

**Draft Proposal for a
Victorian Health
Worker Serial Bully
Exclusion Scheme 2017**



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About the Health Workers Union-Victoria

The Health Workers Union has a proud history since its inception in 1911 of fighting for workers' rights and better work conditions in Victoria's hospitals and other healthcare facilities. We are a strong and growing union that aims to use its combined power to improve working conditions and to maintain reasonable wages and benefits for our members. The Health Workers Union (HWU) of Victoria represents a broad spectrum of workers employed in hospitals, pathology, dental, aboriginal, disability and aged care services.

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Background

The Health Workers Union (HWU) has been participating in the Bullying and Harassment in Healthcare Advisory Group 2016. The Bullying and Harassment in Healthcare Advisory Group 2016 is chaired by Dr Helen Szoke.

The above-mentioned advisory group was established due to the widespread culture of Bullying and Harassment within the Public health sector. In particular, during 2015 and 2016 numerous workers from the Ballarat Health Service mental health unit, medical staff and numerous members of the Health Workers Union and other unions came forward and made complaints about the workplace culture at Ballarat Health Services. In particular, they disclosed a quagmire of inappropriate behaviour, bullying, favouritism and harassment.

In response to these allegations, multiple investigations were commissioned and two hundred workers were interviewed as part of the review commissioned by Victorian Health Minister Jill Hennessy. In its findings, staff reported a culture of discrimination, where workers were yelled or screamed at by supervisors during handover, during team meetings, and even in front of BHS patients.

Our submission will focus on the establishment of a Serial Bully Exclusion Scheme for the Victorian Public Sector. The HWU Serial Bully Exclusion Scheme for the Victorian Public Sector will incorporate the principles of Natural Justice and a right to a fair hearing.

Unfortunately, the Bullying and Harassment in Healthcare Advisory Group 2016 Chair would not accept our submission or include it in the final report to the Minister for health. However, the HWU representative was allowed to circulate this submission to the Advisory group members!

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Definitions:

Bullying & Harassment:

The HWU has chosen to use the Safe-Work Australia's definition of workplace bullying:

“Persistent, unreasonable and repeated negative behaviour directed towards a worker or group of workers that creates a risk to health and safety”.

Unreasonable behaviour includes victimising, humiliating, intimidating or threatening. Whether certain behaviour is unreasonable can depend on whether a reasonable person might see the behaviour as unreasonable in the circumstances (The Fair Work Ombudsman, June 2016).

“Behaviour” includes actions of individuals or a group, and may involve using a system of work as a means of victimizing, humiliating, undermining or threatening

Examples of bullying include:

- Intimidating
- behaving aggressively (includes verbal threats or blackmail)
- teasing or practical jokes (being picked on)
- pressuring someone to behave inappropriately (includes frightening someone into doing or not doing something)
- excluding someone from work-related events or
- being routinely overworked
- Excessive scrutiny of someone's work
- consistently denied career or training opportunities
- Unjustified isolation or exclusion from workplace activities

Senior managers: The most senior group of managers in your organisation (i.e. the CEO and the people who report directly to them).

Manager: The person in your workgroup or team that you report to on a daily basis. If you work for more than one team/work unit, please think of the manager with whom you work most frequently.

Workgroup: The direct workgroup or team where you spend the largest proportion of your time at work. If you work for more than one site, please think of the worksite that you do most of your work.

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Workplace: The place where you commute to on a daily basis to complete your work. For example, Regis the Grange Aged Care-Rosebud West, Darebin Community Health Centre-Preston campus, RMH-Parkville Campus, St John of God Pathology- Morewell Campus, St. Vincent's Private Hospital-Kew Campus).

Organisation: The organisation in which you are employed (For example, The Royal Melbourne Public Hospital, St. John of God Pathology, Authority, St. Vincent's Private Hospital, Darebin Community Health Centre, Regis Aged Care Pty Ltd).

Human Resources Department (HRD): The department of a business or organization that deals with the hiring, firing and disciplinary actions, administration and training of staff.

Human Resources worker (HRW): An employee of the human resource's department of a particular organization.

Human Resources Manager (HRM): The person in the Human resources department that HR workers report to and that makes the ultimate decisions in relation to cases before the HR department.

Patient/Client/Consumer(s): The person(s) you provide advice, care or service to (internal or external to your organisation).

Chief Executive Officer: Is the highest ranking executive in the company that you work for, whose main responsibilities include developing and implementing high-level strategies, making major corporate decisions, managing the overall operations and resources of a company and so on.

Managers Inner Circle of Friends: All leaders have what can be described as an "inner circle" of people who they trust, depend upon and confide in. They can be members of their leadership team, advisors, peers and others. However, in many instances, some managers are more prone to playing favourites. Chosen favourites can range from someone being mentored by the manager, a friend or shopping buddy to someone with whom the boss is having an affair with. Your managers inner circle of friends are more likely to get plum assignments, getting insider information, get promoted, or are allowed to do things that other workers would be punished for.

Randomized Controlled Trials:

They are the gold standard of scientific testing for new medical interventions. They have become the standard that must be met by pharmaceutical companies in the process of working out what level of efficacy and safety can be achieved by an experimental drug.

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The three words for this method of clinical testing - randomized controlled trial (RCT) - represent important elements of the scientific design. For the purpose of the Victorian Public Health Service Serial Bully Exclusion Scheme (VPHSSBES) will focus on the definition of randomisation.

- Randomized - the decision about whether a patient in the trial receives the new treatment or the control treatment is made randomly!

Randomization is important in order to prevent a conflict of interest or bias. If the decision about choosing a B&H Investigation company or Registered Training Organisation is not decided by random, the HR workers or managers can find themselves in a conflict of interest when it comes to choosing the abovementioned services. Additionally, the companies that provide these services are generally driven by profit and will be inclined to behave in a way that is favourable to the Public health service that is paying their fee.

Natural Justice:

In English law, natural justice is technical terminology for the rule against bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*). While the term natural justice is often retained as a general concept, it has largely been replaced and extended by the general "duty to act fairly".

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Introduction

Our submission has been informed by a review and examination of Victorian and Australian figures of Bullying and harassment within health settings. Information was sourced from the Australian Bureau of Statistics, the Victorian Auditor General's report into Bullying and Harassment 2016 and Work-safe Victoria and Safe-work Australia.

In order to ensure that this submission represents the diversity of the HWU membership, workers' from a broad range of occupational backgrounds that work within metropolitan, rural and remote areas of Victoria's health system were invited to provide verbal or written feedback to the HWU. We have included their feedback in our submission. These individuals are representative of health workers nationwide and we thank them for taking the time to share their stories.

The Health Workers Union is concerned about the mental and physical health of our members. According to the second annual national statement issued by Safe Work Australia titled "Psychosocial Health & Safety & Bullying in Australian Workplaces 2015' (based on accepted workers compensation claims), Hospitals and Other Health Care Services, such as aged and disability services, have the highest frequency rates of harassment and/or bullying compared to other industries.

These findings were supported by the Victorian Auditor-General's Investigation and Report into Bullying and Harassment in the Health Sector March 2016. In his report, the Auditor general made the following comment "I found that health sector agencies are failing to respond effectively to bullying and harassment as a serious OH&S risk. They are not demonstrating adequate leadership on these issues, which is illustrated by the fact that the audited agencies do not understand the extent, causes or impact of bullying and harassment in their respective organisations, even when such issues have resulted in significant media attention and reputational damage".

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These shocking revelations were also supported by the Quarterly Newsletter published by The Royal Australasian College of Medical Administrators. In this article titled “The Impact of Bullying in Health Care” they state that the health care profession has one of the highest levels of bullying in the workplace.

They go on to report something that we all know! Being bullied at work has ramifications that cannot be understated! It impacts the individual victim’s health and their immediate family, it negatively effects workplace morale and can undermine an organisation’s productivity and places a significant burden on the national economy.

These findings highlight once more why adequate staffing and funding for the health sector is so vital. Our hardworking members deserve a health system that enables them to meet the needs of patients without putting their own health and wellbeing at risk. Workplace bullying and harassment can only be alleviated when our health system is adequately funded and has in place the right policies to stamp out what appears to be a common practice.

After lobbying the government to do something about the widespread bullying and harassment within Victorian’s health services, Victoria’s Health Minister Jill Hennessy finally established the Bullying and Harassment in Healthcare Advisory Group! The taskforce has brought together Victorian hospital representatives, unions (including the Health Workers Union), Australian Medical Association Victoria, Work-safe, the Victorian Public Sector Commission and other stakeholders to tackle this insidious problem.

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The Victorian Public Health Service Serial Bully Exclusion Scheme

In many instances Public health sector employees resort to bullying and harassing others for various reasons, sometimes due to the fact that the victim may be identified as belonging to a union or as a “trouble maker” because they may refuse to regularly work overtime without pay or remind Senior managers or their Manager about the Fair-Work Act 2009 and what it says about the rules governing workplaces.

In many instances some workers that belong to the Managers “Inner Circle of Friends” (ICOF) become an instrument of a Manager or CEO and compromise their objectivity and engage in behaviour inconsistent with what is expected of a Public servant. Their ability to work objectively and carry out their duties and functions can be called into question. The HWU believes that much of the Bullying and Harassment that occurs in our Public health service is conducted by Managers, Senior Managers, Human Resources Workers, and other Health Workers that can be defined as belonging to the Managers ICOF.

In order to make reference to the type of worker that may qualify for placement on the Victorian Public Health Service Serial Bully Exclusion Scheme (VPHSSBES) we propose an acronym-Serial Bully Health Worker (SBHW). This acronym will be used throughout this submission!

Unfortunately, SBHW’s can be found in almost every organisation, workplace and workgroup. Unfortunately, when a particular health service does recognise that they have a SBHW working amongst them, they do not necessarily act immediately. The impact of allowing a SBHW to continue bullying without consequence or disciplinary action must not be underestimated! The SBHW may inflict serious physical and mental harm on their victim and contribute to the formation of a toxic work environment.

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Unfortunately, our members have informed us that SBHW's that fall within the managers (ICOF) are not dealt with immediately or in accordance with the health services stated policy, but instead, are eventually encourage to resign/or to go quietly from their position (often given a good reference from their manager or the CEO of the health service). There are many reasons for this type of behaviour, but it is usually done in order to save the health service from unhealthy attention. Unfortunately, SBHW's usually end up working in another Victorian health service or Human Resources department, frequently in a Country town, far from the health service that they were persuaded to leave.

This scenario is quite common and The Royal Commission into Institutional Responses to Child Sexual Abuse has found that some known clergy or offenders were usually recycled and sent to another service where they continued their pattern of abuse. In order to prevent such an occurrence in our health service, the HWU believes that the establishment of the Victorian Public Health Service Serial Bully Exclusion Scheme must occur as soon as possible.

The VPHSSBES scheme will work in a similar way to the Victorian Department of Human Services Disability Worker Exclusion Scheme. The scheme must be created to stop hospital administrators from recycling HR managers and workplace bullies that have been stood down from turning up in another hospital or health service.

The aim of the Victorian Public Health Service Serial Bully Exclusion Scheme (VPHSSBES) will be to collect, store and use information about people who are unsuitable to work within Victorian health services. Human resources managers/workers that are found to be unsuitable will be placed on the VPHSSBES and will be prevented from obtaining employment in Victoria's health system or an organisation funded or registered by the Department of Health.

The VPHSSBES has been designed to protect people employed in Victoria's vast health services by ensuring that SBHW's that are found to be

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unsuitable or inappropriate are placed on a VPHSSBES and prevented from obtaining further employment in a Victorian health Service Human resources department or an organisation funded or registered by the department of health.

Service providers are required to check prospective workers against the list before a person is allowed to work in a Victorian health service or have access to employees that work within Victoria's health services and to notify the VPHSSBES team if they become aware that a worker, or a prospective worker, may satisfy the VPHSSBES criteria.

The requirements imposed apply to all people that work in direct roles within Victorian health services that are provided, funded or registered by the department of health/human services, regardless of their employment status. This means that the requirements of the scheme also apply to labour that is provided to service providers by labour hire agencies.

Criteria for inclusion on the VPHSSBES and for

- A public health worker found to be engaging in Bullying and Harassment behaviours by a workplace Investigation carried out in conjunction with HR and an external investigator such as the "Peacemakers" that specialise in B&H (this organisation was used in Ballarat Health investigation).
- In the first instance, workers that engage in B&H behaviour that is not deemed to be Serious Misconduct or their behaviour has not had a significantly adverse impact on the victim will be required to undertake a corrective/Re-Education course of study that attempts to educate and correct inappropriate B&H behaviour.
- In the second instance, workers that engage in B&H behaviour that is not deemed to be Serious Misconduct or their behaviour has not had a significantly adverse impact on the victim will be required to attend before the VPHSSBES Board.
- Workers that engage in B&H that is deemed to be Serious Misconduct or having been established to have had a serious impact on the victims physical and mental health will automatically be placed on the VPHSSBES and required to attend the VPHSSBES Board.

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- Any health worker that has had Bullying and Harassment cases lodged against them to the Fair-Work Commission on more than one occasion may be referred to the VPHSSBES Board. In particular, where an order to Stop Bullying has been granted by the Fair-Work Commission and the Victim complains that the bully or harasser is continuing to engage in such behaviour shall be referred to the VPHSSBES Board for a hearing.

Criteria for selecting Independent B&H Investigators

In order to insure that the Independent Investigator used by the Public health services HR department will not be biased or find themselves in a conflict of interest, Independent Investigators will be randomly selected (a similar technique used in Randomised Controlled Trials will be used to select the Independent Investigator). Ideally, a pool of several dozen 'Independent Investigation companies' will be randomly selected.

Criteria for selecting Organisations that offer Re-education courses

In order to prevent bias in the selectin of an RTO used by a public health services HR department and to prevent a conflict of interest, SBHW Re-education courses will be offered by a variety (a pool of several dozen would be ideal) of RTO's that will be selected at random each and every time a person is referred to for Re-education (a similar technique used in Randomised Controlled Trials will be used to select the RTO).

What happens when a Serial bully is re-employed in a regional facility because they have not been properly represented by their referee?

The VPHSSBES also proposes a number of measures against CEO's or managers that fail to comply with the VPHSSBES policy. For example, they may give a Serial Bully Public Health Worker a glowing reference or arrange for them to work in another health service, despite being aware of their background for being a serial bully. The consequence of such behaviour shall be determined by the VPHSSBES Board.

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In the instance where a serial bully is reemployed in a small regional facility, those employers must inherit any sick leave and long service leave liability. That is, when an employee is employed in a small health service under false pretenses (due to a glowing reference) it's not only the hospital that gets torn apart it affects the entire town (the health service is generally the largest employer in regional towns).

The role(s) of the VPHSSBES Board

The VPHSSBES Board will be an independent statutory tribunal established under the relevant Act (The Victorian Public Health Service Serial Bully Exclusion Scheme Act 2017). The Tribunal will have a role in safeguarding and protecting the rights and dignity of people that have been labeled as Serial bullies. The Board will also determine what measures or consequences SBHW's will face.

- The VPHSSBES Board will determine if a person is to be placed on the VPHSSBES and the duration (that is, 3 or 5 years or indefinitely).
- The VPHSSBES Board will hear appeals from health workers that have been ordered to attend Re-education
- Public health workers that have been placed on the VPHSSBES list can also appeal the duration of their VPHSSBES sentence (the appellant must present new evidence not heard by the board in their previous presentation).
- Appearance before the VPHSSBES Board shall be affordable to all public health workers and its lodgment fees comparable to VCATT.

Composition of the VPHSSBES Board

The VPHSSBES Board will have similar membership and procedures for applying for membership to the existing Mental Health Tribunal of Victoria.

It is proposed that the VPHSSBES Board comprise of the following membership:

- An Independent Expert in Human Resources and Bullying & Harassment;
- A Legal Expert with expertise in Industrial Relations and the effects of Bullying and harassment;
- A Psychiatrist with expertise in the treatment of symptoms resulting from Bullying & Harassment;

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- A Carer of a former public health worker that has been a victim of bullying and was subsequently seriously affected by it; and
- An average worker from a Victorian public health worksite.

SBHW Natural Justice and a right to a fair hearing

In order to ensure that accused Serial bullies have a right to a fair hearing or to natural justice and that their human rights are not breached (as is the case with the Disability Worker Exclusion scheme), workers will be able to appeal the decision of the VPHSSBES Board to Victorian Civil and Administrative Tribunal (VCAT).

It is also important to define the limitations or powers of VCATT because ultimately an appeal of a VCATT decision will most likely end up in the Supreme Court. This will be counterproductive when it comes to ensuring workers receive natural justice. Similar to the human rights commission, persons that upon appeal to VACTT, are found to have had their rights abused and that they were not afforded natural justice, they shall be able to claim compensation:

- For the lost hours of work;
- Reputational damage; and
- Any psychiatric injury caused by the decision of the VPHSSBES Board and VCATT.

The role of WORKSAFE VICTORIA

The current Bullying and Harassment in Healthcare Advisory Group 2016 appears to be recommending that training by Work-safe Victoria be adopted as a solution to addressing the serious Bullying & Harrassment culture within our public health sector. The HWU agrees that training or re-education is necessary for SBHW but insists on the implementation of a VPHSSBES and the VPHSSBES Board.

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The HWU also insist that Work-safe be given a larger budget to be able to continue with their current role(s) in addition to the new roles envisaged by the prospective Department of Health (DOH) Bullying & Harassment strategy.

We also hope that WORKSAFE does not have to reduce their enforcement and investigation roles, projects & other existing functions in order to comply with the new work/training that they will be required to undertake under the proposed DOH B&H strategy. Work-safe is currently under-resourced and understaffed!

Without adequately resourcing Work-safe with additional EFT, the HWU cannot fathom how Work-safe employees can continue to carry out their current duties and functions in addition to taking on the new roles envisaged by the prospective DOH B&H strategy. We suggest that the DOH allocate Worksafe an adequate budget. The DOH can determine this size of the budget by multiplying the number of public health service work-sites and employees by the amount of hours per organisation that Worksafe is expected to spend training the public health sector workforce.

According to the Victorian government's Health 2040 discussion paper on the future of healthcare in Victoria, the government funds more than 500 organisations to provide healthcare to Victorians. This includes hospitals and emergency services, and services provided in the community and in people's homes. They estimate that the public health workforce is one of the largest in Australia, employing over 100,000 (Department of Health & Human Services, 2015).

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