Ministry of Business, Innovation and Employment

Bullying and harassment at work: consultation submissions analysis

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Contents

Context

Earlier this year, the Workplace Relations and Safety Policy branch in the Ministry for Business, Innovation and Employment (MBIE) undertook public consultation on an Issues Paper on bullying and harassment (including sexual harassment) at work in New Zealand. The Issues Paper examined in detail what is known about the extent of bullying and harassment at work in New Zealand, what good practice to address these issues is, and what systems are currently in place in New Zealand to prevent and respond to these issues.[1] Through the consultation, MBIE asked the public to give feedback about how effective the systems are that prevent and respond to bullying and harassment at work.

The consultation process resulted in:

- 65 long-form submissions from a variety of stakeholders
- Approximately 12 submissions via stakeholder engagement meetings or short form submissions
- Around 1,000 responses to an online survey.

The feedback received in response to this Issues Paper will help inform:

- consideration of whether there are potential operational improvements that can be made to the services and information provided by regulators and operational agencies; in particular, MBIE Employment Services and WorkSafe
- upcoming reviews of the disputes resolution system under the Employment Relations Act and selected aspects of the Health and Safety at Work Act 2015 (HWSA)
- Aotearoa New Zealand's approach to managing psychosocial risk at work and potential system changes that may be required, including the role of businesses in managing their risks.

How the submissions have been analysed

Submitters were invited to comment on the long-form or summary version of the Issues paper, which was structured around five topics (context, sexual harassment, rights and responsibilities under law, prevention, and response). There were 62 discussion questions related to the topics.

Question by question analysis was undertaken across the long-form and short-form survey submissions, and the stakeholder engagement meetings. Key themes for each topic were then drawn from the submissions and are set out in the sections below. The first section provides a summary of themes and suggestions made from across all sections.

The survey findings have been reported separately. The survey questions focussed on respondents' experiences with bullying and harassment, including the perceived effectiveness of bullying and harassment policies, and their experiences with mediation and the Employment Relations Authority (ERA).

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[1] https://www.mbie.govt.nz/have-your-say/bullying-and-harassment-at-work/

Cross-cutting themes

While the below sections go into each topic in more detail, there were several common themes across the totality of the submissions that are worth drawing out. These are set out in the table below. The table also sets out suggestions made by submitters that are linked to each theme. Note that these suggestions are not recommendations of the writers of this report, but submitters' suggestions for MBIE's consideration.

Theme	Summary	Suggestions from submitters
Māori and people who have experienced bullying and harassment are not well served by the system		
Reponses and formal pathways for bullying and harassment are inaccessible, transactional, and not trauma informed, or victim centred.	Submitters thought that the formal pathways for resolution were cost-prohibitive, difficult to navigate and focused on financial redress instead of restoration of relationships. Some said they were not in line with international best practice, which would be to take a victim-centred approach. Some talked about how retraumatising processes were.	Restorative justice approaches and responses (instead of adversarial approaches). More accessible support for victims (financial, psychological, and procedural). **Specific suggestions for the employment relations pathway:** Application for mediation should be able to be done by phone / via easily accessible offline methods. Extend the 90-day limit for raising a personal grievance with an employer. Use the Sexual Violence Legislation Bill as a guide for restrictions on, and alternatives to, cross-examination. Overhaul the operations of the Employment Relations Authority. Full review of the current legislative framework, with some specific suggestions including allowing employees to be a defendant or co-defendant in grievances, and expanding the definition of sexual harassment.

Government responsibilities are split across multiple agencies causing confusion.	Submitters referenced the split of responsibilities in this area across MBIE, WorkSafe and the Human Rights Commission. Some thought that this caused a lack of accountability and confusing guidance for businesses and workers, and there were calls for centralisation of responsibility across guidance, training, and specialist advice.	One-stop shop for bullying and harassment with centralised government responsibility. Establish systems like the Fair Work Commission in Australia and/or Worksafe in Victoria.
Obligations under Te Tiriti o Waitangi are not considered, and the system does not take Kaupapa Māori approaches.	While few submitters responded to the specific questions about how the system worked for Māori, there was clear consensus that there was a lack of culturally appropriate processes, workplaces were culturally unsafe and that MBIE should engage directly with iwi and Māori organisations to answer the consultation questions.	Direct engagement between MBIE and iwi and Māori organisations. Mediation held in places that properly observe tikanga. Investment in Māori mediators and investigators. Cultural competence education and training required in all workplaces.

Policy and guidance are insufficient and fragmented

People are unclear about what constitutes "bullying and harassment".	Submitters overwhelmingly said that businesses and workers were unclear about what bullying and harassment was, and what was appropriate and inappropriate behaviour in the workplace. Some thought a legislative definition was required, while others thought the WorkSafe definition was sufficient.	Define in legislation. Communicate the definition more clearly and widely.
There is insufficient education, training, and awareness.	Submitters said that businesses and workers needed greater clarity about definitions, processes, and options for resolution. Submitters were clear that a separate approach was needed for sexual harassment. Some submitters suggested a need for a national awareness raising campaign.	National awareness raising campaign like "It's Not Ok" for family violence. Mandatory training for all staff and leaders. Targeted investment in Health and Safety Representatives. National directory of suitable, evidence-based training compiled and managed by government, and funding from government to deliver training and education. Specific training for bystanders on the "bystander intervention model".

There is a disconnect between businesses and organisations' policies and their practice.	Submitters frequently referred to businesses' policies not translating into practice, and policies about bullying, harassment and sexual harassment being "just words on a page."	Greater accountability on businesses. Create policies through engagement with workers.

The risks and incidence of bullying and harassment are mismanaged

Bullying and harassment is often managed as a human resources issue, where it would be more appropriately managed as a health and safety issue.	Several submitters felt strongly that bullying, harassment and sexual harassment needed to be prevented and responded to as a workplace health and safety issue, and not an HR or employment relations issue. Some said that the guidance and powers were all contained in the HSWA and just needed to be better used, with greater investment in Health and Safety Representatives and WorkSafe strengthening their presence and role in relation to psychosocial risks.	Issue clearer guidance that bullying, harassment and sexual harassment are health and safety issues. Invest in the Health and Safety Representative role through additional training and support. WorkSafe to do more work to support businesses to identify and manage psychosocial risks (through guidance, training and monitoring etc).
There should be more accountability on businesses and organisations.	Several submitters thought that businesses were not held accountable, either for failing to prevent bullying, harassment, and sexual harassment or for failing to appropriately respond. Many submitters wanted more, and harsher, enforcement action.	Mandated public reporting about claims and responses. Use of penalties such as fines for non-compliant businesses and prosecution by WorkSafe. Establish new national body with enforcement powers. Setting response to claims and/or establishing healthy cultures as KPIs or performance measures for managers. For sexual harassment, expanded powers of the Human Rights Commission and a National Inquiry.
Small businesses have more challenges.	Several submitters indicated the challenges for smaller businesses (especially those without internal HR departments) in responding to bullying, harassment, and sexual harassment. They thought smaller businesses needed greater financial and other support to improve.	Subsidies for training, or free training for workers and managers in small businesses. Establishment of an independent hotline for advice.

Building inclusive, positive, and culturally safe work cultures will prevent bullying and harassment

More investment is needed to intentionally build healthy and positive workplace culture.	Submitters talked about the importance of building inclusive, positive, safe, and culturally supportive workplaces to prevent harassment and bullying across their responses to a range of questions. Different methods were referenced, but they were clear that creating this type of culture had to be deliberate and be invested in from the "top down." Several submitters said that WorkSafe should be taking a greater role in supporting organisations to do this.	Specific guidance and training. Establish national standards of behaviour for New Zealand workplaces, like Canadian National Standard of Psychological Health and Safety in the Workplace or have workers and employers come together to develop, record, and promote respectful behaviour and embed them through the organisation (recruitment, performance review etc). Businesses prioritise communication and culture establishment skills in recruitment of managers.
The relative emphasis needs to shift to prevention and early intervention.	Submitters were clear that the current focus (including investment) of businesses and government was on response and not on prevention and early intervention, and this needed to change.	Access existing evidence-based training on prevention and creation of healthy workplaces. Government provided facilitation services to assist in the early intervention and resolution of workplace issues / greater access to early intervention and alternative dispute resolution services less formal than mediation.

Wider data collection and more New Zealand-specific research is needed

More New Zealand-specific research is needed.	Several submitters indicated the need for more research, particularly qualitative research and for priority populations.	Commission the Social Investment Agency (supported by Stats NZ) to undertake research. Quantify the social and economic burden of bullying in New Zealand. Undertake qualitative research to understand the stories of those who have experienced (or perpetrated) bullying, especially those populations experiencing disproportionate harm. Undertake research into the effectiveness of interventions, as this is lacking both in New Zealand and international literature.

A wider, systems-based approach to data collection is required.	There was a strong sense from submitters that the current data environment is inadequate for good monitoring and analysis.	Improve the range of indicators collected via the Household Labour Force Survey or the Statistics NZ Survey of Working Life.
		Collect complaints and case data in a more comprehensive and coherent way.
		Collect data from a wider range of sources, e.g., from witnesses, HR practitioners, mediators, court records, investigators, and organisational policy documents.
		More disaggregation of data, with a focus on priority populations.
		Use internationally validated scales to enable international comparisons.

Context to Bullying and Harassment at Work[2]

"The Issues Paper does not give enough emphasis and attention to workplace drivers of bullying and harassment such as over-work, workloads, vulnerable precarious and casual work. A major driver of bullying and harassment in the workplace is from power dynamics caused from insecure work, lack of respect and poor workplace culture. Work factors such as work overload, places workers at higher risk of workplace bullying, harassment." (Quote from a Union)

In response to the questions about the context of bullying at work in Aotearoa New Zealand, submitters indicated considerable support for clearer definitions of bullying and harassment; supported more New Zealand-specific quantitative and qualitative research; called for improved data collection; were clear that there were significant barriers facing workers who were subject to bullying or harassment, more so for Māori and vulnerable populations; and submitted about the need to build culturally supportive workplaces, however had few suggestions about how to do so.

Bullying and harassment needs to be more clearly defined

"We consider it to be imperative that, like harassment, racial harassment, sexual harassment and discrimination, there is a clear statutory definition of bullying." (Quote from a law firm)

Submitters indicated considerable support for better defining what is meant by bullying and harassment.

There were mixed views about the need to define bullying in legislation. Some thought the lack of lack of legislative definition of bullying did not make it hard to pursue legal action because current case law was that if a workplace policy does not have its own definition, the WorkSafe definition applies. Others felt strongly that it needed to be defined in legislation. Some submitters argued for strengthening the terminology used to recognise bullying as a form of violence.

Others considered that to collect more accurate data about the prevalence of bullying, we need to move away from self-reported subjective experiences of bullying in favour of a more 'objective' method with survey questions that specify behaviours associated with bullying.

More New Zealand-specific qualitative research is needed, including for priority populations

"We genuinely believe that while the amount of research available to explore the extent of workplace bullying in New Zealand is increasing and it is now widely accepted that we do have a problem, there is more that can be done." (Quote from an NGO)

The majority of submitters indicated the need for more New Zealand-specific research, and the Public Service Association (PSA) suggested that the Social Wellbeing Agency with the

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[2] Note: for ease of reading, for the remainder of this report 'bullying and harassment' is shortened to 'bullying', unless to do so would obscure the meaning. 'Sexual harassment' as a separate phenomenon remains spelled out in full.

support of MBIE and Statistics NZ be commissioned to do this work. The following topics had support:

- quantifying the social and economic burden of bullying in New Zealand
- qualitative research to understand the stories of those who have experienced (or perpetrated) bullying, especially those populations experiencing disproportionate harm
- research into the effectiveness of interventions, as this is lacking both in New Zealand and international literature.

Improved data collection is needed

"Many agencies, including both Central and Local Government, survey their constituents regularly. These surveys are often anonymous, only collecting data around where they live and their gender/ethnic makeup. Inclusion of questions around violence and harassment may garner more information around the drivers that currently are not known or undervalued." (Quote from an NGO)

There was a strong sense that the current data environment is inadequate, and suggested improvements focused on four areas.

1. Ground data collection methods and indicators in a systems approach. Several submissions focused on the idea of understanding bullying as part of the wider work system, where bullying can be understood as a symptom of workplace environments that cause harm to employees in other ways, i.e., through precarious work, high workloads, stressful environments, discrimination, and a high reliance on hierarchy. Submitters indicated more could be done to quantify these factors as contributing drivers to bullying.

2. Relatedly, this could be achieved through adopting a wider range of indicators and collecting complaints and case data. Several submissions suggested improving the range of indicators collected via the Household Labour Force Survey or the Statistics NZ Survey of Working Life – e.g., working hours, absenteeism, presentism, work-life balance, and experience of specific bullying behaviours. There were also recommendations to collect complaints and case data in a more comprehensive and coherent way, e.g., from 'first responder' organisations, as well as via MBIE's settlement process.[3] Other suggested sources for data collection included from witnesses, HR practitioners, mediators, court records, investigators, and organisational policy documents.

3. More disaggregation of data, with a focus on priority populations. There was a key theme about undertaking more granular analysis by being able to disaggregate data by population group, e.g., for Māori, disabled people, rainbow communities, and a call for more data available by industry group.

4. Use internationally validated scales. Two submissions noted that current data collection on bullying in New Zealand is not aligned to internationally validated measurement scales, which inhibits accurate international comparisons.

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[3] Note, "MBIE's settlement process" is verbatim from the submission.

Greater engagement is needed with Māori, who experience bullying disproportionately

"We strongly encourage MBIE and WorkSafe to put processes in place to work in partnership with iwi Māori, hapū and whānau to address workplace bullying, for Māori to determine with their communities the best way to do this, and to explicitly prioritise the elimination of inequities for Māori in the workplace in your work programmes and approaches." (Quote from an NGO)

There were few specific responses to the question about drivers for bullying experienced by Māori, and some submitters did not think that there was a need to build understanding specifically for Māori. Others were clear that to uphold Te Tiriti o Waitangi, MBIE needs to follow a process of engaging with Māori to answer this question, including with iwi and Kaupapa Māori organisations such as TOAH-NNEST[4]. Submissions also noted that it is not possible nor appropriate to suggest a general approach for Māori without consultation with individual iwi.

Several submissions noted that Māori are at increased risk of exposure to bullying at work, due to structural barriers such as societal racism, power imbalances and lack of cultural safety in the workplace. Submitters noted that support processes (including mediation and Employment Assistance Programme [EAP] support services) do not tend to incorporate or follow tikanga Māori, are constructed in a Pākehā system and are seen as culturally inappropriate. This extended to a lack of suitably qualified investigators with knowledge of Te Reo and tikanga, and conversations with Māori organisations raised the need for cultural competency tools for Pākehā in workplaces.

These structural barriers were also consistently raised as barriers to Māori seeking support or redress, including a fear of being stereotyped as a troublemaker, or being penalised with further reprisals.

While few submitters responded to the question about partnering with Māori, there was the strong sense that approaches taken by agencies were limited and inadequate. The submitters that did respond to this question recommended that MBIE prioritise and showcase ongoing collaboration with Māori as a matter of urgency, as well as resourcing existing Māori-led programmes.

New Zealand needs to build more culturally supportive workplaces

"To build culturally supportive workplaces, organisations and government need to build robust corporate social responsibility strategies together and stick to them. The government needs to motivate the population towards more inclusive workplace goals." (Quote from an individual)

In relation to creating culturally supportive workplaces for Māori, there were few specific suggestions, although some submitters indicated that stronger focus on te ao Māori approaches, Te Reo, tikanga, and whanaungatanga were important. Ensuring that workplace policies take Te Tiriti o Waitangi into account was also noted. Some submitters

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[4] Note, TOAH-HNEST = Te Ohaakii a Hine – National Network Ending Sexual Violence Together

considered that building culturally supportive workplaces requires a whole-of-society approach, involving intervention and buy-in from government, workplaces, and the public.

Cultural safety was noted by the Mental Health Foundation's submission and others to be a concept where non-Māori:

- examine themselves and the potential impact of their own culture on their interactions
- acknowledge and address any of their own biases, attitudes, assumptions, stereotypes, prejudices, and characteristics
- be aware that cultural safety encompasses a critical consciousness where employees and organisations engage in ongoing self-reflection and self-awareness and hold themselves accountable to being culturally safe in the workplace.[5]

Significant barriers exist for vulnerable groups

"It is difficult for people with mental and cognitive disabilities to raise concerns of unfair treatment, for fear of being further discriminated against." (Quote from an advocate)

A small number of people submitted in response to the question about partnering with vulnerable communities. Those who did submit indicated that much more could be done to partner with vulnerable communities, and that current models of engagement are of limited effectiveness. One submitter noted that effective consultation includes resourcing people for their time and expertise.

For all vulnerable groups, submitters agreed that a key way to build more supportive and respectful workplaces is to have more diverse people in leadership roles, which will require government and organisational support to achieve.

Submitters noted that there are some barriers to seeking support which are common across vulnerable communities. These barriers are listed below, and are particularly relevant for migrants, disabled people, LGBTIQ+ people, young people, and women:

- job precarity, fear of retribution, and fear of being misunderstood or not believed
- a lack of clear policies concerning harassment or diversity in their workplace, or working for organisations that do not have EAP
- a lack of a clear pathway to support – there can be confusion between what someone can access, when there are seemingly many options with a variety of criteria: under the Human Rights Act via the Human Rights Commission, WorkSafe, union representatives, HR, Netsafe, and private legal advice
- feeling marginalised, and that mainstream services will not or cannot meet their needs
- an inability to access ACC counselling due to very specific criteria for eligibility
- response systems and processes being traumatic for victims, especially those who have experienced sexual harassment
- structural and institutional racism and discrimination against disabled people and women were referenced as specific issues for those groups

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[5] Adapted from Medical Council of New Zealand statement on cultural safety.
www.mcnz.org.nz/assets/standards/b71d139dca/Statement-on-cultural-safety.pdf

- a lack of accessible resource and guidance for disabled people and migrants. In relation to disabled people for example, the WorkSafe website contains several bullying resources containing images without alt-text for vision impaired readers. For migrants there were concerns that information was not readily available in different languages.

Sexual Harassment

Responses to the questions about sexual harassment elicited the same themes from across the general bullying and harassment questions. This included the need for awareness raising and training; simple, accessible, and easy to use resources and guidance; greater access to support, mediation and resolution services (including a dedicated 0800 number); policies and practices being rooted in an HR framework when it should be managed as a health and safety issue; policies were inaccessible (high level and obscure); and the need for employers to lead from the top and intentionally create healthy workplace cultures. This section will focus on where there were differences or responses specifically applicable to sexual harassment in the workplace.

Stronger government intervention needed to support prevention and response to sexual harassment in the workplace

"All workplaces should be required to have policies on sexual harassment. Having model standards and policies on sexual harassment widely and easily available means that workplaces can easily use their templates and tweak them for their own environments. …Policies must be victim-centred." (Quote from a Union)

Submitters made numerous suggestions for how government could intervene to support businesses to prevent and respond to sexual harassment, from supporting workplace policy development to establishing greater accountability for businesses.

Improved reporting processes

Submitters commented that sexual harassment took place in the context of gender inequity and power imbalances in workplaces, and that it can be "extraordinarily difficult" to raise complaints of sexual harassment. They agreed that there was a stigma around talking about sexual harassment and "shame and cultural norms" which allow this to happen and go underreported.

Submitters referred to the need for greater trust in reporting systems, and that the formal processes that are triggered by making a report can be a barrier. One suggestion to increase trust was that public institutions should be required to publicly report annually on how many sexual harassment complaints they had received, how they responded to them and what response systems they have in place. Another referred to a mobile phone app that had been developed in the UK which allowed individuals to report incidents of sexual harassment.

Mandated sexual harassment policies

Several submitters said that sexual harassment policies should be mandatory for all workplaces in New Zealand. To support the development of these, several submitters said

that government should provide model examples and guidelines for businesses and that boundaries and behaviour expectations should be defined, with discussion in workplaces encouraged about what was appropriate.

Awareness, training, and education with a focus on prevention and early intervention

Specific to sexual harassment, there was a significant focus in the submissions about raising awareness, increased training and education focusing on prevention and early intervention, and investment in prevention programmes which have an existing evidence base. The following suggestions were made.

- There was consensus that sexual harassment was a specialist area, on the continuum of sexual violence, and should be treated as such.
- Several submitters said there should be more, or mandatory, training and education for all levels of organisations and schools. One submitter suggested that a national directory of organisations that provide this type of specialist, evidence-based training would be helpful.
- Several submitters suggested specific investment was needed in Health and Safety Representatives for them to understand their role in addressing sexual harassment.
- There was concern among submitters that there were no standards and consistency for this type of training, and a number of submitters said there should be guidelines to ensure consistency, a good evidence-base, relevance, and effectiveness. One submitter suggested MBIE or WorkSafe could provide free training to ensure access and consistency.
- Specific training and guidelines for bystanders and witnesses of sexual harassment were suggested. One submitter talked about their business' system of having designated and trained staff who could be approached for advice.

New / improved avenues for advice, guidance, and support

Several submitters talked about a need for new and/or improved avenues for advice, guidance, and support specific to sexual harassment. Submitters commented that many employers to do know what good looks like or understand current legislative frameworks.

There were references to current resources being "cumbersome" and one submitter commented that resources are spread across the Human Rights Commission, MBIE and WorkSafe. There were calls for dedicated sexual harassment support, and one submitter commented that the current MBIE employment line was not resourced to respond to sexual harassment, and specialist support was required.

Several submitters commented that changes were needed to the support available, and that support, mediation and resolution services should be more widely available.

Accountability for responses

Several submitters referred to a lack of accountability on employers to manage sexual harassment complaints well, and in line with their policies. Suggestions for increased accountability included mandated public reporting and having a specific voice and line of responsibility in the Human Rights Commission for sexual harassment.[6]

Investment in research, data, and a National Inquiry

Submitters said that a lack of reporting means that the extent of sexual harassment in New Zealand is unknown, and a National Inquiry should be undertaken (as has been undertaken

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[6] This submission was from the New Zealand Law Society.

by the Australian Human Rights Commission)[7]. Other submitters indicated a need for investment in research and data to understand the extent and nature of the problem and to have evidence about effective prevention and responses. One suggested that questions about witnessing this behaviour at work should be in staff surveys to enable data collection.

Sexual harassment policies exist, but are generally ineffective, not followed and/or low quality

"...most [businesses and organisations] have policies, but policies don't resolve the issue. There is widespread lack of knowledge on how to effectively implement policies and how to engage effectively." (Quote from a professional association)

There was consensus among the submitters that most organisations and business have policies and processes in place for responding to reports of sexual harassment. However, it was considered that the quality of policies varied to an unacceptable degree, given the high volume of good resources available.

Submitters also said that sexual harassment is often located in the same policy as other forms of harassment, whereas it should be dealt with separately. Several referenced policies being "merely pieces of paper" and "lip service" which were rarely backed up with effective training, and commented that regardless of the policy quality the normalisation of sexual harassment and workplace cultures that are untrusting of workers remained significant issues.

There needs to be a focus on creating healthy workplace cultures

"...the difficulty arises, where business and organisations have not fostered a culture in which people feel safe to speak up and raise their concerns." (Quote from a law firm)

As with bullying and harassment responses generally, several submitters commented that training was not the single answer and that a better approach was through the creation of healthy work cultures and environments. Some of these submitters said that research has shown that sexual harassment training can make a work environment less safe for women and minorities, and that it may not be the appropriate approach or response where there are active concerns about sexual harassment in the workplace.

Submitters agreed that it was "foolish" to assume that people knew what was appropriate and inappropriate behaviour at work, and that bystanders were unlikely to speak up because of fear of retaliation or believing that nothing would happen in response. Some said that sometimes workers do not know they have been sexually harassed, particularly within New Zealand's culture of "banter", and there needed to be more and simpler information (through multiple formats) about what sexual harassment was.

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[7] The New Zealand Council of Trade Unions, Women's Council suggested the National Inquiry.

What are the rights and responsibilities under New Zealand law?

There is limited understanding of the legislative frameworks and clarity is needed about what bullying is

"Government must provide regulatory standards that are clear, easy to understand and ensure protection and enforcement for those in need." (Quote from a union)

Submitters indicated that there was low awareness of legislative obligations and that the legislative framework is unclear, with a particular lack of understanding about how it should be implemented.

A number of submitters thought a legislative definition of bullying should be considered (as previously noted in the context section). This lack of definition has led to confusion about what bullying and harassment are, the difference between 'bullying' and 'harassment' and people's responsibilities for bullying. One submission was also concerned that legislation did not have clear protections for transgender people, and others thought the current legislation did not apply to a broad enough set of behaviours. Submitters suggested that employees have less awareness of relevant legislation than their employers, contributing to the existing power imbalance.

The legislative framework is fragmented, and New Zealand should ratify the ILO

"It [the legislation] is insufficiently clear and one has to navigate three pieces of legislation, which does not make it easy for organisations and workers to understand their rights and responsibilities." (Quote from a union)

The fact that the legislative framework is split across three pieces of legislation was referenced as contributing to a lack of clarity. The Public Service Association (PSA) made the point that the HSWA is modelled on Australian legislation, a review of which has highlighted a key regulatory gap for psychosocial risks. Several submitters commented throughout their responses that the framework in the Health and Safety at Work Act 2015 (HSWA) was often not used in preventing and responding to bullying, and it should be.

Submitters raised the need for New Zealand to ratify articles 9 and 10 of the International Labour Organisation's Violence and Harassment Convention (C190), particularly as it provided a useful framework for definitions, so that there was better guidance for responding to workplace bullying.[8]

Generally, organisations do not provide regular training or education about legal responsibilities and managing bullying at work

"…many businesses believe they provide training (usually during induction), but it does not meet a standard that is effective." (Quote from an NGO)

Most responses indicated that businesses either do not provide regular training about legal responsibilities, or that this training is insufficient. Several submissions noted that small

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[8] This was submitted by organisations that represent workers, such as E tū and the New Zealand Council of Trade Unions.

businesses are less likely to provide sufficient training compared to larger businesses, due to resource constraints. Other submissions suggested that there was a particular lack of training for managers which focuses on early intervention, creating inclusive workplaces and low-level interventions. The Advisory and Conciliation Arbitration Services in the UK was suggested as a model for government-provided training and education.

Prevention approach – how well are business implementing their legislative obligations?

Businesses are not managing bullying as a health and safety risk

"I believe that the Health and Safety at Work Act (2015) is the best legislation for preventing workplace bullying as a health and safety matter, rather than as an HR matter. In my experience, when HR are involved, then privacy requirements tend to shut down open discussion about workplace bullying and harassment. Rather than approaching this from an individual perspective, I would encourage approaching it as a workplace hazard that needs to be managed (as a risk management matter)." (Quote from an individual)

Most submitters said that businesses were not identifying and assessing the risks of bullying as part of their risk assessment processes. Some concluded that this meant most employers were not taking the necessary steps under the HSWA.

Several concluded that employers were not identifying and assessing the risks of bullying because they were not recognised as a health and safety risk. One submitter noted that this was despite a focus from WorkSafe on psychosocial harms, while others said that WorkSafe needed to do more and be better resourced to treat it as a health and safety matter. The majority of submitters were clear that bullying was a health and safety issue and should be managed under the provisions of the HSWA. It needed to be made clearer that psychosocial harm was included in the areas Health and Safety Representatives are responsible for.

The challenges for smaller organisations were identified, with submitters noting that smaller organisations did not have the resources (people and time) to conduct formal risk assessment processes and put appropriate mitigations and measures in place. One submitter suggested that small organisations be provided with some form of subsidy to allow them to do prevention work.

Another factor referenced by submitters was that businesses and organisations were more likely to have identified bullying as a risk if they have had to manage a complaint, and that many think they do not have a problem so also do not see it as a risk. This was linked to submissions that talked about businesses not seeing their culture as something they could actively control, so saw bullying as something to manage when it arose instead of something they could invest in to prevent.

Current risk management policies do not address the risks of bullying

"Whilst education resources help identify and assist workers/employers understand what appropriate and inappropriate behaviour is, must be part of any solution, this will be ineffective if the organisation's culture does not recognise that they have a problem and if they are resistant to change." (Quote from a union)

Most submitters did not think that risk management policies addressed the risk of bullying. Several said that policies were a good start, and an essential part of a prevention framework, however, were only worthwhile if they were followed and supported by the culture of the workplace. This was not seen to be the case.

Several submitters made the point that policies in place are not about addressing the *risk* of bullying (prevention) but were about how to respond when there was a complaint.

In response to the questions about whether risk management policies were communicated to staff, submitters generally talked about policies that responded to incidents of bullying and not about prevention. They therefore reiterated that policies were generally communicated, however staff were unaware of *processes* they should go through if an incident arose. Additionally, submitters did not think businesses were effectively engaging with workers to identify risks and develop processes to addressing bullying at work. While submitters acknowledged attempts that were made, such as employee surveys, they did not think they were well run or amounted to genuine engagement.

Businesses require significantly more support to understand and meet their legislative obligations

"It is clear that many of the issues identified in this submission could be better resolved through greater guidance and resourcing from government organisations. We need clear guidelines and expectations of minimal compliance; compulsory training for key staff (if not for all); and this needs to be resourced." (Quote from a professional body)

Submitters had a range of ideas about the further support and guidance that would be useful for businesses to strengthen their management of the risk of bullying.

Tools and guidance

Submitters saw a need for clearer and more accessible guidance, tools, and templates for businesses from government, including the definition of bullying, appropriate and inappropriate behaviour, how to build inclusive healthy workplace cultures, best practice policies and processes and risk assessment and management *specifically* for bullying. Submitters were clear that there should be centralised accountability in one government agency and that a central portal / repository would be desirable.

There were mixed views about the value of WorkSafe's current guidance. One submitter suggested that a public/private working group be convened to develop best practice guidance, while another said existing guidance[9] was useful but it needed to be purchased making it inaccessible. One suggested that New Zealand should have national standards of behaviour for workplaces,[10] while the PSA submitted that it would be useful to have guidance which includes both the HSWA and the Employment Relations Act pathways.

Education, training, and awareness raising

Most submitters said there was a need for more education and training in relation to legislative obligations, while also saying that education and training alone were only part of

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[9] Such as from the Institute of Directors New Zealand, Business Leaders' Health & Safety Forum and the Institute of Risk Management.
[10] Such as the Canadian National Standard of Psychological Health and Safety in the Workplace or the World Health Organisation Healthy Workplace model.

the solution to the lack of understanding of the legislative framework. Many did not think businesses were aware of the tools and training currently available. Submitters were clear that this education and training should be resourced through government funding and training outcomes evaluated.

Accountability / harsher penalties

Several submitters talked about needing greater accountability and harsher penalties, as opposed to support or guidance, with one individual submitter saying *"support and guidance doesn't work, you need tougher measures to tackle this."* Another submitter suggested the establishment of a national body with powers under the HSWA, HRA and ERA who exercise powers of enforcement. Others suggested higher fines and creating greater legal risk for employers would be the only way to stimulate action. Submissions about harsher penalties tended to be from individuals.

Access to expertise

A few submitters said that it would be useful for businesses to have access to external expertise. This would provide advice and guidance about prevention as well as responses to bullying and sexual harassment. One submitter suggested that this could be a service provided by government. A further suggestion was that, like the directory held by the Office of the Privacy Commissioner, MBIE could create a directory of mediators and facilitators so businesses could access expertise easily.

The role of worker representatives

Not many submitters responded to the questions about the role of worker representatives in assessing and managing the risks of bullying. Those who did responded tended to be private individuals, who said that worker representatives either did not exist in many workplaces, were not involved in this type of work, this work was not seen as part of their role because bullying was not seen as a health and safety issue, or it depended on whether they worked in "a culture of silence or a speak up culture".

Businesses require significantly more support to review and monitor their bullying risks

"In our experience, businesses have difficulty identifying who is responsible for doing this work if they are even aware that it is a responsibility. There is a struggle in knowing how to maintain confidentiality and show a duty of care to all staff, particularly in small businesses where relocating an employee during an investigation is not possible." (Quote from an NGO)

Submitters said that businesses did not have the right incentives[11] and resources to monitor and review bullying in their workplaces.[12] For example, submitters said that small workplaces have difficulty identifying who should be responsible for this work, even if they recognise that it is required, and then difficulty resourcing it.

Submitters also talked about the difficulties of monitoring, when success is often measured by no complaints being made, when that could also be an indicator of an issue.

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[11] The submissions about incentives for reviewing and monitoring their bullying risks did not provide specific detail.

[12] Most submitters were talking about incidence of bullying as opposed to monitoring the risk of bullying.

Ideas put forward for improving guidance for businesses about reviewing and monitoring their bullying risks included:

- what best practice looks like in monitoring and reporting, including how to survey staff
- what the risk factors for bullying are
- how to engage employees on what bullying and harassment are.

Submitters referenced that more support was required for employers to build healthy work environments and enhance manager capabilities. One submitter referenced the New Zealand Workplace Barometer project and the evidence it provides in this regard.

Submitters also referenced that there were a range of resources already available, such as the Mental Health Foundation's Working Well resources, however they currently were not well used. There was also reference to needing to upskill workplace health and safety professionals and target interventions to those sectors in most need.

Management capability could be lifted

"Managers need better skills and resources to prevent, detect and correct for situations where individual psychosocial distress arises. Focusing on a proactive duty to maintain a health workplace culture (and what that means and how it is achieved) is likely to be more productive than obsessing about "bullying"." (Quote from an individual)

The consultation question put forward three ideas for lifting management capability to identify, prevent and manage workplace bullying, including sexual harassment. There were a low number of specific responses to this question, however those who did respond were generally in support of the suggested approach.

In relation to the suggestion of stocktaking management programmes, submitters said that training should not stop at managers and all employees should also receive training, which should be followed by monitoring of impact and reporting outcomes to employees.

In relation to creating a proactive duty on workplace leaders to develop and maintain a healthy and respectful workplace culture, mixed views were received, with one submitter who thought that this already existed if the HSWA was read broadly. Other submitters said that this should be an inherent part of being a manager which currently was not considered important, with one saying this should be driven by business not by government. Several said KPI and reward schemes for outcomes relating to healthy workplace cultures should be put in place.

The New Zealand Law Society said that any proactive duty would need to be carefully drafted, in that it should be caveated with a reasonableness component, supported by appropriate guidance, and only targeted at leaders who have the ability to influence positive change.

In relation to tracking problematic sectors, one submitter suggested that WorkSafe should have a database of all sexual harm cases and reports to better identify high-risk workplaces, and for the Human Rights Commission or WorkSafe to have the power to initiate investigation into a workplace. Another said that tracking should be used for educational purposes and not for enforcement. This submitter also discouraged using complaint

numbers as a sole monitoring mechanism, as high complaint numbers may simply reflect a 'speak up' culture or a healthy complaints resolution process within a business.

Response – what options are available to workers who experience bullying at work?

"The avenues for redress and accountability available for complainants are not fit for purpose and rarely result in an outcome that upholds the mana of the victim" (Quote from a union)

Raising issues and early response

"Many employers either do not have policies, or they are not proactively disseminated to employees." (Quote from a professional body)

In general, workers do not know how to raise bullying issues at work and do not feel supported to do so

Most submitters indicated that workers are unwilling or unable to raise bullying issues. The referenced reasons for this were as follows.

- Fear of retribution. Some submitters thought workers could identify their options and the best approach, however they wouldn't pursue it due to fear of lack of support and retribution.
- Complexity of the information and guidance. In reference to the available information and guidance, submitters said:
    - documents were long and there were inconsistencies between legislation and supporting guidance from MBIE and WorkSafe
    - there was limited practical guidance on how to navigate the different pathways
    - guidance and support are perceived as being aimed at employers rather than employees.
- Lack of resources. In small organisations submitters said there may be a lack of resources that assist workers to identify and select the best approach, whereas one submitter said for large organisations workers may be overwhelmed by the level of escalation instigated by HR departments (escalation by HR departments is an issue cited in responses elsewhere). Some referred to small organisations not having HR services in house.
- Few external support options. There were few options for external support in the early stages of trying to raise an issue, and a lack of restorative approaches to resolution.

There were mixed views on whether processes for raising issues are sufficiently clear for employees. Gaps noted were lack of clarity about who to raise the issue with, especially if the bullying or harassment involved their manager, and a lack of dedicated resources to respond to issues raised.

Workers and employers require more support and guidance to raise and manage issues in their workplace

Submitters provided a wide range of suggestions to improve support for workers to be able to raise issues, and to raise issues earlier. These included:

- access to effective early intervention services and alternative dispute resolution pathways that are less formal than mediation
- promotional campaigns and clear guidance about what constitutes bullying
- a "hotline" with trained people available to provide independent advice to workers and employers
- simple and consistent guidance and templates for workers about how to raise concerns, where to get help, processes and what was going to happen
- providing more support and funding to NGOs, unions, and mental health experts, to enable continued and expanded education, support, advice, and specialist services (including training for managers about how to manage disclosures)
- increased guidance and support from MBIE (in the form of online training courses, best practice guidelines, promotion of mediation services) for employers to be able to take informal steps to resolve issues, where appropriate
- establishing a specialist agency with powers to protect the complainant from adverse conduct and coercion and act if the Person Conducting a Business or Undertaking (PCBU) fails to
- developing policies and processes in consultation with workers, ensuring they are 'living' documents with regular reinforcement and training
- the PSA suggested that MBIE fund unions' delegate training to enhance workers capability to raise concerns and support each other when issues arise.

Workplace representatives are not sufficiently trained or resourced

Responses generally indicated that workplace representatives (Health and Safety representatives and committee, HR personnel and unions) are not suitably trained or supported to assist workers to raise concerns. This mirrors submissions about workplace representatives' abilities to identify bullying risks. Four key themes emerged in the submissions about workplace representatives.

1. The quality of support workplace representatives offered workers depended on how much support they received in their roles from management. There was a perception that many workplace representatives lacked impartiality and were risk averse, focusing on making the issue go away rather than resolving the issue for the worker.
2. Representatives do not receive appropriate training and support to respond to the number of complaints in a workplace.
3. Representatives did not necessarily have the required authority to satisfactorily address bullying complaints.
4. Health and Safety Representatives were underutilised.

Improvements are required in the investigations process

Many submissions pointed to further training and guidance needed from MBIE about investigations processes, and how to assess conflicting perspectives. Several submissions suggested that the government should establish an investigative arm, providing

independent and impartial investigators. Submitters did not provide detailed suggestions about how this would operate within current arrangements.

In relation to independent investigators, submitters said that their quality varies and there is a perception that they favour employers. This results in a lack of trust in the investigative process and their conclusions from workers. Submitters also noted that there is no oversight of the employer to ensure they implement recommendations made by the investigation. One submitter said there should be an accredited and subsidised panel of qualified independent investigators that could be accessed.

Investment is needed in lower-level, restorative dispute resolution processes

While some submitters were sceptical that bullying issues could be resolved "at a low-level",[13] several submitters said there needed to be more access to less formal restorative resolution processes. These restorative processes would be informal, independent, and early. Some submissions suggested an increased use of mediation to resolve issues before they progress and for current mediators to be trained to deal with lower-level issues in workplaces.

Submissions strongly suggested that external and independent facilitators should be used to resolve low-level disputes. An independent facilitation service could provide employees with a means of talking through issues with a third party, and record all actions and steps taken. Such a facilitation service could be attached to the current mediation services offered by MBIE; MBIE could also potentially establish a specialist team trained in restorative approaches.

The current system is fragmented and therefore difficult to navigate

Submitters overwhelmingly said that the current regulatory system is fragmented, making pursuing a bullying or harassment issue difficult for workers. They pointed to the lack of a whole-of-government approach to bullying, including inconsistent policies, language, and processes. One submitter suggested a full review of the legislative framework, and there was also a perception that different regulatory actors pass problems to each other with most taking a 'hands off' approach rather than an active role.

The employment relations pathway – general

"In our experience, most people would rather walk over hot coals than raise a personal grievance. Grievances are often strongly resisted by employers who automatically take a defensive approach – acting in the perceived interests of the organisation rather than working to establish the facts or looking to uncover further wrongdoing. Often the resources of the organisation are pitted against the individual." (Quote from a union)

The Employment Relations Pathways for responding to bullying are not working well

Submitters indicated that there a few aspects of the pathway which work well. Mediation was one aspect that some submitters raised as working well, particularly if a skilled mediator is used. Free access to information and the range of relief avenues offered from informal to formal was considered by some as effective.

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[13] This submission was mainly from private individuals.

The following issues were raised.[14]

- A victim focus, which would be international best practice, is not taken. Several submitters described the lack of closure and healing for victims as a key issue, as well as victims being re-traumatised by the response process (including because of lawyers' actions) and fearing retribution.
- The pathway is transactional. In relation to mediation the financial focus was referenced here, which leaves both parties of the complaint acrimonious.
- If mediation is not successful, cases go unresolved.
- Employees can only claim against their employer, rather than the employee who is bullying them.
- Employers are avoiding accountability through negotiated settlements which are subject to confidentiality.
- There is a lack of Kaupapa Māori approaches to receive and resolve complaints, te reo Māori capability and tikanga knowledge. For example, during COVID-19 alert levels where mediation was not able to be held in person, some Māori organisations felt uncomfortable with phone mediation due to a preference to meet kanohi ki te kanohi (face to face).

To address the issues raised most submitters said the pathway required structural change. Suggested structural changes included:

- changes to the Employment Relations Act to include personal grievance options for bullying and to allow individual employees to be a co-defendant in personal grievance matters
- increased compliance and enforcement powers including more fines and penalties for employers
- creating an independent entity with investigative powers
- more powers and structures focused on bullying prevention. The Australian Fair Work Act 2009 was suggested as a potential model
- an early disputes resolution service that is timely, cost-effective, and non-stressful.

Mediation

"I have great respect for the MBIE mediators and find the service effective but in cases of bullying and sexual harassment the service doesn't fit well." (Quote from an NGO)

There are barriers to accessing the current mediation system

Submissions strongly indicated the current online application is a significant barrier for accessing mediation. Concerns were raised about people without internet access and/or limited English language skills being unable to access mediation. Linked to the online application, submitters said that the requirement to create a RealMe account was also a barrier. Submitters said that the requirement to provide verification documents adds an unnecessary layer of formality and deters people who do not have access to the required identification.

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[14] On the whole these issues were submitted by NGOs who represent workers, professional bodies and unions.

As well as the barriers caused by the online application process, submitters said the system was under-resourced, and referenced a range of factors that could inhibit ability and willingness to access mediation services[15] which are listed below.

- Socio-economic status. One submission noted that the ability to access quality legal representation creates a power imbalance, with employers more likely to be able to afford legal advice. Employees who are financially insecure might not be able to afford to take leave to attend a mediation.
- Immigration status. Submissions indicated that employees on visas are less likely to engage in mediation services if their visa is tied to their employment. These employees are concerned that the process may affect their immigration status.
- Language and literacy barriers. Language barriers (although interpreters are available) and a lack of literacy may also discourage workers from raising issues.
- Gender. A submission noted that women are less likely to access mediation services as they are less likely to complain about a bullying issue, and when a complaint is made by a woman, it is less likely to be actioned appropriately by an employer.

In general, submissions indicated that phone mediation is not preferable as it is harder to read body language and may be less likely to resolve issues. However, many submitters considered that phone mediations may be preferable if the parties are not comfortable in the same room, or the dispute is based on a misunderstanding. In general, submitters thought that video conferencing would be preferred over phone mediation.

When mediation is accessed, there are lengthy delays

Some submitters thought that the current Employment Mediation Services was working well. Others said that it needed greater investment and one was concerned that mediators could pressure parties into reaching an agreement. Some submitters thought that mediation was too formal, and ineffective (especially if the issue is within a team or between employees).

Lengthy delays in accessing mediation were referenced,[16] with mixed views as to whether these delays have been exacerbated by COVID-19. Particular reasons noted included varying access by geographic location and limited dates made available.

Challenges with legal representation

Submissions noted that legal representatives in mediation processes tend to aggravate situations, which further weakens the relationship between parties. There was additional concern about no win/no pay representatives who may be incentivised to push for a financial settlement rather than focusing on repairing the relationship between parties, and that employers may engage lawyers to avoid accountability.

Submitters thought that parties needed clear communication that legal representation was not compulsory, and parties needed to be better assured that processes would be fair if they proceed without legal representation. One submitter said that the Family Dispute Resolution processes could provide a suitable framework.

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[15] Note, a low number of submitters responded to this question.
[16] This was by a range of submitters, including the New Zealand Law Society and the ADLS Employment Law Committee.

Submitters said that MBIE should consider using alternative venues if an employee was unrepresented, such as marae-based mediation services.

For non-legal representatives, some submissions considered that they did not always have the required legal knowledge to adequately support an employee.

Non-disclosure and confidentiality agreements cause issues, but may be required in some form

Submissions gave opposing opinions on the issue of non-disclosure and confidentiality agreements. Several submissions pointed to significant issues, including:

- allowing perpetrators of bullying to remain unaccountable and continue their behaviour
- limiting victims' ability to talk about their issues is a barrier to healing and moving on
- restricting employees' ability to explain work absences and departures to future employers.

However, submitters also pointed to risks if current confidentiality measures were restricted. At present, confidentiality arrangements allow both parties to partake in a full and frank discussion to resolve the issue without fear of retribution. If these arrangements were removed, discussions may be more reserved.

The Employment Relations Authority and the Employment Court

"Unless a party has union support it is unlikely an individual will commit the financial resources necessary to take such action. Legal costs are largely unable to be recovered. There are very few employees who would feel confident enough to proceed unrepresented." (Quote from a professional body)

Requirements for raising complaints are inappropriate and unclear

Many submitters considered that the grounds for raising a grievance for bullying were unclear. Submitters noted that most employees have limited knowledge of the process for raising a grievance for bullying, or the response they should expect from their employer. Additionally, several submissions were not clear that bullying was grounds for a grievance.

Submitters were clear that the 90-day limit for raising a personal grievance for bullying was inappropriate. The main reasons for this were:

- the cumulative nature of bullying/harassment, which may take time for the victim to identify
- the traumatic nature of bullying/harassment (particularly sexual harassment) may result in victims being unable to come forward within a short amount of time.

A small number of responses considered the current limit appropriate due to the difficulties in investigating historic cases of bullying. Some of these issues include limited memory of witnesses and lack of organisational records. Submissions also noted that the current 90-day limit allows for employers to address a concern or issue as early as possible. One submitter referenced the ability to bring a claim outside the 90-day limit in exceptional circumstances, and that there was precedent for events outside the 90-day limit to be considered as part of a "course of conduct."

ERA and Employment Court processes are not appropriate for sexual or racial harassment

In relation to raising a sexual or racial harassment claim with the ERA, some submitters considered the current grounds appropriate. However, several submissions raised issues including:

- the definition of sexual harassment is quite limiting, particularly given the 90-day constraint
- the requirement to raise the issue with the employer and await response is potentially a barrier for workers to raise a complaint, particularly vulnerable groups and where the employer or management is the perpetrator.

Submitters universally agreed that employees who experience sexual or racial harassment do not feel able to escalate through the ERA or Employment Court. Submitters referenced two key barriers:

- Cost. Many employees do not have the resources.
- Lack of confidentiality in the process. An employee may have to incur significant costs to confirm the non-publication of the case and this confirmation is provided towards the end of proceedings.

The employment relations pathway can be re-traumatising and not supportive of the complainant

Submissions provided mixed responses about whether cross-examination of witnesses in the ERA was appropriate. Some submissions said it is necessary for natural justice, and that evidence in relation to serious allegations needs to be properly tested. Others were clear that it was inappropriate because it re-traumatised complainants, particularly in sexual harassment cases. Most submitters who said cross-examination was necessary supported some form of mitigation for the risk of re-traumatisation. Submissions suggested that the Sexual Violence Legislation Bill and current processes in the Human Rights Review Tribunal could provide guidance. The following were also suggested:

- guidelines and/or a framework to govern how cross-examination of complainants is carried out
- a person accused of sexual harassment or bullying should not be permitted to question a complainant directly
- ERA members should receive training to ensure cross-examination does not cause more harm
- inclusion of a security guard to reassure employees of their safety
- employees should be made aware of the checks and balances in place to mitigate re-victimisation, so they are reassured of their safety.

There *may* be a need for increased governance of representatives

Some submitters considered that lawyers were already bound by extensive regulation and professional codes and no further governance was required. Others said increased governance of legal representatives was needed, with one submitter suggesting that lawyers should be regulated by MBIE in the same way as immigration lawyers and advisors.

Submissions suggested MBIE should increase governance measures for non-lawyer advocates to regulate their training, conduct and qualifications. Some suggestions for a

possible governance framework included a professional body, requirements for representatives to be licensed, and specific complaints procedures.

More support is needed to employees without representation

Submissions generally considered parties without representation face significant challenges in pursuing the employment relations pathway. Unions often provide support where people do not have legal representation, and one submission from the New Zealand Police Association said without their support people would not be able to pursue the employment relations pathway. Some submissions noted that the ERA took active steps to support unrepresented parties yet there was a sense from most submissions that unrepresented parties were still disadvantaged compared to those with representation.

Remedies are inadequate

Responses mostly considered current remedies to be inadequate. Remedies were considered to be too low compared to the resources required to pursue this pathway and the trauma resulting from the bullying. Submissions also pointed to the transactional nature of remedies as they are financial and do not address the underlying relationship issues, which remain unresolved.

Another key theme was that the amount awarded in remedies between the ERA, Employment Court and criminal prosecution are inconsistent. A lack of transparency between these pathways makes assessment of the appropriateness of remedies difficult.

The cost of the Employment Court makes it an inaccessible pathway

Many submissions indicated that the cost of going to the Employment Court is prohibitive and referenced that it was an adversarial pathway. The pathway was generally considered to be too complicated for employees to pursue unrepresented so significant resources would be required to access legal representation. Delays in proceedings was also considered an issue by some submitters.

WorkSafe

"It is important for Government to provide appropriate funding for WorkSafe to provide high quality advice, inspection services, monitoring and evaluation of the effectiveness of settings at work. WorkSafe needs to be able to effectively respond to health risks at work (including psychosocial and behavioural risks) as well as safety risks." (Quote from a union)

WorkSafe should take a greater role in bullying issues in the workplace

Several submitters said that WorkSafe should take a greater role in bullying issues in the workplace because it should be managed as a health and safety risk instead of an HR issue.

Specific suggestions for WorkSafe are as follows.

- Increase enforcement activity and treat bullying in the same way it manages other workplace safety issues like injuries and accidents. This could include requiring notifications, national standards for complaints handling, investigating identified workplaces,[17] prosecutions for serial bullies and negligent workplaces, monitoring and reporting on businesses, and issuing infringement notices.
- Take a greater role in supporting workplaces to build healthy, positive, and safe cultures.
- Review the WorkSafe definition and people's interpretation of "bullying" as the current threshold is too high, placing undue burden on the victim to provide evidence.
- Improve its education and guidance role including a hotline for workers to contact at the early stages of a bullying issue.
- Provide more information to employers so they can handle bullying complaints more effectively.
- Improve staff capability and capacity. Some submissions, including from the PSA, suggested that currently WorkSafe is under-resourced and understaffed.
- Better communicate its role. This includes an advertising campaign to raise WorkSafe's profile and provide a richer range of supporting resources for workers (including managers) and employers.

Some submitters supported the ERA and Employment Court notifying WorkSafe of ongoing safety risks. Other submitters were sceptical that workplaces would take any actions required by WorkSafe seriously due to its lack of enforcement powers.

Human rights pathway

Most responses indicated that the human rights system is not working well for those who have experienced bullying or harassment with a discriminatory basis. Some submissions questioned why this pathway exists, as it is not clear that it benefits many victims of bullying. This is due to:

- the pathway being too time consuming, with lengthy delays, which have been compounded by Covid-19 restrictions
- employees being advised against this pathway as it is too difficult to navigate without representation
- a strong focus on the individual without consideration of potential systemic failures of the employer, and the behaviour of the employer in addressing the complaint.

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[17] The Victorian model was referred to as an example of best practice here.

Survey Findings

Overall, the survey findings were consistent with the longer-form submissions and the same themes were prevalent.

Survey Cohort

There were 1314 responses to the survey. Just over 80% of the respondents were workers, 8% responded on behalf of a business or organisation (employers), and 11% were classed as "Other" (e.g., unemployed, or self-employed people). The most well represented industries in the survey were education and training, health care and social assistance, public administration and safety, and professional services. The majority of the respondents (75%, n=837) identified as female.

87% of workers (n = 1031) who answered the survey had been involved (as a victim or support person) in bullying or harassment. Of these[18]:

- 87% experienced ongoing or repeated bullying or harassment
- 10% experienced racial harassment. Respondents who did not identify as New Zealand European were more likely to experience racial harassment[19]
- 9% experienced sexual harassment. Respondents who identified as female were more likely to experience sexual harassment than respondents who identified as male.[20]

Support People

Only about half of the respondents experiencing bullying got help from another person (49%, n = 869). Most of these respondents got help from a co-worker (55%), with some getting help from a friend or union (35%, 32%). A quarter of these respondents got help from family or an external advocate (26%, 25%), with only 22% of these respondents involving a lawyer. The majority of these support people provided general support to the person experiencing bullying (81%) and advice on next steps (66%), with just over half representing the person experiencing bullying in relevant meetings.

Bullying Policies

Overall, most respondents were aware of their workplaces' bullying policies (60%, n=1149). However, 24% of respondents' workplaces did not have bullying policies, and 16% of respondents did not know whether their workplace had such policies. Additionally, of those workplaces that had policies, only 31% (n=567) provided dedicated training. Unsurprisingly, workers who experienced bullying were more likely to know whether their workplace had bullying policies.[21]

Effectiveness of policies

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[18] non-exclusive; respondents were able to select more than one answer so the total will exceed 100%.

[19] X^2 (1, N=532) = 87.52, p < 0.00001. More granular results are not avaliable due to small sample sizes.

[20] X^2 (1, N=635) = 10.31, p < 0.001324. Results for gender diverse people are not avaliable due to a small sample size.

[21] X^2 (1, N=950) = 17.04, p = 0.000037

A large majority of respondents (88%, n=1024) thought workplace bullying and harassment policies work 'not that well' or 'not at all well',[22] with over half (53%) believing that these policies did not work at all well.

Workers who experienced bullying were more likely than those who did not to think that bullying policies were ineffective. [23] Only 6% (n=755) of workers who were bullied thought that policies were effective[24] compared to 32% (n= 89) of workers who were not bullied. However, employers are more likely than workers to believe that policies are effective at preventing bullying[25], with 9% (n=844) of workers believing that policies were effective compared to 45% of employers (n=75).

Many respondents thought that policies were not effective because of low awareness and the fact that there can be no clear processes to reinforce and support the policies, particularly if a complaint is raised. A prevailing theme was that policies needed to be underpinned by a culture that did not tolerate bullying; respondents noted that policies alone cannot not deal with the power imbalances and fear of reprisal that prevent many people from raising a complaint. Respondents commented that policies can make the process of raising a complaint exceedingly formal, and does not protect anonymity, meaning that people may be less likely to raise a complaint.

A point raised by employers was that businesses are often not aware of their legislative responsibilities or options for dealing with bullies, so do nothing for fear of doing the wrong thing. This corroborates the findings from the other submissions.

Raising a complaint

Only 24% of workers who were bullied or harassed (n=752) felt comfortable to raise a complaint early. Key factors for these respondents included supportive managers and colleagues, clear processes for raising a complaint (including information about what to expect once a complaint was raised), and personal assertiveness and confidence. Respondents who were not comfortable to raise a complaint early either did not feel supported to raise a complaint (e.g., they feared retaliation or did not think their complaint would be taken seriously) or were being bullied by senior management so did not know how to make a complaint.

Resolution

Only fiver percent of workers (n=731) were able to resolve the issue with their employer directly. The remainder of respondents relied on their union, friends and colleagues, general internet searches, MBIE/WorkSafe, advocacy groups (such as CultureSafe), lawyers, or their doctors. 34 (approximately five percent of 731) respondents did not seek resolution at all and left their jobs.

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[22] Policies worked "not that well" or "not at all well".
[23] X^2 (1, N=844) = 72.14, p < 0.00001
[24] Policies worked "very well" or "quite well".
[25] X^2 (1, N=919) = 90.10, p < 0.00001

Mediation

26% of workers who were bullied (n=717) went to mediation.[26] Just over half of these workers (n=183) felt that the mediation was not effective at all, and another quarter felt that it did not work that well. Overall, 78% of workers were not satisfied with the result of mediation. On the other hand, employers were more likely to be satisfied with the result of mediation than workers.[27]

Both workers and employers had a broad range of experiences with mediation; some felt that it was fair and balanced, but others felt that process was biased towards the other party. Many noted that mediation requires buy-in from management and HR to be effective in reducing the bullying, otherwise it can feel that people are being pushed to a pre-determined solution. Some workers felt re-traumatised by the mediation process.

Improvements suggested by respondents included publicising independent mediation more, better training for mediators so they can better deal with challenging situations, and offering more informal mediation in early stages, as it can be stressful when people are already in a stressful situation. Some respondents also noted that mediation does not protect tikanga.

Employment Relations Authority

9% of workers who were bullied (n=703) had their case go to the Employment Relations Authority (ERA). The majority of these respondents (both workers and employers)[28] were not satisfied with how the ERA resolved the issue. Major concerns with the ERA included: delays, bias towards employers, lack of name suppression, the adversarial nature of the process, and difficulty getting witnesses willing to testify. The upfront expense for representation was another concern for workers, which combined with the length of process means that some respondents were not able to complete the process.

How could the Government help to better prevent and respond to bullying at work?

An overarching theme of the survey responses was that the government should be raising awareness about bullying and harassment and taking steps to improve what many respondents see as a broader culture of accepting unacceptable behaviour.

More specifically, many respondents noted the need for better definitions of what bullying is, with harsher consequences. They also thought that an independent body to investigate bullying (or increasing WorkSafe's mandate) would be useful. In that vein, a common theme in the responses was to emphasise the harm created by bullying as a health and safety issue, and therefore treat prevention of bullying as a responsibility under the Health and Safety Act.

Respondents also thought that the government should provide similar support for bullying victims (e.g., for burn-out and post-traumatic stress) as they do for workplace accidents. This was especially the case if they have been through a mediation process or the ERA.

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[26]NB: it was unclear whether this question and the responses refer to MBIE mediation or internal mediation in respondents' workplaces.

[27] X^2 (1, N=216) = 17.97, p = 0.000022

[28] No numbers avaliable here due to limitations of survey construction.