



Australian Education Union

FE.

Federal Office

*Ground Floor, 120 Clarendon Street, Southbank, Victoria, 3006
PO Box 1158, South Melbourne, Victoria, 3205
Federal Secretary : Susan Hopgood
Federal President : Angelo Gavrielatos*

*Phone : +61 (0)3 9693 1800
Fax : +61 (0)3 9693 1805
Email : aeu@aeufederal.org.au
Web : www.aeufederal.org.au*

3 July 2012

Standing Committee on Education and Employment
Inquiry into Workplace Bullying
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

Email: workplacebullying.reps@aph.gov.au

Dear Sir or Madam,

Re: AEU Submission to the Inquiry into Workplace Bullying

Please find attached submission from the AEU to the Inquiry into Workplace Bullying.

Please contact me if you have any questions in relation to this submission.

Yours sincerely,

Susan Hopgood
Federal Secretary



Australian Education Union

Submission to the Parliament of Australia

House of Representatives Standing Committee on Education and Employment

Inquiry into Workplace Bullying

July 2012

Angelo Gavrielatos
Federal President

Susan Hopgood
Federal Secretary

Australian Education Union
PO Box 1158
South Melbourne Vic 3205

Telephone: +61 (0)3 9693 1800
Facsimile: +61 (0)3 9693 1805
Web: www.aeufederal.org.au
E-mail: aeu@aeufederal.org.au

Australian Education Union

Submission to the

Inquiry into Workplace Bullying

Introduction

The AEU welcomes the opportunity to provide a submission to the House of Representatives Standing Committee on Education and Employment Inquiry into Workplace Bullying [‘the Inquiry’].

The Australian Education Union is an organisation of employees registered under the provisions of the *Fair Work (Registered Organisations) Act 2009*. It has approximately 186,000 members employed in government schools and public early childhood work locations, in public institutions of vocational and/or technical and further education and training and in disability services work locations as teachers, school leaders, instructors or supervisors and in education assistance or support work classifications. As such it has considerable experience in dealing with workplace cultures and allegations concerning workplace bullying together with the legal and other regulatory frameworks concerning these and related matters.

The AEU supports and adopts the submissions made by the ACTU to the Inquiry. In the submissions which follow the AEU provides supplementary material or comment drawn from its experience in the education sector.

The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying.

There is no shortage of evidence to support the claim that workplace bullying is prevalent and of serious concern amongst the Australian community.

The National Data Set (Productivity Commission) indicates that the national incidence rate of serious mental stress claims processed by the various Australian workers compensation authorities has been increasing since 2007 by about 2% each year.

In significant recent research conducted across all Australian jurisdictions, the ‘Investigation of Staff Bullying in Australian Schools’ (2009), Riley et al report empirical data which support the AEU’s anecdotal experience in the education sector that bullying behaviours are widespread for staff as well as students. A staggering 99.6% of educators claimed that at some stage during their employment they had experienced at least one of 42 bullying behaviours identified by the researchers.

The most common was personal confrontation or professional destabilisation, often resulting in a deterioration of mental and physical health. Despite an earlier, 2005, research finding concerning only Catholic schools by the same authors that parents were the primary bullies, the 2009 report found the primary bullies were colleagues (86%), executives (85%), parents (81%), principals (79%) and students (74%). Persistent bullies, however, were executives and principals.

The survey results also showed that a disturbingly high 50% of educators indicated their health was affected by persistent or frequent bullying. Educators in isolated, rural and remote work locations face particular exacerbations. The AEU Northern Territory Branch reports a rising use of emergency medical evacuations in isolated rural or remote communities where bullying has resulted in severe depressive illnesses and victim suicidal behaviours.

The role of workplace cultures in preventing and responding to bullying and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying.

Workplace bullying occurs at work. However, at least in the education sector, work or work place is not simply the conventional ‘bricks and mortar’ institutional campus but also involves ‘cyberspace’ where working relationships and the practice of work ‘business’ is conducted in part, and increasingly, online and in places removed from the traditional campus.

Bullying, as the incidence data shows, is not the isolated or aberrant or infrequent behaviour of a few ‘bad apples’. It occurs within a broader management, organisational and cultural context which, despite protestations to the contrary, enables bullying behaviour to occur and even flourish. Workplace contexts or cultures which are autocratic, hierarchical, competitive and ‘target’ or ‘task’ focussed show higher risk for bullying behaviours than cultures which stress democratic decision making, consultative processes and where the work process is collegial or co-operative rather than competitive.

These risk factors can be particularly exacerbated in isolated workplaces. The *Working Safe in Rural and Remote Australia Project*, a collaboration between rural doctor and medical associations with nursing, teaching and policing industrial organisations, released a report in May 2012, ‘*Keeping People Safe*’ which stressed that while there was too little empirical data to conclude that rural and remote work locations were more dangerous places than their metropolitan work places, nonetheless generally lower staffing levels, fewer support services and greater difficulties in actioning effective complaints procedures presented a greater problem in controlling for behaviours such as workplace violence, aggression, bullying and harassment. It favoured the development of a whole-of-community approach to the issue of prevention of workplace violence.

Establishing, such ‘bully-free’ workplace cultures requires conscious effort to implement safe systems of work. Employers, managers and workers need to take individual responsibility for their actions to build atmospheres of trust and respect and to create workplace cultures that ensure they well equipped to prevent, control for and deal with bullying. This should not be seen as detracting from the primary responsibility that employers have toward identifying and mitigating risk with respect to bullying.

An example of such conscious effort is the NSW *'Dignity and Respect in the Workplace Charter'* developed by the NSW Teachers Federation, Public Service Association and the Education Department.

The Australian Council of Trade Unions (ACTU) includes in their Charter of Workplace Rights, the principle that “persons who control, manage or own workplaces have an absolute duty of care without limitation to provide and maintain safe and healthy work environments.”

Riley et al, (2009) emphasise that developing cultures of dignity and respect certainly has an impact in reducing the incidence and seriousness of workplace bullying, and that a whole school response is warranted.

The emphasis in prevention was not lost when developing new ‘harmonised’ work health and safety laws on a nationally consistent basis. Those laws require persons conducting a business or undertaking to consult workers who carry out work for the business or undertaking about health and safety risks, and require duty holders to work together to coordinate their responses to risks. Officers of organisations have a positive and proactive duty to exercise due diligence to ensure that the organisation complies with its duties.

In order to change workplace cultures which display heightened risk for bullying, the AEU sees a significant need for well resourced and more coordinated strategies across government and the private sector. The aim of such strategies would be to increase the skills of managers and workers within the organisation, business or undertaking in preventing workplace bullying from occurring and in identifying the factors that give rise to it.

The experience of the AEU strongly suggests that workplace bullying is poorly understood in the workplace and that the emphasis to date has been primarily re-active: on having and promulgating ‘zero tolerance’ policies and ensuring a ‘complaints’ process is available. At best the focus has been on preventing the extreme forms of bullying. The wide variety and subtle nature of many forms of bullying is simply a subject of neglect.

Too often, AEU members’ experience of using complaints-based procedures is that they are ‘biased towards management’. Examples include informal concerns not acted upon unless raised to the level of formal, written complaints, incident reports are viewed as just that rather than as matters on which to take further action and investigations are conducted by supervisory staff in a defensive manner, with a vested interest in preserving ‘status quo’ behaviours.

The ACTU (2012, p12) acknowledges that “modern working arrangements create a heightened exposure to psychosocial hazards. Outsourcing, privatisation, corporatisation and competitive tendering of previously stable full time jobs has led to a large increase in the number of workers in insecure employment arrangements. Workers lacking secure employment face significant difficulties in raising health and safety complaints due to the nature of their employment arrangements and conditions.” With increasing casualisation of occupations such as teaching, it can be predicted that the incidence, as distinct from the reporting, of bullying behaviours will rise. This latter distinction is important as workers in insecure forms of employment have both a greater incapacity to access and a greater reluctance to utilise formal complaints procedures.

Government policies in education which drive organisational change such as funding constraints and reductions, increasing devolution of management and accountability functions to workplace levels with models such as ‘self managing’ or ‘independent public’ schools which compete for students, status and funds are high risk factors for the development of bullying behaviours. So too are the introduction of performance-bonus remuneration schemes and the creation of education markets whereby schools compete for students and are ranked in ‘league tables’ displaying success and status. Yet it seems Work Health and Safety risk control is not a factor in any ‘due diligence’ or ‘pre-implementation’ policy evaluation process.

In the Australian Capital Territory, a recent WorkSafe ACT investigation into the compliance by Canberra Institute of TAFE with the Work Safety Act 2008 & Work Health & Safety Act 2011 in response to allegations of Bullying and Harassment highlighted the increased risk of a culture of bullying developing when there is a failure to be proactive about prevention and to adequately respond to complaints.

The WorkSafe ACT investigation noted that funding reductions (of around 40% in real terms since 1997), and the resulting casualisation of the teacher workforce had contributed to increased workload and stress in the workplace and was associated with an increased health and safety risk of bullying.

In response to those risks, the Investigation identified that management had both deficient policies and inadequate processes associated with complaints of bullying and harassment and that this had occurred over many years.

In Western Australia, Ann Dreyfus explains in an Education Review opinion piece “All’s not quiet on the Western Front” (March 2012, p28-29) how Independent Public Schools (IPS) are contributing to the risk of bullying cultures developing. She reports these risks as competitiveness fostered by IPS recruitment methods, employment insecurity with one year contracts, reforms being driven by cost efficiencies and enormous workloads being forced onto school administrations.

In Western Australia, teachers and school administrators are being displaced through IPS restructuring and competitiveness. The State School Teachers’ Union of WA (SSTUWA) reports “forced medical reviews” are one way of doing this and where previously they used to be contacted once a week with such cases, since IPS schools were established they receive as many 5 per week. About 45% of case management by the SSTUWA is said to be ‘bullying-related’ even though cases originate as teacher performance management or medical referrals or forced transfers.

In Victoria which has the most ‘devolved’ system, the AEU Branch reports that over 2011-2012 it has handled some 500 direct bullying-related inquiries.

The adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums.

The AEU believes that workplace culture can only be preventative when empowered by interventionist policy regulation and when coupled with quality education and training.

Given widespread variations in the perception and ‘definitions’ of bullying, there is a need to develop a shared understanding of a common definition of workplace bullying.

Currently, there is a deficiency in the use of ‘primary intervention’ options that prevent bullying behaviour from occurring, including the use of standards and principles for enhancing and promoting an ethical culture in workplace and increased use of education and training programmes targeted to the differing needs of different groups of workers. There is also a deficiency in the use of ‘secondary intervention’ options early in any ‘conflict cycle’ to prevent one-off incidents escalating into bullying.

Strategies which build capability within workplaces to prevent bullying and ensure such places are safe and healthy are those which:

- primarily design risk factors out of the work process; but also secondarily
- increase organisational and worker awareness of bullying;
- improve all management levels’ commitment to preventing bullying;
- increase the monitoring and review of policies, procedures and intervention strategies; and
- develop a central resource hub including training materials, posters, case studies and templates of policies and procedures.

The AEU supports the ACTU in its advocacy for:

- a) a regulation and supporting codes of practice to address psychosocial hazards, which must include an obligation on employers to assess and control psychosocial hazards;
- b) genuine consultation and engagement of workers and their representatives in the identification, assessment and control of psychosocial hazards;
- c) training of health and safety representatives, workers and supervisors;
- d) workplace policies and procedures that ensure confidentiality in dealing with individual issues.

Government agencies involved in responding to workplace bullying complaints, in consultation with key stakeholders, should review their existing awareness and engagement resources regarding workplace bullying and jointly develop and publish co-branded guides to inform people subjected to bullying, employers and the general public about the different avenues available for help. These guides should refer to the potential for extreme cases of workplace bullying to also constitute criminal conduct, for example, assault.

The AEU believes that there is a lesson that can be learned from the sort of community education undertaken in response to anti-discrimination and sexual harassment some decades ago. The awareness process utilised contact officers in workplaces, extensive and ongoing professional development but was centred on behavioural change in addition to recognising that redress could be sought through legal complaints processes. Any community education strategy should also clearly make the distinction that harassment on the basis of discrimination is not bullying and that it comes with its own distinct legal remedies.

Whether there is scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying.

There are a large number of government agencies with roles in responding to workplace bullying complaints. Legislative avenues of redress for persons subjected to workplace bullying include:

- workers' compensation;
- criminal law;
- anti-discrimination;
- unfair dismissal;
- breach of contract actions against employers; and
- breach of statutory duty actions under workplace health and safety legislation.

This can be bewildering for workers and militates against effective remedies. Consequently there is a need for better coordination between agencies to ensure, among other things, that the risk of complaints being simply cross-referred by agencies is reduced. Complainants could be better assisted through implementation of a single entry point – a 'one stop shop' dealing with all facets of their complaint - or at least a cross-agency protocol to improve referrals between government agencies.

It is perhaps worthwhile investigating the utility of ensuring the various legislative schemes underpinning Work Health and Safety, anti-discrimination, criminal, and industrial or employment law encompass a 'cross-vested' jurisdictional element so that complainants have better access to effective remedies and are not denied justice due to jurisdictional and 'choice of forum' barriers.

Many stakeholders are involved in 'helping' roles, including human resource officers, union delegates, doctors, psychologists, lawyers and community advocates who support targets of bullying, and there is often little or no coordination between these personnel when dealing with persons affected by bullying behaviour. This lack of coordination may result in incorrect or misleading advice being given.

Whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms.

There are a number of legal and policy gaps which should be addressed:

- Definitions of ‘health’ in all jurisdictions’ principal legislation and regulatory practices must expressly include ‘psychological health’ and, preferably, include a reference to workplace bullying amongst psychosocial hazards or risks to such health.
- Compensation for psychological injury arising from bullying must be permitted and bullying should be expressly excluded from any concept of ‘*reasonable management action taken in a reasonable manner*’.
- Prosecutions must be able to be undertaken by an injured party and not remain the sole province of the jurisdictional regulator.
- A well resourced, highly trained regulatory inspectorate is required with a primary obligation to ensure each workplace has an appropriate hierarchy of controls in place to prevent and reduce workplace bullying. This includes a requirement that workplace policies and procedures are regularly monitored and reported on and perhaps even certified as being compliant.
- Each workplace, or ‘Person Conducting the Business or Undertaking’ should be required to report on the safe systems it has in place, including the methods it has for implementing those systems, for the identification of and controls for the preventing of risks to the psychological health of its workers. Such systems must be required to be sensitive to the differing requirements of differing categories of workers, eg, the one standard set of ‘induction materials’ outlining a zero tolerance policy and referencing a standard complaints handling mechanism will not be adequate or appropriate to all classes of workers.

Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying.

The evidence suggests an inescapable inference that the existing legislation and other statutory provisions have been ineffective in reducing bullying behaviours. The use of the concept of ‘deterrence’ itself is problematic as it suggests a remedial solution would be to increase penalties. In other words, there have to be victims or targets, bullying as a cause has to be established to the requisite (criminal?) level of proof and then greater penalties (fines and custodial sentences) imposed so that, in theory, other bullies will be ‘deterred’ from such behaviour.

Not only do deterrence-based or motivated models not work, they are simply misconceived and provide a classic case of ‘the tail wagging the dog.’ While there should be penalties, even criminal penalties for severe cases, such schemes fail to address causes and preventative strategies.

The most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another; and possible improvements to the national evidence base on workplace bullying.

The issue of cultural or behavioural transfer should not be confused with schemes for identification and registration of offenders as individuals, such as those which operate for serious sexual or drug offenders and pre-employment criminal history checks.

The most appropriate way to ensure workplaces are free from bullying is to ensure the workplace is one that values and displays dignity and respect for all workers regardless of diverse backgrounds. This requires those who conduct or undertake the business to have in place safe systems of work. Workplace policies and procedures which concentrate upon identifying and punishing individuals as offenders become increasingly ineffective and wasteful of resources.

References

Riley, Duncan & Edwards, 2009, 'Investigation of Staff Bullying In Australian Schools' Exec Summary http://www.schoolbullies.org.au/InvestigationOfStaffBullying_ExecSummary.pdf (retrieved 20/06/2012)

ACTU, 2012, "Occupational Health Safety Rehabilitation and Compensation," Congress policy.
<http://www.actucongress.org.au/site/attachments/policies/final/OHS%20Rehabilitation%20and%20Compensation%20Policy%20FINAL.pdf>

Ann Dreyfus, 2012, "All's not quiet on the Western Front," Education Review, March, p28-29.