Submission to House Standing Committee on Education and Employment

Inquiry into Workplace Bullying

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Summary

Workplace bullying is a health and safety issue, and is best prevented and managed using a health and safety (risk management) framework. Within this framework, several issues require significant improvement, in terms of roles, expectations, and quality of implementation. The forthcoming National Code of Practice on workplace bullying will assist, but there is more to be done.

Specific criminal laws on workplace bullying are problematic because they are post-hoc, and may not be very effective at deterrence. Ensuring that any new criminal laws do not lead to a perception that bullying is not a health and safety issue is a primary concern.

Development of an agency/agencies that fulfils the support and educative roles that fall between the gaps of the activities of existing agencies should be considered.

An independent description and comparison of the strategies currently adopted by workplace safety regulators around Australia would be an important first step in improving the activities of these government agencies.

Open discussion, sharing of data and resources, and increased research collaboration needs to be pursued to improve our national evidence base on workplace bullying. Not exposing organisations and safety regulators to threats of sanction/poor publicity for attempting to deal with bullying, or improve bullying through research, needs to be considered as a way of removing this barrier to increased evidence based activity.

Introduction and background

I welcome the instigation of an inquiry into how we deal with workplace bullying as a Nation. I have recently returned from the 8th International Conference on Workplace Bullying and Harassment, hosted by the International Association on Workplace Bullying and Harassment (IAWBH) held in Copenhagen. I think it is important to note that Australia is regarded internationally as a place where action on workplace bullying is moving ahead. The development of a National draft Code of Practice on workplace bullying, and this inquiry,

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exemplify our contributions, and both are being watched with anticipation by the international community.

The terms of reference of the inquiry are quite wide. I have attempted to comment on most of the terms of reference, but am happy to expand and contextualise these ideas if necessary.

I hold an undergraduate degree in Psychology (BA(Psych) Hons 1) from the University of Newcastle and a PhD in Psychology from the University of New South Wales.

I am currently advising Safe Work Australia on the development of the National Draft Code of Practice on workplace bullying, following public comment.

I convene the Risk Management Special Interest Group within the International Association for Workplace Bullying and Harassment (IAWBH). I also coordinate the Australasian Workplace Bullying Research Network (AWBRN) which seeks to connect Australasian researchers interested in bullying. I have given several international conference presentations on workplace bullying and stress, and written several journal articles on this workplace bullying. I gave evidence at the NSW Legislative Council inquiry into the Management and operations of The NSW Ambulance Service, in my capacity as an expert on workplace bullying, and provide expert witness reports for the courts on workplace bullying and harassment matters (for both defence and plaintiff).

With my colleague, Dr. Anne Wyatt, I have recently published a book about workplace bullying, entitled *Preventing workplace bullying: An evidence based guide for managers and employees* (2011), published in Australia by Allen & Unwin, and internationally by Routledge.

Issues of prevalence of bullying and improvements to the national evidence base

Prevalence

Current estimates of the prevalence of workplace bullying in Australia are usually based on public sector data (18-26% in the last 12 months; Australian Public Service Commission, 2011; State Services Authority of Victoria, 2011; Tasmanian State Services Commissioner, 2006). These usually relies on the "self-identification" method of indexing bullying, that is, asking people directly whether they have been bullied at work within a particular timeframe, given a particular definition. The other common method is the behavioural index, where people are asked to indicate how often they have experience behaviours consistent with bullying (such as using the Negative Acts Questions-Revised (NAQ-R). Behavioural indices are more commonly used for research (academic) purposes.

There are huge variations in estimates of prevalence depending on the methodology used (eg. the scoring of the behavioural index; the workplace context, and the nation/jurisdiction). This was reflected recently at the 8th International conference on workplace bullying and harassment, hosted by the IAWBH in Copenhagen. It is recognised that the bullying research field is relatively young, and has attempted to dealt with pressing applied issues to reduce harm without the optimal degree of work on conceptual and measurement issues (Keashly & Harvey, 2005).

There are problems with all existing measurement strategies (eg. bias in self reports; lack of understanding of "bullying"; bias introduced from questionnaire methodology; reporting bias and demand characteristics; underreporting due to fear of losing one's job etc).

There is work currently being conducted in Australia to explore these problems in more depth, and to develop more valid and reliable measurement tools (eg. including the notion of the severity of the behaviours, rather than just their frequency; Caponecchia & Wyatt, 2012; Murray & Branch, 2012).

Despite problems with current measurement, even the lower range estimates of the prevalence of bullying (8-10% in Europe; Zapf, 2003) are quite high. So while we do not yet have measurement tools that are as accurate as we might desire, we know that bullying affects a large proportion of the population.

Putting actual prevalence to one side for a moment, when considered from a health and safety perspective relative to other workplace hazards, psychosocial hazards are extremely important, because anyone who works can potentially be exposed. Psychological hazards are different to other workplace hazards in that they do not rely on the use of particular equipment, particular tasks, or materials, but rather, can exist in any work system in which people are a part. This makes psychosocial hazards, of which bullying is one exemplar, an important issue on which we must take meaningful preventative action. Due to potential exposure, it should be a top priority in terms of resources for all safety regulators and similar agencies.

A national evidence base

Lack of research funding is always a problem, though this is not the appropriate forum for wider discussion on that issue. There are several key research issues that should be prioritised, and strategies should be implemented to ensure that this research is conducted (such as plans for collaboration between researchers and organisations/industry groups). I am happy to provide more detail on what I see as the key topics that require further research. We have talented, willing researchers in Australia with expertise in workplace bullying. They need not only access to research funds, but to samples within organisations and existing sources of data.

There are several barriers that should be addressed in order to facilitate an improved the national evidence base on workplace bullying.

(a)Research needs to be independent. People simply do not always feel safe to speak up about bullying when "research" is conducted internally within an organisation. Biased results can be delivered due to demand characteristics in this kind of internal research, and this is not appropriate for risk identification nor for population prevalence estimates. Increased partnerships between researchers and organisations should be pursued. At the same time, we need to make it "safe" for organisations to take part in research, without fear of exposure or public censure. Organisations that do take part in research on bullying are leading the way: they should be encouraged and rewarded for doing so. Fear of reprisal currently stifles research on workplace bullying.

(b)Better sharing of data from workplace health and safety regulators would assist in developing better national evidence. I imagine there is a vast mine of data already in existence. It is very difficult to access, possibly again due to fear of public censure. Some regulators have already had significant bad press on this issue in the past, and we need to work to remove such fears and enable sharing of data in the national interest. Opening up lines of communication on how the different jurisdictions deal with bullying complaints, and fostering evidence based analysis of these strategies should be pursued.

The role of workplace culture and issues in prevention

Health and safety approaches to bullying

My comments are based on the notion that bullying is a workplace health and safety issue. The effects of bullying on people's health and wellbeing are well documented and do not need recounting here (eg. see Hogh et al., 2011). There is ample data and commentary to support that bullying is a health and safety issue (eg. Lyon & Livermore, 2007; Johnstone et al 2008, 2011; Caponecchia & Wyatt, 2009, 2011; Caponecchia, Sun & Wyatt, 2012), and indeed it has been viewed as a heath and safety issue in Australia for many years (the first guidance material was available in 2003). Viewing bullying as a health and safety issue is appropriate, advantageous, and should remain. This framework influences my comments below to a large extent.

Despite this, some people do not see bullying as a health and safety issue, viewing it rather as something to be dealt with by human resources units, in the way that conflict might have been dealt with by human resources units in the past. This may be in part influenced by a desire to not see prevention of bullying regulated, the apparent challenges of accommodating bullying within a health and safety framework built for physical hazards, or the denial that organisational and systemic factors have an influence on whether bullying occurs.

It is important to outline that we know that a range of factors influence whether bullying occurs, and the extent of its effects. These include (but are not limited to):

- Organisational actions (presence and quality of policies, procedures and their implementation; management commitment; actions taken to discourage bullying and deal with it appropriately)
- Aspects of the target (past workplace experiences; personality variables such as assertiveness)
- Aspects of the alleged perpetrator of bullying
- Levels of workplace stress (including role ambiguity and role clarity; overwork; job control and autonomy etc)
- Organisational culture and leadership (quality of supervision, management support and leadership)
- Industry culture and values (for example, hierarchical structures; cultures that dictate that new members must "earn their stripes" etc)
- Wider social and cultural variables (job insecurity, labour laws and protections etc)

(see Einarsen et al., 2011; Caponecchia & Wyatt, 2011)

From the above description of antecedents it can be seen that bullying results from a complex interplay of contributing factors, which are individual, and organisational and systemic. Conventional wisdom would indicate that bullying is about individuals who just don't get along, or have a personality clash, but it is far more complex than that. Indeed, international evidence suggests that the relationship between bullying and particular personality variables is not as strong as people might think. Approaches that focus too much on the individual level, looking at individual motivations, or attempting to assign fault or blame, can be problematic, and can cause further harm (eg. the popular yet stigmatising workplace psychopaths approach, see Caponecchia, Sun & Wyatt, 2012). We must have a balanced, cool-headed approach to dealing with workplace bullying that recognises all of the potential contributing factors.

There are several advantages to a workplace health and safety approach to preventing and managing workplace bullying, which distinguish it from the more reactive conflict management approaches traditionally associated with human resources activities. Such an approach:

- Is not focused on individuals, but on systems, and attempts to be blame free
- Requires documented risk management systems which are regularly monitored, reviewed and continually improved
- Subjects the risk management activities to external scrutiny by health and safety regulators
- Is preventative in nature, rather than acting after harm has occurred

Workplace bullying is relatively new as a health and safety issue, compared to other issues such as dealing with asbestos, manual handling or electrical hazards. It is also a little different in nature, due to its psychological effects. Accordingly, there are challenges in operationalising safety activities for workplace bullying, but there are also solutions to this, such as the time course model of bullying interventions (Caponecchia & Wyatt, 2011) and making the reporting of bullying similar to reporting of all other safety hazards, which must be acted upon.

The point here is that a systems based approach is the best way to prevent and manage workplace bullying. Risk management strategies already exist within organisations for other problems, and just need to be tailored for psychological hazards. Still, there is much to be done in enriching and improving health and safety actions on bullying. Any attempt to downgrade or sideline existing health and safety approaches to workplace bullying would be a step backwards.

Policies and procedures

Part of the terms of reference question the ability of workplace policy and procedures to prevent workplace bullying. This is an important issue.

A key theme that seems to be raised in almost all cases of workplace bullying that we deal with is the nature and quality of the implementation of control strategies. Many organisations have policies and procedures, and training in place. Merely having such strategies is not sufficient. They must be interrogated for their quality, suitability for the context, usability, accessibility, and whether people feel safe in using them should they have to. This is the key challenge in terms of organisational responses to workplace bullying, and needs to be accounted for in regulatory/policy action. Worksafe ACT's recent report into a series of

bullying claims provides an example of how the quality of risk control strategies and their implementation can and should be investigated by safety regulators. This report was made public and serves as an example to organisations and regulators regarding what can be done about bullying from a health and safety perspective (http://www.worksafe.act.gov.au/news/view/1312/title/investigation-into-bullying-at-the).

Education and support services

Education on workplace bullying is a key issue. I would speculate that a lack of awareness about what bullying is, and is not, contributes a great deal to the number of inquiries workplace safety regulators receive about bullying which are later found to be mis-diagnosed or mis-labelled (eg. Wells, 2011). This can be relatively easily solved by better education campaigns about when and how to report workplace bullying, giving people strict criteria and guidelines to follow. This is just one element that deserves research attention, and collaboration between researchers and regulators.

We must work to achieving consistent, conservative, cool-headed reporting of bullying, in order that real risks to people's health and safety are managed appropriately, without the distraction and pain of mis-labelled or misdiagnosed complaints. Greater recognition of the distinctions between particular concepts, and consistent use of terms would assist in these aims (eg. regarding the distinctions between bullying, harassment, violence and conflict, see Caponecchia & Wyatt, 2009), and hopefully the National Code of Practice on workplace bullying will also assist in this.

The development of the National Code of Practice will also serve to educate Australians about the importance of bullying. Developing a code, rather than a guide, indicates the seriousness with which this issue is viewed, and demonstrates commitment to preventing the hazard. Greater consistency in the approach of organisations to this problem should follow from the development and implementation of the code.

Support services for people who feel they have been bullied are chronically unavailable. The issues include that:

- They cannot always talk to someone in their organisation due to confidentiality issues;
- their doctor may not have experience in the area;
- their union may or may not be helpful, they may or may not be a member;
- they cannot always afford a psychologist (and do not always need one, if they only need advice on options);
- some agencies simply refer people to their health and safety regulators because bullying per se is not directly in their scope of activity; and
- according to the reports of targets, safety regulators can appear to be dismissive.

In short, there is often nowhere for people to go to get advice and support. This is likely to exacerbate any negative effects that they are already experiencing.

Regulators have been severely criticised in the past for their actions, or seeming lack thereof, in regard to workplace bullying. Widely publicised internal bullying problems have not helped. There are several people working for regulators around the country who are extremely committed to improving how workplace bullying is managed, and they have been

successful in the recent past in improving how this issue is dealt with. They need increased support from management and a commitment of resources to deal with this problem more effectively.

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

It should be acknowledged that dealing with targets of workplace bullying can be extremely difficult, and those tasked with dealing with them should be appropriately trained. Some regulators have piloted programs where trained psychologists step in to deal with particular cases. I am as yet unaware of the evaluation of such programs. These are people who are often in very dire circumstances, who may already be experiencing psychological and physical symptoms associated with their experience. They are often (justifiably) angry, upset or depressed.

There are a range of support activities that currently fall through gaps between the scope of several state and federal agencies that should be addressed.
Consideration should be given to an advisory agency/agencies independent of safety regulators that might have a range of roles including:

- Advising workers on when and how to make a report of bullying (and when not to)
- Providing options to workers and monitoring and supporting them
- Providing advice to people who have been accused of workplace bullying (an often forgotten group that needs support)
- Managing the allocation of independent investigators (who are appropriately trained and vetted) to organisations as necessary
- Educating the public and relevant professional groups regarding issues of workplace bullying
- Coordinating, monitoring and reviewing the effectiveness of bullying prevention strategies, by regulators and organisations at a macro level
- Championing research and collaboration and showcasing best practice.

Coordination between governments

Sharing of practice among the states and territories can only be a good thing: it appears that there are different practices at many regulators in terms of dealing with bullying.

There are several simple things that could be done, quite quickly and with little disruption to improve processes used by safety regulators when dealing with bullying inquiries and complaints. The ideas are there in the research community. They do not always get translated across to practice, for a range of reasons. We need more open discussion on (a) what is currently occurring; and (b) how they could be improved, implemented, tested and evaluated. I do not believe that there is any one source that compares and contrasts the systems that state and territory regulators have for dealing with bullying. In the spirit of harmonisation and collaboration, the development of such a document would be a very welcome and important start.

Regulatory, administrative, legal and policy gaps

Proposed new criminal laws

Much of the publicity around this inquiry has involved the notion that criminal provisions against workplace bullying could be implemented around the country. I can only assume that these would be similar to those enacted in Victoria, sometimes known as "Brodie's Law". While I understand the desire of family and friends of those who have been bullied to see criminal prosecution of those who enacted the bullying behaviours, I have several concerns about such laws.

The primary intended outcome of developing criminal laws is the punishment of individuals, with the flow on effect of deterrence. This approach seems to fall into the trap of viewing bullying as a one-on-one interpersonal exchange, based solely on interpersonal issues, where one individual should be held responsible for their effects on another (after those effects have occurred). This may be appropriate in some extreme cases, but in most cases, as discussed above, the role of the context and work environment is important in both preventing bullying from occurring in the first place, and/or from mitigating its effects.

A further problem is that criminal provisions are reactive in nature. They do not protect people from being bullied, unless previous cases have a strong effect in deterring the behaviour. While the new law in Victoria has not yet been tested, I'm unsure whether it can be said to have had any effect at deterring bullying.

It is therefore important that any attempt to implement criminal laws for workplace bullying does not replace, nor appear to replace, the duties that organisations have to protect employees from risks to their health. Health and safety responsibilities are preventative in nature, systemic, and deal with the range of factors that influence workplace bullying in organisations.

There is a real risk that specific criminal laws on bullying will encourage the perception that it bullying is no longer a workplace problem, but rather, one that a target can deal with by going to the police. Having said that, I find it difficult to imagine a situation in which an individual could be prosecuted for workplace bullying where elements of the organisation's response to the situation where not called into question through health and safety investigations. Perhaps the two mechanisms should be linked. Nonetheless, I fear that there will be temptations to dissolve health and safety responsibilities with the development of criminal laws.

In addition, other issues may restrict the efficacy of criminal laws against workplace bullying, because of the dynamics of workplace bullying situations. For example, how likely is it that people will report being bullied to the police and be able to continue working in their workplace without retribution or fear of retribution? We know that this is one of the major reasons accounting for underreporting (see Caponecchia & Wyatt, 2011). This means that accessing such criminal laws may have the unintended effect of making people look for a new job. Rates of turnover in bullying cases are very high, but this is disruptive and the notion of having to leave one's job is unacceptable. For many people, leaving their job is simply not an option. We must consider what criminal laws for bullying will mean for people who are targeted, including whether the side effects will stop people from using this criminal provision. If people are unlikely to go to the police due to fear of losing their job, or cannot gather appropriate levels of evidence, what effect does this have on the efficacy of the law in deterring workplace bullying?

Existing laws and policies

The terms of reference also highlight issues regarding the adequacy of laws and policies to address workplace bullying. Following the implementation of the forthcoming Code of Practice, and provided it is implemented with significant changes from its draft version, I believe that the legal and policy arrangements will be adequate.

However, there is much to be done to ensure that health and safety approaches to preventing and managing bullying are effective. Viewing the problem as a health and safety issue, and having the Code of Practice is just an entry-level step in terms of prevention. The real challenges are in translating it into practice.

As indicated above, we need to make it safe for organisations to discuss their bullying problems, to engage in research, or get external advice as necessary. Bullying has to be "normalised" as a problem that we can discuss, learn about, and improve on. We need to better support organisations in managing their health and safety responsibilities. This means engaging in activities that develop robust tools for organisational use (such as risk assessment/management tools). Many of the tools currently available have been prepared with good intentions, and they appear to provide organisations with a tangible guide on how to manage the risk of workplace bullying. In reality, these can be implemented in such a way that real levels of risk is ignored or downplayed, because no evidence or accountability has been sought for particular risk ratings. The outcome is a false sense of security, and an uncontrolled risk of harm from workplace bullying. This is just one example of a good strategy that can be poorly implemented. There is no doubt that developing better tools to assist businesses in managing their risks needs to be developed, but it needs to be done in a well considered and collaborative manner.

Other comments

In the area of workplace bullying there are issues that are often raised which frustrate debate.

I imagine the committee will receive several submissions commenting on the definition of bullying. The three criteria used to define bullying in Australia are that the behaviours have to be

- Repeated (rather than a one off event)
- Unreasonable (with an understanding of the context and circumstances)
- Cause a risk to health and safety

I think it is important to point out that these criteria are relatively consistent across jurisdictions, and are fundamentally quite conservative in nature when they are properly applied. They are not always properly nor consistently applied when discussing or reporting bullying, which can lead to some mis-labelled claims, and misdirected views.

Bullying claims are often made in connection with performance management processes. This should not be a barrier to taking action on workplace bullying. Clear and consistent identification of what bullying is, and is not, should help ameliorate concerns over false claims, or fears of being accused of bullying when counselling staff about their performance.

The role of perception in bullying is another commonly raised issue. Perception is important: things have to be perceived as negative in order for someone to report that they have been

bullied. However, the criteria used to identify bullying include the notion of unreasonableness. A judgement on the unreasonableness of otherwise of the behaviours is not necessarily only performed by the target of the behaviours: it will be done by others, with consideration of the context and full range of circumstances. I raise this issue because the idea that bullying is just about the perception of the target is often a barrier to taking action on bullying, or to developing commitment to solving this problem. The perception of the target is only relevant at some particular stages of the process. Bullying is not just about perception.

The Minister for Employment and Workplace Relations, The Hon Bill Shorten MP made a speech to parliament on March 14, 2012 comparing the community and policy responses to the road toll to how Australians respond to the number of deaths that occur at work each year (http://billshorten.com.au/ministerial-statement-on-workplace-deaths). Our attitudes are fundamentally different on these two causes of deaths and injuries. One is responded to with recognition and outrage, while the other is poorly understood and largely ignored. Neither is acceptable. We have to work towards harnessing a community expectation that workplace bullying, like all other health and safety hazards at work, should be prevented from occurring, not just dealt with when it occurs. I believe that some of the suggestions above can assist in this goal.

I look forward to the results of the inquiry, and am happy to provide more details on the above comments if necessary.

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