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Enhancing tools for the prevention and resolution of workplace bullying

The only way I can see us overcoming [bullying at work] is really for employers to have more tools at their side.[1]

It is about empowering not only the workforce and the people on the job but also the organisational management and structure. [It is] about looking at preventative measures. Let's do the hard work upfront so workplace bullying will not be played out.[2]

Moving beyond workplace bullying ensures that work is not just balanced with life, but enriches and fulfils it.[3]

Introduction

5.1   All Australians should be able to go to work and return home without being harmed, physically or psychologically. The psychosocial health of working Australians has been the subject of significant national attention in the past year. A national discussion about workplace bullying has been

1   Mr Michael Maloney, Manager, Workplace Relations, Chamber of Commerce Northern Territory (CCNT), *Committee Hansard*, Darwin, 17 July 2012, p. 17.

2   Ms Toni Ah-Sam, Chair, Northern Territory Indigenous Business Network (NTIBN), *Committee Hansard*, Darwin, 17 July 2012, pp. 14-18.

3   Carlo Caponecchia and Anne Wyatt, *Preventing Workplace Bullying: An evidence-based guide for managers and employees*, Allen & Unwin, 2011, p. 144.

fuelled by recent media coverage of horrific examples of bullying and violence at work.[4]

5.2   Australia should use this current momentum to improve the national 'skills-set' to respond to workplace bullying. Participants in the inquiry referred to the need for a 'change agenda' that will improve Australia's workplace culture.[5]

5.3   Bringing about cultural change is a protracted and highly complex task. The Alannah and Madeline Foundation (the AMF), a national advocacy group for preventing violence against children, commented there are five broad conditions to achieve social change which could be applied in bringing about cultural change in the workplace. These five conditions include:

- a common agenda for change where stakeholders have a shared understanding of this issue and a joint-approach for addressing the issue;

- a consistent measurement of the issue, to gauge the prevalence of the problem and to assess the impact of new initiatives;

- mutually reinforcing activities, where different activities are complementary, coordinated and focused on the shared vision for change;

- an ongoing and open dialogue between key stakeholders to build trust, affirm objectives and maintain focus; and

- resources are invested to coordinate activities across stakeholders (usually through a separate organization whose main focus is the change agenda).[6]

5.4   The Committee was encouraged throughout the inquiry to develop recommendations that would lead to a practical, multifaceted approach consisting of awareness-raising, education, support services and improved

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4   H Ewart, 'Lawyers question workplace bullying protections', *7.30,* Australian Broadcasting Corporation, 10 September 2012; and H Ewart, 'Government fears extent of workplace bullying', *7.30*, Australian Broadcasting Corporation, 25 September 2012.

5   Dr Angela Martin, Senior Lecturer, Management, University of Tasmania, *Committee Hansard*, Melbourne, 11 July 2012, p. 47; Mr Michael Harmer, Harmers Workplace Lawyers, *Committee Hansard*, Brisbane, 18 July 2012, p. 1, Ms Kate Price, Regional Manager ACT, Davidson Trahaire Corpsych (DTC), *Committee Hansard*, Canberra, 13 September 2012, p. 6.

6   Alannah and Madeline Foundation (AMF), *Submission 125*, p. 15.

enforcement. The AMF acknowledged that these activities will need to be 'delivered by different stakeholders at many different levels'.[7]

5.5   This chapter considers prevention and resolution strategies and policies. Specifically:

- provision for a single government agency to provide a coordinated advice, assistance and resolution service to employers and workers alike;

- provision for a single entry point or 'gateway' to regulators in the various jurisdictions and across all areas of law;

- awareness raising of workplace bullying and how the final Code of Practice can be best promoted;

- strategies to encourage good workplace cultures through the establishment of a national accreditation system of employers who achieve standards of psychosocial health and safety;

- improving the national evidence base; and

- enhancing education and protections for young workers.

Complexity of regulation and dispersed support services

5.6   Throughout the inquiry, employers, workers, their legal representatives and consultants highlighted the regulatory complexity of workplace bullying. Chapter 2 outlined the different areas of law that may be brought into play by workplace bullying and the authority and powers of the regulators with respect to workplace bullying. These include:

- work health and safety laws of the Commonwealth and each state and territory with local regulators for each jurisdiction;

- industrial relations legislation at the Commonwealth level, covering the 96 per cent of employers in Australia, with:
  ⇒ the tribunal (Fair Work Australia) hearing unfair dismissal cases and adverse action cases;
  ⇒ the ombudsman (the Fair Work Ombudsman) investigating complaints and suspected contraventions of the entitlements

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7   AMF, *Submission 125*, pp. 12-13.

provisions of the *Fair Work Act 2009*, and providing advice and education on the Act; and

- anti-discrimination legislation in federal, state and territory jurisdictions with commissions established to hear complaints about discrimination claims.

5.7   Each of these agencies has a defined role, with few overlapping responsibilities. However, community and industry expectations of the purpose and powers of these institutions with respect to workplace bullying, appear greater than the powers of any one area.[8]

5.8   Although all of the agencies listed above dedicate resources to education and advice services, there is still significant confusion about their role and responsibilities, as well as the overarching confusion as to how workplace bullying is or should be responded to.[9] These challenges are experienced by both employers and workers alike.

5.9   Employers, regardless of their size or industry, can struggle to navigate the complexities of developing systems, strategies and methods of work that reduce the risk of their workers being exposed to psychosocial risks. There is confusion amongst employers about how to tackle this issue, what responsibilities they carry, how they can meet these responsibilities, and to what extent they can act on a finding of bullying.[10]

5.10   Confusion, frustration and isolation are also felt by workers. Workers, and their industrial representatives, who participated in the inquiry reported confusion about what rights and remedies they have to pursue bullying complaints either internally with their employers or externally with the multitude of frameworks listed above.[11]

5.11   Frustration was expressed by individuals who attempt to resolve the issue internally within their workplace[12] and those who had attempted to engage agencies.[13] Many workers who had been targets of workplace

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8   Robert Carlisle Thomas Solicitors (RCT Solicitors), *Submission 106*, pp. 3-4.

9   Dr Carlo Caponecchia, *Submission 81.1*, p. 1-2.

10   Australian Chamber of Commerce and Industry (ACCI), *Submission 62*, p. 9; Mr Nick Behrens, General Manager, Chamber of Commerce and Industry Queensland (CCIQ), *Committee Hansard*, Brisbane, 18 July 2012, p. 14

11   National Network of Working Women's Centres (NNWWC), *Submission 86*, p. 10; BK, *Submission 131*, pp. 3-5; DO, *Submission 51*, p. 2; KL, Submission 157, pp. 1-2.

12   Ms Meredith, Hammat President, UnionsWA, *Committee Hansard*, Perth, 8 August 2012, pp. 15-16; NNWWC, *Submission 86*, p. 10.

13   Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions (ACTU), *Committee Hansard*, Melbourne, 11 July 2012, p. 17; Mr Behrens, CCIQ, *Committee Hansard*, Brisbane, 18 July 2012, p. 14.

bullying also questioned the willingness of work health and safety (WHS) regulators to enforce their powers.[14] Similar stories have been reported in mainstream media earlier this year.[15]

5.12   Confusion and frustration of employers and workers would indicate a need for more practical information to better understand the role and powers of all agencies involved in workplace bullying. The submission of the Chamber of Commerce and Industry Queensland (CCIQ) was typical of calls for the enhancement of educational and support services and the promotion of employers and community awareness and access to these services.[16] CCIQ advocated that governments should focus on preventative measures by enhancing:

> education and support services, and subsequently increase businesses' and the community's awareness and access to these services.[17]

5.13   Although all state, territory and Commonwealth regulators (particularly in WHS and anti-discrimination areas) provide support and advice services, there is currently a range of support activities that are not available because they fall through the gaps between the function of the regulators. Dr Carlo Caponecchia, a workplace bullying expert, identified the following areas:

- advising workers on when and how to make a report of bullying (and when not to);
- providing options to workers and monitoring and supporting them;
- advising people who have been accused of workplace bullying (an often forgotten group that needs support); and
- managing the allocation of independent investigators (who are appropriately trained and vetted) to organisations as necessary.[18]

5.14   The complexities of the problem of workplace bullying and the labyrinth of regulation of WHS, anti-discrimination, workers compensation and criminal law over nine Australian jurisdictions has led to heightened

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14   DM, *Submission 91*, p. 2; Australian Council of Trade Unions (ACTU), *Submission 63*, p. 24; Victorian Trades Hall Council, *Submission 139*, p. 12; RCT Solicitors, *Submission 106*, p. 9; NNWWC, *Submission 86*, p. 7; Dr Caponecchia, *Submission 81*, p. 6.

15   H Ewart, 'Lawyers question workplace bullying protections', *7.30,* Australian Broadcasting Corporation, 10 September 2012; and H Ewart, 'Government fears extent of workplace bullying', *7.30*, Australian Broadcasting Corporation, 25 September 2012.

16   Chamber of Commerce and Industry Queensland (CCIQ), *Submission 67*, p. 3.

17   CCIQ, *Submission 67*, p. 3.

18   Dr Caponecchia, *Submission 81*, p. 7.

confusion and a 'haphazard' approach to community education and awareness of the risk of workplace bullying.[19]

5.15   Both employer and worker organisations called for improved coordination of agencies and information. Unions NSW suggested that there is currently 'an opportunity to coordinate all aspects of government in all jurisdictions'.[20]

5.16   CCIQ was strongly supportive of increasing the awareness and accessibility of current government and industry initiatives aimed at reducing workplace bullying:

> Work is required to reduce the high level of confusion that currently exists within the community about which government agencies are responsible for dealing with workplace bullying. There is a need for better coordination between agencies to reduce the risk of complaints being cross-referred and to provide better services and support to the victims and businesses.[21]

A national service: advice, assistance and resolution

5.17   Calls for better coordination focused on the need for a national service that would operate as a national depository of expert advice and practical supporting materials for both employers and workers.

5.18   Employer organisations argued that there is a need for better assistance and advice to be available for all parties when navigating these challenges.[22] For example, Master Grocers Australia stated:

> there is still much more that needs to be done to ensure that all workplaces are provided with the tools to ensure that bullying is not tolerated in any Australian workplaces.[23]

5.19   An individual commented:

> there have been nine different places that we have rung. There should be a one-stop shop. It is really hard when you are in there

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19   Unions NSW, *Submission 61*, p. 17.
20   Unions NSW, *Submission 61*, p. 28.
21   Mr Behrens, CCIQ, *Committee Hansard*, Brisbane, 18 July 2012, p. 14.
22   Mr Behrens, CCIQ, *Committee Hansard*, Brisbane, 18 July 2012, p. 14.
23   Master Grocers Australia, *Submission 115*, p. 3.

> fighting, trying to find a solution and hearing, 'No, try this one', 'No, try this one', 'No, try this one'.[24]

5.20   Underscoring these comments appears to be a desire for a single 'one-stop shop' that provides not only practical advice that would be specific to a situation, but also advice on the different legal frameworks (WHS, anti-discrimination etc), along with the specific avenues that are peculiar to the relevant jurisdiction. Although harmonisation is removing the need for the latter, the rate at which harmonisation is progressing would indicate that there is still a residual need for specific advice for specific jurisdictions.

5.21   Unions NSW proposed a coordinated service, a 'one-stop shop' or central depository of materials providing advice, assistance and strategies to respond could be delivered through a telephone service[25] and the AMF advocated for online service delivery.[26]

5.22   Headspace contended that 'coordination' should extend beyond traditional state/territory and federal jurisdictions to include other stakeholders:

> Employers require ongoing guidance and support to assist employees who have experienced workplace bullying. Employers need to know where they can turn for advice and assistance in supporting an employee. Fostering links between workplaces and mental health and other community services will assist referrals and provide integrated, supportive care to workers.[27]

Provision of practical advice

Specific advice for employers

5.23   The need for practical assistance for employers was commented on by the South Australian Office of the Employee Ombudsman:

> ... there is still a profound failure to grasp practical interventions for dealing with [workplace bullying, and] education and support services should focus on capacity building on how to prevent and respond to workplace bullying.[28]

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24   KJ, *Committee Hansard*, Closed Session.
25   Unions NSW, *Submission 61*, p. 17.
26   AMF, *Submission 125*, p. 20.
27   headspace, *Submission 56*, p. 8.
28   Office of the Employee Ombudsman, *Submission 79*, p. 3.

5.24   Similarly, Dr Angela Martin, from the University of Tasmania stated:

> Many managers might be quite sympathetic to the idea of
> 'Workplace bullying is bad and I do not want to have that in my
> workplace' but they do not have the tools, training and support
> systems to help them to achieve that.[29]

5.25   The Chamber of Commerce Northern Territory and the Northern Territory
Indigenous Business Network (NTIBN) called for a 'toolkit' for
employers.[30] Ms Toni Ah-Sam, Chair of the NTIBN suggested:

> whether you are a small sole trader, in a partnership arrangement
> or if you are running an non-government organisation, you still
> need some basic toolkits. Giving them something in a toolkit that
> they would be able to access free through some sort of information
> package, I envisage that these businesses would be able to click on
> a link saying 'How to Deal With Bullying in the Workplace—these
> are some things that you as an employer would need to
> consider'.[31]

5.26   Dr Caponecchia also advocated for employers to be provided with
additional, practical support through the development and evaluation of
materials to complement the final *Code of Practice: Managing the Risk of
Workplace Bullying*.[32] Dr Caponecchia contended that the following
materials could complement the final Code:

■ valid and reliable risk assessment tools;

■ developing best practice strategies, and contextualised case studies, for
dealing with bullying across a range of businesses and sectors; and

■ providing advice for employers on 'early triage systems' and what is
the best kind of intervention for an array of situations. [33]

5.27   To provide small and medium enterprises with greater assistance, the
NTIBN supported the development of a 'checklist', developed specifically
for smaller employers.[34] However, the Chamber of Commerce Northern
Territory cautioned:

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29   Dr Angela Martin, Senior Lecturer, Management, University of Tasmania, *Committee Hansard*,
Melbourne, 11 July 2012, p. 47.

30   Mr Maloney, CCNT, *Committee Hansard*, Darwin, 17 July 2012, p. 17; Ms Ah-Sam, NTIBN,
Committee Hansard, Darwin, 17 July 2012, p. 17.

31   Ms Ah-Sam, NTIBN, *Committee Hansard*, Darwin, 17 July 2012, p. 17.

32   Dr Caponecchia, *Submission 81.1*, p. 1.

33   Dr Caponecchia, *Submission 81.1*, pp. 1-2.

34   Ms Ah-Sam, NTIBN, *Committee Hansard*, Darwin, 17 July 2012, p. 17.

> We have to be careful about someone developing a checklist that becomes the panacea all of a sudden, because it is not. It is only a bit of the tool kit. There has to be a lot more in there than just that. But at least, for those organisations that have no policies or procedures, it gives [them] a starting point.[35]

5.28   The provision of advice must not only assist employers through the response to workplace bullying once it is present in an organisation, but show how the employer can, and should, take proactive measures to respond to the risk of workplace bullying.

5.29   In this regard, the AMF argued that its successful eSmart program[36] can be applied successfully to workplaces:

> [eSmart] provides a method for creating a cultural change in the workplace through social and behavioural change campaigns and provides a mechanism to deliver interventions. Because an eSmart workplace is required to record and monitor its progress in implementing bullying policies and best practice strategies to reduce the incidence and harms caused by workplace bullying, eSmart offers a method for tracking and reporting the effects of interventions within the workplace.[37]

5.30   Using the eSmart program as a template, the Foundation advocated for the following advice and support services be developed for employers to implement in their workplaces:

- a framework to help workplaces navigate the myriad of information;

- a website where workplaces can access strategies for implementing good workplace policies, procedures and cultures, including sign-posted links to the best-available resources and tools;

- an online tool where workplaces can track and report on their progress;

- an ongoing 'help desk' service that is available to all workplaces; and

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35   Mr Maloney, CCNT, *Committee Hansard*, Darwin, 17 July 2012, p. 17.

36   "eSmart is a world-first, holistic approach to reducing bullying and cyberbullying within the Australian community and is informed by other successful behaviour change campaigns such as SunSmart and Quit which have an integrated, multi-layered, sustainable and systemic approach to social change. These interventions create the environments in which it is easy and normal for individuals to make smart/healthy/self-protective choices. ... eSmart is a web-based system. Each of the six 'pieces of the pie' or domains has within it a series of 'attributes' containing key questions and activities that a school must complete in order to achieve eSmart 'status', in the same way as SunSmart status is achieved and maintained". (AMF, *Submission 125*, p. 17)

37   AMF, *Submission 125*, p. 20.

- a training session (virtual or otherwise) for every workplace, supported by online forums and webinars.[38]

5.31   For Australia to tackle the problem of bullying in the workplace, employers must be fully aware of their responsibilities in health and safety risks and in psychosocial hazards. This requires equipping employers with the relevant knowledge to meet their workplace health and safety obligations and to be able to address issues arising from unacceptable behaviour.

Tailored information and advice for workers

5.32   Evidence received throughout the inquiry indicated that tailored information and advice should be developed for workers. The provision of such services, it was argued, must be tailored to support targets, those accused of bullying and the workforce as a whole.

Advice for targets

5.33   There is a 'chronic' need to provide support services to individual workers who experience workplace bullying. Dr Caponecchia detailed the current lack of support:

> Support services for people who feel they have been bullied are chronically unavailable. The issues include that:
>
> - They cannot always talk to someone in their organisation due to confidentiality issues;
> - their doctor may not have experience in the area;
> - their union may or may not be helpful, they may or may not be a member;
> - they cannot always afford a psychologist (and do not always need one, if they only need advice on options);
> - some agencies simply refer people to their health and safety regulators because bullying per se is not directly in their scope of activity; and
> - according to the reports of targets, safety regulators can appear to be dismissive.
>
> In short, there is often nowhere for people to go to get advice and support. This is likely to exacerbate any negative effects that they are already experiencing.[39]

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38   AMF, *Submission 125*, p. 20.
39   Dr Caponecchia, *Submission 81*, p. 6.

5.34   Some of these issues may go beyond the services that an advice and assistance service could provide. However, coordinating the service-providers and developing a seamless referral process would be an avenue where aggrieved or injured workers may be better supported. The case for such a referral service was made by the AMF as quoted above.[40]

5.35   At the very least, workers should be able to access consistent and clear guidance on how, and to whom, they should report bullying within their workplaces.[41] Dr Caponecchia advocated that workers should be advised:

> about when and how to report workplace bullying, giving people strict criteria and guidelines to follow.[42]

5.36   Offering greater support to workers to report was also supported by Mr Mark McCabe, Commissioner of Worksafe ACT:

> We detect a fair bit of fear about what the consequences will be for their employment and their social interaction with others. [W]e need some kind of better support for people who feel they are victims to enable them to understand what protections there are and to encourage them to come forward.[43]

5.37   Mr Jarrod Michael Moran, Senior WHS and Workers Compensation Officer at the Australian Council of Trade Unions (ACTU) agreed:

> Giving someone an ability in a workplace to stand up and say, 'There is a health and safety issue here,' is paramount to the work that we do. Workers knowing what they are exposed to, workers knowing how to deal with what they are exposed to, is paramount. [If] someone is being victimised in the workplace they need some confidence to be able to speak up, for fear of further victimisation, of censure, of losing their position and those kinds of things. These are all real things that are happening in the modern workforce.[44]

5.38   Beyond the initial support of workers to report instances of bullying, it became apparent throughout the inquiry that the array of bullying situations in workplaces requires providing a spectrum of options. Unions

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40   headspace, *Submission 56*, p. 8.
41   Dr Caponecchia, *Submission 81.1*, p 1.
42   Dr Caponecchia, *Submission 81*, p 7.
43   Mr Mark McCabe, Work Safety Commissioner, Worksafe ACT, *Committee Hansard*, Canberra, 16 August 2012, p. 1.
44   Mr Jarrod Michael Moran, Senior WHS and Workers Compensation Officer, Australian Council of Trade Unions (ACTU), *Committee Hansard*, Melbourne, 11 July 2012, p. 17.

NSW contended that an advice service would 'provide consistent and clear guidance to workers on addressing the behaviour when it occurs'.[45]

5.39   Providing options that can be tailored to suit the needs of the parties will not only encourage more proactive resolution of these situations, but may lead to more agreeable outcomes. This may include using the early intervention strategies or mediation methods in the preliminary stages of inappropriate behaviour discussed in chapter 3.

5.40   Importantly, the spectrum of options and advice provided must extend to all courses of action, including empowering workers to leave the organisation should they be in a position to do so. Sally Jetson and Associates commented on the need for the advice to cover the complete spectrum including discussing the option of leaving the workplace:

> My key message is to the targets of bullying: give your employer one chance to act, to resolve and address your concerns and ensure your safety and wellbeing. If that fails, then get out. If your employer has not got the guts to stand up for you, do not stay and fight because you will not walk away without huge personal costs.[46]

5.41   In presenting this evidence, the Committee would not wish to convey a flippant message here. Poor workplace behaviour, and an employer's reticence to improve that culture and system of work, should not force a worker to leave their job. Rather, this discussion reflects the many individuals who appeared before the Committee or who submitted to the inquiry who, with the benefit of hindsight, wished they had left the organisation before they sustained significant psychological injuries.

5.42   However, leaving an organisation is not an option for many workers. Davidson Trahaire Corpsych acknowledged how many workers with whom they have worked feel 'trapped' in a workplace where they are bullied. Difficult personal financial circumstances, coupled with limited options for other employment often mean that leaving the organisation is not an option for workers.[47]

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45   Unions NSW, *Submission 61*, p. 5.

46   Ms Sally Jetson, Consulting Director, Sally Jetson and Associates, *Committee Hansard*, Perth, 8 August 2012, p. 28.

47   Ms Michele Grow, Chief Executive Director, DTC, *Committee Hansard*, Canberra, 13 September 2012, p. 3.

Providing advice to those accused of bullying

5.43   An often overlooked challenge in discussions about workplace bullying is the effect that an accusation of bullying can have on a worker who is the alleged perpetrator of that behaviour. Importantly, an unfounded claim of bullying can amount to bullying itself.

5.44   Dr Caponecchia recommended that better advice be available to those who have been accused of bullying.[48] Dr Caponecchia stated:

> It would be possible to have that [national] body do a whole bunch of important things—not just advising targets but also, for example, advising people who have been accused of using bullying behaviours, because they are a group that are often forgotten about. They can be really badly stigmatised.[49]

5.45   The Committee received minimal evidence on how and what advice should be provided to workers who have been accused of bullying. Importantly, the draft *Code of Practice: Managing the Risk of Workplace Bullying* (draft Code) does not provide guidance to workers who have been accused of bullying.

Information and advice for the whole workforce

5.46   A recurring theme of the inquiry was the responsibilities of all workers to each other. Beyond the legal responsibilities all workers carry to each other, all workers contribute to the culture of an organisation. As discussed in chapter 4, workplace culture has enormous potential to reduce the prevalence of bullying at work.

5.47   Acknowledging this dynamic, stakeholders discussed the role of bystanders in intervening and responding to instances of bullying in the workplace. The Australian Human Rights Commission (AHRC) advocated the important role that bystanders can play in preventing and responding to bullying in the workplace and encouraging strategies that create the confidence and safety for bystanders to take action.[50] The AHRC commented that bystanders' action:

> Include[s] taking proactive action by identifying and stopping a situation before it happens, intervening during an incident, and

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48   Dr Caponecchia, *Submission 81.1*, p. 1.
49   Dr Caponecchia, *Committee Hansard*, Canberra, 23 August 2012, p. 6.
50   Australian Human Rights Commission (AHRC), *Submission 121*, p. 3.

> learning how to effectively and safely take action when confronted
> with behaviours that support violence, harassment and bullying.[51]

5.48   Dr Sara Branch from Griffith University also discussed how education of
        the whole workplace should be a focus and the benefits that will result:

> One of the areas where a lot of leverage could be had is with
> encouraging bystanders not to be silent and with skilling
> bystanders—and that means everybody—to feel empowered
> enough to step up and say, 'Hey, what you're doing there is not
> right.[52]

5.49   The personal accounts from individuals who experienced bullying at work
        indicated that bystanders, though wanting to speak up against the
        inappropriate behaviour, did not have the tools to do so. For example, the
        following statement was made by an individual worker, working as a
        teacher, who participated in the Committee's individual impact statement
        session:

> Staff members—people I considered friends—actually told me in
> private not to take it personally, but they could not sit with me in
> school, or be seen talking to me on their own, because they may be
> the next person she would choose to bully. ... I can still see a
> colleague standing behind the principal her eyes wide, mouthing,
> 'I'm sorry,' as she walked away. Once the principal had finished
> she watched as I headed to my classroom trying to hold it
> together. Staff members passed and whispered, 'Keep walking;
> she's watching.[53]

5.50   The dynamics reported in this individual impact statement are likely to
        reflect the day-to-day experiences of many workers in Australia. The
        capacity therefore of providing advice to the workforce as a whole is
        particularly evident.

Committee comment

5.51   The evidence received throughout this inquiry pinpoints the need to
        establish a single, national service to provide advice to employers and
        workers alike on how to prevent, and respond to workplace bullying.
        Support of this kind should also be available to those officers who have

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51   AHRC, *Submission 121*, p. 7.

52   Dr Sara Branch, Research Fellow, Key Centre for Ethics, Law, Justice and Governance, Griffith
     University, *Committee Hansard*, Brisbane, 18 July 2012, p. 12.

53   SH, *Committee Hansard*, Closed Session.

prescribed duties under the WHS Acts including health and safety representatives.

5.52   The Committee believes that the national service should draw upon the existing guidance and assistance materials developed by the regulators across the relevant areas of WHS law, anti-discrimination law, industrial relations law, workers compensation law and criminal laws. The collation of the vast, yet dispersed, information is integral for Australia to overcome workplace bullying.

5.53   Access to practical, implementable advice, assistance and resolution support must be available through online and telephone platforms. Online services should be quick and easy to access, with a collection of tailored information available for both workers and employers.

5.54   More specifically, employers should be able to access a variety of services which assist them to tackle workplace bullying, including:

- clear advice on their legal obligations with respect to workplace bullying;

- a toolkit that provides reliable risk assessment tools to assist employers in their initial risk management assessments of the risks of workplace bullying;

- assistance packages to develop policies and procedures, with the necessary flexibility to accommodate the specifics of the industry, size and characteristics of the employer;

- a sliding-scale diagnostic tool to assist employers calibrate their response to possible bullying behaviour in accordance with the 'triage' system discussed throughout this report;

- specialised best practice strategies and case studies for their specific industry and workforce size; and

- downloadable training packages that promote good workplace behaviours which can be tailored to specific industries.

5.55   In addition, advice should also be provided to employers who are seeking to reform their workplace culture. Further, assistance should be available to support employers who are seeking to assist workers who engaged in inappropriate behaviour. This might be in the form of specific strategies, or the development of training materials.

5.56   Support should also be made available to workers. This includes:

- early intervention strategies which they might be employed to respond to bullying behaviours directed at them;

- how and when to report bullying;

- tools which may be of assistance to workers personally, when dealing with the effects of bullying at work;

- clear advice about the objectives and content of areas of relevant regulation including WHS, industrial relations, workers compensation, anti-discrimination and criminal law;

- a coordinated referral service to ongoing support organisations; and

- specific advice to those workers who have been accused of bullying others in the workplace;

- information about the obligation of all workers to ensure their actions do not adversely affect the health and safety of their colleagues; and

- information for observers or bystanders of bullying about how to support the targeted worker, and how they might progress their concerns with the employer.

5.57   Further, with prescribed duties under the WHS Acts, health and safety representatives are often the first point of call for workers experiencing bullying by a colleague, manager or third party. Information should also be made available to health and safety representatives to assist them to support and advise workers who are experiencing bullying and to progress these issues with the employer.

5.58   The Committee did not receive evidence on where such a service should be located. It might be best situated within an existing government agency or department such as Safe Work Australia, the Fair Work Ombudsman or the Department of Education, Employment and Workplace Relations. It may also be considered appropriate for the service to be an independent body that is funded by the Commonwealth. Consequently, the Committee does not have a clear recommendation as to where the new national service may sit.

Recommendation 11

5.59   **The Committee recommends that the Commonwealth Government, in consultation with stakeholders, establish a new national service to provide advice, assistance and resolution services to employers and workers. Its activities should include:**

- **a hotline service to provide advice to employers and workers alike on a variety of topics including:**
    - ⇒ **practical, preventative and proactive steps that employers can take to reduce the risk of workplace bullying;**
    - ⇒ **empowering workers to respond early to the problem behaviour they encounter;**
    - ⇒ **provide advice to workers who have been accused of bullying others in their workplace;**
- **providing downloadable training packages for employers to tailor to their industry and size;**
- **a proactive, onsite and ongoing education service targeting specific industries where bullying is known to be particularly problematic;**
- **resolution assistance services including information about how and when to engage mediation sessions between the workers concerned; and**
- **collating information when providing the above services, and contributing to improving the national evidence base in Australia on workplace bullying.**

Recommendation 12

5.60   **The Committee recommends that the Commonwealth Government, through Safe Work Australia, develop an accredited training program for managers and health and safety representatives to equip them to deal with workplace bullying matters.**

Resolution assistance and mediation services

5.61   A key focus of the evidence has been on developing improved resolution
        options for parties. Broadly, the ACTU commented on the need for some
        form of independent resolution assistance service prior to the breakdown
        of employment relationships:

> Sometimes those [relationships] are going to break down.
> Sometimes they are not going to work.[W]e think there needs to be
> some step between a breakdown in the workplace and the more
> formal aspects of how you resolve that through a court system. ...
> There needs to be something in the middle. Conciliation is perhaps
> one model, some mediation or some recommendation by an
> inspector that something else can happen are other things that
> could be used in this space.[54]

5.62   Where workplace bullying arises from a workplace conflict, informal
        mediation and/or conciliation sessions may be a useful tool to employers
        and managers to respond to that behaviour.

5.63   Yet mediation is not without challenges. The challenges of mediation were
        discussed in chapter 3. In some circumstances mediation will be an
        appropriate option for the resolution of early bullying. However, the
        power imbalance that emerges through long-term bullying will reduce the
        capacity of traditional mediation to be an effective tool.

5.64   If used early in the process, and employers and/or managers are proactive
        in identifying and responding to poor workplace behaviour, mediation
        services may be useful. Yet to be successful, it was commented that
        mediators should be independent of the organisation.

5.65   For example, the Employment Law Centre of Western Australia (Inc)
        (ELC) submitted that internal processes may not be suitable in some cases:

> A conciliating function by an external party would be valuable to
> an aggrieved employee. ELC is often contacted by employees who
> feel they are being bullied by superiors who "have the ear" of
> management (or who constitute the management itself) and as
> such feel that an internal mediation process will not assist.[55]

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54   Mr Moran, ACTU, *Committee Hansard*, Melbourne, 11 July 2012, p. 18.
55   Employment Law Centre of Western Australia (Inc) (ELC), *Submission 269*, p. 5.

5.66   The ELC argued that it would therefore be a positive move to empower a tribunal with the authority to conciliate and resolve cases of alleged workplace bullying.[56]

5.67   Similarly, Ms Meredith Hammat, President of UnionsWA contended:

> I think one of the processes that would help with resolution is having some form of truly independent mediator or third party that can assist in the resolution of issues. ... A truly independent mechanism that would allow some kind of more informal resolution options would go a long way. [57]

5.68   Dr Caponecchia also reflected on mediation. He noted that its use in regard to workplace bullying is not always appropriate or positive:

> I feel I should mention that in the international literature, the notion of mediation is highly controversial. ... Mediation is more focused on not whether it happened or not but, 'Let's get back to work', which may mean transferring someone. It may mean an agreement that sees them working together again, which might be a little bit risky. It might mean someone leaves. The outcomes are not always great. I think people go to mediation and organisations use mediation too soon, and almost as a bit of a default. That is partly because the mindset that we often have with this problem is more a human resources and an industrial-relations mindset than a risk-and-safety mindset. [58]

5.69   Ms Moira Rayner from the Law Institute of Victoria did not support the use of mediation:

> Someone who is a bully does not listen to mediation. They need to be pulled up in front of somebody who has the power to say that this is or is not bullying and to be told, 'This falls within the definition,' so they cannot shrug it off and say, 'That's just the way I am,' or, 'She's supersensitive,' or, 'They are hypersensitive and fragile and this is the way things go in our workplace.'[59]

5.70   However, Dr Moira Jenkins, a clinical psychologist and consultant who works with organisations to prevent and manage workplace bullying, supported the use of mediation as an early intervention tool:

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56   ELC, *Submission 269*, p. 5.

57   Ms Hammat, UnionsWA, *Committee Hansard*, Perth, 8 August 2012, p. 16.

58   Dr Caponecchia, *Committee Hansard*, Canberra, 23 August 2012, p. 6.

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

> If we are looking at bullying from an occupational health and safety perspective, there are recommendations in relation to early intervention, which I think is very important, and to mediation being used as an early intervention. I do not think mediation is appropriate later on when you have very damaged people, but as an early intervention I think it is great. However, if mediation is being used, there needs to be a system where it is not kept confidential and just between the two parties; there needs to be a risk management perspective of identifying what organisational issues contributed to the problem occurring.[60]

5.71   Mediation presents an opportunity for longer-term resolution of issues, including providing feedback on workplace culture and systems of work both of which contribute to the creation of the initial risk of bullying at work. Mediation as an early intervention tool was supported by several individual submitters to the inquiry. For example, the following comment was made by an individual worker who had been bullied at their workplace:

> There should be mandatory mediation at the very outset of any complaints if this is not thought to be advisable then there should be mandatory counselling and mentoring for not just the bullied but the bully.[61]

5.72   Mediation cannot be the panacea to workplace bullying, rather, it is an effective early intervention tool and needs to be applied on a case-by-case basis. Although the evidence from stakeholders on the use of mediation was not particularly conclusive, the capacity of alternative dispute resolution methods as a tool for early intervention did appear to be supported by the majority of participants in the inquiry.

Committee comment

5.73   Throughout the inquiry, stakeholders raised the possibility of a new independent mediation service which could be voluntarily used in early to respond to instances of poor workplace behaviour. It is unlikely, and would be inappropriate, for mediation to be used in cases where bullying behaviours had occurred over a protracted period. However, mediation can form part of an early intervention model where poor workplace behaviour has been detected.

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60   Dr Moira Fay Jenkins, *Committee Hansard*, Adelaide, 7 August 2012, p. 28.

61   LP, *Submission 21*, p. 2.

5.74   Resolution achieved through mediation can also feed into the workplace culture. This can be achieved by ensuring that the employer is a party to the mediation and takes responsibility for their role in managing WHS.

5.75   The Committee is aware that the Victorian Government offered mediation services to employers and workers through its WHS regulator, WorkSafe Victoria. Though the program was not utilised during its six-month trial, the Committee believes that lessons can be learnt from the Victorian experience. Potentially, the success of the program could have been affected by the service being located in the office of the regulator itself.

5.76   The Committee recognises that more work is required to progress the idea into a practical service. However, the evidence received throughout the inquiry indicated that workers and employers alike wish to be better equipped to proactively overcome instances of conflict or poor behaviour before the behaviour descends into bullying.

Recommendation 13

5.77   **The Committee recommends that the Minister for Employment and Workplace Relations develop a trial mediation service for resolution of conflicts where there is a risk of bullying arising out of poor workplace behaviour, prioritising small and medium enterprises, and where employers and workers jointly request the use of the service in an effort to resolve the matter.**

A single entry point to regulators

5.78   It was discussed earlier in this chapter the confusion that results from the labyrinth of regulation that workers and employers face when engaging with government agencies about bullying experiences at work. For example, Mr Michael Borowick, the Assistant Secretary of the ACTU, contended that the three dominant areas of regulation, WHS, industrial relations and criminal law, need to be coordinated.[62]

5.79   The call for improved coordination was also made by industry groups. CCIQ also advocated for a single entry point where cross-agency protocols were developed to streamline the referral process:[63]

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62   Mr Borowick, ACTU, *Committee Hansard*, Melbourne, 11 July 2012, p. 19.
63   CCIQ, *Submission 67*, p. 3.

> A single point of entry or cross-agency protocols are required to streamline the referral process and allow for the collection and disbursal of accurate and meaningful date in the area of workplace bullying.[64]

5.80 A single point of entry, or a 'gateway' to regulators, would allow complainants to access assistance through a single advice service by developing greater cross-agency protocols to improve referrals across state/federal government agencies.

5.81 The call for a single point of entry to relevant agencies was endorsed by some state WHS regulators. For example, the Acting Deputy Director of the Office of Fair and Safe Work Queensland, Dr Simon Blackwood contended:

> The plethora of agencies that look like they might deal with workplace bullying means that there are a lot of people ringing into various systems and being referred around the place, because: 'No, it may not be exactly a health and safety issue; it looks more like an antidiscrimination issue or something else.'[65]

> Bullying will get addressed by a number of agencies and laws, and therefore there is a need for better coordination between agencies. The fact is that some complainants will obviously be looking for redress through different tribunals and information sources, and they will at the same time get bounced around by the different agencies within government at a federal and state level. We believe that consideration should be given to allowing complainants to access assistance through a single entry point or at least developing greater cross-agency protocols to improve referrals across government. That is certainly been an issue that we have found comes up. And, as we said, there is a need to manage expectations about responses to bullying.[66]

5.82 WorkSafe ACT also endorsed the idea of a single point of entry, with the following caveat made by Mr McCabe:

> It is an excellent idea. Sometimes people do not just get bounced around—they will be pursuing it down different avenues at the same time. It is not something we can directly control; we have to

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64 Mr Behrens, CCIQ, *Committee Hansard*, Brisbane, 18 July 2012, p. 14.

65 Dr Simon Blackwood, Acting Deputy Director, Office of Fair and Safe Work Queensland, *Committee Hansard,* Closed Session, Canberra, 18 September 2012, p. 12.

66 Dr Blackwood, Office of Fair and Safe Work Queensland, *Committee Hansard,* Closed Session, Canberra, 18 September 2012, p. 4.

> negotiate with those other bodies for some mechanism for a single entry point—but that does not mean it is not doable.

> One of the constraints would be the legislative obligations we are all under once the issue is raised with us, which they would face as well. But I still think it is an excellent idea.[67]

5.83   WorkSafe WA also supported the single point of entry:

> Our experience has shown that often, by the time people come here to WorkSafe, they have been to a number of other agencies and they have been bounced around. The Western Australian WorkSafe regulator also is a party to that bouncing process, so we do not have clean hands in that sense.[68]

Clarifying the public's expectation of regulators' powers and responsibilities

5.84   Developing a single point of entry would also be a vehicle to clarify the public's expectation of regulators' powers and responsibilities. The ACTU commented:

> Clarity is needed around the roles of [regulators]. That is a very necessary path in addressing those issues.[69]

5.85   Dr Caponecchia similarly recommended that efforts need to be made to clarify the roles of various agencies (WHS regulators, discrimination commissions, industrial relations tribunals and ombudsmen) with a goal of clarifying end-user's expectations of what these agencies have responsibility for, and what outcomes they are empowered to deliver.[70] Dr Caponecchia contended:

> There is a need to educate people on what exactly the role of the safety regulators is, because there seems to be a gap between what workers might expect and what the regulators can do and should do. Indeed it may be that the exact role of the regulators needs to be reframed and better communicated.[71]

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67   Mr McCabe, WorkSafe ACT, *Committee Hansard,* Closed Session, Canberra, 18 September 2012, p. 12.

68   Mr Ian Munns, Director, Policy and Education, WorkSafe WA Division, Department of Commerce *Committee Hansard,* Closed Session, Canberra, 18 September 2012, p. 12.

69   Mr Finian Scallan, WHS and Workers Compensation Project Officer, ACTU, *Committee Hansard*, Melbourne, 11 July 2012, p. 18.

70   Dr Caponecchia, *Submission 81.1*, p. 1.

71   Dr Caponecchia, *Submission 81*, p. 7.

> The expectations on the safety regulators, to be fair, are not always in line with what the regulators' role is.[72]

Committee comment

5.86   Repeatedly, the Committee heard of stakeholders' frustrations and confusion about the roles and responsibilities of the numerous regulators. This frustration was expressed by employer organisations and unions alike. Support for a single entry point or a 'gateway' to regulators was not only supported by employer organisations, workers and their industrial representatives but also a number of the regulators responsible for enforcing laws around workplace bullying.

5.87   Underscoring these calls for a single entry point appears to be a need for better cross-jurisdictional advice and coordination amongst regulators throughout the jurisdictions and between the different areas of regulation.

5.88   Further, the evidence received throughout the inquiry pointed to a disconnect between the expectations and experiences of stakeholders interaction with regulators. Many participants, including workers, unions, academics, and practicing lawyers, identified a 'gap' in current regulation. Whilst other participants called for current regulation to be 'streamlined' so that duplicated regulation could be minimised.

5.89   This situation highlights the need for clarity in the community about the purpose and objective of the different aspects of regulation. This report has attempted to provide some clarity of this kind in chapter 2.

5.90   When members of the business community are perceiving duplication, and workers and the industrial and legal representatives are observing gaps, it would appear that the purpose of these regulatory bodies is not fully appreciated. A lack of appreciation of what regulator does what, can lead some to have higher expectations than what these regulators are currently empowered to deliver.

5.91   The Committee therefore has identified an urgent need in the community for greater clarity on the roles of the respective regulators.

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

Recommendation 14

5.92   **The Committee recommends the Commonwealth Government work with its state and territory counterparts to develop better cross-agency protocols in respect of workplace bullying, to allow for better information-sharing, cross-jurisdictional advice and complaint referrals across the following areas of regulation:**

- **work health and safety laws;**
- **industrial relations laws;**
- **antidiscrimination laws**
- **workers compensation laws; and**
- **relevant criminal laws.**

Raising awareness and promoting education of workplace bullying

5.93   A national conversation about workplace bullying has begun in Australia. The Committee's inquiry feeds into this discussion, and it is hoped that as the discussion progresses, more Australian will feel comfortable not only to identify inappropriate behaviour, but to speak up and report.

5.94   Importantly, there has been an increasing awareness of the hazard of workplace bullying and how organisations can be proactive in mitigating those risks. The Northern Territory Working Women's Centre noted:

> It is fair to say that there has been some awareness raising on this issue in the last few years, and it has been really good to see a number of organisations introduce their own workplace policies and their own community education type programs. Unfortunately that is not enough.[73]

5.95   The NTIBN commented that awareness and advocacy campaigns should be developed in collaboration with stakeholders such as employer and industry associations. Ms Ah-Sam elaborated:

> And, if people are made very much aware of it, they cannot plead ignorance. ... They cannot plead ignorance if we have promoted

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73   Ms Rachael Uebergang, Co-coordinator, Northern Territory Working Women's Centre, *Committee Hansard*, Darwin, 17 July 2012, p. 2.

> awareness and have a campaign going [and] additional information [is available]. There are so many different stakeholders involved in this that you cannot develop such an educational or preventative campaign without factoring in all of those things. Why reinvent the wheel? [74]

5.96   However, the AMF cautioned that education campaigns are not necessarily a panacea:

> It is often the first response of organisations to create a campaign to disseminate views. [But] 'Campaigns' on their own have little long-term effect on behavioural change. They do play a role as part of a whole of community cultural change strategy. A multi-faceted approach consisting of awareness-raising, education, support services and interventions (amongst other things), which will need to be delivered by different stakeholders at many different levels to address the issue of bullying, including workplace bullying across our society. [75]

5.97   In isolation, support services and awareness campaigns cannot reduce workplace bullying in an ongoing and holistic way. Rather, these activities must be part of a broader approach to address the issue, involving the co-ordination of a range of different activities and interventions at different levels. [76]

Promoting the final *Code of Practice*

5.98   Once finalised, Safe Work Australia and the state/territory regulators will seek to promote the Code of Practice. These regulators have developed, adopted and promoted codes of practice on a variety of WHS topics including asbestos, hazardous manual tasks, working in confined spaces and construction work. Notably, most of these codes of practice are limited to certain industries – making them easier to promote and achieve greater awareness.

5.99   Yet a key challenge with promoting the final *Code of Practice: Managing the Risks of Workplace Bullying* will be the universality and complexity of the problem. It was clear throughout all evidence received by the Committee, that the problem of workplace bullying is not limited to certain industries or workers who attain senior position in an organisation.

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74   Ms Ah-Sam, NTIBN, *Committee Hansard*, Darwin, 17 July 2012, p. 18.

75   AMF, *Submission 125*, pp. 12-13.

76   AMF, *Submission 125*, p. 14.

5.100 Bullying at work is a complex phenomenon affecting all industries, workplaces of different sizes, and affects workers in different ways and to varying degrees.

5.101 Communicating the obligations and guidance that are established in the Code will be a challenge for the state/territory regulators and Safe Work Australia. Starting a conversation with an audience who is unaware of a risk can be a complicated task. In contrast, where an audience is aware of a problem and seeking guidance of how to manage or overcome that risk, is comparatively easier as they are more open to receiving, and will often seek the information out independently.

5.102 Consequently, the CCIQ advocated for public information sessions on the content of the Code, and by so doing, promoting the benefits of creating sound workplace cultures.[77]

Committee comment

5.103 One of the key strengths of the draft Code is its practical and implementable guidance specific to both employers and workers. The Code discusses bullying at the workplace level making it easier to comprehend such a challenging issue.

5.104 The Committee believes that this method of communication should be used by the new national service body when it engages in awareness and education initiatives. Its education initiatives must be proactive, and complement its reactive advice service. Analysing its advice-service statistics will allow the service to be proactive in its education strategies for the industries where the statistics reveal there are acute problems. The national service should also seek to work collaboratively with the multitude of regulators as well as state and territory governments so that awareness and education initiatives are consolidated, targeted and effective.

5.105 Throughout the inquiry, the Committee became aware of the workplace bullying awareness and education initiatives run by various state-based regulators. A notable example, is that conducted by the Victorian Department of Justice in collaboration with Mr Damian Panlock.

5.106 The Committee would like to formally recognise the efforts of Brodie Panlock's parents, Damian and Rae Panlock, and their ongoing endeavours to raise awareness about workplace bullying in Australia.

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77 CCIQ, *Submission 67*, p. 3.

Recognising good culture: a national accreditation system

5.107   Culture can be improved through advice and awareness campaigns discussed elsewhere in this chapter. However, participants in the inquiry further advised that a system of 'accreditation' be developed to encourage and recognise employers who achieve best practice in promoting the psychosocial health of workers and maintain good workplace culture.

5.108   Employers' achievements in protecting and promoting the health and safety of their workers are recognised through the annual Safe Work Australia Awards. The state and territory regulators also present employers with awards in health and safety each year.

5.109   However, there is no ongoing recognition of employers who maintain good working cultures and exercise good practice with regards to psychosocial health. Workplace bullying expert, Dr Caponecchia recommended that a list of organisations be developed to recognise these good practices.[78] Dr Caponecchia expanded:

> That would be a great place for us to go, if we actually started rewarding people for doing this well. My colleagues and I talked about that several years ago as one of the places we need to take this area. Wouldn't it be great if one day there was an accreditation system or an awards system that said, 'This company, this company and this company have been evaluated as doing this really well.' It is almost like the idea that there are lists of companies that do corporate social responsibility well. There is an index every year, I think. ... That was the kind of pie-in-the-sky idea that we had. We do have [work health and] safety awards, but they are for all of safety.[79]

5.110   Similar recommendations were made by Harmers Workplace Lawyers and the Australian Institute for Employment Rights (AIER). Both called for a system of 'accreditation' to support and promote healthy workplace cultures.

5.111   Harmers Workplace Lawyers recommended the implementation of a system of accreditation for employers across Australia whereby employers

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78   Dr Caponecchia, *Submission 81.1*, p. 2.

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

become accredited for compliance with standards of psychosocial health and safety.[80]

5.112   The AIER called for a National System of Accreditation to encourage workplaces to improve their workplace cultures:

> It is clear that a systemic approach to managing workplace culture is required. … Given the clear business and community case for investment in workplace culture, this requires a comprehensive national approach. The AIER believes that this is best administered at a federal level. In addition to initiatives such as the development of procurement guidelines, the Australian Government needs to lead the way by developing a National Accreditation System that would educate employers and other workplace participants, and encourage their alignment with the objectives and values of the system.[81]

5.113   The AIER advocates that an accreditation system should:

- be accessible to all employers and their workplaces: 'the costs and complexity of the system do not preclude small businesses or those with limited human resources expertise from engaging with it';

- be inclusive of employers, workers and their representatives, whereby the rights and legitimate expectations of workers and employers are balanced against the public interest; and

- aim to influence workplace culture by being an educative tool.[82]

5.114   The AIER contended:

> a National Accreditation System would address workplace culture over the long term. Such a comprehensive and systemic approach lends itself to focussing on the preventative ability and willingness of the business to minimise physical and mental illness arising from adverse culture in the present, as well as, in the future.[83]

Committee comment

5.115   The need to improve workplace culture in Australia was discussed throughout the inquiry. However, very few participants recommended how this might be achieved. A number of submissions called for a system

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80   Harmers Workplace Lawyers, *Submission 88*, p. 7.
81   Australian Institute of Employment Rights (AIER), *Submission 109*, p. 16.
82   AIER, *Submission 109*, pp. 16-17.
83   AEIR, *Submission 109*, p. 18.

of national accreditation that recognises 'employers of choice'. The AIER, Harmers Workplace Lawyers and Dr Caponecchia called for a system of this kind.

5.116   On the recommendations of these participants, an employer would become 'accredited' or recognised for achieving defined standards of psychosocial health and safety. The Committee believes that this system could motivate employers to improve their workplace cultures and, more specifically, increase their awareness of the importance of workers' psychosocial health.

5.117   A challenge with establishing an accreditation system is developing the standards by which to measure workplaces. A recurrent theme throughout the inquiry is that there is no settled 'best practice' model that could be universally applied to all sectors. However, the Committee believes that its comments and recommendations to develop further guidance materials and specific sector best practice guides could assist in developing the standards which a national accreditation system could be evaluated against.

Recommendation 15

5.118   **The Committee recommends that the Minister for Employment and Workplace Relations consider implementing, in conjunction with stakeholders, a voluntary national accreditation system to recognise and award employers who achieve best practice and meet defined standards of psychosocial health and safety.**

Recommendation 16

5.119   **The Committee recommends that the Minister for Employment and Workplace Relations work with state and territory counterparts to specifically recognise good practice in workplace psychosocial health and safety through instituting annual employer awards in all jurisdictions throughout Australia.**

Improving the national evidence base

5.120   As commented in chapter 1, Australia does not have an evidence base on which to assess the trends of, or develop appropriate policy responses to, workplace bullying. The absence of a national evidence base was commented by a majority of stakeholders. For example, Unions NSW commented:

> there is a lack of knowledge of the depth of bullying in our workplace community and the extent to what it costs the community and who bears the costs.[84]

5.121   Similarly, Professor Maryam Omari and Mr David Blades argued:

> Clearly we need to know more about the environment of work. That is, what are Australian workplaces like? What are the main quality of work-life issues for employees and employers? How do experiences of employees differ within different professions and work settings? What is best practice?[85]

5.122   Dr Caponecchia argued that improving the national evidence base would assist in the development of best practice guides and more practical assistance to all parties. Dr Caponecchia stated:

> We really need to get best practice from evidence, not just practice from what we are already doing or from what is practical based on where we already are.[86]

5.123   Safe Work Australia commented on the other 'gaps' in Australia's knowledge of workplace bullying:

- a lack of longitudinal data on bullying / harassment;
- the lack of a complete national picture of the extent of workplace bullying across all jurisdictions in Australia; and
- the lack of information on how sources of bullying vary between industrial sectors in Australia.[87]

5.124   To improve the national evidence base, the Government of South Australia recommended:

> that the Commonwealth Government continues to explore opportunities to conduct further research into the area of

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84   Unions NSW, *Submission 61*, p. 11.
85   Professor Maryam Omari and Mr David Blades, *Submission 28*, p. 4.
86   Dr Caponecchia, *Committee Hansard*, Canberra, 23 August 2012, p. 3.
87   Safe Work Australia, *Submission 74*, p. 14.

> workplace bullying. There should also be close links between research organisations (e.g. Universities) and SafeWork Australia and other jurisdictions to ensure research findings are disseminated to policy makers and industry to inform and improve policy, workplace practices and procedures in the area of workplace bullying (for both prevention and the management of bullying complaints).[88]

5.125　Unions NSW also recommended that the Federal Government fund research into the prevalence of workplace bullying across all industries, including measures to address bullying.[89]

5.126　Some participants called for Safe Work Australia to be adequately resourced to conduct a long-term study of workplace bullying in Australia. The ACTU contended:

> In terms of the collection and analysis of data, Safe Work Australia is reliant on the cooperation of the states and territories, which sometimes is not forthcoming. Ideally, we would like to see Safe Work Australia have an independent capacity to undertake research. However, in the current budgetary climate, I think Safe Work Australia is struggling with its funding, and perhaps this committee might see fit to make a recommendation about adequate funding for research in this area. [90]

Committee comment

5.127　The need to improve Australia's evidence base in workplace bullying was discussed throughout the inquiry. As highlighted in preceding sections, the Committee believes that the new national service could use its collated information to improve the evidence base.

5.128　A key challenge for the Committee, and consequently for state/territory and federal governments, is that responding to the problem of workplace bullying is challenging as currently there is very little evidence that would direct what is needed to assist stakeholders to combat the problem.

5.129　Though this inquiry has been a mechanism for the community to provide feedback to policy makers about what is needed and how it should be delivered, a long-term study of workplace bullying in Australia would

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88　Government of South Australia, *Submission 216*, p. 4.

89　Unions NSW, *Submission 61*, p. 6.

90　Mr Borowick, ACTU, *Committee Hansard*, Melbourne, 11 July 2012, p. 22.

allow regulators and governments to assess the impact of their policies and better understand the prevalence of bullying at work.

Recommendation 17

5.130   **The Committee recommends that the Minister for Employment and Workplace Relations commission research into the prevalence and long-term trends of workplace bullying in Australia using the definition provided in Recommendation 1.**

Recommendation 18

5.131   **The Committee recommends that Safe Work Australia issues an annual national statement which updates any emerging trends of its collated data from each of the state and territory regulators, and the Commonwealth, with respect to psychosocial health and safety generally and workplace bullying specifically.**

Young workers

5.132   For young people, gaining employment symbolically represents an entry point into the world of adulthood with responsibilities, freedom and respect. However, according to headspace, the national youth mental health foundation, young workers are particularly vulnerable to the impact of bullying as a transition to work generally occurs at the same time when young people are most vulnerable to the onset of mental health difficulties.[91]

5.133   Indicating the prevalence of bullying experienced by young people at work, the Adelaide-based, Young Workers Legal Service reported that in the last year, they received 450 calls, 20 per cent of which related to workplace bullying.[92]

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91   Ms Victoria Lee Ryall, eheadspace Manager, headspace National Youth Mental Health Foundation, *Committee Hansard*, Melbourne, 11 July 2012, p. 8.

92   Ms Anne Purdy, Coordinator, Young Workers Legal Service, *Committee Hansard*, Adelaide, 7 August 2012, p. 33.

5.134   Similarly, headspace reported findings from a survey of 797 apprentices which found that 23 per cent of new apprentices felt that they had been bullied at work which motivated them to leave the apprenticeship. headspace also stated that young people (aged 18 to 25) report more stress in the workplace and less positive experiences of work compared to other age groups.[93]

Vulnerability of young workers

5.135   Young workers can be more vulnerable than other employees to the hazards of workplace bullying. 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 workplace bullying. Mr Damian Panlock, Brodie's father, commented on the vulnerability of his young daughter:

> They pick them out. They pick out the weakest. Brodie was the weakest in that situation. She was the youngest and more vulnerable. They tried it on other people in the organisation and it did not work because they were older.[94]

5.136   The Government of South Australia argued that lack of knowledge about appropriate working conditions and entitlements, together with limited life experience and self-confidence can make younger workers vulnerable to 'exploitative practices and workplace bullying'.[95] The Government of South Australia also commented:

> their often limited self-confidence can make it difficult for them to speak up about experiencing bullying or to do anything to address the situation for the fear of jeopardising their employment and any future opportunities.[96]

5.137   The Tasmanian Anti-Discrimination Commission also commented on the likelihood of, and barriers faced by, young workers:

> young people will tend not to complain. When you are talking about workplace situations, the capacity to get and retain work and wanting to stay in a work environment probably are a further disincentive on top of the fact that young people do not tend to use formal complaints bodies across the board. I suspect there is a

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93   headspace, *Submission 56*, p. 4.
94   Mr Damian Panlock, *Committee Hansard*, Melbourne, 11 July 2012, p. 53.
95   Government of South Australia, *Submission 216*, p. 12.
96   Government of South Australia, *Submission 216*, p. 12.

> group who are probably highly vulnerable to bullying who are less likely to be represented in data anywhere there are complaints.[97]

5.138   Further, when young people transition from a school environment to a working environment, they face different structures and operational systems from those that they are accustomed. A school environment has clear, linear hierarchies. This is in contrast to the workplace environment where power structures can be dispersed and complex.

5.139   headspace commented on this transition:

> I think there is a lot of transitioning across or initiating that is not done that well at this time. Even in health care, parents often do not take their young ones to a GP to say, 'You now look after your own health'. We are strongly advocating for those things across the board for young people, including that we should let young people know their rights in workplaces et cetera. [98]

5.140   The Department of Education, Employment and Workplace Relations (DEEWR) also stated that the 'transition' from school to work presents an opportunity:

> the Australian Government recognises that addressing bullying behaviours and attitudes needs to commence well before people enter the workplace, and that bullying can take many forms. ... The Government believes student resilience and wellbeing are essential for academic and social development and that all students should be able to learn and develop in safe, supportive and respectful environments.[99]

5.141   The opportunity to impart good workplace behaviours, resilience and rights-awareness among young people as they transition from school into the workplace is discussed in the following section.

Educating on workplace rights and good workplace behaviour

5.142   Recurring themes in the evidence indicated priorities for educating young people of their workplace rights, the avenues available to seek assistance, as well as developing good workplace behaviours.

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97   Ms Robin Banks, Anti-Discrimination Commissioner, Office of the Anti-Discrimination Commissioner, Tasmania, *Committee Hansard*, Hobart, 12 July 2012, p. 16.

98   Ms Ryall, headspace, *Committee Hansard*, Melbourne, 11 July 2012, p. 9.

99   Department of Education, Employment and Workplace Relation (DEEWR), *Submission 84*, p. 5.

5.143   headspace recommended a targeted campaign for young workers to inform them of their rights and services that can support them, and further contended:

> Many young people drop out work when they are experiencing problems. They are less likely to seek help. Coordinated care and links with mental health services and workplaces can assist in providing ongoing support. This could prevent young people from dropping out of work altogether. ... Young people need information about their rights in the workplace and where to turn for help.[100]

5.144   Educating young people of their workplace rights should also be balanced with information about their legal responsibilities as a worker. As discussed throughout this report, all workers carry responsibilities with respect to the health and safety of their co-workers. A better understanding of these responsibilities can lead to a deeper appreciation of good workplace behaviour.

5.145   Imparting an appreciation of good workplace behaviour is an extension of current campaigns around good citizenship and good digital citizenship. The Australian Chamber of Commerce and Industry stated:

> By the time young people join the workforce they have been exposed to many situations which cause them to define what is or is not acceptable behaviour.[101]

5.146   Similarly, the AMF argued:

> Young people progress into the wider workplace setting and take the cultural norms of bullying and cyberbullying [as] being unacceptable with them. However, targeting young people in workplace training and apprentice settings is only the first step... The goal is to have every work place become [an environment] where bullying and cyberbullying are reduced.[102]

5.147   School programs about good digital citizenship have coincided with discussions about bullying more broadly. DEEWR referred to initiatives commenced by the AHRC and the Australian Federal Police (AFP) that engage young people in discussions about bullying online.[103]

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100 headspace, *Submission 56*, p. 8.
101 ACCI, *Submission 62*, p. 12.
102 AMF, *Submission 125*, p. 17.
103 DEEWR, *Submission 84*, p. 6.

5.148   Despite the recent push for education in good citizenship and digital citizenship highlighted by the AHRC and AFP programs, there was concern among stakeholders that many young people are in workplaces across Australia with little protection from bullying and its effects.[104]

5.149   Work experience programs often occur at beginning of this transition, and represent students' first encounters with working environments. Work experience programs are currently managed by the states and territories with specific legislation regulating these programs.[105] Work experience placements aim to:

- provide students with an opportunity to relate school studies with workplace contexts;
- prepare students for the demands and expectations of the working world;
- help students make informed career decisions by assessing their aptitudes and interests, and exploring potential careers;
- give students insights into the nature of diversity of employees in the workplace; and
- improve students' maturity, confidence and self reliance.[106]

5.150   These programs also provide opportunities for students to become more informed about their responsibilities at work.

Protecting young people

5.151   In its submission, the Government of South Australia foreshadowed the introduction of legislation to reinforce the protections for young workers against bullying:

> The South Australian Government is planning to introduce a
> Child Employment Bill into the South Australian Parliament later
> in the year. Within the context of this legislative framework, the

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The AHRC recently launched its *BackMeUp* campaign to encourage young people to support those targeted by cyber bullying. The AFP's work in this area focuses on a program known as *ThinkUKnow* which aims to raise awareness among parents, carers and teachers of the issues that young people face online. The AFP through its High Tech Crime Prevention Team also works with schools in the ACT in delivering cyber-safety presentations, which address cyber-bully.

104   AMF, *Submission 125*, p. 3.

105   For example, *Vocational Education Training and Employment Act 2000* (Qld).

106   Queensland Government, Department of Education, Training and Employment, 'Work Experience Placements for School Students', <http://ppr.det.qld.gov.au/education/management/Pages/Work-Experience-Placements-for-School-Students.aspx> accessed 4 October 2012.

Government will consider the inclusion of specific provisions to reinforce the protections against bullying for young workers.[107]

5.152   The Government of South Australia recommended such an approach be adopted in other jurisdictions.[108]

Committee comment

5.153   The Committee did not receive evidence in support of or against protecting young workers through specific legislation as the South Australian Government has foreshadowed. The Committee therefore does not believe it can make a specific recommendation on this matter.

5.154   However, once the bill is introduced into the South Australian parliament, it is foreseeable that public debate will occur specifically on this issue. In addition, it is foreseeable that discussions will also take place at Safe Work Australia meetings on this topic. The Committee will watch with interest the outcomes of these events.

5.155   Despite this, the Committee believes there is a unique opportunity for good workplace behaviours to be instilled in young workers as they make the transition from school to work. Enhancing the awareness of rights and responsibilities at work at an early age is one of the preventative measures that the Committee believes should form part of the national response to workplace bullying.

5.156   Developing the skills and self-awareness for respectful workplace behaviours among young workers will also contribute to the 'change agenda' and improvement in workplace culture that has been the undercurrent of this inquiry.

Recommendation 19

5.157   **The Committee recommends that the Minister for Youth and the Minister for Employment and Workplace Relations work with their state and territory counterparts to develop targeted initiatives for young Australians undertaking the transition from school to work, about their rights and responsibilities at work.**

107 Government of South Australia, *Submission 216*, p. 12.
108 Government of South Australia, *Submission 216*, p. 12.