

# Chapter 1 Workplace bullying, harassment and discrimination

This chapter sets the scene for this report and begins by providing definitions of workplace bullying, harassment and discrimination. It examines the prevalence of this kind of behavior across the five emergency services agencies, based on the results of the Public Service Commission's People Matter Employee Survey, including the problem of under-reporting within the agencies. The chapter concludes by outlining the external complaint management avenues currently available to complainants.

## Definitions

**1.1** The definition of workplace bullying accepted in New South Wales is based on the national definition in Safe Work Australia's publication *Dealing with Workplace Bullying – A Workers' Guide (Workers' Guide)*.<sup>2</sup> According to this guide, workplace bullying is defined as 'repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety'.<sup>3</sup>

**1.2** The *Workers' Guide* further elaborates on the terms 'repeated behaviour' and 'unreasonable behaviour' as follows:

- repeated behaviour 'refers to the persistent nature of the behaviour and can involve a range of behaviours over time'<sup>4</sup>
- unreasonable behaviour is 'behaviour that a reasonable person, having considered the circumstances, would see as victimising, humiliating, intimidating or threatening'.<sup>5</sup>

**1.3** The *Workers' Guide* also differentiates discrimination and sexual harassment from bullying. Discrimination is defined accordingly:

Generally, unlawful discrimination is where a person or group of people are treated unfairly or less favourably than others because they have a particular characteristic or belong to a particular group of people. Protected traits include race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.<sup>6</sup>

**1.4** The *Workers' Guide* makes specific reference to sexual harassment as 'unwelcome sexual advances, requests for sexual favours or other unwelcome conduct of a sexual nature that could be expected to make a person feel offended, humiliated or intimidated'.<sup>7</sup> More generally,

<sup>2</sup> Submission 66, SafeWork NSW, p 5.

<sup>3</sup> Submission 66, SafeWork NSW, p 5.

<sup>4</sup> Submission 66, SafeWork NSW, p 5.

<sup>5</sup> Submission 66, SafeWork NSW, p 5.

<sup>6</sup> SafeWork Australia, *Dealing with Workplace Bullying – A Worker's Guide*, May 2016, p 6.

<sup>7</sup> SafeWork Australia, *Dealing with Workplace Bullying – A Worker's Guide*, May 2016, p 6.

harassment is any behaviour that is unwanted, offensive, humiliating or intimidating, and creates a hostile environment.<sup>8</sup>

1.5 Dr Carlo Caponecchia, Senior Lecturer, University of New South Wales, explained that the differences between bullying, harassment and discrimination are important as they instigate ‘different management strategies, different legal issues, and different methods of redress for targets of the behaviours’.<sup>9</sup>

1.6 The definition of bullying used in the People Matter Employee Survey is based on the definition in the *Workers’ Guide*, and gives examples of what may, or may not, constitute bullying, as follows:

Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety. Bullying can be: intentional or unintentional; overt or covert; active or passive. Bullying behaviours include actions such as shouting and non-action such as not passing on information necessary to doing a job. Bullying should not be confused with legitimate feedback (including negative comments) given to staff on their work performance or work-related behaviour; or other legitimate management decisions and actions undertaken in a reasonable and respectful way.<sup>10</sup>

## **Prevalence of bullying, harassment and discrimination within emergency services agencies**

1.7 The Public Service Commission conducts the People Matter Employee Survey annually across the New South Wales public sector, to ask employees about their ‘experiences with their work and working with their team, managers and the organisation’.<sup>11</sup> The survey also gathers information on employees’ experiences with bullying.

1.8 This section details the survey results in this area across the five emergency services agencies, noting that:

- the survey is voluntary and captures only the employed workforce, meaning it does not provide a complete picture of the entire workforce’s views
- the survey does not measure actual instances of reported cases of bullying and other behaviours, but rather records the perceptions of employees who respond to the survey.<sup>12</sup>

1.9 This section also outlines the problem of under-reporting of complaints.

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<sup>8</sup> Anti-Discrimination Board of NSW, *Harassment*, 7 April 2017, [http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1\\_antidiscriminationlaw/adb1\\_harassment.aspx](http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/adb1_harassment.aspx)

<sup>9</sup> Submission 89, Dr Carlo Caponecchia, p 2.

<sup>10</sup> Submission 83, Public Service Commission, p 6.

<sup>11</sup> Public Service Commission, *The People Matter Employee Survey*, <https://www.psc.nsw.gov.au/reports--data/state-of-the-sector/people-matter-employee-survey>.

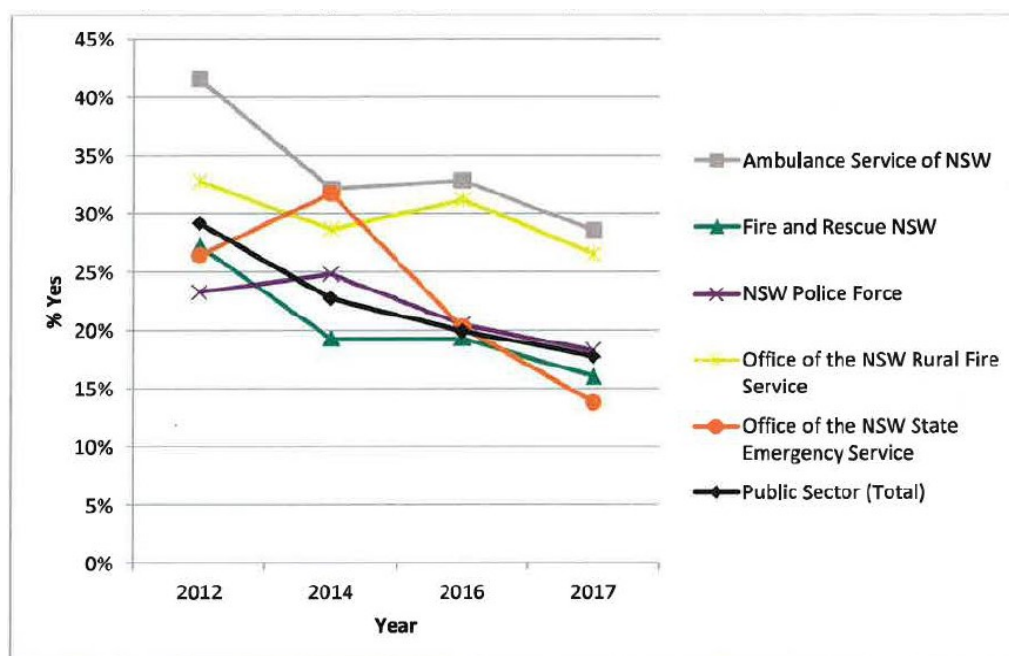
<sup>12</sup> Submission 83, Public Service Commission, p 2.

## Experiencing bullying

**1.10** In terms of notable trends, all five emergency services agencies saw a decline in the proportion of employees who reported experiencing bullying between 2016 and 2017.<sup>13</sup> While the NSW Rural Fire Service (NSW RFS) and Ambulance Service of New South Wales (NSW Ambulance) have seen declines since 2012, their rates of experiencing bullying are still high at 27 per cent and 29 per cent respectively, and well above the other emergency services agencies, which are close to or below the public sector average of 18 per cent in 2017.<sup>14</sup>

**1.11** Figure 1 shows the levels of experienced bullying in emergency services agencies reported through the People Matter Employee Surveys between 2012 and 2017.

**Figure 1 Experienced bullying – Emergency services agencies (2012-2017)**



*Submission 83, Public Service Commission, p 11.*

**1.12** The above figure shows that:

- NSW Ambulance has seen the greatest decline in experienced bullying rates of 13 per cent, however, it also has the highest rates of bullying among the five agencies at around 29 per cent
- NSW RFS has seen a decline of around six percentage points but rates are still fairly high at 27 per cent
- NSW Police Force (NSWPF) has seen a steady decrease since 2014 and it is now closely aligned with the public sector average at around 18 per cent
- NSW State Emergency Services (NSW SES) saw the greatest decline between 2016 and 2017 to 14 per cent, down six percentage points

<sup>13</sup> Submission 83, Public Service Commission, p 12.

<sup>14</sup> Submission 83, Public Service Commission, p 12.

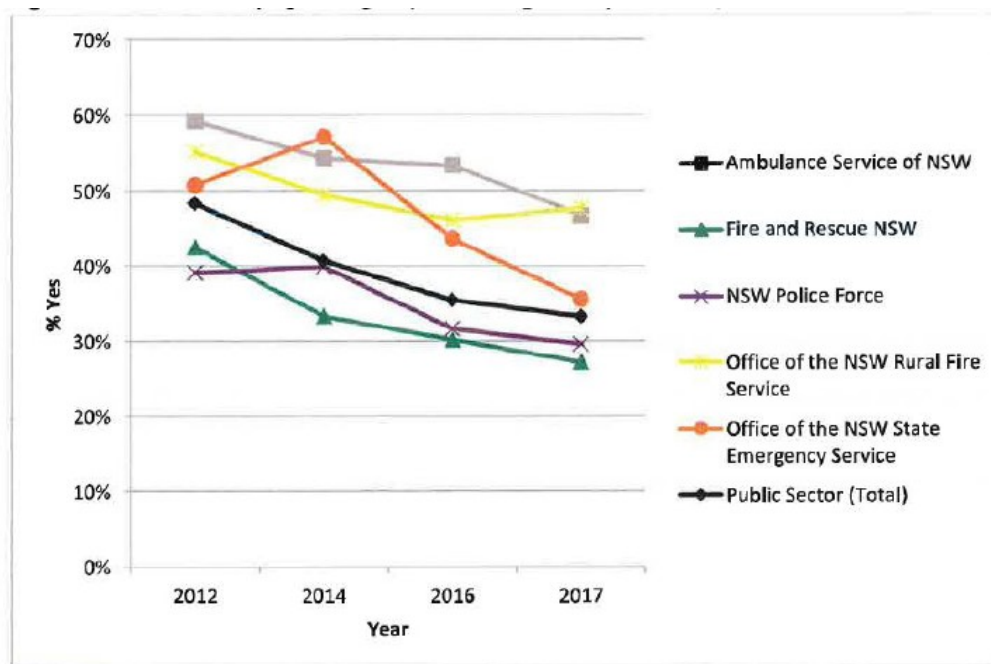
- Fire & Rescue NSW (FRNSW) has seen a continuous decline in bullying rates from 27 per cent in 2012 to 16 per cent in 2017.<sup>15</sup>

### Witnessing bullying

1.13 Between 2016 and 2017, the NSW Rural Fire Service (NSW RFS) was the only agency out of the five emergency services agencies which saw an increase in the proportion of employees who reported witnessing bullying.

1.14 As above, the NSW Rural Fire Service (NSW RFS) and Ambulance Service of New South Wales (NSW Ambulance) have seen declines in this indicator since 2012. However, their rates of witnessing bullying are still high, and well above the other emergency services agencies which are close to or below the public sector average of 33 per cent in 2017, as demonstrated in Figure 2.

Figure 2 Witnessed bullying – Emergency services agencies (2012-2017)



*Submission 83, Public Service Commission, p 12.*

### Sources of the most serious bullying

1.15 In 2016, survey participants in all five agencies cited senior managers, immediate managers/supervisors and fellow workers as the most frequent sources of the most serious bullying. This reflected the statistics of the public sector more broadly.<sup>16</sup>

<sup>15</sup> Submission 83, Public Service Commission, p 11-12.

<sup>16</sup> Submission 83, Public Service Commission, p 13.

- 1.16 More specifically, Figure 3 shows that in the NSW Rural Fire Service (NSW RFS) and NSW State Emergency Service (NSW SES), employees reported immediate managers and supervisors as the most frequent source of the most serious bullying. For Ambulance Service of New South Wales (NSW Ambulance), Fire & Rescue NSW (FRNSW), and NSW Police Force (NSWPF), senior managers were reported as most likely to engage in bullying.<sup>17</sup>

**Figure 3 Source of the most serious bullying in 2016**

Agency	Senior manager	Immediate manager / supervisor	Fellow worker at same level		Client or customer	Member of the public		Prefer not to say
			Subordinate	Other				
Ambulance Service of NSW	29%	27%	18%	13%	R	R	R	8%
Fire and Rescue NSW	29%	23%	26%	10%	R	R	R	9%
NSW Police Force	30%	28%	20%	7%	R	R	3%	11%
Office of the NSW Rural Fire Service	18%	44%	13%	R	R	R	R	12%
Office of the NSW State Emergency Service	24%	28%	R	R	R	R	R	R
<b>Public Sector (Total)</b>	<b>23%</b>	<b>26%</b>	<b>25%</b>	<b>8%</b>	<b>2%</b>	<b>0%</b>	<b>4%</b>	<b>13%</b>

(R) = redacted (results are not available due to the small size of the group)

*Submission 83, Public Service Commission, p 13.*

- 1.17 Figure 4 provides a comparison of the sources of the most serious bullying in 2014 and 2016. As demonstrated below, Fire & Rescue NSW (FRNSW), NSW Rural Fire Service (NSW RFS) and NSW State Emergency Service (NSW SES) saw a reduction in the likelihood of a senior manager perpetrating bullying behaviours. Notably, FRNSW saw an increase in the likelihood of fellow workers engaging in bullying, from 16 per cent to 26 per cent. NSW RFS also saw a significant increase in the rate of bullying by immediate managers and supervisors of 15 per cent.<sup>18</sup>

**Figure 4 Comparison between top three sources of the most serious bullying in 2016 and 2014**

Agency	Senior manager		Immediate manager / supervisor		Fellow worker at same level	
	2016	2014	2016	2014	2016	2014
Ambulance Service of NSW	29%	29%	27%	26%	18%	24%
Fire and Rescue NSW	29%	42%	23%	22%	26%	16%
NSW Police Force	30%	28%	28%	30%	20%	23%
Office of the NSW Rural Fire Service	18%	30%	44%	29%	13%	15%
Office of the NSW State Emergency Service	24%	30%	28%	33%	R	R
<b>Public Sector (Total)</b>	<b>23%</b>	<b>23%</b>	<b>26%</b>	<b>28%</b>	<b>25%</b>	<b>23%</b>

(R) = redacted (results are not available due to the small size of the group)

*Submission 83, Public Service Commission, p 13.*

<sup>17</sup> Submission 83, Public Service Commission, p 13.

<sup>18</sup> Submission 83, Public Service Commission, p 13.

### Under-reporting of complaints

- 1.18** The committee heard that the statistics on bullying provided by the emergency services agencies, as set out in chapters 3-7, are not necessarily a true reflection of the problem. Dr Caponecchia, as well as Dr Anne Wyatt, Director at Beyond Bullying, highlighted under-reporting as a key concern in relation to the management of bullying in these agencies, with SafeWork NSW also observing that there is a ‘high level of under-reporting’.<sup>19</sup>
- 1.19** In particular, Dr Caponecchia drew the committee’s attention to ‘complications in most reporting systems that render them unreliable and inadequate when dealing with workplace bullying’, meaning those systems are not used and so statistics based on them are not a true representation of the extent of the problem. These complications include:
- real or perceived conflicts of interest in the reporting system
  - a tendency for some staff to prefer informal reports
  - lack of adequate training and support in relation to making, receiving and responding to reports
  - a perception that interpersonal issues should be dealt with personally rather than through the organisation
  - unclear procedures and a lack of communication regarding the progress of reports
  - inadequate follow up of reports
  - issues of confidentiality
  - return to work processes that could further endanger involved parties.<sup>20</sup>
- 1.20** Dr Wyatt commented specifically on the inadequacy of current reporting structures in NSW Ambulance and FRNSW. She noted that while every incident should be reported online using a notification form, the reality is different. Instead, notifications are often made verbally or on ‘bits of paper’, which can lead to ‘inactivity and no follow up’. She stated that there is also a perception in these agencies that notifications made online through an electronic form also lead to inactivity.<sup>21</sup>

### External complaint management avenues

- 1.21** In addition to the internal complaint mechanisms of the five emergency services agencies, detailed in chapters 3-7, the committee received evidence primarily from Maurice Blackburn Lawyers regarding a number of external complaint management avenues available to victims of workplace bullying.
- **Anti-discrimination Board of NSW/Australian Human Rights Commission:** Employees in New South Wales can lodge a complaint with the Anti-Discrimination Board of NSW (ADB) or the Australian Human Rights Commission (AHRC) if they can

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<sup>19</sup> Evidence, Ms Jodie Deakes, Acting Executive Director, SafeWork NSW, 21 March 2018, p 15.

<sup>20</sup> Submission 89, Dr Carlo Caponecchia, pp 5-6.

<sup>21</sup> Supplementary submission 88a, Dr Anne Wyatt, p 3.

show that they are being bullied for an attribute protected in the legislation, including race, ethnic origin, gender, marital status, family responsibilities, physical or intellectual disability, or age.<sup>22</sup> Complaints then proceed through conciliation at the ADB or AHRC. If conciliation is unsuccessful, complaints can then be referred to the NSW Civil and Administrative Tribunal (for complaints that have come through the ADB) or the Federal Court or Federal Circuit Court (for complaints that have come through the AHRC). In these forums, complainants can seek remedies which include injunctions and compensation. Maurice Blackburn pointed to significant delays at the federal and state level in dealing with these complaints, noting that they can take six to eighteen months to be resolved.<sup>23</sup>

- **SafeWork NSW:** According to Maurice Blackburn, another potential avenue available to victims of alleged bullying is to argue that their employer has breached the *Work Health and Safety Act 2011* by failing to protect their health and safety in the workplace, potentially a criminal offence. In such situations, SafeWork NSW can commence a prosecution under this legislation before a court or tribunal.<sup>24</sup> However, individuals cannot instigate such action themselves and if SafeWork NSW chooses not to prosecute a bullying complaint, there is little recourse for the individual under the Act.<sup>25</sup> SafeWork NSW also makes it clear that they cannot deal with industrial matters or discrimination; provide mediation, counselling or legal advice; order an employer to discipline an alleged bully or terminate their employment; or issue an order to stop bullying.<sup>26</sup>
- **Fair Work Commission:** Under the *Fair Work Act 2009* (Cth), a victim of alleged bullying can make an application to the Fair Work Commission seeking an order to stop the bullying.<sup>27</sup> However, this only applies to employees of constitutional corporations, and Commonwealth and Territory entities, and is not applicable to employees of state governments, including the emergency services agencies.<sup>28</sup>
- **Law Enforcement Conduct Commission (LECC):** The LECC was established in 2017 to provide external oversight of the NSW Police Force and NSW Crime Commission by ‘detecting and investigating misconduct and corruption, and overseeing complaints handling’.<sup>29</sup> At the writing of their submission, the LECC advised that the previous agreement between the NSW Ombudsman, Police Integrity Commission and the NSW Police will remain in place until a new agreement is finalised. Under that agreement, workplace bullying, harassment, victimisation or unlawful discrimination of a member of the NSW Police Force is notifiable to the LECC, but only where the police officer who is alleged to have committed the conduct has previously been the subject of similar complaints.<sup>30</sup> The LECC is discussed further in chapter 5.

<sup>22</sup> Submission 76, Maurice Blackburn Lawyers, p 3.

<sup>23</sup> Submission 76, Maurice Blackburn Lawyers, p 3.

<sup>24</sup> Submission 66, SafeWork NSW, p 4.

<sup>25</sup> Submission 76, Maurice Blackburn Lawyers, p 3.

<sup>26</sup> Submission 66, SafeWork NSW, p 13.

<sup>27</sup> Submission 76, Maurice Blackburn Lawyers, p 2.

<sup>28</sup> Submission 76, Maurice Blackburn Lawyers, p 2.

<sup>29</sup> Submission 77, Law Enforcement Conduct Commission, p 1.

<sup>30</sup> Submission 77, Law Enforcement Conduct Commission, pp 1-2.

- **Industrial relations legislation:** There are also remedies for victims of bullying under the *Industrial Relations Act 1996* if the bullying behaviour constitutes a detriment and is motivated by an unlawful reason, however these provisions are not available for bullying generally.<sup>31</sup>
- Other external complaint mechanisms include:
  - judicial review in the Supreme Court
  - Independent Commission Against Corruption for fraud or corruption matters
  - NSW Ombudsman for maladministration matters
  - NSW Police for criminal matters
  - external investigators.<sup>32</sup>

1.22 Maurice Blackburn commented that because most remedies offered by these external bodies ‘can only be pursued once harm or detriment is caused’, they can be criticised as too reactive.<sup>33</sup>

## Committee comment

1.23 The committee notes the matters raised in this chapter, particularly in relation to the prevalence of bullying, harassment and discrimination across the emergency services agencies as reported in the People Matters Employee Survey, and the problem of under-reporting of complaints. We also note the limitations of the various external complaints management avenues available to emergency services workers.

1.24 These issues are explored in detail in the following chapters.

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<sup>31</sup> Submission 76, Maurice Blackburn Lawyers, p 3.

<sup>32</sup> Answers to questions on notice, New South Wales Rural Fire Service, received 9 November 2017, p 11.

<sup>33</sup> Submission 76, Maurice Blackburn Lawyers, p 4.