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# Inquiry into Workplace Bullying

House Standing Committee on Education and  
Employment

**Submission of Unions NSW**

**29 June 2012**

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## Introduction

1. On 31 May 2012 the Minister for Employment and Workplace Relations, Bill Shorten MP, asked the Committee to inquire into and report on *workplace bullying*.
2. Unions NSW welcomes the Inquiry and the opportunity to comment particularly given recent changes made to both the New South Wales and Federal Work Health Safety Laws.
3. Unions NSW is a State Peak Body as defined by section 215 of the *Industrial Relations Act 1996 (NSW)*. Unions NSW has over 60 affiliated unions representing members employed across a wide range of public and private sector industries including teaching, local government, retail, distribution, childcare, manufacturing, electrical, health, emergency services, agriculture, engineering, construction, administrative, the public sector, transport and the textile clothing and footwear industry. Collectively Unions NSW and its affiliates represent over 600,000 workers employed across NSW.
4. We note that the Australian Council of Trade Unions ('ACTU') has provided a submission to this inquiry. Unions NSW supports the submission of the ACTU as well as affiliates to Unions NSW.
5. Unions NSW (formerly known as Labor Council of NSW) has a proud history in advocating for improved knowledge of and management of workplace bullying. The effects of workplace bullying are highly toxic on individual workers, their workmates and their families, as well as a major drain on business productivity.
6. Unions NSW has maintained a website called Unions Safe since 1999 that has seen the development of a number of fact sheets on workplace bullying for workers in and beyond NSW.
7. In 2003 Unions NSW launched its Dignity and Respect Charter and in 2004 the NSW Government, Premiers Department signed up to the Dignity and Respect Charter. Since then, in 2007 the NSW Government has adopted the Dignity and Respect Charter across all of the NSW public sector, and a number of private sector organisations have also adopted the Dignity and Respect charter.
8. In 2007 Unions NSW developed with NSW Department of Premier and Cabinet the NSW Government Dignity and Respect Policy and Guidelines and a training package for government agencies and unions to deliver in the public and private sectors. This has been delivered jointly to many hundred workplaces meetings since.
9. We look forward to contributing to this important inquiry and are available for further contributions if required.

# Executive Summary of Recommendations

The following summarises the recommendations provided by Unions NSW.

## **Recommendation 1**

*It is recommended that the WHS Regulators disclose publicly, particulars regarding the categorisation of the causes of mental disorders which is to include cause; and*

*That the subject matter of WHS enquiries for psychological hazards to the WHS Regulators also be disclosed publicly (including the number of calls and correspondence on topics of psychological hazards also broken down to cause).*

## **Recommendation 2**

*It is recommended that a considerable research program is commenced in partnership with the union movement to identify the prevalence of workplace bullying, what and where the costs are born, and reasons for under reporting.*

## **Recommendation 3**

*The Federal Government establish as part of Safe Work Australia a unit that collates information from the WHS and Workers Compensation Authorities, as well as various medical associations dealing with medical effects of bullying, health institutions and the Medicare system to establish a base line of the prevalence of workplace bullying.*

## **Recommendation 4**

*That the Federal Government support the union movement in developing a national series of draft framework policies and education packages to assist industry and employers better prevent and deal with issues of workplace bullying.*

## **Recommendation 5**

*That the Federal Government provides funding for the union movement to provide training provided to workforces in industry, after consultation with employers to encourage a preventative approach to workplace bullying.*

## **Recommendation 6**

*That the Federal Government provide funding for an independent body such as a Workers Health Centre to establish a national bullying helpline. The purpose is to gather information on the prevalence of bullying and on the mechanisms that are used to address bullying; and to provide consistent and clear guidance to workers on addressing the behaviour when it occurs.*

#### **Recommendation 7**

*Psychological Risk Management Chapter of the WHS Regulations should be created including bullying;*

*and prescriptive Code of Practice for Workplace Bullying should be completed.*

#### **Recommendation 8**

*An adequately trained independent inspectorate division should be created within each WHS Regulator. Adequate and comprehensive procedures should be developed to ensure that the inspectors are not precluded from undertaking further investigations because of other aspects of the employment relationship being tested elsewhere.*

#### **Recommendation 9**

*Creation of a mandatory reporting regime to a central independent government agency, that requires all employers, health professionals, medical services and insurers to report psychological injuries caused at work.*

#### **Recommendation 10**

*That a comprehensive Psychological Risk Management Chapter be developed for inclusion in the Work Health and Safety legislation including mechanisms for addressing all forms of psychological hazard.*

#### **Recommendation 11**

*That self insurers are excluded from self assessing psychological claims and that these be undertaken by a central independent body.*

#### **Recommendation 12**

*That the specialist inspectorate outlined in Recommendation 8 is charged with undertaking investigations based on the statistical prevalence of bullying in that jurisdiction.*

**Recommendation 13**

*That the Federal Government fund research into the prevalence of workplace bullying across all industries, including measures to address bullying.*

## Terms of Reference

The Terms of Reference for the Inquiry are as follows:

- the prevalence of workplace bullying in Australia and the experience of victims of workplace bullying;
- 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;
- 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;
- whether the scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying;
- 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;
- whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;
- 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.

# Response to Terms of Reference and Conclusions

We have addressed these terms of reference in sequential order with conclusions provided at the end of the subject matter of the term of reference.

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

## Prevalence of Workplace Bullying

There appears to be a significant number of studies conducted by Occupational Health and Safety Academics on particular workplaces or industries<sup>1</sup>. This submission does not attempt to revisit this research.

The prevalence of workplace bullying is significantly understated in Australia. It is the experience of the NSW Union Movement that many victims of workplace bullying simply walk away rather than take the issue further through adversarial means of redress or workers compensation. Part of the reason is the adversarial nature of the means of redress. (This includes that the bullying behaviour is often alleged to be from management practices or the application of the corporate structures and policies of the workplace.) Additionally at the very heart of the bullying experience regardless of the source is the implied or overt creation of fear, including repercussions ensuring a practice of silence.

The workers compensation system, which is one of the main sources of actual, not estimated or real costs. It is our submission that it is heavily skewed against recognition of workplace bullying with psychological claims often not being paid, if made at all. The reasons for this include “reasonable employer actions” (Section 11A, NSW WC Act 1987) conducted in an unreasonable manner. In NSW for example reasonable employer actions such as performance management, disciplinary action and/or change management are sometimes used in an unreasonable manner in order to single out and make the work life of selected individual workers unreasonable, whilst different standards are applied to others. These unreasonable applications of “reasonable management actions” can be enough to

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<sup>1</sup>For example, See

Mayhew C., (2004) Occupational Violence/Bullying in Education and Juvenile Justice and Assessment of the impact of these events, in McCarthy P., and Mayhew C., *Safeguarding the organisation against violence and bullying: an international perspective*, Palgrave Macmillan, Hampshire

Mayhew C., and McCarthy P., (2004) Occupational violence: a pilot study of workers in a juvenile justice centre, *Journal of Occupational Health and Safety - Australia New Zealand*, 20 (6): 511-521



allow a claims agent to decline a claim for injury (at least at first instance), no matter how injured the worker is, or inappropriate the application of the management action was. A bullied worker is often in no position to coherently challenge their employer as well as their insurer when often the worker's self-esteem and confidence is already low, and is further removed by the experience.

Self-insuring employers have an extra capacity to complete this power imbalance. When there is a bullying claim (as they control workplace safety, workplace management, claims management etc) and are now often the entity that refers injured workers to contracted medical personnel, who often mistake the employer (with whom they have a service agreement) as the client rather than the injured worker.

Insecure work is a further factor that is prevalent in the cause of the underreporting of workplace bullying. It has been estimated that up to 40%<sup>2</sup> of the workforce works in some form of insecure work. This may be casual, temporary, fixed term, labour hire, supply chain workers or a form of contracting work, that make the worker more vulnerable if they advocate for improved standards of workplace behaviour.

The union delegate victimisation and unfair dismissal case *PSA v DJJ*<sup>3</sup> is an example of what may happen to a casual worker who reports the incidence of their work colleague being allegedly bullied. This resulted in the person reporting the incident being discontinued in their casual shifts despite a history of a pattern of regular shifts. This required now Fair Work Commissioner Deputy President Sams to reinstate the worker and pay them compensation for lost time. It is our experience that many workers who are the victim of bullying cannot undertake the financial challenges or adversarial nature of seeking to get their job back or made safe, and simply walk away from the employment, or out of employment.

The Statistical Bulletin from WorkCover NSW (herein referred to as 'WorkCover') identifies a number of claims in the occupational disease sub category of mental disorder. Unfortunately the statistics from WorkCover's published statistics do not narrow down to state what the cause of the mental disorder claim is. The most relevant statistics available in NSW are now dated.

	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007
Claims all industries	388	884	1,054	927	895

<sup>2</sup> Source ABS, Forms of Employment, November 2011 (Released April 2012), Cat 6359.0 quoted in Independent Inquiry into Insecure Work, Lives on Hold, Unlocking the Potential of Australia's Workforce

<sup>3</sup> Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (on behalf of Kylie McKelvie) and Department of Juvenile Justice [2008] NSWIRComm 98 (26 May 2008)

TMF- Claims all industries	40	280	361	332	336
Total GIC	\$7,577,051	\$19,502,576	\$20,637,507	\$16,372,966	\$16,289,141
TMF- Total GIC	\$1,156,770	\$6,013,098	\$7,838,291	\$5,731,571	\$7,497,510
Total Time Lost (weeks)	5,081	14,119	13,149	12,136	10,209
TMF- Total Time Lost (weeks)	672	5,244	4,825	4,154	3,919

**Table 3: Work Related Harassment and/or Workplace Bullying Claims- all Industries**

Source: WorkCover Authority NSW, (2008), (1) Business Intelligence Report, November December 2008, *Analysis of Occupational Disease Claims*

As seen by the above table the public sector is over represented in claims of bullying and harassment compared to the workforce in general. Part of the reason for this over representation may be a greater knowledge of the hazard, less mobility of the workforce or less reporting in the private sector. This is confirmed on a national level<sup>4</sup>. The problem is that we do not currently have further information, research, analysis and coordination.

There is a widespread view that bullying and harassment claims are under reported like other forms of psychological injury. Some of the reported reasons for this include:

- Section 11A “reasonable employer actions” of the Workers Compensation Act when disciplinary, performance and restructures are in process or are used inappropriately, or in a bullying manner may preclude a worker from accessing compensation;
- The reluctance of workers to trust workplace management in supporting a bullying allegation or claim;
- Many people prefer to leave the workplace rather than deal with ongoing bullying;
- Some employers not recognising workplace bullying as a health and safety issue and referring it to conflict resolution through grievance processes only;
- Fear of further bullying if the claim is made as the bullies “close ranks”.

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<sup>4</sup> Safe Work Australia, *Compendium Of Workers’ Compensation Statistics Australia 2009–10*, page 9

*WorkCover Guide 2008 (NSW)*<sup>5</sup>, states that bullying may not be reported because people:

- may not recognise bullying behaviour;
- may not know the reporting procedure;
- fear retribution or payback from the bully, or isolation of colleagues;
- believe no-one will respond to their complaint;
- fear being labelled a complainer or weak;
- believe complaining will damage their career prospects;
- accept bullying as a normal part of the workplace culture;

When Unions NSW affiliates have undertaken surveys in the public and private sector they have often been surprised by the response rates and the number of people who were subjected to or witnessed bullying at their work. This would indicate the reasons why the workers compensation statistics fail to tally or compare to the same figures as the Productivity Commission figures. A number of Unions NSW affiliates have conducted surveys of workplaces to identify bullying behaviours and have come up with significantly large experiences of witnessing ( >80%) or directly being targeted ( >30%) by bullying behaviour. These surveys are often self selecting but usually anonymous but often get a larger sample than employer run surveys due to the fear of employee identification.

Unions NSW is aware that our WHS Regulator, WorkCover Authority of NSW receives several hundred thousand calls per year from the public on a range of WHS and Workers Compensation matters of which workplace bullying is often one of the highest non administrative WHS subjects of the call or Frequently Asked Question (FAQ). A number of these calls would not appear on the Workcover workers compensation statistics as they may not injure a worker or a claim may not be made, but are a good indicator of the types of emerging issues and prevalence of the issue.

The important conclusion that this all points to is that 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.

### **Experiences of Victims**

Unfortunately many of the victims of workplace bullying suffer in silence.

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<sup>5</sup> WorkCover Authority NSW, (2008), Preventing and Dealing with Workplace Bullying, A guide for Employers and Employees, Guide 2008

A number of unions have reported member's experiences of bullying to Unions NSW. The evidence suggests that that bullying is a serious issue at work and deserves a higher focus of attention.

Often the bullied worker feels helpless, reports the issue later than other categories of injury and as a result fails in other areas of their personal and work life, compounding the workplace scenario for them. This often then leads to the bullied being further victimised by the "system", be it the workplace systems of management of conduct and performance or alternatively the workers compensation system. Where people remain constantly under scrutiny, their honesty and integrity always challenged by the workplace and also the insurer, and very little is undertaken to investigate the workplace, it allows for the psychological torment to continue.

Most people report feeling highly distressed and further distressed trying to seek redress.

A number of case studies have been inserted at the end of this submission at Appendix 1.

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*That the subject matter of WHS enquiries for psychological hazards to the WHS Regulators also be disclosed publicly (including the number of calls and correspondence on topics of psychological hazards also broken down to cause).*

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*The Federal Government establish as part of Safe Work Australia a unit that collates information from the WHS and Workers Compensation Authorities, as well as various medical associations dealing with medical effects of bullying, health institutions and the Medicare system to establish a base line of the prevalence of workplace bullying.*

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;

The Dignity and Respect Charter was introduced in NSW in 2003 by Unions NSW and with affiliate unions including the Public Service Association of NSW. The Charter lists a range of behaviours that may constitute bullying behaviour or risk factors, to assist with identification and a process on how to deal with the bullying including risk management techniques.

## Dignity & Respect in the Workplace Charter

**This organisation is committed to a workplace that provides dignity and respect to all its employees. Dignity and respect requires acceptable behaviour from everyone in our workplace.**

**Preamble**  
Everyone in the workplace, irrespective of their position, deserves to be treated with dignity and respect. No one should suffer bullying or harassment while going about their work. This can put at risk the health, safety and wellbeing of all employees. This organisation has therefore adopted a policy of 'zero tolerance' to bullying or harassment of work.

**Definitions**  
"Dignity and Respect" requires an organisation to have and maintain a certain behavioural culture. Acceptable and unacceptable behaviour are defined below.

**What is unreasonable or inappropriate behaviour?**  
Workplace bullying or harassment is repeated unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

**Within this definition:**  
"Repeated" refers to the persistent nature of the behaviour, not the specific form the behaviour takes. Behaviour is considered "repeated" if an established pattern can be identified. It may involve a series of discrete incidents – eg verbal abuse, deliberate damage to personal property etc.  
"Unreasonable behaviour" means behaviour that a reasonable person, having regard to all the circumstances, would expect to be victimised, humiliated, undermined or threatened. "...having regard to all the circumstances" does not mean that this hypothetical person has total knowledge of every aspect of the situation. Rather this person knows as much as the alleged bully could reasonably be expected to know.  
"Behaviour" includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening.

**'At Risk to Health and Safety'** includes risk to the mental or physical health of the employee.

**Types of Bullying Behaviour**  
The following types of behaviour, when repeated or occurring as part of a pattern of behaviour, could be considered bullying:  

- Being overworked with work, or not being given enough work to do;
- Being required to perform tasks without proper training or instruction, and which may place an employee at risk from injury;
- Unreasonable overtime, unfair rostering, allocation of work or being asked to perform non-work related tasks;
- Being excessively supervised or criticised;
- Subjected to constant ridicule and being put down in front of co-workers;
- Damage or interference with personal belongings, sabotage or undermining of work;
- Using the victim of harassment, threatening or derogatory language usually when co-workers are present;
- Open or implied threat of the work, or demotion or being pressured to resign;
- Creation of an oppressive and/or unhealthy work environment to cause or intimidate employees;
- Intimidation or threats to employees not to report or complain about conditions, unacceptable behaviours or health, safety and welfare;
- Leaving offensive messages on email or by telephone;
- Maliciously excluding and isolating a person from workplace activities, and promotional opportunities;
- Harassing a person through gestures, or sarcastic, racist, or derogatory comments, often in front of clients, management or co-workers;
- Spreading gossip, false or malicious rumours about a person with intent to cause damage to a person's employment or reputation;
- Inequitable use of performance management.

There are bound to be occasional differences of opinion, conflicts and problems in working relationships – these are part of working life.  
However, if workplace behaviour is repeated, unnecessary, deliberate and unprovoked, offensive, and is used to intimidate, humiliate, or threaten an employee, then workplace bullying exists and this will not be tolerated by our organisation.

**Single Incidents of Harassing Type Behaviour**  
A single incident of harassing type behaviour may not be considered bullying. Nevertheless, this will be ignored or allowed. This organisation will intervene to ensure that these incidents do not escalate. This will help prevent future incidents occurring.

**Examples of acceptable behaviour**  
**Managerial Actions**  
**Legitimate managerial actions include:**  

- Performance management processes;
- Action taken to transfer, make redundant or terminate an employee in a fair and equitable manner;
- Justified decisions not to provide a promotion in connection with an employee's employment;
- Disciplinary procedures for proven misconduct, and other behaviour or actions involving proven breaches of discipline;
- Managed business processes, such as workplace change or restructuring conducted in consultation with the employees and their representatives, which is required under the NSW Occupational Health and Safety Act 2003 (the Act);

**Management and Supervisory Responsibilities**  
This organisation has a 'duty of care' under the Act in relation to the health safety and welfare of all our employees. This includes a commitment to the psychological wellbeing of every employee employed by this organisation.  
Employee participation is a key element in effective Health and Safety management systems. It promotes commitment to health and safety and develops a positive health and safety culture. This organisation is committed to fostering an environment consistent with consultative processes.  
Employees have responsibilities under legislation, including the responsibility to provide a safe workplace.  
Key areas of legislation that provide for dignity and respect at work include:  

- NSW Occupational Health and Safety Act 2003 (the Act) and
- NSW Occupational Health and Safety Regulation 2001 (the Regulation)

**Clause 8 of the Regulation** requires all employers in NSW, regardless of size, to identify workplace risks. Violence and psychological hazards are defined as workplace risks. This clearly identifies bullying as a psychological hazard, to be a risk. The OHS Regulation requires employers to eliminate risks associated with bullying and the only way to eliminate these risks is to have policies and procedures that respect dignity in the workplace. These policies and procedures should effectively deal with the issue by clearly setting out procedures for complaints and appeals, provision of training for managers and supervisors and promotion of awareness amongst employees.

The NSW Chief Industrial Magistrate has ruled that employers should not tolerate bullying, implement an anti-bullying policy and procedures, train staff in working with policy and procedures, establish a complaints mechanism and continually monitor the effectiveness of these policies.

Employers, in order to meet their primary 'duty of care' obligations under the Act and the Regulation, have an obligation to conduct risk assessments to ensure risks from harassment, including bullying, are appropriately managed. This includes having processes to ensure respect and dignity exists in the workplace, as well as an anti-bullying policy and program.

**NSW Industrial Relations Act 1996 & Federal Workplace Relations Act 1997:** both prohibit harassment on the grounds of trade union activity and both include dispute resolution procedures.

**NSW Anti-Discrimination Act 1977:** prohibits workplace harassment on following grounds: Sex, pregnancy, race – colour – nationality – descent – ethnic or other religious background, marital status, disability (actual, past future or presumed), age, transgender, sexual harassment, care's responsibility.

**Federal Human Rights Equal Opportunities Commission Act 1986:** prohibits workplace harassment on the following grounds: Political opinion, sexual origin, medical record, criminal record, trade union activity and religion.

**Federal Racial Discrimination Act 1975:** prohibits workplace harassment on the following grounds: Race, colour and nationality.

**Federal Sexual Discrimination Act 1984:** prohibits workplace harassment on the following grounds: Sex, marital status and pregnancy.

**Federal Disability Discrimination Act 1992:** prohibits workplace harassment on the following grounds: Disability and impairment.

**Federal Age Discrimination Act 2004:** recently passed and intended to prohibit workplace harassment on the grounds of age.

**Employee Involvement**  
Employees will be committed to:  

- Reporting hazard, risk, or incident to the employer
- Participating in consultation during risk assessment
- Participating in training and awareness of the development of a dignity and respect in the workplace policy and procedures
- Adherence to a Dignity and Respect in the Workplace Charter
- Providing a culture of respect and dignity for their fellow employees

**Five Steps To A Bully-Free Workplace**  
This organisation is committed to the five steps to a workplace with dignity and respect:

**STEP 1 – Workplace Consultation**  
Set up appropriate consultation mechanisms involving our employees and their representatives to develop this organisation's **Dignity and Respect in the Workplace Charter**.  
Employees must be involved in the development of this code. It is important that the **Dignity and Respect in the Workplace Charter** reflect the needs and values of the organisation.  
A risk assessment will be conducted to ensure that the organisation is not 'at risk' by having a culture that encourages or tacitly condones harassment and bullying.

**STEP 2 – Workplace Awareness campaign**  
All employees from senior management down will be made aware of the meaning and application of the **Dignity and Respect in the Workplace Charter** for the meaning of zero tolerance, and the greater duty to actively monitor bullying or harassment including:  

- Health and safety training
- The possible effects of bullying
- Where to get further information

The organisation will also provide OHS induction and other training, posters, videos and films explaining the **Dignity and Respect in the Workplace Charter**.


**STEP 3 – Training and Development**  
The organisation will establish an effective training program for management and supervisors specifically tailored to the needs of our organisation and to meet the zero tolerance objectives.  
Management and supervisors will be trained in how to develop a workplace culture that encourages dignity and respect and is consistent with the **Dignity and Respect in the Workplace Charter** and the zero tolerance objectives. The training will include the skills necessary to manage the issue including skills in mediation and negotiation.  
In addition to the training, managers, OHS representatives and staff will be provided with a Dignity and Respect toolkit to assist them in practice and to ensure that the organisation is not 'at risk' by having a culture that encourages or tacitly condones harassment and bullying.

**STEP 4 – Procedures to Deal With Complaints**  
The organisation will establish a complaints mechanism that includes:  

- A time frame to complete – complaints investigated immediately
- A person that includes a record of the problem (eg. an incident report form) and any other relevant information about the situation, which should be forwarded to a designated responsible person and acted upon immediately
- A trained, designated and impartial mediator who has authority to act to resolve the problem to ensure a fair and equitable outcome. In some instances it may be appropriate for the mediator to be second from outside of the organisation
- Support for parties involved, including counselling, formal apologies and any other appropriate action

Urgently procedures through an effective **Dignity and Respect in the Workplace Charter** and zero tolerance for bullying is the best way to ensure a productive and harmonious workplace.

**STEP 5 – Consultation and feedback**  
A monthly review of the **Dignity and Respect in the Workplace Charter** and grievance procedures and mechanisms ensure that the policy remains effective and relevant.  
The review includes consultation between senior management, relevant unions, OHS representatives and employees on the performance of the organisation on how it has met the objectives of the **Dignity and Respect in the Workplace Charter** in the previous 6 months.  
The review will identify any relevant issues, strategy or performance targets for inclusion in the **Dignity and Respect in the Workplace Charter** for the next 6 months.  
This organisation is committed to the wellbeing of our entire workforce and has agreed to meet the objectives outlined in this Charter.

EMPLOYEE ELECTED UNION REPRESENTATIVES	SIGNATURES	EMPLOYER REPRESENTATIVES

OHS COMMITTEE/REPRESENTATIVES

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### Unions NSW Original Dignity and Respect Charter

The Charter provides workplaces with guidelines to reach the positive goals of Dignity and Respect, seeks commitments from the workers, management and the employer and seeks to educate the workplace to identify the behaviour and deal with it promptly. Unions saw

this as a positive approach rather than the cycle of blame identification and disciplinary procedures.

### **Management of Workplace Bullying Claims**

Across the coverage of Unions NSW affiliates there are a number of experiences about how workplace bullying is managed. A number of unions report employers with a number of well written policies and procedures and others report a number of employers with virtually no knowledge of the bullying hazard or how to manage it. Further even though a policy may exist, a number of the employers may have very little management commitment to implementing the policy.

Unions NSW affiliates often report that the best way to deal with bullying allegations is as soon as they are identified and to rectify the behaviour to avoid further injury.

Instead however, many workplaces use workplace policies such as grievance handling procedures that become another aspect of the psychological stress that a person experiencing bullying behaviour may experience, or a further hurdle to negotiate and overcome.

In training on how to address bullying, a number of attendees actually confess that they have undertaken bullying activities or actually bullied people in the past, either intentionally or unintentionally. Stopping the behaviour from re occurring is a major factor that can reduce the extent of the injury to the worker, and if unintentional and acknowledged by the alleged perpetrator will often go some way to establishing a better trajectory for the worker who has been injured.

However, too often we see grievance and other policies being used to harm resolution of workplace bullying issues. The grievance policies often include no timeframes, or timeframes that are not followed for the quicker resolution of issues. We have had reports from unions of workplace bullying grievances taking months to even acknowledge receipt of the grievance. A number of the grievance handlers go into investigation immediately, often without any clear attempt to acknowledge and remedy the bullying behaviour. Then despite the evidence of bullying behaviour a number of investigations declare that bullying did not occur and therefore justify no further action, but often authorising the behaviour to continue, and isolating the worker/s who had the courage to report it.

## **Proactive Culture Development**

Much of the Academic literature points to proactive or primary level interventions to deal with psychological risk management and bullying prevention<sup>6</sup>. This includes reducing the other stresses in the workplace, providing adequate workplace design, adequate training of management not only to address bullying incidents but to manage employees in a way that reduces the risk of bullying occurring. Also educating the workplace enables individual workers to identify behaviour and amend their behaviour as well as identify the bullying behaviour to address it when it is occurring, thus reducing the depth of the injury.

Affiliates experiences in their industries has been that the education of workers has seen a notable increase in bullying claims trends but without a notable increase in the overall mental disorder claim. We believe that this may be due to better identification of the cause of the injury which provides a better opportunity for changes to be made to the workplace that address the bullying behaviours rather than simply moving the victim.

### **Recommendation 4**

*That the Federal Government support the union movement in developing a national series of draft framework policies and education packages to assist industry and employers better prevent and deal with issues of workplace bullying.*

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;

### **Education Services**

Whilst there are existing education and support services in relation to workplace bullying in NSW they are sporadic and not well covered.

Unions NSW and affiliates have produced a number of tailored education packages for workplace bullying training and dignity and respect in the workplace training.

Union affiliates have run this out across a number of employers when requested by the workplace or workplace management.

Alternatively a number of employers acquire consultants to educate their workers on their bullying and harassment policies. This is often at great expense, but often provides a generic

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<sup>6</sup> Elshaug C, Knott V, Mellington T., (2004) Psychological injury in the workplace: prevention and best practice intervention, Journal of Occupation health and Safety- Aust NZ 2004, 20 (6) 523

training program that may or may not suit the individual industrial circumstance of the workplace.

Most of the training application is haphazard and reactionary.

Recently WorkCover NSW undertook an audit of selected industries into the presence of a bullying policy and training in its use. Despite a number of criticisms of the methodology used, Unions NSW await the outcomes of this audit. Several Unions NSW affiliates have been requested to assist the employer in undertaking the training with joint roll outs of training to selected employers who have undergone or have been warned of the commencement of the WorkCover Audit. The audits have been in both the public and private sector.

### **Further on Education**

When Unions NSW and affiliates have been involved in education to raise awareness of bullying, we have noticed positive results after these interactions. Generally we have noticed that despite a slight spike in bullying workers compensation claims (which usually involves classification of the mental disorder workers compensation claim to the appropriate cause), that these are then better able to be addressed in the workplace.

As the employer often mandates this training as a compulsory attendance and it is delivered by Unions and not the employer, attendees can often attend and open up their questioning and absorb more of the knowledge. There is also often a joint commitment from both the workforce and the management to address bullying which tells the workforce that the issue will be taken seriously.

Additionally an added benefit is that when bullying behaviour is identified, the organisation and its people are better aware of how to deal with the hazard and are then able to minimise the harm from ongoing exposure and treat the injured workers quicker.

### **Support Services**

A number of medium to large Employers now provide an Employee Assistance Provider (EAP) as free service to their employees. Whilst this may sometimes act as an educative tool and occasionally as a support tool from a safety perspective the emphasis on the EAP solely by many organisations is flawed.

Post incident control measures aimed at reducing the impact on the psychological health of workers, if bullying is experienced by the workers, has been a focus for many employers. Many employers in public and private sectors rely upon an Employee Assistance Program (E.A.P.) service solely to deal with workers who have experienced occupational stress (such



as bullying). E.A.P. is often conducted without any feedback to improve the workplace with secured anonymity. Post-incident investigation and review including critical incident committees may be a better mechanism of reducing future exposure of workers to the risks of psychological injury including bullying. However, these EAP and other forms of post incident controls for bullying can at best be used to prevent further injury or exacerbation occurring and cannot prevent the incidence of bullying occurring in the first place.

This tenet for a change in focus on our interventions to manage psychological injury is supported by the literature. The literature states that the focus on incident management and return to work may be a wasted effort as demonstrated by the longer length of time workers are absent after psychological claims. Instead the literature suggests our focus should be aimed at the environment and organisation for prevention. There is a strong view that the organisational related characteristics more strongly influence the experience of stress compared to individual characteristics of the worker.

### **Workplace Bullying Contacts**

A number of workplaces have included elected and nominated bullying contact officers or grievance contacts. These people will act to assist alleged bullied persons seek some form of redress and to assist in getting the bullying behaviour to cease. There are mixed outcomes depending on the independence of the contact officer, the authority of the contact officer, and the support the organisation places on the process and the roles.

### **Conclusion**

Unions NSW sees further avenue for education and support services in NSW and throughout Australia. Organisations such as Unions and Workers Health Centres can provide independent advice to workers and employers about workplace bullying. Independence is a key to these services, as well as a preventative approach rather than solely focussing on counselling.

### **Recommendation 5**

*That the federal government fund for the union movement and Workers Health Centres to provide training provided to workforces in industry after consultation with employers to encourage a preventative approach to workplace bullying.*

### **Recommendation 6**

*That the Federal Government provide funding for an independent body such as a Workers Health Centre to establish a national bullying helpline. The purpose is to gather information on the prevalence of bullying and on the mechanisms that are used to address bullying; and*

*to provide consistent and clear guidance to workers on addressing the behaviour when it occurs.*

Whether the scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying;

The Harmonisation of Occupational Health and Safety laws under the Work Health and Safety Legislation provided the largest opportunity for better coordination between parties to address and prevent workplace bullying. Despite the failure for this to occur in the formation of the model laws there is still scope if the terms of the IGA are reached.

### **The Regulator and Legislation**

Unions NSW submits that bullying is a Work Health and Safety issue. However, work health and safety inspectorates are limited in resources and coverage. For example in NSW there are approximately 350 inspectors and approximately 500615 registered businesses<sup>7</sup>. A number of these inspectors also are not assigned to deal with work health and safety inspections in the field, and are assigned to management, community education or policy matters. Therefore the inspectors who are assigned to deal with these issues, will have limited time to deal with these complex issues when there is another traumatic incident such as an arm amputated or fatality down the road which provides a more urgent and easier to attain compliance statistic for the Safety Regulator.

The focus on bullying hazards should not be limited to just bullying incidents but also other aspects that contribute to risk factors for workplace bullying, including work overload, systems changes, exposure to violence and fatigue, and bad safety practice and consultation to name a few.

The Work Health and Safety Act 2011 (NSW) has in its definitions section 4 describes “health”.

**“Health”** means *physical and psychological health*

The WHS Act is absent from mentioning other psychological hazards throughout the rest of its text. This has been a large step backwards in educating the work community of the importance of combatting all psychological hazards. With the reduced notification provisions (next paragraph), may mean that the new harmonised laws will provide a lesser emphasis on psychological hazards including bullying.

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<sup>7</sup> Office of Fair Trading, Annual Report, 2010-2011 as of 30 June 2011

## **Conclusion on Regulator and Legislation**

Bullying should be Regulated by the Workplace Safety Regulator under the Work Health and Safety Act.

Additionally Clause 9 of the NSW Regulation 2001 required Risk Management of all foreseeable psychological hazards.

*“9 Employer to identify hazards*

*(1) An employer must take reasonable care to identify any foreseeable hazard that may arise from the conduct of the employer’s undertaking and that has the potential to harm th health and safety of*

*(a) any employee of the employer, or*

*(b) any other person legally at the employer’s place of work...*

*..Employer must take reasonable care to identify hazards arising from:*

*..*

*(b) work practices, work systems and shift working arrangemets ( including hazardous processes, psychological hazards and fatigure related hazards), ...”*

There is not equivalent directive provision in the harmonised laws that would allow the legislation to assist PCBU’s in addressing workplace psychological hazards including bullying.

Bullying should not be a stand alone provision and should be included in a Psychological Risk Management Chapter in the harmonised WHS Regulations with additional prescriptive guidance in the proposed Code of Practice.

## **Notifications**

Formerly the NSW OHS Regulation 2001 Cl. 341 required the notification to WorkCover OHS Division if there was an incident that posed the risk of a worker being absent from work for 7 days or more or if exposed to violence at work. As “mental disorders” generally take twice to three times as long as average claims for the injured worker to return to work (in 2008-2009 median return to work for a mental disorder was 11.8 weeks as compared to median

for injury at 4.2 weeks and illness at 3.8 weeks<sup>8</sup>). As such incidents also cost approximately twice to three times as much as average claims, it would be logical that mental disorders would be included as an automatic notification to the workplace safety regulator, in the new harmonised legislation so that they can prioritise enforcement measures in this area.

Unfortunately the notification provisions have been lessened under the harmonised laws from what we had in NSW, now only including the following physical provisions and the illness provisions in the WHS Regulation 2011 Cl. 699 Incident notification-prescribed serious illnesses:

***“WORK HEALTH AND SAFETY ACT 2011 (NO. 137, 2011) - SECT 36***

***What is a serious injury or illness***

*In this Part, [serious injury or illness](#) of a person means an injury or illness requiring the person to have:*

*(a) immediate treatment as an in-patient in a hospital; or*

*(b) immediate treatment for:*

*(i) the amputation of any part of his or her body; or*

*(ii) a serious head injury; or*

*(iii) a serious eye injury; or*

*(iv) a serious burn; or*

*(v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or*

*(vi) a spinal injury; or*

*(vii) the loss of a bodily function; or*

*(viii) serious lacerations; or*

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<sup>8</sup> Safe Work Australia, Compendium Of Workers' Compensation Statistics Australia 2009–10, page 31

(c) medical treatment within 48 hours of exposure to a substance;

*and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind. “*

Unfortunately many people who are injured at work because of workplace bullying may slip through the system entering the health system, or the unemployment system, without any support from the Workplace safety regulator or any efforts made to rectify the bullying behaviour occurring.

## **Conclusion**

We conclude that the best way to combat this absence of knowledge of the workplace exposure is to include a mandatory reporting regime that requires all employers, health professionals, medical services and insurers to be required to mandatorily report psychological injuries caused at work to a central independent government agency.

Further, therefore conclude that an independent dedicated inspector group should be formed to focus on workplace bullying and that the procedures should not be narrow but broad to allow thorough investigation of all workplace bullying.

Bullying should be regulated by the Workplace Safety Regulator under the Work Health and Safety Act.

Bullying should not be a stand alone provision and should be included in a broadly defined Psychological Risk Management Chapter in the harmonised WHS Regulations.

## **Recommendation 7**

*Psychological Risk Management Chapter of the WHS Regulations should be created including bullying;*

*and prescriptive Code of Practice for Workplace Bullying should be completed.*

## **Recommendation 8**

*An adequately trained independent inspectorate division should be created within each WHS Regulator. Adequate and comprehensive procedures should be developed to ensure that the inspectors are not precluded from undertaking further investigations because of other aspects of the employment relationship being tested elsewhere.*

## Recommendation 9

*Creation of a mandatory reporting regime to a central independent government agency, that requires all employers, health professionals, medical services and insurers to report psychological injuries caused at work.*

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;

We repeat the issues raised in the previous term of reference regarding gaps in the Regulatory approach.

The following excerpt is from a WorkCover document. The document identifies bullying as just one element of the picture of psychological harm at work. It is important to note that workplace injuries for bullying often occur in workplaces with other psychological risks. Workers will be exposed to different stressors and after a time their coping capacity will be weakened. The presence of bullying remains even when the other hazards are shut off on the weekend. The workplace bullying episode may be ‘the last straw that breaks the camels back’ of the coping resources of the worker.

Additionally as the statistics demonstrate below workplace bullying is not the largest cause of psychological injury with bullying appearing 4<sup>th</sup> on NSW compensation statistics. This is important as a narrow focus on addressing bullying will simply delay improvements on the management of the other psychological hazards which often result in equal or more severe psychological injuries.

*“Mental Disorders - Workers’ Compensation claims data*

*According to the classification system used by WorkCover, the term ‘mental disorders’ includes conditions such as anxiety, depression, nervous breakdown, hysterical symptoms, phobias etc. All the above conditions are pooled together as ‘mental disorders’ and there is no provision in the classification system to be more specific.*

*The aggregate data for the five-year period 2002/03 to 2006/07 was analysed. Mental disorders accounted for 5% of all injury and disease claims and ranked fourth in terms of the number of claims. In 2006/07 there were approximately 5600 claims in relation to mental disorders. The total cost of these claims was \$102 million.*

*The industries (at ANZSIC 1-digit level) with the highest proportion of claims were:*

<i>Education</i>	20%
<i>Health and community services</i>	19%
<i>Personal and other services</i>	10%
<i>Transport and storage</i>	9%
<i>Retail trade</i>	8%

*At the 4-digit ANZSIC level, the top six industries were:*

<i>Hospitals (except psychiatric hospitals)</i>	8%
<i>Secondary education</i>	7%
<i>Police services</i>	6%
<i>Combined primary and secondary education</i>	5%
<i>Rail transport</i>	5%
<i>Primary education</i>	4%

*The occupations with the highest proportion of claims were:*

<i>Secondary school teachers</i>	8%
<i>Police officers</i>	6%
<i>Primary school teachers</i>	5%
<i>Sales assistants</i>	4%
<i>Train drivers and assistants</i>	4%

*The most common causes of mental disorders were:*

<i>Work pressure</i>	33%
<i>Other mental stress factors</i>	24%
<i>Exposure to workplace violence</i>	17%

## **Work related harassment / workplace bullying 14%**

*According to the classification system, work pressure includes mental stress arising from a range of work situations such as work backlogs, deadlines, organisational restructure, interpersonal conflict with peers and/or supervisor, performance counselling, disciplinary action etc.<sup>9</sup>*

### **Conclusion**

Workplace Bullying should be addressed as part of a complete package or Chapter of Psychological Risk Management in the WHS Regulations dealing with all psychological hazards including, but not limited to, Bullying, Fatigue, Violence, Work Design.

### **Self Insurers**

A Self Insurer if they meet the financial, administrative and safety management system standards can then keep the profits from reduced claims or claims management costs, as compared to industry standard premiums. As workplace bullying is often a challenge to how workplace management is undertaken, the self insurer is placed into a position that enables them to implement management and workplace systems, to undertake claims assessment when there is alleged bullying. Further they also control how the employer deals with the notification as far as further assistance to the worker who is claiming injury as a result of the bullying behaviour. Often affiliates report that the self insurer “closes shop” isolating the alleged victim and creating further complications with new performance work plans, and warnings. Other times affiliates have reported the encouragement of taking sick leave or other leave, so as to enjoy the double advantage of not having the case management appear in the system, thereby avoiding possible WorkCover audit or review, and also reducing long term the need to pay for medical expenses when the worker may otherwise not know about their entitlements.

With an issue such as bullying it is difficult to see how a self insurer can assess claims for workplace bullying in an independent and fair manner.

### **Conclusion**

We conclude that self insurers should as a default with all psychological claims, be required to outsource claims assessment to a central independent body.

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<sup>9</sup> WorkCover Authority NSW, Business Intelligence Report , January February 2009



## International Practice

There are a number of examples provided from around the world on addressing the issue of bullying<sup>10</sup>. Many incorporate bullying as one of the hazards in a suite of psychological hazards such as the European Frameworks such as the European Framework for the Psychosocial Risk Management<sup>11</sup>. The Irish model was significantly referenced by our research officers in the development of the Dignity and Respect Charter.

We are unable at present to elaborate on these examples other than to advise that they appear to provide a proactive preventative approach as part of a broader psychological risk management strategy.

### Recommendation 10

*That a comprehensive Psychological Risk Management Chapter be developed for inclusion in the Work Health and Safety legislation including mechanisms for addressing all forms of psychological hazard.*

### Recommendation 11

*That self insurers be excluded from self assessing psychological claims and that these be undertaken by a central independent body.*

Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;
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We submit that the answer to this question is “no”.

The harmonisation of Work Health and Safety demonstrates a lost opportunity to address the workplace bullying hazard that is on the ascendency in many jurisdictions and not significantly declining like some other occupational hazards.

Often workplace bullying is the secondary hazard that results injury after the presence of other workplace hazards including psychological hazards. For example violence, unsafe work practices, work overload, and unclear work practices or inadequate work training may lead to higher exposure to workplace stress and a higher risk of workplace bullying behaviours

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<sup>10</sup> See Caponecchia C., and Wyatt A., (2011) Preventing Workplace Bullying, An evidence based guide for managers and employees, p. 72

<sup>11</sup> PRIMA and World health Organisation - Guidance on the European Framework for Psychosocial Risk Management, A resource for Employers and Work Representatives.

causing a form of injury to the worker/s. The increased stress may also cause people to use behaviour that may be viewed as bullying behaviour.

Unions NSW calls for this review to recommend bridging the gap and including in the harmonised Work Health and Safety Legislation a Chapter on Psychological Risk Management.

The role of the Regulator enforcing the legislation is also important if we are to combat the prevalence of bullying behaviour and send a message to the work community to deter future occurrences and encourage positive workplace behaviours. NSW has a less than satisfactory history in regulating this issue. When you consider the proportion of claims and gross incurred cost, there are very few serious investigations into workplace bullying in NSW and even fewer successful enforcement actions.

Unions NSW affiliates have advised of very few successes in interacting with the Regulator to bring about change. Often, of late, the Regulator appears to choose from a select few inspectors who appear to investigate the allegation in the same manner as a physical hazard (which we are informed has an internally imposed 20 day turn around time). This experience has not enabled, we believe, adequate time to gather evidence of a sufficient nature from witnesses and relevant business documents to start to prepare a brief of evidence for prosecution. There has been one bullying prosecution that we are aware in NSW, where WorkCover NSW was the prosecutor, but this also had a large element of physical assault attached to the bullying behaviours. Inspector Maddaford<sup>12</sup> was a bullying case that saw WorkCover run its first notable prosecution on the issue of bullying. The case involved significant physical assault and violent elements also.

*“A landmark NSW prosecution has seen two directors fined \$1,000 each and their company fined \$24,000 after a 16-year-old asthmatic labourer was wrapped in cling wrap and had sawdust thrown into his mouth as part of an "initiation" by five other workers.*

*Chief Industrial Magistrate George Miller said the court "must indicate to others in the industry that this type of incident will not be countenanced". He said the director knew the initiation might happen but did nothing. “*

*Source: Public Service Association of NSW, Bullying Training materials*

Union affiliates in NSW have also run several OHS prosecutions where there have been elements of bullying behaviour including a practical joke that ended in a worker being made

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<sup>12</sup> (Inspector Maddaford v MA Coleman Joinery & Ors, 20085574/03/02, 5/5/04)

deaf<sup>13</sup>, and where a union has prosecuted a particular in a charge, that bullying caused a breach of the employer's duty of care<sup>14</sup>.

### **Current Regulator Bullying Campaign**

We are aware that WorkCover has been running a compliance campaign in NSW where they attempt to verify the presence of a bullying policy and then attempt to identify the levels of training in the policy.

Whilst we encourage consultation with employers and employees, it has been advised to Unions NSW that in large employers WorkCover has arranged with the employer which workplaces they will visit prior to their attendance at these sites. This may inadvertently provide information that is not up to date or provide a true indication of bullying at the workplace.

### **Bullying Unit**

NSW has a psychosocial unit that is only a few public servants with limited investigatory practice.

It is our understanding that a number of other states have "technical experts" in their inspectorates. We believe that this was a recommendation out of the Victorian Ombudsman report into WorkSafe Victoria and the subsequent inquiry and report by Lyon SC and Livermore<sup>15</sup>. This enables the Workplace safety regulator to pursue the selected examples thoroughly to send a warning that bullying behaviours is not tolerated without the distraction of other traumatic workplace injuries requiring immediate investigation.

### **Recommendation 12**

*That the specialist inspectorate outlined in Recommendation 8 is charged with undertaking investigations based on the statistical prevalence of bullying in that jurisdiction.*

The most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another
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The question enters into areas that suggest that bullying is a problem of the individual perpetrator and not one of workplace systems design. We disagree with this proposition.

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<sup>13</sup> Cahill v State of New South Wales (NSW Police) [2005] NSWIRComm 33 (17 February 2005)

<sup>14</sup> Cahill v State of New South Wales (Department of Education and Training) (No 2) [2008] NSWIRComm 246 (19 December 2008) – This particular was dismissed on appeal.

<sup>15</sup> Dr Gregory Lyon SC & Garry Livermore, The Regulation Of Workplace Bullying, July 2007

Workplace systems allow bullying behaviour to flourish, and not individuals. Having stated this, rather than remediate behaviour, it is common to simply move the recipient or the person conducting the bullying behaviour without any form of serious attempt to improve the behaviour. Whilst this may be justified to improve the return to work outcomes of the injured workers, it cannot be the total solution, which involves changing work practices, and workforce understanding of appropriate behaviours.

Proactive and remedial education in programs such as the dignity and respect program enable workers of all levels to identify bullying behaviour, implement risk minimisation measures, and to better implement measures to reduce the harm caused by bullying and prevent its reoccurrence. It also enables behaviour that may be of a bullying nature to be curbed by colleagues and the alleged perpetrator as most workers will not deliberately break the law.

If the psychological risk management requirements are included and improved (as requested above) in the legislation, this will provide the opportunity to ensure that bullying prevention becomes the law for all workplaces and jurisdictions in Australia as the harmonised laws are implemented. These laws have an increased emphasis on all parties to the workplace having responsibilities including workers (workers and managers), officers, and others at work, as well as the PCBU or employer body.

#### Possible improvements to the national evidence base on workplace bullying

##### **Evidence Base - Prevalence**

As discussed above in the first term of reference, whilst there has been a series of individual workplace and industry research studies conducted on bullying, there is a serious flaw in research examining the prevalence of workplace bullying across all industries at the one time, and identifying what measures are being used to prevent and ameliorate the effects of workplace bullying. Apart from the measures identified above, Unions NSW also advocates further research utilising affiliate's membership across all industries that identifies the evidence around this serious issue.

If the figures of the Productivity Commission are even partly accurate, the problem is one that dwarfs the damage to the community and the economy from a range of other areas of focus such as "state taxes" and "red tape".

This review as a federal review offers an opportunity to coordinate all aspects of government in all jurisdictions when this was formerly the role of the states who coordinated health departments, labour departments, workers compensation and occupational health and safety entities, as well as professional bodies and research

institutions. With workplace bullying, a significant proportion of bullying incidents are simply not reported, and if the knowledge from the treating medical professional including a mandatory reporting of the statistic minimally as with other chronic diseases, then this may lead to the improvement in understanding the prevalence.

### **Evidence Base- Mechanisms to reduce bullying in the workplace**

There appears to be significant scientific based literature on how to minimise the risk from workplace bullying. By creating a bullying helpline and also creating suitable research facilities and projects including industry wide surveys into the hazard, researchers and call centre operators (helpline) will be able to identify what mechanisms are being used and which ones are actually working. This will allow an evidence base to be developed as to the prevalence and effectiveness of interventions.

### **Recommendation 13**

*That the Federal Government fund research into the prevalence of workplace bullying across all industries, including measures to address bullying.*

## Appendix 1

### Case Studies

The following case studies were provided to Unions NSW recently as a result of the current cuts to workers compensation that were put through NSW parliament on the 21 June 2012. The treatment of long term injured workers of bullying is likely to now be that they have to rely on federal income support and medical injuries as both of these are capped in length and quantum now. This will lead to people who are long term injured from bullying now suffering a greater financial hardship as their health care is lowered and their income is further reduced.

#### Case Study 1:

In the last 5 years John has had approximately two years off work as a result of five different workplace related injuries and illnesses. John works as a case worker and has experienced death threats and physical violence from clients directed at both him and his family members. This has resulted in both psychological and physical injuries. John also sustained psychological injuries as a result of workplace bullying. John believes that the time he needed to take off would have been significantly reduced if management had appropriately responded to his suitable duties restrictions.

#### Case Study 2

Workplace injury: Bullying & harassment by a manager

How long did you have off work: Initially 3 weeks then returned to work at a different location gradually increasing hours. Also had other times off due to aggravation of the injury over different periods of time. Have not returned to substantive position. What would have happened if weekly payments were reduced: I would have lost my house & been unable to provide at all.

Would you have been able to cover your medical costs: Most of them but would not have been able to continue counselling.

Comments: Being unable to work is EXTREMELY stressful. To add to that stress by not knowing if you are going to lose your house or be able to afford to eat is very debilitating. I work in Public Sector & the injury occurred in 2009. I am still receiving treatment, and although I am able to work & adjustments have been made I am still affected by the injury.

#### Case Study 3

Workplace Injury: Gradually over a prolonged period. **Targeted bullying and harassment against me in reprisal after I reported abusive management behaviour** and also after I

reported management failure to adhere to employer policies & procedures and legislation in relation to child abuse mandatory reporting. **I was the target of a very long campaign of bullying. I reported the bullying to senior management. Senior management protected the bullies**(two staff in my workplace). Senior management let me down very badly. They failed to adhere to their own policies of protecting victims of bullying. They failed to provide a safe workplace. I asked for a transfer to get away from the bullies and management refused to give me a transfer. I sustained a psychological injury resulting in permanent impairment.

How long did you have off work: I am still off work. I have been off work for approximately 19 months now. My doctors say that I should be medically retired due to the permanent nature of my injury.

What would happen if weekly payments were reduced: It is hard enough to pay the bills as it is, without even lower weekly payments.

Would you have able to cover your own medical costs: No. It is very difficult.

Comments: Please understand that injured workers do not choose to be injured. Safe workplaces are the responsibility of everyone. Injured workers need tender loving care and medical treatment. Injured workers do NOT deserve to be attacked.

#### **Case Study 4**

I am in my late twenties and have a young family. I have been working as a casual through a labour hire agency, working for a distribution company in their warehouse. I have been doing this for a few years. I am always worried about whether or not I will be allocated enough work to pay my bills. I normally get about 3-4 shifts per week, which really isn't enough. My hours vary week to week.

The permanent workers look down on us casuals. You also have to tread very lightly in terms of reporting safety matters or bullying.

#### **Case Study 5**

The bullying culture at my workplace has profoundly affected my well being along with other colleagues. It has caused harm in so many ways including psychological damage i.e. fear, humiliation, stress, anxiety, weight loss and insomnia.

These bullies continue to flourish and these bullies are our executive managers so one and all feel powerless to complain.

The bullies recruit and promote staff who will perform similar behaviour on their behalf which further entrenches the bullying and eventually (in particular over the last two years) this becomes the norm management style.

Staff work ethic, loyalty and a want to do their best for patients is being eroded. The bullying culture markedly affects patient care in the long run.

Staff have retired early, resigned or simply put up to avoid the bullying and harassment.