



Workplace Bullying Summit Discussion Document

by

Donna Pokere-Phillips LLB LLM

BEETit Solutions

Business Environmental

Employment & Tax Solutions

beetit.solutions@gmail.com

Mobile 027 602 5011

 Photo.elsear.com

Contents

Status of Workplace Bullying in New Zealand	4
1. Explaining the problem	4
2. Together achieving change	4
3. Zero tolerance to workplace bullying	4
4. Worksafe NZ Guidelines	5
5. Restriction of the 90 day rule	5
6. Current Status.....	6
7. Failure of the existing route to natural justice	7
8. Obstacles encountered by victims of workplace bullying and harassment	7
9. What defines workplace bullying?	10
10. Legal Claims	11
11. Workplace Bullying is a hazard	13
12. The Employee	14
13. The Employer	15
14. The bully	16
15. Access to Natural Justice	16
16. Costs	17
17. Conclusion.....	18
18. Moving forward	18
19. Points to Consider.....	19
20. Endnotes.....	20

Status of Workplace Bullying in New Zealand

1. Explaining the problem

- 1.1. The appreciation of workplace bullying today is comparable to our recognition of sexual harassment and abuse three decades ago.
- 1.2. Society and the Courts were initially slow to recognise both the nature and the extent of this problem and therefore could not react appropriately when dealing with it.
- 1.3. Both the Employment Court and the Employment Relations Authority's failure to recognise the endemic problems and underlying issues associated with workplace bullying only exacerbates the problem.
- 1.4. Unfortunately the insidious nature and characteristic of the workplace bully is often not fully appreciated by the Courts.
- 1.5. The adversarial role of the Courts and the burden of proof placed on a victim of workplace bullying brings the effectiveness of this process into question.

2. Together achieving change

- 2.1. We are here today to discuss the prevalence of workplace bullying created in part due to deregulation of employment law of the past 20 years.
- 2.2. We are not here to discuss the merits or disadvantages of deregulation.
- 2.3. This is a real opportunity to discuss with likeminded people the issues surrounding workplace bullying and collectively consider opportunities for positive change.

3. Zero tolerance to workplace bullying

- 3.1. Workplace bullying is a criminal not a civil offence in the State of Victoria, Australia with a dedicated worksafe investigation unit.
- 3.2. Workplace bullying in Victoria is solely the realm of Health and Safety not employment law.
- 3.3. Another positive aspect is 'stress leave' is covered by their insurance that covers victims of workplace bullying.

WORKPLACE BULLYING DISCUSSION DOCUMENT

- 3.4. Worksafe Victoria's bullying unit is involved in 'back to work plans for the victims of bullying and stress'.
- 3.5. Our Australian counterparts have taken a zero tolerance to workplace bullying. In contrast New Zealand deal with Health and Safety as an employment issue raised by the personal grievance 90 day rule.

4. Worksafe NZ Guidelines

- 4.1. Worksafe NZ has developed Guidelines to encourage positive change surrounding workplace bullying.
- 4.2. Workplace bullying is recognised as a significant hazard in New Zealand. Not only does it affect people physically and mentally, it can disrupt workplaces and reduce productivity.
- 4.3. Employers who don't deal with it risk breaching legislation, such as the Health and Safety in Employment Act 1992, the Employment Relations Act 2000 and the Human Rights Act 1993.
- 4.4. The guidelines were developed with Ministry of Business Innovation and Employment (MBIE) and has a focus on both employees and employers responding early before a situation gets out of hand and focusing first of all on workplace based solutions.
- 4.5. The guidelines provide a clear definition of bullying which is yet to be substantively adopted by our Courts.
- 4.6. The Minister for Workplace Relations and Safety, MBIE and Worksafe NZ share the view that existing legislations are more than adequate to deal with workplace bullying.

5. Restriction of the 90 day rule

- 5.1. Any bullying complaint is managed as an employment issue under the Employment Relations Act 2000 restricted by the 90 day rule to raise a personal grievance.
- 5.2. A detailed legal analysis provided by Judge Shaw's decision in *Clear v Waikato DHB* [2008] ERNZ 646, stressed the obligation of employers to provide a safe system of work and an obligation to properly investigate allegations of bullying.

WORKPLACE BULLYING DISCUSSION DOCUMENT

- 5.3. Judge Shaw highlighted in this case that such an investigation must consider the course of conduct as a whole (the 'persistence' aspect of bullying) and not focus on individual events in isolation.
- 5.4. The 90 day rule to raise a personal grievance does not allow the court to consider the persistent aspect of bullying as some bullying encounters fall outside this timeframe.
- 5.5. Evidence shows in many situations complaints of workplace bullying do not trigger the appropriate internal response but instead escalates impacting on the health and wellbeing of a victim.
- 5.6. Evidence also shows that victims do not always realise until they are out of time that they have been bullied making crucial evidence inadmissible.

6. Current Status

- 6.1. The current status of workplace bullying is dire and those of us who work closely with victims want to affect change.
- 6.2. The current treatment of victims of workplace bullying creates serious harm and mental illness which usually requires victims to seek professional help.
- 6.3. The effect is the loss of income and confidence which further impacts on the victim's family.
- 6.4. The current civil jurisdiction of the Employment Court and Employment Relations Authority falls short to provide the appropriate redress to victims of workplace bullying.
- 6.5. Workplace bullying and any health and safety breach should be considered as a criminal offence.
- 6.6. To not recognise the distinction between criminal and civil proceedings is misleading creating undue and unnecessary trauma for workplace bullying victims.
- 6.7. While victims of workplace bullying can bring a private prosecution under the Health and Safety in Employment Act 1992, the cost of bringing any proceedings against an employer verses the likely remedial reparation does not make this option viable.
- 6.8. Another barrier is the high burden of proof "beyond reasonable doubt" compared to the lower threshold of "the balance of possibilities" brought under the Employment Relations Act 2000.

7. Failure of the existing route to natural justice

- 7.1. At the moment a victim of workplace bullying is effectively denied natural justice because the victim is expected to rely on the Employment Relations Act 2000 ('ER Act') to raise concerns about workplace bullying without any regard to the health and safety consequences of the hazard to which the victim has been exposed.
- 7.2. In effect this is a default deterrent to natural justice based upon the victim's appetite to appeal through successive levels of the justice system; for example 1. Personal Grievance 2. Mediation 3. Employment Relations Authority 4. Employment Court 5. High Court 6. Appeal Courts.
- 7.3. The current process places the burden of proof upon the victim and assumes that the victim also has the same financial resources and access to legal support as the alleged bully.
- 7.4. Employers will often engage expensive lawyers to either evade or avoid consequences of non-compliance with existing legislation in a process of attrition to 'wear down' a complainant and cause further harm and distress as a result, in the hope that the complainant 'gives up' and the workplace bullying issue is 'swept under the carpet'.
- 7.5. As a result workplace bullying and harassment has been enabled to continue as normalised and legitimate employment practice throughout NZ to limit exposure of the organisation to risk whilst shifting the financial burden to employees and the NZ health and welfare systems.

8. Obstacles encountered by victims of workplace bullying and harassment.

- 8.1. Of concern are the following obstacles to access by victims of workplace bullying to natural justice.
- 8.2. A victim of workplace bullying is required to report concerns under the 'Employment Relations Act' and even when a notification of Serious Harm resulting from a recognised hazard is made to the Department of Labour (now MBIE) and Worksafe NZ under the 'Health & Safety in Employment Act', no action is taken by these

WORKPLACE BULLYING DISCUSSION DOCUMENT

agencies, who then revert the matter back through the Employment Authority/Court process.

- 8.3. The insistence that legal professionals are the most appropriate authority to address the Employment Relations Authority and the Employment Court.
- 8.4. Thorough and impartial investigation is essential to the just resolution of a workplace bullying complaint but experience demonstrates that this is seldom a component of the processes employed to resolve an employment situation which has impacted the health of an employee.
- 8.5. Evidence of bullying and harassment which victims are encouraged through best practice to record is subsequently disregarded.
- 8.6. Through a process of elimination Health and Safety is able to be discounted when MBIE refer a compliant back to the Employment Relations Authority who are then able to discount any Human Rights Act implications i.e. workplace bullying when the employee is dismissed.
- 8.7. Thus an employee has expectations raised, that if bullied appropriate action can be taken, most often in reality the opposite occurs.
- 8.8. As soon as an employee raises any concern with a colleague or a human resources advisor about being bullied or harassed it is most likely that the victimisation will increase and the staff member is 'exited' from the workplace.
- 8.9. Thus both the employer and Authority are able to evade any obligation to consider any grievance for a prolonged period of 'unjustified disadvantage'
 - 8.9.1. i.e. workplace bullying can proceed to consider 'unjustified dismissal' or the conclusion of the workplace bullying if complaint is made 'in-time' i.e. within 90 days, during which time a former employee will often be traumatised.
- 8.10. The victim is blamed and the subsequent judicial process compounds any harm as opposed to mitigating it as intended by existing legislation. Perversely the same legislation restricts the avenues for recourse for membership organisations to support their members who are victimised.
- 8.11. Support agencies and employers alike promote the notion that workplace bullying is unacceptable and should not be tolerated while at the same time fully aware that there

WORKPLACE BULLYING DISCUSSION DOCUMENT

is no consequence for the perpetrators because they too are regulated by the ER Act which inadvertently condones the practices.

- 8.12. Employers are able to completely disregard any physical or mental health impacts of inappropriate workplace behaviours which have occurred over a period of time because the 'ER Act' imposes an arbitrary 90 day time limit for the reporting of incidents of bullying.
- 8.13. Consequently, the Authority is then able to dismiss anything that has not been raised 'in time' and irrespective of the cumulative detrimental impact of the bullying behaviours which ought to have been investigated under the "H&S ACT" when a complaint is raised.
- 8.14. These observations are supported by respected academics such as Professor Tim Bentley who in 2010 reported that 1 in 5 New Zealanders are bullied in the workplace and in 2013 Dr Plimmer found that over 30% of 16,000 public sector workers reported experiences of workplace bullying.
- 8.15. The relationships between workplace bullying and harassment, mental health and the national suicide statistics are not clear. However, again anecdotally a victim may not have lost life or limb but will have committed a form of professional suicide through exercising apparently irrational choices, based on genuine fear and heightened anxiety, to escape the toxic workplace and return to a safe environment in order to recover.
- 8.16. The long term consequences for the victims of workplace bullying are not acknowledged.
- 8.17. These include the economic consequences of the extended period of recovery required by a victim of workplace bullying.
- 8.18. Beyond the physiological damage there is the secondary significant impact to the employability and finances of a victim which are also able to be disregarded by employers and the ERA because the evidence and claim regarding these consequences are able to be ignored.
- 8.19. The most serious deficiency which has been widely experienced relates to interpretation of the concept of 'investigation' by both employers and the ERA.

- 8.20. The expectation of investigation originates from the ‘H&S ACT’ where multiple lines of inquiry are opened in order by an external independent person to ascertain the full facts of a situation.
- 8.21. However, the reality in many cases is that an ‘internal inquiry’ is initiated, usually controlled by an alleged bully or their line management.
- 8.22. In these circumstances the outcome is pre-determined and the victim is denied a ‘fair go’.
- 8.23. The economic consequences for the health and welfare systems of NZ are also unrecognised.
- 8.24. These include the costs of prescribed medications, hospitalisation, mental health consultants and practitioners as well as the financial support provided to those who are declared unfit for work for long or indefinite periods as a result of the workplace environment.

Recognising Workplace Bullying

9. What defines workplace bullying?

- 9.1. Workplace bullying can be confused with a personality clash and is often confused by both the employer and employee.
- 9.2. It is important to make the distinction when asking the broader legal question whether certain actions determine whether legal obligations arise.
- 9.3. Workplace bullying has not been explicitly defined in legislation and has been difficult for the Employment Relations Authority and the Employment Court to define.¹
- 9.4. As mentioned earlier in this discussion document, Worksafe NZ has developed a pragmatic guideline to workplace bullying.
- 9.5. Other authors have also attempted to identify and define the concept of workplace bullying.
- 9.6. It can be difficult to distinguish workplace bullying from a mere personality clash.
- 9.7. This distinction and the broader question of exactly what constitutes bullying are important in determining when legal obligations arise.

WORKPLACE BULLYING DISCUSSION DOCUMENT

- 9.8. One such definition is “unwanted and unwarranted behaviour that a person finds offensive, intimidating or humiliating and is repeated so as to have a detrimental effect upon a person’s dignity, safety, and well-being”.ⁱⁱ
- 9.9. The Authority in *Evans v Gen-i Limited*ⁱⁱⁱ referred to academic definitions of bullying. Bullying may be seen as something that someone repeatedly does or says to gain power and dominance over another, including any action or implied action, such as threats, intended to cause fear and distress.^{iv}
- 9.10. This definition was approved of in *Isaac v Chief Executive of the Ministry of Social Development*^v and cited by the Authority in *Kneebone v Schizophrenia Fellowship Waikato Incorporated*.^{vi}
- 9.11. In *Kneebone* the Authority found “the common theme arising from the literature I have read suggests a bully has a desire to exert power and control over others, usually demonstrates a complete lack of understanding for other people’s feelings and uses intimidating behaviour”.
- 9.12. More importantly, the Authority in *Kneebone* concluded that to come within a broad definition of bullying, the bully’s behaviour must include:
- 9.13. Repeated actions:
- 9.13.1. Carried out with the desire to gain power or exert dominance;
 - 9.13.2. Carried out with the intention to cause fear and distress;
 - 9.13.3. Carried out with the intention to cause fear and distress.
- 9.14. Case examples provide specific examples to definitions of workplace Bullying. There are two types of workplace bullying, horizontal and vertical bullying. Horizontal bullying is bullying by workplace peers, vertical bullying is bullying of subordinate employees by those higher up in the workplace hierarchy.

10. Legal Claims

- 10.1. There are a number of claims to trigger a personal grievance if an employee believes they have been bullied.

WORKPLACE BULLYING DISCUSSION DOCUMENT

- 10.2. The Employment Relations Act 2000 (ERA) can determine whether a person has been unjustifiably disadvantaged due to the employers failure related to bullying.
- 10.3. If an employee has been dismissed due to them being bullied, they may claim the employer unjustifiably dismissed them.
- 10.4. In *Clear v Waikato District Health Board*,^{vii} the Employment Court found the employee was both unjustifiably disadvantaged and unjustifiably dismissed for reasons related to her being bullied.
- 10.5. The employee was dismissed due to a long period of illness, but the illness was a result of severe stress attributable to the employer's failure to adequately deal with her complaints of bullying.
- 10.6. Alternatively if the employee resigned, they may claim their resignation was actually a constructive dismissal due to various failures by the employer.
- 10.7. In *Roberts v Japan Auto (NZ) Limited* [2003],^{viii} the Employment Court found that the bullying manager's behaviour amounted to a clear course of conduct with the dominant and deliberate purpose of inducing the employee's resignation.
- 10.8. The employee's resignation was actually a constructive dismissal. Similarly, in *McGowan v Nutype Accessories Limited* [2003],^{ix} the Employment Court treated the employee's resignation as a constructive dismissal.
- 10.9. The employee had resigned because he had been bullied and the employer had failed to support him in the face of such repeated abuse.
- 10.10. Employment agreements contain certain fundamental terms of employment contract, breaching these terms will have serious implications for both employer and employee.
- 10.11. Alternatively an employee can bring a breach of contract against the employer under common law.
- 10.12. The Employment Court in *Roberts* found that the bullying manager's conduct...amounted to a fundamental breach of the term of trust, confidence and fair dealing inherent in the parties' employment contract.
- 10.13. The ongoing and multi-faceted nature of the breach indicated an intention to continue not to be bound by the term and therefore the contract.
- 10.14. That, too, was a constructive dismissal of [the employee].

WORKPLACE BULLYING DISCUSSION DOCUMENT

- 10.15. Bullying by the employee's manager amounted to a breach of the implied term of trust and confidence.
- 10.16. The Court considered the employee's resignation as a result of the breach of the implied term to be a constructive dismissal.
- 10.17. If an employer fails to adequately deal with workplace bullying, it also leaves itself open to an allegation that it has breached the implied term of trust and confidence.
- 10.18. In *Hawkins v The Commissioner of Police*,^x the Employment Court found that the cause of the employee's resignation was the ongoing betrayal of his trust and confidence in the police administration through its failure to address the systemic dysfunction at his workplace which had made him seriously unwell.
- 10.19. The Court also found, another relevant implied duty in the context of workplace bullying is the duty of an employer to provide a safe and secure workplace.
- 10.20. The employer is required to take reasonable steps to protect employees from harm. Harm is defined in the Health and Safety in Employment Act 1992 ('H&S ACT') as including illness, injury, and physical or mental harm caused by workplace stress.

Impact of Workplace Bullying

11. Workplace Bullying is a hazard

- 11.1. Bullying can potentially cause physical and psychological harm.
- 11.2. An employee could be physically and emotionally bullied, suffer medical conditions resulting from stress, become extremely anxious, and so on. Under s6 'H&S ACT', an employer must take all practicable steps to ensure the safety of employees while at work, in particular providing safe working environment and ensuring that employees are not exposed to hazards at work.
- 11.3. The 2002 amendments to the 'H&S ACT' clarified the definition of hazard to include a situation where a person's behaviour may be the cause or source of harm including a situation resulting from physical or mental fatigue, drugs, alcohol, traumatic shock or other temporary condition that affects a person's behaviour.

- 11.4. In *McGowan*, the Employment Court found that the employer's failures to properly address bullying complaints amounted to a breach of the duty to take all reasonable and practical steps to provide the bullied employees with safe working conditions.
- 11.5. Where an employer breaches its obligations under the 'H&S ACT', they also risk prosecution by the Department of Labour (MBIE). Stress caused by workplace bullying could result in a breach of the 'H&S ACT'.

Legal Obligations

12. The Employee

- 12.1. When a bullying claim is raised by an employee, they must first bring this issue to the attention of the employer.
- 12.2. Once the issue has been raised it is the duty of a 'fair and reasonable employer' to properly investigate the issues raised and take the necessary steps to protect the employee.
- 12.3. There are a number of cases which impose this obligation.
- 12.4. Section 19 (a) of the Health and Safety in Employment Act 1992 provides that employees take all practical steps to ensure their own safety while at work. If an employee fails to take advantage of programmes provided by the employer they could fail a claim under section 19 (a) 'H&S ACT' Act see *Crook v Sovereign Services Limited Crook*.^{xi}
- 12.5. The emphasis of this section shifts responsibility from the employer to the employee which may deny a victim of workplace bullying access to natural justice.
- 12.6. Workplace bullying is a major cause of stress and psychological harm for employees and a costly problem for organisations.
- 12.7. Those of us who are advocates for victims of workplace bullying or who have experienced workplace bullying recognise the victim is not always capable of taking steps to provide for themselves a safe work environment.

13. The Employer

- 13.1. The onus falls on the employer to justify whether its actions were *what a fair and reasonable employer could have done in all the circumstances at the time of dismissal or action occurred* 103A(2) Employment Relations Act 2000.
- 13.2. If procedural defects result in an employee being treated unfairly 103A(5), a failure to meet 103A(3) test, a dismissal is likely to be unjustified.
- 13.3. Once an employer is made aware of the bullying behaviour, it must take positive steps to deal with the bullying.
- 13.4. The Employment Court in *Clear v Waikato District Health Board*^{xii} found that: *A fair and reasonable employer faced with [the employee's] repeated complaints should have undertaken a comprehensive investigation at the earliest opportunity, reached a firm conclusion on the complaints, kept them fully informed of the process, advised them of the decision and then taken steps to address the dysfunction.*
- 13.5. The employer is obligated to investigate the complaints, reach a conclusion, and take remedial action where required. The employer must also keep the employee informed throughout this process.
- 13.6. The failure of an employer to properly investigate their employees bullying complaints can lead to further workplace problems. Employers have a legal obligation to properly investigate their employee's bullying complaint.
- 13.7. An employer is required to balance the severity of harm, the current state of knowledge and to counter any risk, however this is balanced with section 19 requirements.
- 13.8. The Courts will consider whether or not health and safety of employees have been compromised by weighing up the facts.
- 13.9. The Courts will consider whether or not an employer has taken reasonable practicable steps to ensure they have provided a safe work environment by considering their contractual and legal obligations highlighted in *Gilbert v Attorney-General*.^{xiii}

WORKPLACE BULLYING DISCUSSION DOCUMENT

14. The bully

- 14.1. An important part of the employer's response to the complaints must be to also consider the best way to deal with the alleged bully.
- 14.2. The employer may conclude as a result of their investigation that some form of disciplinary action or dismissal is the appropriate sanction for the bully's behaviour. The employer must be able to substantively and procedurally justify that action taken against the bully. If the employer's actions cannot be justified, the bully may succeed in a claim of unjustified disadvantage or unjustified dismissal under the personal grievance provisions of the ERA.
- 14.3. An employer must act carefully in dealing with bullying complaints. While the employer is obligated to act to protect staff from bullying, is also obligated to follow proper procedures with the alleged bully.

15. Access to Natural Justice

- 15.1. The definition of bullying must include elements of repeated actions carried out with the desire to gain power or exert dominance with intention to cause fear and distress.^{xiv}
- 15.2. A single incident of bullying does not fall within the ambit of this definition.
- 15.3. As mentioned earlier in this document, if there are several incidents which fall outside the 90 day rule, the courts are not required to consider it.
- 15.4. Incompatibility is justifiable dismissal,^{xv} In *Harris v Chief Executive Department of Corrections* the CA held an employer may take appropriate action including dismissal where there is serious incompatibility in the workplace.
- 15.5. When a relationship has broken down and especially where bullying is involved the relationship usually becomes irreconcilable.
- 15.6. The current legal principle of 'serious incompatibility' benefits the employer and alienates a victim of workplace bullying.
- 15.7. Common law principles of the '90 day rule' and 'incompatibility is justifiable dismissal' denies a victim of workplace bullying access to natural justice.

WORKPLACE BULLYING DISCUSSION DOCUMENT

16. Costs

- 16.1. Compensation under section 123(1)(c)(i) ERA for humiliation, loss of dignity and injury to the feelings of the employee and loss of benefit whether or not of a monetary kind which the employee might reasonably have been expected to obtain if the personal grievance had not arisen is draconian and has not been adjusted for decades to align with inflation, and other relevant costs.
- 16.2. A woman who says she was wrongfully dismissed from Waikato District Health Board has been ordered to pay \$8,000 in costs despite winning her case.
- 16.3. The ERA has ruled Erin Dent was unjustifiably disadvantaged and dismissed from her position at the health board, but also ruled her behaviour contributed to her dismissal under section 124 ERA. Ms Dent was awarded \$2,500 even though she was originally awarded \$5,000, 50% was deducted by the ERA because of Ms Dent's contributory behaviour.
- 16.4. The WDHB made two offers to settle with Ms Dent, classed as Calderbank offers.^{xvi} The court has the discretion to bear whether the failure to accept the offer was unreasonable.
- 16.5. In Ms Dent's case the authority member Tania Tetitaha expressed litigants who chose to ignore a Calderbank offer burdens the scarce resources of the Courts especially if the offer is more than what the Court can offer.
- 16.6. A Calderbank offer is a departure from the judicial process and includes a departure from the remedies available to a victim of workplace bullying.
- 16.7. Ms Dent felt monetary compensation did not restore her professional reputation, nor did it give her the ability to be reinstated back into her employment.
- 16.8. In short a Calderbank offer circumvents the judicial process and allows an employer with deep pockets to remedy the situation through monetary compensation without been held accountable for breaches under the Employment Relations Act or the Health and Safety in Employment Act.
- 16.9. Costs are another deterrent for people who are victims of workplace bullying, normally the Authority will use a daily tariff approach when addressing a costs claim (refer PBO Ltd (formerly Rush Security Ltd) v Da Cruz [2005] ERNZ 808). The normal starting

WORKPLACE BULLYING DISCUSSION DOCUMENT

point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

17. Conclusion

- 17.1. Often bullying behaviour will be identified by a bully's repeated actions with their intention to cause fear and distress to exert dominance over their subordinate/s.
- 17.2. Both the Employment Court and the Employment Relations Authority have outlined what constitutes workplace bullying.
- 17.3. Both the employer and employee must take active steps to improve their situation.
- 17.4. The employee has to make the employer aware of their problem in return the employer has to actively take steps to fulfil its obligations to properly investigate the matter to ensure the safety of their employees.
- 17.5. To do nothing or too little constitutes a breach of employment legislation.
- 17.6. When workplace bullying does occur, common law and statutory obligations apply. Both the bullied employee and the employer must take certain active steps to improve the situation.
- 17.7. There are many challenges and considerations for a person who wants to bring a personal grievance against their employer.
- 17.8. This discussion document has highlighted a number of relevant issues which need to be considered and is a good starting point for further discussion.

18. Moving forward

- 18.1. In order to rectify disparities identified in this document, things need to change.
- 18.2. This discussion document has only touched on some of the issues relating to a victim of workplace bullying. For any change to occur, acknowledgement of all the issues needs to take place first.
- 18.3. This summit goes some way in identifying common issues experienced by a victim of workplace bullying. It is up to all of us to make positive changes to turn around the appalling statistics on workplace bullying.
- 18.4. This document has not considered any claims to the Human Right Review Tribunal.

19. Points to Consider

- 19.1. Affordable access to justice
- 19.2. Lobby the government to consider State of Victoria Worksafe Unit and relevant legislation.
- 19.3. Any breach of Health and Safety should be made a criminal offence similar to that of Australia and should not be included in New Zealand employment law.
- 19.4. A Calderbank Offer should not circumvent any legal obligations or breaches.
- 19.5. Legal Professionals are costly, costs far outweigh awards.
- 19.6. Remedial awards need a revamp.
- 19.7. Repeal 90 day rule for workplace bullying.
- 19.8. Incompatibility is justifiable dismissal, this doctrine should not be used as an excuse to justifiably dismiss.
- 19.9. Lobby the government to publically fund investigators of workplace bullying, potential option for investigators to be part of Worksafe NZ.

WORKPLACE BULLYING DISCUSSION DOCUMENT

20. Endnotes

- ⁱ *Isaac v Chief Executive of the Ministry of Social Development* unreported, V Campbell, 5 Jun 2008, AA 200/08
- ⁱⁱ Hayden Olsen, *Workplace Bullying and Harassment* (CCH New Zealand Limited, Auckland, 2005) 8
- ⁱⁱⁱ *Evans v Gen-i Limited* unreported, D King, 29 Aug 2005, AA 333/05, p2-3
- ^{iv} *Evans v Gen-i Limited* unreported, D King, 29 Aug 2005, AA 333/05, p2-3
- ^v *Isaac v Chief Executive of the Ministry of Social Development* unreported, V Campbell, 5 Jun 2008, AA 200/08
- ^{vi} *Kneebone v Schizophrenia Fellowship Waikato Incorporated* unreported, V Campbell, 13 Feb 2007, AA 31/07, para 6-7
- ^{vii} *Clear v Waikato District Health Board* unreported Shaw J, 15 Dec 2008, AC 49/08, para 125
- ^{viii} *Roberts v Japan Auto (NZ) Limited* [2003] 1 ERNZ 439, 448
- ^{ix} *McGowan v Nutype Accessories Limited* [2003] 1 ERNZ 120, 133
- ^x *Hawkins v The Commissioner of Police* [2007] ERNZ 762, 778
- ^{xi} *Crook v Sovereign Services Limited* unreported Shaw J, 18 Dec 2007, WC 34/07, 4
- ^{xii} *Clear v Waikato District Health Board* unreported Shaw J, 15 Dec 2008, AC 49/08, para 125
- ^{xiii} *Attorney-General v Gilbert*[2002] 1 ERNZ 31, 51
- ^{xiv} *Lal v Skellerup Clothing and Rubber Ltd* [1979] ACJ 259; *Tate v South Westland Timber Co Ltd* [1986] ACJ 458; *New Zealand Printing & Related Trade IUOW v Allied Press Ltd* [196] ACJ 434.
- ^{xv} *Lal v Skellerup Clothing and Rubber Ltd* [1979] ACJ 259; *Tate v South Westland Timber Co Ltd* [1986] ACJ 458; *New Zealand Printing & Related Trade IUOW v Allied Press Ltd* [196] ACJ 434.
- ^{xvi} *Calderbank v Calderbank* [1975] 3 All ER 333