

# VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE

Victorian Automobile Chamber of Commerce submission to the House of  
Representatives Standing Committee on Education and Employment  
inquiry into workplace bullying

*Inquiry into  
Workplace Bullying*



# Workplace bullying

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## **1. Introduction**

The Victorian Automobile Chamber of Commerce (VACC) is the peak industry employer association in the retail automotive industry (RS&R Industry) representing 5,300 members in Victoria and Tasmania. This representation covers businesses that operate in over twenty industry sectors (set out below) employing over 40,000 employees in the automotive repair, services and retail sector. VACC also represents 335 businesses in Queensland, which have joint membership of both the Motor Trades Association of Queensland and our organisation.

### ***VACC principal services***

VACC supports the RS&R industry by providing a comprehensive range of services including the following:

- Public affairs advocacy and representation of key industry policy issues to government and other industry stakeholders
- National industry magazine highlighting current and emerging industry issues
- Preparation of submissions on industry issues to Federal and State Governments
- Supply of apprentices through the VACC Auto Apprenticeship Scheme which currently employs over 500 apprentices and trainees working within the retail automotive sector across Victoria and Tasmania
- Technical advice to members within a range of industry sectors
- Promotion of the industry including the Melbourne International Motor Show
- Community events sponsorship
- Education and training sponsorship
- Road safety information
- Industrial relations, OHS and environment advisory services
- Newsletter highlighting issues in industrial relations, OHS and environment
- Industry courses organised through the Skills Development Centre, and
- Surveying and supply of statistics and economic data.

### ***Industry sectors represented by VACC***

VACC provides services to the following sectors in the RS&R industry:

- New car dealers
- Used car dealers
- Commercial vehicle dealers
- Truck repairers
- Motorcycles dealers
- Farm machinery dealers
- Commercial vehicle body builders
- Radiator repairers
- Air-conditioning specialists
- Automobile repairers
- Auto-transmission specialists
- LPG specialists
- Automotive electricians
- Alternative fuel specialists
- Service stations and convenience stores
- Tyre retailers
- Smash repairers
- Towing operators
- Roadside service contractors

- Automotive recyclers and dismantlers
- Car hire and rental
- Engine re-conditioners
- Windscreen fitters
- Automotive accessory retailers
- Motor trimmers
- Exhaust and undercar specialists
- Diesel specialists
- Vehicle painters
- Car detailers
- Car wash businesses
- Roadhouses and truck stops

## **2. Executive summary**

VACC supports the submission made by the Australian Chamber of Commerce and Industry (ACCI).

VACC believes that bullying is a community wide problem that needs to be addressed across the whole community, not just in workplaces. There is no need for the addition of any further regulation in relation to workplace bullying. It is time for the focus to shift towards education and support services for the whole community.

## **3. Terms of reference**

The House Standing Committee on Education and Employment is holding an Inquiry into workplace bullying.

Workplace bullying can have a profound effect on all aspects of a person's health as well as their work and family life. It also has significant flow-on effects for the community and the economy, with the Productivity Commission estimating the total cost of workplace bullying in Australia at between \$6 billion and \$36 billion annually.

The terms of reference for the inquiry will focus on:

- the prevalence of workplace bullying in Australia and the experience of victims of workplace bullying;
- the role of workplace cultures in preventing and responding to bullying and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying;
- the adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums;
- whether the scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying;
- whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms;
- whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;
- the most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another; and
- possible improvements to the national evidence base on workplace bullying.

#### **4. Introduction**

The terms of reference are very broad but really not broad enough. Bullying is a problem for our whole community. We need a shift in community attitudes not just in individual workplaces. It is not appropriate to try to use workplaces as instruments of social change. The problem is community wide so we must look at solutions that can help the whole community.

Bullying in schools is a problem that has been occurring for many years. Serious incidents of bullying in school are often noted in the media. There has also been recent comment in the media by the former Chief Justice of the Family Court, Alistair Nicholson. He stated that there should be legal liability for the parents and the school for bullying that takes place in school.<sup>1</sup>

Principals, teachers and parents are grappling with the problem of bullying in schools and they have not yet found a solution. There are now more ways than ever before for bullies to victimize others. It is no longer mostly face-to-face. People can tweet, blog and post messages on Facebook. One email can reach hundreds or thousands of others within minutes. Alistair Nicholson stated that the law cannot keep up with society on this. He is correct.

This is not to say that there should not be legal avenues of complaint. Those avenues already exist. VACC believes that there should be a shift of focus. It is time to focus on education and training but not just in relation to bullying at school or in workplaces. This is a complex issue that needs a complex approach.

We will address some possible approaches towards the end of this submission. We will also address a few aspects of the terms of reference including the adequacy of the existing regulatory frameworks and the existing education and support services.

#### **5. Current legal framework**

We do not need any further regulation of this area. Employers are already burdened with the myriad of laws that apply to workplace bullying. Employees have several existing avenues of complaint under workplace health and safety, employment law and discrimination law. They are now also protected in Victoria under the criminal law.

In Victoria, we have recently seen the introduction of Brodie's Law, which amended the *Crimes Act* to make bullying a criminal offence.<sup>2</sup> However, instead of defining workplace bullying as a specific offence, the Victorian government has extended the definition of stalking to include the types of behaviours that are typical of bullying.

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<sup>1</sup> ABC News, 15 June 2012 See <http://www.abc.net.au/news/2012-06-15/call-to-make-bullying-a-legal-offence/4072370>

<sup>2</sup> See Crimes Amendment (Bullying) Act 2011

Further, we have had Safe Work Australia developing a draft model *Code of Practice for Preventing and Responding to Workplace Bullying* as part of the harmonised work health and safety legislation and regulations.

We do not need to add to the current legal framework. There are no legal 'gaps' that need to be filled. It would however assist if we could address at least two problems with the current and proposed regulatory framework - the lack of a common definition for bullying and the unworkable draft model *Code of Practice for Preventing and Responding to Workplace Bullying*.

## **6. Common definition of bullying**

One serious shortcoming in the current regulatory framework is that there is currently no common definition of bullying across all the different laws that deal with workplace bullying. This makes it confusing for both employers and employees alike.

VACC believes that the definition should be as follows:

*Bullying at work can be defined as repeated unreasonable or inappropriate behaviour that is directed against a worker, or a group of workers, that creates a risk to health and safety.*

Any law that relates to workplace bullying should rely on this common definition so as to provide clarity and certainty. The definition must include a reference to *repeated* behaviour and it must be subject to a reasonable person test.

## **7. Draft Code of Practice**

VACC has recently made a submission on the draft model *Code of Practice for Preventing and Responding to Workplace Bullying* as part of the harmonised work health and safety legislation and regulations. VACC believes the draft code is unworkable and needs to be replaced with more practical guidance notes as soon as possible.

VACC is very concerned that despite widespread understanding that the workplace bullying information would be in the form of guidance notes, a decision was made to prepare a draft Code of Practice instead. This is seen to be an overly prescriptive approach and has alarmed many employers, particularly because the draft code has a number of serious omissions.

The draft code is aimed at the business owner and fails to provide any information directed at workers. It is VACC's experience that most instances of bullying occur between co-workers, not management down. It is those workers that need educating, and their managers that need to be equipped to deal with the conflicts that arise in the workplace. This is done through education and training not through prescriptive Codes of Practice.

The draft code also omits any reference to web based social media which is a forum in which bullying has become rife. It must be addressed in any guidance material.

There also seems to be confusion about management style and its application to claims of bullying. A 'strict management style' is referred to in the draft code as a potential source of bullying. This is absurd. Being 'strict' is not bullying and should not be included in any workplace bullying guidance material. Further, the list of reasonable management actions is inadequate. Some of the actions left out include:

- re-training of a worker/s
- providing a warning (verbal or written)
- demotion or redeployment of a worker due to not being capable in a position
- transfer of worker's employment
- suspension or stand-down of worker's employment, and
- reclassification of the worker's employment position.

It is a common experience for VACC members that employees claim to have been bullied when they have actually been either disciplined or just asked to get on with their work. One VACC member reported an employee in tears because he had been asked to stop distracting other workers and return to his workstation. The worker complained to the Human Resources Manager that he had been bullied.

This example highlights the importance of ensuring that managers are free to manage their workplaces appropriately. Overly prescriptive regulation can only lead to more workplace disputation and confusion.

Finally a workplace bullying complaint should not involve consultation with other workers or the health and safety representative. A complaints process is a confidential investigation. Only those people who need to be aware of the complaint should be informed. This is a misguided attempt to conform to the format of other Codes of Practice.

Addressing workplace bullying is not like addressing a workplace hazard like the storage of paint thinners. You cannot apply the same risk assessment and management strategies. A Code of Practice is the wrong tool for the job. Education and support are needed to deal with bullying in the workplace; guidance material that helps both employers and employees to understand their obligations and to modify their behaviour.

VACC urges the federal government to revisit the draft Code of Practice and replace it with a guidance note instead. Guidance material needs to be refocussed on workplace health and safety and resolving problems at the workplace.



## **8. Practical solutions**

The current education and support services are not sufficient to prevent and respond to workplace bullying or bullying in any other place. We need to focus on education and investment in practical solutions across the whole community, not just in workplaces.

VACC believes that there should be a community wide approach to dealing with bullying. This would include trying to address bullying that occurs in schools and workplaces. It should reach into all areas of life to provide assistance for people that are the victims of bullying wherever they are.

### ***School curriculum***

The Department of Education Employment and Workplace Relations (DEEWR) should ensure that students at both primary and secondary level are taught age appropriate lessons in equality, bullying and conflict management. This should include emphasis on responsibilities as well as rights. It is important that student be taught how to deal with bullies at school; however such training should not be too narrowly focussed. It needs to include other issues such conflict management to equip them for the wide range of problems they may face in the future.

### ***Public awareness campaigns***

DEEWR could run public awareness campaigns about bullying in our community. Advertisements like the Worksafe campaign focusing on coming home safe from work were very effective. It could be a campaign designed to encourage people to be aware their obligations and the effect of their actions; or one designed to encourage people to support friends who are the victims of bullying such as the 'Back Me Up' campaign recently launched by Federal Race Discrimination Commissioner, Dr Helen Szoke.<sup>3</sup>

### ***Training videos***

DEEWR could produce training videos that can be downloaded free from the DEEWR website for use in the workplace for businesses that cannot afford expensive training sessions. The videos could explain the laws about bullying in the workplace. It could also have instructional videos about how to deal with conflict in the workplace for employees and for managers. The videos could clearly explain to employees and managers what is and what is not considered bullying as this still seems to be an area of confusion for many people.

Videos could also be prepared for schools and members of the general public to link into public awareness campaigns. Such videos could show how to deal with bullies, what are people's rights and responsibilities and the like. Such videos should be free to download for everyone.

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<sup>3</sup> See [http://www.hreoc.gov.au/about/media/news/2012/55\\_12.html](http://www.hreoc.gov.au/about/media/news/2012/55_12.html)

***Fund tailored training sessions for businesses***

DEEWR could fund organisations to go out and conduct training in workplaces. This could be similar to the Fair Work Act training that took place a few years back. Alternatively, or in addition, it could find government agencies like the Fair Work Ombudsman to go out and conduct training.

**9. Further comment**

Please contact Bill Chesterman at VACC on (03) 9829 1111 if you require any further information.