

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT: INQUIRY INTO WORKPLACE BULLYING**

**QUESTIONS ON NOTICE—AUSTRALIAN PUBLIC SERVICE COMMISSION, APPEARANCE ON 17 AUGUST 2012**

**1. Does the data collected in the employee survey for the 2010–11 State of the Service Report reflect stark differences between agencies in the rate of reporting of workplace bullying?**

The Australian Public Service Commission's (the Commission's) employee survey for the State of the Service Report 2010–11 included the question, 'During the last 12 months, have you been subjected to harassment or bullying in your workplace?' Respondents to the survey could respond by selecting 'Yes', 'No' or 'Not Sure'.

The scope of the employee survey was Australian Public Service (APS) employees (ongoing and non-ongoing) in agencies with at least 100 APS employees. A stratified random sample of 17,326 APS employees was selected from the Australian Public Service Employment Database (APSED)<sup>1</sup>. The final response rate for the employee survey was 55%. Survey responses were then weighted to better match the characteristics of the overall APS population. Further information may be found in Appendix 2 (p. 269) of the State of the Service Report 2010–11 or at: <http://www.apsc.gov.au/publications-and-media/current-publications/state-of-the-service/state-of-the-service-2010/appendices/appendix-2-survey-methodologies>.

Table 1 (at [Attachment A](#)) shows the responses from each agency to this question, including the proportion of respondents who indicated that they had experienced bullying or harassment. Due to weighting and rounding of results, percentages calculated from the numbers in Table 1 may be slightly different from those reported.

Agencies with fewer than 50 respondents to the employee survey have been collapsed into a single group. In these cases, slight variations in the numbers of respondents can have a disproportionately large impact on the calculated percentages, and comparisons between agencies therefore would be misleading. By collapsing the data in this way, the information gained from these employees is retained, and more reliable comparisons between agencies can be made.

Table 1 shows that employee responses to the question, 'During the last 12 months, have you been subjected to harassment or bullying in your workplace?' do vary between agencies.

**2. Does the provision in the APS legislation that allows employees to be referred for a fitness for duty assessment also allow referral for a mental health assessment?**

Public Service Regulation 3.2 stipulates that an APS agency head may, by written notice, direct an APS employee to undergo a medical examination by a nominated medical practitioner for an

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<sup>1</sup> The Australian Public Service Employment Database (APSED) is a database that stores the employment data of all current and former APS employees. APSED is maintained by the Australian Public Service Commission and the data is supplied to APSED from the HR systems of APS agencies.

assessment of the employee's fitness for duty, and give the Agency Head a medical report of the examination.

A 'nominated medical practitioner' is defined in regulation 3.1(3) as 'a registered medical practitioner nominated by an Agency Head to assess the fitness for duty of an APS employee in the Agency'. A registered medical practitioner can include a psychiatrist, but not a psychologist or counsellor.

A direction under regulation 3.2 may only be given if the agency head believes that the state of the employee's health:

- a. may be affecting the employee's work performance; or
- b. has caused, or may cause, the employee to have an extended absence from work; or
- c. may be a danger to the employee; or
- d. has caused, or may cause, the employee to be a danger to other employees or members of the public; or
- e. may be affecting the employee's standard of conduct.

Examples of 'extended absences' are absences from work of at least four continuous weeks, or a combined total of absences from work within a 13 week period—whether based on a single or separate illness or injury—of at least four weeks.

### **3. What protections are in place to ensure that referral for a fitness for duty assessment is not made improperly?**

The APS operates under a devolved management structure in which agency heads have all the rights, duties and powers of an employer in respect of employees in their agency. Agency Heads are required to uphold the APS Values in exercising their powers.

It is expected that the power to direct employees to attend a medical assessment will be exercised responsibly, in good faith, and in a way that is consistent with the APS Values and Code of Conduct. The requirements of the Values and Code include, among other things, that:

- the APS has the highest ethical standards (section 10(1)(d) of the *Public Service Act 1999*)
- the APS provides a fair, flexible, safe and rewarding workplace (s.10(1)(j))
- the APS provides a fair system of review of decisions taken in respect of APS employees (s.10(1)(o))
- an APS employee must behave honestly and with integrity in the course of APS employment (s.13(1))
- an APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment (s.13(3)).

The power to refer employees for a fitness for duty assessment is a significant one, and it exists for good reasons. It provides agencies with a flexible tool that allows them to manage genuine cases of illness, including mental illness, with compassion for both the individual employee and their colleagues. In some circumstances it may be difficult for agencies to meet their duty of care to employees without recourse to such steps; in fact, they might become liable for damages if they did not.

In coming to a decision as to whether to refer an employee for a medical assessment, a manager must weigh several concerns, including those of the employee, and the requirement under the *Work Health and Safety Act 2011* to ensure that their 'acts or omissions do not adversely affect the health and safety of other persons', which includes those in the direct team and the wider work environment.

Section 33 of the Public Service Act provides a check on this decision-making power by providing that APS employees have rights of review about matters affecting them in their employment, including in these circumstances.

Agencies are also likely to have policies in place that govern the use of this power, and such policies may include mechanisms for the protection of employees referred for medical assessment.

**4. How many review cases considered by the Merit Protection Commissioner in the last five years included application for review of a decision to refer the employee for a mental health assessment?**

The Commission does not capture data at this level of detail, and it is not practical to examine every case. However, the number of cases, if any, is likely to be small.

**5. Under what mechanism can an invalidity retirement be reviewed?**

Arrangements for review of decisions about invalidity retirement are the responsibility of agencies within the Department of Finance and Deregulation portfolio.

**Table 1: Agency responses to Q41a. “During the last 12 months, have you been subjected to harassment or bullying in your workplace?”**

| Agency   | q41a. During the last 12 months, have you been subjected to harassment or bullying in your workplace? |   |   | Total number of respondents to q41a. | Proportion of respondents who report being bullied or harassed in the previous 12 months |
|--|---|---|---|--------------------------------------|--|
|  | Weighted number of respondents answering “Yes”  | Weighted number of respondents answering “No” | Weighted number of respondents answering “Not sure” |                                      |  |
| Department of Climate Change and Energy Efficiency                           | 9   | 43  | 3   | 54                                   | 16%  |
| Fair Work Ombudsman  | 8   | 45  | 1   | 54                                   | 14%  |
| Australian Electoral Commission  | 11  | 42  | 2   | 55                                   | 20%  |
| Department of Infrastructure and Transport                                   | 16  | 42  | 1   | 59                                   | 28%  |
| IP Australia   | 10  | 51  | 2   | 63                                   | 16%  |
| Department of the Prime Minister and Cabinet                                 | 11  | 52  |   | 63                                   | 17%  |
| Australian Agency for International Development (AusAID)                     | 12  | 51  | 2   | 66                                   | 19%  |
| Department of the Treasury   | 7   | 64  | 1   | 73                                   | 9%   |
| Attorney-General's Department  | 12  | 86  | 1   | 99                                   | 12%  |
| Bureau of Meteorology  | 15  | 86  | 1   | 102                                  | 15%  |
| Department of Finance and Deregulation                                       | 20  | 94  | 1   | 115                                  | 17%  |
| Department of Veterans' Affairs  | 20  | 99  | 3   | 122                                  | 16%  |
| Australian Securities and Investments Commission                             | 21  | 98  | 3   | 122                                  | 17%  |
| Department of Industry, Innovation, Science, Research and Tertiary Education | 22  | 120   | 2   | 144                                  | 15%  |
| Department of Sustainability, Environment, Water, Population and Communities | 44  | 131   | 6   | 182                                  | 24%  |
| Department of Foreign Affairs and Trade                                      | 14  | 170   | 2   | 186                                  | 8%   |
| Australian Bureau of Statistics  | 22  | 180   | 4   | 206                                  | 11%  |
| Department of Families, Housing, Community Services and Indigenous Affairs   | 47  | 162   | 7   | 216                                  | 22%  |
| Department of Health and Ageing  | 72  | 215   | 16  | 303                                  | 24%  |

| Agency  | q41a. During the last 12 months, have you been subjected to harassment or bullying in your workplace? |   |   | Total number of respondents to q41a. | Proportion of respondents who report being bullied or harassed in the previous 12 months |
|---|---|---|---|--------------------------------------|--|
|   | Weighted number of respondents answering "Yes"  | Weighted number of respondents answering "No" | Weighted number of respondents answering "Not sure" |                                      |  |
| Department of Agriculture, Fisheries and Forestry           | 64  | 229   | 9   | 303                                  | 21%  |
| Department of Education, Employment and Workplace Relations | 55  | 257   | 12  | 324                                  | 17%  |
| Australian Customs and Border Protection Service            | 66  | 265   | 11  | 342                                  | 19%  |
| Department of Immigration and Citizenship                   | 84  | 352   | 13  | 448                                  | 19%  |
| Department of Defence                                       | 210   | 1107  | 33  | 1351                                 | 16%  |
| Australian Taxation Office                                  | 223   | 1203  | 40  | 1467                                 | 15%  |
| Department of Human Services                                | 469   | 1688  | 63  | 2220                                 | 21%  |
| Agencies with fewer than 50 respondents                     | 170   | 798   | 31  | 1000                                 | 17%  |
| <b>Total APS</b>  | <b>1735</b>   | <b>7732</b>                                   | <b>272</b>  | <b>9740</b>                          | <b>18%</b>   |