



Coalition Members' Dissenting Report—Mr Rowan Ramsey MP; Mrs Karen Andrews MP; and Mr Alan Tudge MP

Introduction

The Coalition Members of the House of Representatives Education and Employment Committee, Mr Ramsey, Mrs Andrews and Mr Tudge wish to emphasize Australia should reject the notion that bullying in the workplace is 'normal' or that the issues presented by workplace bullying are too difficult to address.

Throughout the course of this inquiry, the Committee learned from many affected individuals the tragic outcomes of unresolved conflict within the workplace. While these cases are not a measure of the extent of bullying in Australia, it is clear that unacceptable bullying does occur in workplaces and can be significantly degrading on people's lives.

Places of work are full of complex relations and different personalities. The Coalition Members recognise that there is frequently great difficulty in determining whether workers have been targeted for unfair abuse or whether those who claim injury have an unreasonably low threshold to legitimate criticism. At the same time it must also be recognised that while workers may be more sensitive than the average to criticism that does not mean their injuries are less real.

The parallels to a workplace accident caused by a missing guard were frequently used throughout the inquiry as an example of how injuries caused by workplace bullying should be treated. It is however worth considering that determining whether a safety guard is missing is a far clearer task than determining what was

or was not said in the place of employment, and whether that constitutes an unacceptable behaviour.

The fact that allegations of bullying can be relating to affairs where there may be no witnesses, means that recommending any actions to government should be taken with great care lest otherwise innocent parties be damaged by unwarranted action. The Committee heard repeatedly that workers wrongly accused of bullying can be damaged in a similar way to those who are actually bullied.

Recommendations

The Coalition Members of the Committee are broadly in support of many of the findings and recommendations of the majority of the Committee. However they were not able to support every recommendation and comment and take this opportunity to highlight our primary points of difference.

The Coalition Members reject the idea that the best way to address workplace bullying is to introduce another raft of inflexible compliance to all parties including employers who are struggling to meet the various, vagarious and expensive requirements of three levels of government already.

In fact the Coalition Members believe moves to introduce formal regulations are likely to be counter-productive. In that circumstance employers are more likely to see compliance to regulation as a signal to do the bare minimum to meet the 'pass mark' and compliance regimes are much more likely to be industry standards developed to tick the boxes instead of finding adaptive and productive solutions to individual workplaces.

Instead they strongly advocate that the best chance of achieving real outcomes in this area is to promote the positive benefits to business of harmonious, caring and co-operative workplaces. The facilitation of best possible practice will work hand in hand with a focus on high productivity. Simply put, a happy workforce is likely to produce the best results for all parties.

By taking a positive approach rather than a punitive path to workplace bullying the Coalition Members believe significant improvements in workplace culture are far more likely.

While recourse to substantial penalties for lack of attention to the issue of bullying may seem a viable path to take, in the members' opinion penalties are also far more likely to make employers reluctant to seek outside advice on how to deal with these issues or to identify workers as bullies for fear of drawing attention of regulators to their business.

That is why the Coalition Members support many of recommendations in the report including calling for the adoption of a national definition, for the

establishment of a national advisory service and support for employers to identify and deal with bullying in the workplace.

The Coalition Members believe there is merit in having a national code which can provide guidance for employers and employees about what constitutes bullying. However the Coalition Members have serious reservations about the current draft code, as it exemplifies many of the concerns articulated above. For example, the current draft code lists “not providing enough work” as a form of “indirect bullying” along with setting timelines that are difficult to achieve. The draft code also prohibits “eye rolling responses” that might “diminish a person’s dignity”. The Coalition Members could not support a Code with clauses which are so subjective or plainly ridiculous. Further, as substantial changes to the Code were likely, the Coalition Members were of the view that it would be unwise for any Committee Member to fully endorse the current draft.

The Coalition Members have also supported the Government Members of the Committee in calling for the government to consider the development of a number of services that would assist both employers and workers to address the issues surrounding bullying in the workplace.

All of these recommendations should be part of informing employers and workers alike about the benefits of eliminating bullying and providing tools, advice and assistance to achieve this goal. It should also demonstrate the financial and personal costs of ignoring the issue.

The Coalition Members are particularly opposed to recommendations five and twenty three and have reservations on some other recommendations.

Recommendation 3

As outlined above, the Coalition Members believe there is merit in having a national code to provide best-practice guidance, but have serious reservations about the existing draft Code.

Recommendation 5

Recommendation five advises the Government to introduce Commonwealth regulations which would force employers to meet the conditions of a code of conduct which is still under negotiation and yet to be adopted by Australian regulators.

Australia wide adoption of the national work health and safety laws is steadily progressing. States that have signed on to that harmonised legislation are working towards reaching agreement on a national code of conduct. The Coalition Members believe these changes should be given time to take effect before further regulatory action is considered.

Under regulations, employers would be given the ultimate responsibility of guaranteeing compliance with legislation driven by defined compulsory actions. The Coalition Members consider that it is likely this course of action rather than being a catalyst for reform, may instead lead to this group to identify government agencies as the source of their problems rather than a tool to address these issues. Smaller employers in particular are already struggling to adapt to the rafts of compliance handed down by all levels of government.

To achieve a real change in workplace culture the importance of support from the organisations that represent the bulk of employers in Australia is difficult to overstate. Many of these groups expressed strong concerns at the possibility of enforceable regulations.

Mr Paul Moss for the Chamber of Commerce and industry WA said during the Perth hearing. “The more legislation you have, the more complex the issue is” and “So the more you have, (legislation) the more confusion and the more complexity you have. Employers in running a business have an awful lot of things they need to be aware of and comply with. The more we add in here, the greater the chance of non-compliance will be. So keep it simple”.

The Coalition Members are concerned that an inflexible enforcement mechanism could lead to a hardening of attitude between conflicting parties and particularly so between the employers and workers. If that is the case it is likely all parties will be disadvantaged and the co-operation needed to change workplace attitudes will be harder to achieve.

In the Coalition Members opinion, legislated regulation will not help in this area however it is more likely to provide a platform for recompense after a worker has left the place of employment. The sub-title of this report “We just want it to stop”, succinctly captures the desires of victims and clearly recommendations should aim for change at work, not after work.

Recommendation 10

The Coalition Members are not opposed to the Commonwealth Government working with industry and employer groups to promote the economic benefits of positive working environments that are free from workplace bullying. However, they question the impact of this recommendation versus implementing a more general awareness campaign about workplace bullying. Further, recommendation 10 suggests to work through the “Centre for Workplace Leadership” as well as employer groups. This Centre is not yet established and Coalition Members are sceptical it will add any real value, but will cost at least \$12m over four years.

Recommendation 11

The Coalition Members would also like to draw attention to recommendation eleven which calls for the establishment of a national service to provide advice, assistance and resolution services to employers and workers.

The recommendation while calling for the government to establish this service does not specify whether this service should be run by and within government or whether it could be provided by industry.

The Coalition Members are very wary about any moves to establish expensive new government bureaucracies and consider this potentially valuable service would be best placed outside government.

Should such a service be located within the office of the regulator, that, in itself, would be a problem to an employer identifying their workplace as having issues with workplace bullying. However it is likely that should such a service be located within government anywhere, such attitudes may persist.

Recommendation 13

Coalition Members believe that independent mediation undertaken voluntarily can be an effective mechanism to resolve difficult workplace issues. Many private mediators are already in existence and utilised by employers and employees. Coalition Members questioned the efficacy of a government mediation service particularly when such a mediation service in Victoria was withdrawn because it was not utilised.

Recommendation 19

The Coalition Members support young Australians understanding their rights and responsibilities during work experience programs. Fair Work Australia already provides such information and would be best placed to enhance its efforts if required. Duplicating its work through other arms of government is not supported.

Recommendation 23

The final recommendation of the report, calls for the individuals to be given a right of recourse if they claim to be the victims of workplace bullying.

The Coalition members accept there were numerous calls from individuals in particular for this course of action, but fear that outcomes are far less likely to be satisfactory in practice than in theory.

The Coalition Members are concerned that while the calls from these parties were for justice, it is far from certain that recourse to retributive action would achieve that. The Coalition Members are unconvinced that the enquiry sufficiently

examined what the possible down-sides might be of extended and difficult litigation for all individuals concerned.

Scope currently exists in all jurisdictions for the workplace regulators to take action on behalf of injured parties and we can assume if they choose to pursue such action they will have assessed a reasonable chance of winning the case and have the resources to execute that course of action.

Further, the Coalition Members are concerned that enabling individuals to take such action will open a door to potential abuse of the device. Frivolous actions, or even worse, actions driven by malicious intent would have the ability to tie employers up in rolling court actions for extended periods.

While the Committee took no direct evidence on this possibility the Coalition Members are concerned that in the past seemingly un-associated actions have been part of industrial campaigns against employers and thus are sufficiently wary to decline endorsement of this recommendation.

Closing comments

The Coalition Members would like to make the point that while a body of evidence was received identifying bullying in a wide number of workplaces, the inquiry was far more likely to attract examples of poor practice, rather than good and in that case examples of good and excellent workplace environments were unlikely to be highlighted.

They believe as awareness increases in the community of the personally damaging effects of workplace bullying then change for the better is inevitable and hope that this report will go some way to mapping that change.

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