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headspace

National Youth Mental Health Foundation

Street 47-51 Chelwynd Street North Melbourne

Mail PO Box 473 North Melbourne VIC 3051

Tel +61 3 9027 0100 Fax +61 3 9027 0199

headspace.org.au

headspace submission: Inquiry into Workplace Bullying

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For further inquiries please contact:

Sian Lloyd

Senior Policy Advisor

headspace National Office

1.0 Introduction

headspace welcomes the opportunity to lodge a submission to the House Standing Committee on Education and Employment. **headspace** believes that workplace bullying is an important issue as it has a significant negative impact on mental health [1-10] and physical health [2, 5-10], and reduces ongoing employability [5, 6, 9]. The estimated cost of workplace bullying to Australian businesses is \$6 to \$36 billion [11]. Young workers are particularly vulnerable to workplace bullying [7, 10, 12]. Current laws and regulations are fragmented and inadequate, and many cases of workplace bullying are not reported or addressed. The Federal Government has a fundamental role to play in stimulating workplace culture change with regard to bullying and counteract the normalisation of bullying in Australian workplaces.

In this submission we will highlight the lack of an agreed definition of workplace bullying, lack of data into the prevalence and experiences of workplace bullying (including for young people), and draw attention to the inadequacy of laws and regulations to address or prevent workplace bullying.

headspace believes a range of strategies is required to tackle workplace bullying in Australia including: research, education, support, prevention, law and policies. A national legal framework is required, along with education and prevention initiatives, and improved access to support services for victims of bullying. Further research is required into the prevalence and nature of workplace bullying in Australia, in particular focusing on the experiences of young workers.

2.0 About headspace

headspace, the National Youth Mental Health Foundation, is a world-first initiative providing youth-friendly early intervention services to Australians aged 12-25.

Established in 2006, **headspace** has provided services to more than 63,000 young people. It reaches them through a number of channels, including:

- **headspace Centres.** We have 40 centres (scaling up to 90 centres by 2015) right across the country - in metropolitan, regional and rural areas. Any young person who needs support, advice or just someone to talk to about a mental health problem, can walk into a **headspace** centre and be treated with respect and compassion, within a confidential and safe environment.
- **ehespace.** Our online and telephone mental health support service helps young people who don't feel ready to attend a centre or who prefer to talk about their problems via online chat, email or the phone.
- **headspace School Support.** This newly-launched program is gearing up to assist school staff and students across the country deal with the complex issues they may confront in the aftermath of a suicide.

headspace provides assistance across four core streams of mental health, physical health, alcohol and other drug, and vocational assistance and advice, and we aim to empower young people to seek assistance early.

Because 75 per cent of all mental health problems begin between before the age of 25, our services provide high quality early intervention services for mental health challenges commonly experienced by young adults, with the aim of preventing long-term adverse effects.

headspace national work is driven through four core platforms: building knowledge in evidence based treatment, community engagement and awareness-raising, provision of training and education, and driving service sector reform.

headspace prioritises the views of young people, both at a service-provision level and at a policy level, through our headspace National Youth Reference Group. Our workers listen to and try to understand the needs of young people so they can realise better health and wellbeing. We also work with other mental health and community agencies to improve the lives of young people.

A recent Independent Evaluation of **headspace**ⁱ was favourable in its view of the **headspace** model, its appeal to young people, and the quality of care provided across the four core streams.

3.0 The prevalence of workplace bullying in Australia

The prevalence of workplace bullying is not well established in Australian workplaces and no national surveys have been conducted in Australia on the incidence of bullying [11]. International annual prevalence rates range from 3.5 per cent in Sweden and 15 per cent in the U.K. to 21.5 per cent in the United States [1, 5, 11]. When these prevalence rates are applied to the Australian working population, estimates range from 350,000 to 1,500,000 workers subjected to workplace bullying [11].

It is important to note that bullying can be difficult to detect and may not always be reported because employees: fear payback from the bully, believe that no-one will act on the problem, fear being labelled as weak, think that it will affect their career prospects, accept bullying as a normal part of work culture, and concern that complaining about bullying may be considered as an act of disloyalty [6, 12]. People who are bullied tend to leave their job rather than address or report the bullying behaviour [13].

ⁱ Muir K., Powell A., Patulny R., Flaxman S., McDermott S., Oprea I., Gendera S., Vespignani J., Sitek T, Abello D. and Katz I. (2009). Independent Evaluation of **headspace**: the National Youth Mental Health Foundation. Social Policy Research Centre, University of New South Wales.

Available at: <http://www.headspace.org.au/about/news-and-media/resources/>

The Productivity Commission notes that there is no single, nationally accepted statutory definition of workplace bullying which has been adopted by all jurisdictions in Australia and argues that *“the diversity in definitions and regulatory treatment creates uncertainty”* p.288 [11].

WorkSafe Victoria defines workplace bullying as *“repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.”* p.6 [12]. Another definition describes workplace bullying as *“repeated and persistent negative acts towards one or more individual(s), which involve a perceived power imbalance and create a hostile work environment”* p.1215 [6]. Bullying often comprises subtle and masked negative behaviours that can be difficult to prove or address [10].

Bullying takes a variety of forms. These include: social isolation; spreading rumours; excessive criticism or monitoring of work; withholding information; depriving responsibility; verbal aggression/abuse; physical gestures; ignoring or giving the target the ‘silent treatment’, making unreasonable work demands. such as overloading or reducing timelines in order to make the person appear incompetent; deliberately blocking promotion in the hope that the target will resign; and cyberbullying [5, 6, 9, 12]. Many commentators argue that single acts are not bullying [6, 11], and that bullying must be distinguished from legitimate performance management practices [5]. Individual factors that cause bullying include perceived power imbalance, low perceived costs for the perpetrator, and dissatisfaction and frustration in the work environment [5, 6].

The literature reports that women [6-8], people from ethnic minorities [6], and young people [8] are more likely to be the victims of bullying at work. A survey of 797 apprentices found that 23 per cent of new apprentices felt that they had been bullied at work and this had motivated them to leave the apprenticeship [14]. Young people (aged 18 to 25) also report more stress in the workplace and less positive experiences of work compared to other age groups [15], and ‘job strain’ is more prevalent among young workers than older workers[8]. Olender-Russo’s (2009) examination of bullying in nursing states that bullying is often directed at new graduates and recounts the common phrase used in the profession, *‘nurses eating their young’* [10].

Bullying is very costly to Australian businesses, workers and society as a whole. The estimated cost to Australian businesses is \$6 to \$36 billion [11]. Sheehan et al (2001) estimates that every case of workplace bullying costs the workplace involved between \$16,977 and \$24,256 [5]. The costs to

business include: lost productivity, absenteeism, staff turnover, legal and compensation costs, and decreased commitment and productivity [5, 6, 9, 10].

More important is the cost to the individual. Workplace bullying has a major negative effect on mental health through depression, anxiety, stress and suicide [1-10]. It also affects physical health through tobacco, alcohol and other drug abuse, and heart disease, [2, 5-10];. It significantly reduces future employability [5, 6, 9]. The Australian Council of Trade Unions has found that the most common source of stress at work is bullying [5].

headspace recommends:

- *Research into the prevalence of workplace bullying in Australia.*
- *Research into the prevalence and experiences of young workers in Australia.*
- *Support to young workers to address workplace bullying and to seek professional help.*

4.0 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 may be a process of long-term cultural change. Workplace bullying is a social and cultural problem which ultimately concerns the way in which people interact with one another” p.29 [5].

The literature identifies multiple causes of workplace bullying and state that it is often an interaction between individual and situational factors, for example workplace culture [5, 6]. Salin (2003) identifies organisational constraints that foster bullying behaviour. These include; lack of control over job, lack of clear goals, role conflict and ambiguity, dissatisfaction with social climate, dissatisfaction with internal communication, and high degree of stress through high workload, time pressure and a hectic work environment [6]. Motivating structures and processes in workplaces include high internal competition, certain forms of reward systems, and expected benefits for perpetrator [6]. Organisations where there is less constructive leadership or laissez faire management style [5]. In some organisations bullying seems to be more or less permitted as the ways things are done and in some workplaces bullying can be seen as an initiation ritual [5, 6]. Bullying is also used to expel unwanted employees, whom it otherwise would be difficult to lay off [5, 6].

The workplace and employers have a fundamental role to play in preventing and responding to bullying. WorkSafe Victoria suggest a range of prevention measures that workplaces can adopt including: creating awareness of bullying behaviours; developing a policy on workplace bullying; informing, instructing and training on workplace bullying; identify risk factors and controlling the risks, and

encouraging reporting. Workplaces must send a clear message to all employees that bullying will not be tolerated.

headspace recommends:

- *Development of a systematic approach to bullying within the workplace.*
- *Workplaces take a more active role in addressing the issue of bullying, including the development of bullying policies, staff training, and providing staff with access to services for support and advice when needed.*
- *Workplaces are encouraged and supported to develop and implement workplace bullying policies.*
- *Employees are provided education, assistance and advice, and employers produce best practice guides to workplace relations and practices.*
- *Availability of affordable dispute resolution and access to health service, when needed.*

5.0 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;

“The insidious and underhanded nature of workplace bullying can make attempts to recover workers’ compensation complicated or unsuccessful and the uncertainty and cost of common law action makes its remedies largely inaccessible.” p. 22 [5].

In workplace bullying cases it is often difficult to establish a legally-recognisable harm; that is that the harm was foreseeable and that the conduct (bullying) caused the mental injury [5]. The expense and uncertainty of pursuing legal action can act as a significant deterrent to targets of workplace bullying, especially if they are suffering from mental injuries caused by their treatment at work [5]. In addition Occupational Health and Safety inspectors report that psychosocial issues in the workplace are harder to address than physical hazards as claims are more difficult to substantiate due to different individual interpretations of the events [11].

“The legal landscape which ultimately confronts the targets of workplace bullying is fragmented, uncertain and in some instances totally inadequate” p.16 [5].

The literature also highlights that while there are no specific laws directed to address workplace bullying, a range of laws and acts can be used, including common law and statutory avenues [5]. Common law avenues include: tort, breach of the employer’s duty of care, vicarious liability, and liability for intentional infliction of harm. Contract law avenues include: breach of employer’s implied duty of

care, and breach of the implied term of mutual trust and confidence. Statutory avenues include: occupational health and safety legislation, anti-discrimination legislation, workers' compensation and the Fair Work Act – (workplace bullying as a contravention of an enterprise agreement or modern award, the general protections of the Fair Work Act, and unfair dismissal under the Fair Work Act).

Since there are no specific laws or regulations to address workplace bullying, there are gaps in the existing framework which means that many victims of bullying have no achievable avenues of recourse at all [5, 11]. For example, Kelly (2011) argues that *“Where bullying in the workplace is non-discriminatory, is not addressed by a modern award or enterprise agreement and cannot be classified as adverse action or unfair dismissal, legal redress can be extremely difficult”* p. 22 [5].

France and Belgium have implemented specific legislative initiatives directed to the prevention and resolution of workplace bullying [5]. The French Labour Code stipulates that employees have the right not to be subjected to acts of moral harassment which have the effect of degrading the employee's physical or psychological health or affecting the employee's professional future. In 2002 in Belgium, legislation was enacted relating to protection from violence, moral harassment [bullying] and sexual harassment. The legislation requires the employer to put preventative measures to reduce risk of bullying, and the burden of proof lies with the individual accused.

A targeted legislative approach is required in Australia positioning workplace bullying as a legal issue in its own right. This needs to be centralised, comprehensive, efficient and accessible, and seek to establish the rights of all workers to be free from bullying, harassment and victimisation in the workplace. This could be achieved through the proscription of bullying in the workplace and through the provision of new complaint mechanisms and compliance and enforcement measures. Kelly (2011) suggests using legislation to tackle workplace bullying on individual level – through proscription of workplace bullying behaviour, and on an organisational level – through the imposition of new obligations upon the employer to provide a workplace free from bullying under the umbrella of the Fair Work Act. Legislation must impose new obligations upon organisations and employers to take all reasonable steps to provide a bullying-free workplace. Law can provide a powerful incentive for employers to provide bullying-free workplaces.

headspace recommends:

- *Nationally consistent legislation to tackle bullying that provides incentives to employers to prevent bullying.*

- *Making workplace bullying a legal issue in its own right under the Fair Work Act.*

6.0 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;

Workplaces, health and safety regulators, trade unions and community services need to work collaboratively to tackle the issue of workplace bullying. 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, including young people.

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. **headspace** services, including **headspace** centres and **eheadspace**, have a role to play in supporting young people experiencing workplace bullying. Young people need information about their rights in the workplace and where to turn for help.

headspace recommends:

- *A targeted campaign for young workers to inform them of their rights and services that can support them.*
- *Collaboration between workplaces, health and safety regulators, trade unions and community services (including mental health services) to improve support to workers who experience bullying.*

7.0 Possible improvements to the national evidence base on workplace bullying:

The national evidence base on workplace bullying is currently poor. Further research is required to identify the rates and impact of bullying in Australian workplaces. Investment in evaluating the effectiveness of workplace bullying interventions is also required. In particular, there is limited research on the experiences of young workers.

headspace recommends:

- *A commitment to developing national data on workplace bullying rates and evaluation of workplace bullying interventions.*

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