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**Australian Council of Trade Unions (ACTU)  
Submission  
To the House Standing Committee on  
Education & Employment,  
Inquiry into Workplace Bullying**

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04 July 2012

ACTU

Level 6, 365 Queen Street

Melbourne VIC 3000

[www.actu.org.au](http://www.actu.org.au)

D No. 38/2012

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# **Australian Council of Trade Unions (ACTU)**

## **Submission**

### **To the House Standing Committee on Education & Employment, Inquiry into Workplace Bullying**

#### **Introduction**

The ACTU is the peak union body representing 47 affiliated unions and the interests of almost 2 million workers across Australia. The ACTU is committed to ensuring that all workers have the right to a safe and healthy work environment and in the event of injury or illness are afforded decent levels of workers' compensation, quality rehabilitation and the opportunity to participate in fair and equitable return to work programs.

The ACTU and its affiliated unions have long since recognised the serious problems posed by workplace bullying and the broader problems posed by related psychosocial hazards including: harassment, occupational violence, fatigue and work overload. These hazards have come to the fore in response to greater work intensification, increased casualisation of previous full time roles and have been compounded by increased global financial uncertainty.

In 2000, the ACTU was responsible for putting workplace bullying firmly on the work health and safety agenda through its campaign, '*Being Bossed around is Bad for Your Health*'. This campaign focused on encouraging Governments, employers and work health and safety regulators to widen their focus from worker to worker bullying and look at all forms of bullying, including aggressive management<sup>1</sup>. The ACTU notes that there is a significant body of research which suggests that bullying behaviour is

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<sup>1</sup> Workers' Online, Being Bossed Around is Bad for Your Health, October 2000, George Wright

facilitated by frequent organisational change and the interaction of workplace factors, rather than as a result of individual behaviours.

Workplace bullying can have a profound effect on all aspects of a person's health as well as their work and family life. Bullying behaviours can range from subtle behaviours that seek to exclude, isolate or marginalise, to extreme acts of physical violence resulting in death or serious injury. In the main, workplace bullying undermines self-esteem, productivity and workplace morale. *For some it can represent a permanent departure from the labour market and in extreme incidents can result in suicide.*<sup>2</sup> While workplace bullying can involve a range of different behaviours, the elements of most definitions include repetitious, unreasonable, or unfair and inappropriate behaviour that attempts to undermine a worker or group of workers that creates a risk to health and safety.

*The Union Charter of Workplace Rights provides that All Workers (or prospective workers) including health and Safety Representatives, will be protected by law from discrimination, harassment, bullying or detriment to their employment because they have raised a health and safety issue , lodged a compensation claim or been involved in consultation on workplace health and safety matters*<sup>3</sup>

*Lives on Hold, the Report of the Independent Inquiry into Insecure Work in Australia highlights the difficulties faced by insecure workers in voicing health and safety concerns because exercising their rights could lead to censure, the loss of shifts or the loss of a job altogether. As a class of workers they are subject to unpredictable working hours, lack of security and lack of any say at work over wages, conditions and work organisation*<sup>4</sup>

The ACTU acknowledges that workplace cultures which genuinely support consultation through elected health and safety representatives and health and safety committees have a lower incidence of injury and disease. Research conducted by the Trade Union Congress (TUC) identified the positive role played by Health and Safety Representatives

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<sup>2</sup>Bullies in Business, 2011, LJJ, Josh Bornstein

<sup>3</sup>Occupational Health & Safety, Compensation and Rehabilitation, Union Charter of Workplace Rights

<sup>4</sup> Lives on Hold, Unlocking the Potential of Australia's Workforce, The Report of the Independent Inquiry into Insecure Work in Australia, 2012

(HSRs) and it was noted that workplaces with these structures in place had half rate of serious injury than those which did not<sup>5</sup>

## **The costs**

The Productivity Commission report on psychosocial hazards estimated the costs of workplace bullying alone range between \$6 billion and \$36 billion per year. However, these costs fail to account of the human costs such as reduced quality of life for victims, colleagues, children, spouses and costs to the greater community<sup>6</sup>.

Safe Work Australia note that workers' compensation statistics for 2007/08 list claims for mental disorders as the category with the third largest number of claims accounting for 4.7 of all claims made in 2007 (NOSI 2010). In 2007/08, 26% of accepted workers compensation claims for mental stress in Australia resulted in 26 or more weeks off work.<sup>7</sup> The average direct cost of mental health claims is \$14,000.00 compared with the average for all other workers compensation claims of \$5,600.00. While workers' compensation statistics provide some limited information on the extent of psychological injury sustained at work, they do not identify the actual cause of injury and are therefore a poor measure of the true extent of workplace bullying.

## **Current Legislative Provisions**

With the exception of South Australia<sup>8</sup>, which specifically proscribes bullying behaviours, all jurisdictions' occupational health and safety legislation imply a general duty care to manage psychosocial hazards in the workplace. Despite these advances in individual jurisdictions, it is regretful that harmonised work health and safety legislation does not expressly require employers to control the risks to psychological health of workers. The ACTU submits that this presents a glaring and significant safety-gap that requires immediate attention.

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<sup>5</sup> The Union Effect, TUC 2004, Hazards 'Union Effect' Web Pages

<sup>6</sup> Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety, Research Report, Australian Productivity Commission,

<sup>7</sup> National Hazard Exposure Worker Surveillance: Psychosocial Working Conditions and the Provision of Risk Controls Strategies in Australian Workplaces

<sup>8</sup> Occupational Health & Safety Act 1986, Section 55(A)

## **Barriers**

Certain types of bullying behaviour can be addressed in other *fora* such as the Australian Human Rights and Equal Opportunity Commission (HREOC), Fair Work Australia (FWA) or through other state and territory laws. However, workers, reliant on their OHS regulator to take action, face extreme burdens in proving their case for workplace bullying. Consequently, existing modes of redress for victims are reactive and are ineffective in the control of the risks of bullying behaviour.

Furthermore, the nature of OHS legislation, with the exception of discrimination proceedings, precludes workers from commencing proceedings for breach of OHS Laws and must rely on their jurisdictional regulator taking action. This can take years to complete and often when irreparable damage has been done to victims of bullying behaviour. Even if a regulator does take action, a successful prosecution does not benefit workers as the penalty imposed on an employer is a fine a fine for breach of duty, which does not include a compensation component. Consequently a bullied worker will find it difficult to access a satisfactory legal remedy unless a compensable injury is sustained<sup>9</sup>. This is consistent with the position in Queensland where no prosecutions have been commenced for purely psychological injury.

## **Workers' Compensation**

In addition to the lack of clarity surrounding duty holder obligations, workers have to contend with additional hurdles in accessing workers compensation entitlements. 'Reasonable management action' provisions that seek to exclude psychological injuries sustained during, appraisal, counselling, suspension, disciplinary action or for failure to obtain a promotion, reclassification, transfer or benefit or to retain a benefit in connection with a worker's employment, are not compensable if undertaken in a 'reasonable manner'. Therefore instead of addressing the bullying behaviour at workplace level, 'reasonable management action' provisions effectively suppress claims and shift the responsibility to injured workers, their families and the greater community. From 1997 to 2006 the number of workers' compensation claims in

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<sup>9</sup> *Ibid* 2

Australia decreased by 11% but yet the number of claims categorised as mental disorders increased by nearly five per cent during that period<sup>10</sup>.

### **The prevention of workplace bullying**

The ACTU recognises that the range of behaviours that can constitute workplace bullying can, depending on the type of behaviour, the severity of that behaviour and who it is directed at, determine the forum and the applicable penalties involved for that behaviour. While supportive of the work of FWA and HREOC in addressing certain types of bullying behaviour, the ACTU submits that an effective regulatory response to the incidence of workplace bullying needs to recognise that:

#### **Workplace bullying occurs in a workplace setting**

While bullying can occur in any context in which people interact with each other, the nature of work and its organisation mean that people who would not normally interact with each other are required to do so for the purpose of their employment. Power imbalances, between perpetrator and target are typically a factor in workplace bullying. This imbalance may be based on position in an organisation, experience, age, the length of time a person has been in an organisation, social position or other factors including gender, and other inherent characteristics.

Therefore, as workplace bullying occurs in a work setting, which can affect the health and safety and welfare of workers, it is appropriate that work health and safety legislation should be applied when addressing bullying behaviours. Workplace health and safety legislation should require risk factors for psychological injury to be systematically identified, assessed and controlled. This could be achieved through the adoption of:

- Risk identification tools
- Confidential means of reporting bullying incidents and other risks; and
- Annual staff climate surveys as a means of risk identification and control

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<sup>10</sup> Australian Safety Compensation Council, Occupational Health & Safety Statistics Report – Number of Cases 1997-2006 ,2008 <http://nosi.asc.gov.au/Default.aspx>> at 21 January 2009

## **Regulatory Responses need to occur in the context of wider regulatory responses**

Bullying and related stressors such as fatigue, occupational violence and work overload should be treated with the same range of compliance and enforcement activities that are applied to other breaches of health and safety law.

This includes the provision of information, education, improvement notices and prohibition notices and prosecutions for breaching health and safety duties. Sanctions in respect of bullying behaviour should be consistent with sanctions available in this sphere and should include fines and custodial sentences for extreme breaches by duty holders.

## **Provisions outside of work health & Safety Legislation**

As mentioned above, some types of workplace bullying behaviours can be dealt by federal, state and territory human rights and equal opportunity legislation and also through industrial relations legislation through FWA and also by state and territory criminal codes. The ACTU supports all of these avenues of redress as being complementary to, but not a substitute for occupational health and safety legislation.



## **ELEMENTS OF AN EFFECTIVE RESPONSE TO WOKPLACE BULLYING**

### **Workplace bullying is occupational health and Safety Issue:**

- In the first instance, workplace bullying is a health and safety issue and in that regard should be dealt with within health and safety laws before considering alternative options.

### **Hierarchy of control to be applied**

- Workplace bullying should be dealt with in the same way as any other workplace hazard through the hierarchy of control by assessing the risk, determining the control measures, applying control measures and then monitoring and reviewing control measures to ensure their effectiveness. This should be done in conjunction with educational campaigns including information sessions, draft policies templates and specific 'how to' information.

### **Legislative responses**

- Legislative responses to workplace bullying need to recognise that bullying occurs not just between individuals but is also directed at certain classes of workers such as women and other vulnerable groups such as insecure workers.

### **Appropriate Sanctions**

- As with other offences under occupational health and safety legislation the appropriate penalty for serious breaches of the legislation can involve a term of imprisonment for reckless endangerment or gross negligence causing death or serious injury to a worker. The ACTU supports the notion that serious incidents of workplace bullying should attract a term of imprisonment.

## Gap Analysis

ACTU Psychosocial Policy recognises that workers, in particular insecure workers, face significant difficulties in raising health and safety issues as a consequence of their employment arrangements. The following gaps have been identified and require immediate attention:

- (a) Legislation that provides for the control of risks arising from psychosocial hazards;*
- (b) An adequately resourced and qualified inspectorate capable of taking action to ensure that employers control psychosocial risks; and*
- (c) Decent and on-going workers' compensation entitlements for injured workers and their families*

## Summary of Recommendations

### Recommendation 1

The ACTU calls for:

1. A definition of '*psychosocial hazards*' including bullying;
2. The adoption of a regulation to control '*psychosocial hazards*';
2. Codes of practice for bullying and other '*psychosocial hazards*'; and
3. An adequately resourced and trained inspectorate capable of taking action to address the risks of '*psychosocial hazards*' in the workplace.

### Recommendation 2

The ACTU calls upon Safe Work Australia to conduct research to determine the nature and extent of injured workers accessing workers' compensation entitlements where investigations by WHS inspectorates have failed to substantiate allegations of workplace bullying.

### Recommendation 3

The ACTU calls for an easily accessible forum to resolve bullying complaints to ensure that bullying behaviours do not escalate and cause injury to workers. Bullying behaviours should be actionable without proof of damage or injury.

## **Recommendation 4**

### **Multi Agency Approach**

The ACTU recommends that Safe Work Australia are tasked with developing nationally a consistent approach to the collection and coding and data from state, territory and federal agencies to assist determining the incidence bullying and for the continued development of policy in this area.

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

Despite the lack of accurate data on the incidence of workplace bullying in Australia, available data on workers' compensation claims statistics indicates that the prevalence of behaviours that result in claims for mental stress remain at a high level. Safe Work Australia data show an increase of accepted stress claims from 4440 in 1997-98 to a peak of 7850 in 2003 -04. While there has been a decline in the number of compensated claims to 5950 in 2007-08, the number of claims in 2007 -08 is still 34% above the figure recorded in 1997-98<sup>11</sup>

An analysis of more recent data from the Australian Bureau of Statistics, Work Related Injury and Illness data (WRIS – 2006 -2010) shows that the stress or other mental conditions had increased by 2% over the period since 2006

<b>Workplace injury sustained</b>	<b>2006 (‘000)</b>	<b>2010 (‘000)</b>	<b>Change (%)</b>
<b>Fracture</b>	44.3	48.2	9
<b>Chronic joint/internal organ damage</b>	128.3	113.6	-11
<b>Sprain/strain</b>	207.7	192.1	-8
<b>Cut/open wound</b>	132.3	100.6	-24
<b>Crushing injury/internal organ damage</b>	27.8	44.6	60
<b>Superficial injury</b>	51.6	24	-53
<b>Stress or other mental condition</b>	30.9	31.5	2
<b>Burns</b>	29.3	32.3	10
<b>Other<sup>[1]</sup></b>	37.3	53.7	44

<sup>11</sup> *Ibid* 5

<sup>[1]</sup> In the 2010 survey includes 20,200 persons for which there was no information provided. This data was not included in the 2006 survey.

## ACTU Campaigns

As part of the ACTU National Health and Safety Campaign '*Being bossed around is bad for your health - the workplace is no place for bullying*', unions surveyed workers about bullying.

Results from over 3,000 responses received by the ACTU, from a range of unions representing the health, education, finance, manufacturing, clerical and administration, in the public and private sectors, are presented below:

- Over half the respondents (53%) report an unhappy and oppressive workplace and 54% say that that intimidating behaviour - shouting, ordering and belittling people happens in their workplaces. Almost a third report abusive language.
- Forty-four per cent say that people are afraid to speak up about those behaviours in their workplaces, or about working conditions and health and safety.
- Around a third report pressure of impossible targets and demands to perform tasks for which they have not been adequately trained.
- Twenty per cent have been threatened with the sack, 10% have experienced physically threatening behaviour, and 5% report being assaulted at work.
- Almost 70% report that either a manager or supervisor carries out the bullying behaviour and 14% say it is the employer. Less than 30% say that the bullying is carried out by fellow workers or by clients or customers.
- Workers are reporting a range of symptoms as a result of being bullied, including feeling stressed (73%); feeling angry (67%); feeling depressed (59%); sleep difficulties (48%); headaches, and feeling helpless (45%); feeling fearful (29%); and stomach problems (24%).
- Sixty per cent say that workplace bullying is affecting their home and social life, and 44% say that they have taken time off work due to the bullying. Most (39%) have taken sick leave, 8% have used recreation leave, 6% have taken leave without pay, but only 4% have received workers' compensation.
- Only 18% say that anything is being done to stop the bullying behaviour.

More recent research conducted by the Unions NSW 2004, and cited in an article by the Australian Psychological Society (APS), indicates that the bullying behaviours are on the increase. In a survey involving 840 workers it was found that 74% of respondents had

been the subject of workplace bullying, 56% indicated that there was a culture of bullying at their workplace and 89% wanted workplace policy and procedures to deal with issues. In fact, bullying is believed by Unions NSW to be the number one occupational health and safety issue in New South Wales.<sup>12</sup>

## **The experience of victims of workplace bullying**

### **Bullying and Organisational Change**

A key focus of the ACTU campaign, '*Being Bossed Around is Bad for Your Health*', was to broaden the narrow focus from worker to worker bullying and examine all forms of bullying including aggressive management. ACTU research suggests that managers and supervisors are the main perpetrators of workplace bullying<sup>13</sup>. It has been noted elsewhere that managerial bullying emerges as a result of emotional reaction to constantly dealing with organisational change and that some organisations have developed a culture of achieving organisational goals by any means, including the use of bullying behaviours<sup>14</sup>.

Frequent organisational change brought about by recession, consumer demand, technological change, changes in the labour market and global competition results in increased uncertainty at all levels, and as consequence of these changes bullying behaviours becomes common<sup>15</sup>

There is a significant body of international research which suggests that organisational change can have a profound effect on worker safety and health and wellbeing. It has been noted that evidence links downsizing to poorer mental health outcomes, bullying and other forms of occupational violence.<sup>16</sup> Downsizing and job insecurity have been linked with presenteeism and excessive unpaid hours of work with workers being discouraged from taking sick leave, joining health promotion initiatives, taking part in WHS Committees and reporting health and safety problems.

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<sup>12</sup> Fighting Back: Workplace Bullying in Australia, Australian Psychological Society - [http://www.psychology.org.au/publications/inpsych/workplace\\_bullying/](http://www.psychology.org.au/publications/inpsych/workplace_bullying/)

<sup>13</sup> '*Being Bossed Around Is Bad For Your Health*' (2000) Union Surveys

<sup>14</sup> Stress and Managerial Bullying, Affective Antecedents and Consequences, 2000 PJ Jordan & M.Sheehan

<sup>15</sup> *Ibid* 12

<sup>16</sup> Organisational Restructuring /Downsizing, OHS Regulation and Worker Health and Wellbeing, Michael Quinlan, March 2007

## **Bullying and Insecure Work**

The recent report on the *Independent Inquiry into Insecure Work in Australia* estimates that the number of workers engaged in insecure work to be in the region of 2.2 million workers. The characteristics of these roles can include unpredictable and fluctuating pay; inferior rights and entitlements; limited or no access to paid leave; irregular and unpredictable working hours; lack of security and or uncertainty over the length of the job and lack of any say at work over wages, conditions and work organisation<sup>17</sup>

The report notes that workers engaged in labour hire arrangements felt unable to report bullying in the workplace, or occupational health and safety risks for fear that exercising their rights would lead to censure, the loss of shifts or the loss of a job altogether<sup>18</sup>The report describes the experiences of a worker who made a complaint in relation to physical aggressive behaviour by a female manager when the issue was raised she was subsequently sacked<sup>19</sup>

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<sup>17</sup> Lives on Hold, Unlocking The Potential of Australia's Workforce, The Report of the Independent Inquiry into Insecure Work In Australia, ACTU 2012

<sup>18</sup> *Ibid* 15

<sup>19</sup> *Ibid* 15 Gabrielle's Story, Page 8



## **2. 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**

Workplace bullying thrives in an atmosphere where workers are fearful of speaking up about unreasonable behaviours because of fears of victimisation or because they may be the subject of bully behaviours themselves. Bullying cultures are often supported by a code of silence which allows destructive behaviours of this kind to flourish.

While having policies and procedures in place to deal with psychosocial stressors is essential, they are of very little use if they are not communicated to workers or relied upon when bullying behaviour is reported or witnessed by co-workers. To address workplace bullying, employers should:<sup>20</sup>

- Make it known that bullying behaviours will not be tolerated;
- Implement policies and procedures outlining the employers position on bullying, what is meant by bullying and the consequences for engaging in bullying behaviours;
- Ensure awareness of policies and procedures;
- Establish a complaints mechanism whereby employees who have been bullied can make a complaint, ensuring that grievances are dealt with independently, timely, and kept confidential; and
- Monitor the effectiveness of these steps on a regular basis

### **Worker Consultation**

The Robens Report notes that *if workers are to accept their full share of responsibility, they must be able to participate fully in the making and monitoring of arrangements in their workplace*<sup>21</sup>. Effective and genuine worker consultation is essential in preventing and responding to workplace hazards including bullying. Genuine consultation with workers on safety issues recognises that:

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<sup>20</sup> *Ibid*, 9

<sup>21</sup> Report of the Committee on Safety and Health at Work 1970-1972(The Robens Report)

- Workers are well able to monitor and provide feedback on measures implemented to control risk;
- Effective consultation promotes the development of skills in identifying, assessing risk, and appropriate control measures to control hazards. This can have a positive effect on workplace culture by improving morale and increased job satisfaction; and
- Worker participation can and does result in improved safe systems of work

## **Health & Safety Representatives Committees**

HSRs play a vital role by providing workers with the opportunity to participate in decisions affecting health and safety at work. Work Health and Safety legislation provides for the election of HSRs to act as the primary mechanisms to represent workers on health and safety issues. HSRs have the power to inquire into risks to health and safety, investigate work health and safety complaints from workers in a work group and monitor measures taken by the PCBU to manage risks. It has been noted that HSRs provide a diverse channel for reporting events and hazards at a workplace<sup>22</sup>

Consultation with HSRs and WHS committees should be part of the process used to develop anti-bullying strategies and the ongoing monitoring and review of the effectiveness of those strategies.

## **Workplace Culture - Behavioural Based Initiatives**

The ACTU does not support workplace cultures that focus on individual behavioural based safety approaches. These type of programs suggest that workers' behaviour is the cause of most work related injuries and illnesses without considering unsafe working conditions. Workers that are identified as behaving unsafely are coaxed, cajoled and, or threatened into behaving safely on the job, or worse, sacked. According to the UK's Health and Safety Executive behaviour based programs *require front line staff to carry out behavioural based safety observations on their colleagues.*<sup>23</sup> Fundamentally, behavioural based approaches are flawed and are of little use in controlling risks

<sup>22</sup> Safety Cultures – Giving Staff a Clear Role, 1999, Health Services Executive

<sup>23</sup> Oh Behave Behavioural Based Safety Programs (full reference required)

associated with physical hazards such as dusts, fumes or biological hazards or with hazards that arise through organisational change, or through systems of work.

### **3. The adequacy of existing education and support services to prevent and to respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums**

Given the high incidence of bullying behaviour and low prosecution rate, the ACTU questions firstly, whether available information is sufficient to provide workplace supervisors, HSRs and workers with the knowledge to deal effectively with workplace bullying and secondly, whether this information is being effectively communicated to all workforce participants.

#### **Adequacy of Existing Education**

The ACTU acknowledges that the provision information through education should be an important function of OHS inspectorates across all workplace hazards, not just bullying. Education should provide duty holders with the necessary skills to identify potential risks and to respond appropriately by developing measures to eliminate risk. Broadly, education should:

- Raise awareness of workplace hazards and mechanisms for their control;
- Build up knowledge
- Consolidate knowledge and understanding<sup>24</sup>

Similarly for WHS inspectorates, education initiatives should inform the development of strategic priorities and parameters for future inspections and other enforcement activities in preventing and responding to workplace hazards.

While a national code of practice for workplace bullying is still under development, at present there is a lack of national consistency between those jurisdictions have adopted codes of practice and those which have not. Additionally, greater emphasis should be placed upon primary prevention, and the development of options to prevent workplace conflicts from developing into bullying behaviours.

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<sup>24</sup> A Summary of Compliance, Enforcement and Prosecution Policy, Worksafe Victoria, June 2005

## **Adequacy of Existing Support Services**

Support services should be available to all workers and should not be dependent upon a worker having first sustained an injury or having accessed workers compensation as a pre-requisite to access help. As mentioned above, the emphasis needs to be on prevention and early detection of bullying behaviours and not when the damage has been done.

## **Employee Assistance Programs**

The ACTU recognises the role of EAP programs but notes and that they should be complementary and are not a substitute for existing WHS requirements and obligations. EAP programs must be voluntary and confidential. However, it should be noted that EAPs seldom have the power to follow systematic bullying that is based on workplace cultures or systems of work.

## **Community Forums**

Workplace bullying is a WHS issue and therefore should be dealt by jurisdictional regulators who are *adequately resourced, qualified and capable of taking action to ensure that employers control psychosocial risks*<sup>25</sup>. The ACTU does not see the merit of community forums in dealing with WHS issues.

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<sup>25</sup> ACTU Psychosocial Hazards Policy, ACTU Congress 2012

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

##### **Jurisdictional Coordination and Consistency**

The Safe Work Australia Operational Plan 2011-2012 at Strategic Outcome 3 provides that:

*Australia has uniform work health and safety laws complemented by consistent compliance and enforcement policies which contribute to provide improved safety for all workers.*

The ACTU considers that the scope to improve jurisdictional coordination and consistency should occur under the auspices of Safe Work Australia. This could be achieved through the adoption of a common set of principles to control *psychosocial hazards* in the workplace, including bullying behaviours. The ACTU submits that the integral components of an effective prevention of workplace bullying must include:

- a broad definition of '*psychosocial hazards*' including bullying;
- the adoption of a national regulation to enhance existing WHS Legislation;
- codes of practice for bullying and other '*psychosocial hazards*'; and
- An adequately resourced and trained inspectorate capable of taking action to address the risks of '*psychosocial hazards*'

##### **Recommendation 1**

1. Definition of '*psychosocial hazards*' including bullying
2. The adoption of a regulation to control '*psychosocial hazards*'
2. Codes of practice for bullying and other '*psychosocial hazards*'
3. An adequately resourced and trained inspectorate capable of taking action to address the risks of '*psychosocial hazards*' in the workplace.

## **Greater coordination between WHS inspectorates and workers' compensation authorities**

The ACTU is aware of instances where workers have accessed workers compensation entitlements for psychological injury, yet investigations conducted by jurisdictional inspectorates were unable to substantiate allegations of workplace bullying. This suggests that a disconnect exists between WHS inspectorates investigating bullying claims and workers compensation agencies in compensating claims for psychological injury. The ACTU suggests that if this disconnection cannot be solved, that the scope of bullying behaviours will need to be redefined to ensure that all types of bullying behaviours are captured, not just those involving violence. The ACTU therefore questions what tests are employed by WHS inspectorates when investigating bullying behaviours and how they intend to redress this anomaly.

### **Recommendation 2**

The ACTU calls upon Safe Work Australia to conduct research to determine the nature and extent of injured workers accessing workers' compensation entitlements where investigations by WHS inspectorates have failed to substantiate allegations of workplace bullying.

## **The Role of Health service Providers**

As mentioned previously, the ACTU recognises the role of EAP programs but notes that they should be complimentary to, but are not a substitute for existing WHS requirements. EAPs programs must be voluntary and confidential.

**5 Whether there are regulatory, administrative or cross jurisdictional and international legal policy gaps that should be addressed in the interests of enhancing protections against and providing an early response to workplace bullying, including through appropriate complaint mechanisms**

*'Attention has traditionally focused on physical violence, and the typical profile of violence at work which has emerged has been largely one of isolated, major incidents... in more recent years new evidence has been emerging of the impact of harm caused by non-physical violence in the workplace'<sup>26</sup>*

### **Regulatory Gaps**

Taking Victoria as an example, last calendar year alone there were 6000 complaints of workplace bullying made to WorkSafe. Of that only 10% were referred to the Bullying Response Unit. Of those referrals, one in 10 resulted in an Inspector visiting to conduct further inquiries.<sup>27</sup>

WorkSafe Victoria prosecutions for the 1999 to 2005, show that most involved an act of violence inflicted upon mostly junior or apprenticed employees. While instances of overt workplace bullying involving violence are more likely to proceed to trial and conviction, this suggests that there are a significant number of incidents that risk causing psychological harm that are not been acted upon. It has been noted elsewhere that WorkSafe Victoria have had less success prosecuting cases that do not contain an aspect of physical assault<sup>28</sup>. This presents a significant safety gap for workers that requires immediate attention.

### **The Case for a Regulation**

The ACTU submits that the case for a national regulation to control the risks of psychosocial hazards, including bullying would be a proportional response to hazards of this kind. A regulation and supporting Code of Practice would provide greater clarity to duty holders in discharging their health and safety duties.

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<sup>26</sup> Duncan chappell and Vittorio Di Martino, Violence at Work (International Labour Organisation, 3<sup>rd</sup> Ed, 2006) 17.

<sup>27</sup> Most Workplace Bullying Claims Fall Short, The Age Newspaper, Rachel Wells, 24 July 2011  
<http://www.theage.com.au/victoria/most-workplace-bullying-claims-fall-short-20110723-1hub7.html>

<sup>28</sup> Bullying Alleged at WorkSafe, September 2011, David Rood and Melissa Fyfe



## **Supporting Code of Practice**

The ACTU submits that a code of practice on its own is insufficient to control the risks of bullying behaviours. The ACTU noted in its comments that the code of practice for *Preventing and Responding to Workplace Bullying*<sup>29</sup> was not developed based on a regulation but with regard to general duties contained in harmonised WHS legislation.

Amongst other issues, the ACTU commented that the title *Preventing and Responding to Workplace Bullying* was inconsistent with other codes of practice drafted under the WHS regulatory framework and represented a fundamental flaw by including in the title ‘*Responding to*’ rather than ‘*Managing*’ workplace bullying. No other Code of Practice includes ‘*responding to*’ in its title. This fails to emphasise that workplace bullying should be treated in the same way that any other hazard. These interventions, or the lack thereof, have failed to convey the serious implications of workplace bullying to all workplace participants.

## **Administrative & Cross Jurisdictional Gaps.**

### **Insecure Work**

In the absence of a compensable injury, all workers face significant barriers in accessing a suitable legal remedy to control exposure to bullying behaviours. However, nowhere is this barrier more pronounced than in the case of workers subject to insecure working arrangements.

Almost one quarter of all employees in Australia (2.2 million workers) and one fifth of the total workforce are engaged in casual work. Typically, these workers are young and concentrated in industries such as retail, accommodation and food services and a significant proportion are female. Research conducted by Safe Work Australia has identified that casual workers had a workplace injury frequency rate twice the rate of full time employees (74 injuries per million hours compared to 35 for full time workers)<sup>30</sup>. Therefore as a class of workers, they are the most likely to be injured and the least likely to speak-up about concerns for their health and safety.

*Lives on Hold*, the report into insecure work notes that workers engaged in labour hire arrangements felt unable to report bullying, injuries suffered in the workplace, or

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<sup>29</sup> Preventing & Responding to Workplace Bullying, Code of Practice, Safe Work Australia, ACTU Comment

<sup>30</sup> Work Related Injuries in Australia, Safe Work Australia, 2006/07

occupational health and safety risks for fear that exercising their rights would lead to censure, the loss of shifts or the loss of a job altogether<sup>31</sup>.

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<sup>31</sup> *Ibid* 15

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

The ACTU submits that existing health and safety regulatory frameworks are an ineffective deterrent against workplace bullying. As breaches of WHS Legislation are criminal, there are procedural difficulties for regulators pursuing prosecutions. Firstly, the burden of proof rests on the prosecution to prove all elements of the offence and secondly, and the standard of proof to be discharged by the prosecution is *beyond reasonable doubt*.

Furthermore, because bullying can involve from the subtle behaviours it can be difficult for OHS regulators to build sufficient evidence of repeated behaviours required to secure a prosecution for workplace bullying. As mentioned previously, responses to bullying are highly reactive and can take years before a matter can be brought before a court and long after the damage has been done to the victim. In its current form, WHS legislation will not deter the incidence of bullying and if anything will facilitate it. To redress this imbalance the ACTU calls for a national regulation and national supporting codes of practice to address psychosocial hazards including bullying (per Recommendation 1). Additionally, the ACTU calls for an accessible forum to resolve bullying complaints before they escalate and cause injury to workers.

### **Recommendation 3**

The ACTU calls for an easily accessible forum to resolve bullying complaints to ensure that bullying behaviours do not escalate and cause injury to workers. Bullying behaviours should be actionable without proof of damage or injury.

## **7 The most appropriate ways of ensuring bullying cultures are not transferred from one workplace to another**

There is no single way of ensuring that bullying cultures are not transferred from one workplace to another however, having appropriate workplace structures in place is an important part in promoting a positive workplace culture and preventing bullying behaviour from taking hold. Workplace bullying thrives in an atmosphere of fear. Victims and witnesses are often reluctant to speak-up because they fear that they might be victimised or be the target of bullying behaviours themselves.

### **Early Intervention**

At a workplace level It has been noted that early intervention is essential in managing the risks of bullying and can assist in rebalancing the power relationship that exists between bullies, targets and witnesses and prevent or limit further damage from taking place <sup>32</sup>. However, early intervention is dependent upon workers being able to speak up and engage management on safety issues without fear of victimisation and this can only be done if there is a positive workplace culture and appropriate workplace structures in place.

### **Enforcement**

To complement the above, ACTU policy calls for *an adequately resourced and qualified inspectorate capable of taking action to ensure that employers control psychosocial hazards, including bullying, and secondly, training to ensure that health and safety inspectorates can address psychosocial hazards*<sup>33</sup>

### **Workplace Structures**

#### **Health & Safety Representatives & Safety Committees**

As mentioned previously, HSRs play a vital role by providing workers with the opportunity to participate in decisions affecting health and safety at work. Work Health and Safety

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<sup>32</sup> Bully Blocking At Work: A self help guide for employees and managers, Field

<sup>33</sup> ACTU Psychosocial Policy, ACTU Congress 2012

legislation provides for the election of HSRs to act as the primary mechanisms to represent workers on health and safety issues. HSRs have the power to inquire into risks to health and safety, investigate work health and safety complaints from workers in a work group and monitor measures taken by the PCBU to manage risks. It has been noted that HSRs provide a diverse channel for reporting events and hazards at a workplace<sup>34</sup>

Consultation with HSRs and committees should be part of the process used to develop anti-bullying strategies and for the ongoing monitoring and review of the effectiveness of those strategies.

### **Psychosocial Regulation & Supporting Codes of Practice**

The ACTU submits that a national psychosocial regulation and supporting codes of practice are an important part of the process to ensure that duty holders understand the extent of their duties owed to others in the workplace. Supporting codes should also include information on the early detection and prevention of bullying behaviours.

### **Education & Training**

Adequate education and training for health and safety representative, workers and supervisors. Please refer to Terms of Reference three for further information

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<sup>34</sup> Safety Cultures – Giving Staff a Clear Role, 1999, Health Services Executive

## 8 Possible improvements to the national evidence base on workplace bullying

As a consequence of the differing definitions of workplace bullying across jurisdictions, there is no clear available data to quantify accurately the incidence of workplace bullying. This problem is compounded by the number of regulatory agencies charged in administering laws and the various behaviours that are regarded and categorised as 'workplace bullying'.

In the absence of actual statistical data on the incidence of workplace bullying there is an over reliance on workers' compensation claim statistics. While providing some indication of the effectiveness of regulatory frameworks, these data do not reflect the incidence of bullying because compensation claim statistics focus on the resulting injury and not its cause. Not all workplace injuries are reported and not all injuries are compensated. ABS statistics for 2009 – 10, show Approximately 640,700 workers sustained a workplace injury or illness of this figure only 185,000 received workers compensation.

In addressing the lack of consistent and available data, the Australian Work Health & Safety Strategy 2012 -2022, notes that

*Effective work health and safety policy programs and practices need to be informed by robust evidence... A nationally-coordinated and cooperative approach is required to promote efficient use of Australia's limited research resources to ensure that the whole of Australia is able to draw on available expertise and knowledge.<sup>35</sup>*

Consistent with the above, the ACTU recommends the following improvements to the national evidence base on workplace to assist in identifying the incidence of different bullying behaviours.

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<sup>35</sup> The Australian Work Health & Safety Strategy 2012 -2022

## **Recommendation 4**

### **Multi Agency Approach**

The ACTU recommends that Safe Work Australia are tasked with developing nationally a consistent approach to the collection and coding and data from state, territory and federal agencies to assist determining the incidence bullying and for the continued development of policy in this area.

## Appendix 1

### ACTU Psychosocial Policy



## ACTU Psychosocial Policy

### Introduction

1. The *Union Charter of Workplace Rights* provides that every worker has the right to a safe and healthy work environment. The Union movement recognises the damaging effect that psychosocial hazards (for example, workplace stress, fatigue, violence, and bullying) pose to the mental and physical wellbeing of workers.<sup>36</sup>
2. Health and Safety is a union issue and a basic human right of the utmost importance to Australian Workers. The protection and promotion of health and safety is integral to union activity and growth.
3. The ACTU acknowledges that modern working arrangements create a heightened exposure to psychosocial hazards. Outsourcing, privatisation, corporatisation and competitive tendering of previously stable full time jobs has led to a large increase in the number of workers in precarious employment arrangements. Precarious workers face significant difficulties in raising health and safety complaints due to the nature of their employment arrangements and conditions.
4. The ACTU recognises that workers who develop injuries, or illness, as a result of exposure to workplace psychosocial hazards, are likely to suffer stigmatisation and discrimination. As a consequence, disclosure and discussion of these injuries / illnesses may prove difficult for workers, and Health and Safety Representatives.
5. The continued failure of employers and regulatory agencies to control exposure to psychosocial risks continues to have flow-on effects to workers' families, and the general community. This contributes to disparities in health, and over time, to social inequality.

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<sup>36</sup> *Psychosocial Hazards are those aspects of the design and management of work, and its social and organisational contexts that have the potential for causing psychological or physical harm.* Cox & Griffiths (1996) *The Assessment of Psychological Hazards at Work*. In M.J, J.A.M Winnubst and C.L Cooper (Eds), *Handbook of Work and Health Psychology*. Chichester John Wiley & Sons.

6. To redress this imbalance, the ACTU recognises that Model Work Health and Safety laws present an opportunity to address the hitherto piecemeal approach by employers and regulatory agencies to prevent workers' exposure to psychosocial risks. In this regard, the ACTU calls for:
  - (d) Legislation that provides for the control of risks arising from psychosocial hazards;
  - (e) An adequately resourced and qualified inspectorate capable of taking action to ensure that employers control psychosocial risks; and
  - (f) Decent and on-going workers' compensation entitlements for injured workers and their families.
7. Workers must be treated with respect and dignity. The ACTU will continue to oppose any program that seeks to shift responsibility on to workers.

**Working with State & Territory Governments, Occupational Health & Safety Bodies, Industry and Unions**

8. The ACTU recognises that in order to improve the psychosocial work environment for workers, a genuine tripartite approach is needed from all governments, (including OHS and workers compensation bodies) industry and unions. The ACTU will advocate for:
  - (a) A regulation and supporting codes of practice to address psychosocial hazards, which must include an obligation on employers to assess and control psychosocial hazards;
  - (b) Genuine consultation and engagement of workers and their representatives in the identification, assessment and control of psychosocial hazards;
  - (c) Training of health & safety representatives, workers and supervisors;

- (d) Workplace policies and procedures that ensure confidentiality in dealing with individual issues;
- (e) Research through Safe Work Australia into the influence of systems of work on psychosocial risks and mental health issues associated with workers compensation processes;
- (f) Training to ensure that health and safety inspectorates can address psychosocial hazards; and
- (g) The removal of '*reasonable management action*', and like provisions, from all jurisdictions' workers' compensation provisions.

### **ACTU Action**

9. The ACTU acknowledges that the approaches taken by health and safety authorities have predominantly focused on individual cases, and have not addressed the root causes of psychosocial risks. The ACTU advocates for a collective approach to psychosocial hazards. The ACTU will:
- (a) Encourage the election of health and safety representatives;
  - (b) Encourage cross-collaboration between health and safety representatives and union delegates including joint training;
  - (c) Assist in developing training module(s) on psychosocial hazard identification, risk assessment and control
  - (e) Produce campaign materials, including factsheets for use in the ACTU Workplace Health and Safety Growth Campaign and the Secure Jobs Campaign. In this regard, the ACTU will use existing WHO, ILO and European Union materials.

## Appendix 2

### Case Studies

## **Case Study 1**

### **Female, mid 20's**

An employee was bullied by her co-supervisor and was subject to behaviours which included unjustified and public criticism of her work performance, badmouthing her to co-workers, overloading her with work, micromanagement, undermining her and interfering with her personal property. On the advice of her employer, she attempted to deal with the problem on an informal basis. On two occasions the perpetrator was verbally warned about her behaviour by the employer. However, the bullying continued and again, on the advice of her employer, she lodged a formal complaint. The Employer dealt with the complaint as a disciplinary investigation using four narrow terms of reference which resulted in a finding that it was a personality clash and not bullying. However, her request for a copy of the investigators report was denied and she does not know what action, if any, was taken against the supervisor in addressing the problem.

She lodged a workers compensation claim for stress caused by bullying which was subsequently investigated and accepted. She was treated for depression and was unable to work. She is fit to return to work now but not at her original workplace. Her employer attempted to place her in a new position which would entail excessive travelling from her home. Her rehab support team agreed this was unacceptable. She has still not returned to work 12 months later because her employer has still not found her a suitable position. She is now considering settling of her workers compensation claim.

The perpetrator still remains in her role as co-supervisor.

## **Case Study 2**

### **Female, mid 60's, Commenced employment in 2008**

An employee was subjected to bullying in her workplace since early 2010. She was exposed to unfair treatment by management by making it difficult for her to carry out her assigned duties which were changed without any consultation. She was directed to work hours which were not the hours she was employed to do (despite regularly working longer hours at her own volition to ensure work was completed) and threatened with disciplinary action if she did not comply. She returned from a period of approved leave to find that

her computer password had been changed, items of her personal property were missing, and some of her office furniture had been removed. She left the workplace in early 2011, following a particularly stressful meeting with her line manager. She has still not returned to work.

#### *Attempts at resolution*

She applied for workers compensation which was subsequently accepted and eventually settled because her weekly payments due to be terminated due to her age. A complaint has been lodged in June 2012, which is yet to be actioned. She tried to resolve the issues herself by confronting the perpetrators but this was unsuccessful and just led to further bullying and harassment.

#### *Ongoing consequences*

She attempted to take her own life and is still being treated for depression and on-going panic attacks. Prior to this series of events she was a normal, healthy person who enjoyed her work and had numerous awards and positive comments regarding her work ethic and performance. This situation has had a huge impact on her family and social life. She is now being pressured to return to work to the same workplace but there have been no consequences for those involved and so it is unlikely that she will be returning at all. It has been reported that there are other employees who have left employment as a result of the bullying culture in this workplace.

### **Case Study 3**

#### **Female – mid 50's – Commenced employment in this role in 2008**

A member works in busy customer service area involving face to face contact and telephone contact with customers. The team shares the counter-work between taking calls and performing paperwork. The Member came into conflict with a manager following a number of attempts to resolve work load issues. She also came into conflict with a work colleague appointed in 2009, who the Member feels undermined her with management and who was given some acting roles and eventually promoted later that year. The Member undertook another role outside of this area for 12 months and had received positive feedback during her performance appraisal. When she returned to her role she says she was isolated by the team, not given adequate training on new systems

and procedures, overloaded with work compared to other employees. In May 2011, after an altercation with a colleague she left the workplace in a distressed state and has not been able to return.

She lodged an OSH incident report and a workers compensation claim. The OSH incident to my knowledge has not been investigated. Her workers compensation claim has been disputed by the Insurer on the basis of conflicting evidence provided by other employees and she is currently receiving legal advice on appealing WorkCover's decision.

She is still receiving therapy and has been on medication for several months. She was previously, in her own words, a strong person who enjoyed her work. She has not been able to work since.

#### **Case Study 4**

##### **Female, early 50's, Commenced employment in 2010**

A member complained to her manager about the behaviour of two colleagues (whispering, exclusion, belittling and condescending attitude). She also reported being subjected to differential treatment in regarding her work performance. The bullying behaviour escalated after reporting it her manager. She was the subject of further bullying behaviour from her CEO. Rather than investigate the matter, her employer tried to transfer to a different area of the organisation. She left the workplace in January 2012 and has not yet to be declared medically fit to return to work.

She lodged a complaint against her CEO. This was investigated by a consultant paid for by her employer. The complaint was found to be unsubstantiated. Her union have requested a copy of investigators report but this has been refused by her employer. A freedom of information request has since been lodged. She has lodged a workers compensation claim which is still pending.

She is being treated for depression via counselling and she has not worked since January this 2012, and is now reliant on DHS payments to survive. Anecdotally, other workers feel intimidated and unwilling to speak out because of the likelihood of suffering similar treatment.