a complaint with the Chief of the Defence Force, that the Chief of Army was gatekeeping against the bullied officer's entitlements to an investigation of the falsification and fraud matters, thus denying the bullied officer a finding of the facts about these complaints, and denying detailed reasons for the Chief of Army's determination based on these facts.

The letter of complaint was acknowledge but has never been responded to by way of a decision with detailed reasons. The complaint was and remains ignored by the Chief of the Defence Force. A progression of officers holding this position have collectively engaged in gatekeeping against a valid complaint about gatekeeping by a Chief of the Army.

Analysis. There were a number of ways in which the methods of gatekeeping, against the entitlements of a bullied officer, were developed in this second round of trouble.

There appeared a practice and a commitment by the watchdog bodies to support the system for not doing investigations, established by the commanders of the Defence Force – this appeared to be the case even though the Defence Instructions required and require that investigations be undertaken. This is information tending to show a corrupting of the Defence Instruction and complaint system, these being neutered by an unauthorised system that avoids the requirement to investigate.

The avoidance appears to be achieved by both investigatory authorities, the Conflict Resolution Authority supporting the Chief of the Army, and the Inspector General of the Defence Force, cooperating via a system of mutually supporting referrals, by each to the other, of the responsibility for investigating the complaint, such that neither does the investigation.

This outcome is termed hereafter as the ‘double block’ – this is systemic gatekeeping.

The Terms of Reference, too, were used to shut out (or *gatekeep*) from the investigation matters that were the subject of complaint. The matters in the written complaint were no longer the determinant of what was to be investigated, as per the Defence Instructions. The terms of reference for the investigation became the determinant.

The new complaint, that the terms of reference did not cover the scope of the matters in the original written complaint, was never considered. Nor, for that matter, were detailed reasons given for allowing the requirements of the Defence Instructions to be replaced in this way.

The Chief of the Defence Force appeared to take upon himself the entitlement to *gatekeep*, by simply ignoring a complaint properly made to that Chief under Defence Instructions.

The Third Round of Trouble

Background. The bullied officer, on advice, sought to overcome the double block, coming from the Chief of Army and the Inquiry/Inspector General, by lodging again the original complaint about rough justice, this time back at the bottom of the complaint process, by lodging it again with his then current Commanding Officer.

Exchanges and Events. This Commanding Officer referred it immediately to his higher formation who appear to have appointed a subsequent Commanding Officer to examine

the complaint. This subsequent Commanding Officer recommended that the bullied officer be removed from the service and be made to “...**resolve his outstanding administrative issues as a non-defence member**” – an escalation to expulsion bullying.

The formation commander suspended the bullied officer until further notice, without any process or procedure, for a period that ultimately became 16 months. This new illegal punishment became the subject of a further complaint, which was investigated. At interview with the Inquiry Officer, the falsification and fraud matters were discussed.

The General Officer Commanding Training Command, a Major General, received a report that found the complaints about the fraud and falsification matters were evidence that the bullied officer was irrational, mentally unbalanced and required psychiatric examination (hurtful bullying using psychological vilification). The Major General found that the bullied officer was a serial complainant and removed him permanently from Training Command, with instruction that he not be returned to that Command. The Major General also stated an intention to seek discussion at Army Headquarters to remove exceptional cases like the bullied officer from the Service.

As well as the King bully behaviour, the General Officer Commanding Training Command engaged in gatekeeping by failing to give a finding of fact on the falsification and the fraud matters. This was the case even though the bullied officer's complaints about these matters were a basis for the Major General to engage, allegedly, in hurtful bullying and expulsion bullying in his decision. Nor did this Major General give detailed reasons regarding these two matters of complaint.

The bullied officer complained to the Chief of Army about the investigation conducted by the General Officer Commanding Training Command.

The Chief of Army was now the steadfast officer, who had disclosed to the bullied officer the falsified document and the fraud finding, back at the time of the initial trouble. His deputy, a Major General, conducted the Inquiry, agreeing not to assign the inquiry to

either of the two authorities who had cooperated earlier not to investigate the rough justice complaint in the second round. An officer, not of general rank, and from another service, found the investigation by the General Officer Commanding Training Command to be biased, but did not look into the falsification or the fraud matter. He did state in general terms that the previous investigation should have **systematically addressed all matters in the complaint**. Regarding the fraud matter, this investigation officer criticized the previous investigation for ***not supporting the allegation by providing any analysis of the factual circumstances against the necessary elements of fraud ... The unsupported inference of fraud was allowed to remain in the report, to the detriment of*** the bullied officer.

This investigation officer, however, was not Army, and was not of rank equivalent to general. His criticism was swamped in subsequent decision-making when his report was returned to the generals to implement.

The Chief of Army, too, did not require an investigation into the two matters that he had disclosed to the bullied officer in the initial trouble, nor did he provide a statement to the bullied officer about these two matters as requested by the bullied officer. The Chief of the Army, a Lieutenant General, did not take any step known to the bullied officer that brought to notice that the bullied officer's claims about the falsified document and the fraud were genuine, were true, and did not constitute evidence of mental imbalance or need for psychiatric examination. The Chief retired leaving the bullied officer to fend for himself.

The new Chief of the Army did refer the matter for reinvestigation by the Inspector General, in the face of the bullied officer's objections. The new Chief, another Lieutenant General, refused, however, to include in the terms of reference the falsification and the fraud matters that had been disclosed years earlier by the former Chief of the Army.

The Inspector General also refused to include the falsification matter in his Inquiry.

The Inspector General did decide to investigate the fraud matter, but limited the investigation to what was on the documented record. The Inspector General was limiting inquiry into a complaint about ‘off the record’ punishment to what was ‘on the record.’ This would seem to be an inquiry set up to fail. The Inspector General also refused to include, in the investigation, any interview of the just retired Chief of Army and of any other officer allegedly involved in or otherwise knowledgeable about the illegal punishment.

The Inspector General refused the bullied officer’s complaints that the Inspector General was in a conflict-of-interest situation on the complaint. The basis for this concern about the Inspector General was the involvement of the Inspector General, during the second round of trouble, in the cooperative gatekeeping behaviour concerning the falsification and fraud matters with the Chief of Army – the so termed ‘double block’ used by both to deny the bullied officer his entitlements to an investigation, decision and detailed reasons by either of these authorities. The Inspector General refused to give the bullied officer a Statement of Impartiality and Independence as is the normal procedure of the Inspector General.

Let us consider the claims that the bullied officer is mentally unbalanced and a serial complainant. The Inspector General and the Chief of Army are together again, this time in refusing the bullied officer the ability to defend himself on these hurtful claims by inspecting the falsified document. It is strongly open to conclude that such an inspection would demonstrate that a complaint on this matter was reasonable.

The Inspector General confirmed the continuation of these restrictions two days after ‘Zero Tolerance Day’ for Military Justice, announced by the Minister of Defence, the Hon Stephen Smith, and the military chief executive, on 7 March 2012.

The Inspector General advised that the only way that the bullied officer was going to stop the investigation being carried out by the Inspector General was if the bullied officer withdrew his complaints.

Analysis. The bullied officer took action to overcome the mutually supporting double block, by the Chief of Army and the Inspector General, to an investigation of the falsification and fraud matters. The bullied officer did this by starting the same complaint again with his then current Commanding Officer. This action, however, has only escalated the reaction by the generals who thereafter engaged in hurtful and expulsion forms of bullying behaviour. The generals have also been unrelenting in regard to the gatekeeping form of bullying preventing investigation into the falsification and fraud matters.

An inspection only of the documents with respect to fraud matters may allow the inquiry to find whether or not the bullied officer actually committed fraud. The limited inspection, however, will not allow and will prevent the inquiry from finding out whether or not the bullied officer was found guilty, off the record, of a charge of fraud by avoiding going through a proper procedure (or any procedure that involved the bullied officer). The limited inspection is unlikely to uncover whether or not a punishment was imposed on the bullied officer, namely that the bullied officer was never to be promoted or allowed to return to units in his corps.

In this circumstance, the independence of the investigation needs to be especially beyond question. The ADF and their watchdog authorities, including the Inspector General, presently face a national call for a Royal Commission into the conduct of seven hundred (700) investigations into alleged sexual and other forms of abuse, from a 60 year period since 1952. A finding by the watchdog authority, that the bullied officer actually committed fraud, might be too great a temptation, because the finding might allow the system to dismiss another allegation of serious misconduct that might bring added weight to the pressure for establishing that Royal Commission.

The *raison d'être* of the generals for disentitling the bullied officer, from his entitlements to an investigation and determination of his complaints with detailed reasons, is unlikely to be that the bullied officer is mentally unbalanced. This is because at least one of them

knows that the claim about the falsification document (as well as the fraud matter) is real. This general also knows what his expectations were, during the initial trouble, as to what the bullied officer would do when the bullied officer was shown the falsified document – the expectation as to what the bullied officer might do may probably be why this general did not risk giving the bullied officer a copy of the falsified document.

Relevance to the TORs

The Prevalence TOR A1 asks the Inquiry to inquire into the prevalence of workplace bullying in Australia. The case study is of only one bullied officer, but the case study is also about:

1. Twelve generals, across all levels of that rank;
2. One hundred percent (100%) of the three (3) watchdog authorities regulating the Australian Defence Force, namely:
 - The Office of the Defence Force Ombudsman;
 - The Conflict Resolution Agency, now the Fairness & Resolution Branch;
 - The Inspector General of the Australian Defence Force.

It is beyond question that other bullied officers exist. The case of MAJOR Allan Warren has many of the critical issues related to bullying that the case study in this submission contains. These include:

1. Gatekeeping by military authorities on the provision of detailed reasons - which acts of gatekeeping Major Warren tested and won before the Administrative Appeals Tribunal [AATA 272];
2. Gatekeeping with respect to a critical document affecting MAJ Warren's employment - which MAJ Warren finally obtained due to extraordinary steps taken by an internal watchdog authority within Defence; and
3. A focus of the criticisms by MAJ Warren upon the performances of senior officers of the rank of general, including their truthfulness in ordinary situations.

With respect to the matters heard in Major Warren's case before the Administrative Appeals Tribunal, the decision of McMahon B. J. included the finding that the decision by the ADF:

... does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based, or adequate particulars of the reasons for the decision. Not only has there been no finding of fact, there has been no proper statement of reasons.

Major Warren reports that the hearing on this matter lasted for 10 minutes.

The decade of multiple Senate Inquiries into military justice, culminating (but not ending) with the 2005 Senate Inquiry, produced scores of examples of the phenomenon of bullying (disentitlement) by the Defence Force as an organization:

7. Against this background of almost ten years of rolling inquiries into the military justice system, the Chief of the Defence Force (CDF) recently expressed his view that 'The military justice system is sound, even if it has sometimes not been applied as well as we would like...I have every confidence that on the whole the military justice system is effective and serves the interests of the nation and of the Defence Force and its people'.

8. In view of the extensive evidence received, the committee cannot, with confidence, agree with this assessment. It received a significant volume of submissions describing a litany of systemic flaws in both law and policy and believes that the shortcomings in the current system are placing the servicemen and women of Australia at a great disadvantage. They deserve a system that is fairer, with rules and protections that are consistently applied. The committee has recommended a series of reforms that would constitute a major overhaul of the military justice system in Australia.

9. The submissions made to this inquiry, which number well over 150 and although canvassing a wide range of personal circumstances, contain a number of recurring themes which echo many of the complaints made in previous inquiries. Despite the six inquiries in the last ten years and the subsequent reforms described by CDF and the Service Chiefs, certain types of complaint continue to be made.

10. Complaints were made to this inquiry about recent events including suicides, deaths through accident, major illicit drug use, serious abuses of power in training schools and cadet units, flawed prosecutions and failed, poor investigations. Some of these complaints raise serious concerns about sub-standards of justice meted out within the ADF.

...

12. What is striking about the submissions to this inquiry is the variety of background and experience in their demographic. The complainants range from a 15 year old female cadet to a 50 year old male two-star general equivalent and include every single rank level in between those two extremes. They include serving and ex-serving personnel, general service and specialist officers and other ranks, legal officers and health professionals, police and convicted persons, civilian Defence employees and

Equity officers, mental health and social workers, community and returned service groups and, most poignant of all, the next of kin of deceased members.

...

14. Under the terms of reference and in the context of the Committee's role, the committee cannot determine the veracity or otherwise of each and every claim, nor pursue individual remedies for the complainants. However, it is apparent to the committee that in the military justice system there is at least some degree of substance in the submissions the committee has received which suggests the system is not operating properly and justly. This perception in itself is an indictment on any justice system. Modern legal systems are underpinned by the maxim that justice must not only be done but be seen to be done. Assessed against this principle, in too many instances current ADF rules and practice founder.

15. It is clear, however, that substantive injustices to individual servicemen and women have occurred. The ADF has admitted to some of these instances. However, many instances given as evidence to this inquiry met with no comment by the military, despite the committee giving Defence the opportunity to do so throughout the course of this inquiry (by way of written submission). In the view of the committee, the lack of response from the ADF on some of the matters sent to them has made the committee's task more difficult.

...

110. It is in the public interest to have an efficient and effective military justice system. Just as importantly, it is in the interest of all servicemen and women to have an effective and fair military justice system. Currently they do not.

111. For ten years now, there have been increasing calls from servicemen and women and their families that all is not well in the military justice system. Repeated inquiries have resulted in piecemeal change but some fundamental principles remain unchallenged. The serious issues raised in the 150 plus submissions made to this committee—including by extremely senior ranks of the military—make it plain that wholesale review and reform of the principles underpinning the current system of military justice is now required. Modern management principles have been visited upon the military and 'core business' has become the guiding principle for most functions. The military legal and administrative system should be subject to the same logic, and, in so doing Australian service personnel will become subject to consistent, professional processes whenever problems arise.

112. Finally, the committee recognises the measures introduced over the last decade by the ADF in response to many of the problems that have again been identified. The fact that these problems continue to be highlighted in this report demonstrates those initiatives are not fully resolving many critical issues.

**Extract from the Executive Summary,
The Effectiveness of Australia's Military Justice System,
Senate Foreign Affairs Defence and Trade Reference Committee, 2005**

There is also the recent DLA Piper Report for the Minister for Defence, citing 700 cases going back to 1952 that DLA Piper found to be highly credible.

This submission, however, has highlighted the reported prevalence of cases within the ADF as at 2005, as reported by the Senate Inquiry, because that was the year when the

Griffith University study was initiated. This is highly relevant to what is submitted later about the credibility of information from this study, under the Evidence Base TOR H

This submission has highlighted a case study from the Defence Forces, because that is the only organisation, of the seventeen public sector organisations that participated in the Griffith study, that is known to be on the list of participants for that study – the others are not reported by name in the literature.

The Experience TOR A2 asks the Inquiry to inquire into the experience of victims of workplace bullying.

As well as the experiences of the target of the bullying behaviour, the case study in this submission sets out to introduce the experience of:

- The steadfast officer who performed with credit in bully situations when he was entering into Field Rank, but who did not produce the same level of performance when he rose to the General Officer Commanding rank and position as Chief of his Service – because, it is alleged, that steadfast officer too appears to have become a victim of the systemic bullying;
- The watchdog authority, the Defence Force Ombudsman, which showed effectiveness in preventing or overcoming gatekeeping by a general in earlier times, but which progressively turned to allowing gatekeeping to be imposed on service personnel, and ultimately (as related in Appendix 1), to misrepresenting the facts known to the DFO to the Senate, and misleading the Senate on specific questions put to the DFO on the treatment of service personnel by their superior officers – because it is alleged that watchdog authority too appears to have become a victim of the system of bullying in the Defence Force over which the DFO was assigned the responsibility of maintaining a watch.

The comparison the MAJ Warren case study, widely reported on the internet (google ‘ex-Major A K Warren’) of events occurring before 2005, with the case study from this

submission, the third stage of which has happened since 2005, provides compelling material from which a sound judgment can be made as to whether organisational bullying in the Defence Force has improved or worsened, or has not changed.

The Culture TOR B asks the Inquiry to inquire into the role of workplace cultures in preventing and responding to bullying, and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying.

The body of knowledge on organisational change, gained from the experience in Australia of introducing advancements such as Total Quality Management, includes the summary that culture is (Rehn, 1993):

- A. 70% leadership**
- B. 20% reward and recognition, and,
- C. 5% communications, with
- D. 5% covering all other factors

The communications on reward and punishment, from the top level leaders (the generals) within the army, has been, it follows, the primary contributor to the bully culture within the ADF. It is submitted that gatekeeping by generals, denying access by soldiers and officers to their entitlements under the Defence Instructions, has been a powerful and all-pervading influence on junior officers and on officers within watchdog authorities.

The treatment of the bullied officer, after he complained about the falsification and the fraud matters, may have surprised and educated the steadfast officer. Thereafter, the steadfast officer may not have had any expectations that such matters, once reported, would be quickly identified as a wrong and corrected.

The case study contained two aspects that appear to be direct evidence of the type of bully culture existing at the command level of the ADF.

Firstly there is the comment by one Major General, in the role of investigating officer, during the second round of trouble experienced by the bullied officer, where the Major General stated to the bullied officer at interview (words similar to):

“...If what you say is true, they will never tell you.”

This may indicate that the generals have a sense of their own entitlement extending beyond any need to adhere to the Defence Instructions or military law.



Figure 2: The Layers to the Culture of an Organisational

This may be a critical assumption, in the structure depicted in Figure 2, to the culture of the generals. This assumption of entitlement above the requirements of military law may be enabling the generals to adopt an attitude (another part to the structure of their culture depicted in Figure 2) that disentitles others, be they junior officers, watchdog authorities, a Senate Committee or even the relevant Minister of the Crown, when these others challenge this **Commanders' Entitlement**.

Secondly, there is the extent of the measures taken by the Defence Force Commanders to prevent the falsification matter from being admitted to or acknowledged, more than a decade after the officer who allegedly falsified the document at issue was retired,.

This may tend to fit with the descriptions of bullying contained in Wilkie (2004), quoting Dr Shirley Waugh, that bullying has “...**antecedents**”, in particular, “...**an unconscious belief that there is someone, either oneself or another, who has all power**” and who “...**never ever makes any mistakes**”, with a related belief in the “...**absolute uniqueness of that person**”. **Beliefs**, too, are a part of the structure to a culture as depicted at Figure 2, and this belief may be part of the structure to the culture of the generals.

The culture of the generals does seem to include, if not turns upon, an inability to admit mistakes. The case of Major Warren appears to bear this out, as well as the unyielding denials before the 2005 Senate Inquiry. The absolute need to deny any mistake was in evidence before the 2005 Senate Inquiry, and was contained in the assumptions made by TORs, adopted by the Defence Force Ombudsman and other watchdogs, when steering the Griffith University study. These instances of denials are strongly indicative of this belief. This may lead, as per the structure of Figure 2, to the ‘WAY WE THINK’ step in that diagram, which is immediate denial and delay, followed by defamation and expulsion of those who do not withdraw from the criticism.

The Awareness TOR C requests the Inquiry to inquire into the adequacy of existing education and support services to prevent and respond to workplace bullying, and whether there are further opportunities to raise awareness of workplace bullying such as community forums.

Two responses are offered from the case study used in this submission, regarding:

1. Awareness levels, and
2. The negative impact of particular education exercises.

The lack of **awareness** held by elected representatives, with the issue of bullying or of harassment or discrimination or unacceptable behaviour or similar, is the awareness issue of greatest concern, it may be suggested by the case study and the history of Parliament Inquiries into the ADF.

It appears that the Federal Parliament is not accumulating the weight of evidence over two decades of such inquiries into the ADF, reasonably necessary, and available, for the Parliament to understand fully the causes of these problems in bully cultures. It appears that the Parliament is relearning over and over again aspects to these issues that have already been the subject of Inquiry and recommendation without result.

An accumulation of this information from past inquiries should reasonably and unavoidably lead to the observation that there was an absence of any improvement in outcome from the Defence Force on this and related issues. This absence of outcome exists despite repeated efforts with training, with improved procedures, and with better policies, all directed at the awareness and culture of persons at the frontlines of the organisation and along its line management. This observation should have alerted the Parliament to the possibility that other factors may be the true cause of these repeatedly reported but unaffected problems.

It is respectfully submitted that factors such as the culture of the leadership of the organisation, and the performance of watchdog bodies, both internal and external, would have been included in the terms of reference of the current Inquiry if the awareness levels of the Parliament on these worker treatment issues were heightened by the findings from past inquiries

Once the TORs for the Inquiry promote directly a response on these higher level factors, the Inquiry may be giving consideration to the core causes of the problem rather than to the symptoms. The symptoms, occurring at the lower levels of the organisation, are more visible, according to Figure 2, that the causal factors arising in the higher places within the organisation.

It is relevant to note that one of the contributors to this submission held position at a principal army school as the Subject Master for Leadership and Ethics. It was the case that most group discussions on Leadership and Ethics programmed for the captains and majors participating in the Command Leadership and Management courses during that period quickly settled into serious criticisms about certain actions by the generals of the Army. A little of such criticism may help all to realise that the discussion had no limits, but long discussion of these criticisms did not contribute to the learning objectives of the training.

The contributor turned the discussion by asking the captains and majors to consider the particular generals in whom they found fault, and ask themselves the question:

What were these generals like when they too were captains or majors?

Invariably, the trainees would respond:

They were probably just like us,

And, the contributor would then pose the question, that was on point for the learning:

What might cause you to move to these unsatisfactory behaviours as you rise in rank?

This submission has benefited from frank responses to that question.

This submission has proposed that visible acts by generals disentitling officers from their entitlements under Defence Instructions and military law serves to ‘educate’ junior officers about the rewards that may flow from seeking their entitlements in these respects, when a wrong has been done to them or to their subordinates. The expected response

from a junior officer observing such conduct from his superiors is likely to be one of self protection.

It does not explain how officers, on their journey to the rank of general, may grow any sense of improper self-entitlement, or how they may form any belief that they no longer make mistakes. The sense of improper self-entitlement and the belief that they no longer make mistakes, are aspects from the definitions of bullying that were discussed at the beginning of this submission. Evidence that these aspects may apply to the culture of the generals in the army may be gained from the behaviours of generals described in the case study used by this submission.

These observations seem reasonably to suggest that some part of the process may belong to the military training that officers receive with the preparations that they are given for appointment to command positions.

Staff College, a one-year course of scholarship in war and administration, **does not** seem to be a contributor in this regard. The Pre-Command Course, however, given at the School at which the contributor to this submission served, may merit inspection.

Officers are sent to this Pre-Command Course at the rank of Lieutenant Colonel, and this course, in some aspects, may be having a negative effect upon the successful and talented officers who attend.

The course has had, on some formats, the following aspects:

- This is the first course in the continuum of training experienced by officers to which not very many of the peers of an attendee also attend;
- The spouse of the selected officer comes to the course with the selected officer, and activities entertaining the spouses, between the few training sessions where the spouse attends with the attendee, are a major component of the activities planned for the course;

- An expensive social event, say, up to three days in length, extending say to a trip to an offshore island, can be the finale to the course;
- The lecture content can contain, again on some formats, a fair degree of content on:
 - Building the career; and
 - Covering ‘your arse’,
 drawn from a sentiment that ‘You have made it. Do not ruin it’, or similar.

While all these topics can be given a legitimate context, healthy formats also bear down upon the servant culture of the true commander. **The Royal Military College at Sandhurst** in the United Kingdom has the motto “*Serve to Lead, to Lead is to Serve.*”

The servant culture can be emphasised, for instance, by assigning new commanders the task of serving breakfast to the diggers, and by training sessions on responsibilities. Activities of this type, with an emphasis on accepting accountabilities rather than ‘covering an arse’, may give the overall course a better balance regarding the legitimate entitlements of commanders and the legitimate entitlements of those who they command.

It is submitted that the system for educating senior officers needs to be driven such that all tendencies to the development of a bully culture are displaced and replaced by a leader-servant culture, as can reasonably be deduced from the case study.

The Prevention TOR D requires the Inquiry to look into whether there is scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying.

The case study has been selected because of the demonstrations that it contains that the regulators, including the watchdog authorities, 100% of the three watchdog authorities with responsibilities to protect defence service persons from bullying, are implicated in the bullying, by, for example:

- The DFO, by misleading the Senate Select Committee;

- The CRA and the Inspector General, by the double block denying investigation of the falsification and fraud matters; and,
- The Inspector General again, by denying any conflict of interest in its current investigation of the bullied officer, despite its involvement in the double block system (with CRA) used for denying the same investigation 7 years earlier.

A lack of coordination is not the problem. Well developed forms of inappropriate co-ordination may be closer to the issue.

Appendix 1 sets out, as one example, the instance before the Senate Standing Committee where it asked if there had been complaints to the DFO about reprisals, and the DFO stated that there had been no complaints. As a matter of known fact, the DFO had a recent complaint from the bullied officer from the case study used in this submission.

It is on the record that the DFO has been involved in presentations to other public and private organizations advocating the Australian Defence Force's 'reformed' administrative justice system as **best practice** (Street & Fisher 2008, para 90). The DFO have placed the reputation of their own Office on the performance of the military justice system, and thus seem to be in a conflict of interest situation when a bullied officer comes to the DFO with documented proof that the military justice system remains systemically corrupt.

It is reasonable to ask: To whom can the bullied officer go, now that the DFO has misled the Senate about the bullied officer's complaint of systemic bullying by the leadership of the Defence Force?

In the instance of the **double block**, as another example, the co-operation amongst the watchdogs has extended to a phase of developing a system that defeats the essential requirement of the Defence Instruction on complaints. The Defence Instruction assures a service person of their entitlement to an investigation of a complaint against a senior officer, but '**the double block**' renders the assurances prescribed in the Defence

Instruction as being hollow and so profoundly demoralizing as to engender unhealthy, but unavoidable, cynicism of authority, the very antithesis of a properly functioning ADF.

The phenomenon, as is proposed in Appendix 1, is that the watchdog authorities have either have been bullied themselves into a state of capture by the generals commanding the ADF; or they have remained attached to, or have entered willingly into, the bully culture that the leadership of a generation of certain generals has established.

The watchdogs need to find involvement at the beginning of the trouble if these authorities are to preventative and proactive in their operations, the case study suggests. The DFO had some beneficial effect for the bullied officer in the initial trouble stage of the case study, but did not sustain the effort as would be necessary for any watchdog seeking to correct a bully organisation.

A focus by watchdogs on the gatekeeping form of bullying, by organisations over which they have a 'watch', appears to be pivotal to the effectiveness of watchdogs and to the cost efficiency of watchdog operations. The decision by McMahon, B. J., in the AAT matter lodged by Major Warren against the ADF, took a few minutes to resolve, because gatekeeping is largely a black and white distinction – here is the list of complaints, please show the watchdog a decision for each, and for each decision, the finding on the facts, and the detailed reasons.

As a demonstration as to how this approach can benefit the response to bullying, consider the current effectiveness of the DFO in influencing the environment within the ADF.

Currently, the DFO is only allowed to become involved after the service person has taken the complaint to each level of the ADF complaints system. By then the bullying can have gone on for years, and the worst outcomes for the bullied service person can be firmly in place. If the DFO was able to become involved at all stages of the ADF's complaint process, with respect to gatekeeping issues, matters readily identified and directed, it

would significantly influence the health of workplaces in the ADF, it is proposed, at a cost effective rate of resource use by the DFO.

The current regime for DFO involvement is the worst set of rules for the bullied service person, and the best set of rules for advantaging the bully culture within the ADF.

The Gaps TOR E asks the Inquiry to advise whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms.

What has proved helpful, in isolated instances, are the more detailed provisions of the Defence Instruction, that deal specifically with some of the alleged tricks of process that are systemically employed by gatekeeper bullies.

For example, the Defence Instruction specifically states, regarding the provision of detailed reasons, that the particular ‘trick’ of giving vague reasons does not meet the requirements – examples of the inappropriate response too are given:

“...It is not sufficient to simply state ‘no grounds for complaint’, ‘redress sought is not upheld’ or the like.”

[DI PERS 34-1, annex G para 22]

The Defence Instruction, however, does not have provisions of comparable specificity dealing with the tricks of, for example:

1. Leaving some aspects of complaint out of the TORs for the inquiry into the complaint, allowing the requirement for investigation of all matters of complaint to be circumvented, and then defended on the basis that the investigation covered the TORs.

A specific statement in the Defence Instruction, starting with the words from the above quote, namely, ***“It shall not be sufficient to...”***, would be helpful;

2. Investigating complaints that have not been lodged, in place of the complaint that has been lodged, and investigating a complaint that has not been made, finding no case to answer on the complaint that has not been lodged, and defending the action on the basis that the matter has been fully investigated;

A specific statement in the Defence Instruction, starting with the words from the above quote, namely, ***“It shall not be sufficient to...”***, would be helpful;

3. Giving detailed reasons on some matters of complaint only, but then stating that detailed reasons have been given; and

A specific statement in the Defence Instruction, starting with the words from the above quote, namely, ***“It shall not be sufficient to...”***, would be helpful.

The Defence Instruction would be improved if it specifically proscribed these tricks, stipulating that these types of actions, taken in response to a complaint, do not meet the requirements of the Defence Instruction.

The specificity and the examples would assist the bullied complainant to present good argument before commanders who are not legally trained, or who attempt to gatekeep bullied members out of proper processes based on spurious legal opinion provided by Command Legal Officers.

With the bullied officer in the case study, for example, the bullied officer complained that he had been suspended without pay and expelled from the formation by a commander of that formation because the bullied officer had made a complaint about decisions taken by that commander. This complaint was based upon the commander’s letter to the bullied officer which read:

“...The concerns you have espoused to [Higher Command] towards the decisions I have made regarding your employment within [the Formation] have been noted. Based on information provided by the CLO relating to these

concerns, I have determined that to maintain an appropriate level of distance between you and the formation that I command, you are not required to parade at this unit or at any [formation] unit until I direct otherwise.”

The reputedly independent ADF Inspector General, however, set out, in the TORs, to make inquiry into an action by that Commander described as (words similar to)

‘a direction that the bullied officer was no longer required to parade at the unit pending the outcome of the Routine Inquiry into the officers complaints.’

The wording, ***direction not to parade***, was consistent across both sets of words, but other changes to the wording of the complaint changed the nature of the complaint substantively:

- the original complaint alleged that the reason for the direction was a complaint made by the bullied officer about the commander, but the reason in the new TOR drafted by the Inspector General, is an Inquiry into that complaint and complaints against three other senior officers – the direction not to parade is no longer personal between the commander and the officer with the new words, it is procedural between the Routine Inquiry (into complaints about 4 officers) and the bullied officer;
- the original complaint was about an expulsion from parading at any unit in the formation, but the limits to the expulsion in the TOR have been reduced considerably to just the current unit in that formation – the element of the unreasonableness of such a wide range of expulsions has been reduced to the unreasonableness of an expulsion from one unit only;
- the original complaint was about a direction that was to be maintained until the commander directed otherwise, but the new wording in the IGADF’s TOR has reduced this to the end of the conduct of an Inquiry – again the personal element is removed and a time frame based on an administrative process has been installed in its place. This has been done in circumstances where there is no mention of the ‘Routine Inquiry’ in any part of the commander’s letter.

The nature of the complaint, through these **new** wordings, has been transformed from the nature of a (serious) reprisal personally given and imposed by a commander upon the officer who has complained about the commander, into a (lesser/administrative) procedural issue as to whether a commander can suspend a complainant during the conduct of an Inquiry into those complaints.

This set of words by the Inspector General follows a previously unsuccessful attempt to rephrase the bullied officer's original complaint. On that earlier occasion, the wording of the complaint about the commander was changed to:

“...taking action to remove you from an environment that you found hostile, for both your benefit and that of the unit.”

again without any mention of ‘hostility’ or ‘benefit’ being made in the commander’s letter.

These changes are being introduced into the TORs before any investigation is begun, and thus constitute findings made by the Inspector General in advance of any investigation. In this way, the investigation of complaints that have not been made may be turned into the nature of another ‘trick’.

The *Public Service Act Qld* is legislation that specifically directs, as a matter of law, that the public service commissioner can only investigate complaints that **have been made**, and thus is not allowed, under the Act, to investigate complaints that **have not been made**.

It follows therefore that gathering such specific provisions, used piecemeal by different jurisdictions to diminish particular tricks used by particular authorities to gatekeep against the entitlements of bullied persons in the workplace, would considerably strengthen the practicability of legislation and policies determined to assist bullied persons in the workplace.

The **Deterrent TOR F** requires the Inquiry to seek information and opinion of whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying.

Dr Adair, in his recent visit to Australia, explained the importance of the finding of the International Criminal Court in The Hague against Charles Taylor, the President of Liberia, for atrocities against the people of Sierra Leone. Dr Adair stated that it meant that leaders of member nation of the United Nations could no longer rest easy that they could use their Office (invoking Head of State immunity) to avoid justice for aiding and abetting forces in wrongdoing against the entitlements of their own people, in this case not to suffer genocide.

It is not the existence of the International Criminal Court that has encouraged Dr Adair in the grand challenge that he has undertaken, it is the action taken against an alleged perpetrator that provides the encouragement.

The existing procedures in that instance have been enforced.

In this respect, this Deterrent TOR is mis-worded. It appears to presume that it is the existence of the process that provides the deterrent. The only deterrent is the demonstration of a preparedness to take action using any process when bullying appears, in any of its forms. It is open to argue that the action taken to expel the bullied officer in the case study had the strong tendency, unacceptably so, to deter others from disclosing wrongdoing by their commanders and thereby avoid his fate. There needs to be a deterrent of a similar nature directed at commanders, if a deterrence to bullying and to a bullying culture by errant commanders is to be given regard and gain some traction.

With respect to bullying in the ADF, however, there is no example of any action taken against a general or a watchdog authority, for deliberate gatekeeping against the entitlements of one of the ADF service members. Service members are *persona* in

Adair's meaning with respect to entitlements for receiving fair process regarding any complaint. These entitlements are what these watchdog authorities should be guaranteeing. This is the case despite the allegations made by MAJ Allan Warren, the allegations that went before the Senate, and the misleading of the Senate alleged as part of the case study reported in this submission. The DLA Piper report presently before the Minister for Defence demonstrates the outcome from the lack of any deterrent over a prolonged period.

It is now a stark public fact that the accumulation of grief, suicide and anger in the ADF communities, reported to the Minister for Defence in recent inquiries, accompanies the accumulation of unresolved injustices. This accumulation of unresolved injustices has occurred by definition because no action has been taken to deter the chiefs of organisations from gatekeeping against the entitlements of persons. This same result has occurred for the leadership of Churches with respect to their gatekeeping against the proper investigation into the abuse of children, and for the leadership of prisons with respect to their gatekeeping against a proper investigation into deaths in custody.

The two interdependent accumulations are a universal phenomenon, derived from the disentitlement of people who are 'persons', and are in possession of Adair's 'personality'.

The Transfer TOR G asks the Inquiry to inquire into and make recommendations as to the most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another.

Again, the TOR may be missing the understanding about the 70% importance of leadership to the development of culture. The development of a bully culture may migrate from one workplace to another. The more expected process, however, is that culture flows down to all workplaces in an organisation from the leadership of those workplaces.

Culture development is principally a vertical process. It stems from the leader to the workplace, and is not so much a horizontal process, that is, from one workplace to another workplace working under the same leadership.

The Evidence Base TOR H requests that the Inquiry inquire into and make recommendations on the possible improvements to the national evidence base on workplace bullying.

Appendix 1 sets out the evidence that the Griffith University study made a number of errors in researching complaints made by persons within the public sector. It is to be hoped that this Inquiry should, as a result, not make the same errors.

The Inquiry should also appreciate that the holes in the data collected by the Griffith study as a result of these errors remain holes that need addressing.

Firstly, Appendix 1 provides the evidence that the Griffith study simply assumed away the possibilities that the organisation and its leadership might be ill-intentioned, and might deliberately be avoiding any genuine attention to eradicate bullying. This assumption the Griffith study has certainly made with respect to one of its participating organisations, namely the Australian Military, without any reasonable basis for doing so. This criticism appears clearly justified, given the findings on systemic wrongdoing in the military that had been made by a procession of inquiries leading up to the start of the Griffith study.

This Inquiry should not avoid the evidence that bullying in certain organisations may be systemic, and/or that bullying may be being used by the leadership of some organisations to control aspects to the operations of those organisations. In short, bullying is essentially proactive in nature, but can also become reactive very quickly.

Secondly, Appendix 1 shows that the Griffith study held to this assumption even when the data that it collected from the participating public sector organisations demonstrated

that the problems were widespread and observed, on average, by 70% of the employees. That scope of observations by 70% of staff is the mechanism through which the culture was developed, it is proposed.

If the figures reported in Appendix 1 were only average figures, how bad was the situation in the worst of the participating organisations? The Australian Parliament, too, has volumes of testimony about mistreatment suffered in the ADF, and should not hold to a view of Australian workplaces that such dire situations do not exist. The current TOR for the Inquiry may imply that the Inquiry has not considered that this might be the case. This Group representing whistleblowers requests that the Inquiry does consider this case.

Thirdly, the Griffith study concentrated on horizontal forms of mistreatment, principally mistreatment of staff by colleagues. The data that the Griffith study collected, however, indicated that 3 out of 4 instances of mistreatment came from superiors, not colleagues. It follows therefore that this Inquiry needs to examine both situations, namely:

- A. bullying by a colleague [bullying] or colleagues [mobbing]; and
- B. bullying by the organisation [systemic bullying], as part of a systems decided upon by the leadership of the organisation, that relies on bullying in order to control its staff to some improper outcome.

CONCLUSIONS PART V

The case study demonstrates the prevalence of gatekeeper forms of bullying within an organisation known to have systemic wrongdoing within its justice procedures and serious and continuing symptoms amongst the experience of its employees.

The case study also demonstrates the compromised state of all the watchdog authorities with responsibilities for addressing forms of mistreatment within that organisation.

The case study provides an illustration as to how well intentioned persons, upon promotion into ill intentioned command cultures, have and/or may become victims of that culture. The culture can win.

The problems with the culture of the executive of a bully organisation appear to have two elements. Firstly, as the case study suggests, a sense of self entitlement that is improper; and secondly, a belief that they no longer make mistakes.

The levels of awareness held by elected representatives may not be as insightful as it might be if the lessons learned from the sequence of Parliamentary Inquiries on related topics were accumulated and considered to greater effect. The continuing series of inquiries into the organisation from which the case study was taken strongly tends to underpin this concern.

The leadership of organisations needs to develop a leader-servant culture. The training given to higher level executives may contribute to the establishment of such a culture.

Improvement can be assisted, by providing into policies and procedures, specific vetos-cum-prohibitions of and on several or many of the gatekeeper tactics that can be used to disentitle persons in the workplace and drive operations using bullying. **The process of stronger prevention is reliant on the enforcement of those entitlements as and when bullying occurs.**

The public sector in Australia is currently poorly served by its watchdog authorities. This is demonstrated by the comparison of the history of the organisation at issue in the case study, namely the ADF, versus how the watchdogs treated this organisation in the Griffith University research that they funded and steered.

It is submitted that this Bullying Inquiry should inquire, not only into the horizontal dynamics that may occur within organisations regarding the spread of a bully culture, but

also on the vertical dynamics linking leadership to culture. The case study and the analysis provided by Appendix 1 is information tending to show that the vertical dynamics are three times as powerful as the horizontal techniques.

Watchdog authorities would be more effective, and more cost effective, if they became more proactive, through a focus on dealing with gatekeeping issues by organisations at the beginning of bullying, rather than as a venue of last resort when the spoiling, hurtful and expulsion forms of bullying have also had their impact on the situation.

SUMMARY OF CONCLUSIONS

Leadership is key. It is key to the problem of the bully culture, and it is key to the solution of bullying in organisations.

Leadership, in resolving the myriad of problems that can arise in organisations where bullying is rife or is systemic, needs to be exercised in:

- A. The enforcement of the policies and procedures in place to combat bullying;
- B. The development of a leader-servant culture through training and development given to the higher level executives within an organisation;
- C. The reinforcement, in ethics training, of the entitlement of persons in the workplace; and
- D. A focus upon gatekeeping by executive managers and internal watchdog units, as an indicator of the health of their organisational culture with respect to bullying.
- E. A focus by external watchdog authorities upon gatekeeping behaviours by organisations under their watch, as a strategy for earliest intervention and preventative action against the development of bully situations and bully culture.

A study of the size of the Griffith study needs to be done again, but in a way that avoids the biases and failings (explained in Appendix 1) that were incorporated into the assumptions and methodologies that seriously misdirected the Griffith study. To have real

and lasting worth, such a study needs to be done **independent** of the watchdog authorities whose performance needs to be a separate part of the Terms of Reference for such a study.

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Appendices

1. Critique of Griffith University research project into Whistleblowing in Australia's Public Sector Workplaces