

**Submission  
No 66**

**INQUIRY INTO ALLEGATIONS OF BULLYING IN  
WORKCOVER NSW**

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# **Inquiry into allegations of Bullying in WorkCover NSW**

**The General Purposes Standing Committee No. 1**

**Submission of Unions NSW**

**23 August 2013**

**Submission by:**

**Unions NSW**

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# Executive Summary

WorkCover Authority is the major agency that deals with work health and safety in NSW.

In its role as the regulator and as a major public sector employer, it is considered that its goal should be to make WorkCover an exemplary employer when it comes to work health and safety.

Unions NSW note with concern the difficulties of a large employer also being required to regulate health and safety laws when it comes to their own employees. This difficulty becomes more problematic when the issue is workplace bullying when the Regulator is the employer of workers and the bullying may be part of a management culture that may be argued contributes to any culture of workplace bullying.

We have made recommendations to prevent this from occurring in the future including independent review of safety and workers compensation matters including workplace bullying at WorkCover from an independent external body such as through external regulators.

Similarly Unions NSW have expressed concern over the WorkCover Authority's role of regulator of workplace bullying. NSW WorkCover Authority has not taken an active role in identifying, minimising the occurrence and enforcing workplace safety laws when it comes to workplace bullying.

We have made a series of recommendations to improve the performance of WorkCover and how safety operates for bullying in NSW including:

- Undertake in a coordinated manner research on the prevalence, risk factors and cause of workplace bullying across all industries in NSW.
- That a specialist independent inspectorate is charged with undertaking investigations based on the statistical prevalence of bullying in the jurisdiction. The inspectors should receive adequate training. Adequate and comprehensive procedures should be developed to ensure that the inspectors are not precluded from undertaking further investigations because of other aspects of the employment relationship being tested elsewhere. Safety should have primacy.
- That self-insurers be excluded from self-assessing psychological claims and that these be undertaken by a central independent body.
- That a tri-partite panel be formed to manage WHS strategic direction and boost compliance and enforcement activity within NSW with regard to workplace bullying.

- Psychological Risk Management Chapter of the WHS Regulations 2011 should be created including bullying as a pilot through the Inter- Governmental Agreement on workplace safety;
- A prescriptive Code of Practice for Workplace Bullying should be completed and supported by WorkCover NSW and their representatives at HWSA.
- Creation of a mandatory reporting regime to a central independent government agency, that requires all employers, health professionals, medical services and insurers to report psychological injuries caused at work.
- That a specialist independent government body be permanently established to review the performance of the WorkCover Authority such as an Ombudsman.
- That consultation occur with the NSW workforce and injured workers as to what service standards should be applied to different complaints related to health and safety.

# Introduction

1. On 27 June 2013 the NSW Parliament through the General Purposes Standing Committee No. 1 established an **“Inquiry into allegations of bullying in WorkCover NSW”** that included terms of reference
  - a. A the culture of WorkCover,
  - b. WorkCover’s role as the State Regulator of occupational health and safety as it relates to bullying in the workplace,
  - c. Appropriate recommendations to address issues raised; and
  - d. Any other related matter
2. Unions NSW welcomes the Inquiry and the opportunity to comment particularly given recent changes made to both the New South Wales Work Health Safety Laws and the Workers Compensation laws. Unions NSW welcomes the opportunity to contribute to the inquiry into WorkCover and its role as the regulator of health and safety including bullying in all workplaces in NSW. Bullying is an issue that affects all workplaces and industries in NSW. We are aware that a number of the people who have been affected by workplace bullying at WorkCover have been across the political spectrum and has affected all workers including both union and non-union members. Workplace bullying has been known to destroy workplace morale, productivity and an estimated to cost the economy of NSW, in the billions of dollars. Most importantly workplace bullying can destroy families, has severe financial and health consequences on working people and has lead to workers taking their lives in some of the more extreme cases.
3. Unions NSW is a State Peak Body as defined by section 215 of the Industrial Relations Act 1996 (NSW). Unions NSW has over 60 affiliated unions representing members employed across a wide range of public and private sector industries including local government, retail, distribution, childcare, manufacturing, electrical, health, emergency services, agriculture, engineering, construction, administrative, finance, the public sector, education, transport and the textile clothing and footwear industry. Collectively Unions NSW and its affiliates represent over 600,000 workers employed across NSW.
4. We note that the Public Service Association of NSW who has members at WorkCover has provided a submission to this inquiry. Unions NSW supports the submission of the PSA as well as submissions by other affiliates to Unions NSW.
5. Unions NSW (formerly known as Labor Council of NSW) has a proud history in advocating for improved knowledge of and management of workplace bullying. The effects of workplace bullying are highly toxic on individual workers, their workmates and their families, as well as a major drain on business productivity.
6. Unions NSW has maintained a website called Unions Safe since 1999 that has seen the development of a number of fact sheets on workplace bullying for use by workers in and beyond NSW.

7. In 2003 Unions NSW launched its Dignity and Respect Charter and in 2004 the NSW Government, Premier's Department signed up to the Dignity and Respect Charter. Since then, in 2007 the NSW Government has adopted the Dignity and Respect Charter across all of the NSW public sector, and a number of private sector organisations have also adopted the private sector Dignity and Respect charter.

8. In 2007 Unions NSW developed with NSW Department of Premier and Cabinet, the NSW Government Dignity and Respect Policy and Guidelines and a training package for government agencies and unions to deliver in the public and private sectors. This has been delivered jointly by unions and employers to many hundred workplaces in employer sponsored training and meetings since.

9. We look forward to contributing to this important inquiry and are available for further oral or written contributions if required.

#### **Disclaimer**

10. We have written this so as to not make individuals names known who may read this on the Parliamentary website apart from those that are in the public domain such as via case references. As a peak body we are also provided with significant information in summary form or with names withheld. Where we have provided information or statements, on most occasions we do have access to the further and better particulars to support the assertions or statements made by us. However, due to the sensitive nature and vulnerable position of many of the parties, we would rather provide this information when requested in a more confidential manner where further harm can be avoided. Although most workers at WorkCover are now employed by the Safety Return to Work and Support Division, we have referred to WorkCover throughout this submission in reference to the employer or regulator.

We have addressed each of the terms of reference separately.

## a. The Culture of WorkCover

11. Unions NSW has been intimately involved with WorkCover over many years. WorkCover in NSW is a manifestation of labour movement's efforts to regulate against the ill effects of industrial harm to health and safety of workers as ratified by Australia through conventions such as the Labour Inspection Convention 81 of 1947. On the whole a majority of people involved in WorkCover are there to improve the outcomes for NSW workers by reducing injuries, through improved occupational health and safety and improving the health and standards of injured workers.

12. Having a long involvement with WorkCover it is fair to say that despite the organisation being one entity, there are many parts of the Authority that make the whole. Many of these parts work in isolation and rarely give the appearance of coordinating their activities. The Divisions are also managed by rather strong and at times competing management that vary in styles and approaches to their colleagues. At times there are different structures but on the whole the two main Divisions for employment and influence are the Work Health and Safety and Workers Compensation Divisions.

13. The history of the WorkCover Authority may be an insight into the culture and risks of bullying. Most of the academic literature describes workplace change and job role certainty as risk factors that increase the risk of workplace bullying. It could be argued that these are present at WorkCover.

14. The Workers Compensation Division generally manages the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act of 1998 and related regulations and guidelines. In relation to the Workers Compensation Division, at present there is a very close alignment with the insurance companies, who appear to have a greater influence on the decisions of WorkCover Workers Compensation Division. This creates an interesting position for public servants who are generally governed by public interest (in this case the interests of injured workers) rather than profit motive, or the profit motive of the insurance agents. However, the interaction between scheme agents, their contracts and how the insurance companies make money from their contracts places these workers in what can be at times conflicting situations due to the conflicting goals of the organisation. There has been significant organisational change in this Division since the departure of the stabilising force of a previous General Manager, Mr Thomson. This included a long period after Mr Thomson's departure where a competent officer acted in the General Manager role however which lead to a number of people also acting in roles temporarily whilst waiting for confirmation of the roles of higher management. Whilst there was no permanent appointment to this Division it is said this created instability for a large period. Then two persons were appointed to the split role of the General Manager after a restructure. After one of these managers unexpectedly resigned, a major restructure and movement of a number of positions back to Sydney in a move that appears contrary to original rationale for the relocation of WorkCover to Gosford in the first place. This move back to Sydney was justified in terms of moving closer to the insurance companies and a restricted talent pool in Gosford. Many persons who contributed significantly above and beyond what was required of them for many years were lost to the organisation, we are told in this move.



15. The Work Health and Safety Division is the division that you are more likely to see as the frontline workers or public face outside of the walls of a WorkCover office. The Work Health and Safety Division looks after, on the whole, the preventative side of the WorkCover Authority by investigating incidents, prosecuting the incidents, regulating high risk activities, providing advice and education and now a form of mediation or resolution service related to their new functions under the WHS Act. It also has testing laboratories and until a recent restructure also possessed a number of specialist scientific health and safety officers to support the role of the inspectorate. This Division has been going through constant change with a number of restructures occurring on a regular basis. In this Division there has also been a major cultural change where the WorkCover Authority appears to jump onto the latest "compliance fashion", with a subsequent restructure to back up the change. This has included approaches that saw a proactive enforcement regime where the WorkCover Authority actively made examples of poor performers for the purpose of deterrence across a range of industries and hazards. A change occurred then that saw a softening of their enforcement approach and adoption of a partnership with business approach and an education approach. The education approach saw the establishment of a Business Advisory Group who were not issued inspectors authority or would "leave their inspectors authority in the office" as it was said by WorkCover representatives that the industry was fearful of the inspectors. The education approach then made its way into the inspectorate proper, and subsequently saw the disbanding of the business advisory group. Since then there has also been a disbanding of industry groups and now following of the "10/5/5" strategy which focusses on a narrow band of industry and hazards.

16. The 10/5/5 strategy clearly does not focus workplace bullying except to the degree that it focusses on mental disorders for which bullying is but one of several major causes.

*"High-risk industries – '10/5/5 program'  
10/5/5 focuses on the:*

- *10 highest risk industries in NSW*
- *five highest risk injuries within those industries*
- *five highest risk illnesses.*

*Through 10/5/5 we are working with customers who face the highest risks in work health and safety and return to work, to improve outcomes for them, and reduce costs to their industry and the NSW community. "*

Source: WorkCover NSW website<sup>1</sup>

17. With the changes to regulatory approach, there has been a general reduction of interactions with the public resulting in enforcement actions since the mid to late 2000s. This is demonstrated with the Comparative Performance Monitoring Reports<sup>2</sup>. This must be a cultural direction being set

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<sup>1</sup> See WorkCover website, <http://www.workcover.nsw.gov.au/newlegislation2012/your-industry/Pages/default.aspx>

<sup>2</sup> See Safe Work Australia website, <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/comparative-performance-monitoring-report-14th-edition>

from the top, who when questioned on this claim they are operating smarter but the statistics demonstrate not actually undertaking significant enforcement activity in this area.

Safe Work Australia has also undertaken research that supports the effectiveness of the Regulator undertaking interventions.

*“The pattern of results observed suggests that inspections:*

- ***are more likely to lead to improved work health and safety outcomes for small businesses and for those with no prior experience of inspections***
- ***may reduce the severity of injuries rather than the overall injury rate, and***
- ***that include penalties may be more effective for medium and large businesses.***

*The key mechanisms leading to inspections producing changes in work health and safety outcomes are:*

- *drawing managers’ attention to the issue of safety overall*
- *enabling businesses to understand what they need to do in order to comply, and*
- *the potential for damage to businesses’ reputation associated with being the subject of enforcement.”<sup>3</sup>*

The following comes from the Comparative Performance Monitoring Reports<sup>4</sup>.

Indicator	2006-07	2007-08	2008-09	2009-10	2010-11
# of Improvement Notices	13243	13109	10832	12161	11326
# of infringement notices	726	620	686	688	588
# of prohibition notices	1127	994	767	856	834
# of legal proceedings finalised	303	185	98	81	93
# of legal proceedings resulting in a conviction, order or agreement	300	182	96	76	89
Total amount of fines awarded by the courts (\$000)	\$11086	\$8600	\$4602	\$5614	\$6039

<sup>3</sup>Safe Work Australia, The Effectiveness Of Work Health And Safety Interventions By Regulators: A Literature Review, 2013, p. 7

<sup>4</sup> Safe Work Australia, Comparative Performance Monitoring Report Comparison of work health and safety and workers’ compensation schemes in Australia and New Zealand, Fourteenth Edition, October 2012, pp. 18-20

**Table 1: Enforcement Statistics- Safe Work Australia, Comparative Performance Monitoring Report Comparison of work health and safety and workers' compensation schemes in Australia and New Zealand, Fourteenth Edition, October 2012**

See the response below to term of reference (b) for further information on the role of WorkCover as a Regulator.

18. As far as bullying at WorkCover, we are not aware of whether WorkCover is a better or worse employer than any other employer. We do state that as the regulator of Work Health and Safety and as a public sector agency that there is an expectation that the WorkCover Authority is considered to strive to be an exemplary employer. This is demonstrated by the commitments in the Working Together public sector safety strategy and we believe can be achieved at WorkCover if some of the systematic issues are resolved.

**WorkCover as an employer,( Regulator, Scheme Manager, Principal in Contract Management with Insurance Companies, Author of Guidelines maintaining income for parts of the medical, training, and rehabilitation industries, Licence issuer, Holder of Information and Statistics relevant to the legislative process etc.)**

19. Unions NSW has read the decision in *Butler vs. WorkCover Authority*<sup>5</sup> which purportedly was part of the genesis of this Inquiry. Affiliates have also made Unions NSW aware that other staff members have experienced workplace bullying at WorkCover. We are also aware of workers suffering workplace bullying and being provided with permanent impairment assessments by the workers compensation system of impairment enough to pass the 15% threshold despite the difficulties posed by workers compensation in recognising psychological claims described below.

20. WorkCover has many hats and can convey significant influence over a number of parts of the NSW economy and working lives. This includes a range of people that they license or gain accreditation to undertake functions within the Work Health and Safety and Workers Compensation legislative functions, such as medical practitioners, and other service providers. These can generally be reviewed through some form of internal and then external process and are of course considered at least partially "optional" for the parties involved in the sphere of influence of the transactions they undertake with WorkCover.

21. Employees or workers as they are called under the Work Health and Safety Act 2011 have less options or choice when it comes to the interaction with their employer. They have a limited capacity to call an independent person in relation to their work health and safety or bullying concern. They may be calling in a work colleague (inspector) who will be governed and directed by the same management as the worker who is the victim of the alleged bullying behaviour. This is a conflicted scenario.

22. A worker/s at WorkCover if following the standard procedures under the Act for addressing safety concerns for a bullying concern would find they would be exposed to potentially multiple barriers within the WorkCover Authority with little capacity to seek redress when the management

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<sup>5</sup> Wayne Butler and Safety Return to Work Support Division, [2013] NSWIRComm 45

of WorkCover are opposed to the allegation progressing. The opportunities for “*institutional bullying*” as referred to in *Butler vs. WorkCover* are numerous. WorkCover has an obligation to proactively identify and prevent risks to health under the WHS Act 2011. It should also be considered that workplace bullying may also have a detrimental effect on a worker’s capacity to continue to advocate an issue or bullying concern, so the issue may not be pursued if the worker gives up. This is demonstrated in the WorkCover document, *Bullying Prevention Compliance Strategy, Occupational Health and Safety Division*, page 3.

23. The following simplified flow chart demonstrates the problems that may be encountered in red by a worker at WorkCover.

#### **Summary of the WHS process to review bullying behaviour for WorkCover employees**

WorkCover Worker makes complaint of bullying using WorkCover policies as is required under the WHS Act S 28 to WorkCover management. WorkCover (line management- People and Culture- HR) can delay progression of the allegation or undertake a light investigation and state nothing to be done, without doing anything to prevent further injury or bullying.



Worker can contact their union delegate or Health and Safety Representative (HSR) to seek assistance in getting the safety issues of the bullying behaviour modified. The HSR can issue cease work order or Provisional Improvement Notice after consultation with the PCBU (WorkCover). The union delegate or HSR is also employed by the same agency and can also be subject to other administrative pressures.



The WorkCover Authority (employer) can appeal a PIN (S.101) or Cease Work order (S.89) from a HSR to WorkCover (Regulator). WorkCover (employer) will be provided with an inspector (appointed by WorkCover Regulator- who is the employer of the inspector) and their decision can be reviewed internally (WorkCover as Regulator), and then externally (NSW IRC).

#### **New Work Health and Safety Act 2011 and prosecutions**

24. It has been stated at times when discussing who regulates the regulator that an inspector or a union could undertake a prosecution at WorkCover.

25. One of the subtle changes that were opposed by the unions but to no avail during the harmonisation process was the change from the NSW OHS Act 2000 as to who can bring a prosecution. Formerly under the OHS Act 2000 an inspector or a Union Secretary could prosecute as per:

##### *OCCUPATIONAL HEALTH AND SAFETY ACT 2000*

##### *106 Authority to prosecute*

*(1) Proceedings for an offence against this Act or the regulations may be instituted only:*

*(a) with the written consent of a Minister of the Crown, or*

*(b) with the written consent of an officer prescribed by the regulations, or*

*(c) by an inspector, or*

***(d) by the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate.***

*(emphasis added)*

26. However, the harmonised WHS Act 2011 for whom NSW was involved altered the position of the inspector and the secretary of an industrial organisation as both prosecutors, both now requiring review by the Regulator.

*"WORK HEALTH AND SAFETY ACT 2011 - SECT 230*

*230 Prosecutions*

*(1) Subject to subsection (4), proceedings for an offence against this Act may only be brought by:*

*(a) the regulator, or*

***(b) an inspector with the written authorisation of the regulator (either generally or in a particular case), or***

***(c) the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate, but only as permitted by subsection (3) if the offence concerned is a Category 1 offence or a Category 2 offence.***

*....*

***(3) The secretary of an industrial organisation of employees can bring proceedings for a Category 1 offence or a Category 2 offence only if the regulator has (after referral of the matter to the regulator and the Director of Public Prosecutions under section 231) declined to follow the advice of the Director of Public Prosecutions to bring the proceedings."***

*(emphasis added)*

27. As far as the prosecution by an inspector this now requires approval by the regulator. It would be hard to imagine that an inspector would be allocated permission or direction to pursue such a prosecution and secondly resourced and authorised to pursue the prosecution against the organisation that is their employer, for whom the inspectors owe a duties to follow reasonable direction and faithful service.

28. As far as the union secretary's prosecutorial powers which were rarely used, these provide another hypothetical avenue for seeking enforcement of WHS laws within the WorkCover Authority. However, the new provisions of Section 231 require the Regulator to decide whether they will undertake a prosecution and make a recommendation to the ODPP. If there has been no investigation occur, the ODPP would be unable to recommend a prosecution be recommended.

Unions investigative powers and evidence gathering powers under Entry Permits are also greatly curtailed in comparison to those of an inspector.

#### Recommendations

a) That Unions who cover the WorkCover Authority be empowered to have the same powers as an inspector for that agency.

or as proposed by the PSA Inspector Vocational Branch

b) That a memorandum of understanding be formed between state regulators that enables inspectors from other states to be empowered to investigate WHS breaches including bullying inside WorkCover in NSW.

#### Workers Compensation

29. There is a similar problem with how a WorkCover worker may progress a workers compensation claim for a bullying injury under the Workers Compensation Act 1987. They must meet a number of hurdles in order to gain meaningful support from their employer and the scheme. These may be problematic if there is institutional bullying as was described in *Butler v WorkCover*.

30. A summary of how a WorkCover worker could progress a workers compensation claim for bullying and the difficulties they may face in red is provided below.

#### Workers Compensation process for a WorkCover worker.

WorkCover Worker makes claim for psychological injury due to workplace bullying. Insurance company (agent contracted with WorkCover with performance goals reviewed by WorkCover) receives complaint and then rings employer WorkCover. The insurer then asks as per Section 11A whether the workplace has workplace restructuring (as is demonstrated by the above history), the worker is exposed subject to a disciplinary or performance process (regardless of whether these actions are done inappropriately as "institutional bullying" as demonstrated by the *Butler v WorkCover* case"). If these are present then Section 11 A may be used to reject the workers bullying claim (liability) under a Section 74 Notice. They may also just state that the investigation "*found nothing*" (as occurred with license processing) For the investigation to **progress would require further medical evidence from the injured worker, or workplace evidence from co-workers.**



If the worker's claim is rejected then minimal focus is placed on fixing the workplace behaviours and less resources are typically placed into recovery and rehabilitation of the worker. This means that the worker is likely to return to the workplace still unwell (leading to possible performance and conduct measures) or not receive adequate rehabilitation, and the workplace will still be in the same state with threats of further bullying going unabated.



The worker if they have the psychological strength can appeal the decision to the workers compensation commission where the insurer who is under contract from WorkCover will oppose liability.

### **Recommendation**

That the NSW WorkCover Authority submit all internal claims of workplace bullying to an independent government body for review.

### **WorkCover Cultural History of Bullying**

31. WorkCover has an unfortunate history in dealing with workplace bullying inside their own workplace. As stated above this may be due to the focus placed on perceptions of this organisation, but this organisation as a regulator and a public sector employer is expected to be an exemplar employer. Apart from the current incident in *Butler v WorkCover* there are a range of examples when the WorkCover Authority as an employer has been called into question over their ability to manage workplace bullying in their own workplace.

32. We are aware from affiliates, parliamentary hansard and the media of incidents including:

- Union and Staff Surveys indicating high percentages of people experiencing directly or witnessing co-workers being bullied,
- Subsequent media articles,
- A number of questions in Parliament into alleged incidents of bullying,
- The 2010-2011 Price Waterhouse Report into Workplace Bullying,
- The Klaason Report into bullying allegation in the ITSB.

### **Ombudsman**

33. There is limited speciality within the NSW Ombudsman to address issues of safety at WorkCover or administered by WorkCover. We are aware that there have been protected disclosures made with the NSW Ombudsman regarding bullying at WorkCover that have not progressed despite a relatively good indication that the WorkCover Authority could have managed the bullying at WorkCover better. This is no criticism of WorkCover or the Ombudsman but most government agencies have some form of external expert review including for decisions related to the administration of their own legislation for their own staff and external parties.

## **b. WorkCover's role as the State Regulator of occupational health and safety as it relates to bullying in the workplace,**

### **Prevalence of Workplace Bullying**

34. In order to assess WorkCover's role as regulator for health and safety as it relates to bullying we need to assess the prevalence.

35. It should be noted that Unions NSW and affiliates attempted via several different methods to attain more recent information regarding the statistics of the prevalence of workplace bullying through the WorkCover Authority. At the time of submission these were not forthcoming so we have had to rely upon older information. This information is also controlled by WorkCover.

36. There appears to be a significant number of studies conducted by Occupational Health and Safety Academics on particular workplaces or industries<sup>6</sup>. This submission does not attempt to revisit this research.

37. It is the experience of the NSW Union Movement that many victims of workplace bullying simply walk away rather than take the issue further through adversarial means of redress, or through a pursuit of the Regulator to remedy or through workers compensation. Part of the reason is the adversarial nature of the means of redress. (This includes that the bullying behaviour is often alleged to be from management practices or the application of the corporate structures and policies of the workplace- institutional bullying.) Additionally at the very heart of the bullying experience regardless of the source is the implied or overt

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<sup>6</sup>For example, See

Mayhew C., (2004) Occupational Violence/Bullying in Education and Juvenile Justice and Assessment of the impact of these events, in McCarthy P., and Mayhew C., *Safeguarding the organisation against violence and bullying: an international perspective*, Palgrave Macmillan, Hampshire

Mayhew C., and McCarthy P., (2004) Occupational violence: a pilot study of workers in a juvenile justice centre, *Journal of Occupational Health and Safety - Australia New Zealand*, 20 (6): 511-521



creation of fear, including repercussions ensuring a practice of silence. The Injured Worker Support Network undertook a recent survey that stated that less than 4% of workers have faith in WorkCover to address bullying<sup>7</sup>.

38. The workers compensation system, is one of the main sources of partial actual, not estimated or real costs of workplace bullying. Whilst demonstrating actual costs, it is stated without much argument that workers compensation costs are only a partial indication of the true cost of workplace bullying which has been estimated by the Productivity Commission in the billions of dollars. It is our submission that workers compensation statistics are heavily skewed against recognition of workplace bullying with psychological claims often not being paid, if made at all. The reasons for this include “*reasonable employer actions*” (Section 11A, NSW WC Act 1987) conducted in an **unreasonable** manner. In NSW for example reasonable employer actions such as performance management, disciplinary action and/or change management are sometimes used in an unreasonable manner in order to single out and make the work life of selected individual workers unreasonable, whilst different standards are applied to others. These unreasonable applications of “reasonable management actions” can be enough to allow a claims agent to decline a claim for injury (at least at first instance), no matter how injured the worker is, or inappropriate the application of the management action was. A bullied worker is often in no position to then coherently challenge their employer as well as their insurer when often the worker’s self-esteem and confidence is already low, and is further removed by the experience. Additionally an injured worker may perform poorly after being bullied at work, but not make a claim until they realise they are suffering a psychological injury.

39. Self-insuring employers have an extra capacity to complete this power imbalance. When there is a bullying claim (as they control workplace safety, workplace management, claims management etc.) and now often refer injured workers to contracted medical personnel, who often mistake the employer (with whom they have a service agreement) as the client rather than the injured worker. This has seen workers claim to be “bullied” by the treating doctor, the independent medical examiner in what has been reported as quite robust and inappropriate examination techniques.

40. Insecure work is a further factor that is prevalent in the cause of the under-reporting of workplace bullying. It has been estimated that up to 40%<sup>8</sup> of the workforce works in some form of insecure work. This may be casual, temporary, fixed term, labour hire, supply chain workers or a form of contracting work, that make the worker more vulnerable if they advocate for improved standards of workplace behaviour.

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<sup>7</sup> Injured Workers Support Network website, <http://www.injuredworkerssupport.org.au/?p=7445>

<sup>8</sup> Source ABS, Forms of Employment, November 2011 (Released April 2012), Cat 6359.0 quoted in Independent Inquiry into Insecure Work, Lives on Hold, Unlocking the Potential of Australia’s Workforce

41. The union delegate victimisation and unfair dismissal case PSA v DJJ<sup>9</sup> is an example of what may happen to a casual worker who reports the incidence of their work colleague being allegedly bullied. The reporting of bullying resulted in the person reporting the incident being discontinued in their casual shifts despite a history of a pattern of regular shifts. This required now Fair Work Commissioner Deputy President Sams to reinstate the worker and order DJJ pay them compensation for lost time. It is our experience that many workers who are the victim of bullying cannot undertake the financial challenges or adversarial nature of seeking to get their job back or made safe, and simply walk away from the employment, or out of employment. These costs are not counted by WorkCover and are born by the worker, their family and community and the business that employs them.

42. The Statistical Bulletin from WorkCover identifies a number of claims in the occupational disease sub category of mental disorder. Unfortunately the statistics from WorkCover's published statistics do not narrow down to state what the cause or agency of the mental disorder claim is. The most relevant statistics available in NSW to Unions NSW are now dated and are included below.

	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007
Claims all industries	388	884	1,054	927	895
TMF- Claims all industries	40	280	361	332	336
Total GIC	\$7,577,051	\$19,502,576	\$20,637,507	\$16,372,966	\$16,289,141
TMF- Total GIC	\$1,156,770	\$6,013,098	\$7,838,291	\$5,731,571	\$7,497,510
Total Time Lost (weeks)	5,081	14,119	13,149	12,136	10,209
TMF- Total Time Lost (weeks)	672	5,244	4,825	4,154	3,919

**Table 2 : Work Related Harassment and/or Workplace Bullying Claims- all Industries**

Source: WorkCover Authority NSW, (2008), (1) Business Intelligence Report, November December 2008, *Analysis of Occupational Disease Claims*

43. As seen by the above table the public sector is over represented in claims of bullying and harassment compared to the workforce in general. Part of the reason for

<sup>9</sup> Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (on behalf of Kylie McKelvie) and Department of Juvenile Justice [2008] NSWIRComm 98 (26 May 2008)

this over representation may be a greater knowledge of the hazard, less mobility of the workforce or less reporting in the private sector where the employer is often the manager in SME's. The over representation of the public sector is confirmed on a national level<sup>10</sup>. Additional reasons provided for this over representation are that the public sector across Australia has not grown in size, yet the population that they serve has, requiring increased stress being placed on fewer public servants to do more with less, constant workplace change and other factors such as constant policy direction change that are now associated with the public sector. The problem is that we do not currently have further information, research, analysis and coordination as to what are some of the causes of workplace bullying prevalence amongst different industries.

44. There is a widespread view that bullying and harassment claims are under reported like other forms of psychological injury. Some of the reported reasons for this include:

- Section 11A "reasonable employer actions" of the Workers Compensation Act when disciplinary, performance and restructures are in process or are used inappropriately, or in a bullying manner may preclude a worker from accessing compensation;
- The reluctance of workers to trust workplace management in supporting a bullying allegation or claim;
- Many people prefer to leave the workplace rather than deal with ongoing bullying;
- Some employers not recognising workplace bullying as a health and safety issue and referring it to conflict resolution through grievance processes only;
- Fear of further bullying if the claim is made as the bullies "close ranks".

*WorkCover Guide 2008 (NSW)*<sup>11</sup>, states that bullying may not be reported because people:

- may not recognise bullying behaviour;
- may not know the reporting procedure;
- fear retribution or payback from the bully, or isolation of colleagues;
- believe no-one will respond to their complaint;
- fear being labelled a complainer or weak;
- believe complaining will damage their career prospects;
- accept bullying as a normal part of the workplace culture;

45. When Unions NSW affiliates have undertaken surveys in the public and private sector they have often been surprised by the response rates and the number of people who were subjected to or witnessed bullying at their work. This would indicate the reasons why

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<sup>10</sup> Safe Work Australia, *Compendium Of Workers' Compensation Statistics Australia 2009-10*, page 9

<sup>11</sup> WorkCover Authority NSW, (2008), *Preventing and Dealing with Workplace Bullying, A guide for Employers and Employees, Guide 2008*

the workers compensation statistics fail to tally or compare to the same figures as the Productivity Commission figures. A number of Unions NSW affiliates have conducted surveys of workplaces to identify bullying behaviours and have come up with significantly large experiences of witnessing ( >80%) or directly being targeted ( >30%) by bullying behaviour. These surveys are often self-selecting and usually anonymous but often get a larger sample than employer run surveys due to the fear of employee identification. Several have been supported by employer surveys that have occurred with similar results. The recent People Matter survey in the NSW public sector for example found a prevalence of 50%.

*“Almost half (48 percent) of respondents reported witnessing bullying at work in the last 12 months with 29 percent personally experiencing bullying at work in the last 12 months. Of those, who experienced bullying, 21 percent submitted a formal complaint (Page 24)”<sup>12</sup>*

46. Unions NSW is aware that our WHS Regulator, WorkCover Authority of NSW receives several hundred thousand calls per year from the public on a range of WHS and Workers Compensation matters of which workplace bullying is often one of the highest non administrative WHS hazard subjects of the call or Frequently Asked Question (FAQ). A number of these calls would not appear on the Workcover workers compensation statistics as they may not injure a worker or initiate a claim to be made, but are a good indicator of the types of emerging issues and prevalence of the issue.

47. The important conclusion that this points to is that there is a lack of knowledge of the depth of bullying in our NSW workplace community and the extent to what it costs the community and who bears the costs.

#### **Recommendation**

*That WorkCover undertake in a coordinated manner research on the prevalence, risk factors and cause of workplace bullying across all industries in NSW and provide this as a public report.*

#### **Enforcement Activity**

48. Despite the high cost and claims burden to the scheme and presumably to the self-insurers, the approach from WorkCover could be said to be “hands off” when it comes to workplace bullying.

49. The history of Unions NSW involvement with WorkCover and the issue of workplace bullying as a regulator is a long one. Unions NSW and some leading unions had pushed for a number of years

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<sup>12</sup> Public Service Commission Website, <http://www.psc.nsw.gov.au/About-the-Public-Sector/People-Matter-Survey-2012>

to get WorkCover to be more active around the workplace hazard – workplace bullying. We have called for a Regulation, code of practice and guidance material for a number of years.

### **Guidance Activity**

50. Part of the WorkCover Authority's role as a regulator is to form laws, codes of practice and guidance materials to guide duty holders as to how to manage work health and safety hazards. In 2003 Unions NSW got the NSW Premier's Department to agree to signing the Dignity and Respect Charter. Then in approximately 2007 after a number of years of highlighting the vacuum of guidance in this area, NSW WorkCover Authority started the process of negotiating a WorkCover Bullying Guide. This then became published in 2008 and was known as the *Preventing and Dealing with Workplace Bullying- A Guide for Employers and Employees to Bullying at Work Guide 2008*.

This is **Attachment 1**.

### **"Bullying in the Workplace – Technical Guide"**

51. Following the issuance of the Guide WorkCover started to develop a *"Bullying in the Workplace – Technical Guide"* in 2009.

52. We were able to view an embryonic draft copy only of this document in 2009, and we were not consulted on the content nor received further drafts as it neared completion. This is the internal document that instructs inspectors on how to follow up bullying complaints and incidents that are reported to WorkCover.

53. Interestingly whilst the document we received was only in draft, the document provided an insight into a number of opportunities for WorkCover to do nothing and be "hands off" with bullying.

For example page 5,

*"In determining these parameters consideration should be given as to whether there are other proceedings in relation to the workplace bullying allegation, for example where such a matter that is the subject of a complaint is being dealt with by another jurisdiction, such as; Industrial Relations Commission of NSW; the Australian Industrial Relations Commission; Workers Compensation Commission NSW; Government and Related Employees Appeal Tribunal (GREAT); NSW Ombudsman; NSW Anti-Discrimination Board (ADB).*

*Matters under these other jurisdictions may form part of the initial workplace bullying complaint. Even if the complainant believes **the process is flawed or compromised** they are dealt with within the Commission's Authority and do not form a component of the OHS complaint. These matters must be dealt with within the relevant jurisdictions or complaint made to the NSW or Commonwealth Ombudsman."*

Page 6,

*"These investigations will focus on the safety matters/risks, WorkCover is not the lead agency for IR, performance management and other matters that are not related to safety."*

*“Was the alleged bullying notified/reported to any party external to the workplace eg NSW Police, ADB, Ombudsman, Union, OIR, Industrial Relations Commission and/or the Workers Compensation Commission. If this matter is still being dealt with by any of these Organisations/Authorities then WorkCover will not deal with the individual matter.”*

This causes at least three issues if this approach was followed in the final draft of the technical guide.

54. Firstly as a large proportion of reported bullying matters are within the public sector, the OIR when this document was written had no jurisdiction over NSW public sector agencies or their employers.

55. Secondly, whilst the Workers Compensation Commission, the AIRC (now Fair Work Commission) and the Industrial Relations Commission have authority to deal with a wide range of matters, their jurisdiction does not preclude and in some cases does not extend to cover workplace safety. WorkCover has jurisdiction to deal with procedures to ensure the safety of workers including those that aim to identify safety hazards (bullying), assess the risk, and implement controls or procedures to prevent and minimise injury. If the WorkCover Authority has decided not to participate in these matters when there is an enlivened matter before these other organisations or jurisdictions then they are simply deciding not to participate and not doing so via the force of another exclusive law. This finding was one of those that came out of the Federal Parliament Joint Parliamentary Inquiry into Workplace Bullying<sup>13</sup>.

56. Thirdly, if the scenario described in the *Butler v WorkCover Authority* decision was applied with the above technical guide, the “institutional bullying” that the Industrial Relations Commission described would have been not acted upon as WorkCover would have used a number of the opt out clauses described above to excuse themselves from undertaking any action. This is despite several other staff in the area apart from Mr Butler having experienced workplace bullying that were compensated by the workers compensation insurer as evidence of the manifestation of the risk.

57. When an already under-resourced inspectorate is then required to assess whether to investigate a clear case such as an amputation from unguarded machinery or contribute significant work time (measured in months and years) and resources (also requiring expert witnesses) into a bullying investigation, the Authority appears to be providing an excuse to the de-prioritisation of bullying investigations by the above version of the technical guide.

#### **“Bullying Prevention Compliance Strategy”**

58. We also viewed a document titled the *“Bullying Prevention Compliance Strategy”* in draft form with no opportunity for consultation.

59. This document appeared to be part of a national HWSA program to increase bullying compliance. However, the anecdotal evidence is that the strategy was inappropriately implemented on occasion.

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<sup>13</sup> Inquiry into Workplace Bullying, House Standing Committee on Education and Employment

60. This inappropriate implementation is demonstrated by what was involved in the strategy, which required the WorkCover inspectorate to enquire with at risk employers based on claims history into the prevalence of bullying prevention policies and supporting procedures in place and training/induction on bullying and respectful behaviours. This document included:

*“The following industries have been identified as priority areas using business intelligence from workers compensation, industry knowledge, the inspectorate and specialist staff:*

1. *Government agencies including education, health and community services sectors*
2. *Accommodation cafes & restaurants; and*
3. *The retail sector.....*

*Strategies/Key Result Areas*

*The key performance indicators to measure whether the Bullying Prevention Compliance Strategy meets its goals are:*

1. *Percentage of targeted workplaces that are surveyed have a **bullying prevention policy and supporting procedures in place and training/education on bullying prevention/respectful behaviours (trends over time);***
2. *An increase in the number of requests for information regarding bullying received through the Information Centre, complaint and incident reports (through the Strategic Assessment Centre) in the first 12 months of the strategy (trends over time);*
3. *Decrease in the number of confirmed bullying issues and incident reports over five year period (trends over time); and*
4. *Number of webpage visits to WorkCover’s suite if bullying guidance materials (trends over time)” (page 5)*  
(emphasis added)

61. Unions NSW were told for example of how the WorkCover Authority undertook this Bullying Prevention activity with the Department of Education and Training (DET- now Department of Education and Communities), was to go to the DET OHS Directorate and ask them which schools they should select for the Strategy. The problems with this approach are obvious.

62. Firstly, the DET is one of the most prosecuted defendants under the OHS Act 2000 and its predecessor legislation the OHS Act 1983. In a number of these prosecutions the DET was described in words to the effect as having a number of extensive policies dealing with safety, but in the cases involved there was little evidence that the policies were implemented. Therefore a policy review would be a meaningless tick a box exercise where all workplaces could demonstrate compliance via the intranet with the existence and availability of a policy and training. Secondly, by meeting with the Directorate that deals with OHS; we are asserting that at worst the WorkCover Authority could be directed to the workplaces for inspection where everything has been confirmed as compliant with their internal audits or checks; or less worse WorkCover is flagging to DET where they are going so that the DET can pre warn the workplaces for improvement. We assert that WorkCover should be looking at cases and identifying whether the policies were implemented.

63. Unions NSW has experienced a level of frustration with all the Regulators lead by WorkCover at HWSA when it comes to regulating the hazard of bullying. The new Work Health and Safety Act comes in the form of a model Act and Regulation with supporting harmonised Codes of Practice and

Guidance Material. One of the aims of the harmonisation of the legislation was to provide practical guidance to business – in particular small to medium enterprises- as to how to manage work health and safety hazards. Despite the status as an emerging issue that is increasing in prevalence relative to other hazard types, workplace bullying remains an issue that regulators appear to be unwilling to tackle. Unions NSW have advocated for a Chapter in the WHS Regulations 2011 dealing with psychological hazards that have been allowed during the harmonisation process to be all but excluded from the Work Health and Safety laws. A draft is attached at **Attachment 3**. Formerly psychological hazards were clearly included and an integral part of the NSW OHS Act 2000. The reason why a psychological risk management chapter in the WHS Regulations is advocated is that often where there is prevalence of bullying behaviour, there are other psychological hazards present. Often workplace bullying is a secondary consequence of not managing other psychological hazards. Several of these hazards have a greater incidence and injury rate than that of bullying, such as violence and other workplace stressors. However, they often interact to reduce a worker's coping mechanism which triggers injury when a worker is bullied. A Regulation would provide clear guidance to small business that bullying is a work health and safety issue. Now instead of small business attempting to undertake actions to mitigate against bullying behaviour, some of the business lobby have been lobbying and submitting to have workplace bullying the subject of only guidance material and not of a Code of Practice. The reason we believe this is occurring is because Code of Practice's can be used in a court as evidence of what can be done to prevent a risk. However, another aspect of the federal harmonisation process was there was to be no reduction in safety standards. At least one other jurisdiction had a Regulation governing workplace bullying prior to the harmonisation process, yet now aided by a disinterested HWSA we are arguing about whether bullying should be regulated by a Code of Practice or not at all, solely through guidance material. Whilst the construction of Regulation and Codes of Practice is a role of the WorkCover Authority now in a national context with the Inter- Governmental Agreement on OHS, there is still the scope for WorkCover to state that they see workplace bullying as a serious issue that should be governed by a Regulation or minimally a code of practice that means that enforcement of workplace bullying as a safety issue can be achieved more easily.

### **Prosecutions**

64. The role of the Regulator enforcing the legislation is also important if we are to combat the prevalence of bullying behaviour and send a message to the work community to deter future occurrences, and encourage positive workplace behaviours. NSW has a less than satisfactory history in regulating this issue. When you consider the proportion of claims and gross incurred cost, there are very few serious investigations into workplace bullying in NSW and even fewer successful enforcement actions.

65. Unions NSW affiliates have advised of very few successes in interacting with the Regulator to bring about change. Often, of late, the Regulator appears to choose from a select few inspectors who appear to investigate the allegation in the same manner as a physical hazard (which we are informed has an internally imposed initial 20 day turn-around time). This experience has not enabled, we believe, adequate time to gather evidence of a sufficient nature from witnesses and relevant business documents to start to prepare a brief of evidence for prosecution. There has been one bullying prosecution that we are aware in NSW, where WorkCover NSW was the prosecutor, but



this also had a large element of physical and violent assault attached to the bullying behaviours. Inspector Maddaford was a bullying case that saw WorkCover run its first notable prosecution on the issue of bullying.

*"A landmark NSW prosecution has seen two directors fined \$1,000 each and their company fined \$24,000 after a 16-year-old asthmatic labourer was wrapped in cling wrap and had sawdust thrown into his mouth as part of an "initiation" by five other workers.*

*Chief Industrial Magistrate George Miller said the court "must indicate to others in the industry that this type of incident will not be countenanced". He said the director knew the initiation might happen but did nothing. "*

Source: Public Service Association of NSW, Bullying Training materials

66. Union affiliates in NSW have also run several OHS prosecutions where there have been elements of bullying behaviour including a practical joke that ended in a worker being made deaf (i.e. physical injury based on physical systems failures), and where a union has prosecuted a particular in a charge, that bullying caused a breach of the employer's duty of care. The experience of a union in undertaking a prosecution is of course more onerous than for an inspector due to the limitation on the powers that an Entry Permit Holder has, when compared to a WorkCover inspector in gathering evidence.

### **The Victorian Experience**

67. Despite having a slow start and also similar problems reported about the culture inside WorkSafe at times, Victoria's WorkSafe has now undertaken a number of successful prosecutions. The Café Vamp case was the most notable where WorkSafe prosecuted a business, its owners, and workers over the suicide of Brodie Panlock after she experienced severe workplace bullying.

68. After this case calls to Worksafe increased by over 300% enquiring about bullying at work, which demonstrate the awareness raising and deterrent effect of bullying prosecutions.

69. A number of other WorkSafe workplace bullying examples are demonstrated on the attached documents at **Attachment 2** which demonstrates a history of prosecutions for verbal abuse and other forms of vilification.

70. WorkSafe Victoria has similar laws to NSW and a similar size inspectorate, with slightly less inspectors per head of population. Despite this they are able to maintain enforcement action that identified workplace bullying and establishes precedents that act as a deterrent to prevent future bullying being condoned. After several reviews and inquiries in Victoria they created a specialist inspectorate to look at investigating psychological hazards.

### **Bullying Unit**

71. NSW has a psychosocial unit that is only a few public servants strong, with limited investigatory practice. The unit covers all matters of a "psychosocial" nature including workplace stressors such as violence, fatigue, overwork, work organisation, and bullying. In all the other causal aspects that are the focus of this unit, WorkCover's prosecutorial rate has also decreased so that we

now see a reduced number of violence cases pursued for instance. Affiliates have advised of workplace assaults where workers have died not being investigated or prosecuted.

72. It is our understanding that a number of other states have “technical experts” in their inspectorates. We believe that this was a recommendation out of the Victorian Ombudsman report into WorkSafe Victoria and the subsequent inquiry and report by Lyon SC and Livermore . This enables the Workplace safety regulator to pursue selected examples thoroughly to send a warning that bullying behaviours are not tolerated without the distraction of other traumatic workplace injuries requiring immediate investigation.

#### **Recommendation**

*That a specialist inspectorate is charged with undertaking investigations based on the statistical prevalence of bullying in the jurisdiction.*

#### **Self-Insurers**

73. Self-Insurers, similar to the scenario presented by the WorkCover Authority are in a highly powerful position with their workers when it comes to dealing with the issue of workplace bullying.

74. A Self Insurer if they meet the financial, administrative and safety management system standards for WorkCover can then keep the profits from reduced claims or claims management costs, as compared to industry standard premiums. As workplace bullying is often a challenge to how workplace management is undertaken, the self-insurer is placed into a position that enables them to implement management and workplace safety systems, and to undertake claims assessment when there is alleged bullying. Further they also control how the employer deals with the notification as far as further assistance to the worker who is claiming injury as a result of the bullying behaviour. Often affiliates report that the self-insurer “closes shop” isolating the alleged victim and creating further complications with new performance work plans, disciplinary allegations and warnings, and difficulties returning to work without bullying hazards. Other times affiliates have reported the encouragement of taking sick leave or other leave, so the employer enjoys the double advantage of not having the case management appear in the system, thereby avoiding possible WorkCover audit or review, and also reducing long term the need to pay for medical expenses when the worker may otherwise not know about their entitlements. Self-insurers also often employ the use of contracted doctors that enables the employer to “doctor shop” and place immense pressure on injured workers affected by workplace bullying to justify their claim or maintain their insistence on not being re exposed to unsafe bullying behaviour. This is not encouraged by the AMA.

75. With an issue such as bullying it is difficult to see how a self-insurer can assess claims for workplace bullying in an independent and fair manner particularly when the claim is one where it is alleged that the employer’s safety systems allowed it to happen.

76. Additionally it has been the experience of many affiliates to report to Unions NSW that because of the size of the self-insurer that WorkCover minimally enquires into complaints as they have workplace systems and policies in place to deal with workplace bullying.

77. We conclude that self-insurers should as a default with all psychological claims, be required to outsource claims assessment to a central independent body.

**Recommendation**

*That self-insurers be excluded from self- assessing psychological claims and that these be undertaken by a central independent body.*

**Public Sector**

78. As demonstrated by the figures in the above table 2, the public sector, including government education and health are over represented in the prevalence of workplace bullying claims. Whilst workplace bullying only makes a small percentage of overall claims, the length of claim and the cost are often described as costing double to three times the average claim profile.

79. Unfortunately the above description of WorkCover’s compliance and enforcement program does not equate with a meaningful contribution to the these parts of industry. If WorkCover’s method of ensuring compliance is solely superficial to ensure that there is a policy and that there is training, then the question should be asked whether there is any purpose to this approach without further follow up or investigation.

80. All of these parts of industry with the highest prevalence of workplace bullying have extensive workplace policies. Most of this industry is concentrated with large employers or employer networks who have the capacity to develop extensive policies and training packages. It is whether these are implemented in a fair manner where WorkCover needs to be focussing its enquiries when interacting with the workplace, particular in “hot spots”..

81. It is reported to Unions NSW that WorkCover is contacted regarding bullying in the public sector and the complainant is not called back, or that an inspector enters the workplace and speaks to management, identifies the policy or that an investigation is occurring internally and then leaves. This is demonstrated in Case Study 3. The extensive information gathering powers available to an inspector are not utilised and interventions are rare as demonstrated by Case Study 2.

82. Additionally many inspectors who have intervened via notices or other interventions in the public sector have found a negative reaction from their employer after they have made the decision to undertake minor actions such as issue an improvement notice.

83. After all the employer of the workplace inspectorate is in the end the government of the day and the ILO convention requires the labour inspectorate to be independent from employers and unions. It is hard to understand how the WorkCover Authority can be independent for the public sector when there is such a reluctance to intervene in matters of safety for workers of the same employer as the inspectorate.

83. In Case Study 1 below the problems with this are demonstrated where the inspector was removed from the role of inspecting that agency after issuing an Improvement Notice.

**Recommendation**

*That a tri-partite panel be formed to manage WHS strategic direction and boost compliance and enforcement activity within NSW with regard to workplace bullying.*

## **Notifications**

84. Formerly the NSW OHS Regulation 2001 Cl. 341 required the notification to WorkCover OHS Division if there was an incident that posed the risk of a worker being absent from work for 7 days or more or if exposed to violence at work. As “mental disorders” generally take twice to three times as long as average claims for the injured worker to return to work (in 2008-2009 medium return to work for a mental disorder was 11.8 weeks as compared to median for injury at 4.2 weeks and illness at 3.8 weeks<sup>14</sup>). As such incidents also cost approximately twice to three times as much as average claims, it would be logical that mental disorders would be included as an automatic notification to the workplace safety regulator, in the new harmonised legislation so that they can prioritise enforcement measures in this area.

85. Unfortunately the notification provisions have been lessened under the harmonised laws from what we had in NSW, now only including the following physical provisions and the illness provisions in the WHS Regulation 2011 Cl. 699 Incident notification-prescribed serious illnesses:

### ***“WORK HEALTH AND SAFETY ACT 2011 (NO. 137, 2011) - SECT 36***

#### ***What is a serious injury or illness***

*In this Part, **serious injury or illness** of a person means an injury or illness requiring the person to have:*

*(a) immediate treatment as an in-patient in a hospital; or*

*(b) immediate treatment for:*

*(i) the amputation of any part of his or her body; or*

*(ii) a serious head injury; or*

*(iii) a serious eye injury; or*

*(iv) a serious burn; or*

*(v) the separation of his or her skin from an underlying tissue (such as degloving or scalping);  
or*

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<sup>14</sup> Safe Work Australia, Compendium Of Workers' Compensation Statistics Australia 2009-10, page 31

*(vi) a spinal injury; or*

*(vii) the loss of a bodily function; or*

*(viii) serious lacerations; or*

*(c) medical treatment within 48 hours of exposure to a substance;*

*and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind. "*

86. Unfortunately many people who are injured at work because of workplace bullying may slip through the system entering the health system, or the unemployment system, without any support from the Workplace Safety Regulator or any efforts made to rectify the bullying behaviour occurring.

87. At present we are advised that WorkCover WHS Division receives a summary of all claims under the workers compensation general scheme and where they occur on a monthly basis. This summary is not currently used on a regular basis to undertake interventions or track workplace bullying hotspots. There is an absence of this information with self-insurers and TMF provided to WorkCover, who despite regular statements that this will change have remained slow in providing information to WorkCover on causation of injury.

### **Conclusion**

88. We conclude that the best way to combat this absence of knowledge of the workplace exposure to bullying, is to include a mandatory reporting regime that requires all employers, health professionals, medical services and insurers to be required to mandatorily report psychological injuries caused at work to WorkCover.

89. Further, we therefore conclude that an independent dedicated inspector group should be formed to focus on workplace bullying and that the procedures should not be narrow but broad to allow thorough investigation of all workplace bullying.

90. Bullying should be regulated by the WorkCover under the Work Health and Safety Act through a new Regulation titled Psychological Risk Management.

91. As bullying is often present when other psychological hazards are present bullying should not be a stand alone provision and should be included in a broadly defined Psychological Risk Management Chapter in the harmonised WHS Regulations.

### **Recommendation**

*Psychological Risk Management Chapter of the WHS Regulations should be created including bullying as a pilot through the IGA on workplace safety;*

**Recommendation**

*A prescriptive Code of Practice for Workplace Bullying should be completed and supported by WorkCover NSW and their representatives at HWSA.*

**Recommendation**

*An adequately trained independent inspectorate division should be created within WorkCover. Adequate and comprehensive procedures should be developed to ensure that the inspectors are not precluded from undertaking further investigations because of other aspects of the employment relationship being tested elsewhere.*

**Recommendation**

*Creation of a mandatory reporting regime to a central independent government agency, that requires all employers, health professionals, medical services and insurers to report psychological injuries caused at work.*

**No Ombudsman**

92. An ombudsman of a sort has been established to monitor insurers, employers and WorkCover under the workers compensation side of WorkCover's service provision. This is called the WorkCover Independent Review Officer or WIRO. They have limited powers to attempt to resolve complaints between employers and insurers, to review process in work capacity decisions and handle complaints about workers compensation in general. Periodically the Audit Office reports on aspects of the work health and safety function for NSW Government but not for the whole of the scheme's coverage.

93. There is no such equivalent specialist independent body handling complaints about WorkCover's acts or omissions in dealing with the workforce and work health and safety aspects of WorkCover performance.

**Recommendation**

*That an independent government body be permanently established to review the performance of the WorkCover Authority.*

**Service Standards**

94. There also appears to be no publicly available service standard as to what you can expect from WorkCover when you ring with a health and safety (including bullying) complaint. For example a number of affiliates report making a bullying complaint and then never hearing again from the WorkCover Authority. Some members report making a complaint and then not being able to be told

information about their own complaint. It is an expectation that most other government agencies that certain interactions trigger certain levels of response and feedback.

**Recommendation**

That consultation occur with the workforce as to what service standards should be applied to different complaints related to health and safety.

# Case Studies

## **1. WorkCover Inspector Issues Improvement Notice on Bullying**

An example was provided by an affiliate where a WorkCover Inspector issued an Improvement Notice on a workplace after a number of repeated reports of bullying. The Improvement Notice required the workplace to accommodate the workers return to work requirements by accommodating the workers return to work without risks to further exposure. The employer was Sydney based and was unaware of this occurring in the region and decided to review their policies and also implement a thorough training program across the state in conjunction with the union with coverage.

It was reported that internally at WorkCover there was some dis-satisfaction with the issuance of the Improvement Notice and the Inspector was counselled.

## **2. A Suicide associated with bullying**

A Union was advised of a suicide allegedly after a workplace bullying incident. The union contacted the WorkCover Authority. They appointed an inspector who commenced an investigation. They called for volunteers to speak to them. We are told the inspector did not utilise their broader inspectoral powers that could compel workers and the employer to provide other statements that clearly demonstrated minimally verbal abuse.

## **3 A WorkCover Timeline- A Transport Company**

1. Issue unresolved after over 6 months despite several workers compensation claims triggers a further complaint to WorkCover.
2. June XXXX – Complaint emailed to WorkCover pertaining to Harassment and Bullying in transport workplace. Form lodged with additional attachment containing further contact details of members that put their name forward and wished to pursue the complaint.
3. July XXXX – Received a call from WorkCover inspector – XXXXX. Followed up with a further email of which manager to contact.
4. July XXXX - Members contacted by WorkCover Inspector. Further information emailed through by them to Inspector pertaining to examples, Enterprise Agreement and copies of policies.
5. August XXXX, Member contacted Inspector re: status update.



6. August XXXX – Received a response from Inspector stating he is talking to the head of Health and Safety dealing with this and the other WorkCover Inspector dealing with a previously made report by a non-member.
7. Inspector stated he should be able to give member another update by next week. Part of the delay was the fact the legal entity has changed for the employer.
8. No news since and I have spoken to others on the list that was provided to WorkCover and they haven't heard from the Inspector.

## **c. Appropriate recommendations to address issues raised;**

### **Recommendation 1**

- a) *That Unions who cover the WorkCover Authority be empowered to have the same powers as an inspector for that agency. or As proposed by the PSA Inspector Vocational Branch*
- b) *That a memorandum of understanding be formed between state regulators that enables inspectors from other states to be empowered to investigate WHS breaches including bullying inside WorkCover in NSW.*

### **Recommendation 2**

*That the NSW WorkCover Authority submit all internal claims of workplace bullying to an independent government body for review.*

### **Recommendation 3**

*That WorkCover undertake in a coordinated manner research on the prevalence, risk factors and cause of workplace bullying across all industries in NSW.*

### **Recommendation 4**

*That a specialist inspectorate is charged with undertaking investigations based on the statistical prevalence of bullying in the jurisdiction.*

### **Recommendation 5**

*That self-insurers be excluded from self- assessing psychological claims and that these be undertaken by a central independent body.*

### **Recommendation 6**

*That a tri-partite panel be formed to manage WHS strategic direction and boost compliance and enforcement activity within NSW with regard to workplace bullying.*

### **Recommendation 7**

*Psychological Risk Management Chapter of the WHS Regulations should be created including bullying as a pilot through the IGA on workplace safety;*

**Recommendation 8**

*A prescriptive Code of Practice for Workplace Bullying should be completed and supported by WorkCover NSW and their representatives at HWSA.*

**Recommendation 9**

*An adequately trained independent inspectorate division should be created within WorkCover. Adequate and comprehensive procedures should be developed to ensure that the inspectors are not precluded from undertaking further investigations because of other aspects of the employment relationship being tested elsewhere.*

**Recommendation 10**

*Creation of a mandatory reporting regime to a central independent government agency, that requires all employers, health professionals, medical services and insurers to report psychological injuries caused at work.*

**Recommendation 11**

*That an independent government body be permanently established to review the performance of the WorkCover Authority.*

**Recommendation 12**

*That consultation occur with the workforce as to what service standards should be applied to different complaints related to health and safety.*

## d. Any other related matter

### **WorkCover's Role as the Regulator of Workers Compensation and Return to Work**

Although it is not specified in the terms of reference of this inquiry, the WorkCover Authority has a role as a regulator of workers compensation and return to work. There are times when the *regulation of occupational health and safety as it relates to bullying* in the workplace overlaps WorkCover's role as the regulator of workers compensation and return to work (under the WIMWC Act 1998).

### **Return To Work**

As an example, it is a common occurrence for people who experience workplace bullying to be deemed "to have a capacity to work full time" by their nominated treating Doctor but in "a safe workplace free from further bullying". Under the new arrangements (post June 2012) this then has enabled in a number of occasions the workers compensation agent to cut off weekly payments despite there being safe work that is available in vacant positions at grade but the employer does not want to accommodate the worker. The worker then complains to WorkCover and until very recently the WorkCover Authority has stated that the matter is an industrial issue and not assisted the worker return to work.

WorkCover is empowered to utilise enforcement actions and was authorised do so prior to June 2012. They simply chose to not undertake this action.

The intervention by an inspector can be a major determinant between a worker being returned to work and a worker being medically terminated or made redundant after a workplace injury.

### **Workers Compensation**

#### **Liability**

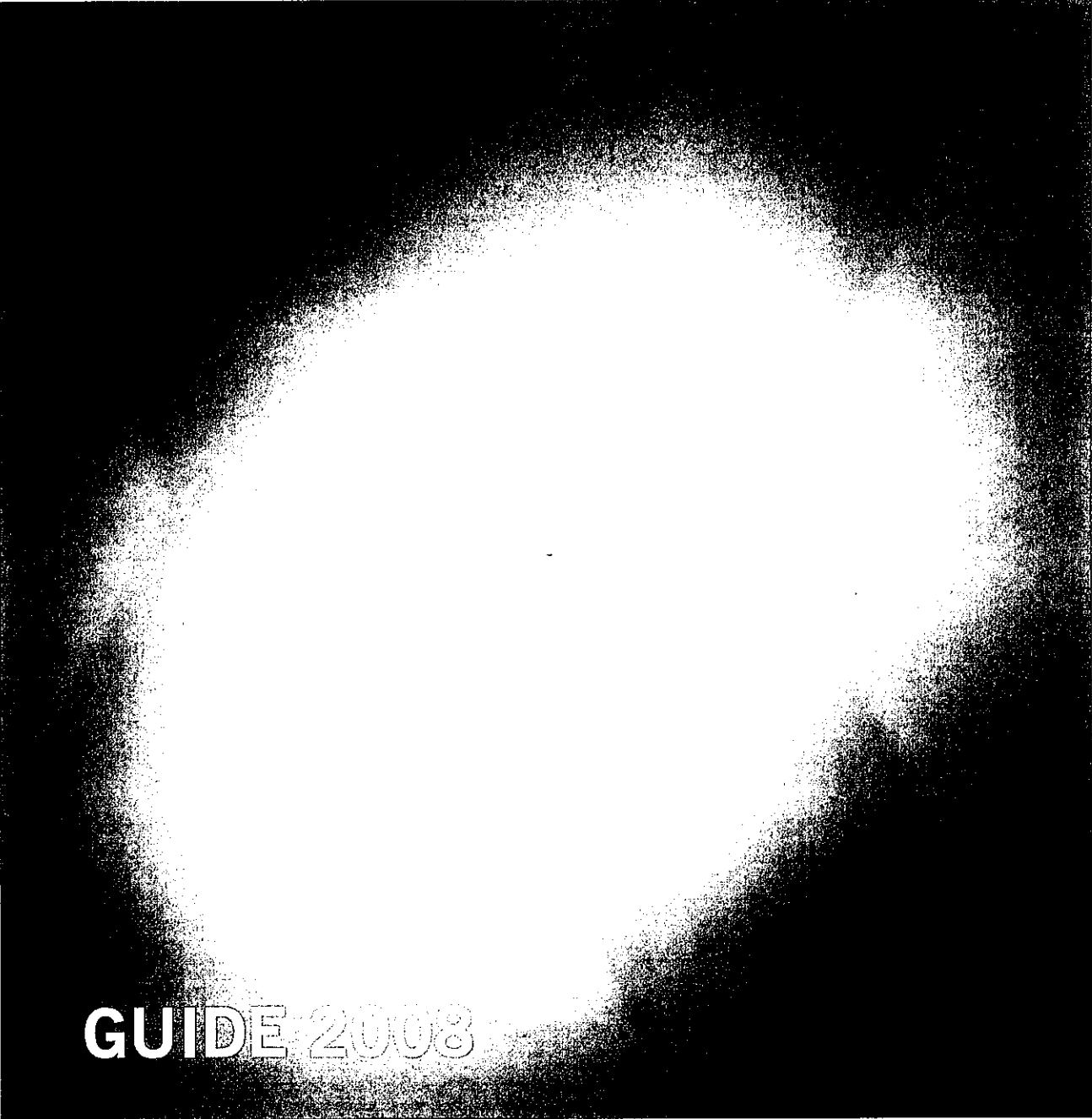
Liability for workers compensation for workplace bullying has always been a difficult process for injured workers. Some agents appear to have unwritten policies to "deny" the claim and then see if the worker can mount a case to get liability accepted, thus relying upon the lack education or strength of the injured worker to carry on with their claim. This may provide a large % reduction in claims from the lack of knowledge. An additional problem lies with the extra doubt that is implied with the workplace bullying scenario. For example the injured worker must prove that they were injured (usually requiring psychiatric report) and that the injury was because of work. i.e. workplace bullying (which usually requires the employer to undertake an independent investigation) and not as some "independent insurer doctors" state due to some other occurrence in the workers life currently or during their distant past being the cause.

The changes to the workers compensation legislation whilst not specifically targeting psychological injuries, (who already had a higher 15% threshold and the operation of Section

11A), have had a detrimental effect due to the formulas provided by Sections 36 onwards of the Workers Compensation Act. They financially detriment workers reducing their pay when the bullying occurrence is often due to the employer's acts or omissions and the failure to return to work is often also because of the employer.

# PREVENTING AND DEALING WITH WORKPLACE BULLYING

A GUIDE FOR EMPLOYERS AND EMPLOYEES



GUIDE 2008

**Disclaimer**

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)) or by contacting the free hotline service on 02 9321 3333.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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## Introduction

Workplace bullying is a serious occupational health and safety problem that puts at risk the health and safety of workers, their colleagues and their families.

Being bullied or working in a climate of bullying can lead to psychological and /or physical injury and can also contribute to other injuries. Workers affected by bullying may be more likely to make mistakes causing injuries and may, because of increased muscular tension, be more likely to develop injuries such as occupational overuse syndrome and low back pain.

Bullying can also damage organisations. It can lead to loss of productivity, high staff turnover, increased absenteeism, reduced performance, low morale, disruption to work when complex complaints are being investigated and may end in costly workers compensation claims or legal action.

Everyone in the workplace, no matter what their position, deserves to be treated with dignity and respect. No one should suffer bullying while going about his or her work.

Bullying can happen in any workplace and is best dealt with by taking steps to prevent it long before it becomes a risk to health and safety. The risk of bullying is minimised in workplaces where everybody treats their colleagues with dignity and respect, management leads by example and makes it clear that bullying will not be tolerated and individuals are encouraged to report incidents of bullying, knowing that they will be dealt with seriously, fairly and in a timely way.

If bullying does occur, early intervention will 'nip in the bud' potentially complex disputes and prevent a pattern of bullying becoming entrenched in the workplace. Appropriate policies and procedures that everyone in the workplace is aware of and able to use are crucial for effective early intervention.

The measures described in this guide will help employers to develop systems that will prevent or minimise bullying; respond to complaints or incidents of bullying quickly and effectively and meet their legislative requirements under the *Occupational Health and Safety Act 2000* (OHS Act) and the *Occupational Health and Safety Regulation 2001* (OHS Regulation).

# Legislative requirements

## Employers

Under section 8 of the OHS Act, an employer or manager has a legal duty to protect the health, safety and welfare of their employees and of other people in the workplace whose health and safety may be affected by the work undertaken. This duty could include risks arising from workplace bullying.

Employers also have duties under clause 9 of the OHS Regulation to assess the risks to their employees and to take appropriate measures to prevent or reduce the risk. This could include the need to protect employees from exposure to reasonably foreseeable bullying.

Section 13 of the OHS Act requires employers to consult their employees when considering decisions that may affect their health and safety. Therefore employees must be involved in the development of any procedures for the prevention of workplace bullying.

## Employees

The OHS Act and the OHS Regulation also require employees to contribute to workplace health and safety by not putting others at risk, cooperating with any health and safety requirements of the employer and informing the employer of any workplace hazards of which they are aware. Therefore employees are required to comply with any bullying prevention procedures that are implemented in the workplace.

## Section One: Describing Workplace Bullying

### What is workplace bullying?

While there is no standard definition of workplace bullying, the term is generally used to describe workplace behaviour that could reasonably be considered humiliating, intimidating, threatening or demeaning to an individual or group of individuals and that is usually repeated over time.

The following description is used in this guide:

*Workplace bullying is behaviour that is usually repeated, that is inappropriate, unreasonable and possibly aggressive and that creates a risk of physical and/or psychological harm.*

### What is 'unreasonable' behaviour?

Unreasonable refers to behaviour that a reasonable person, having regard to all the circumstances, would find offensive, humiliating, intimidating, degrading or threatening.

### What is 'repeated' behaviour?

Repeated refers to the persistent nature of the behaviour, not to the specific form the behaviour takes. Behaviour is considered 'repeated' if an established pattern can be identified. This may involve a series of diverse incidents- for example verbal abuse, followed by isolation and subsequently, being unreasonably denied training opportunities.

One-off incidents of unreasonable or inappropriate behaviour may also be considered bullying, particularly if the incident is serious. A single incident, even if not considered bullying, could offend or upset people, or escalate into bullying, or it could indicate hidden bullying. Single incidents should never be ignored. The measures described in this guide should be used to address single incidents.

Workplace bullying can be:

**intended:** where actions were intended to humiliate, offend, intimidate or distress, whether or not the behaviour did in fact have that effect or

**unintended:** which although not intended to humiliate, offend, intimidate or distress, did cause and should reasonably have been expected to cause that effect.

## **When and how can workplace bullying occur?**

Workplace bullying can occur at any time when carrying out work related duties or activities. This can include while working off-site, for example at external meetings, on regional or interstate visits or on overseas postings and outside work hours for example at workplace related social events.

Bullying can be carried out verbally, physically or in writing. It can also be carried out via Internet services such as email, chat rooms, discussions groups, websites or instant messaging and through mobile phone technologies such as short messaging services (SMS).

Workplace bullying can occur sideways, between workers at the same level, or upwards at supervisors or managers or downward.

This guide does not cover instances where bullying comes from sources outside the workforce, such as customers, clients, patients or visitors.

Assistance in preventing and dealing with these external sources of bullying can be found in the WorkCover publication *Violence in the workplace* (Catalogue No. 70).

### **Case study – sideways bullying**

Kim and Su had been working together on a project for several months. Su's behaviour towards Kim was hostile. Often, she unfairly found fault with his work and criticised him in front of supervisors and other work colleagues and in meetings with clients.

She made disparaging comments about his relationship with his wife in public. Su also withheld important information from Kim, such as not forwarding reports he needed and not telling him the times and details of important meetings.

Other workers witnessed a number of incidents, and tension and stress levels within the workplace began to increase. From being a positive and outgoing employee, Kim became severely stressed and anxious. Eventually, he resigned.

### **Case study – downward bullying**

Pat has been working as a general assistant in a small manufacturing business for six weeks. He has received no training in the range of tasks the job requires and has made a number of mistakes that have upset Alex, his supervisor. Alex has been employed in the workplace for over 15 years.

When Pat asks for help Alex becomes angry. His typical response is to yell and abuse Pat with comments such as 'Don't waste my time, I've shown you once already', or 'It's just common sense, even an idiot like you should be able to do it.'

Pat has stopped asking for help. He feels anxious most of the time at work and is thinking of quitting.

### **Case study – upward bullying**

Lisa was appointed to a management position in an organisation with branches throughout the State. Lisa was appointed from outside the organisation.

Some of the staff had acted in the position and applied for it. One of these staff members continually undermined Lisa in her work and commenced a campaign of gossip and vindictive comments about Lisa. Other staff began failing to assist her during busy periods, disobeying her requests and behaving discourteously even rudely toward her.

Some staff then made a complaint about Lisa to her Manager. Lisa felt humiliated and belittled. She approached her manager then a senior manager for support and advice and reported the conduct of her team.

The senior manager requested Lisa's manager take action on the situation but the manager did nothing. Lisa went on leave from stress and eventually left the company suffering from a psychiatric condition.

## Examples of workplace bullying behaviour

Workplace bullying can be overt or covert, inflicted by one person or groups and may include one or more types of behaviour. Some types of bullying behaviour may seem trivial taken on their own, but when they are part of a repeated pattern they can seriously undermine confidence, self-esteem and health.

Bullying behaviour can be obvious and aggressive, including:

- behaviour or language that frightens, humiliates, belittles or degrades
- loud verbal criticism
- encouragement to other workers to participate in bullying behaviour
- malicious rumours, gossip, or innuendo.

Workplace bullying can also be subtle, including:

- deliberate exclusion of a worker from normal workplace activities
- interference with personal property or work equipment
- intimidation by inappropriate personal comment, belittling opinions or unjustified criticism
- offensive jokes, whether by spoken word or email.

Behaviour that treats some people less favourably, or is disempowering, is also bullying and includes:

- assigning meaningless tasks to a worker that are unrelated to their job
- setting tasks that are unreasonably above or below an employee's ability
- deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker or workers
- setting timelines that are very difficult to achieve
- deliberately denying access to information, consultation or other resources
- unreasonably blocking promotion, training, development or other work opportunities
- excessive and unreasonable work scrutiny
- removing areas of responsibility without cause.

### Case study 1

Sharon excelled in the academic and employment sphere. She was promoted to a demanding job sooner than was normally the case. Her first few months went well and she worked enthusiastically for her new boss Steve. Steve felt that Sharon's cheerfulness and sociability was a sign that she was not serious about her work. He did not communicate this to Sharon but did tell others this opinion.

After some months without any performance feedback, Sharon received a glowing report from a senior manager about her performance and progress. A copy of the report went to Steve.

Steve started to increase Sharon's workload, giving her large amounts of work with tight deadlines.

When Sharon attended section meetings, Steve trivialised or ignored her input, humiliating her in front of colleagues and stakeholders. Sharon attempted to meet the deadlines, but the constantly increasing workload made it difficult.

Sharon then found that some of the work she had submitted to Steve was forwarded on without any acknowledgement of her input. Other work was returned to her time and time again for improvement, despite other colleagues finding no issues with it.

Sharon had trouble sleeping and started suffering from severe headaches. She went to her doctor. She then took sick leave and applied for a transfer to another area. When she returned to work the excessive workloads continued as well as the bullying behaviour.

### Case 2

Brett worked in an industrial firm. He enjoyed his work, but that changed when a new manager, Andrew, started work as his supervisor. From being confident in his work and working independently much of the time, he found he was being constantly criticised by his new supervisor, who seemed to be watching or checking up on him throughout the day. Work he submitted was returned for amendment without any opportunity for Brett to meet with Andrew and discuss the proposed changes or have input into the process.

The last straw came for Brett when his son fell ill and he had to leave work urgently to care for him. He advised his supervisor and took work home to complete. He emailed work to his supervisor from home.

On his return a few days later, Andrew approached him at his desk and loudly criticised him for leaving to look after his son and for not properly completing the work he had been set.

The shouting was heard by other colleagues, who were shocked by the supervisor's behaviour.



## **Violence**

If any bullying behaviour involves violence or the threat of violence it should be treated as a criminal offence and reported to police.

## **Harassment**

Harassment has a specific meaning in NSW legislation under the *NSW Anti Discrimination Act 1977* and the *Commonwealth Sexual Discrimination Act 1984*, which makes it different from bullying.

Under anti-discrimination laws, harassment in the workplace is any form of behaviour that is not wanted, that offends, humiliates or intimidates, and that concerns the following aspects of the person being harassed: sex; pregnancy; race; marital status; disability; age; carers' responsibilities; homosexuality; transgender status.

To be unlawful, harassment must disadvantage the person being harassed but, unlike bullying, it need not create any risk to health and safety.

However, harassment can include behaviour that is also bullying. If, for example, a pattern of behaviour includes jokes about a person's age that a reasonable person would consider demeaning or humiliating and also behaviour that disadvantages the person by, for instance, denying them training on the grounds of their age, then this could be considered both bullying and harassment.

The NSW Anti-Discrimination Board can give advice on harassment. Their contact details are on page 24.

## **What is not bullying?**

It can be a fine line between workplace bullying and behaviour that can upset or offend people, but the following situations should not be confused with bullying:

- differences of opinion
- poor or bad management practices on their own
- constructive and courteous feedback, counselling or advice about work-related behaviour and performance
- reasonable managerial actions taken in a fair and equitable way.

**What is a reasonable managerial action?**

Legitimate management decisions or actions that are undertaken in a reasonable way and with respect and courtesy are not bullying. They include:

- taking action to transfer an employee
- allocating work to an employee, and setting reasonable goals, standards and deadlines
- making a decision not to select an employee for promotion
- warning employees about unsatisfactory performance
- making a complaint about a manager's or other employee's conduct, if the complaint is made in a proper and reasonable way
- disciplinary actions that are handled constructively, not in a humiliating or threatening fashion.
- business processes such as implementing organisational change or downsizing of business – however, these changes may contribute to creating an environment where bullying could happen and should be accompanied by undertaking the preventive measures outlined in this guide on pages 13-19.

### **Case study – reasonable managerial action**

Mira has been working in the purchasing department for six months, alongside six other workers. Although the department is busy, the work tasks are routine and evenly shared by the workers.

On a consistent basis, Mira is behind schedule with her tasks, so Tom, the purchasing manager, recommends she attend a two-day training course to develop her administrative skills.

Mira feels humiliated for being singled out, despite Tom's assurance that her suitability to the purchasing department would be reconsidered following the course.

### **Who bullies?**

All people have the potential to bully, if placed in circumstances that permit, tolerate or reward bullying. Bullying behaviour is often the product of organisational pressures and/or workplace culture.

### **Who is at risk?**

Everyone in the workplace is potentially at risk of experiencing bullying. However, some employees may be at higher risk of experiencing bullying, including:

- people with a disability
- young workers
- people who are in a minority group in the workplace
- isolated workers.

If there are reasonable grounds to suspect that a child (a young person under the age of 16) is being bullied, this can be reported to the Department of Community Services (DoCS) on the Helpline: 132 111.

If a young person (age 16 to 17 years) is being bullied at work, DoCS can be contacted on 132 111 for advice.

## Section Two: Preventing workplace bullying

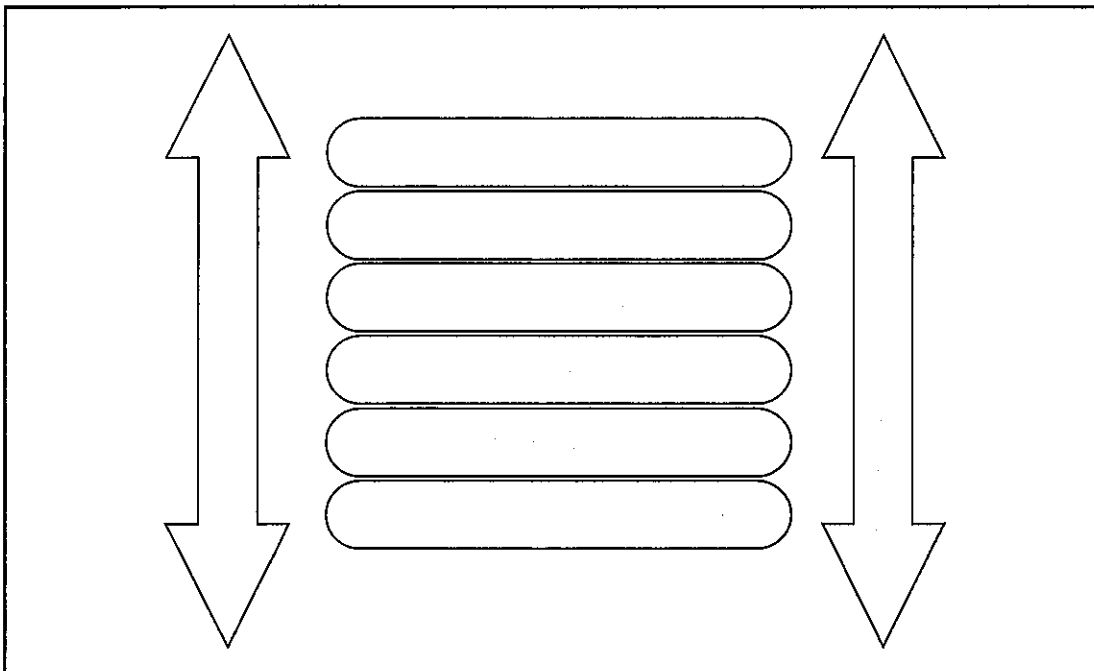
As bullying can happen in any workplace, every employer should take preventive steps to reduce the likelihood of bullying occurring. Don't assume that the workplace is free of bullying simply because there are no obvious signs.

Bullying may not always be reported because people:

- may not recognise bullying behaviour
- may not know the reporting procedure
- fear retribution or 'payback' from the bully, or isolation from colleagues
- believe no-one will respond to their complaint
- fear being labelled a complainer or weak
- believe complaining will damage their career prospects
- accept bullying as a normal part of the workplace culture.

### Steps to take

The following series of practical steps represent a simple risk management approach designed to protect workplaces from the risk of bullying.



Carrying out each of the steps is essential – using only one or some of them will not adequately reduce the risk of bullying.

The steps can be implemented in any order, to suit the size and circumstances of the workplace. Some workplaces may, in consultation with workers, make their first step the writing of a 'no bullying' policy and then use the policy to raise awareness more widely in the workplace. Others may carry out a risk assessment first, in consultation with workers, to help them write a policy that is relevant to their workplace.

Workers must be consulted at every step.

Once every step is completed, the measures that have been put in place should be regularly monitored and reviewed to ensure they are effective.

### **Consult at every step**

Employers have a duty to consult with their workers and their elected health and safety representatives to enable them to contribute to the making of decisions about health and safety matters at work.

Consulting widely and effectively will ensure that the policies, procedures and strategies that are developed to prevent and deal with workplace bullying will fit each organisation and be owned by everyone.

Employers should ensure consultation is undertaken company-wide so that all areas are adequately represented and take into account the gender, ethnicity, age and disabilities of the workforce.

Opportunities for consultation include direct discussion, staff meetings, toolbox meetings, health and safety committee meetings and special working groups.

Ensure consultation with workers when:

- identifying and eliminating/controlling risks
- developing a bullying prevention policy
- developing awareness strategies
- implementing reporting procedures
- implementing investigation and resolution procedures
- implementing support programs, such as a support officer for bullying and/or an employee assistance program (EAP)
- evaluating the effectiveness of bullying prevention and management measures.

### **Step One: Create awareness**

Employers should promote awareness of bullying among all workers, including managers and supervisors. It is important to make it clear to everyone that bullying is unacceptable and that bullying incidents should be reported. Information to raise awareness should include:

- how to recognise bullying
- the possible effects of bullying
- workplace policies and procedures
- where to get further information.

Information can be communicated through existing workplace mechanisms such as staff meetings, notice boards, OHS committee meetings, formal training sessions, staff bulletins, toolbox talks, the intranet and informal discussion groups.

In particular, information should be provided when:

- recruiting workers (including appointing or promoting managers and supervisors)
- running induction training
- engaging contractors or supplying services to others.

## **Step Two: Develop a 'no bullying' policy**

Every workplace should develop a 'no bullying' policy. A written policy makes it clear that bullying behaviour in the workplace is unacceptable and gives everyone confidence that complaints about bullying will be taken seriously.

The policy can be brief or detailed, depending on the size and needs of the workplace. It should be written in plain language and provided in languages other than English, where appropriate. A very long policy, or one using formal or legalistic language is less likely to be read and used.

It can be developed as a stand-alone policy, or included in an existing policy such as an 'acceptable workplace behaviour' policy, code of conduct, or grievance and dispute resolution policy.

When finalised, the 'no bullying' policy should be prominently displayed, promoted appropriately and included in induction materials, performance reviews and codes of conduct.

Every policy should include:

- a statement from management that bullying is inappropriate and is not tolerated
- a description of bullying, for example: 'Workplace bullying is unreasonable behaviour, usually repeated over time, directed towards a person or group of persons at a workplace, which creates a risk to health and safety'
- examples of behaviour that constitute bullying
- encouragement to report bullying
- a statement that victimisation of workers who report bullying is not tolerated
- an assurance that prompt, confidential and impartial action will be taken in response to reports of bullying
- procedures to be followed when bullying is experienced or witnessed.

Samples of workplace bullying prevention policies suitable for different size workplaces are included in Appendix B.

Employers may also seek legal advice to clarify their obligations.

The 'no bullying' policy should be supported by complaint resolution procedures. These may be incorporated into general complaint-handling procedures, if they already exist in the workplace, or they may need to be developed at the same time as the policy. Information on page 20 of this guide will assist employers, in consultation with employees, to develop an effective complaints resolution procedures.

### **Step Three: Identify and assess the risk**

A risk assessment for bullying is simply a careful examination of what, in the workplace, could allow or encourage bullying, so that you can weigh up whether you have taken enough precautions or should do more to prevent harm. A number of organisational factors are related to increased risk of workplace bullying and should be considered in a risk assessment.

#### **Prevalent risk factors**

##### **Workplace culture and relationships**

Workplaces where workers' views are ignored or undervalued, or where there is poor communication, unequal treatment, constant teasing or inappropriate practical jokes are more likely to experience and tolerate workplace bullying.

##### **Organisational change**

Significant change such as recent restructuring or technological change can promote bullying behaviour if people feel uncertain, insecure or fearful as a result.

##### **Work systems**

System factors such as increasing demands for efficiency and speed, unrealistic work schedules, poorly defined jobs, uncertainty about job requirements, poor job security lack of experience and skill among workers, lack of appropriate policies and procedures are stressors that can contribute to the development of bullying behaviours.

For instance, the pressure of working under these conditions may lower the threshold at which people might, without intending to, adopt bullying behaviours. Or, in a highly competitive workplace, management success may be measured solely by productivity and not also by people management. In this circumstance, managers and supervisors, or those with some power over others in the workplace, may use bullying as a strategy to improve their position – they may try to eliminate high-performing workers whom they view as a threat, or low-performing workers who may be seen as liabilities. Other workers may perceive that bullying behaviour is a way to 'get ahead' in the organisation.

##### **Poor management practices**

While poor management practices on their own are not bullying, Australian research has shown that the risk of bullying is linked to poor people management skills and a lack of supportive leadership.

### **How is information to measure the risk obtained?**

Information on the risk should be collected using all of the following methods:

- a workplace audit of systems and structures
- direct observation of conditions and of other peoples' behaviour
- consulting with workers
- examining written reports, records and documents.

A workplace audit of systems and structures can include checking for:

- recent organisational change such as a takeover, major internal restructuring or technological change or change in management, particularly those changes that can lead to high job instability and uncertainty about ongoing employment
- lack of appropriate policies and procedures, including inadequate complaints or grievance procedures
- a high rate and intensity of work
- staff shortages
- lack of experience and skill in dealing with workers from different backgrounds
- poorly defined jobs and high levels of uncertainty about job requirements
- competitive work environment
- low levels of consultation or poor communication.

Direct observation of conditions and behaviour can include checking for indirect signs such as:

- workers becoming withdrawn and isolated
- deterioration of relationships between colleagues, customers or management
- regularly torn clothing/uniforms
- regularly damaged personal effects or work tools
- a worker experiencing a number of minor workplace injuries
- workers leaving the organisation reporting dissatisfaction with working relationships (eg at exit interviews).

Consulting can be formal or informal, it can be in regular meetings, and can include:

- consulting with health and safety representatives and committees
- surveying workers
- providing suggestion boxes to enable workers to provide feedback anonymously
- raising issues at staff meetings, toolbox talks etc.

Examining documents or records includes monitoring:

- issues raised by workplace health and safety committees, in staff meetings, in toolbox talks etc
- high levels of sick leave
- high levels of absenteeism associated with particular shifts or work teams
- an increase in workplace grievances or complaints
- high levels of staff turnover.



### **Assess the risks**

Risk factors found in the workplace need to be assessed to decide how serious the risk is to the workplace to ensure an appropriate response. When doing this, employers should be aware that some risk factors are stronger indicators that bullying may be occurring than others, but also remember that when combined, seemingly insignificant factors can indicate a high risk.

For instance, a survey that reveals that workers have witnessed or experienced bullying is reason for immediate action.

On the other hand, a highly competitive work environment on its own is not a strong indicator. However, when this is combined with other risk factors, such as low levels of communication and high levels of staff turnover, the risk is high and immediate action should be taken.

### **Step Four: Eliminate/control the risks**

Once risk factors have been identified and assessed, employers should take action to eliminate or control the possibility of bullying in their organisation.

Typical measures to control and prevent bullying include:

- promote the principles of dignity and mutual respect and act decisively against any discrimination
- redesign jobs
- clarify workers' roles and responsibilities
- appoint a person to receive complaint reports
- introduce a buddy system for new and high-risk workers
- provide training in bullying policies and procedures, particularly for managers and supervisors
- provide training in workplace diversity
- provide specific training for managers and supervisors dealing with workers at higher risk.
- don't reward bullying by praising or promoting those who get results by using bullying tactics
- use key performance indicators that include people management, as well as budgetary and performance goals, not just the latter
- ensure that workers understand their role and have the appropriate skills to do their job
- ensure that workers who supervise others have appropriate skills as supervisors.

### **Step Five: Inform, instruct and train**

Topics to cover when providing information, instruction or training on bullying include:

- full details of the 'no bullying' policy
- a description of bullying
- measures used in the workplace to prevent bullying
- how to make a complaint about bullying
- how the organisation deals with complaints or incidents of bullying.

Information, instruction and training should be accessible to everyone in the workplace. It may need to be tailored to take account of the specific needs of particular groups of workers. Consider factors such as work experience, gender, disabilities and language skills.

Some common methods to ensure that all workers are informed about bullying in the workplace include:

- distribution of a copy of the 'no bullying' policy to all workers
- conducting training sessions about workplace bullying
- conducting induction courses that include information about the 'no bullying' policy.
- putting workplace bullying prevention posters on staff notice boards – include the contact details of those who are responsible for managing and resolving workplace bullying complaints
- producing brochures outlining the 'no bullying' policy and display them in prominent places throughout the workplace
- publishing information about workplace bullying in the staff newsletter and on the company's intranet
- publishing the 'no bullying' policy in staff manuals.

### **Step Six: Monitor and review**

Prevention and risk control measures for bullying should be reviewed in consultation with workers on a regular basis and following a complaint or incident of bullying.

A review should be conducted when working conditions have altered, to ensure the alterations are not conducive to bullying.

## **Section Three: Dealing with workplace bullying**

### **Encourage everyone to report bullying**

The reporting procedures outlined in the 'no bullying' policy should make it clear that reports of bullying will be taken seriously and victimisation of those who make reports, whether they are a witness or directly affected, will not be tolerated.

Include contact details of the person (or persons) to whom reports should be made – eg a bullying contact officer, supervisor, human resources manager, union representative, or external mediator - in the 'no bullying' policy and regularly promote the contact details to all workers.

### **Bullying contact officer**

Generally, a bullying contact officer is an appropriately skilled worker who takes on the role alongside their other responsibilities.

A contact officer provides confidential assistance and support to those who believe they have been bullied. They listen and provide information and advice on the options available for resolving the dispute. They help choose a course of action, provide support in following it through and follow up to ensure the issue is resolved.

It is not usually the contact officer's role to resolve the issue. Their role is to provide information and support to the person who feels they are being bullied. With early assistance, people are often able to deal with the bullying issue themselves, before it becomes a formal complaint.

A contact officer does not advocate or speak for the complainant, nor do they provide counselling or become involved in investigations.

### **Respond to incidents and complaints**

A procedure for resolving complaints about workplace bullying should be developed in consultation with workers. It should suit the size and structure of the organisation.

For instance, internal procedures will not be appropriate when the complaint is against a senior manager, particularly in a small organisation. In this case, the resolution procedure should allow for the use of an impartial and independent external body, or individual, to handle the complaint.

Whatever resolution procedures are used, they must incorporate standards of natural justice and procedural fairness.

Natural justice means that:

- everyone who deals with the complaint is unbiased and acts in an unbiased way
- all relevant parties are given an opportunity to be heard
- any action taken is based on the facts.

The resolution procedure should adopt the following principles of natural justice and procedural fairness:

- treat all reports seriously – this encourages reporting and reinforces the employer's commitment to the bullying prevention policy
- act promptly – resolve reports quickly and fairly

- do not victimise people who report bullying
- support all parties – provide details to all parties about support systems, such as employee assistance programs (EAPs), interpreters, cultural liaison officers, or appropriate support for people with disabilities
- support during interviews – give all parties the opportunity to have a support person with them at all interviews (eg a health and safety representative, union representative or friend)
- neutrality – the person in charge of the resolution process or investigation should have had no direct involvement in the incident
- impartiality – ensure that all parties are comfortable that the person in charge of the resolution process or investigation is impartial and unbiased
- communication – all parties should be informed of how long the process will take and what they can expect to happen during and at the end of the process. If delays occur, inform all those involved of the reasons for the delay and when the process is expected to recommence
- confidentiality – guarantee all parties that details of the matter will remain private
- record – document all meetings and interviews, who attended and agreed outcomes (even where no formal investigation is undertaken).

### **Procedures to resolve reports of bullying**

Procedures to resolve reports of bullying should be flexible and allow for a choice of actions to be taken, depending on the situation. The informal and formal approaches described in this section can be used in combination or on their own and as a step-by-step approach to resolution. However, it is important that the person who reported the situation agrees with the proposed approach or combination of approaches for resolution.

A person who reports bullying should not be required to exhaust informal attempts at resolution before starting formal action. Complainants have the right to formalise their complaint, or approach an external agency at any stage.

#### **Informal procedures**

Informal procedures focus on changing behaviour and are non-blaming. When used promptly, an informal approach can resolve issues before parties become entrenched in the positions of bully or target. Informal procedures include a direct approach and /or mediation.

#### **Direct approach**

The person affected, or someone on his or her behalf, can make a polite request to the alleged bully for the behaviour to stop. If this direct approach succeeds and the offending behaviour stops it will usually not be necessary to do anything further – except monitor the situation.

#### **Mediation**

If the direct approach has not resolved the issue, or an investigation has recommended discussion to assist resolution, all the parties can be brought together to discuss the issue with an independent third party. The independent third party can be a person in the organisation who has no prior knowledge of the people involved or the issues, and who has the skills to facilitate the discussion, or it can be an external person, such as a mediator.

Appendix A provides contact details for mediation organisations.

In all informal procedures, it is important to ensure that:

- participation is voluntary – all parties agree to participate
- all parties recognise the independence of the third party
- no disciplinary action is attached.

In some cases, it may be appropriate to go directly to formal procedures.

### **Formal procedures**

Formal complaints procedures focus on looking at whether a complaint can be substantiated, or at least whether the parties can be brought together to try and reach a satisfactory outcome. Formal complaints procedures usually involve:

- investigation of the allegations
- making a finding as to whether the bullying occurred or whether it is likely it has occurred
- submitting a report with a recommended course of action to the appropriate decision-maker
- implementation of an appropriate outcome.

Throughout the process, the alleged bully should be:

- treated as innocent unless the allegations are proved true
- fully informed of the complaint, including the name of the person making the complaint and
- given an opportunity to explain their version of events.

Formal procedures should be used when:

- an informal approach has failed
- the impact on the target has been so severe that they are unable to confidently use the informal options
- there is a significant difference in power between the parties
- bullying includes violence or threats
- a worker lodges a complaint that requests a formal investigation, in line with reporting procedures
- disciplinary action is needed.

An impartial and appropriately skilled person should conduct investigations. In most cases, referral to an independent investigator is appropriate. In large public and private sector organisations, internal complaint procedures may provide the opportunity for the situation to be resolved internally without compromising fairness and impartiality.

### **Follow up action**

Should an investigation find that a complaint of bullying is valid, the options for further action will vary according to the seriousness of the case and other circumstances.

More than one of the following options for further action can be taken:

- obtain the bully's commitment to cease the offensive behaviour
- mediation – when all parties agree to mediation and to the mediator
- training – communication skills, cultural awareness, interpersonal skills, conflict resolution skills
- counselling for the bully

- support and counselling for the affected person, and other workers and team members who may also have been affected
- move the bully away from the affected person, if possible
- require an apology from the bully
- discipline the bully.

Appropriate disciplinary action should correspond with the seriousness of the matter: the punishment should fit the crime. Mitigating factors should be taken into account when assessing what form of discipline will be implemented.

Any party should be able to make an appeal against the findings of a formal investigation. An external body, an independent third party or an external mediator should hear the appeal.

If the investigators do not agree that bullying occurred, it may be useful to ask all parties to participate in a mediated discussion, with the aim of re-building relationships.

The investigators may find that the complaint is frivolous or vexatious, in which case the employer may take any of the actions listed above.

At the completion of the formal process, written advice of the decision should be given to both the complainant and the individual(s) against whom the complaint was made.

After a situation has been resolved, an employer should examine the work situation to identify and address any underlying risk factors that may have contributed to the bullying.

#### **Where workplace bullying continues**

All attempts should be made using workplace procedures.

If all the steps and processes provided in the workplace have been followed and the issue of bullying in the workplace remains unresolved WorkCover can be contacted.

WorkCover Inspectors can respond to reports of bullying in the workplace.

Further information on WorkCover's role is provided at Appendix A.

# APPENDIX A

## Further information

### WORKCOVER

When all the internal processes in the workplace have been tried and have been unable to resolve the situation, or when bullying incidents are very severe, a complaint about workplace bullying may be made to WorkCover.

The role of WorkCover is to assist organisations to meet their obligations under the Act.

WorkCover may take enforcement action if any breach of the Act is identified.

WorkCover can:

- provide guidance and advice in relation to the prevention of workplace bullying
- make enquiries to determine whether a risk to health and safety is, or may be, posed by workplace bullying
- undertake prevention and enforcement activity where appropriate.

WorkCover cannot:

- resolve the problem
- mediate or conciliate between the parties involved
- provide counselling or victim support
- reprimand any parties.

### NSW ANTI-DISCRIMINATION BOARD (ADB)

Where bullying involves issues of sex, race, age, marital status, disability, homosexuality or transgender and carer's responsibilities, the matter may involve discrimination; harassment or vilification and the employee may lodge a complaint under anti-discrimination law.

Discrimination occurs when a person is denied the opportunity to participate freely and fully in normal day-to-day activities. It might include harassment in the workplace or being denied a job or a promotion.

Vilification is generally any act that happens publicly rather than privately, and could incite (ie encourage, urge or stir up) others to hate, have serious contempt for, or severely ridicule a person.

The Anti-Discrimination Board deals with complaints of discrimination, harassment and vilification. The Board is impartial and tries to help all parties come to an agreement about how the problem can be resolved. The Board also tries to prevent discrimination happening by educating people through seminars and onsite training about what the anti-discrimination laws say and why they are important in the workplace and community.

NSW Anti-Discrimination Board

Phone: (02) 9268 5544;

1800 670 812

<http://www.lawlink.nsw.gov.au/adb>

## **OFFICE OF INDUSTRIAL RELATIONS**

Workers in the NSW jurisdiction who believe they have been unfairly dismissed or unlawfully dismissed because of bullying or harassment in the workplace are encouraged to contact the Office of Industrial Relations for advice and assistance.

Office of Industrial Relations

Phone: 131 628

1800 803 836

[www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au)

## **THE WORKPLACE OMBUDSMAN**

Workers who are employed by constitutional corporations in the federal system who believe they have been unfairly dismissed or unlawfully terminated because of bullying and/or harassment in the workplace are encouraged to contact the Workplace Ombudsman for advice and assistance.

Workplace Ombudsman

Phone: 1300 363 264

[www.workplace.gov.au](http://www.workplace.gov.au)

## **NSW DEPARTMENT OF PREMIER AND CABINET**

Publishes *Dignity and respect policy on preventing and managing workplace bullying in the NSW public sector*

[www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au)

## **NSW POLICE**

If a worker has been physically attacked or threatened in the workplace, they should report the matter to the police immediately. A threat can be a statement or behaviour that causes the person to believe that they are in danger of being physically attacked.

Criminal behaviour is defined under the *NSW Crimes Act 1900* and includes offences against a person or persons, documents containing threats, sexual assaults, stalking and extortion.

Depending on the circumstances, the person may be able to obtain an Apprehended Violence Order prohibiting the violent person from approaching them, or limiting their access to the person.

NSW Police

Phone: 131 444

1800 622 571

[www.police.nsw.gov.au](http://www.police.nsw.gov.au)



## **YOUNG WORKERS**

If a worker is under 18 years of age and is subject to bullying, they (or their parent/guardian) can speak with:

- The Commission for Children and Young People.

Phone: (02) 9286 7276

[www.kids.nsw.gov.au](http://www.kids.nsw.gov.au)

- Department of Community Services.

Phone: 132 111

[www.community.nsw.gov.au](http://www.community.nsw.gov.au)

All NSW workers under the age of 18 have special protections in the workplace including access to unfair dismissal provisions, regardless of which jurisdiction they are employed in.

More information can be found at:

[www.youngpeopleatwork.nsw.gov.au](http://www.youngpeopleatwork.nsw.gov.au)

Support is also available for young workers at:

- Kids Helpline, phone: 1800 551 800
- National Children's and Youth Law Centre, phone: (02) 9385 9588
- Legal Aid Hotline for Under 18s, phone: 1800 101 810

## **ABORIGINAL LEGAL CORPORATION**

The Sydney Regional Aboriginal Legal Corporation has four offices in Sydney:

- Redfern office, phone: (02) 9318 2122
- Blacktown office, phone: (02) 9621 1653
- St Marys office, phone: (02) 9673 6400
- Liverpool office, phone: (02) 9824 1589

## **THE LAW SOCIETY OF NSW**

The Law Society of NSW can refer clients to private lawyers in his/her area. It can also provide information about private lawyers who do legal aid work.

Phone: (02) 9926 0333

<http://lawsocnsw.asn.au/>

## **THE WOMEN'S INFORMATION AND REFERRAL SERVICE**

Phone: 1800 817 227

1800 673 304 (for deaf and speech impaired)

## **AUSTRALIAN COUNCIL OF TRADES UNIONS (ACTU)**

Workers Helpline  
Phone: 1300 362 223

## **UNIONS NSW**

Phone: (02) 9264 1691

## **MEDIATION SERVICES**

### **Australian Dispute Resolution**

For a directory of dispute resolution practitioners and resources, visit [www.ausdispute.unisa.edu.au](http://www.ausdispute.unisa.edu.au)

### **Community Justice Centres (CJCs)**

CJCs provide free mediation and conflict management. They will assist with disputes about workplace relationships and non-industrial matters. Services are available throughout NSW.

<http://www.cjc.nsw.gov.au/>

### **Yellow Pages**

Look under 'mediators' for a list of providers, including those who specialise in workplace disputes.

## **USEFUL WEBSITES**

### **Workplace bullying**

*Prevention of Bullying and Violence at Work Guidance Note* – WorkSafe Victoria

<http://www.workcover.vic.gov.au/>

*Violence, Aggression and Bullying at Work Code of Practice 2006* – WorkSafe Western Australia

<http://www1.safetyline.wa.gov.au/>

*Dealing with Workplace Bullying* – Safe Work SA

<http://www.safework.sa.gov.au/contentPages/ManagingSafety/ProblemsAtWork/BullyingStop.htm>

*Workplace Bullying – Working Women's Centres*

<http://www.wwc.org.au/bullying>

*Workplace Harassment*

<http://www.dir.qld.gov.au/workplace/subjects/harassment/index.htm>

*OHS Bullying - Australian Council of Trades Unions*

<http://www.actu.asn.au/public/ohs/bullying/>

*Interagency Round Table on Workplace Bullying* – South Australia

<http://www.stopbullyingsa.com.au/>

*The Unions NSW website*

<http://council.labor.net.au/>

*Beyond Bullying Queensland*

[www.connectqld.org.au/asp/index.asp?pgid=19339](http://www.connectqld.org.au/asp/index.asp?pgid=19339)

*Royal College of Nursing UK*

<http://www.rcn.org.uk/publications/pdf/bullying-managers-guide.pdf>

**Complaints and grievance handling**

*Constructive Grievance Handling* – NSW Department of Commerce, Office of Industrial Relations  
<http://www.industrialrelations.nsw.gov.au>

**Investigation procedures**

*Investigating Complaints, A Manual for Investigators* – NSW Ombudsman, June 2004  
<http://www.ombo.nsw.gov.au>

**Violence**

*Preventing Violence within Organisations – A Practical Handbook Research and Public Policy Series No 29* (2000) Australian Institute of Criminology's Website and Publications  
[www.aic.gov.au](http://www.aic.gov.au)

*Violence in the Workplace Research and Public Policy Series No. 22* (1999) Australian Institute of Criminology's Website and publications  
[www.aic.gov.au](http://www.aic.gov.au)

**Psychological injuries**

*Preventing and Managing Psychological Injuries in the Workplace: Agency Heads and Senior Managers Guide* – ComCare Australia  
<http://www.comcare.gov.au/publications/PUB07/stress-agency.html>

**Depression**

Beyond Blue  
<http://www.beyondblue.org.au/>

**Young Workers**

[www.youngpeopleatwork.nsw.gov.au](http://www.youngpeopleatwork.nsw.gov.au)  
[www.bullyingnoway.com.au](http://www.bullyingnoway.com.au)

# APPENDIX B

## Sample 'no bullying' policies

The owner of a small vehicle repair workshop developed the following bullying prevention policy in consultation with his six workers.

### Sample one: X Car Repairs – No Bullying Policy

This is a bullying and violence-free workplace. Bullying is unreasonable behaviour that is usually repeated over time, directed towards a worker or group of workers that creates a risk to health and safety. It includes behaviour such as screaming at someone, initiation practices, interfering with repair-work processes and belittling someone's opinions.

Bullying is not an acceptable part of this company's work culture. If you are being bullied, or see others being bullied at work, you must report it as soon as possible. Report to your supervisor, or if this is not possible, to John Smith, the contact person for this policy.

No one who reports bullying will be victimised and reports will be investigated quickly and fairly.

Violence between workers is not tolerated under any circumstances. Supervisors are responsible for ensuring that no person in their work group is bullied, threatened or physically hurt by other workers.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

An accounting firm developed the following policy in consultation with its 20 workers.

### Sample Two: XYZ & Associates – Policy on Workplace Bullying

Workplace bullying is behaviour, often repeated over time, which could harm, intimidate, offend, degrade or humiliate the person

Workplace bullying may cause the loss of trained and talented workers, reduce productivity and morale, and create legal risks.

XYZ & Associates believes all its workers should be able to work in an environment free from bullying.

Managers and supervisors must ensure workers are not bullied.

XYZ & Associates has grievance and investigation procedures to deal with workplace bullying. Any reports of workplace bullying will be treated seriously and investigated promptly, confidentially and impartially.

XYZ & Associates encourages all its workers to report workplace bullying.

Managers and supervisors must ensure that workers who make complaints, or witnesses, are not victimised.

Disciplinary action will be taken against anyone who bullies a co-worker.

Discipline may involve a warning, transfer, counselling, demotion or dismissal, depending on the circumstances.

The contact person for bullying at this workplace is John Smith.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

A manufacturing company with a number of work sites developed a no bullying policy in consultation with workers.

**Sample Three: ABC Pty Ltd – No Bullying Policy**

ABC Pty Ltd is committed to providing our workers with a healthy and safe work environment that is free from bullying.

Bullying is:

- Usually repeated behaviour that can be obvious or hidden
- directed toward a worker or group of workers
- that a reasonable person would consider offensive, intimidating, humiliating or threatening and
- that is a risk to health and safety.

Examples of bullying include:

- verbal abuse and yelling
- humiliation through sarcasm, criticism or insults
- constant criticism
- exclusion of a worker from workplace activities
- allocation of unpleasant tasks to a particular worker.

ABC Pty Ltd expects all workers to behave in a professional manner and to treat each other with dignity and respect when they are at work.

ABC Pty Ltd encourages all its workers who experience bullying or who see someone else being bullied to report it. All reports of bullying will be treated seriously and investigated promptly, confidentially and impartially. No one who reports bullying will be victimised.

The reporting and investigation procedures for dealing with bullying are set out in the personnel manual, as are disciplinary and appeals procedures. Managers and supervisors have a responsibility to ensure workers are not bullied.

The contact officer in your area is John Smith.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX C

### Employer checklist

All employers should carry out a regular check of the workplace to identify if there are any signs that workplace bullying is happening or could happen (risk identification) and then take steps to deal with any problem areas (risk control).

This checklist and the suggested control measures are not exhaustive. You may need to consider other factors that are unique to your workplace.

<b>Are there any high-risk groups in the workforce?</b>	<b>YES</b>	<b>NO</b>
Are there any workers with different religious or political views, or from different racial backgrounds, compared to the majority of the workforce?	<input type="checkbox"/>	<input type="checkbox"/>
Are there workers in uncertain employment, such as casual and labour hire workers?	<input type="checkbox"/>	<input type="checkbox"/>
Are there young workers, such as apprentices and trainees?	<input type="checkbox"/>	<input type="checkbox"/>
<p>If YES to any of the above, implement risk control measures, such as:</p> <ul style="list-style-type: none"> <li>• at induction, provide information to all workers, including casual and labour hire workers, about workplace policies and procedures, including the no bullying policy, grievance and complaints procedures, codes of conduct and the like</li> <li>• promoting the principles of dignity and respect, and taking action to combat discrimination</li> <li>• introducing a buddy system for young workers</li> <li>• providing cultural awareness training.</li> </ul>		
<b>Are there any problems with work systems?</b>	<b>YES</b>	<b>NO</b>
Are there staff shortages?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a high level of uncertainty about job requirements?	<input type="checkbox"/>	<input type="checkbox"/>
Is the work rate intense?	<input type="checkbox"/>	<input type="checkbox"/>
<p>If YES to any of the above, implement risk control measures, such as:</p> <ul style="list-style-type: none"> <li>• consulting workers on possible job redesign</li> <li>• consulting workers about improving work patterns, including increasing their control over the pace of work, rest breaks and the like</li> <li>• improving the availability of flexible working arrangements</li> <li>• assessing whether demands on workers are achievable within the agreed hours of work</li> <li>• providing clear job descriptions that outline roles and responsibilities.</li> </ul>		
<b>Are workplace relationships conducive to bullying?</b>	<b>YES</b>	<b>NO</b>
Are workplace relationships poor?	<input type="checkbox"/>	<input type="checkbox"/>
Is there inadequate consultation?	<input type="checkbox"/>	<input type="checkbox"/>
Is communication poor?	<input type="checkbox"/>	<input type="checkbox"/>
Is the work environment competitive?	<input type="checkbox"/>	<input type="checkbox"/>
<p>If YES to any of the above, implement risk control measures, such as:</p> <ul style="list-style-type: none"> <li>• providing training in communication and conflict resolution skills, and assertiveness</li> <li>• treating all workers with fairness and consistency</li> <li>• communicating openly at all levels and involving workers in decision – making processes that impact upon their work</li> <li>• providing appropriate rewards and recognition</li> <li>• using performance indicators that measure good people management and relationship skills, not just financial goals – don't praise or promote those who 'get results' through bullying tactics.</li> </ul>		

<b>Are there signs that bullying may already be happening?</b>	<b>YES</b>	<b>NO</b>
Workers leaving the organisation reporting dissatisfaction with working relationships? (eg at exit interviews)	<input type="checkbox"/>	<input type="checkbox"/>
Workers becoming withdrawn and isolated?	<input type="checkbox"/>	<input type="checkbox"/>
Deterioration in relationships between work colleagues, customers or management?	<input type="checkbox"/>	<input type="checkbox"/>
Regularly torn clothing or uniforms?	<input type="checkbox"/>	<input type="checkbox"/>
Regularly damaged personal belongings or work tools?	<input type="checkbox"/>	<input type="checkbox"/>
Does a particular worker experience a number of minor workplace injuries?	<input type="checkbox"/>	<input type="checkbox"/>
If YES to any of the above, consult with workers to promote the existing no bullying policy and complaints procedure, or consult with workers to implement them immediately.		

<b>Has there been recent significant organisational change, or is change pending?</b>	<b>YES</b>	<b>NO</b>
Has a takeover occurred or is it pending?	<input type="checkbox"/>	<input type="checkbox"/>
Has there been a major internal restructure or is it pending?	<input type="checkbox"/>	<input type="checkbox"/>
Has technological change occurred or is it pending?	<input type="checkbox"/>	<input type="checkbox"/>
Has there been a change in management or is it pending?	<input type="checkbox"/>	<input type="checkbox"/>
Are there any other changes that might lead to high job instability and uncertainty about on going employment?	<input type="checkbox"/>	<input type="checkbox"/>
<p>If YES to any of the above, implement risk control measures, such as:</p> <ul style="list-style-type: none"> <li>consulting with workers about proposed changes and providing them with an opportunity to influence proposals</li> <li>providing workers with information to help them understand the proposed or actual changes, and the impact of the changes</li> <li>consulting with workers about any support or retraining needed as a result of the change.</li> </ul>		

<b>Are there problems with people management practices?</b>	<b>YES</b>	<b>NO</b>
Do managers and supervisors lack appropriate leadership training?	<input type="checkbox"/>	<input type="checkbox"/>
Do managers and supervisors have poor interpersonal skills?	<input type="checkbox"/>	<input type="checkbox"/>
Does the workplace have a 'command and control' management style?	<input type="checkbox"/>	<input type="checkbox"/>
<p>If YES to any of the above, implement risk control measures, such as:</p> <ul style="list-style-type: none"> <li>providing managers and supervisors with leadership and/or communication skills training</li> <li>using mentoring and coaching to improve managers' and supervisors' interpersonal skills</li> <li>training managers and supervisors to apply participative management styles as part of a culture that emphasises open communication, support and mutual respect.</li> </ul>		

Even if none of the above risk factors are identified, bullying can still occur. The preventative measures outlined in this guide should be used in every workplace – and monitored and reviewed regularly.

## Appendix D

### Other Legislation

Physical assault and sexual assault are criminal matters and should be referred to the police.

The *NSW Industrial Relations Act 1996* and *Workplace Relations Act 1996 (Cwlth)* provide for unfair dismissal procedures. A dismissal is unfair if it is deemed 'harsh unjust or unreasonable'. Not everyone has access to unfair dismissal procedures.

A dismissal may also be considered unlawful. For example, filing a complaint against an employer about non-compliance with any laws or regulations; participating in legitimate trade union activities; taking time off work because of an illness or injury; or if the decision is made based on anti-discrimination grounds such as an employee's race, sex or disability.

Should a worker believe they have been dismissed for making a complaint in relation to bullying, or is forced to resign due to the effects of bullying, they should seek advice from the relevant authority listed in Appendix A

The *NSW Anti Discrimination Act 1977* prohibits workplace harassment on the following grounds: sex, pregnancy, race (i.e. colour, nationality, descent, ethnic or ethno-religious background), marital status, disability (actual, past, future or presumed), age, homosexuality, transgender, sexual harassment and carer's responsibilities.

The *Commonwealth Human Rights and Equal Opportunity Commission Act 1986* prohibits workplace harassment on the following grounds – political opinion, social origin, medical record, criminal record, trade union activity and religion.

The *Commonwealth Racial Discrimination Act 1975* prohibits workplace harassment on the following grounds – race, colour and nationality.

The *Commonwealth Sexual Discrimination Act 1984* prohibits workplace harassment on the following grounds – sex, marital status and pregnancy.

The *Commonwealth Disability Discrimination Act 1992* prohibits workplace harassment on the following grounds – disability and impairment.

The *Commonwealth Age Discrimination Act 2004* (recently passed) prohibits workplace harassment on the grounds of age.

The *Public Sector Employment and Management Act 2002* governs the behaviour of NSW public sector workers.

**Common law cases** regarding workplace bullying are dealt with under employment contracts and personal injury claims. Some cases have resulted in significant compensation payments.

A worker can, for example, bring an action under tort law, claiming that the employer was negligent in failing to provide them with a safe workplace (ie stress from bullying).

Alternatively an action may be brought under contract law. A worker may argue that workplace harassment constitutes a breach of the implied term that the employer would not, without reasonable cause, destroy or seriously damage the relationship of confidence and trust between employer and employee.



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## VWA Prosecutions

Case	Relevant Section	Date of Disposition	Description of Offence	Result
Peninsula Prestige Cars Pty Ltd trading as Stewart Webster Mitsubishi	S21(1) & (2) (e) x 3 Failing to provide adequate information, instruction and training to employees.	18 Oct 1999	An apprentice motor mechanic was subjected to five specific incidents of workplace harassment and abuse. On one occasion the employee suffered physical injury and the court found he had no doubt suffered mental torment.	The company was convicted on all three counts and fined \$45,000.00
Scott Alan Chambers	S21 (1) & (2)(a) Failing to provide safe plant and systems of works 21(1) & (2) (b).	22 Feb 2000	Between 1 November 1995 and December 1995 the defendant, a head technician at Peninsula Prestige Cars Pty Ltd, taped and bound an apprentice to a pole at the workplace and on another occasion placed the apprentice on a 60 litre oil drum and sprayed a flammable substance on boots and set them alight.	Chambers was convicted on both counts and fined \$2,000.00
City Edge Panel Repairs Pty Ltd	S21(1) & (2)(e) Failing to provide adequate information, instruction and training to employees.	10 July 2000	Between August and November 1995, a 15 year old apprentice panel beater was subjected to ongoing verbal and physical abuse by other employees at the workplace. The magistrate was satisfied the victim was a vulnerable young person who had suffered systematic abuse for a considerable period of time at the workplace.	The company was convicted and fined \$25,000.00
Daryl Marwood	S21(1) & (2)(e) Failing to provide adequate information, instruction and training to employees. The charge was laid pursuant to s 52(1), offences by bodies corporate may be the responsibility of directors.	10 July 2000	The defendant was a director of City Edge Panel Repairs.	Marwood was convicted and fined \$5,000.00
Edo Fato	S21(1) & (2)(e) Failing to provide adequate information, instruction and training to employees. The charge was laid pursuant to s 52(1), offences by bodies corporate may be the responsibility of directors.	10 July 2000	The defendant was a director of City Edge Panel and Repairs. Fato had also directly participated in the abuse, on one occasion striking the victim.	Fato was convicted and fined \$8,000.00

VWA Prosecutions continued

Case	Relevant Section	Date of Disposition	Description of Offence	Result
Dennis John Vines	S21(1) & (2)(e) Failing to provide adequate information, instruction and training to employees.	7 April 2000	Vines ran 'Gearmatics', a motor vehicle repair business. An apprentice mechanic and other junior employees were subjected to continual verbal and physical abuse by senior staff at the business, including Vines. The abuse consisted of using tools to prod the victims in their genital region, firing pressurized airguns, suggesting sexual acts and threatening to set junior members of staff on fire as portrayed in the WorkSafe advertising campaign.	Vines was convicted and fined \$15,000.00
Tom Phillipson	S25(2)(b) Failing to cooperate with employer with respect to OHS issues.	25 February 2000	The defendant, a senior mechanic at 'Gearmatics', subjected junior staff to physical and verbal abuse.	Phillipson was released without conviction and placed on a 12-month good behaviour bond and ordered to pay \$500.00 into the Court fund.
John Anthony Paul De Sensi	S25(2)(b) Failing to cooperate with employer with respect to OHS issues.  S18 Crimes Act 1958 Recklessly cause injury.	14 July 2000	The defendant a senior mechanic at 'Gearmatics' subjected junior staff to physical and verbal abuse.	De Sensi was convicted on both counts and fined an aggregate of \$8,000.00
John Anthony Scicluna	S25(2)(b) Failing to cooperate with employer with respect to OHS issues.	13 October 2000	In December 1998, the defendant subjected a fellow employee at Don Smallgoods Pty Ltd, to verbal abuse about the employee's sexuality. He also set fire to another employees shirt.	Scicluna was convicted and fined \$1,000.00
Bradley Kenneth Lane	S25(2)(b) Failing to cooperate with employer with respect to OHS issues.	25 February 2003	The defendant was an employee at Hills and Mason. A new apprentice started at the business and Lane and other staff were warned there was to be no fooling around or practical jokes. On 22 June, the victim was punched, bitten and hooked up to a crane and raised and left to hang.	Lane was convicted and fined \$2,500.00

VWA Prosecutions continued

Case	Relevant Section	Date of Disposition	Description of Offence	Result
Boylan Distribution Services Pty Ltd	S 54(1)(d) Employer discrimination on the grounds the employee had made regarding health and safety.	8 September 2003	On 12 November 2001, Boylan Distribution Services dismissed a casual truck driver when he refused to drive a vehicle he considered unsafe. The direction to drive the vehicle was given despite the vehicle carrying a 'do not use' sign.	The company was convicted and fined \$30,000.00
Class Air Pty Ltd	S21 (1) & 2(a) Failing to provide safe and maintain safe plant and systems of work.  S21(1) & (2)(e) Failing to provide adequate information, instruction and training to employees.	3 February 2003	An employee suffered both verbal and physical abuse when he was subjected to racial vilification, sexual comments being made about his family, and was punched and burned using an aerosol can.	The company was convicted and fined \$5,000.00
Kenneth Joachim Wosgien	S21 (1) & 2(a) Failing to provide safe and maintain safe plant and systems of work.  S21(1) & (2)(e) Failing to provide adequate information, instruction and training to employees.	18 November 2002	The defendant was employed at Class Air Pty Ltd and admitted subjecting a co-worker to racial vilification, sexual comments being made about his family, and burning the victim using an aerosol can.	Wosgien was convicted and fined \$8,000.00
Radio Ballarat Pty Ltd	S21 (1) & 2(a) Failing to provide safe and maintain safe plant and systems of work.  S21(1) & (2)(e) Failing to provide adequate information, instruction and training to employees.	12 August 2004	The company employed an announcer who was responsible for numerous acts of bullying and violence against fellow employees over a two-year period.	The company was convicted and fined \$50,000.00

VWA Prosecutions continued

Case	Relevant Section	Date of Disposition	Description of Offence	Result
Reginald David Mowat	S25(1)(a) Failing to take reasonable care for safety.  S25(2)(b) Failing to cooperate with employer with respect to OHS issues.	22 July 2004	Over a two-year period the defendant repeatedly bullied fellow employees, often using physical violence against them.	Mowat was convicted and fined \$10,000.00
Kalinda Downs Pty Ltd	S43(3)  Failing to comply with an Improvement Notice	8 December 2005	WorkSafe issued the company with an Improvement Notice requiring the defendant to develop and implement a system for addressing bullying in the workplace after the inspector responded to allegations of bullying at the workplace.	The company was placed on a good behaviour bond for 12 months on the condition it paid \$2,000.00 to the Salvation Army.

## **Source OHS Alert (Brodie Case)**

### **\$330K workplace bullying fine sends message on vicious behaviour; more**

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**Tuesday, 09 February 2010 11:28am OHS ALERT**

\$330K workplace bullying fine sends message on vicious behaviour; and Employer fined \$135K after injuries for shoddy chemical procedures.

### **\$330K workplace bullying fine sends message on vicious behaviour**

Fines handed down yesterday to three workers who physically and emotionally bullied a teenage co-worker - who later committed suicide - were among the highest penalties ever issued to individuals under Victorian OHS laws and stood as a warning to other workplace bullies and their employers, WorkSafe acting executive director Stan Krpan said.

"This is a deeply sad and tragic prosecution [and] a very important prosecution for us to take," Krpan said.

"It sends a very clear message to the community that this sort of behaviour is vicious, it shouldn't be tolerated, and it won't be tolerated."

Cafe Vamp employees Nicholas Smallwood, Rhys MacAlpine and Gabriel Toomey were fined \$45,000, \$30,000 and \$10,000 respectively for relentlessly insulting and criticising 18-year-old waitress Brodie Panlock. Smallwood, who managed the cafe, also taunted Panlock over a failed suicide attempt. On one occasion, MacAlpine held her while Smallwood covered her in sauce.

Cafe owner Marc Luis Da Cruz and his company, MAP Foundation, were fined a total of \$250,000 for failing to maintain a safe working environment.

Magistrate Peter Lauritsen said he would have doubled the penalties if the employer and workers hadn't pleaded guilty.

Krpan said the culture at the cafe was vicious and unacceptable.

"People who hear about bullying need to speak up at their workplace," he said. "Young people in particular are vulnerable in the workplace, and they need to be supported, to ask questions [and] raise issues."

The judgment comes just days after a [Productivity Commission report](#) found that workplace bullying and other psychosocial hazards are largely neglected by OHS regulators and in legislation.

The report also found that stress claims are more costly on average than workers' compensation claims for physical injuries, in terms of direct cost and time taken off work.

### **Employer fined \$135K after injuries for shoddy chemical procedures**

In other Victorian news, a textile manufacturer has been fined \$135,000 after two employees were seriously injured in separate chemical incidents in less than two months.

In the first incident, a labourer lost an eye when the handle of a bucket of corrosive chemicals he was carrying broke, causing the bucket to strike the ground and the liquid to splash in his face.

Some five weeks later, another employee was using a one-litre test tube - with a handle

consisting of a metal rod attached with gaffer tape - to retrieve a chemical from a portable container when the handle snapped and, as with the first incident, the chemical splashed in his face. He suffered burns and numbness inside the mouth.

A subsequent investigation found the employer:

- did not have a safe system of work that reduced the risk of contact with dangerous goods and hazardous substances;
- failed to provide employees with adequate protective equipment;
- provided inadequate or predominately verbal information, instruction and training to employees on the safe handling and movement of dangerous goods; and
- failed to provide adequate First Aid facilities.

The employer was charged with breaches of the State *Occupational Health and Safety Act 2004*. It did not enter a plea.

**Wednesday 10 February 2010**

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# THE AGE

## **Tragedy turns glare on work bullies**

Author:

Publication: The Age (20, Wed 10 Feb 2010)

Edition: First

Section: News

Keywords: **occupational (1), health (1), and (1), safety (3)**

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AMONG the many stomach-turning aspects of the workplace ordeal that ended with the 2006 suicide of 19-year-old Brodie Panlock was the cheerful, suburban setting. She was not subjected to what magistrate Peter Lauritsen described as "persistent and vicious" bullying in the military, say, or in high school or in other contexts in which incidents of this sort usually surface, but in Hawthorn's Cafe Vamp, where she worked as a waitress and sandwich hand.

This is where cafe owner Marc Da Cruz allowed Nicholas Smallwood, Rhys MacAlpine and, to a lesser extent, Gabriel Toomey to torment Panlock, later dismissing what had transpired as "just a boyfriend, girlfriend type of thing".

This week's Melbourne Magistrates Court ruling, imposing a hefty \$335,000 in fines on the three staff, the cafe owner and his company Map Foundation, sends an unambiguous message about the nature and gravity of workplace bullying. It is

also, sadly and somewhat surprisingly, a message that needs amplifying.

Only last month, a draft report of the Productivity Commission found 2.5 million Australians experienced some aspect of bullying during their working lives. The report estimated the annual economic cost of such "psycho-social hazards", measured in terms of absenteeism and poor performance, at nearly \$15 billion. It also found that workplace bullying was not explicitly addressed in **occupational health and safety** laws. South Australia is the only state that mentions inappropriate behaviour in its legislation, while only Western Australia and Queensland have codes of practice on how to detect and manage bullying. Small businesses, seeking clarity about their responsibilities, might be particularly well served with the latter. In any event, WorkSafe Victoria should consider an advertising campaign that stresses the illegality of bullying across all occupations and age groups. In time, an absence of workplace harassment should be as obvious an imperative as protective clothing and **safety** equipment.

This tragic case will no doubt send a shudder through small business employers and employees. These businesses, which don't have human resources departments to develop anti-bullying protocols, need to have an urgent discussion about how to detect and tackle toxic conduct in the workplace. As the



slogan goes, workplace **safety** is everyone's responsibility; complacency is simply no longer an option.

Thursday 11 February 2010

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# Herald Sun

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## Time to stop the torment

Author: NEIL MITCHELL

Publication: Herald Sun (34,Thu 11 Feb 2010)

Edition: 1 - FIRST

Section: ED

Keywords: **occupational (1),health (1),and (1),safety (2)**

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The word ``bullying'' is too mild to describe what caused the death of 19-year-old Brodie Panlock. The persistent brutality was more akin to degradation

WHEN Brodie Panlock was bullied to death, decent people struggled to understand such evil, while experts cast about for answers. But if anybody must be heard through the pain it is her parents, still grieving, still angry.

Her mother, Rae, sees the world through hollow eyes, while her father, Damian, looks through flashes of anger and frustration, blended with paternal pride in a bright and loyal child whose potential was stolen.

``There is no future for us,'' he says ``We are trying to do the best we can, but this has chewed it all up again. We are back to the beginning.

``For the sake of others, now there need to be tougher laws, the investigations need to be better planned, small businesses must be checked.

``We must look after the village. The village is not being looked after properly and that village is our children. These people saw they could get away with it and they did."

Perhaps if you too are struggling to understand how in this century a pack of young men can bully a teenage girl to death, you should look at the faces.

First, there's her photograph. If you need evidence of the tragedy and horrible waste behind the case, this is it. She's innocent, bright, eyes glowing with hope.

Then, turn to the bullies as they leave court. They look cruel, cold. There's arrogance behind the flash sunglasses, no hint of remorse.

Bullying is the wrong word for this lot. That term simply conjures images of disputes between five-year-old preppies in the playground.

This is more cruel, insidious, and based on the pleasure one human can take inflicting pain on another.

Let's call it workplace degradation, it better fits the brutality.

Let's also use these images and the awful detail to do things better, and to recognise that nobody should be treated as sub-human because they want to earn a dollar.

You know the facts. Damian says Brodie fell, but officially she jumped from a multi-storey building after being tormented by these men she worked with in a Hawthorn cafe.

The hands-on bullying came from Nicholas Smallwood, acting manager of the cafe, Rhys MacAlpine, waiter, and Gabriel Toomey, chef. They were fined under **occupational health and safety** laws \$45,000, \$30,000 and \$10,000 respectively.

The owner, Marcus Luis da Cruz, was fined \$30,000 and his company \$220,000 for failing to stop the torment.

And the frightening thing here is the cruelty of this workplace is probably repeated in dozens of businesses across Australia.

THERE'S no doubt a culture of bullying exists in restaurants. Chefs are notorious for harassing staff. Consider the oafish Gordon Ramsay and how he treats people.

In this case, the bully MacAlpine learnt his ugly trade early. A woman who worked with him in a restaurant several years ago says back then he was then the victim.

``He was seriously bullied -- not physically but verbally. There's no doubt he suffered. You would think his own experience would have taught him something," she said.

Instead, he and the others embraced the culture. They abused Brodie, spat on her, poured beer over her. She was held down and doused in fish oil so she had to go about her work smelling like the bottom of a barrel.

When she first attempted suicide she was mocked for failing, and offered rat poison.

Why? Who knows? She was a good worker, popular with customers. She was punctual. She liked what she did.

Perhaps she felt trapped and was unable to walk away when the degradation got worse, but we'll never know. Jobs can be hard to find and many young people put up with a great deal to hang on to theirs.

If we knew why Brodie made her decisions, and what motivated her tormentors, there would be more hope of avoiding this. Presumably the thugs liked inflicting pain and somehow grew in their own estimation by tormenting a helpless girl.

But if you think this couldn't touch you, you're wrong. Here are five salient facts to consider:

SEVERAL different surveys have estimated between 60 and 70 per cent of the workforce has suffered some form of bullying/degradation.

ESTIMATES vary, but some argue this costs industry up to \$30 billion a year in sick leave and lost time.

MORE than half the bullying reported in surveys comes from managers or supervisors, and lasts six months or longer.

A SURVEY by recruitment agency Drake International found only 2 per cent of workers felt immune to bullying.

PSYCHOLOGISTS who specialise in the subject say suicidal thoughts or attempted suicide are an extremely common reaction to bullying.

All this means we must support the Panlocks and do everything to identify and avoid another Brodie.

Damian, her father, is right. Tougher punishment is needed. The thugs in this case could have been fined \$180,000 each and \$1 million for the company, but under the law jail was not an option.

Better co-operation could address that. The WorkSafe officers will investigate health and **safety** issues but they should also be encouraged to consult police.

Holding Brodie down and pouring oil over her was, arguably, assault. If charges had been laid, jail would have been an option, without changing any laws.

Awareness is part of it, too. Brodie's mates have started a Facebook page that aims to change attitudes. Business must now be on a warning and there's hope this case is a turning point.

BUT workers, particularly young workers, will feel isolated and disempowered. The message needs to get through that decent people will stand with them.

Then there's the culture. Bullying happens on the roads, in supermarkets, and in our parliaments, where some politicians confuse robust debate with name-calling and mockery.

At work it can be devastating, because the victim is trapped. But if attitudes change from the school-ground to Question Time, there's hope the next Brodie can be saved.

And there is hope. As Brodie's father Damian talks, there's evidence that through his suffering he still understands the world is not all bad.

``When she fell two guys who saw it jumped over a wire fence and went to help. They called an ambulance; they comforted her and stayed with her.

``I have never met them but they are the sort of men we want in this country. They give you faith that there are some decent blokes out there."

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# **WORKPLACE HEALTH & SAFETY PSYCHOSOCIAL REGULATION**

## **1. Person in control of a business or undertaking to identify psychosocial hazards**

(1) A person in control of a business or undertaking must identify and control the psychosocial risks associated with, but not limited to

- i. Job Control,
- ii. Organisational Culture,
- iii. Career Development,
- iv. Home-work interface,
- v. Workplace Design,
- vi. Violence,
- vii. Bullying,
- viii. Harassment,
- ix. Fatigue
- x. Time pressure,
- xi. Work pace,
- xii. Workload,
- xiii. Task Variety,
- xiv. Emotionally demanding tasks,
- xv. Working hours,
- xvi. Shift work,
- xvii. Task design,
- xviii. Working with people,
- xix. Mental task demands,
- xx. Hazardous work,
- xxi. Workplace conflict,
- xxii. Job and skill match,

(3) A person in control of a business or undertaking must ensure that effective procedures are in place, and are implemented, to control psychosocial hazards:

- (a) immediately prior to using premises for the first time as a place of work,
- (b) before changes to work practices and systems of work are introduced,
- (c) while work is being carried out,
- (d) when new or additional information becomes available

(d) the results of consultation by the duty holder under the Act or these Regulations indicate that a review is necessary;

(e) a health and safety representative requests the review.

## **2. Person in control of a business or undertaking to eliminate or control risks**

(1) Subject to subclause (2), a person in control of a business or undertaking must eliminate any foreseeable psychosocial risk to the health or safety of:

- (a) any worker of the person in control of a business or undertaking, or
- (b) any other person legally at the person in control of a business or undertaking's place of work, or both,

that arises from the conduct of the person in control of a business or undertaking.

(2) If it is not possible to eliminate the risk, the person in control of a business or undertaking must control the risk as far as reasonably practicable..

(3) A person in control of a business or undertaking must ensure that all measures that are adopted to eliminate or control psychosocial risks to health and safety are properly used, maintained, evaluated, redesigned and implemented. (need to check the hierarchy of control reg)

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Suggested clauses given the Risk assessment clauses

**Managing risks to health and safety**

A person conducting a business or undertaking must manage the risk of a psychosocial Hazards.

**Specific control measure – Administrative control**

A person in control of a business or undertaking must ensure that effective procedures are in place, and are implemented, to control psychosocial hazards:

- (a) immediately prior to using premises for the first time as a place of work,
  - (b) before changes to work practices and systems of work are introduced,
  - (c) while work is being carried out,
-