

JE.



5 July 2012

Ms Amanda Rishworth MP  
Chair, Standing Committee on Education and Employment  
House of Representatives  
Parliament House  
Canberra ACT 2600

Dear Ms Rishworth

RE: Inquiry into Workplace Bullying

The National Network of Working Women's Centres (NWWC's) are pleased to provide the following submission to the Standing Committee on Education and Employment.

The NWWC's includes the South Australian Working Women's Centre Inc (WWC SA), the Northern Territory Working Women's Centre Inc (NT WWC) and the Queensland Working Women's Service Inc (QWWS). Each are community-based not-for-profit organisations that support women employees whatever their age, ethnicity or work status by providing a free, confidential and specialised service on work related issues. All three organisations are small agencies that rely on funding from the Commonwealth (SA and NT), State (SA and Qld) and Territory governments (NT).

The WWC SA opened in 1979 and NT WWC and QWWS in 1994 and are very well known and respected by women across Australia for information, advice and education about work issues. The NWWC's were in direct contact with over 7000 Australian women during the year 2011/2012.

The NWWC's also conduct research, project work and are active in contributing to policy in the area of women and employment. This submission is based on information collected from all three WWC's.

Each Centre has had a long involvement in assisting women employees who experience workplace bullying. The NWWC's also provide training and awareness raising to a range of organisations including government, the community sector and the private sector. The NWWC's have represented the concerns of their client base in various jurisdictions but also on Ministerial Committees and the like.

There is no doubt that workplace bullying, either by way of assisting our clients to manage incidents, to seek information and strategies for addressing the bullying, to seek legislative redress, to be provided with appropriate referrals to health care practitioners, counsellors, lawyers, unions, etc or by way of advising and working with workplaces who are keen to implement preventative strategies, consumes much of our resources.

**House of Representatives Committees  
Inquiry into Workplace Bullying  
Submission by the National Network of Working Women's Centres  
(WWC SA - Working Women's Centre SA, NT WWC - NT Working Women's Centre,  
QWWS - Queensland Working Women's Service)  
June 2012**

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

Working Women's Centres across two States and one Territory in Australia keep sound statistical data on all phone enquiries and all case work conducted with clients in relation to workplace bullying.

Whilst this does not provide reliable data about the prevalence of bullying generally in workplaces, it does indicate the level of concern that this issue raises amongst women who know about our services.

Workplace bullying in terms of matters that NWWC's deal with, ranks at Number 2, 3 or 4 in incidence, after 'Employment Conditions' and 'Dismissal/Redundancy'. Workplace bullying matters represent around 12% to 20% of all calls and case work, depending on the quarter in which records were collected. This trend has not varied greatly for the last 8 – 12 years. Queensland Working Women's Service reports that their statistics average 19% of callers seeking advice or representation on workplace bullying matters over the last 3 years. Of a snapshot sample of around 50 recent cases, the majority are claims against their immediate supervisor.

***Kristen's story***

*Kristen has been working over 7.5 years as a full time employee for a city council. She complained about workplace bullying by her supervisor. Kristen was asked to attend a meeting with HR and she took her union rep with her. She was unhappy with the outcome. Her supervisor told her that he will re-deploy her if she continues to raise these issues.*

***Antonia's story***

*Antonia works in promotions for a radio station. She has been harassed for the last 12 months, including experiencing personal attacks from her direct supervisor. After complaining about this, she keeps getting dropped off the roster.*

The experiences of victims of workplace bullying range from a concern that they may be being targeted in some way but are still feeling in control, to feeling like they wish to end their lives because of the bullying. Experiences of bullying are most likely to trigger health impacts including sleeplessness, anxiety and depression that may result in an inability to attend work.

Extreme bullying, in our experience, results in the targets of bullying losing their faith in their supervisors or work colleagues and hence a need to leave their jobs. Many targets of workplace bullying resist lodging a claim for workers' compensation, even when their health is so compromised that they can't work. Targets of bullying will often use up all available leave including annual leave, just to gather some strength to keep functioning in their role, though this is not a reliable long term way of addressing workplace bullying.

NWWC's have supported clients who are targets of extreme workplace bullying with diseases such as stroke, heart attack and stomach ulcers. NWWC's have also had the tragic experience of clients who were affected by workplace bullying and have committed suicide. Many of these clients have made no workers' compensation claim and their injuries and/or death does not register on any OHS data (the NTWWC alone is aware of two suicides of women who were affected by workplace bullying since 2004. Neither women had made workers' compensation claims). Whilst it is acknowledged by NWWC's that in some of these cases workplace bullying was not the sole cause of illness or suicide, for the worker it was a known contributing factor.

Clients who report that they have been bullied often have no language to describe what has been happening to them. When women ring our service they are often confused about what is going on. They may be upset and crying, feeling ill but often say 'I don't know what I have done wrong'. Women especially will often question themselves when things start to break down at work and may over compensate to try to get the bullying behaviour to stop. Typically they may work harder or longer hours in order to please or appease the bully. They may give the bully extra ammunition for continuing the bullying by confiding personal information to the bully like 'my performance may not be quite up to speed at the moment as I have been diagnosed with breast cancer'. Rather than this information raising some compassion, it is used as a further reason to bully.

Many clients report that when they try to have a conversation with a bully and/or manager about not coping, they are asked to suspend their employment until they can provide medical evidence from a qualified practitioner (usually a psychiatrist) of their fitness to attend work. Appointments can take months to secure. This absence from work further isolates targets of bullying and adds to their sense that they are going crazy. Employers who use this approach will claim they are merely exercising their responsibilities to ensure the health and safety of workers. This approach is often used quite separate from a proper investigation of workplace bullying incidents and a genuine attempt to address and resolve complaints. Often it appears that employers or supervisors lack the skills to address matters of workplace bullying in humane, appropriate and respectful ways.

Calls to our Centres from clients who report experiences of bullying are typically long phone calls where women can recount a number of seemingly trivial or minor events but which together present a pattern of behaviour which intimidates, isolates, humiliates or demeans the target.

Case work appointments with clients who are keen to seek a remedy for their situation are also typically long appointments as each experience of bullying is different and remedies, if they exist, need to be explored with each client to determine suitability. WWC SA has developed a check sheet titled 'Options for Remedies' which is attached. Some clients have no other option but to lodge a workers' compensation claim, while others if they still have the energy, may, with appropriate support and coaching, be able to advocate for the bullying to stop in their workplace. Other clients just make the decision to leave, even when they 'feel bad' about knowing someone else may be targeted by a bully once they've left.

### **Grace's Story – Bullying after raising a grievance**

*Grace phoned to enquire about her right to change her work hours. Grace's employer wanted her to do more hours, but Grace couldn't as she had family caring responsibilities. Management at Grace's workplace was predominantly female and Grace had been working there for over 11 years.*

*Grace lodged a grievance with her employer about this, but the issue was not resolved. Grace then started experiencing bullying and harassment in the work place. Grace's employer tried to move her around to 'make things easier for her'. This only stressed Grace even more, and was having a serious impact on her health.*

*Grace finally put in a complaint with the Equal Opportunities Commission for Family Responsibility Discrimination, after exhausting all avenues with her employer. The matter did not resolve at conciliation and Grace looked into pursuing the matter further.*

### **Groups of workers at risk;**

Any worker can experience workplace bullying but some groups are particularly at risk including those who have precarious or insecure work arrangements including casual workers, young workers and labour hire or agency workers. Research conducted by the WWC SA Inc. showed that women were more likely to be bullied than men, and that workers in large hierarchical organisations like government departments and agencies, educational institutions and hospitals reported more incidents of workplace bullying. In the experience of staff at WWC SA, employees who work in small workplaces where the bully is the Owner Manager are also at risk. Recent research indicates that workers in the Health and Community Industry Sector are particularly vulnerable to workplace bullying. This sector is typified by a lack of resources and high workloads, both of which are known to contribute to workplace bullying.

### **Nina's Story – family business**

*Nina was employed in a jewellery store as a sales assistant for a couple of years. She explained that this was a family business and that family members are both directors and staff members.*

*Nina alleged that she was harassed and bullied mainly by Jacinta who is one of the daughters of the owners. Nina felt that Jacinta disliked and bullied her from the beginning of her employment, and that some of the other staff were also hostile towards her as they felt encouraged by Jacinta.*

*Nina felt ostracised and isolated, and when she complained about it, Management's actions, such as talking with all staff members, only exacerbated her isolation and the feeling of hopelessness to the point where she couldn't efficiently perform her duties. In order to do her job she needed to be able to communicate with others. Nina alleged that others were avoiding her and not talking or responding to her. She felt this was extremely stressful and unfair.*

*Nina stated that she attempted to address her concerns with the Manager and the Director because both seemed understanding. One of the issues raised was her "dress code". She was told that Jacinta was complaining to Management about the way Nina dressed but they themselves couldn't see anything wrong with it. Further she was told that she was a good worker and they wouldn't like her to leave. They told her "if you work with a bunch of girls then you get this type of and this needs to stop". The Manager promised to speak with the others.*

*Nina alleged that in the past she was reprimanded unfairly for behaviour the other staff, such as family members, could engage freely in.*

*She alleged that as a result of her complaints about bullying, action taken by management did not*

*resolve the issue and the poor treatment continued.*

*After the discussion about her "dress code" when Management told her they didn't have a problem with this, she was again reprimanded about this same issue.*

*Customer complaints were raised as well but Nina explained that these related to sales provided not by her but by Jacinta. However her evidence was disregarded and she was threatened with further disciplinary action.*

*Nina alleged that her health deteriorated and she started suffering from stress induced anxiety and depression.*

*She approached the Director with her complaint. The Director promised that he would look into it again.*

*Nina was by this stage quite unwell with anxiety and panic attacks. She stated that she didn't believe she trusted the employer to give her "a fair go" in relation to resolving the alleged customer complaints, given that she felt her complaints in relation to workplace harassment and bullying were being misconstrued and/or ignored.*

*After approaching the Director, Nina worked for a further 2 weeks. There was no change in attitude or any indication that anything was being done to address her issues. She felt isolated and decided that she had no other option but to resign.*

*Consequently she lodged an unfair dismissal claim arguing constructive dismissal on the employer's initiative. Her complaint was resolved during conciliation to her satisfaction.*

WWC staff have identified a number of cases where Managers report to Boards and Management Committees made up of personal friends of the Manager. Employees who experienced bullying in these structures inevitably had no confidence in addressing the issue with the Board or Committee. This scenario is particularly common in regional areas or in Aboriginal Community organisations where family members may also be part of the management structure. Employees in these types of organisations are at risk and may benefit from the option of outside intervention. Many Aboriginal women who work in community organisations carry cultural responsibilities along with their work roles which can make the resolution of bullying complaints very complex. There is a body of literature growing about the 'horizontal violence' experienced by Aboriginal workers and specific regard needs to be paid to this in any proposed approaches to addressing and preventing 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;**

NWWC's have contributed significant work to resources and approaches that promote the prevention and addressing of workplace bullying through policies and procedures. NWWC's refer the Committee to the WWC SA publication 'Workplace Bullying; Making a Difference'. ([www.safework.sa.gov.au/.../docs/aeWorkplaceBullying2003.pdf](http://www.safework.sa.gov.au/.../docs/aeWorkplaceBullying2003.pdf)) and also to 'Risky Business: a time for action' a joint publication of QWWS undertaken with the Queensland Government.'

Research generally supports the supposition that well resourced workplaces with positive workplace cultures and strong representation of workers' concerns do make a difference to

the incidence and seriousness of workplace bullying.

The experience of NWWC's is that, like other forms of harassment and discrimination, to ignore bullying is to invite an escalation of bullying behaviours.

Of course policies and procedures on their own do not prevent or address bullying. Appropriate leadership that demonstrates skills and confidence in addressing this issue are also required. High level commitment to making positive changes has a big influence on the culture of workplaces.

**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;**

NWWC's regularly deliver awareness raising and training sessions on workplace bullying to a range of organisations including government, private sector and community sector organisations.

Requests for these sessions have not reduced but reflect growing awareness of the ill effects of workplace bullying as reported in the media. Often we are contacted to deliver sessions as a 'fix it' approach but we are reluctant to adopt this strategy. An education session on its own will not address or prevent bullying but will raise the expectations of staff that something will be done. If no properly developed policies or procedures exist, that have been developed with staff input and are widely known, then an educational session on workplace bullying on its own will not be effective. Work carried out with 3 organisations and reported on in 'Workplace bullying; Making a difference' documents the steps required to adequately prevent and address bullying. Each step has suggestions and examples from other organisations of what worked for them.

The Northern Territory Council of Social Services (NTCOSS) conducted research with community services workers in the Northern Territory in 2007. That research found that one of the top three reasons for community services workers to leave the industry and seek employment in another industry was workplace bullying. As a result of this research NTCOSS funded the NTWWC to offer awareness raising workplace bullying training to the entire community services sector of the NT. That program was delivered and evaluated and overwhelmingly participants requested a further round of training that had a strong focus on the development of a new anti-bullying policy or review of existing policy. This request demonstrated a sound understanding of participating organisations that awareness raising alone was not enough to address workplace bullying and that effective policy was essential to create bully free workplaces.

In response to this request the NTCOSS provided further funding to the NTWWC to offer more training to the community services sector with the aim of ensuring that participating workplaces had, as a result of the training, an anti-bullying policy. The NTWWC has only been able to offer such targeted and intensive training as a result of specific NTCOSS funding.

A request to deliver a 'training session' while an active complaint of workplace bullying is afoot is also not an ideal approach and can sometimes cause a conflict of interest if a Working Women's Centre is asked to deliver training whilst also assisting a non union woman worker from that workplace with her matter or her claim. NWWC's are careful to guard against this, but nevertheless the demand for appropriate support for organisations

grappling with workplace bullying is significant.

NWWC's are recognised as leaders in this field and could easily expand their programs of delivery in this field if adequately resourced.

NWWC's struggle to find appropriate referral options for employers who seek assistance in responding to workplace bullying in their workplace. NWWC's therefore recommend the development of an online anti-workplace bullying website that has extensive information and resources for targets of workplace bullying, supervisors, managers and HR professionals. By way of example the NWWC's would direct Inquiry panel members to a similar website that relates to domestic violence at work

<http://www.dvandwork.unsw.edu.au/>. This website contains extensive information, written resources, short videos, policy advice and e-learning modules for victims of domestic violence and workers who are required to respond to disclosures or requests for assistance in relation to domestic violence. A similar website dedicated to workplace bullying would be an excellent point of referral for a wide range of organisations.

***Donna***

*Donna disclosed to her boss that she was experiencing domestic violence.*

*Donna had been head hunted for her position but once she revealed the DV she was systematically bullied out of her position.*

Educational and policy focused programs, such as those described above, that are aimed at preventing and appropriately responding to workplace bullying can only be effective if they are supported by a broader regulatory framework that enables targets of workplace bullying to make successful complaints. It is also essential that the broader community is witness to the successful prosecution against perpetrators of workplace bullying by OHS or other regulators.

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

It is our belief that there is significant scope to improve co-ordination between the bodies listed. As early as 1998 WWC SA conducted consultations with relevant stakeholders and in 2000 held a series of Roundtables. At this time little was understood about the dynamics of workplace bullying so there was a lot of value in getting people with various perspectives together to discuss proactive approaches to workplace bullying. The evidence base from research is now much greater but there are still in our view 'silos' of understanding at best and at worst still a denial that all claims of workplace bullying are genuine complaints. In our view there is still much to be gained from bringing various jurisdictions together, provided there are some benchmarks of understanding about what is to be achieved by improved co-ordination. Even within some groups, and medical practitioners are one example, understanding of workplace bullying and suitable treatment of it varies widely. There is now good documented evidence to show the benefits of the prevention of workplace bullying, both from a health perspective but also an economic one.

Partnering between agencies is important in ensuring that key stakeholders meet and understand a range of approaches to workplace bullying. The NWWC's have facilitated

forums, roundtables and panel sessions for practitioners from a range of disciplines to meet. This results in wider understanding of the issues and the roles of agencies. Because there is currently no legal redress for workers who have been bullied they sometimes find themselves on a 'merry-go-round' being sent from agency to agency trying to seek solutions to their workplace issue. Any proposed partnering needs to take this into account and avoid this happening to already vulnerable workers. Clear information needs to be given to workers who have been bullied – raising expectations that they 'may' be able to use current legislation, in our experience leads to disappointment and frustration, often exacerbating a worker's position and condition.

**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;**

It has long been the view of NWWC's that there should be a range of legislative remedies to prevent and address workplace bullying. The issue has 'landed' in the OHS realm in Australia as there is so often a health impact for targets of bullying and the OHS framework does allow for prevention to be a key part of the approach.

NWWC's recognise that the OHS framework does present problems for individuals who have been the targets of workplace bullying. A complaint to a regulatory OHS authority can only be actioned whilst the complainant is still employed at that workplace, yet we know that many people who experience workplace bullying 'move on' from a workplace as it is not safe for them to raise a complaint and continue working there. Also a complaint to an OHS authority is not treated in the same way that a complaint of discrimination for instance is. We have long maintained that an individual complaint based system needs to do a number of best practice things which empower a complainant to stay in touch with the progress of their own complaint for instance and to be afforded advocacy. A complaint that is taken over by an investigative authority does not always afford a complainant with this. Particularly in workplace bullying matters where there may be fear and uncertainty about what is happening with the progress of a complaint we believe there is scope for looking at other jurisdictions that can also deal with complaints of bullying. The 'burden of proof' required under OHS Acts generally that workplace bullying is taking place also creates problems for some inspectors and in some matters in this jurisdiction.

The manner in which workplace bullying enquiries and complaints are handled by OHS authorities varies greatly between jurisdictions. Some OHS regulators are staffed with specialist psychosocial complaints handlers who have specialist workplace bullying skills and knowledge. Some OHS complaints handlers do not. Whilst some Working Women's Centres have success in enabling their clients to have complaints of workplace bullying investigated by their OHS regulator, some Working Women's Centres find that their OHS regulator will not accept or action an enquiry or complaint of workplace bullying. It is not uncommon for complainants in some jurisdictions to be informed by a staff member of an OHS regulator that they do not deal with workplace bullying and inappropriately refer the matter to an anti-discrimination commission or Fair Work Australia.

Some of the work of adequately representing clients who have been bullied is highly nuanced and specialised and care needs to be taken in just offering up one option for legislative remedy.



## **Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;**

Existing regulatory frameworks do not provide a sufficient deterrent against workplace bullying. Whilst Adverse Action provisions of the Fair Work Act have been a positive step as far as providing a legal remedy for unfair treatment at work is concerned, the majority of NWWC's workplace bullying clients are unable to make an Adverse Action claim as the treatment against them is not interpreted to be because of a discriminatory ground, illness or temporary absence from work or because of pursuing a workplace right.

NWWC's know that the current regulatory system is not working because of the sheer volume of women who seek our assistance with workplace bullying and because of the fact that so few of those women are able to seek an appropriate legal remedy. The Productivity Commission in their *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety report* (January 2010) found the issue of workplace bullying to be of such OHS concern that it was listed as one of the ten key points in their 405 page report.

More localised research such as unpublished 2007 data from the NT Council of Social Services shows that workplace bullying was one of the top three reasons cited by community services workers for choosing to leave the sector.

An understanding of the current workplace bullying regulatory framework is virtually unknown in some jurisdictions in Australia. NWWC community education participants are regularly surprised to learn that complaints of workplace bullying can be made to OHS regulators. There is a general community perception that workplace bullying is against the law and the relevant law is anti-discrimination legislation. The reality for NWWC clients is that few workplace bullying complaints are relevant to anti-discrimination legislation and some or virtually none, would consider contacting their OHS regulator depending on the jurisdiction in which the worker resides.

There needs to be a wide range of remedies and targets of bullying should have choice in the way they wish to address their issue. For some people counselling is appropriate, others need to seek 'justice' for what has happened to them.

### ***Irene's story – unable to refer complaint to OHS regulator***

*Irene contacted the NTWWC to talk generally about her rights and options as they related to her experience of workplace bullying. The NTWWC Industrial Liaison Officer discussed with her a range of options including a formal written complaint to NT WorkSafe. The NTWWC staff member opted to call NT WorkSafe whilst with the client to talk about how they might handle a complaint and offer her support and assistance.*

*The NT WorkSafe officer that answered the phone call said that NT WorkSafe didn't really deal with workplace bullying.*

*After hearing this, the client made the decision not to make a complaint to WorkSafe.*

### ***Jennifer's story – lack of response by OHS regulator***

*Jennifer contacted NT WorkSafe to make a complaint about workplace bullying. She made the complaint in writing and provided almost 2 pages of detailed written information about the incidences of bullying against her. She asked NT WorkSafe that the matter be dealt with 'promptly' as it was causing her 'great distress'.*

*She received a written response that gave her a reference number and said 'NT WorkSafe will only conduct enquiries when the bullying is still occurring and you have exhausted all avenues to stop the bullying such as reporting the hazard to the employer and trying to resolve the issue. It is NT WorkSafe's role to enquire into and determine whether all parties have met their obligations under the Act not to become involved in the specific details of the alleged bullying activities or to mediate between the aggrieved persona and the alleged bully.'*

*When Jennifer contacted the NTWWC she had formed the view, from the information sent to her, that NT WorkSafe was 'not much help' with workplace bullying.*

### ***Sam's story – lack of response by OHS regulator***

*Sam contacted NT WorkSafe about her experience of workplace bullying. She emailed approximately 6 pages of details of the incidences against her and asked for help. One month later she sought assistance from the NTWWC as her complaint to NT WorkSafe had not been receipted, acknowledged or responded to in any way.*

**Schemes to support individuals who have been affected by bullying in their return to work;**

### **Casey's Story – workers' compensation**

*Casey had been employed in her position for over 5 years. Casey had an exceptional employment history, and worked many hours in excess of what she was paid for, but did this out of loyalty to her employer.*

*Casey was aware of ongoing bullying and harassment in the workplace, however for the most part of her employment accepted the behaviours of the employer.*

*Casey became seriously ill and was admitted to hospital in an emergency. Whilst in high care Casey received ongoing harassment from the employer. Casey returned prematurely to the workplace.*

*Subsequently, the employer's bullying behaviours towards Casey increased. Casey had her annual bonus cut as a consequence of becoming ill. Casey was subject to other serious forms of bullying in the workplace, which resulted in Casey suffering from anxiety and depression and eventually being unable to return to work.*

*By the time Casey was diagnosed unfit to attend work and referred to Workers' Compensation she was not able to comprehend the application process, the interview process, her rights or entitlements.*

*WWC SA Inc were able to provide referral and support for Casey throughout the Workers' Compensation process. WWC was also able to assist Casey once her employment had been terminated by the employer and provide representation with a Disability Discrimination claim as well.*

*Whilst the processes which Casey had to undertake were far from pleasant, Casey was able to achieve relevant and sufficient settlements in the jurisdictions where her complaints were lodged and Casey has since acknowledged that the processes themselves were so difficult and confronting at a time where she was not able to function to her full capacity, that without the assistance of the WWC she believes she would not have pursued the matters to their conclusion.*

The very few NWWC clients who have made successful workers' compensation claims for workplace bullying are sometimes placed on a return to work plan after a period of absence from work. Return to work plans, whilst well intentioned, are often unable to affect the cause of the psychosocial injury because the perpetrator of workplace bullying remains in the same work site as the target, there is no education or training to accommodate the bullied workers and no support systems or people in place for the bullied worker to go to upon their return.

Workers who are targets of workplace bullying often take a period of leave as a way of coping with the bullying behaviours. Whilst a period of leave can provide some initial relief it quickly turns into a period of waiting and worrying about a return to the workplace. It is not uncommon for workplace bullying behaviours to escalate upon a return to work after absence, complaint or workers' compensation claim. Perpetrators of workplace bullying perceive such actions and threats against them.

NWWC's observe a strong similarity between the well documented and accepted cycle of domestic violence and a workplace bullying relationship. The cycle of domestic violence theory assists NWWC staff to understand that in situations of serious and prolonged workplace bullying any actions taken by the worker against the perpetrator must be accompanied by actions to protect the worker's safety in the event of an escalation of

attacks. The cycle of domestic violence theory also assists NWWC staff to understand that outbursts or attacks by the perpetrator of workplace bullying will sometimes be followed by an apology and then a period of peace and appropriate behaviour before the cycle continues again. As the cycle repeats it often escalates.

### **Legal frameworks.**

OH&S legislation is useful for prevention, however its effectiveness varies across jurisdictions.

Workers need a legal remedy other than constructive dismissal which is too problematic in its interpretation and administration.

It would be useful if existing legislation ie OH&S, IR and EO all addressed workplace bullying and offered remedies.

Any new legal framework needs to be low cost for the user, easily accessible, provide for individual complaint based action, have a remedy which is broader than just economic loss ie have the ability for further remedies like educational programs to be ordered, and have a speedy time frame for resolution.

NWWC's staff have some concerns about a model that can order mediation where one or both parties may be unwilling to mediate. In our experience the effectiveness of mediation depends largely on the skills of the mediator and their awareness of workplace bullying and its impact. Too often we hear of instances where poor mediation or attempts at mediation have escalated the problem for the worker.

There need to be clear guidelines about how investigations will be conducted and what will be investigated if a model is adopted that provides the power to investigate. Staff also have concerns about what process would be used to decide which complaints would be investigated. If every reported case of workplace bullying were to be investigated there would need to be considerable resources available. If 'cases' of bullying are to be declined there need to be clear and fair guidelines for this.

Resources to set up an alternative resolution process must not be taken from existing jurisdictions if it means that it leaves them under resourced.

### **The most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another; and**

NWWC's have certainly witnessed a culture of workplace bullying being transported from one organisation to another, largely in the form of an individual 'bully' taking their skills and practices into a new environment. Sometimes this is an unfortunate by-product of a person moving to a new position. In some instances it seems that bullying bosses are head hunted into positions where, for instance, large numbers of the workforce need to be shed.

A belief in natural justice precludes NWWC's from recommending a register of known bullies. However, some considered fair practices adopted at recruitment may indicate that a prospective employee offers too great a risk to an organisation.

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

NWWC's believe in strong research evidenced based data which informs understanding of workplace bullying and furthers the community's understanding of and approach to preventing and addressing the impact of bullying on workers and their organisations.

NWWC's would welcome the setting up of a grant process or similar which would enhance work in this field. Whilst we know a lot about this issue, clearly there is still much to learn. Most importantly it requires a heart and mind approach where sound approaches are developed not to profit only some individuals, but where wide application of new learning will mean that the harm that results from workplace bullying is significantly decreased.

NWWC would also urge OHS regulators record more detailed information about workplace bullying complaints. Currently the majority of publicly available data from OHS regulators is in relation to psychosocial injury workers' compensation claims. The collection of data of OHS regulators should also include detailed information about workplace bullying enquiries and complaints as many do not result in workers' compensation claims.

## Options for Remedy – Workplace Bullying

Option	Outcome
Do nothing	The Bullying and your health are likely to get worse
Check workplace policy – informal complaint	<ul style="list-style-type: none"> <li>• Speak to the person concerned, name the behaviour you want to change and say what you want ie 'When you ....I feel....What I want is.....You can put this in writing but get someone to check what you have written.</li> <li>• An informal process should mean that no records are kept on your personnel file but keep your own records of what has gone on and copies of all correspondence.</li> <li>• Normally this is a process for very early in the conflict.</li> </ul>
Raise a formal grievance	<ul style="list-style-type: none"> <li>• Up to the workplace to deal with.</li> <li>• Becomes a formal process. Records are kept.</li> <li>• If handled well can resolve the issue – needs good skills to work.</li> <li>• If handled poorly can result in worse situation.</li> </ul>
If you are very unwell take sick leave	<ul style="list-style-type: none"> <li>• Gives you time to think, have a break from the behaviours</li> <li>• May allow you to reframe your approach to the situation, think of new strategies for dealing with the behaviours.</li> <li>• Suggest you seek help with this</li> </ul>
Lodge Workers' Compensation claim	<ul style="list-style-type: none"> <li>• Gives you more time on pay to get well if you have no other options.</li> <li>• Has to be supported by your health professional.</li> <li>• Will be a stress claim and will be investigated. This is a stressful process and not to be entered lightly.</li> <li>• Is an option if you are so unwell that you can't work.</li> <li>• No guarantee that it will resolve the situation for you – depends a lot on the support of your doctor/psychiatrist/psychologist to give you consistent treatment.</li> <li>• Most likely that you will be sent for an 'independent' medical assessment with a psychiatrist – can take months for an appointment.</li> <li>• We advise you also get your own report from another specialist – can be a costly process. Your workplace will argue that their report should be accepted – you will most likely have to lodge a dispute.</li> <li>• Likely the workplace won't clear you for work until this report is received. They may use the report to stop you coming back if it's found the workplace is not safe for you.</li> <li>• They could be asked to make the workplace safe for your return – this will meet with resistance.</li> <li>• Needs a strong doctor who has the time and interest to advocate for you.</li> <li>• Will result in you having a 'Worker's Comp' claim on your employment record.</li> </ul>

Transfer to another area/job	<ul style="list-style-type: none"> <li>• Will get you away from the particular person but may expose you to someone else just as bad or worse.</li> <li>• May make you feel resentful that you are the one who has to leave/transfer when you feel the problem is not of your making.</li> <li>• Ask yourself how much power you feel you have to change the situation.</li> </ul>
Resign	<ul style="list-style-type: none"> <li>• May be what you need to consider if your health is compromised.</li> <li>• Better to be well and look for other work than to be too sick to work anywhere.</li> <li>• Again will make you angry that you have to consider leaving but helps you to assess how much 'fight' you have in you to remain where you are.</li> </ul>
Lodge a complaint with SafeWork SA	<ul style="list-style-type: none"> <li>• If you feel you have exhausted your options to have your concerns dealt with at the workplace you can lodge a complaint of bullying with SWSA – again, not a process to enter into lightly.</li> <li>• If your workplace does not want to play nicely now, they are not likely to play any better after you complain. They will most likely claim that they are following reasonable administrative procedures – your view is that they are not being reasonable.</li> <li>• You will need to have evidence and good documentation.</li> <li>• It may be another chance to resolve the issues but is just as likely to result in a complete breakdown of your employment relationship.</li> </ul>
Seek other support from a counsellor or Employee Assistance Program	<ul style="list-style-type: none"> <li>• Will help you to develop strategies for dealing with the behaviour and situation.</li> <li>• You can do this at any point – don't wait until crisis point.</li> </ul>
Lodge a dispute with Fair Work (The final step in a grievance resolution process)	<ul style="list-style-type: none"> <li>• This is the final step if all other efforts to follow a grievance process (as outlined either in a workplace policy or in the National Employment Standard [NES] or the modern awards) have failed to resolve the issue. There must be a strong paper trail indicating that efforts to resolve the issue were made at the workplace level.</li> <li>• Again, not an easy straightforward process and escalating a complaint will make your employer dig their heels in further.</li> <li>• The employer will most likely seek legal opinion and will play 'hardball'. You would be advised to get legal opinion/representation</li> <li>• Lodging a dispute to get a remedy is a punt – no guarantee again that it will resolve – depends on who you get as the Commissioner.</li> <li>• If there are a number of employees with the same complaint this may be a sound course of action.</li> </ul>
AHRC (Australian Human Rights	<ul style="list-style-type: none"> <li>• If there are any elements of racism or sexual behaviour or disability or other forms of discrimination based on caring</li> </ul>

Commission) or EOC (Equal Opportunity Commission)	responsibilities associated with the bullying this may be an avenue. Depends if any claim you have fits the grounds of the relevant Acts (Federal and State). Further bullying because you have taken sick leave may constitute disability discrimination.
Put all your energies into getting balance and sanity back in to your life	<ul style="list-style-type: none"><li>• Take the emphasis off the issues at work – put them in another place (easy for me to say – not easy to do)</li><li>• Do nice things with your time</li></ul>