

To: House Standing Committee on Education and Employment

From: Associate Professor Maryam Omari & Mr David Blades

Date: June 20, 2012

Subject: Feedback on the Terms of Reference for the inquiry into Workplace Bullying

Thank you for the opportunity to comment on the Terms of Reference (ToR) of the above inquiry. Below please find our comments against each focus point. It should be noted that our comments are made in a private capacity and do not necessarily represent the views or standing of our employers or professional associations. We have provided our profiles at the end of this submission.

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

There is no universal definition for workplace bullying. Some measures are based on the 'negative acts' carried out, others on provided definitions, yet others focus on the behaviour from an 'eye of the beholder' perspective. Most definitions of workplace bullying focus on 'repeated' events, however, given the subjective nature of this behaviour, and that related anti-harassment legislation includes single acts, the acceptance of a wider definition is suggested.

Given the challenges in defining workplace bullying, measurement of the prevalence of the behaviour is not clear-cut. The Omari studies (2003, 2007, 2011 and 2012) reported that prevalence in the subjects' "current place of employment" ranged between 20%-35%. These statistics are underestimated given it is well established that most victims of workplace bullying leave the organisation where the bullying is taking place.

As Australia is a multi-cultural society, and different value systems shape the perception and interpretation of (inappropriate) behaviours, it is suggested that a 'reasonable person' test be used in any definition of workplace bullying. Single acts if significant, far reaching and public should be considered workplace bullying. Traumatized victims often re-live the experience and as such, single acts become repeated experiences.

The consequences of workplace bullying for individuals are far ranging. At one end of the continuum the behaviour can result in loss of motivation or job satisfaction; at the other significant health consequences: physical, physiological or psychological (including anxiety, depression and even suicide).

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.

Organisations are often worried about the possible negative implications of workplace research, education and awareness raising; not wanting to "open-up a can of worms" was a repeated reason that organisations opted not to participate in the Omari studies.

Organisational culture by nature is hard to shift, leadership and role modelling by the head of the organisation and senior management set the scene for what is deemed as acceptable/unacceptable behaviour in the workplace. Unless Chief Executive Officers (CEOs) and their senior leadership teams are on-side, tackling workplace bullying, from a cultural-shift perspective, will be next to impossible.

The key here is to improve education and awareness, but also provide punitive measures for inappropriate conduct. Like health and safety legislation, organisational leaders and managers must be held accountable. The Law Society of WA study showed that there was a significant positive (statistical) relationship between having anti-bullying policies and the prevalence of the behaviour; that is, anti-bullying policies do work, however, further evidence suggested that in isolation the policies are of limited value. A strategic, integrated and multi-pronged approach is recommended. Awareness raising and education are key in ameliorating workplace bullying. Public and private organisations should do more by way of training, workshops and information sharing to ensure that managers and employees follow the relevant codes of practice that relate to bullying, discrimination and harassment at all times in their day-to-day work rather than treating these codes as statements of principle with little practical application.

It should be noted that the Omari studies indicated that there is a very fine line between robust performance management and workplace bullying. The provision of soft skills training, negotiation and conflict resolution skills will go some way in ensuring people are treated with dignity and respect at work, even if they need to be on 'back on track' plans to improve work performance.

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.

This is an area that has been grossly ignored. Organisational support services may be available through the employee assistance providers (EAPs), however, these are usually accessed when there has already been an escalation in the situation. As part of the Law Society of WA project, Associate Professor Omari has been involved in awareness raising within the legal profession in WA, in the recent past these education sessions have been expanded to the membership of the Australian Human Resources Institute (AHRI). HR practitioners are often in the front line when dealing with workplace bullying scenarios, so their timely and appropriate response is critical.

Associate Professor Omari is currently offering to assist in raising awareness of workplace bullying through the provision of information sessions to business associations in WA; this service will be free of charge. Workplace bullying carries significant personal, organisational and societal costs (tangible and non-tangible), it is hoped that discussion of the negative consequences of the behaviour for organisations may result in mobilising support for preventative strategies.

Whether the scope (sic) to improve coordination between governments, regulators, health service providers and other stakeholders to prevent and address workplace bullying.

There is huge room for improvement here, the current policies, codes of practice and legislation do not seem coherent or coordinated. Some countries (e.g. Norway, Sweden and Colombia) have long had anti-bullying legislation. In Australia, in the main, the reliance is on health and safety legislation to cover workplace bullying (seen as a psychological hazard in this context). WorkSafe has been active in this space, but there is room for more coordinated and coherent activities; partnership between industries and researchers of workplace bullying is suggested.

Should there be more clear provisions in the Fair Work Act? As mentioned earlier an education and awareness raising campaign should be balanced with punitive measures such as relevant, clear cut legislation.

It would be useful to have a national brainstorming workshop with researchers and practitioners who are at the forefront of work in the area of workplace bullying. Bringing together these groups with the regulators and policy makers will go some way in pooling the collective knowledge to find a way forward.

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.

See earlier point.

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

The short answer is, 'no'. Much more needs to be done in this space. Professional associations can deal with workplace bullying more clearly through their Codes of Practice, the public sector should enunciate the requirements more clearly through their Codes of Conduct and Values. Having said this, regulation is not a deterrent in itself, champions of the cause (such as Brodie Panlock's parents) are needed to put a human face to the tragedies.

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

Leadership plays a key role in setting the culture of an organisation, the espoused and lived values. The language used by an organisation is an indicator of the corporate values system, perhaps anti-bullying policies need to be mentioned in job vacancies, similar to organisations indicating that they are 'equal opportunity' employers.

Adopted HR policies in organisations are often mechanisms for achieving cultural change. The recruitment, promotion and reward systems in organisations should clearly promote and recognise appropriate conduct. As an example, performance should not be purely based on outcomes, often quantitative and revenue based; the behaviour in achieving these outcomes is equally important. That is, did the area head who met their annual targets deal

with their employees with dignity and respect or where the employees made to work late nights and weekends? Where they put under undue pressure to 'hit the targets' of the section?

Possible improvements to the national evidence base on workplace bullying.

Clearly we need to know more about the environment of work. That is, what are Australian workplaces like? What are the main quality of work-life issues for employees and employers? How do experiences of employees differ within different professions and work settings? What is best practice? The answers will vary from workplace to workplace, but a clear understanding of the context is the needed starting place. A clear definition and central administration of associated issues will assist in collecting consistent and timely feedback. Should the issue of workplace bullying not be tackled in a consistent and coordinated manner this may ultimately undermine the administration of justice.

Thank you again for the opportunity to comment. We would be more than happy to assist in driving this important agenda further in any capacity. Please feel free to contact us as required.

Yours sincerely,

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Mr David Blades

Profiles

Associate Professor Maryam Omari has been researching workplace bullying in the Australian context for the last decade. She has conducted a number of large scale studies including 11 Australian Public Service (APS) agencies in Western Australia (WA), and the membership of the Law Society of WA. She has published a book on workplace bullying and has presented at international conferences, most recently at the 8th International Workplace Bullying and Harassment Conference in Copenhagen (June 13-15, 2012). Maryam has been invited to be a Keynote speaker at the Australian Women Lawyers 4th National Conference at the Australian National University (August 10-12, 2012). She has written a number of refereed journal articles on the topic and has been interviewed on TV and radio; Maryam's research on workplace bullying has also been quoted in print media, including The Australian and the Australian Financial Review.

Mr David Blades is a lawyer based in Perth with a keen interest in workplace law and the regulation of the legal profession. He is actively involved in the Law Society of Western Australia's initiatives on workplace bullying, and psychological distress and depression.