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JE

4 July 2012

Mr Glenn Worthington  
Committee Secretary  
House Standing Committee on Education and Employment  
House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Via email: [workplacebullying.reps@aph.gov.au](mailto:workplacebullying.reps@aph.gov.au)

Dear Mr Worthington,

**RE: INQUIRY INTO WORKPLACE BULLYING**

Please find attached the Australian Nursing Federation (Victorian Branch) submission for the Inquiry into Workplace Bullying and supporting documents. As an affiliate of the Australian Council of Trade Unions, I trust this submission will be received in compliance with the extended closing date of COB 4 July 2012.

In consideration of this submission, we would be pleased to meet with Committee Members to further discuss these matters, and the recommendations contained therein. We have numerous case studies of nurses and midwives who have been involved in circumstances of workplace bullying and have experienced issues with the existing system in which they have found themselves. If you would like us to provide such details, we would be more than happy to do so.

Please do not hesitate to contact the undersigned on (03) 9275 9333 or via email at [REDACTED] if you have any further questions, or would like to meet with representatives of ANF (Vic Branch).

Yours sincerely,

[REDACTED]  
[REDACTED]  
Kathy Chrisfield  
**OHS UNIT COORDINATOR**

Attached:

*Inquiry Into Workplace Bullying ANF (Vic Branch) Submission*  
ANF (Vic Branch) Workplace Bullying Policy  
ANF (Vic Branch) Nurses Say No to Bullying brochure

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A U S T R A L I A N  
N U R S I N G  
F E D E R A T I O N

# Inquiry into Workplace Bullying

Submission to the House

Standing Committee on

Education & Employment,

Inquiry into Workplace

Bullying

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Australian Nursing Federation (Victorian  
Branch)

**Australian Nursing  
Federation (Victorian  
Branch)**

Contact:

Ms Kathy Chrisfield

OHS Unit Coordinator



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## 2. Executive Summary

Workplace bullying is an occupational health and safety issue, and should be treated as such. Occupational and work health and safety and risk management principles apply equally to workplace bullying as they do to managing patient handling hazards, dangerous chemicals or plant safety. If the risk factors associated with workplace bullying are identified and mechanisms put in place to either eliminate or reduce these so far as is practicable, in accordance with employer obligations under the Victorian Occupational Health and Safety Act 2004 (and similarly under the Work Health and Safety Act 2011), and employers (and employees as appropriate) are held to account for complying with their occupational health and safety obligations under these Acts, it is the Australian Nursing Federation (Victorian Branch)'s position that this will have a significant impact on the incidence and seriousness of workplace bullying.

Further, ANF (Vic Branch) strongly supports the adoption of a nationally consistent definition of bullying, and the finalisation of the Draft Model Code of Practice, developed through Safe Work Australia.

## 3. Introduction

“Workplace bullying can have a profound effect on all aspects of a person’s health as well as their work and family life.” (House of Representatives Committees, Terms of Reference for Inquiry into workplace bullying). Unfortunately, at ANF (Vic Branch), this is regularly brought to the fore in the dealings with members.

ANF (Vic Branch) is Victoria’s peak nursing and midwifery industrial and professional body, representing over 64,000 members in workplace issues across the full spectrum of health and aged care services in Victoria, in relation to matters including industrial, professional, occupational health and safety, and workers compensation.

ANF (Vic Branch) on behalf of its members lobbies governments and other key stakeholders to ensure that nurses and midwives are provided with a healthy and safe workplace, and thus ensures that the community continues to receive professional standards of nursing and midwifery care by maintaining a workforce which is appreciated and supported.

It is in this role that is increasingly common that matters arise which cross the industrial, occupational health and safety, workers compensation and equal opportunity jurisdictions, none more so than workplace bullying.

ANF (Vic Branch) welcomes this House of Representatives Inquiry into Workplace Bullying and the opportunity to consider it in a broader context than work health and safety laws.

Whilst there remains a lack of full consensus in the academic realm regarding what constitutes bullying in the workplace, most definitions share three elements<sup>1</sup>:

1. Intent is not relevant – bullying is defined in terms of its effect on the recipient and not the intention of the bully
2. There must be a negative effect on the victim, which creates a risk to their health and safety, whether this be mental and / or physical health or wellbeing

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<sup>1</sup> Department of Human Services, 2005 : 14

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3. The bullying behaviour must be repeated or occurring as part of a pattern of behaviour.

The discussion of workplace bullying in this submission employs the definition which is now accepted in Victoria, and can be consistently found across current Victorian guidance and reports, including WorkSafe Victoria's guidance, Preventing and responding to bullying at work<sup>2</sup>, Victorian Department of Health information<sup>3</sup> and State Services Authority People Matter Surveys and reports<sup>4</sup>, and incorporates the above elements as follows:

"Bullying is repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Bullying can occur wherever people work together. Under certain conditions, most people are capable of bullying. Whether it is intended or not, bullying is an OHS hazard."<sup>5</sup>

For the purposes of this discussion, this is differentiated from occupational violence, most often perpetrated by those from outside of the services in which our members work (e.g. patients, clients, visitors, families), which involves physical interactions, violence and assaults. Workplace bullying is a form of 'internal violence', perpetrated by others within the workplace.

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<sup>2</sup> WorkSafe Victoria, June 2009

<sup>3</sup> Department of Health, Nursing in Victoria – definition, [www.health.vic.gov.au/nursing/promoting/noviolence/definition](http://www.health.vic.gov.au/nursing/promoting/noviolence/definition), accessed 25 June 2012

<sup>4</sup> State Services Authority 2010 and 2011

<sup>5</sup> WorkSafe Victoria, June 2009 : 3

## 4. Recommendations

ANF (Vic Branch) support the submission from Victorian Trades Hall Council (VTHC), and the recommendations contained within. In addition, further recommendations include:

1. A clear, consistent definition of workplace bullying is adopted across all jurisdictions and agencies within jurisdictions
2. Ensure all terminology refers to 'prevention and management' of workplace bullying, in accordance with occupational health and safety principles, and those contained within the Objects of the Work Health and Safety Act 2011, rather than 'preventing and responding to' workplace bullying
3. Finalise the Draft Model Code of Practice on the Prevention of Bullying under the relevant work health and safety laws developed through SafeWork Australia as an essential addition to Australia's work health and safety regulatory framework to improve the current patchy guidance / codes of practice that are currently in existence.
4. Conduct a full and independent review into the implementation of Violence in Nursing Taskforce recommendations, in particular in relation to bullying, to determine the success or otherwise of recommendations, and add to the body of evidence in relation to this hazard
5. Extend all recommendations from the VIN Taskforce to incorporate all health and aged care services in Victoria, and not only those covered under the public sector system
6. Ensure regulators and workplace parties are provided with the guidance and tools to be able to identify risk factors, develop and implement solutions
7. Ensure that WHS / OHS inspectorates encourage and where necessary enforce compliance with WHS / OHS laws, in particular by using all compliance tools at their disposal
8. Provide WHS / OHS inspectors, workers, managers and other staff with comprehensive training on bullying, including the appropriate investigation of complaints and compliance and enforcement measures to address risk factors
9. Undertake community forums, advertising campaign, community awareness campaign, developed in consultation with appropriate stakeholders to clarify messages and expectations within workplaces

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10. Consider legal reform, in accordance with VTHC submission, which calls for
  - a. Providing for alternative mechanisms for handling of workplace bullying complaints; and
  - b. The creation of a mechanism that gives an individual the ability to seek a remedy which is fast, efficient and specific under civil law e.g. a stand alone tribunal within Fair Work Australia, or under discrimination law
11. Clarify relationship and develop an appropriate Memorandum of Understanding (or the like) between WorkSafe Victoria and Victoria Police relating specifically to workplace bullying reporting, investigation, prosecution, referrals and the like
12. Develop cross-agency / stakeholder forums with appropriate representation to provide the opportunity for ongoing consultation and feedback in relation to all activities undertaken.
13. Ensure the Model Code of Practice in relation to Prevention of Bullying (developed by SafeWork Australia) details that serious allegations should be investigated in a way that is both independent and adheres to principles of natural justice, as per ACT Code of Practice
14. WorkSafe Victoria (and all other work health and safety regulators) alter their approach to enforcement and prosecution of workplace bullying offences to mirror that outlined in McCabe (2012), whereby the role of WorkSafe ACT is reported to be to determine whether:
  - An employer has systems and procedures in place which are designed to prevent bullying or harassment of workers;
  - An employer has systems and procedures in place to competently manage any complaints regarding bullying or harassment of workers;
  - Those systems and procedures are operating effectively;
  - Actions taken by an employer (and their managers/supervisors) in response to complaints of bullying or harassment are consistent with those systems and procedures and are consistent with the employer's duties and responsibilities under the relevant Act;
  - An employer is taking all reasonable steps to ensure that workers are not bullied or harassed at work; and



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- Any other duty holder has failed to meet their obligations under the relevant Act.<sup>6</sup>
15. Address anomaly in Victorian Occupational Health and Safety Act 2004, which means that a person who has been terminated or resigns is not eligible to seek Internal Review of decisions in relation to decisions (or lack thereof) made by WorkSafe in particular in relation (but not limited) to workplace bullying complaints
  16. Develop a nationally consistent framework and model for the prevention and management of workplace bullying, and standards surrounding the enforcement and application of this.
  17. Regulators to formulate and embark on a widespread community awareness campaign.
  18. Regulators to conduct thorough investigations in relation to complaints of workplace bullying and publicly release their findings and enforcement actions, as per release of WorkSafe ACT investigation into compliance by the Canberra Institute of Technology (CIT) with its duties under the Work Safety Act 2008 and the Work Health and Safety Act 2011 in response to allegations of bullying and harassment at the CIT (as cited).
  19. Introduction of mandatory data collection, in accordance with Violence in Nursing taskforce recommendations 27, 28 and 29.

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<sup>6</sup> Adapted from McCabe, 2012 : 7

### 5. Prevalence of workplace bullying in Australia and the experience of victims of workplace bullying

There are few who would claim that bullying is not an issue in Australia, whether it be in the playgrounds of schools or in the electronic media sphere. Bullying is a hazard that can occur in any situation where people interact, however the critical factor to consider in this context is that workplace bullying occurs in a workplace setting, and can (and does) affect the health and safety of workers. The Productivity Commission report on Occupational Health and Safety estimated the costs of workplace bullying to employers and the economy alone at somewhere between \$6 billion and \$36 billion per year<sup>7</sup>, which fails to take into account the associated human costs related to victims, colleagues, children, spouses and the greater community.

More specifically, "For a number of years, the People Matter Survey has revealed that bullying affects around one in five employees in Victorian public sector organisations."<sup>8</sup> However the proportion of employees affected in public sector health organisations is higher than the average for the public sector, with well over 40% of respondents in health having witnessed bullying at work, and over 25% having personally experienced bullying at work<sup>9</sup>. Of critical importance are the reported figures that of those who had personally experienced workplace bullying, only approximately 20% had actually made a formal complaint.<sup>10</sup> This is indicative of experience at ANF (Vic Branch), whereby many of those who experience workplace bullying do not make formal complaints or incident reports, and thereby render many of the data sources often quoted inaccurate in terms of actual experience.

The main reported perpetrators of the bullying in health were fellow workers (36%) followed by immediate managers (20%), with the types of bullying behaviours being intimidation (27%), followed by verbal abuse (20%), with most respondents reporting at least two bullying behaviours being experienced.<sup>11</sup>

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<sup>7</sup> Productivity Commission, 2010 : 279

<sup>8</sup> State Services Authority, 2010 : 32

<sup>9</sup> State Services Authority, 2011 : 24

<sup>10</sup> State Services Authority, 2011 : 24

<sup>11</sup> *Ibid*, 26

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Whilst this survey has been a regular collector of data over a number of years in relation to public sector organisations, the same data is not available for private sector organisations. However, it is known that within the health sector generally and particularly within the nursing and midwifery professions, bullying is a major workplace issue and significantly a contributing factor to workplace stress claims. The Victorian Taskforce on Violence in Nursing (VIN Taskforce) specifically investigated occupational violence and bullying, and in particular bullying within the workplace from other health professionals, supervisors and from their nursing peers. "In Australia, there has been little substantive research of bullying in health workplaces. However, a descriptive study of Tasmanian nurses found that 30% were subjected on a daily basis or near-daily basis to aggression from nurse managers and colleagues, which resulted in significant levels of distress."<sup>12</sup>

Further, a study of hazards faced by Metropolitan nurses compared with rural and remote nurses showed that the top three hazards requiring time off work for nurses are:

1. musculoskeletal diseases / injuries (36.5% for metropolitan nurses, 34.7% for rural and remote)
2. stress or psychological injury (9% metropolitan versus 14.2% rural and remote)
3. bullying and violence (7.6% metropolitan and 8.2% rural and remote nurses)<sup>13</sup>

"Types of behaviour that could be considered bullying include verbal abuse, excluding or isolating employees, psychological harassment, intimidation, assigning to meaningless tasks unrelated to the job, giving employees impossible tasks, deliberately changing work rosters to inconvenience employees and deliberately withholding information that is vital to effective work performance."<sup>14</sup>

The bullying that is experienced by those in the nursing and midwifery workforce varies somewhat in the 'modus operandi' of the perpetrator, but is reflective of the above. Whilst there are situations when bullying is overt and apparently obvious to an impartial observer, the

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<sup>12</sup> Farrell 1999, as reported in Department of Human Services, 2005 : 57

<sup>13</sup> Timmins et al, 2008 : 24

<sup>14</sup> State Services Authority, 2010 : 32

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more common scenario is whereby the bullying is underhanded, systematic and insidious. The bullying takes forms which can be difficult to individually classify as bullying, according to the relevant definition, and it is only the presence of the pattern of such behaviours which are suggestive of the wider issue, should investigations uncover such a scenario. The ANF (Vic Branch) member policy Prevention of Workplace Bullying, and information brochure 'Nurses say no to bullying' (available in Appendices 1 and 2) are an attempt to clarify this damaging hazard.

Within the nursing and midwifery profession a broad range of effects on victims of workplace bullying are apparent. The experience of nurses and midwives who have approached the Australian Nursing Federation for assistance has ranged from those mildly affected, and looking to improve the situation within their workplace, to those who are experiencing total debilitation through severe psychological injury, sometimes accompanied by suicidal ideation. Most commonly, members requesting assistance in the domain of bullying are at the point where they are disempowered, disenfranchised and seeking an outcome of 'justice' which they are unlikely to achieve. A number of de-identified case studies are available on request to provide illustration of not only the types of bullying experienced by nurses and midwives, but also the impacts that this can have on victims.

Moreover, workplace bullying impacts on the recruitment and retention of staff, costing organisations not only financially, but also through the loss of valuable skills and experience. Anecdotally, many nurses and midwives who are experiencing workplace bullying will choose to leave such a workplace rather than report the issue and go through an investigative process. Prior experience has often demonstrated that there is a lack of commitment from the organisation to investigating and preventing bullying from occurring, and also an apparent lack of available outcomes following this process. In the context of a workforce who are reported by Health Workforce Australia to be heading towards a significant workforce shortage (according to Health Workforce 2025, the shortfall in nurses could rise to nearly 110,000 by

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2025<sup>15</sup>), it is a significant concern that nursing and midwifery professionals are being lost due to preventable and manageable occupational health and safety issues such as bullying.

Prevalence and number of calls received by ANF (Vic Branch) in relation to issues of workplace bullying are such that a position is in development in ANF (Vic Branch) of Bullying and Harassment Officer, specifically to deal with such complaints. A further insight into the increasing recognition and significance of the issue in the nursing and midwifery membership can be found in that calls to ANF (Vic Branch) InfoLine, which were categorised as relating to 'Bullying' increased by 49% between 2008 and 2010<sup>16</sup>.

The nurse or midwife who has sought assistance has often had such experiences that there is a requirement for a substantial investment of time to each case. There is a need to gain the trust of and develop a relationship with the affected member, as quite often their ability to trust in others has diminished significantly throughout the progress of their situation. Difficulty can also be faced when attempting to separate out the issues between occupational health and safety (in particular bullying), industrial relations (usually in relation to how the situation has been managed / investigated or ignored, as the case may be) and workers compensation (whereby the victim is likely to have made a claim for benefits as they are unable to return to work in the injury workplace, and is potentially having issues and requiring support in this arena also). Also for consideration is ensuring, via ANF (Vic Branch) internal policy, that both (or all, as the case may be) parties to the situation are provided with appropriate independent representation and support, where those involved on both sides are members of the ANF (Vic Branch).

### *Recommendation:*

1. A clear, consistent definition of workplace bullying is adopted across all jurisdictions and agencies within jurisdictions

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<sup>15</sup> Health WorkForce Australia, <http://www.hwa.gov.au/news-and-events/news/18-05-2012/workforce-projections-revealed-ceos-online-update> , accessed 3 July 2012

<sup>16</sup> Information relates only to number of calls where call details were specifically listed as 'bullying' and/or 'harassment'. Many other calls received potentially categorised in relation to workers compensation issues, disciplinary action, management issues etc. This does not take into account requests for assistance received directly by Organisers, only via InfoLine.

### **6. 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**

Prior to discussing this term of reference in detail, comment is required on the terminology contained therein. It is reflective of the title of WorkSafe Victoria's guidance document, as well as the proposed National Code of Practice relating to bullying, in that reference is made to 'preventing and responding' to bullying. ANF (Vic Branch) asserts that this is an anomaly, given that bullying is the only workplace hazard in which this terminology is used, as opposed to referring to 'preventing and managing' bullying. By employing the term 'respond', it belies an acceptance of a hazard that will occur, irrespective of what actions are undertaken to prevent it, and that the only option remaining is to 'respond'. If this is put into the context of an alternative workplace hazard, such as machine guarding, it would be equivalent to 'preventing and responding' to amputations resulting from inadequate machine guarding i.e. the acceptance that amputations will occur, and then responding after the incident.

As is outlined in the objects of Victorian Occupational Health and Safety Act 2004, and further in the Work Health and Safety Act 2011, principles of elimination of the risk where at all possible, or minimising risk so far as is reasonably practicable set the tone of the legislation, which is in contrast to the approach of accepting that a hazard exists, and only responding after the fact e.g.:

In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the **highest level of protection** against harm to their health, safety and welfare from hazards and risks arising from work as is reasonably practicable.<sup>17</sup> (emphasis added)

In order to prevent workplace bullying, and ensure that workers are afforded the 'highest level of protection', as with any other occupational health and safety hazard, "...most Westminster-style occupational health and safety (OHS) legislative frameworks have imported the common

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<sup>17</sup> Work Health and Safety Act 2011, S3(2)

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law duty of care into legislation placing statutory obligations on employers to implement risk prevention strategies.”<sup>18</sup> This places a proactive duty on employers to address potential hazards, even where no incident / injury or illness has occurred, and the failure to take such precautions could potentially lead to a prosecution.

Appropriately identifying methods of preventing and managing workplace bullying involves examination of the causes. It has been suggested by research findings that there are many environmental risk factors (and in fact, cultural factors within organisations) which increase the likelihood of bullying occurring in a workplace, including:

- Organisational change
- Negative leadership styles
- Lack of appropriate work systems
- Poor workplace relationships
- Workforce characteristics<sup>19</sup>

Further, “...work environments that foster competition, job insecurity, work intensification, casualization, stress and job dissatisfaction have a greater propensity for occupational violence and workplace bullying”<sup>20</sup>.

A report from WorkSafe ACT relating to an investigation undertaken in response to allegations of workplace bullying clearly identified a number of concerns raised by staff in the relevant instances, which contributed to the cultural environment, and did not prevent bullying from occurring, including:

- A lack of transparency in management and decision-making processes affecting staff;
- Perceptions of poor morale and poor people management practices;
- A high proportion of staff on casual or short-term employment arrangements;
- A number of staff facing limited or no career paths;
- A perceived lack of leadership and strategic direction;

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<sup>18</sup> Timo, N et al, 2004 : 57-89

<sup>19</sup> WorkSafe Victoria, 2009 : 7

<sup>20</sup> Timo N, et al, 2004 : 57-89

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- A lack of respect between staff combined with poor team behaviours;
- A perception that a culture existed that discouraged the reporting or the making of complaints about workplace bullying and harassment;
- Inequity in working arrangements, including allegations of nepotism and uneven workloads;
- Lack of clarity of roles and responsibilities creating friction, mistrust and frustration; and
- Poor communication, including a lack of regular meetings or the provision of timely information.<sup>21</sup>

Moreover, “the Victorian Taskforce on Violence in Nursing was asked to identify and review existing systems, procedures and policies in place in Victorian health services and to recommend strategies to reduce the incidence of violence... The taskforce found that a significant barrier to addressing nurse violence is a lack of clear and consistent definitions and underreporting... Themes included the impact of organisational culture and the importance of education and training.”<sup>22</sup>

Therefore, having identified significant organisational cultural risk factors which create an environment in which workplace bullying is more likely to occur allows appropriate controls to be implemented to address the situation. Once the cause and contributing factors are identified, measures can be put in place to prevent or reduce the likelihood of these occurring. As with other occupational health and safety hazards, a risk management approach involves

- a) Identifying the hazard (in this case, workplace bullying)
- b) Assessing the hazard (adequate research has been undertaken to conclude that it is a serious and significant hazard requiring attention, and therefore further assessment is possibly unnecessary in this scenario)
- c) Control the risk (at the source preferably, which in these circumstances requires addressing the risk factors which allow / foster a bullying culture to permeate workplaces)

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<sup>21</sup> McCabe, M, 11 April 2012 : 12

<sup>22</sup> Department of Human Services, 2005 : 1



d) Review (to ensure controls are working)

As is clear in the risk factors associated with workplace bullying, addressing organisational culture as a beginning point is paramount to preventing this hazard, and a demonstration from senior management as to the organisational expectations in a workplace is critical.

“A positive culture needs to be supported by workplace policies, procedures, systems and processes to prevent or manage violent incidents... developing a person-centred workplace culture based on dignity, respect, anti-discrimination, equal opportunity and cooperation is an integral part of any strategy aimed at reducing bullying and violence in the workplace.”<sup>23</sup>

Nonetheless, policy in and of itself will not prevent or reduce workplace bullying. Whilst a policy should be a clarification of an organisation’s values and expectations, with associated underpinning procedures which outline how that policy will be achieved, without the structure in place to implement and enforce such a policy, such documentation will have little or no effect. Further, to reduce incidences of bullying, such a policy would also need to incorporate minimum requirements, including:

- Development of the policy in consultation with staff, and in particular, Health and Safety Representatives within organisations
- Ensure the focus of the policy is twofold, incorporating both a) the prevention of workplace bullying, and the addressing of risk factors that increase the likelihood, and b) how to make a complaint if there is believed to be bullying occurring and the subsequent process
- Appropriate awareness raising to ensure all staff are aware of the policy and the associated expectations
- Training for staff in how to meet the expectations, what to do if there are issues and the reporting mechanism, the process that will occur following such a report, and clear guidance surrounding the potential results and outcomes
- Clear guidance as to when a formal, independent investigation is required, and the inclusion of natural justice principles in the investigation process, such as:

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<sup>23</sup> Department of Human Services, 2005 : 6

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- The person alleged to have committed the bullying should be treated as innocent unless the allegations are proved to be true
- Allegations should be investigated promptly
- All allegations need to be put to the person they are made against,
- The person the allegations are made against must be given a chance to explain his or her version of events
- If the complaint is upheld, any disciplinary action that is to be taken needs to be commensurate with the seriousness of the matter
- Right of appeal is explained
- Mitigating factors should be taken into account when assessing if disciplinary action is necessary<sup>24</sup>

These critical factors should be underpinned by appropriate workplace procedures, developed in consultation with health and safety representatives and workers, which outline how reports of bullying will be dealt with, and the broad principles to ensure the process is objective, fair and transparent.

Whilst the Victorian taskforce on violence in nursing Final Report contained many recommendations that applied to both violence and bullying, there were also five recommendations which specifically related to bullying (Recommendations 22 to 26). Recommendation 22 surrounds the adoption of a consistent definition (which has occurred somewhat in Victoria, particularly in relation to public sector and health workplaces), whilst Recommendations 23 and 24 surround health services establishing management and education strategies around bullying. Recommendation 25 suggests a tool kit should be disseminated, which contains bullying prevention strategies (which in reports of action refers back to WorkSafe Victoria's guidance material, as opposed to any nursing-specific initiatives), Recommendation 26 specifically relates to further promotion of management of bullying, research into nursing culture to identify the key factors which may trigger bullying, thereby enabling a more targeted approach, and sponsorship of strategies to prevent bullying. The

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<sup>24</sup> WorkSafe Victoria, 2009 : 14

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latest update on the progress of this recommendation<sup>25</sup> indicates this research will be completed in August 2012. However, the implementation of this recommendation has not been undertaken in consultation with ANF (Vic Branch), and therefore, it is unclear what this research consists of, and when the balance of the recommendation will be implemented

It is ANF (Vic Branch)'s position that the completion and full implementation of these recommendations would see a significant decrease in the incidence and severity of bullying at public hospitals in Victoria, as these go to the heart of the issue, in prevention and management of workplace bullying in the health sector. However, whilst all of these recommendations (save Recommendation 26) have been signed off as 'completed' there has been no impetus nor follow up by the Department of Health to ensure that the public health services have actually undertaken such measures as recommended particularly in 23 and 24, and there appears to be no likelihood of such enforcement occurring.

Further, these recommendations apply only to the public health system in Victoria, and do not incorporate the private system, including private hospitals and networks, and private aged care providers, which are the domain (in this respect) solely of WorkSafe Victoria to enforce such measures under Occupational Health and Safety laws.

Moreover, experience has shown that WorkSafe Victoria, as the regulator in Victoria in relation to occupational health and safety, appears hesitant or unable to investigate in any depth the majority of workplace bullying complaints, and is even less likely to issue Improvement Notices requiring employers to make changes in order to comply with OHS law, and their own guidance. Information provided to Ms Sue Pennicuik by Assistant Treasurer<sup>26</sup> shows that, in relation to complaints received by WorkSafe Victoria and referred to the Inspectorate in three years, the percentage which actually translated into Improvement Notices decreased significantly (see below<sup>27</sup>).

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<sup>25</sup> Found in Whole of Government Response to the Drugs and Crime Prevention Committee of Inquiry into Violence and Security Arrangements in Victorian Hospitals and, in particular, Emergency Departments (accessed online 22 June 2012, [http://www.parliament.vic.gov.au/images/stories/committees/dcpc/ivsah/Govt\\_Resp\\_Inq\\_Violence\\_and\\_security\\_arrangements\\_in\\_Vic\\_Hospitals\\_7\\_June\\_2012.pdf](http://www.parliament.vic.gov.au/images/stories/committees/dcpc/ivsah/Govt_Resp_Inq_Violence_and_security_arrangements_in_Vic_Hospitals_7_June_2012.pdf))

<sup>26</sup> Accessed via <http://vicmps.greens.org.au/content/q-worksafe-bullying-complaints> on 2 July 2012

<sup>27</sup> *Ibid*

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Year	No of complaints referred to the Inspectorate	No of Improvement Notices issued	No of Notices issued as a percentage of complaints
2008-09	243	69	28.4%
2009-10	411	157	38.2%
2010-11	830	178	21.4%

This is particularly significant, given that these figures only refer to complaints which were referred to the Inspectorate, and does not include complaints whereby the WorkSafe Advisory Service did not refer these on to the Inspectorate, which it is expected would increase the number of complaints significantly.

It is ANF (Vic Branch)'s position that where a complaint of bullying in a workplace is made, particularly to the regulator, where a complainant is not willing to provide their name, or be identified in the process, a thorough and robust investigation should be undertaken into the existing policies and procedures at the workplace which are intended to prevent workplace bullying, and the implementation of these. It is not sufficient to enquire as to simply whether policies are present, but how the policy has been developed, the detail of what is contained within these policies, whether it is in accordance with appropriate legislative guidance and risk management principles, as well as how (and indeed whether at all) it has been implemented and enforced that provides the crux to this investigation. This can (and should) be investigated and enforced in any workplace, whether there is a complaint or not, however is particularly relevant and vital in workplaces where a complaint has been made. Should such an investigation find evidence that the employer has appropriate systems in place, and that these are being followed throughout the organisation, then the employer would likely be fulfilling their duties in relation to workplace bullying under the Victorian Occupational Health and Safety Act 2004, Section 21(1) to "provide and maintain for employees of the employer a working environment that is safe and without risks to health", and further under Section 21(2)(a) "...systems of work that are... safe and without risks to health".

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Additionally, where consultation is undertaken in compliance with the Occupational Health and Safety Act 2004 (in Victoria) (and similarly with other Work Health and Safety legislation), the development and implementation of the policies and procedures will have occurred with the input of Health and Safety Representatives and workers, and therefore are more likely to be complied with, or where there are issues, more likely for reporting to occur. In a workplace where consultation is undertaken in an environment of cooperation and communication, this is likely to be a workplace which is more transparent in terms of processes and practices, and therefore many of the identified risk factors associated with bullying are addressed and removed.

Positive workplace cultures that model positive workplace behaviours at all levels provide a solid framework for building a workplace that is free from bullying. In order to achieve this, there must be open dialogue within all levels of the workplace. A model inclusive of proper consultation is paramount to success. Additionally, all policies and procedures should be developed in conjunction with staff, taking their views into account when writing and reviewing those policies. An empowered and knowledgeable workforce is less likely to have incidents of workplace bullying, as is evidenced in many studies linking the presence of health and safety representatives to better safety outcomes. This is also due to increased reporting of hazards before they become issues, allowing employers opportunities to address these prior to escalation of the incidents.

It is fundamental that all employees (including middle and senior management) are trained in the policies and procedures and are encouraged to report problems in the knowledge that their complaints will be dealt with appropriately and in a timely manner. Further it is critical that management are aware of their responsibilities and what is required of them if complaints are made.

### *Recommendations:*

2. Ensure all terminology refers to 'prevention and management' of workplace bullying, in accordance with occupational health and safety principles, and those contained within the Objects of the Work Health and Safety Act 2011, rather than 'preventing and responding to' workplace bullying

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3. Finalise the Draft Model Code of Practice on the Prevention of Bullying under the relevant work health and safety laws developed through SafeWork Australia as an essential addition to Australia's work health and safety regulatory framework to improve the current patchy guidance / codes of practice that are currently in existence.
4. Conduct a full and independent review into the implementation of Violence in Nursing Taskforce recommendations, in particular in relation to bullying, to determine the success or otherwise of recommendations, and add to the body of evidence in relation to this hazard
5. Extend all recommendations from the VIN Taskforce to incorporate all health and aged care services in Victoria, and not only those covered under the public sector system
6. Ensure regulators and workplace parties are provided with the guidance and tools to be able to identify risk factors, develop and implement solutions
7. Ensure that WHS / OHS inspectorates encourage and where necessary enforce compliance with WHS / OHS laws, in particular by using all compliance tools at their disposal
8. Provide WHS / OHS inspectors, workers, managers and other staff with comprehensive training on bullying, including the appropriate investigation of complaints and compliance and enforcement measures to address risk factors

### **7. 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**

Educational services in relation to workplace bullying in Victoria are inconsistent at best, and potentially damaging at worst. There is little provision of education from an occupational health and safety regulator perspective (i.e. WorkSafe Victoria), apart from a small number of short sessions held during WorkSafe Week each year, and all other education provided is piecemeal in content, as the independent training provider sees fit.

Whilst there is good practical guidance, in the form of WorkSafe Victoria's June 2009 document "Preventing and responding to bullying at work", this is also inconsistent in terms of its reach and spread. An employer would not necessarily know this is available (particularly given it is not a Compliance Code / Code of Practice and is therefore not required to be complied with as such under OHS law), unless they have issues in relation to bullying and have either sought it out themselves, or have heard about it via other means. Whilst it contains useful and practical information, its implementation and use by the WorkSafe Victoria Inspectorate in the workplaces they attend is erratic, and it is not used as an industry standard by which to compare existing practices, policies and procedures in workplaces in order to determine where compliance activity is required e.g. issuing of Improvement Notices, prosecutions or the like.

Whilst there is much research and information available, again, education surrounding this is inconsistent, and therefore it is not of much use in and of itself. Further, the information, research and guidance needs to be in a central forum and format to ensure consistency of message.

ANF (Vic Branch) has provided a one day seminar on Prevention of Workplace Bullying for five (5) years, and has consistently found a need for the provision of such seminars on a

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recurring basis. Even after having run eight (8) seminars, with little or no publicity, each subsequent seminar is always at a level of attendees which warrants consideration of further seminars in the future.

However, "Education is only effective if it is part of a broader organisational approach."<sup>28</sup>

ANF (Vic Branch) believes that the material and research is available, however much of the problem lays in the approach by employers and the regulator to applying and enforcing what is already available. A successful approach is reliant on assuming a similar risk management approach to any other workplace health and safety hazard. Elimination of the hazard or risk is vital, and therefore education and support services in order to prevent workplace bullying can only provide one (although critical) piece of the puzzle.

Certainly, it is ANF (Vic Branch)'s position that there are further opportunities to raise awareness of workplace bullying, and potentially one of those may be via community forums, as well as advertising campaigns and other methods. Clarifying what workplace bullying is in a legal sense would be useful to the wider community to ensure that clear expectations are outlined at this level, as well as detailing appropriate actions to take should such a circumstance arise. It is important to differentiate between potentially criminal acts of assault and physical violence in the workplace, which have been traditionally categorised as 'workplace bullying' (such as 'initiations' involving apprentices and young workers whereby workers have been assaulted in the workplace) and bullying, and assist the community to understand that neither is acceptable, and each is a risk to health and safety in the workplace for their own reasons.

Of critical importance to such campaigns is involvement of appropriate stakeholders (including unions and worker representative organisations, and employer representative organisations) in the development, because, as with consultation within a workplace, such campaigns will be more likely to reach the target audience with the appropriate message where they are created from such a setting.

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<sup>28</sup> Violence in Nursing Taskforce, 2005, page 6



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However, again, this can only form a small part of a much larger picture, and given the significant impact of workplace bullying in the occupational health and safety arena, it is critical that such awareness campaigns are supported by appropriate action and compliance activities from a legislative and regulatory level.

Response for those experiencing workplace bullying can occur in numerous jurisdictions, however given the existence of this as an occupational health and safety issue, it is ANF (Vic) unsatisfactory response in this jurisdiction, other options must be explored to ensure that there is some response, and some appropriate, timely action for a victim. Such other avenues include the Fair Work Act (and in particular, in relation to the adverse action provisions), discrimination laws and workers compensation. All of these jurisdictions are limited by their application, and therefore where the particular circumstances of a case do not fit the definitions, victims are again left with few options to seek redress for their treatment.

Workers compensation laws are of themselves only available whereby the complainant has suffered a work-related injury or illness, and the present construct of these laws is a deterrent in themselves for workers wanting to make a claim, due to the extensive processes associated with having a claim accepted. The inclusion of premises within these laws to have claims denied on the basis of 'reasonable management action undertaken in a reasonable manner' (S82(2A) of the Accident Compensation Act 1985, Victoria). Even where such action is successful, this does not provide avenue for addressing the bullying behaviours which caused the injury or illness itself, and therefore much of the time, such complainants are unable to return to their previous place of employment, as the hazard remains.

### *Recommendations:*

9. Undertake community forums, advertising campaign, community awareness campaign, developed in consultation with appropriate stakeholders to clarify messages and expectations within workplaces
10. Consider legal reform, in accordance with VTHC submission, which calls for
  - a. Providing for alternative mechanisms for handling of workplace bullying complaints; and

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- b. The creation of a mechanism that gives an individual the ability to seek a remedy which is fast, efficient and specific under civil law e.g. a stand alone tribunal within Fair Work Australia, or under discrimination law

### **8. Whether the(re is) scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying**

Currently, when considering workplace bullying in Victoria, there are significant numbers of stakeholders involved, including:

- WorkSafe Victoria – with a threefold role, including
  - as the Occupational Health and Safety regulator and inspectorate, and from where all prosecutions under the OHS Act 2004 are referred
  - as the Occupational Health and Safety regulator who decides upon the prevention strategy and project development within the OHS realm
  - as the regulator for workers compensation claims arising from workplace bullying
- Victoria Police – as the investigating agency and prosecutor involved in cases relating to 'Brodie's Law', and incidents related to the stalking provisions in the Crimes Act 1958
- Potentially other agencies and tribunals, including Fair Work Australia, Equal Opportunity and Human Rights Commissions etc
- Employers – as the location / vehicle through which workplace bullying is occurring, whether condoned, acknowledged, known about or not
- Workers, including both potential and existing victims and perpetrators, be they managers, co-workers or subordinates
- Unions and employer representatives
- Health service providers, in the form of doctors, psychologists, psychiatrists, counsellors and other health practitioners involved in the treatment of those injured or ill due to workplace bullying; and
- Community at large

Particular to nursing and midwifery in the public sector in Victoria, there is an additional stakeholder in the Department of Health, who have the role of overall management of workforce issues within the health system.

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At present, it is unclear to ANF (Vic Branch) as stakeholders what the relationship is between Victoria Police and WorkSafe Victoria where there is an issue relating to workplace bullying i.e. who investigates and how and when (or if) it is referred to the other party. It is also unclear where there is the evidence for prosecution as to how such a prosecution occurs, whether there is any consultation or involvement from the other regulatory body as to the appropriate charges to be brought, whether there is any other evidence for consideration etc. This is particularly the case given that there have been no known cases whereby charges have been laid under the new provisions in the Crimes Act 1958.

ANF (Vic Branch) believes there is considerable scope for improvement to improve coordination amongst the various parties. At present there is insufficient coordination and consistency in approach to the prevention and management of the issue. In order to improve this situation, there needs to be extensive consultation with stakeholders. Each of the stakeholders noted above has a different perspective and body of knowledge in relation to workplace bullying, and is able to provide valuable insight into areas in which they have specific and particular expertise and experience. Utilising such information to its fullest capability will provide a breadth of views critical to the prevention and management of workplace bullying, and of necessity should involve significant consultation with all stakeholders, preferably in a forum allowing cross-agency discussions to occur.

### *Recommendations:*

11. Clarify relationship and develop an appropriate Memorandum of Understanding (or the like) between WorkSafe Victoria and Victoria Police relating specifically to workplace bullying reporting, investigation, prosecution, referrals and the like
12. Develop cross-agency / stakeholder forums with appropriate representation to provide the opportunity for ongoing consultation and feedback in relation to all activities undertaken.

### **9. 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**

ANF (Vic Branch) believes there are gaps in the existing regulatory framework in relation to workplace bullying. From an occupational health and safety perspective, the framework provides adequate and appropriate means of prevention in a risk management model, as well as penalty via Occupational Health and Safety Act 2004 prosecutions for organisations and individuals. Further, the recent amendments to the Crimes Act 1958 (S21A) in relation to stalking offences provide an alternative mechanism and penalty.

However, this does not provide adequate and timely mechanisms of complaint and redress for victims / complainants of workplace bullying, as noted in previous sections.

More specifically, a particular section of the Occupational Health and Safety Act 2004 (Victoria) which does require addressing is the inability of a worker who has resigned or been terminated (whether as a result of bullying or otherwise) to seek Internal Review of any decisions (or lack thereof) made by WorkSafe Victoria or their appointed inspectors, as such a worker is no longer an 'affected person', as set out in Section 127 of the Occupational Health and Safety Act 2004. This means that, where a bully has been 'successful' and managed to ensure the victim no longer is employed at the workplace, should such a complainant make a request for WorkSafe Victoria to investigate the circumstances, that complainant has no right to review of the regulator's decisions.

Conversely, significant gaps are present in the enforcement of such regulatory framework and the approach taken by the Victorian regulator charged with this role. Because both the Occupational Health and Safety Act 2004 and the Crimes Act 1958 are criminal in nature, the necessary levels of proof to obtain a successful prosecution (i.e. the criminal test of 'beyond reasonable doubt') apply, and therefore there is observed to be hesitation in relation to

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attempted prosecution of such matters. Instead of prosecuting the systemic issues that allow the bullying culture to thrive within a workplace, it appears to be that the individuals perpetrating the acts may (on a rare occasion) be held to account, and therefore the more likely target of a prosecution relating to workplace bullying. This allows the toxic environment to continue to exist and the scenario to be repeated.

However, WorkSafe Victoria has many further enforcement activities at its disposal in the Occupational Health and Safety Act 2004. Not every workplace visit undertaken by WorkSafe Victoria is expected to end in a prosecution, and whilst it is understood that there is required to be robust investigation prior to taking legal action, issuing of further Improvement Notices in workplaces where systems, training or consultative mechanisms are found to be wanting is an available enforcement activity which ANF (Vic Branch) believes is under-utilised in relation to workplace bullying. Further utilisation of these methods of enforcement, combined with community forums, awareness campaigns and the like, would encourage employers to understand the expectation around workplace bullying, and the need for some action to be taken in the workplace, under their OHS responsibilities. It would also raise the profile within the community of what comprises bullying, and therefore raise the standard and expectation in relation to workers in the community, and lower the acceptance of activities which cross these boundaries.

WorkSafe Victoria's approach to enforcement and prosecution in cases of alleged workplace bullying is in contradiction to that outlined in McCabe (2012), whereby the positive duty of the employer comes to the fore:

“WorkSafe ACT's view is that ... once aware of the allegation the CIT had an obligation to determine whether there was any substance to the accusation of wrongdoing and whether there was, therefore, any threat to the ongoing health and safety of other workers in the work area concerned.”<sup>29</sup>

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<sup>29</sup> McCabe, 2012 : 12

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### *Recommendations:*

13. Ensure the Model Code of Practice in relation to Prevention of Bullying (developed by SafeWork Australia) details that serious allegations should be investigated in a way that is both independent and adheres to principles of natural justice, as per ACT Code of Practice
14. WorkSafe Victoria (and all other work health and safety regulators) alter their approach to enforcement and prosecution of workplace bullying offences to mirror that outlined in McCabe (2012), whereby the role of WorkSafe ACT is reported to be to determine whether:
  - An employer has systems and procedures in place which are designed to prevent bullying or harassment of workers;
  - An employer has systems and procedures in place to competently manage any complaints regarding bullying or harassment of workers;
  - Those systems and procedures are operating effectively;
  - Actions taken by an employer (and their managers/supervisors) in response to complaints of bullying or harassment are consistent with those systems and procedures and are consistent with the employer's duties and responsibilities under the relevant Act;
  - An employer is taking all reasonable steps to ensure that workers are not bullied or harassed at work; and
  - Any other duty holder has failed to meet their obligations under the relevant Act.<sup>30</sup>
15. Address anomaly in Victorian Occupational Health and Safety Act 2004, which means that a person who has been terminated or resigns is not eligible to seek Internal Review of decisions in relation to decisions (or lack thereof) made by WorkSafe in particular in relation (but not limited) to workplace bullying complaints

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<sup>30</sup> Adapted from McCabe, 2012 : 7

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

WorkSafe Victoria has developed a good theoretical framework for the prevention and management of workplace bullying. This being said, there is a significant lack of knowledge at the community level in relation to this framework due to lack of community education and enforcement by the regulator. In Victoria the practical application of that framework model has proven to be drastically insufficient and poorly and inconsistently applied.

A nationally consistent framework and model for the prevention and management of incidents of workplace bullying would be of great benefit to avoid replication the various states and territories. This may be difficult to achieve with the fragmented Occupational Health and Safety jurisdictions nationally, however the finalisation of the Model Code of Practice for Prevention of Bullying by SafeWork Australia will go some way to addressing this void. In spite of this, collectively examining the problem and collaboratively finding solutions would be of benefit to all. These could then be modified to fit the regulatory frameworks for the various states and territories.

#### *Recommendations:*

16. Develop a nationally consistent framework and model for the prevention and management of workplace bullying, and standards surrounding the enforcement and application of this.
17. Regulators to formulate and embark on a widespread community awareness campaign.
18. Regulators to conduct thorough investigations in relation to complaints of workplace bullying and publicly release their findings and enforcement actions, as per release of WorkSafe ACT investigation into compliance by the Canberra Institute of Technology (CIT) with its duties under the Work Safety Act 2008 and the Work Health and Safety Act 2011 in response to allegations of bullying and harassment at the CIT (as cited).



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

Whilst there is no simple, single answer to ensuring bullying behaviours are not transferred from one workplace to another, adoption of a zero tolerance approach to workplace bullying with a concentrated education campaign at least sets the expectations surrounding this. Such a strategy must be backed up by sound policy and procedures in all workplaces and a regulatory framework that is enforced by regulatory bodies that are equipped, skilled and prepared to deal with the issue.

Further, early intervention at the workplace level is critical, and can only be successfully achieved with cultural change which addresses the power imbalance between bullies, targets and witnesses, and can prevent or limit further damage from taking place. This is dependent upon workers being able to speak up and engage management on safety issues without fear of victimisation, with appropriate workplace structures in place.

Critically, an adequately resourced and qualified inspectorate capable of taking action to ensure that employers control psychosocial hazards<sup>31</sup> is an underpinning component to an effective strategy, as is an appropriate, effective and timely avenue for action for complainants.

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<sup>31</sup> ACTU Psychosocial Policy, ACTU Congress 2012

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

Until such time as employers are required to report incidents and near misses to regulators, and create central data sets on what is being reported, the evidence base is going to continue to be deficient as at present, the only events that are captured are where there are claims of compensation lodged. Many incidents do not ever result in a claim being lodged, which in essence creates gaps in the data, leaving it incomplete and unreliable. As such, the ANF (Vic Branch) recommends the introduction of mandatory data collection, which is in accordance with Violence in Nursing taskforce recommendations relating to standardised, centralised reporting systems (Recommendations 27, 28 and 29).

Further, it is critical that a standardised set of guidelines be developed between regulators across Australia to ensure that data being collected and reported is consistent between regulators and states to provide a full picture of the prevalence and impacts of workplace bullying in this country. Currently the Victorian data set is difficult to obtain, with WorkSafe Victoria being the 'keeper of the data', and having only either claims data (which is incomplete in particular in relation to workplace bullying due to not only the factor of whether a claim is completed to start with, but also whether it is accepted (denied claims are not usually included in the data set when figures are requested) and also whether it is coded as such (the coding is dependent upon which staff member at which Authorised Agent codes the claim at the time, as to whether bullying is incorporated). The other set of data which is available relates to the 'Bullying' inspectorate and activities of its team members, relating to numbers of calls, investigations undertaken, notices issued, cases closed, reasons behind the closing etc. Again, this data set is incomplete, and does not provide the entirety of the picture as there are many cases of bullying which are not reported to WorkSafe Victoria, nor are claims submitted.

#### *Recommendation:*

19. Introduction of mandatory data collection, in accordance with Violence in Nursing taskforce recommendations 27, 28 and 29.

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## **14. Appendix 1 – ANF (Vic Branch) Workplace Bullying Policy**

### **15. Appendix 2 – Nurses Say No to Bullying brochure**