

Workplace bullying: we just want it to stop

Bullying undermines the victim's deepest sense of self, of who they are. As adults we think we have figured out who we are, and so to have that completely undermined and stripped away is utterly crippling and that is why it is so destructive.¹

Bullying is the key workplace health and safety issue of our time. It can affect anyone in any job, regardless of what task they perform, what kind of people they work with, or of what industry they are part. These issues are not easy and they need to be tackled head on, rather than ignored until they become so unbearable for people that they cannot face going to work.²

Introduction

The significance of workplace bullying

- 1.1 To most Australians, work provides a sense of dignity and is central to our individual and collective sense of identity. The value of work is not simply that a very large part of life is spent working, nor that work is the primary means to gaining a livelihood, and therefore ensuring material survival. Rather, work has a more complex meaning interwoven in the creation of a sense of self.

1 SF, *Committee Hansard*, Closed Session.

2 Carlo Caponecchia and Anne Wyatt, *Preventing Workplace Bullying: An evidence-based guide for managers and employees*, Allen & Unwin, Crows Nest, NSW, 2011, p. 139.

- 1.2 The significance of work is also larger than its meaning to the individual. Work plays a critical role in the constitution of a society as the interdependence of citizens through their work, is one of the most important structural bonds of any community.³
- 1.3 Workplace bullying can therefore disturb both the individual and social conceptions of self and value. Workplace bullying is a dynamic and complex phenomenon and its causes are often multifaceted and its impact individual and varied. It can have a profound effect on all aspects of a person's health as well as their work and family life, undermining self-esteem, productivity and morale. For some it can result in a permanent departure from the labour market and in extreme cases, suicide.
- 1.4 Bullying behaviours might range from subtle actions that seek to exclude, isolate or marginalise, to extreme acts of physical violence resulting in death or serious injury. Yet it is common for many targets of this behaviour to struggle to identify these encounters as bullying. Frequently, it is only when they seek the guidance or support of others that they identify that their experience is causing damage to, or creates a great risk to, their health and wellbeing.
- 1.5 Unfortunately, there are illusory distinctions between physical and psychological workplace hazards or injuries. Psychological injuries in particular, are often seen as 'soft issues', as the sole responsibility of the individual, or stigmatised as 'craziness'. Such hazards can be seen as too 'variable' to manage the risk created.⁴
- 1.6 Workplace bullying experts, Dr Carlo Caponecchia and Dr Anne Wyatt commented:
- There is also the fear that taking action to prevent and control psychological hazards will unleash a flood of similar complaints, and ultimately end in litigation, finger pointing and threatened careers. These perceptions are baseless, inadequate [and] irresponsible.⁵
- 1.7 Indeed, like other triggers of stress, physical and emotional responses to workplace bullying are diverse. The Australian community should not dismiss workplace bullying as a 'grey area' or relegate it to the too-hard

3 Rosemary Owens, 'Decent Work for the Contingent Workforce in the New Economy', *Australian Journal of Labour Law*, vol. 15, 2002, p. 209.

4 Caponecchia and Wyatt, *Preventing Workplace Bullying*, 2011, pp. 139-140.

5 Caponecchia and Wyatt, *Preventing Workplace Bullying*, 2011, p. 140.

basket. Preventing and managing bullying is a challenge, but it is a challenge that if met, will reap benefits for all workers and organisations.⁶

- 1.8 This inquiry arose out of increasing national attention on the prevalence of bullying in Australian workplaces. The Committee has sought to understand the experience, prevalence and cost of workplace bullying.

The experience of workplace bullying

- 1.9 The Australian Institute of Employment Rights observed that for an increasing number of Australians, their experience of work and treatment within the workplace is a negative one.⁷ The International Labour Organisation (ILO) describes workplace bullying as a form of psychological violence. The ILO argues:

Workplace bullying constitutes offensive behaviour through vindictive, cruel, malicious or humiliating attempts to undermine an individual or groups of employees. Such persistently negative attacks on their personal and professional performance are typically unpredictable, irrational and unfair.⁸

- 1.10 According to Davidson Trahaire Corpsych (DTC), a leading organisational psychology consulting firm, the most common form of workplace bullying is verbal abuse: shouting, swearing, malicious sarcasm, intimidating behaviours and undeserved evaluations.⁹

- 1.11 Examples of bullying include:

- abusive, insulting or offensive language or comments;
- undue criticism;
- excluding, isolating or marginalising a person from normal work activities;
- withholding information that is vital for effective work performance;
- unreasonably overloading a person with work or not providing enough work;

6 Caponecchia and Wyatt, *Preventing Workplace Bullying*, 2011, p. 140.

7 Australian Institute of Employment Rights, *Submission 109*, p. 4.

8 International Labour Organisation, *Violence at Work: A major workplace problem*, 1 January 2009, referenced in Australian Industry Group (AiG), *Submission 59*, p. 7.

9 Ms Michele Grow, Chief Executive Director, Davidson Trahaire Corpsych (DTC), *Committee Hansard*, Canberra, 13 September 2012, p. 1.

- setting unreasonable timelines or constantly changing deadlines;
- setting tasks that are unreasonably below or beyond a person's skill level;
- denying access to information, supervision, consultation or resources such that it has a detriment to the worker;
- spreading misinformation or malicious rumours;
- changing work arrangements, such as rosters and leave, to the detriment of a worker or workers; and
- unreasonable treatment in relation to accessing workplace entitlements such as leave or training.¹⁰

1.12 Bullying can also manifest in more predatory activities. In a case that gained national attention in 2006, Brodie Panlock, a 19 year old waitress, tragically took her own life after enduring persistent and vicious bullying at work. Evidence raised in the resulting court case revealed that Brodie had been the subject of continual physical and emotional abuse. In one of the more horrific incidents, Brodie was physically restrained whilst her manager, and cafe owner, poured oil over her. Mrs Rae Panlock, Brodie's mother commented on her daughter's experience:

She was a very strong person. I think I have said it a few times, but she used to soldier on and get over whatever was going on. But the impact was just too much. It was not just one person; it was four men: the owner and three individuals. They just kept on pursuing her. This is the other thing. The people who worked there other than these men did try but did not try enough. A lot of them said in the court case they wished they had done more.¹¹

1.13 Recent advances in technology and greater social engagement in the online world are also extending the work environment into the private sphere of workers. Mirroring the phenomenon occurring in schools, workplace bullying is beginning to occur through online technologies,¹² casting doubt on the ability and responsibility of employers to respond to all these behaviours.

1.14 Further, bullying may manifest in different ways according to the nature of certain industries. For example, 'initiation ceremonies' are more likely to occur in certain sectors or amongst workers of a certain age. A recent

10 Safe Work Australia, *Draft Code of Practice: Managing the Risk of Workplace Bullying (Draft Code of Practice)*, July 2012, p. 4.

11 Mrs Rae Panlock, *Committee Hansard*, Melbourne, 11 July 2012, p. 53.

12 Ms Sandra Craig, Manager, National Centre Against Bullying, Alannah and Madeline Foundation, *Committee Hansard*, Melbourne, 11 July 2012, pp. 41- 42.

case in New South Wales was successfully prosecuted after five workers wrapped a 16-year-old asthmatic apprentice-labourer in cling wrap. These workers then forced sawdust into his mouth as part of an 'induction' into the workplace.¹³

1.15 Although the Committee heard numerous personal accounts of psychological bullying in the workplace, there are no Australian examples of these cases pursued in the courts. The cases pursued in the courts are physical, rather than psychological bullying.

1.16 For example, the Committee heard of psychologically abusive group behaviour, known as 'mobbing'.¹⁴ The intent of 'mobbing' is usually to try to drive a worker from the workplace. Evidence received by the Committee indicates that this phenomenon is particularly present in the teaching and nursing professions. The following individual impact statement was given by a teacher at one of the Committee's closed sessions:

Imagine that your favourite teacher at school, the one who impacted you the most and shaped who you are today, was found dead one morning, a suicide note the only indication that their death was the direct result of behaviours they had tolerated at the hands of bullies in their staffroom.

Workplace mobbing is described in the international literature in ways such as these: workplace mobbing is an emotional assault; one individual gathers others to participate in continuous, malevolent actions to harm, control or force another person out of the workplace. The victim feels increasingly helpless when the organisation does not put a stop to the behaviour and may plan or even condone it. ...Workplace mobbing targets people who are high achievers, are enthusiastic and volunteer at work, love what they do, have integrity and ethical standards, and promote human rights, dignity and respect. These are the people that are targeted by this brand of bullying.¹⁵

1.17 Irrespective of form, mode, or context, bullying is characterised by an abuse of power, where vulnerable targets are 'pushed into positions from which they have no avenue of escape'.¹⁶ As such, bullying is part of a

13 Unions NSW, *Submission 61*, p. 26.

14 Safe Work Australia, *Submission 74*, p.

15 GM, *Committee Hansard*, Closed Session.

16 Dr Donna Louise McGrath, *Submission 87*, p. 3.

‘continuum of severity of the misuse of authority or actual power’.¹⁷ Importantly, the concept of a power imbalance is not limited to traditional worker-manager hierarchies.

- 1.18 Bullying can be downwards (from superiors to subordinates), upwards (from subordinates to superiors) or horizontal (amongst co-workers). Notions of power need to be viewed in a broad manner, rather than simple hierarchies.¹⁸ Speaking specifically about upwards and horizontal bullying, Dr Sara Branch, a research fellow at Griffith University, observed:

The recognition of upwards and horizontal bullying emphasises that processes beyond formal power are at play and that bullying is not just conducted by managers. Power derived by a person's access to informal sources such as expertise and information can be used along with formal sources to gain sufficient power to bully others in the workplace.¹⁹

- 1.19 Bullying in workplaces can quickly escalate into a ‘drama spiral’. Namely, what begins as bullying between two primary workers is unlikely to be contained to those people alone. Caponecchia and Wyatt discuss the ‘escalating drama spiral’ that can result when inappropriate behaviour is not addressed early:

What generally happens, over time, is an escalating drama spiral with a number of players, or stakeholders, in varying roles playing out the ‘story’. The roles may include ‘bully’, ‘target’, ‘bystander’, people responsible for intervening, family and friends of the various stakeholders, other people who work in the organisation and possibly to organisation’s consumers. ... The ‘drama’ attracts more players as time goes by and the situation will reach out and affect other stakeholders. Over time the original issue may well be lost sight of and the truth radically distorted.²⁰

- 1.20 Experiencing bullying at work can lead to a feeling of being trapped. In some cases, the targets of bullying behaviours are caught in a ‘trifecta’: a toxic working environment, difficult financial circumstances and not having options for alternative employment. When trapped in that

17 Ms Moira Rayner, Deputy Chair, Workplace Relations Section, Law Institute of Victoria, *Committee Hansard*, Melbourne, 11 July 2012, p. 14.

18 Caponecchia and Wyatt, *Preventing Workplace Bullying*, 2011, pp. 8-9.

19 Dr Sara Branch, Research Fellow, Key Centre for Ethics, Law, Justice and Governance, Griffith University, *Committee Hansard*, Brisbane, 18 July 2012, p. 10.

20 Caponecchia and Wyatt, *Preventing Workplace Bullying*, 2011, pp. 61-62.

situation, individuals can feel disempowered and unable to regain control of their surrounds.²¹

- 1.21 The impacts of bullying can be extreme with its effects extending into all areas of day-to-day activities, family life and broader social engagement. The following comments were made by individual participants in the inquiry who have experienced workplace bullying first-hand.

As a result of my combined two experiences I have given up my career as a research scientist. I am too afraid to go back and put myself in those situations again. It was a career that I loved, and I feel a great sense of loss at the situation I now find myself in. I never expected to become a target of bullying. I used to think of myself as a strong and resilient person, but the stress that was caused by my situation – the fear of losing my job and my career – had an extreme impact on me. My doctor told me that the symptoms I felt were similar to the symptoms that someone has in a life or death situation, and that the situation was prolonged by several months, in fact more than a year, because the processes were not put in place properly to deal with my complaint.²²

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I have been in the same organisation [as my husband] since 1986. I had a variety of roles. The most current one is as work health and safety adviser, which I find a great deal of conflict with because the organisation has failed my husband; he was suicidal. It has failed so many other people. You have people in tears in the workplace, and the workplace does nothing. We have the legislation. I was the one that provided the training. I wrote the presentation packages for the whole of this organisation. I know what it is supposed to do.²³

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Things became worse over the years. I attempted addressing my concerns with the 'bullying'. She denied that her intentions were harmful and said she would never bully anyone as she had been bullied at school. When I did speak to her about specific incidences she said she was joking. I reported the matter to my immediate supervisor who said I'd be fine because I was a strong and stable person whereas the 'bully' was insecure and had problems relating to her childhood. The behaviours were

21 Ms Grow, DTC, *Committee Hansard*, Canberra, 13 September 2012, p. 3.

22 JE, *Committee Hansard*, Closed Session.

23 LW, *Committee Hansard*, Closed Session.

constant and unrelenting. She attempted to engage all new staff in the fiasco. Most of the permanent staff knew better than to believe the lies yet all of us were powerless. Others reported the issue to our supervisor. Still, nothing was done. I began to withdraw and not function as well at work as I used to which only gave her more ammunition.²⁴

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To those who have not personally experienced bullying or victimisation in the workplace the health consequences can sometimes be difficult to appreciate. The reality is that for almost all of us our work is the primary source of our income and, consequently, the lynchpin sustaining most of our aspirations as well as the things we enjoy in our everyday lives. When we are personally denigrated in the workplace on a systematic basis and our key source of income is threatened the consequences can be devastating. Like a cancer, the experience can seep into every facet of one's life and cause ongoing problems including anxiety, frustration, depressed mood and difficulty relating to other people in a normal way. The primary cause of the problem is the power imbalance between the bully and the victim, with the latter typically feeling powerless to do anything about the behaviour due to reliance on the income from his or her job or, perhaps, a desire for a favourable reference.²⁵

Prevalence and national evidence base

- 1.22 Bullying, particularly in the workplace, has been described as a 'hidden problem'.²⁶ The prevalence of workplace bullying in Australia cannot be determined with any precision due to the absence of a national evidence base from which such indicators might be drawn. Consequently, various studies report widely different estimates of the prevalence of bullying in Australian workplaces.²⁷
- 1.23 A commonly accepted estimate of the prevalence of workplace bullying in Australia comes from the Australian Workplace Barometer (AWB) project (2009-11). The AWB project found that 6.8 per cent of Australian workers

24 WM, *Submission 152*, p. 2.

25 CP, *Submission 145*, p. 2.

26 Workplace Investigation Services Pty Ltd, *Submission 98*, p. 7.

27 Safe Work Australia, *Submission 74*, p. 14.

had been bullied at work in the six months prior to being surveyed, with 3.5 per cent experiencing bullying for longer than a six month period.²⁸

1.24 This figure is supported by the Personality and Total Health through Life project, a longitudinal study on mental and physical health managed by the Australian National University. This study also found that 6.8 per cent of workers had been bullied at work in the six months prior to being surveyed. The survey data was collected in 2011.²⁹

1.25 However, the prevalence of workplace bullying could be far greater than this statistic. The Assistant Commissioner of the Productivity Commission (the PC) stated that 'it is probably higher than that ... it could be over 15 per cent'.³⁰ Professor Maryam Omari commented further:

we are not capturing in whatever studies are done the actual rates of workplace bullying, which would be far higher than the 22 to 33 per cent that I have found.³¹

1.26 Similarly, DTC commented that every year they respond to 10,000 cases that relate to some form of workplace bullying. The Chief Executive Director, Ms Michele Grow, stated that the number who present or report their bullying is significantly higher than statistical analysis has found. Ms Grow commented that the figure is possibly closer to 'one in three' workers experience bullying at work.³²

1.27 The Australian Public Service Commission (the APSC) found that 17 per cent of staff had experienced harassment or bullying at work. Only 0.13 per cent of these cases are investigated. The APSC believes that this higher rate of reported bullying could involve unfounded accusations.³³

1.28 The discrepancy of estimates indicates an urgent need to improve Australia's evidence base. Yet, collating solid evidence faces many statistical challenges including:

- lack of common definition;
- self-reporting – may affect both under reporting and over reporting as workers and employer's struggle with defining behaviour as bullying;

28 Referenced in Safe Work Australia, *Submission 74*, p. 14.

29 Referenced in Safe Work Australia, *Submission 74*, p. 14. Mr Rex Hoy, Chief Executive Officer, Safe Work Australia, *Committee Hansard*, Canberra, 17 August 2012, p. 12.

30 Ms Sue Elaine Holmes, Assistant Commissioner, Productivity Commission (PC), *Committee Hansard*, Canberra, 17 August 2012, p. 17.

31 Professor Maryam Omari, *Committee Hansard*, Perth, 8 August 2012, p. 2.

32 Ms Grow, DTC, *Committee Hansard*, Canberra, 13 September 2012, p. 1.

33 Australian Public Service Commission, *Submission 122*, p. 2.

- lack of consistency in the research or data across Australian jurisdictions; or
 - duplication – reports to state-based regulators may relate to the same instance as reported to federally-based industrial relations regulator or anti-discrimination commissions.³⁴
- 1.29 Without a national evidence base, regulators and governments struggle to develop new initiatives or carve out the purpose and goals of new programs.

The cost of workplace bullying

- 1.30 The costs of workplace bullying are significant. The costs are myriad and involve individual workers, employers, industry, government and the community as a whole.
- 1.31 The PC estimates that workplace bullying costs the Australian economy between \$6 billion and \$36 billion every year.³⁵ Again, the absence of reliable, concentrated data on workplace bullying is reflected in this broad-ranging estimate.³⁶
- 1.32 Other costs to the economy include public sector costs such as the health and medical services, and income support and other government benefits provided to individuals who prematurely depart the workforce based on their bullying experience and injuries suffered.³⁷

The cost to employers

- 1.33 Workplace bullying costs employers an average of \$17,000 to \$24,000 per case.³⁸ These costs can be directly or indirectly borne by the employer.
- 1.34 The Australian Industry Group (the AiG) submitted:
- Bullying complaints not only reduce workplace morale, but can prove to be a costly and time-consuming exercise for employers. Employers may be faced with the potential costs of defending

34 Safe Work Australia, *Submission 74*, p. 14.

35 Productivity Commission, *Benchmarking Business Regulation: Occupational Health and Safety*, March 2010.

36 Ms Holmes, PC, *Committee Hansard*, Canberra, 17 August 2012, p. 17.

37 Diversity Council of Australia (DCA), *Submission 185*, p. 8.

38 Ms Holmes, PC, *Committee Hansard*, Canberra, 17 August 2012, p. 17.

bullying allegations under work health and safety laws, legal representation, settling a complaint, and the negative publicity that may arise as a result of the complaint. Even if a complaint is resolved internally, there are costs associated with conducting an investigation.³⁹

1.35 Harmers Workplace Lawyers commented that, in their experience, workplace bullying results in:

- staff turnover, and thus additional recruitment costs;
- management down-time – due to the significant time involved in responding to, and investigation of, allegations of workplace bullying;
- loss of productivity – due to sick leave and/or workers compensation claims;
- diminishment of workplace culture – worker morale can be negatively impacted due to workplace bullying; and
- impact on company reputation.⁴⁰

1.36 The cost of lost productivity to employers was discussed by many other participants in the inquiry. For example, the Chief Executive Officer, Mr Rex Hoy, of the Commonwealth tripartite agency, Safe Work Australia said:

I find it frustrating that a lot of businesses do not think that good performance in work health and safety can lead to improved productivity. We have been battling for a fair bit with companies to identify and report on performance in this area in terms of their bottom line. They just aggregate all of this in terms of their normal [human resource] performance, and you cannot get them to think about and focus on how good work in health will lead to good and improved productivity.

...some well-performing companies that have focused on this... claim that it actually leads to improved performance. It must lead to improved performance, because you reduce absenteeism and improve morale. It just goes without saying, but it is pretty hard to convince people.⁴¹

1.37 Safe Work Australia also contrasted the higher costs of workplace bullying compensation claims to those of ‘traditional’ (physical) injuries:

39 AiG, *Submission 59*, p. 10.

40 Harmers Workplace Lawyers, *Submission 88*, p. 4.

41 Mr Hoy, Safe Work Australia, *Committee Hansard*, Canberra, 17 August 2012, p. 19.

For the financial year 2007-08 the average cost of a compensation claims due to workplace bullying/harassment was \$41 700 and the average time lost from work was 25 weeks compared to the average cost of all claims of \$13 300 and the average time lost from work of 7 weeks.⁴²

- 1.38 These costs fail to account for the human costs including reduced quality of life for victims, colleagues, children, spouses and costs to the greater community.⁴³

Personal costs

- 1.39 Individuals who experience workplace bullying suffer significant personal costs. The extent of these costs is influenced by the nature of the bullying behaviours, their duration, and the efficacy of responses. These costs are also influenced by factors intrinsic to the 'target' – their coping styles, perceptions and reactions as well as the personal support systems provided by family and friends.⁴⁴
- 1.40 Bullying results in significant negative consequences for an individual's health and wellbeing. People who have been exposed to bullying at work have been found to experience the following:
- post-traumatic stress disorders;
 - depression;
 - anxiety;
 - sleep disturbances;
 - lowered self-esteem;
 - anger;
 - chronic fatigue;
 - suicidal thoughts;
 - irritability;
 - feelings of nervousness, insecurity and victimisation;
 - burnout;

42 Safe Work Australia, *Submission 74*, p. 13.

43 Australian Council of Trade Unions, *Submission 63*, p. 5.

44 Caponecchia and Wyatt, *Preventing Workplace Bullying*, 2011, p. 41.

- musculoskeletal complaints and muscular tension;
 - headaches;
 - nausea;
 - stomach upset; and
 - social withdrawal.⁴⁵
- 1.41 DTC reported that one in two people who experience bullying also suffer an 'extreme version of stress-related complications including stomach ulcers, tachycardia, hair loss, dermatitis, panic attacks, [and] irritable bowel syndrome'.⁴⁶
- 1.42 Financial stress can be caused by the target needing time off work to treat the many physical and psychological consequences listed above. These additional costs can quickly escalate should the target pursue legal action against individuals, employers or submit workers compensation claims, all of which can be expensive and protracted experiences for already traumatised people.
- 1.43 Broader costs include social isolation, withdrawal from family or friends, and dismissal or loss of job promotion opportunities.⁴⁷ These can have significant flow-on effects to bystanders, co-workers, family and friends. In extreme cases, targets commit suicide with all the associated consequences for friends and family.
- 1.44 Mr Panlock discussed the effect that his daughter's suicide has had on his family:
- It impacted on our family. It was not just Brodie. She did the ultimate task, if you want to call it that. It has affected our family and it is nearly six years. It affected the whole family. It is not just us but our other children, their grandparents, cousins and so on.⁴⁸

45 Caponecchia and Wyatt, *Preventing Workplace Bullying*, 2011, p. 41.

46 Ms Grow, DTC, *Committee Hansard*, Canberra, 13 September 2012, p. 2.

47 DCA, *Submission 185*, p. 7.

48 Mr Damian Panlock, *Committee Hansard*, Melbourne, 11 July 2012, p. 52.

Definitions

Defining workplace bullying

- 1.45 Providing a definition of workplace bullying was a key issue throughout the inquiry. However, some participants cautioned that the debate about a definition might distract from the broader issue. The Northern Territory Working Women's Centre warned:

It is an interesting debate. We actually shy away from talking too much about the definition, because it leads to so much discussion that it can detract from the actual issue. So we do not have a standard definition. As long as we are talking about repeated events – we are not talking about a one-off incident; we are talking about repeated events over a period of time that leave a person feeling powerless, and that they are harmed physically or psychologically. That, as far as we are concerned, is workplace bullying.⁴⁹

- 1.46 Similarly, Dr Caponecchia stated:

I think [defining workplace bullying] is sometimes a distractor and that the idea that we do not have a definition of workplace bullying in Australia is a little misleading. ... I think that sometimes saying that there is no definition or that it is still controversial is almost a barrier to doing something about this. I do not think we should be seduced by that at all.⁵⁰

- 1.47 However, workers, their legal and industrial representatives, employer organisations, academics and employment assistance providers all supported adopting a nationally consistent definition of workplace bullying.⁵¹

- 1.48 Providing this guidance and assurance through a definition, it was argued, would give clarity and confidence for workers and employers alike.⁵² The AiG referred to the colloquial, loose definitions of 'bullying' as

49 Ms Rachael Uebergang, Co-coordinator, Northern Territory Working Women's Centre, *Committee Hansard*, Darwin, 17 July 2012, p. 4.

50 Dr Carlo Caponecchia, *Committee Hansard*, Canberra, 23 August 2012, p. 1.

51 Ms Katherine Eames, Industrial Services Officer, Queensland and Northern Territory Branch, Independent Education Union of Australia, *Committee Hansard*, Brisbane, 18 July 2012, p. 25; Mr Jason James O'Dwyer, Workplace Relations Manager, Master Electricians Australia (MEA), *Committee Hansard*, Brisbane, 18 July 2012, p. 31;

52 Dr Carlo Caponecchia, *Submission 81*, pp. 9-10.

‘unacceptable or anti-social behaviour or behaviour that a person is unhappy with’.⁵³ Such behaviour is unlikely to amount to ‘bullying’ as provided under legislation.

1.49 All jurisdictions in Australia have definitions of workplace bullying in their respective guidance materials or regulations. However, there is neither a nationally consistent definition, nor an awareness of what behaviour amounts to workplace bullying. It may be that there is no wide-spread appreciation of these definitions, indicating that greater education is needed to increase awareness of the regulation of these behaviours.

1.50 Emerging from definitions adopted by the state, territory and federal jurisdictions, three criteria appear to dominate: the behaviours have to be repeated, unreasonable and cause a risk to health and safety. Dr Caponecchia commented:

These criteria are relatively consistent across jurisdictions, and are fundamentally quite conservative in nature when they are properly applied. They are not always properly nor consistently applied when discussing or reporting bullying, which can lead to some mislabelled claims, and misdirected views.⁵⁴

1.51 A cross-range of witnesses recommended the following definition:

*Workplace bullying is repeated, unreasonable behaviour directed towards a worker, or group of workers, that creates a risk to health and safety.*⁵⁵

1.52 ‘Repeated behaviour’ is further defined as the persistent nature of the behaviour and can refer to a range of behaviours over time. ‘Unreasonable behaviour’ was also defined as behaviour that a reasonable person, having regard for the circumstances, would see as victimising, humiliating, undermining or threatening.⁵⁶

1.53 Balanced against this definition is the need for managers to be able to manage their staff. It was argued by multiple participants in the inquiry that in order to ensure that employers are entitled to properly manage and monitor the conduct of their workers, the definition of workplace bullying must include exemptions for:

- reasonable performance management by an employer;

53 AiG, *Submission 59*, p. 3.

54 Dr Caponecchia, *Submission 81*, p. 9.

55 Safe Work Australia, *Submission 74*, p. 10; Australian Chamber of Commerce and Industry (ACCI), *Submission 62*, p. 8.

56 Safe Work Australia, *Submission 74*, p. 10.

- reasonable disciplinary action by an employer; and
 - reasonable management action.⁵⁷
- 1.54 Performance management processes ‘should not be a barrier to taking action on workplace bullying’.⁵⁸ Many witnesses indicated that clear and consistent identification of what bullying is, and what it is not, would help ameliorate concerns over false claims, or fears of being accused of bullying when counselling staff about their performance.⁵⁹

Intentional versus unintentional bullying

- 1.55 The evidence received by the Committee indicates that under the definition of workplace bullying stipulated above, the intent of the perpetrator is not required to be established. Dr Sheryl Ramsay and Dr Jane Murray, researchers in the area of workplace bullying, observed that in their research, many workers are not aware of the effect of their behaviour in the workplace and consequently, bullying can be seen as ‘accidental’ or unintended.⁶⁰
- 1.56 However, in a joint submission, Dr Moira Jenkins and Mr Karl Luke argued:
- Most definitions of bullying do not include intent as a requirement. Instead, a core component of bullying is said to be the subjective perception of the victim that repeated acts are hostile, humiliating and intimidating, and the unreasonable nature of the actions themselves. This is very similar to some definitions of sexual harassment, where the perpetrator may not have intended to cause humiliation or embarrassment, but their sexually suggestive actions have contributed to a target feeling intimidated and harassed.⁶¹
- 1.57 Similarly, Safe Work Australia also advises stakeholders of the differences between intentional and unintentional bullying. It submitted:

57 Harmers Workplace Lawyers, *Submission 88*, p. 5; ACCI, *Submission 62*, p. 8; Mr O’Dwyer, MEA, *Committee Hansard*, Brisbane, 18 July 2012, pp. 31-32.

58 Dr Caponecchia, *Submission 81*, p. 9.

59 Dr Caponecchia, *Submission 81*, p. 9; Dr Jane Murray, Assistant Professor, Bond University, *Committee Hansard*, Brisbane, 18 July 2012, p. 8.

60 Dr Sheryl Ramsay, Senior Lecturer, Griffith University, *Committee Hansard*, Brisbane, 18 July 2012, p. 8; and Dr Jane Murray, Assistant Professor, Bond University, *Committee Hansard*, Brisbane, 18 July 2012, p. 8.

61 Moira Jenkins and Karl Luke, *Submission 210*, p. 15.

Bullying can be intentional, where the actions are intended to humiliate, offend, intimidate or distress, whether or not the behaviour did have that effect. Bullying can also be unintentional, where actions which, although not intended to humiliate, offend, intimidate or distress, cause and should reasonably have been expected to cause that effect. Sometimes people do not realise that their behaviour can be harmful to others.⁶²

- 1.58 Multiple other stakeholders, including the Law Society of Western Australia, the APSC and the Australian Nursing Federation also advocated that workplace bullying includes intentional and unintentional conduct.⁶³

An aggravated single incident

- 1.59 The Law Society of New South Wales called for a definition that includes an 'aggravated single incident'.⁶⁴ Similarly, Professor Maryam Omari commented that the effect of a single traumatic incident can be 're-lived', and that the one action can be repeated in itself.⁶⁵ Extending the definition this way was not supported by all participants.
- 1.60 A single incident may have the potential to escalate and should not be ignored by employers.⁶⁶ However, broadening the definition to include aggravated single incidents may extend the responsibility of employers beyond what is reasonable.
- 1.61 Aggravated single incidents may be captured by the physical assault provisions of the criminal laws of each state and territory. Workplace bullying as physical assault is discussed in chapter 2.
- 1.62 The Committee does not support extending the definition to include single incidents, but supports the national adoption of the definition of workplace bullying as repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.
- 1.63 A consistent definition amongst the different jurisdictions would provide clarity to workers, their employers, assistance providers as well as the national debate. The case for national consistency is included in chapters 3 and 4.

62 Safe Work Australia, *Submission 74*, p. 31.

63 Law Society of Western Australia, *Submission 130 Attachment A*, p. 16; Australian Public Service Commission, *Submission 122*, p. 2; Australian Nursing Federation, *Submission 85*, p. 9..

64 Law Society of New South Wales, *Submission 123.1*, p. 2.

65 Professor Omari, *Committee Hansard*, Perth, 8 August 2012, p. 2.

66 *Draft Code of Practice*, July 2012, p. 4.

Recommendation 1

- 1.64 **The Committee recommends that the Commonwealth Government promote national adoption of the following definition: workplace bullying is repeated, unreasonable behaviour directed towards a worker or group of workers, that creates a risk to health and safety.**
- 1.65 To clarify, the Committee believes that the word ‘directed’ in Recommendation 1 encapsulates both intentional bullying behaviours and unintentional bullying. Intentional and unintentional bullying was discussed above.

Unpacking the definition: what is, and what is not, workplace bullying

- 1.66 A key concern throughout the inquiry has been the lack of available information on what is, and what is not, workplace bullying. Regulators do provide some guidance to employers and workers alike about what constitutes workplace bullying. However, this guidance provides examples of specific types of behaviour rather than a list of criteria or indicators of bullying.
- 1.67 Stakeholders advocated for a national advice service that provides some guidance as to whether the behaviour received, observed or reported amounts to bullying. Providing this preliminary and general advice will allow workers and employers to calibrate their response accordingly. The Queensland Law Society noted:
- misconceptions ... concerning the various concepts involved in this area of law.... Just as concerted efforts should be made to eliminate workplace bullying, similar efforts should be made in education of the wider community about the conduct that falls within and falls outside of the definition of workplace bullying.⁶⁷
- 1.68 The Law Institute of Victoria submitted:
- It is vitally important for employers and employees to understand what constitutes bullying, what does not constitute bullying, and who has duties in relation to bullying in the workplace.⁶⁸
- 1.69 Dr Jane Murray from Bond University also discussed how clarity around the definition will assist national discussion and drive change:

67 Queensland Law Society, *Submission 73*, p. 1.

68 Law Institute of Victoria, *Submission 52*, p. 1.

If we are educating people about what workplace bullying is, we also need to be educating them about what workplace bullying is not, so that everybody is coming from the same page. ...We do not want to create panic; we want to say, 'This is what it is and this is what it is not, and now here are some ways in which we can upskill ourselves as a population in the workplace to make sure that it doesn't happen.'⁶⁹

- 1.70 Dr Caponecchia discussed the development of a 'decision tool' to guide stakeholders through a self-assessment against established criteria. Dr Caponecchia stated:

I think a lot of our problems would be solved if there were some tools to help people decide in a cool-headed manner: is what is happening to me likely to meet those criteria? ...We are proposing a decision tool that helps people make that decision. I think there needs to be some work done on that.⁷⁰

- 1.71 Providing this basic clarity to the two primary stakeholders, workers and employers, is a first step. Identifying poor workplace behaviour that is bullying will not resolve the problem alone. But it does prompt the parties, and their support networks, to act to address the behaviour and work to improve the system and culture that permitted it to arise.

Recommendation 2

- 1.72 **The Committee recommends that the Commonwealth Government develop a national advisory service that provides practical and operational advice on what does and does not constitute workplace bullying, and offers self-assessment and guidance materials to workers and employers to determine whether behaviour meets the workplace bullying definition established in Recommendation 1.**
- 1.73 Throughout this report, the Committee will make several recommendations that call on the Commonwealth Government to establish a new service. Although these recommendations are dispersed, the Committee wishes to clarify that these new national services could be delivered by a single agency.

69 Dr Murray, Bond University, *Committee Hansard*, Brisbane, 18 July 2012, p. 12.

70 Dr Caponecchia, *Committee Hansard*, Canberra, 23 August 2012, p. 2.

Defining the workplace

- 1.74 Current legislation and regulations of workplaces adopt the terms ‘person conducting a business or undertaking’ and ‘worker’ rather than the traditionally used ‘employer’ and ‘employee’. These terms are used in Australia’s harmonised work health and safety laws as adopted in New South Wales, Queensland, Tasmania, the Australian Capital Territory, South Australia, and the Northern Territory as well as at the Commonwealth level.⁷¹
- 1.75 The terms will be used interchangeably throughout this report.

Who is a ‘person conducting a business or undertaking’?

- 1.76 A ‘person conducting a business or undertaking’ (PCBU) is defined as a person who conducts a business or undertaking alone or with others, whether or not it is conducted for profit or gain.⁷² A person may be a company, unincorporated association or partnership or an individual who is conducting a business in their own right as a sole trader or self-employed person.⁷³

Who is a ‘worker’?

- 1.77 Worker is defined as a person who carries out work in any capacity for a PCBU. Workers therefore are not only employees but also contractors, subcontractors, labour hire workers, outworkers, apprentices, trainees, work experience students and volunteers.

Workplace bullying as a risk to work health and safety

- 1.78 Bullying at work is regulated by many areas of law at both the Commonwealth and state/territory levels. These areas of law will be discussed throughout the report. However, the primary regulation of workplace bullying occurs within the work health and safety framework.

71 It is also anticipated that the South Australian Parliament will pass the harmonised Work Health and Safety Bill 2011 (SA) by the end of 2012, which shall also adopt these definitions and terminology.

72 Section 5 of the model Work Health and Safety Acts.

73 A more detailed explanation can be found on the Safe Work Australian website, in the interpretive guideline: ‘The meaning of a person conducting a business or undertaking’.

- 1.79 Workplace bullying is well recognised as a work health and safety (WHS) matter: a psychological hazard. Risks to psychological injury, like physical hazards, must be mitigated.⁷⁴
- 1.80 In the context of WHS, a risk management framework includes identification, assessment, control and monitoring of hazards that pose a risk to the health and safety of workers.
- 1.81 After attending the eighth International Conference on Workplace Bullying and Harassment in Copenhagen in June 2012, Dr Caponecchia argued that approaching bullying through a risk-management rubric is an example of international best-practice, and that Australia is considered a leader in this regard.⁷⁵ While the Committee is pleased to hear this feedback, Australia could do more to prevent and respond to workplace bullying.
- 1.82 The WHS framework also establishes rights and obligations for workers and employers. The responsibility to prevent workplace bullying is covered in WHS legislation by the duty of care held by employers to provide a healthy and safe working environment for their workers. Workers also have the duty to ensure their actions do not constitute a risk to the health and safety of themselves or other people at the workplace.⁷⁶ These rights and obligations are discussed in more detail in chapter 2.
- 1.83 The protection afforded to workers varies between state/territory and federal jurisdictions. Concurrent with this inquiry, all jurisdictions are working toward harmonising these protections.

Harmonisation of work health and safety laws

- 1.84 In July 2008, the Council of Australian Governments (COAG) signed the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. This commitment included the development and implementation of a complete and fully integrated package including a model Act, supported by model Regulations, model Codes of Practice and a National Compliance, Enforcement Policy and guidance material. These instruments were, and continue to be developed by Safe Work Australia.⁷⁷

74 Safe Work Australia, *Submission 74*, p. 3.

75 Dr Caponecchia, *Committee Hansard*, Canberra, 23 August 2012, p. 4.

76 Safe Work Australia, *Submission 74*, p. 3.

77 Safe Work Australia's members include representatives from each state and territory, the Commonwealth, the Australian Council of Trade Unions, the Australian Chamber of Commerce and Industry and the Australian Industry Group.

- 1.85 The model WHS laws commenced in New South Wales, Queensland, the Australian Capital Territory, and the Northern Territory on 1 January 2012. In its limited jurisdiction, the Commonwealth also adopted the WHS laws on this date. The model WHS laws are due to commence in Tasmania and South Australia on 1 January 2013. South Australia and Western Australia remain committed to implementing the model WHS laws. At the time of writing, the South Australian WHS is currently before Parliament, and is anticipated to be passed by the Parliament in its final sitting session of 2012. Victoria is the only jurisdiction to announce that it will not be adopting the model WHS laws in their current form.⁷⁸
- 1.86 On the topic of workplace bullying, the harmonisation effort is directed towards the adoption of a new Code of Practice as developed through Safe Work Australia. An initial draft was released for public comment in 2011.⁷⁹
- 1.87 The Committee understands that a decision has been made by the members of Safe Work Australia to postpone the approval of the revised draft Code to await the conclusion of the Committee's inquiry in order that consideration be given to issues raised in this report.⁸⁰ The Committee hopes that its report complements the upcoming public consultation phase and that the finalisation process continues with haste.

Scope of inquiry and parameters

- 1.88 The scope of the inquiry is limited to bullying at work. Some participants commented that workplace bullying must be seen in a broader context, as a community-wide issue. For example, the Australian Chamber of Commerce and Industry submitted:

It is generally accepted that bullying is not confined to any particular parts of the community, and is not isolated to the workplace. It is a community wide issue which requires a community wide policy response.⁸¹

78 Safe Work Australia, *Submission 74*, p. 7.

All references in this Report to the obligations under the model WHS law and their provision numbers are consistent throughout the jurisdictions which have enacted the legislation.

79 Safe Work Australia, *Submission 74*, p. 11.

80 Mr Hoy, Safe Work Australia, *Committee Hansard*, Canberra, 17 August 2012, pp. 23-24.

81 ACCL, *Submission, 62*, p. 10.

- 1.89 The Committee's terms of reference were to focus on bullying in the workplace, and there are specific legal obligations that arise with respect to bullying in a workplace to focus on.
- 1.90 The following areas of law seek to regulate the behaviours associated with workplace bullying:
- work health and safety;
 - industrial relations;
 - criminal law;
 - anti-discrimination law; and
 - workers' compensation schemes.
- 1.91 The intersecting responsibilities of federal and state or territory regulation add layers of complexity. Navigating through the matrix of regulations can be overwhelmingly complex for workers and employers alike.
- 1.92 Despite these varied and complex state and federal regulations, Harmers Workplace Lawyers observed:
- it is not uncommon for a client to have experienced significant workplace bullying (and subsequently suffer psychological injury with devastating impacts on ongoing employment prospects), yet have little redress under any of the above legal avenues (apart from some limited workers compensation payments that they may be available).⁸²
- 1.93 The 'gap' identified here is the absence of specific (and uniform) regulation of workplace bullying that does not 'hinge off' the areas of law identified above. Indeed, workplace bullying manifests in vastly different ways; it is the diversity of circumstances that, despite the variety of regulation, appear to lead many bullying incidents to fall between the areas of regulation.

Constitutional limitations

- 1.94 Though the Commonwealth's power to legislate on matters of industrial relations has extended in recent years, WHS is a matter remaining within the residual powers of the states.
- 1.95 The Committee can only make recommendations to the Commonwealth agencies. Consequently, the Committee's report predominantly seeks to

82 Harmers Workplace Lawyers, *Submission 88*, p. 5.

make recommendations for improved regulation and policy at the Commonwealth level and in the areas where it has greater legislative responsibility. The report discusses the harmonisation of WHS law throughout the jurisdictions and recent efforts to adopt a harmonised Code of Practice for bullying.

- 1.96 The Committee makes its recommendations in the context of this current reform agenda. These recommendations should not be seen as detracting from the WHS regulation of the states and territories, but rather complementing these efforts. Further, this report is about providing people with different options; to encourage targets of bullying to pursue genuine complaints whilst acknowledging that different circumstances may favour one mechanism of redress over another.

Conduct of the inquiry

Referral of inquiry

- 1.97 The Prime Minister, the Hon Julia Gillard MP and the Minister for Employment and Workplace Relations, the Hon Bill Shorten MP jointly announced the inquiry on 26 May 2012.
- 1.98 The Minister for Employment and Workplace Relations referred terms of reference for the inquiry on 29 May 2012. The terms of reference are set out in the front pages of the report.

Inquiry process

- 1.99 The Committee announced the inquiry on 1 June 2012 and called for submissions from interested individuals and organisations. The Committee also invited submissions directly from a wide range of stakeholders including state and territory governments, peak advocacy bodies, employer organisations, business chambers, unions, and employment assistance providers.
- 1.100 A total of 319 submissions were received of which over 200 were authored by individuals who had experienced first-hand or witnessed workplace bullying. The remainder was received from a broad cross-section of stakeholders with an interest in the subject matter. The submissions are listed in Appendix A.

- 1.101 The Committee also received a large volume of confidential submissions and supporting documents that were accepted as confidential exhibits. While documents taken on a confidential basis have not been cited in the report, they have been made available to Committee members and informed deliberations. A list of exhibits is included in Appendix B.
- 1.102 The Committee conducted 11 public hearings in all state and territory capitals. Details of hearings and witnesses are included at Appendix C.

Individual submissions and impact statements

- 1.103 A key objective for the inquiry was to hear from individuals who had personally experienced workplace bullying or had supported a co-worker or family member through its effects. In addition to written submissions, time was set aside for individual impact statement sessions at the end of public hearings in each capital city. Both avenues carried equal weight and were given equal consideration by the Committee in preparing this report.
- 1.104 The Committee received a great number of individual submissions many of which provided extensive documentation of their experience. The Committee does not have decision-making or referral functions. Rather, these submissions helped to shape the Committee's report and its recommendations.
- 1.105 Prior to publishing these submissions, the Committee resolved to redact identifying information to ensure the privacy of all concerned. Further, authors' initials were used rather than full names. These redacted submissions were subsequently published on the Committee's webpage in accordance with parliamentary practice. Submissions were considered in their original form by the Committee.
- 1.106 Individual impact statement sessions were an opportunity for members of the public to recount their experiences and provide details of the effects of bullying. To encourage maximum participation by individuals who may have been reluctant to be publicly identified, these sessions were not permitted to be reported by the media. Though forming part of its evidence record and used privately by the Committee in consideration of this report, complete statements provided were not published. Excerpts from these sessions have been incorporated into the report with the prior approval of witnesses.
- 1.107 To ensure equal opportunity for all members of the public wishing to make individual statements, the Committee allocated a total amount of time to these statement sessions, and divided that time equally amongst those individuals.

- 1.108 Individual impact statement sessions were important not only for the Committee in its evidence-gathering, but also important for those individuals who had experienced or witnessed workplace bullying to be provided with an opportunity to simply be heard. These sessions did not follow the typical opening statement and question structure as this was not the purpose. Committee members did not question participants about their experience, rather, they listened to stories recounted by individuals.
- 1.109 The Committee observed the support amongst participants both during the sessions and at their conclusion. Many expressed a sense of relief resulting from the simple act of being listened to.

Public / private balance

- 1.110 A challenge for the Committee was to achieve a public/private balance in the evidence it received from affected individuals.
- 1.111 Many individuals stated off the record that they would not participate without ensuring their privacy and anonymity. Many of the bullying incidents described by individual participants in the inquiry resulted in deeply personal and traumatic experiences. The Committee received evidence of extreme emotional upheaval, anger, frustration, anxiety, depression and suicide.
- 1.112 Yet an open and public discussion of workplace bullying may assist to remove the stigma and shame that many affected individuals feel. Reflecting this, some individuals submitting to, and appearing before, the Committee wanted to provide their name and the name of their employer to frankly and openly discuss what they had experienced.
- 1.113 An open discussion of workplace bullying also works towards establishing a broader culture within the Australian community that demonstrates the public's values for respect and integrity, as well as establishing standards of appropriate behaviour in the workplace. Similar opportunities and challenges are faced when tackling gender discrimination.
- 1.114 Approaching its official evidence gathering in a way that respected the competing desires for privacy and open discussion, was integral to the outcomes of a parliamentary inquiry into workplace bullying. Not only did the inquiry contribute to the public discussion on the issue, but it also encouraged it to be elevated onto a national platform.

Structure of report

- 1.115 Following this introductory chapter, the report is structured in two Parts.
- 1.116 Part One discusses the current landscape in which employers and workers are located. Within this part, chapter 2 presents the legislative and regulatory frameworks for workplace bullying at the federal, state and territory levels. The chapter addresses work health and safety law, criminal law, anti-discrimination law, industrial relations systems and workers compensation schemes.
- 1.117 Chapter 3 extends this discussion into the workplace context. The chapter will look at the capacity for workplace policies to prevent and respond to bullying. It will then examine the role of internal dispute-resolution mechanisms.
- 1.118 Chapter 4 will briefly examine how workplace cultures can 'set-the-tone' for appropriate workplace behaviour and give effect to zero-tolerance policies through role-modelling by organisation leaders.
- 1.119 Part Two explores effective policies for governments to adopt in responding to the complexities and challenges of workplace bullying in Australia. As acknowledged above, the predominant area of law that regulates workplace bullying is work health and safety law – an area that falls within the residual powers of the states and territories under the Constitution.
- 1.120 Chapter 5 examines how the tools for prevention and resolution of workplace bullying can be enhanced. Workplace bullying falls within a complex system of regulation and support services that are notably dispersed. A new national advice, assistance and resolution service will be discussed, as well as the possibility of establishing a single entry point to regulators.
- 1.121 Chapter 6 discusses how enforcement and individual remedies can be bolstered. It examines whether the enforcement measures currently available are sufficient to respond to all instances of workplace bullying and whether they are effectively applied. The chapter also presents the numerous calls for improving access to individual remedies for those adversely affected by bullying at work.

