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Inquiry into workplace bullying

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE HOUSE
STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the House of Representatives Standing Committee on Education and Employment for its inquiry into workplace bullying.
2. The Commission welcomes the Committee's Inquiry. Everyone has a fundamental right to safety and to be free from violence, harassment and bullying.¹ Violence, bullying and harassment can negatively impact on a range of human rights, including:
 - the right to life²
 - dignity of the individual as a result of public humiliation³
 - the right to liberty and security of person⁴
 - the right to work and fair working conditions⁵, with bullying leading to higher absenteeism from the workplace, poor or reduced performance and an unsafe working environment⁶
 - the right to the highest attainable standard of physical and mental health,⁷ with bullying impacting negatively on a person's physical and mental health causing harm in the form of physical injuries, stress-related illnesses, depression and other health-related issues.⁸
3. The purpose of this brief submission is to inform the committee about recent work by the Commission that relates to addressing bullying in the workplace environment, and to highlight the importance of focusing attention on the role of bystanders in the workplace context.
4. **The Commission recommends that the Committee recognise the important role that bystanders can play in preventing and responding to bullying in the workplace and encourage strategies that create the confidence and safety for bystanders to take action.**
5. The Commission makes its submission in relation to the following terms of reference:
 - 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.

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

6. Bullying is an issue that can occur in a range of settings including the workplace. It can have a devastating effect on a person's health and wellbeing. Bullying can lead to emotional and physical harm, and in extreme cases can lead to suicide.

7. There is no single accepted definition of what constitutes workplace bullying, with some overlap between the terms “bullying” and “harassment”. One comprehensive definition is:

Bullying at work means harassing, offending, socially excluding someone or negatively affecting someone’s work tasks. In order for the label bullying (or mobbing) to be applied to a particular activity, interaction or process, it has to occur repeatedly and regularly (eg. weekly) and over a period of time (eg. about six months). Bullying is an escalating process in the course of which the person confronted ends up in an inferior position and becomes the target of systematic negative social acts. A conflict cannot be called bullying if the incident is an isolated event or if two parties of approximately equal ‘strength’ are in conflict.¹

8. The Commission notes the absence of comprehensive national data on bullying in Australia.
9. Despite this, the experience of the Commission has shown that too many Australians encounter bullying because of their gender, race, ethnicity, religion, disability, sexual orientation or age.
10. Commonwealth anti-discrimination law provides some protections against bullying. Bullying could constitute unlawful discrimination if a person is bullied or harassed at work on the basis of their age, sex, race, disability or religion in the area of employment. For example:
- The *Sex Discrimination Act*⁹ makes sexual harassment unlawful in the areas of employment, goods and services, education etc. Sexual harassment can often include elements of violence and bullying. In May 2011, the Sex and Age Discrimination Legislation Amendment Act 2011 was passed expanding the protections against sexual harassment in *Sex Discrimination Act 1984*. The Commission has previously welcomed the amendments, which the Commission had previously urged be made.
 - The *Racial Discrimination Act* makes racial hatred that takes place in public against the law, and would make cyber bullying that contains elements of racial hatred against the law.¹⁰
11. In 2010-11 the Commission received 18 670 enquiries and 2 152 complaints. Of these complaints, 1 564 complaints were made in relation to workplace bullying.²
12. Workplace bullying may relate to a person’s gender, race, disability, age or other characteristic. The Commission has observed high prevalence of workplace sexual harassment. Sexual harassment accounts for 30% of

¹ Einarsen, Hoel, Zapf & Cooper, *Bullying and Emotional Abuse in the Workplace: International Perspectives in Research and Practice* (2003) 15 in ‘Bullying at Work: A Review of the Literature’ (UK: 2006) 4.

² See Australian Human Rights Commission, Annual Report (2010-11), p 104. At http://humanrights.gov.au/about/publications/annual_reports/index.html (viewed 22 June 2012).

complaints received under the *Sex Discrimination Act 1984*.³ 88% of those claims relate to workplaces,⁴ where sexual harassment remains a serious problem, proliferated through the use of new technologies such as facebook twitter and text messaging.

13. In its 2008 national sexual harassment survey, the Commission found that 22% of women and 5% of men aged 18-64 have experienced sexual harassment in the workplace and nearly half of those who have been sexually harassed in the last five years report that it has also happened to someone else in the same workplace.⁵ The Commission is currently finalising the latest national survey and will shortly have updated data on this issue.
14. The Commission is also currently undertaking a review of the treatment of women in the Australian Defence Forces. This addresses the incidence of sexual harassment in a male-dominated industry. The first stage of the Commission's Review has found widespread, low-level sexual harassment at the Australian Defence Forces Academy, disproportionately experienced by women.⁶ The Review recognises that the issue of sexual misconduct is not unique to ADFA.⁷ The second phase of the Review focusing more broadly on the treatment of women within the ADF will include a survey on the prevalence of sexual harassment in the ADF. The report of the second stage of this review will be tabled in Parliament in the second half of 2012.

3 The Commission's work on bullying related issues

15. The Commission's Strategic Plan for 2011-14 identifies as a priority for our work tackling violence, harassment and bullying.
16. The Commission has initiated a range of projects and led advocacy efforts to respond to bullying in different parts of the community. Such initiatives include:
 - **Research papers on the prevalence of violence, harassment and bullying in our community:** The Commission has published online a series of research papers on how violence, harassment and bullying affect vulnerable

³ See Australian Human Rights Commission, Annual Report (2010-11), p 25. At http://humanrights.gov.au/about/publications/annual_reports/index.html (viewed 22 June 2012).

⁴ See Australian Human Rights Commission, Annual Report (2010-11), p 111. At http://humanrights.gov.au/about/publications/annual_reports/index.html (viewed 22 June 2012).

⁵ See Australian Human Rights Commission, *Sexual Harassment: Serious Business*, Results of the 2008 Sexual Harassment National Telephone Survey (2008), at 1. Available at: http://humanrights.gov.au/sexualharassment/serious_business/SHSB_Report2008.pdf (viewed 22 June 2012).

⁶ See Australian Human Rights Commission, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy: Phase 1 of the Review into the Treatment of Women in the Australian Defence Force* (2011), p xxv. Available at: http://www.hreoc.gov.au/defencereview/ADFA_report/ADFA_2011.pdf.

⁷ See Australian Human Rights Commission, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy: Phase 1 of the Review into the Treatment of Women in the Australian Defence Force* (2011), p xxii. Available at: http://www.hreoc.gov.au/defencereview/ADFA_report/ADFA_2011.pdf.

groups including the homeless, women, children and young people, and LGBTI communities.

- **Cyber-bullying and the role of the bystander:** A large amount of our work on violence, harassment and bullying has been focused on cyber-bullying and on the role of bystanders. Edith Cowan University's Child Health Promotion Research Centre undertook research on bystander action and cyber-bullying, which was launched in June 2012.
- **BackMeUp Campaign:** On 19 June the Commission launched its national [campaign to combat cyberbullying](#) among young people with a national competition for school age children and a series of fact sheets on tackling cyber-bullying. The campaign theme is about backing up your mates, by being an active bystander.
- **'Don't Stand By, Stand Up' Campaign and Factsheets on bullying:** In 2011 online youth mental health service, [ReachOut.com](#), and the Australian Human Rights Commission launched a national campaign that called on young people to create an anti-bullying pledge that highlights the importance of the bystander in preventing bullying. The 'Don't Stand By, Stand Up' campaign encouraged young people to stand up to bullies, stand up for their friends, and stand up for other young people who are being bullied by creating an anti-bullying pledge and uploading it to the ReachOut.com facebook page. ReachOut.com has [factsheets](#) developed in collaboration with the Australian Human Rights Commission on how to deal with bullying, information on young people's rights, and links and numbers on where to find help.
- **Sexual harassment national telephone survey:** In 2008 the Commission published the results of the [2008 Sexual Harassment National Telephone Survey](#) to investigate the nature and extent of sexual harassment in Australian workplaces. The Commission is currently undertaking field research for its 2012 sexual harassment telephone survey. The Commission would be happy to provide a briefing to the Committee on the results of the survey as they become available in late August.
- **Publications on sexual harassment:** [Know your rights: Sex discrimination and sexual harassment](#) (2010) is an informative publication about the Sex Discrimination Act, what sex discrimination and sexual harassment are and how to prevent and report them. The Commission has also published [Effectively preventing and responding to sexual harassment: A Code of Practice for Employers](#) (2008) and [A Bad Business: Review of Sexual harassment in employment complaints](#) (2002). In addition, the Commission has published [Harsh Realities 1](#) (1999) and [Harsh Realities 2](#) (2002), an educative set of case studies and real-life experiences of sex discrimination (including sexual harassment) complaints conciliated by the Commission in 1999 and 2002, respectively.
- **Resources on workplace harassment for young people:** The report [Young people in the workplace](#) (2010) contains a series of resources to help students explore the issues around workplace discrimination including sexual harassment.

- **Research on bystander approaches to sexual harassment in workplace:** The Commission has commissioned research on bystander approaches to sexual harassment in the workplace which will be released in July 2012. The Commission invites the Committee to discuss the published research with the Commission once it is released.
 - **Review of the Treatment of Women in the Australian Defence Force Academy and Australian:** The Commission is currently conducting a [Review of the Treatment of Women in the Australian Defence Force Academy and Australian Defence Force](#). Phase one of the review focuses on the treatment of women at the Australian Defence Force Academy (ADFA). The [Report](#) was released on 3 November 2011. The Second phase will review the effectiveness of cultural change strategies and initiatives required to improve leadership pathways for women in the Australian Defence Force (ADF). The Report is expected to be tabled in Parliament in August and the Commission is able to discuss the findings with the Committee after that time.
17. Through this work, the Commission has particularly emphasised the role of bystanders – i.e., people who witness an act of bullying. This is discussed further below.

4 The role of workplace cultures in preventing and responding to bullying

18. The Commission recognises the importance of organisational cultures to the prevention and deterrence of bullying. Organisational environments must promote and support the reporting of bullying and harassment, to encourage both victims and bystanders to take action.
19. In recent years the Commission has particularly focused on the importance of bystander intervention in bullying situations.
20. The Commission has undertaken work in the area of bystander approaches to bullying, in relation to both sexual harassment in the workplace and cyber bullying among young people.
21. The Commission is interested in identifying safe and appropriate ways to support people who want to be defenders of, or stand up for, victims of violence, harassment and bullying. This is important as some people feel uncomfortable witnessing bullying but may be unsure what to do to stop bullying happening.
22. Taking a bystander approach refers to giving individuals specific skills and strategies that they can use in preventing violence, harassment and bullying.
23. These could include taking proactive action by identifying and stopping a situation before it happens, intervening during an incident, and learning how to effectively and safely take action when confronted with behaviours that support violence, harassment and bullying.

24. It can also focus on knowing how to effectively support people after violence, harassment and bullying have occurred.¹¹
25. In order to create a culture where victims and others are supported to report on bullying, the 'bystander' or witness, such as a work colleague, can be enlisted to help and stand up for the victim.
26. Bystanders can be highly effective in raising awareness of bullying. They can also intervene to prevent harm and contribute to improving workplace practices and cultures that reduce the occurrence of bullying and harassment.
27. The Commission has incorporated bystander approaches into initiatives aimed at empowering young people to take safe steps to respond to [cyberbullying](#). On 19 June the Commission launched its national [campaign to combat cyberbullying](#), which encourages students to make a 2-minute film about 'backing up' someone who is being bullied at school.
28. In July 2012 the Commission will also release commissioned research on bystander approaches to sexual harassment in the workplace. The paper will outline some of the key factors that discourage bystanders from taking action. These factors include a lack of knowledge of workplace rights, low expectations of there being outcomes from utilising reporting mechanisms and a fear of the potential negative impacts of reporting on career development.
29. Drawing from other research in areas such as whistle blowing, racial harassment and workplace bullying, the paper recommends a number of strategies to encourage bystander intervention, and to discourage a culture of tolerance.
30. **The Commission recommends that the Committee recognise the important role that bystanders can play in preventing and responding to bullying in the workplace and encourage strategies that create the confidence and safety for bystanders to take action.** The Commission is of the view that such an approach would make a significant, positive contribution to workplace cultures in addressing bullying.

¹ See for example, *Universal Declaration of Human Rights (UNDHR)*, GA Resolution 217A (III), UN. Doc A/810, 1948, art 5; *International Covenant on Civil and Political Rights (ICCPR)*, 1966, art 7; See Human Rights Committee, *General comment no. 20 replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art 7)*, (1992) paras 2-5; At [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) (viewed 4 March 2011) CRC, 1989, art 19; *Convention on the Rights of Persons with Disabilities*, 2006, art 16; Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 – Violence Against Women* (1992), paras 4, 17, 14; Committee on the Rights of the Child, *General Comment no. 13- Article 19: The right of the child to freedom from all forms of violence*, UN Doc CRC/C/GC/13 (2011) para 12. At http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en_AUV.doc (viewed 3 March 2011); *UDHR*, 1948, art 7; *ICCPR*, 1966, arts 7, 26.

² ICCPR,1966, art 6, UDHR,1948, art 3. See also World Health Organisation, *World Report on Violence and Health: Chapter 1 Violence: a global public health problem* (2002), p 3. At http://www.who.int/violence_injury_prevention/violence/world_report/en/ (viewed 4 March 2011).

³ Committee on Economic Social and Cultural Rights, *General Comment No.13 - the Right to Education*, UN Doc E/C.12/1999/10 (1999).

⁴ *Universal Declaration of Human Rights (UDHR)*, GA Resolution 217A (III), UN Doc A/810,1948, art 3; *International Covenant on Civil and Political rights (ICPPR)* 1966, art 9.

⁵ UDHR, 1948, art 23; ICESCR, arts 6 and 7.

⁶ Ibid

⁷ UDHR,1948, art 25; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 1966, art 12(1); CRC,1989, art 24.

⁸ See for example, World Health Organisation, *World Report on Violence and Health: Summary* (2002). p 7; UDHR art 25; ICESCR,1966, art12(1); CRC,1989, art 24

⁹ See Australian Human Rights Commission, *Know Your Rights: Sex Discrimination and Sexual Harassment*. At http://www.humanrights.gov.au/sex_discrimination/index.html (viewed 18th February 2011).

¹⁰ For more information see Australian Human Rights Commission, *Cyber- racism and human rights* (2011) at

http://www.humanrights.gov.au/racial_discrimination/publications/cyber racism_factsheet.html (viewed 16 March 2011); Australian Human Rights Commission, *About Racial Discrimination*, at

http://www.humanrights.gov.au/racial_discrimination/about_race.html 9 (viewed 16 March 2011)

¹¹ National Sexual Violence Resource Center, *Overview of Bystander Intervention* (2010), <http://www.nsvrc.org/projects/bystander/overview>> at 20 September 2010.