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| Bullying and Harassment at Work – Submission Form |

**How to provide us with feedback**

The Ministry of Business, Innovation and Employment (MBIE) is collecting written submissions to gather a range of views on bullying and harassment at work in New Zealand.

This submission form brings together all the questions asked throughout the issues paper *Bullying and Harassment at Work – Issues Paper: An In-depth Look*. Please feel free to answer as many or few of these questions as you wish.

For more information and discussion about these topics please refer to issues papers available at [www.mbie.govt.nz/bullying-and-harassment-at-work](http://www.mbie.govt.nz/bullying-and-harassment-at-work).

When completed, your submission can be returned by email to HSWRegs@mbie.govt.nz. Submissions are due by 5pm 31 March 2021.

**Use and release of information**

The information provided in submissions will be used to inform MBIE’s policy development process, and may inform advice to Ministers about potential changes to the health and safety at work and employment relations systems. We may contact submitters directly if we require clarification of any matters in submissions.

Information is not being requested and will not be used for any enforcement purposes. If you wish to seek resolution of a personal experience involving bullying or harassment you should contact Employment New Zealand on 0800 20 90 20.

Submissions are subject to requests for information under the Official Information Act 1982. If this happens, MBIE would normally release your submission (excluding personal details) to the person who asks for it. If you consider there are good reasons to withhold it, please clearly indicate these in your submission.

Any personal experiences provided will be treated in a confidential and sensitive manner. If you find this topic distressing, support is available from helplines such as Need to Talk? 1737, Lifeline 0500 543 354, Samaritans 0800 726 666 and Safe to Talk 0800 044 334 (for more information, see <https://www.mentalhealth.org.nz/get-help/in-crisis/helplines/>).

## Your details

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| **What is the name of the person completing this submission?** |
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| **If you are submitting on behalf of an organisation, what is the name of that organisation?** |
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| **Is it okay for your name and/or organisation details to be published if we publish your submission or a summary of submissions?** |
| [ ]  Yes, you can publish my name and organisation details with my submission.[ ]  No, keep my name confidential.[ ]  No, keep both my name and organisation details confidential. |
| **Please provide us with at least one method of contacting you, in case we need to discuss your submission further.** |
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|  |  |
| --- | --- |
| Email |  |
| Phone |  |
| Postal address |  |
| Alternative |  |

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| **What sector(s) does your submission most closely relate to, if applicable?** For example, the sector you may work, operate or be a representative in. |
| [ ]  Agriculture, forestry and fishing [ ]  Information media and telecommunications[ ]  Mining [ ]  Financial and insurance services[ ]  Manufacturing [ ]  Rental, hiring and real estate[ ]  Electricity, gas, water and waste services [ ]  Professional, scientific and technical services[ ]  Construction [ ]  Administrative and support services[ ]  Wholesale trade [ ]  Public administration and safety[ ]  Retail trade [ ]  Education and training[ ]  Accommodation and food services [ ]  Health care and social assistance[ ]  Transport [ ]  Arts and recreation services[ ]  Other (*please specify*)[ ]  N/A |

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| **Which of the following most closely describes your perspective as a submitter?** |
| [ ]  Central government [ ]  Local government[ ]  Non-governmental organisation (NGO) [ ]  Iwi, hapū or Māori organisation[ ]  Employer [ ]  Employer representative body[ ]  Worker representative body (eg union) [ ]  Law firm and/or legal expert[ ]  Academic [ ]  Media[ ]  Individual [ ]  Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*please specify*) |
| **We want to ensure we are hearing views from a range of stakeholders. If you or your organisation identifies with an ethnicity, you can choose to indicate this below.**  |
| [ ]  Māori [ ]  New Zealand European[ ]  Samoan [ ]  Cook Island Māori[ ]  Tongan [ ]  Niuean[ ]  Chinese [ ]  Indian[ ]  Other (*please specify*) |

## Context to bullying and harassment at work

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| 1 | How can we most effectively increase our understanding of the drivers of bullying and harassment? What types of data will be most useful in developing this understanding? |
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| 2 | How can we reduce rates of bullying and harassment, including sexual harassment, experienced by Māori?1. How can we increase our understanding of the drivers for bullying and harassment experienced by Māori?
2. What barriers are there for Māori seeking support to address bullying and harassment?
3. What does a ‘healthy and respectful’ workplace look like for Māori (eg, diverse and inclusive)? How do we build culturally supportive workplaces?
4. How well are relevant agencies (eg, WorkSafe and MBIE’s Employment Services) partnering with Māori when developing guidance and support?
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| 3 | How can we reduce rates of bullying and harassment, including sexual harassment, experienced by other minority and vulnerable populations (eg, people with disabilities, migrant workers, and trans and non-binary New Zealanders)?1. How can we increase our understanding of the drivers for bullying and harassment experienced by these groups?
2. What barriers are there for these minority and vulnerable groups seeking support to address bullying and harassment?
3. What does a ‘healthy and respectful’ workplace look like for these groups (eg, diverse and inclusive)? How do we build culturally supportive workplaces?
4. How well are relevant agencies (eg, WorkSafe and MBIE’s Employment Services) working with these groups when developing guidance and support?
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## Sexual Harassment

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| 4 | How can government help businesses and workers in preventing and responding to sexual harassment at work? |
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| 5 | Based on your experience, do businesses and organisations have sexual harassment policies and processes for responding to concerns? |
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| 6 | What is the quality of sexual harassment policies and processes for responding to concerns regarding sexual harassment? |
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| 7 | How can people better understand what is appropriate and inappropriate behaviour at work?  |
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| 8 | How can people who have witnessed or heard about the sexual harassment of someone else at work be supported to take action to prevent or reduce the harm caused by this harassment? |
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| 9 | What is the quality of training available to businesses and workers regarding sexual harassment available in New Zealand? |
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## What are the rights and responsibilities under New Zealand law?

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| 10 | Are people aware of their obligations under the legislation for preventing and responding to bullying and harassment? |
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| 11 | Do businesses provide regular training, education and information to workers on their legal responsibilities for preventing and managing bullying and harassment at work? |
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| 12 | How clear is the legislation when it comes to setting out people’s responsibilities for bullying and harassment at work? |
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## Prevention approach: How well are businesses implementing their obligations?

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| 13 | Are businesses identifying and assessing the risks of bullying and harassment at work as part of their risk assessment processes? If not, why not? |
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| 14 | Do the risk management policies businesses put in place address the risk of bullying and harassment at work? Are the processes being established by these policies effective in addressing these particular risks?  |
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| 15 | Are policies to address bullying and harassment being clearly communicated by businesses to staff? Are staff aware of the processes they should go through if an incident arises? |
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| 16 | What further support and guidance would help businesses to strengthen their risk management processes in relation to bullying and harassment at work? |
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| 17 | To what degree are businesses aware of, and accessing, the tools and training currently available to minimise the risk of bullying? How useful and effective are these tools? |
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| 18 | How can we lift management capability to identify, prevent and manage workplace bullying and harassment (including sexual harassment)? For example:1. Stocktaking management training programmes to assess their coverage, effectiveness and relevance to current labour market patterns.
2. Creating a proactive duty on workplace leaders to develop and maintain a ‘healthy and respectful’ workplace culture.
3. Developing new methods of tracking problematic sectors and workplaces (e.g. where complaints are regularly being raised).
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| 19 | Are businesses effectively engaging with workers to identify risks and develop processes to address bullying and harassment at work?  |
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| 20 | What difficulties do businesses face in monitoring and reviewing the risks from bullying and harassment at work? |
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| 21 | Are worker representatives involved in collecting and analysing information about the workplace culture, assessing risks and reviewing the effectiveness of processes? |
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| 22 | What additional guidance and support could be made available to help businesses with monitoring and reviewing their culture and risk factors? |
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## Response – What options are available to workers who experience bullying and harassment at work?

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| 23 | Are workers able to identify their options and the best approach for escalating a bullying and harassment issue? |
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| 24 | How supported are vulnerable populations for identifying and navigating the different pathways available? |
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|  | **Stage 1: Addressing the issue within the business or organisation** |
| 25 | Are the processes businesses have in place for raising bullying and harassment concerns and/or complaints (both formally and informally) clear to workers? Do these processes address where the bullying or harassment involves a person’s manager or senior manager? |
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| 26 | Are existing types of workplace representatives (eg, health and safety representatives, health and safety committees, human resource personnel and unions) suitably trained and supported to support workers to raise bullying or harassment concerns? |
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| 27 | What support would help people to be clear on what is and isn’t a bullying and harassment issue? |
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| 28 | What support would help workers to raise bullying and harassment concerns early? |
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| 29 | Are there any gaps in the guidance and support currently available? How can this guidance and support be improved? |
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| 30 | How can businesses be supported to take informal steps to respond to and resolve an issue (where this is in the best interest of the parties involved)? |
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| 31 | What would assist businesses to conduct investigations that are impartial, support all parties, and have a conciliation or restorative approach? |
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| 32 | What is the quality of the investigations conducted by the independent investigation market? |
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|  | **Stage 2: Mediation** |
| 33 | To what degree does the current online application requirement for mediation create a barrier? |
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| 34 | Are there variations by ethnicity, gender, or other factors, in parties’ ability or willingness to access mediation services? |
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| 35 | How quickly are mediation meetings occurring for issues involving bullying or harassment? Where there are delays, what are contributing to these? |
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| 36 | What are the benefits and/or risks with the involvement of legal and/or non-legal representatives in bullying and harassment cases? |
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| 37 | How can parties feel supported and safe to attend mediation without legal or external representation? |
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| 38 | How well is Employment Mediation Services currently supporting parties to reach an agreement without feeling unduly pressured? |
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| 39 | What should a low-level dispute resolution process for cases involving bullying or harassment look like? |
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| 40 | Are there particular types of bullying or harassment cases where it would be appropriate and beneficial to attempt to resolve the issue by phone mediation? |
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| 41 | Are there current issues with the way non-disclosure and/or non-defamation clauses are being used for cases involving bullying or harassment, particularly sexual harassment? What risks would arise if their use was restricted? |
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|  | **Stage 3: Lodging a statement of problem with the ERA** |
| 42 | Are the grounds for raising a grievance for bullying, or for the employer’s response to a bullying complaint, clear? Are these grounds appropriate for raising such a claim to the ERA? |
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| 43 | Are the grounds for raising a sexual and racial harassment claim to the ERA appropriate? |
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| 44 | Is the requirement to raise a personal grievance within 90 days appropriate for bullying and harassment cases? If not, does this apply to all bullying or harassment cases or specific types/situations? |
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| 45 | Is cross-examination of witnesses during bullying or harassment, particularly sexual harassment, cases appropriate? If so, what needs to be in place to prevent re-victimisation? If not, how should facts be established?  |
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| 46 | How should representatives be governed? |
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| 47 | Is there adequate support for employees who do not have representation during ERA cases involving bullying and harassment? |
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| 48 | Are the remedies for grievances involving bullying or harassment appropriate? |
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|  | **Stage 4: Challenging an ERA determination in the Employment Court** |
| 49 | Are there any issues with the way bullying and harassment personal grievances are dealt with by the Employment Court? |
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| 50 | Do employees who have experienced sexual or racial harassment at work feel able to escalate a grievance to the ERA or Employment Court? |
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## How well does the employment relations pathway respond?

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| 51 | Are there situations where the ERA or Employment Court should inform WorkSafe of bullying and harassment cases for consideration where there may be an ongoing safety risk? |
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| 52 | Overall, how well does the existing employment relations pathway work for people who have experienced bullying and harassment, including sexual harassment? |
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| 53 | How well is the existing employment relations pathway working for Māori? |
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| 54 | How well is the existing employment relations pathway working for other minority and vulnerable populations (eg, people with disabilities, migrant workers, and trans and non-binary New Zealanders)? |
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| 55 | What is working well in the existing employment relations pathway? |
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| 56 | What is the biggest issue with the way a bullying and harassment issue is currently dealt with within the employment relations pathway? |
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| 57 | What improvements or changes would have the biggest impact? |
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## Other available pathways

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| 58 | Should changes be made to WorkSafe’s criteria, threshold or approach for triaging and handling bullying and harassment incidents at work? |
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| 59 | How can WorkSafe most effectively use its range of intervention options to reduce the risk of harm from bullying and harassment at work? |
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| 60 | What role should WorkSafe have in engaging with, and encouraging change in, sectors or organisations where risks have been identified? |
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| 61 | How well does the human rights system work for someone who has experienced bullying or harassment at work that has a discriminatory basis? |
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| 62 | How effectively do these different regulatory systems work together? What gaps or areas of overlap are arising? |
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