

VADR - VARJ panel:

Responding more effectively to workplace grievance & other symptoms of stress Cooper's Inn, Thursday, April 16th summary notes

The Victorian Association for Dispute Resolution (VADR) and the Victorian Association for Restorative Justice (VARJ) have some common aims, and some overlapping membership. On April 16th 2015, the two organisations held our first joint panel discussion, on the topic of ***Responding more effectively to workplace grievance & other symptoms of stress.***

One trend that prompted this panel discussion is the current state of psychological injury claims in Australian workplaces. Psychological injury accounts for about 10% of all Australian workers' compensation claims, but consumes around a third of the compensation budget, mainly due to the long recovery times in psychological injury cases. Furthermore, while *physical* injury claims are reducing, *psychological* injury claims are not.

Furthermore, many organisational responses seem to compound psychological injury, generating additional grievance and trauma, and exacerbating the depression, anxiety and post-traumatic stress associated with work conditions.

Common concerns in these cases involve workload, job control, and job security. These are matters that the Productivity Commission should consider during its current examination of possible improvements to Australia's workplace relations system. The Commission's January 2015 Issues Paper number 4 offers some initial analysis of employee protections, including the broad anti-bullying provisions introduced under the *Fair Work Act* in January 2014, which make the Fair Work Commission mediator, conciliator and, as a last resort, adjudicator in cases involving accusations of bullying.

Many members of VADR and VARJ will have seen, in cases involving claims of bullying or harassment, the consequences of inaccurate analysis and inappropriate intervention. Our expert panel discussed how cases involving these and other workplace stressors can be handled more effectively in the short-term, and how workplace stress can be reduced over time, through more effective decision-making, dispute resolution and conflict management.

The panel was chaired by **David Moore**, President of the Victorian Association for Restorative Justice. David consults in adaptive organisational change and constructive communication. He is Principal Consultant with Primed Change Consulting, an Associate at La Trobe Law School, and currently also Special Consultant to the Defence Abuse Response Taskforce.

Our panellists were:

- **Murray Bickerdike**

Murray has been involved in workplace investigation and conflict resolution for thirty years. Murray is also a nationally accredited mediator and was President of the professional

Association for Investigators and Security Professionals (AISP) for a number of years, and actively involved in improving professional investigator standards.

- **Clare Ozich,**

Clare has worked as a workplace relations lawyer and advocate, and federal political adviser. She was appointed Executive Director of the Australian Institute of Employment Rights (AIER) in August 2014.

- **Zandy Fell**

Zandy is an Employee Relations Consultant with expertise in workplace conflict management. She works as a conflict coach, facilitator, mediator, investigator, and teaches in Monash University's MBA program and with CMA Learning.

David Moore opened the discussion with reference to the work of the **2012 Federal Parliamentary Committee on complaints of bullying in Australian workplaces.** The report of this 2012 national inquiry noted that:

“the need to improve workplace culture in Australia was discussed throughout the inquiry. However, very few participants recommended how this might be achieved.” [151]
Furthermore, *“there is no ongoing recognition of employers who maintain good working cultures and exercise good practice with regards to psychosocial health.” [p. 150]*

With regards to workplace interventions, the report noted that:

“If mediation is being used, there needs to be a system where it is not kept confidential and just between the two parties; there needs to be a risk management perspective of identifying what organisational issues contributed to the problem occurring.” [p. 142]

These observations are consistent with recommendations of the 2013-14 **Pearce report into workplace issues affecting CSIRO.** Emeritus Professor Dennis Pearce recommended that CSIRO transfer the obligation to pursue concerns about workplace bullying and other unreasonable behaviour from (i) the person affected by that behaviour to (ii) the Organisation. His report recommended that conduct issues in the workplace be approached in the same way as unsafe work practices or equipment. CSIRO staff are obliged to report unsafe practices or equipment and the Organisation is obliged to address these practices. CSIRO has responded to this recommendation by:

- reviewing and revising the procedural rules for dealing with misconduct and grievances: &
- integrating the procedure for dealing with both grievances and misconduct into the one code.

These changes should support the transition to a culture of mutual responsibility for ensuring proper treatment. A second volume of the Pearce Report encouraged CSIRO to recognise and support the role of Human Resources as an essential part of the staff welfare management package. The report noted that it not only takes courage for a manager to raise unpalatable issues of behaviour with a colleague, especially where the officer concerned is senior in rank or scientific status: it also takes

skill, and key skills in this area should be accredited. This was a logical segue to Murray Bickerdike's presentation.

Murray observed that mid- to large-size organisations have moved through stages of (i) having little in the way of grievance procedures, to (ii) developing overcomplicated and often ineffectual or even harmful grievance procedures, to now (iii) frequently trying to work around or outside their complex grievance procedures.

He provided examples of discussions with managers about whether a formal investigation was the most appropriate option considering:

- The nature of the grievance;
- The likelihood of allegations being substantiated in the absence of witnesses;
- The possibility that other individuals and circumstances may have contributed to the situation;
- The limited options the employer will have to resolve the issue - whatever the findings;
- The low probability that sanction-based responses can actually resolve the issue and eliminate unhealthy stress in the workgroup over the longer term.

Murray described instances of internal investigations creating additional problems for the employer when the findings or sanctions were challenged internally or through legal action on procedural fairness grounds - because of the way the investigation was conducted, or because the link between the investigator and the decision maker gave rise to a perception of bias.

Murray noted that, just as the old adage that "you'll never get fired for buying IBM" is no longer accurate, so following formal grievance procedures may no longer be the low-risk path for managers, given the growing likelihood that the investigation will be judged not to have been undertaken correctly, and/or because more effective and more reparative approaches were available.

Murray concluded that investigations still have a place, and when carried out appropriately can lead to defensible sanction-based outcomes - should these be necessary. However, some form of ADR is often a more effective first response, and some facilitated conversation an appropriate final element in an intervention - to restore working relationships after a formal grievance process has concluded.

Clare Ozich then spoke about some of the general principles advocated by the Institute for Employment Rights (AIER). The legal framework for the AIER's advocacy is international law, Australian IR law and institutional frameworks, and common law rights. A guiding principle for the Institute is that workplace relations are about people, and good workplace relations enable people to work with dignity.

The AEIR has made a submission to the Productivity Commission's Inquiry into the workplace relations system. It has expressed concern that the Commission's *Issues Papers* show little interest in the issues of precarious and insecure work; the role of the workplace relations system as a whole in addressing growing inequality in Australia; and the continuing challenges facing women in the workforce.

The AEIR promotes workplace relations laws that are socially beneficial, comply with international labour standards, do not treat labour simply as a commodity, and promote collaboration in workplaces. The adversarial culture of workplace relations and less than optimal management cultures create an ongoing challenge for those seeking improvements in these areas.

Zandy Fell describes an ongoing sense throughout her work that “we can do better than this!” A good starting point would be to “give conflict a good PR job!” We need a more sophisticated understanding of how disputes and conflicts can be managed productively as a catalyst for adaptive change. Zandy described a lack of sophistication on the part of the Human Resources profession, which toggles between two views of the role of HR. According to one view, HR is not responsible for relationship management; according to another, HR *is* responsibility for relationship management. So the role of HR needs clarifying. It is not the role of “priest, police officer or psychologist.” Rather, HR professionals should support other managers in their relationship management. And yet, it is still possible to graduate in human resource management without undertaking any study or skills-building in dispute resolution and conflict management, essential foundations of relationship management.

Zandy described arguing perhaps two to three times a week against her consultancy being hired as investigators. An investigation is typically understood as a prelude to formal discipline or termination, neither of which may be the most productive course of action for a presenting case. There are increasingly high expectations of what investigation can achieve, in what remains a largely unregulated industry.

When the managers in question identify that the conflict in a presenting case is significantly about thoughts and feelings, not solely objective facts, there is then frequently a tendency to make the next mistake in the case management decision-tree, and see mediation as the only other option. In fact, there are many other options, including conflict coaching, assisted strategic negotiation, quality circles, and workplace conferencing.

In addition to (i) preferring investigation, and (ii) seeing mediation as the only other option, a common third general mistake in case management is (iii) abdicating to the Employee Assistance Program the responsibility for dealing with issues.

Our question and discussion session added the following points:

- the current most pressing threat for managers has shifted from sexual harassment, through bullying, to psychological injury through stress.
- middle management are frequently *and understandably* fearful of dealing with these issues.

Middle management will be better supported by:

- revisiting workplace culture;
- improved training for HR managers, especially in case management and the accurate analysis of conflict;

- competency frameworks
- an emphasis not only on improved process, and better management of interpersonal issues, but also on enterprise design.

This is a long-term project of cultural change that requires the sophistication to integrate common good practices into human resource management, other management, and professional services.

Participants at our April forum expressed enthusiasm for a special interest group among members of VARJ, VADR and the AIER, to develop improved responses to workplace stressors. After circulating this summary, VADR and VARJ will jointly call for those who would be interested in joining this interest group. We will then plan other forums and/or develop a mechanism for online networking and dialogue.

At the close for this discussion, one of our participants proposed a forum with a specific industry focus:

Health care professional and university lecturer Jeremy Limpens recently gave a Ted talk [The courage to say sorry in health care](#). Jeremy proposes a better response from the health care system to patients and families whose expectations haven't been met. The current culture makes it difficult for patients to receive an authentic apology from health care providers where appropriate. The culture also prevents doctors, nurses and other staff from truly hearing a patient's story, inhibiting their ability to say sorry in an authentic and heartfelt way. Jeremy proposes open dialogue between health care professionals and those affected, using restorative practices. As a result, patients and clinical staff can openly discuss what happened, acknowledge the impact, say sorry where needed, learn, and mutually agree on a way forward.

VARJ has noted the need for a forum in this area, and will endeavour to convene one this year.