Workplace bullying – Outline of Submissions

Submissions: Moira Jenkins and Karl Luke 7 August 2012

1.   Need for a definition that takes into account reasonable person test, and the OHS consequences of bullying:

As discussed on pages 6- 9 in our discussion paper: Although defined in some State OHS legislation, bullying identified differently in each State. Some States and Territories have guidance notes and /or codes of practice that define 'bullying', again describing bullying slightly differently in each jurisdiction. For example in the Productivity Commission report (2010) the commission notes that Sexual harassment could fall under definitions of bullying in Most jurisdictions However, the Queensland Code of Practice on Bullying clearly states that Bullying does not include sexual harassment. Tasmanian guidance notes refer to bullying being physical violence as well as as well as psychological harm. The differences in definition contribute to the confusion as to what is bullying.

2.   Reasonable person test

Due to the difficulty proving intent in bullying, and because a target may be harmed by unreasonable behaviours although, unintended behaviours, the *reasonable person test* should be included in any definition. This test contends that a reasonable person would expect that the given behaviour would create a risk of either physical or psychological injury to the target. This reasonable person test is similar to that used in sexual harassment definitions.

See definition on page 22 (similar to the current SA definition) (SA definition includes the word *"systematic"* – refers to *"having, showing or involving a method or plan"* this implies intention, which is difficult to prove, and should not be part of any definition)

3.   Use of OHS perspective in prevention and intervention

There is sufficient evidence and research that points to **specific risk factors** within an organisation that contribute to bullying emerging and escalating. Guidance material from a number of OHS regulatory authorities clearly identify risk factors and recommend a risk management approach to prevention and management. These risks can be identified and controlled from an OHS risk management perspective. If the focus remains on just the target and perpetrator dyad and these background or systemic risk factors are not taken into account, there is

a potential risk for bullying to continue to be a problem even if the target or perpetrator is removed from the environment.

Despite this guidance material being available, bullying is still a major problem, and the material is not utilised by organisations.

4. Prevention and intervention

Both Prevention of workplace bullying and interventions into workplace bullying, including mediation and investigation of bullying complaints need to identify these risks, and implement control measures from within an OHS risk management perspective to both prevent workplace bullying occurring in the first place, or emerging as a problem if given situations.

In our discussion paper we suggest inserting both a definition of bullying into National OHS laws, and through regulation, making it a requirement that organisations take action to control specific identified risk factors. This will provide clarity as to at least the minimum identified risk factors that need to be controlled.

Our Discussion Paper contains a draft set of regulations on pages 22 and 23 for discussion purposes.

5. Regulating bullying

Bullying is a known psychological hazard in the workplace.

Employers have WHS duties and obligations to ensure the health and safety of its workforce under current safety laws across all Australian jurisdictions.

The WHS laws are in large a form of self regulation. Duty holders are required to ensure so far as is reasonably practicable the health and safety workers. This is the so-called Primary Duty.

To discharge the Primary Duty, employers must eliminate risks to health and safety so far as is reasonably practicable. If risks can't be eliminated, then ensure that risks are minimised so far as is reasonably practicable.

Physical hazards and the risks to health and safety are often time known. A fundamental tenet of WHS law is;

- hazard identification;
- risk assessment
- risk control measures

- review of risk control measures

It is up to employers to determine how they go about controlling risks in the workplace.

However for some risks, regulators have chosen to introduce defined standards of risk control (eg, confined spaces, falls, high risk work, electrical work etc). This is because the risks are known and more importantly, necessary risk controls are known and therefore prescribed.

In view of the research on known risk factors for bullying, it is appropriate to regulate (set standards) for risk control of workplace bullying.

6. Draft regulation page 22

- Sets out the definition of bullying
- Sets out what bullying is not. Important to ensure that reasonable action in a reasonable manner is excluded.
- Identifies risk factors
- Requires control of known risks
- Review of risk controls in circumstances that are known to increase the risk of workplace bullying.

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7 August 2012

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DISCUSSION PAPER ON INCLUSION OF BULLYING IN WORK HEALTH AND SAFETY REGULATIONS

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DISCUSSION PAPER ON INCLUSION OF BULLYING IN WORK HEALTH AND SAFETY REGULATIONS

A.   Introduction

Controlling risks from psychological hazards in the workplace

Over a decade of research has clearly identified bullying as a established workplace psychological hazard in the workplace This has been supported by cases where bullied employees have sustained significant psychological injuries as a result of bullying at work, to the extent that there have been suicides. In response to this Victoria has enacted amendments to the *Crimes Act 1958* (Vic) (**Crimes Act**), the *Stalking Intervention Orders Act 2008* (Vic) (**SIO Act**) and the *Personal Safety Intervention Orders Act 2010* (Vic) (**PSIO Act**) to include behaviour which is typically associated with bullying (the amendments referred to as 'Brodie's law'. These new laws are a reflection of the community's growing intolerance for bad behaviour, and also reflect the serious potential consequences of workplace bullying..

Regulation of risk control measures for well-known physical hazards (eg, asbestos, hazardous chemicals, falls from height etc) is necessary to ensure minimum standards of safety in the workplace.   Fundamental to the regulation of physical hazards is an understanding of the unique risks associated with those hazards and the control measures needed to eliminate or minimise those risks. Bullying can be prevented and managed by applying a similar risk management framework. Guidance material from health and safety authorities clearly recognises that bullying is an occupational health and safety issue and indicates that it should be addressed within a risk management approach like any other occupational health and safety hazard (for example, Worksafe Victoria, 2003, 2009; Workcover NSW).

Establishing (by way of regulation) standards for controlling some of the identifiable risks across jurisdictions would not only raise awareness of what the specific risks are, but also raise awareness of the need for appropriate behaviours and the potential for serious psychological health impacts of workplace bullying

Prevention better than no cure

A number of jurisdictions have incorporated complaint based mechanisms into safety legislation that allow victims of bullying to seek redress based on conciliation and mediation.[1] Arguably these complaint based mechanisms have no deterrent effect and fail to assist in the prevention of psychological harm in the workplace. Instead of complaint based mechanism, the current paper highlights the benefits of implementing a risk management framework to prevent and manage bullying like any other health and safety hazard.

Purpose of this discussion paper

Research has moved from examining antecedents to bullying at work and prevalence rates, to look at 'best practice' methods of managing the problem. The evidence suggests that workplace bullying is a psychological hazard that can have significant impact on a targets mental health. The evidence suggests that workplace bullying is best prevented and managed from within an OHS risk management framework. This discussion paper explores the benefits of addressing bullying though an OHSW regulatory framework.

B.   Executive Summary

1.   Bullying is a known psychological hazard.   Research over many years has established that inappropriate behaviours in the workplace can lead to significant psychological harm, and in some cases death.

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[1] For example, section 55A of the *South Australia the Occupational Health, Safety and Welfare Act* 1986 provides for complaints to be made to Safework SA inspectors who will investigate with a view to recommending conciliation or medication. There is however no mechanism for enforcement against an employer that allows for bad behaviour in the workplace.

2.   Bullying can be defined so as not to confuse it with other types of behaviours including workplace conflict, reasonable performance management etc.

3.   Bullying is defined by the repetition, duration and unreasonable nature of the behaviour, and the impact of the behaviour on the victim. Intention is not necessary for bullying to occur and a "reasonable person" test is used to assess whether behaviour is inappropriate in the circumstances.

4.   Research has identified a number of risk factors that increase the likelihood of the development and maintenance of workplace bullying. The presence of these risk factors can be assessed, and controlled. . These risk factors include:

      a.   Organisational factors

      b.   Negative leadership styles

      c.   High levels of conflict

      d.   Poor working relationship

      e.   Workforce characteristics

      f.   Lack of policy or training

These risk factors are described and discussed in more detail below.

1.   Bullying is a psychological hazard

In Australia, between 400,000 and two million Australians are estimated to be bullied each year and between 2.5 and five million are bullied at some point in their careers[2].

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[2] Queensland Government Workplace Bullying Taskforce, *Creating Safe and fair workplaces: Strategies to address workplace harassment in Queensland,* (2002).

Bullying can result in serious psychological disorders including depression, anxiety, post-traumatic stress disorder (PTSD) and suicide[3]. Workers compensation claimants suffering mental disorders such as these make up the longest time lost at work, averaging ten weeks of lost work days compared to the median time lost of four weeks for physical injury claims[4] (Australian Occupational Health and Safety Compensation Council, 2007).

2.   Defining workplace bullying

The term bullying has been described as repeated negative behaviours that are directed at an employee or group of employees that harass, offend or negatively affect work tasks, in which the target/s end/s up in an inferior position[5].

Bullying is not conflict, personality differences, unpopular management decisions or directions. Bullying is repeated, negative behaviour that targets a worker or group of workers, that a reasonable person would expect to humiliate, undermine or offend and creates a risk to the health and safety of those workers.

No uniform legal definition of bullying.

Although recognised in New South Wales, South Australian and Victorian occupational health and safety legislation, bullying is defined differently in each state. Other states and

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[3] See, eg S B Matthiensen and S Einarsen, 'Psychiatric distress and symptoms of PTSD among victims of bullying at work' (2004) 32 *British Journal of Guidance and Counselling* 335; E Mikkelsen and S Einarsen 'Basic assumptions and symptoms of post-traumatic stress among victims of bullying at work' (2002) 11 *European Journal of Work and Organisational Psychology* 87; C Rayner and H Hoe and C Cooper *Bullying at work: What we know, who is to blame and what can we do?* (2002); E G Mikkelesen and S Einarsen, 'Bullying in Danish work-life: Prevalence and health correlates. (2001) 10 *European Journal of Work and Organisational Psychology*, 393; M Vartia 'The sources of bullying—Psychosocial work environment and organisational climate' (1996) 5 *European Journal of Work and Organisational Psychology* 203; S. Einarsen, H. Hoel & C. Cooper (Eds.), *Bullying and emotional abuse in the workplace: International perspectives in research and practice* (2003).

[4] Australian Occupational Health and Safety Compensation Council, *Compendium of Workers' Compensation Statistics Australia 2004-05* ' (2007) Safe work Australia <http://www.safeworkaustralia.gov.au/NR/rdonlyres/A6032DB3-4F7B-4834-9D1E-C21E14605F04/0/PartEFeatureMentalStress_WorkCompStats0405.pdf> at 15 May 2010.

[5] S Einarsen et al (Eds) *Bullying and emotional abuse in the workplace: International perspectives in research and practice* (2003) 3.

territories have guidance notes and/or codes of practice that define bullying—again describing bullying slightly differently in each jurisdiction.

Confusing bullying with harassment

While all the laws and guidance notes refer to 'repeated behaviours' and 'unreasonable behaviour ... that creates a risk to health and safety' in their definitions of bullying, as illustrated in Table 1, there are differences in the way workplace bullying is conceptualised within the legal definitions[6]. For example, the Productivity Commission highlights that sexual harassment may be included in the definition of bullying in most states, but Queensland clearly states that bullying does not include sexual harassment (which is covered separately under sexual-harassment legislation). This highlights the confusion between the terms bullying and harassment.

While most jurisdictions refer to bullying as psychological risk, Tasmania specifies that the behaviour 'can include physical violence'[7] This suggests that bullying is a physical health and safety concern as well as a psychological concern, again highlighting areas of potential confusion surrounding terminology and definition. However, the psychological impact of bullying can create a physical risk for workers who develop high levels of anxiety, and continue working in fear of being unreasonably targeted by a bully. These workers are at high risk of making poor safety decisions and physically injuring themselves in the workplace.

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[6] Australian Productivity Commission, *Report into Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety* (2010.) Productivity Commission <http://www.pc.gov.au/__data/assets/pdf_file/0003/96177/13-chapter11.pdf> at 19 October 2010.
[7] Ibid.

Table 1 Definitions of Bullying Included in Australian Occupational Health and Safety Legislation, Guidance Notes and Codes of Practice. (Taken from the Productivity Commission Report on Occupational Health and Safety in Australia, chapter 13, p. 290.)

- **Commonwealth guidance note**

  — repeated, unreasonable behaviour directed towards a person or group of persons at a workplace, which creates a risk to health and safety.

- **New South Wales guidance note**

  — repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.

- **Victorian guidance note**

  — repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.

- **Queensland code of practice**

  — repeated behaviour, other than behaviour amounting to sexual harassment, by a person, including the person's employer or a co-worker or group of co-workers of the person that: (a) is unwelcome and unsolicited (b) the person considers to be offensive, intimidating, humiliating or threatening (c) a reasonable person would consider to be offensive, humiliating or intimidating

- **South Australia's 55 (A) of OHS Act**

  — any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.

- **Western Australia's code of practice**

  — repeated unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety.

- **Tasmanian guidance note**

  — persistent and repeatedly aggressive behaviour (that) goes beyond a one-off disagreement ... increases in intensity and becomes offensive or harmful to someone... can include psychological and physical violence.

- **Northern Territory guidance note**

  — repeated, unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to health and safety.

- **Australian Capital Territory guidance note**

  — repeated, unreasonable behaviour directed towards a person or group of persons at a workplace, which creates a risk to health and safety.

Elements of bullying

3.   **Why is bullying different from workplace conflict?**

Factors that make bullying <u>different</u> from workplace conflict include:

(a)   frequency and duration of the behaviour;

(b)   the reaction of the target;

(c)   the balance of power; and

(d)   the intent of the perpetrator

(a)   Frequency and duration of the behaviour

Bullying is normally not about single and isolated events, but rather about behaviours that are repeatedly and persistently directed towards one or more employees.

Bullying is not a one-off indiscretion, but is long-standing and the outcome of a series of often escalating negative interactions. For example, a number of researchers report that targets typically endure workplace bullying for more than 12 months before leaving the workplace[8]. These studies highlight the difference between bullying and conflicts and how the longevity of workplace bullying can contribute to occupational health, safety and welfare (OHSW) concerns.

(b) *Reactions of the target*

In line with the longevity of bullying behaviours discussed above, there are escalating stages of conflict that have an increasing impact on the bullied target. When targets are bullied, many will seek management support, only to become stigmatised when they are blamed for their reactive behaviour if the perpetrator's accounts of the behaviour are accepted.

(c) *Power imbalance between the target and perpetrator*

Several researchers have highlighted that bullying differentiates itself from normal conflict situations because of a power difference between target and perpetrator[9]. Unlike normal conflict in which both parties are able to engage in a dispute on an equal footing, bullied targets are unable to retaliate. Einarsen and Skogstad[10] argue that 'to be a victim of bullying one must also feel inferiority on defending oneself in the actual situation'.

[8] UNISON *Bullying at Work: Guidelines for UNISON Branches, stewards, and safety representatives.* (2003) UNISON <http://www.unison.org.uk/file/Stewards%20guide%20to%20bullying%20at%20work.pdf> at 20 November 2010.
[9] S Einarsenn and A Skogstad 'Bullying at work: Epidemiological findings in public and private organisations' (1996) 5 *European Journal of Work and Organisational Psychology* 185.
[10] S Einarsenn and A Skogstad 'Bullying at work: Epidemiological findings in public and private organisations' (1996) 5 *European Journal of Work and Organisational Psychology* 185, 187.

One of the reasons that bullied targets are usually the workers, and managers the perpetrators, is the inbuilt formal power structure of the workplace between employees and those in more senior positions. However, Informal power structures exist in most workplaces, with some employees having more power or influence because of their increased knowledge, experience or job security than others, or because they may be a man working in a male-dominated industry and therefore hold more power or influence than the minority of female workers.

Other informal power structures may include race, gender, sexuality and age.

(d)   Intent of the perpetrator

There is continuing debate as to whether bullying is an intentional act by the perpetrator or whether it is a subjective perception of intent to harm from the target's perspective. Early research describes bullying as an intention or a perceived intention to harm[11] and some early studies suggest intent by claiming that bullying is the result of a psychopathic or tyrannical personality of the bully[12]. Other studies suggest that *some* bullying can be intentional, for example, in predatory bullying[13], where the perpetrator specifically targets the victim with the purpose to oust them from the organisation or teach them a lesson'.

In contrast, other types of bullying may not be intentional, for example, in dispute-related bullying. However, some researchers specifically include the notion of intent and Aquino and Thau[14] argue that:

> '*it is reasonable to classify a behaviour as aggressive if the target perceives some*
>
> *possibility that it was performed with the intent to harm* '

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[11] S Einarsen, ' The nature and causes of bullying at work'(1999) 20 *International Journal of Manpower* 16.

[12] See, eg, B Ashforth, 'Petty tyranny in organisations'(1994) 47 *Human Relations* 755; T Field *Bullying in sight Wantage: Success Unlimited* (1996).

[13] As above n 16

[14] K Aquino and S Thau, Workplace victimisation: Aggression from the targets perspective. (2009) 60 *Annual Review of Psychology* 717 at 719.

From within an OHS perspective, it does not matter if there is intent or not. A perpetrator may not intend to harm a target, but if their behaviour is repeated, and unreasonable and results in psychological harm then it is bullying. Just as a person may not intend to sexually harass another, if their behaviour is unwelcome and sexually suggestive, it may be sexual harassment irrespective of intent.

4. Predatory bullying

There are important distinctions between dispute-related bullying (as an escalated conflict) and predatory bullying, because in the latter the target has done nothing provocative but is exploited because they are in a vulnerable position.

In predatory bullying, the target is inadvertently placed in a situation where the bully purposely attacks them through exposure to inappropriate and harmful behaviours. Examples of predatory bullying include acting out prejudices against a target, scapegoating and highly authoritarian leadership styles. The case of Brodie Panlock(Need to reference this correctly) could be viewed as predatory bullying

5. Why intention should not be included in definition of bullying?

Despite the existence of *predatory bullying*, it is difficult to determine whether inappropriate behaviour is intentional.

In a legal sense, determining intention is difficult. In a more practical sense the need to determine whether bullying is intentional may divert attention from positive and productive outcomes. Notions of fault are likely to divert attention from more productive measures associated with prevention.

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, and when examined objectively are deemed to be unreasonable or inappropriate in the circumstances.

Reasonable person test

Due to the difficulty in proving intent, and because a victim may feel harmed by unintended but nevertheless negative behaviours, intent is excluded from most of the definitions of bullying in Australia. Instead, the *reasonable person* test is used. This test contends that a "reasonable person" would expect the given behaviour to victimise, humiliate or threaten the target. Whilst the perpetrator may not intend to harm the target a "reasonable person" would view the perpetrator's behaviour as inappropriate and likely to cause harm.

6.   Bullying as an occupational health, safety and welfare concern

The primary focus of occupational health and safety is traditionally on physical workplace hazards and physical risks. However, the health impact of workplace psychological hazards such as bullying is becoming more apparent. This is partly because of the increased costs associated with psychological injury (including death through suicide) caused by workplace psychological hazards and the significant medical, legal, business and personal costs of psychological injury claims. From this perspective, bullying is clearly an occupational health safety and welfare issue.

The acceptance of bullying as an OHSW issue has resulted in bullying being part of OHSW legislation in many parts of Australia. For example, in South Australia section 55A(1) of the South Australian *Occupational Health, Safety and Welfare Act 1986* (SA).

While the annual number of new workers' compensation claims for physical injury in Australia decreased by 13 per cent between 1996 and 97 and 2003 and 04, psychological injury claims increased by 83 per cent. In 2004–05, the most common subcategories of psychological injury claims were work pressure (41 per cent of all mental-stress claims) and workplace harassment (22 per cent of all mental-stress claims). Both of these subcategories constitute behaviours that may fit with the spectrum of repeated negative workplace behaviours known as bullying. These claims had a median time lost from work of 9.7 weeks and a median direct cost of $12,800—more than double the median time lost of four weeks and the median direct cost of $5,800 for physical injury claims.

Significantly, harassment claims had the greatest median time lost from work (11 working weeks)[15]. These statistics are a sobering reflection of the personal effects of workplace bullying and a reminder that workplace bullying is not just a moral issue but is very expensive. Psychological injuries as a result of workplace bullying continue to be a significant occupational risk in a number of organisations.

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[15] Australian Occupational Health and Safety Compensation Council, *Compendium of Workers' Compensation Statistics Australia 2004-05'* (2007) Safe work Australia <http://www.safeworkaustralia.gov.au/NR/rdonlyres/A6032DB3-4F7B-4834-9D1E-C21E14605F04/0/PartEFeatureMentalStress_WorkCompStats0405.pdf> at 15 May 2010.

7.   Workplace risk factors

Research suggests that workplace bullying develops from multiple risk factors that are

related to characteristics of the workplace as well as both individual target and perpetrator

characteristics such as the target's or perpetrator's personality[16] ways of coping[17],

target's position in the organisation's formal hierarchy[18]

A number of studies have emphasised the importance that the workplace environment has

as a key risk factor in the development and maintenance of workplace bullying.

Risk Factors

Organisational environment

One of the risk factors in workplace bullying has been found to be an organisational

climate and leadership styles that allow employees with specific characteristics to be

exploited. Predatory bullying can occur when these informal power structures are

threatened for example, when a woman enters a previously male-dominated industry such

as fire fighting or mining. In these cases, the target has done nothing wrong, but is bullied

because of specific characteristics that make them less powerful within the organisation,

and they are seen as a threat by the dominant group or a specific person in the workgroup.

An employee who is younger or vulnerable may be picked on and treated unreasonably

by the dominant group. In the case of Brodie Panlok who committed suicide in 2006

following workplace bullying,, being subjected to repeated acts of unreasonable

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[16] M Vartia, 'The sources of bullying—Psychosocial work environment and organisational climate' (1996) 5 *European Journal of Work and Organisational Psychology* 203.

[17] See, eg, E Baillien and H D Witte, 'Why is organisational change related to workplace bullying? Role conflict and job insecurity as mediators' (2009) 30 *Economics and Industrial Democracy* 348; D Zapf, 'Organisational, work group related and personal causes of mobbing/bullying at work' (1999) 20 *International Journal of Manpower,* 70;
D Zapf and C Gross, 'Conflict escalation and coping with workplace bullying: A replication and extension' (2001) 10 *European Journal of Work and Organizational Psychology* 497.

[18] See, eg, K Aquino, 'Structural and individual determinants of workplace victimisation: The effects of hierarchical status and conflict management style' (2000) 26 *Journal of Management,* 171; K Aquino and T Tripp and R Bies, 'How employees respond to personal offense: The effects of blame attribution, victim status and offender status on revenge and reconciliation in the workplace' (2001) 86 *Journal of Applied Psychology* 52;
D Salin, 'Prevalence and forms of bullying among business professionals: A comparison of two different strategies for measuring bullying' (2001) 10 *European Journal of Work and Organisational Psychology* 425.

behaviour by two male work colleagues, and having her complaints ignored by management resulted in her death.

Researchers have found that many perpetrators will only engage in bullying or harassing behaviours if the social or organisational environment of the workplace encourages such behaviour. The café where Brodie Panlock worked did not have a bullying policy or complaint procedure. Employees were not aware of their rights and responsibilities in regard to bullying, and the management style of the employer allowed the bullying behaviour to continue. All the known risk factors were present, contributing to the hazard – bullying, to emerge and continue unabated.

The workplace environment has been found to interact with the personal characteristics of perpetrators and targets and the social environment to contribute to both the development and maintenance of bullying behaviours.

A workplace that has no policy directive in relation to workplace bullying, and where employees and managers are not aware of their obligations creates an environment where there is a high risk of bullying occurring, and the bullying escalating. As a minimum, employers need to address this risk by having a policy and making sure that all employees and managers regularly receive training in regard to their rights to quiet enjoyment of the workplace, free of bullying and harassment.

Factors that interact to contribute to the development and maintenance of workplace bullying

- **Organisational Environment** such as leadership style, job design, role conflict and ambiguity, industrial environment, job insecurity.

- **Social Environment such** as work group environment, group hostility, envy, group pressure to conform.

- **Characteristics of Perpetrator and Target** such as personality, social skills, qualifications, behaviours, perceived employability, ways of coping.

- role conflict and ambiguity[19] , including lack of control over the work one does[20]. In particular, role conflict and role ambiguity have been linked to workplace bullying[21].

Bullying does not occur without a reason. It happens within a specific context where a perpetrator feels they need to exert their control (either intentionally or unintentionally) over a target. However, in order for this to occur there are several factors within the organisations environment that contribute to this behaviour being able to occur.

The organisational environment as a risk factor for bullying

The organisational environment is a significant determinant as to whether there is a risk of bullying occurring. Studies have shown that both victims and observers of bullying are likely to report high levels of role conflict when there are perceptions of contradictory expectations, demands and goals within the organisation or department[22] . Bullying has been found to be closely related to poorly organised work environments with ambiguous roles and command structures[23], especially during periods of organisational restructure, where employees are more likely to be under stress, and job insecurity may be an issue.[24]

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[19] S Einarsen and B Raknes and S Matthiesen, 'Bullying and harassment at work and their relationship to work environment quality: An exploratory study' (1994) 4 *European Work and Organisational Psychology* 381.

[20]See, eg, Ibid; M Vartia, 'The sources of bullying—Psychosocial work environment and organisational climate' (1996) 5 *European Journal of Work and Organisational Psychology* 203; D Zapf and C Knorz and M Kulla, 'On the relationship between mobbing factors and job content, social work environment and health outcomes' (1996) 5 *European Journal of Work and Organisational Psychology* 215.

[21] See, eg, As above n 29; L J Hauge and A Skogstad and S Einarsen, 'Individual and situational predictors of workplace bullying: Why do perpetrators engage in the bullying of others?' (2007) 23 *Work and Stress* 349.

[22] As above n 30.

[23] See, eg, Ibid; H Leymann, 'The content and development of mobbing at work' (1996) 5 *Eropean Journal of Work and Organisational Psychology* 165;

[24] M Avergold, 'The significance of organisational factors for the incidents of bullying' (2009) 50 *Scandinavian Journal of Psychology* 267

From the perpetrator's perspective role conflict[25] elevated levels of role stress and competing demands and expectations[26] were predicative of bullying.

Bowling & Beehr's[27] meta-analysis of more than a decade of workplace bullying and harassment research indicated that bullying tends to occur in work environments where stressors such as role conflict and role ambiguity, role overload and lack of autonomy are present.

Role conflict and ambiguity were the strongest predictors of workplace bullying in their analysis, with lack of control over one's work environment also being strongly associated with bullying at work[28].

The social environment as a risk factor in bullying

Organisational social environment has been described as the assumptions, beliefs and values that members of the organisation come to share and take for granted[29]. A work group environment can differentiate itself from the wider organisational environment and values, where attitudes and behaviours that may not be acceptable in the wider organisation may be established and are passed on to new members of the group. The difficulty that group members have in complaining about inappropriate behaviours within this group emphasises the potential strength of social processes that these group behaviours set up[30]. The way that bullying targets react to the group behaviour can further

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[25] L J Hauge and A Skogstad and S Einarsen, 'Individual and situational predictors of workplace bullying: Why do perpetrators engage in the bullying of others?' (2007) 23 *Work and Stress* 349.
[26] S B Matthiesen and S Einarsen. 'Perpetrators and targets of bullying at work: Role stress and individual differences' (2007) 22 *Violence and Victims* 735.
[27] N A Bowling and T A Beehr, 'Workplace harassment from the victim's perspective: A theoretical model and meta-analysis'(2006) 91 *Journal of Applied Psychology* 998.
[28] Ibid.
[29] E Schein *Orgainzational culture and leadership*. (1985).
[30] H Hoel and D Salin, (2003) 'Organisational antecedents of workplace bullying' from S. Einarsen, H. Hoel, D. Zapf & C. Cooper (Eds.), *Bullying and emotional abuse in the workplace: International perspectives in research and practice* (2003) p203.

isolate them from the work group where the inappropriate behaviours are considered as 'the norm'.

Conflict with group norms has been found to be a significant cause of workplace bullying[31] although Einarsen[32] reported that predatory bullying often occurs in situations where the social group or a member of a dominant group will target a new group member because of their personal characteristics. Targets complaining about these norms' or challenging them may become stigmatised and find it more difficult to become part of the group, exacerbating their isolation and victimisation[33].

Zapf and Gross[34] report **escalation of conflicts** when targets react against improper behaviours that are perpetrated by members of the work group. Indeed, being a target of workplace bullying oneself has been found to be predictive of involvement in bullying others[35]. Examples of this sort of predatory bullying and aggression towards individuals who challenge established social norms have led to a number of court cases in Australia where women were bullied when they did not fit into the norms of male-dominated industries such as mining (for example, *Hopper v Mount Isa Mines Ltd*[36]).

In a similar manner, sexualised workplace cultures that have been normalised' by team members, have led to sexual harassment complaints by women who have been targeted

[31] D Zapf and S Einarsen (2003) 'Individual antecedence of bullying'. In S. Einarsen, H. Hoel, D. Zapf & C. Cooper (Eds.), *Bullying and emotional abuse in the workplace: International perspectives in research and practice.* (2003).

[32] S Einarsen, 'The nature and causes of bullying at work' (1999) 20 *International Journal of Manpower* 16.

[33] See, eg, D Lewin and R Peterson, 'Behavioural outcomes of grievance activity'(1999) 38 *Industrial Relations* 554; H Leymann, 'The content and development of mobbing at work' (1996) 5 *European Journal of Work and Organisational Psychology*165.

[34] D Zapf and C Gross, 'Conflict escalation and coping with workplace bullying: A replication and extension' (2001) 10 *European Journal of Work and Organizational Psychology* 497.

[35] L J Hauge and A Skogstad and S Einarsen, 'Individual and situational predictors of workplace bullying: Why do perpetrators engage in the bullying of others?' (2007) 23 *Work and Stress* 349.

[36] *Hopper v Mount Isa Mines Ltd and Ors* [1997] QADT 3.

by a dominant group' that has normalised the sexualised environment within the

workplace within the organisation (for example, *Horman v Distribution Group Ltd*[37]).

Many perpetrators will only bully or harass others in the work group if the social

environment of the work group encourages such behaviour[38].

Leadership style as a risk factor

There is increasing evidence that poor leadership style is a risk factor in workplace

bullying. In particular, unpredictable leadership under which punishment is delivered

according to the leader's own terms independent of the behaviour of subordinates has

been found to be associated with both self-reported and observed bullying[39]. In addition,

laissez faire or slack leadership has been found in a number of studies to be predictive of

workplace bullying[40] (Einarsen et al., 1994; Hoel & Cooper, 2000; Hoel, et al., 2009) as

this type of leadership style allows inappropriate behaviours to go unchecked,

encouraging predatory bullying and allowing conflicts between staff to escalate to

dispute-related bullying.

An authoritarian leadership style in itself can be bullying if the behaviour exhibited by the

leader is unreasonable, repeated and creates a risk to the health and safety of

subordinates.

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[37] [2002] FCA 219.

[38] See, eg, J B Prior and L F Fitzgerald, (2003) 'Sexual harassment research in the United States' from S. Einarsen, H. Hoel, D. Zapf & C. L. Cooper (Eds.), *Bullying and emotional abuse in the workplace: International perspectives in research and practice* (2003) 79; D Zapf and S Einarsen (2003) 'Individual antecedence of bullying'. In S. Einarsen, H. Hoel, D. Zapf & C. Cooper (Eds.), *Bullying and emotional abuse in the workplace: International perspectives in research and practice*. (2003).

[39] H Hoel et al, 'Leadership styles as predictors of self-reported and observed bullying (2009) *British Journal of Management*.

[40] S Einarsen and B Raknes and S Matthiesen, 'Bullying and harassment at work and their relationship to work environment quality: An exploratory study' (1994) 4 *European Work and Organisational Psychology* 381.

H Hoel and C Cooper, *Destructive conflict and bullying at work* (2000) Unpublished manuscript, University of Manchester, Institute of Science and Technology;

[40] H Hoel et al, 'Leadership styles as predictors of self-reported and observed bullying (2009) *British Journal of Management*.

8. Draft regulation

Regulation of the risks posed by bullying must centre on recognition of the identifiable risk factors for bullying. The risk factors must be defined and easily understood. Guidance material from health and safety authorities clearly recognises bullying as a health and safety issue and incites that bullying should be managed like any other health and safety hazard, with a risk management approach. (for example Worksafe Victoria, 2003, 2009; Workcover NW, 2008). However, while the risk factors may vary depending on the type of organisation, ata bare minimum risk factors that have been identified are:

- Lack of policy

- Lack of training for staff on their rights and responsibilities

- Lack of training for managers on what to do if they receive a complaint

- Lack of designated person to manage the system

The purpose of the regulation is to require persons (PCBU's) to take proactive steps at controlling the risks of psychological harm. The regulation should therefore set a minimum standard of action that must be taken to minimise the risk of bullying in the workplace through thoughtful risk control measures.

The PCBU must then take steps to ensure as far as is reasonably practical, that the minimum identified risk factors are controlled.

The attached draft regulation is for discussion purposes. Further work is needed on the draft.

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DRAFT REGULATION - BULLYING

Chapter X – Inappropriate behaviour towards a worker

Part X.1 – Bullying

X.1.1 – Meaning of *Bullying*

(1) For the purposes of this Part *bullying* means:-

    (a) Behaviour that is directed towards a worker or a group of workers that is repeated and that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the worker or workers to whom the behaviour is directed; and

    (b) That creates a risk to health or safety.

(2) Bullying behaviour does not include:

    (a) Reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee

    (b) A decision by an employer , based on reasonable grounds not to award or provide a promotion, transfer, or benefit in connection with an employee's employment

    (c) Reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment

    (d) Reasonable action taken in a reasonable manner under an Act affecting an employee.

Duties of a person conducting a business or undertaking

X.1.2 – Identifying risk factors

A person conducting a business or undertaking must, so far as is reasonably practicable, identify all risk factors associated with bullying in the workplace. Risk factors associated with bullying may include,

    (a) Lack of workplace bullying policy and complaint procedures;

    (b) Lack of training for all employees regarding their rights and obligations in regard to workplace bullying;

    (c) Lack of training for managers and responsible persons within the organisation in relation to preventing and addressing workplace bullying;

    (d) Lack of designated trained personnel responsible for administering and monitoring bullying grievance system;

X.1.3 – Control of risks (associated with *Bullying*)

(1) A person conducting a business or undertaking must ensure so far as is reasonably practicable that a worker is not exposed to *bullying* in the workplace.

(2) In complying with sub-regulation (1), the person must implement risk control measures that reduce the effect of risk factors associated with *bullying* to the greatest possible extent, so far as is reasonably practicable.

X.1.4 – Review of risk control measures associated with bullying

(1) Without limiting Regulation 38, a person conducting a business or undertaking must review risk control measures for bullying in place in the following circumstances:-

(a) prior to any organisational change or

(b) prior to any change in working arrangements; or

(c) prior to any change in working relationships; or

(d) if a bullying complaint occurs; or

(e) if a risk control measure does not control the risk

(f) if a health and safety representative at the workplace requests a review.

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