**Australian Institute of Employment Rights**

# Workplace Culture and Bullying

A submission by Australian Institute of Employment Rights Inc. to the Standing Committee on Education and Employment

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Date:          29 June 2012

# Introduction

1. The Australian Institute of Employment Rights ("AIER") is an independent, not-for-profit body that works in the public interest to promote the recognition and implementation of the rights of employers and workers in a cooperative industrial relations framework. It is independent of government or interest groups.

2. AIER welcomes the decision of the Minister for Employment and Workplace Relations to ask the Standing Committee on Education and Employment to inquire into workplace bullying and welcomes the opportunity to make a submissions and notes that the terms of reference of the Inquiry 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.

3. AIER does not seek to address each of the terms of reference for the Inquiry individually in detail. Rather in this submission AIER has focused on key issues concerning bullying which arise from particular aspects of the employment relationship and in particular from workplace culture considerations in which we have particular experience and expertise.

4. In particular, this submission will focus on the second, third and fourth of the Committee's Terms of Reference. Our reference point for this submission is the Australian Charter of Employment Rights ("the Charter'). The role of the Institute and the Charter will be explained.

5. *The Australian Charter of Employment Rights*[1] was published in 2007 and provides a structure for considering this matter and other significant workplace issues. The

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[1] Bromberg M & Irving M (eds) (2007) *The Australian Charter of Employment Rights,* Hardie Grant, Prahran.

AIER therefore wishes to acknowledge and thank the contributors to this book, who include many of Australia's leading labour lawyers, barristers, academics and practitioners who contributed to this seminal work.

6. The AIER has also made a number of detailed submissions regarding other matters which have related importance to the issue of workplace bullying. In particular, they include:

   - Submission to the Federal Government regarding *Preventative Health and Workplace Culture*[2]
   - Submission to the *Independent Inquiry into Insecure Work in Australia*[3]

   These submissions are available at the AIER website [www.aierights.com.au](www.aierights.com.au).

7. This submission draws in part on these and other materials prepared for and by AIER and acknowledges the contributions of the authors of those reports and submissions.

8. AIER believes that there is an urgent need to address factors that are negatively impacting on the experience of work in Australia, including bullying. Workplace bullying is one of the outcomes from negative workplace cultures, accentuated in many cases by employee vulnerability and insecurity at work.

9. A range of initiatives to combat this are required. .These includes initiatives in the area of workplace laws changes in workplace culture itself; education of young people entering the workforce; industrial relations measures; and through creating more secure and sustainable jobs.

10. At the heart of AIER's approach our concern about the loss of, as well as the undervaluation of, tripartism flowing from the influence of neo–liberal philosophy on workplace culture. The relationships between workers and those who engage them are of particular importance given the fact that it is the success of these relationships that shapes many aspects of the workplace. From the prosperity of the business to the emotional well-being of each worker, the quality of workplace relationships has a crucial role to play.

11. Australian labour law academic Rosemary Owens describes the significant role of work as follows:

    *"In Australia, as in most contemporary societies, work has acquired an abiding significance. The meaning of work in our society is intimately linked with human dignity. It is not simply that for a great many people a very large part of their life is spent working. Nor that work is for most the primary means to gaining a livelihood, and thus ensuring their material survival. Rather in present day society work has a more complex meaning intricately entwined in the creation of a sense of self. …The significance of work is also larger than simply its meaning to the individual person. Work plays a critical role in the very constitution of a*

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[2] AIER, 2009, *Preventative health and Workplace Culture*

[3] Heap L, 2012, *Striving for Decent Work to End Insecurity in Australian Workplaces*

*society. The interdependence of citizens through their work is one of the most important structural bonds of any community"* [4]

12. It is therefore distressing to acknowledge that, for an increasing number of Australians, their experience of work and their treatment within the workplace, including through workplace bullying, is a negative one.

13. A comprehensive case for improved workplace culture including but not exclusively through reasonable regulation of the labour market can be made. As well, it is important to make the case for educating to remodel work place relationships and culture on the ground. This is a task that AIER has been advocating since its inception in 2005. The problem of bullying needs to be examined and can be dealt with in this context.

## Summary of AIER's Recommended Actions

14. The AIER believes that any effective response to the problem of workplace bullying must be seen as part of a multi-dimensional approach. Workplace bullying emerges in the context of workplaces which lack a consensus for, and a commitment to

- A culture of safety and security, including occupational health and safety in all its facets
- General and effective workplace rights, including industrial relations protections
- A managerial culture in which management takes responsibility for realizing the rights and dignity of all within the workplace.

15. The AIER proposes that such workplaces can best be encouraged by:

- Adopting the Australian Charter and Standard of Employment Rights in each workplace
- Adopting and implementing the ILO's definition of Decent Work a public policy objective
- The establishment of a Centre for Workplace Citizenship to promote excellence in the realization of workplace rights and building collaborative culture.
- A National Accreditation System to support and promote healthy workplace cultures

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[4] Owens R 2002 *Decent Work for the Contingent Workforce in the New Economy* 15 AJLL 209

16. These measures are explained in the submission that follows. A multi-dimensional approach to improving workplace culture includes practical measures that can be and are implemented at an enterprise level supported by appropriate public policy and government programs. Key to eliminating workplace bullying is creating a culture committed to respect and realization of workplace rights and dignity.

17. In addition, all workers, but especially young workers entering the workforce, need to be well educated and informed about their workplace rights and especially their right to be treated with respect and dignity and to be free from harassment, discrimination and bullying. The AIER has worked with the education sector to develop resources for school students to be educated and informed about workplace issues, including bullying. The resource created – Workright – is groundbreaking however its reach has been limited by the lack of resources to train teachers in its use. The AIER therefore via this submission, seeks support for the provision of funds to make this resource more widely available and utilised.

18. As part of a broad response, the AIER believes that the Australian Charter of Employment Rights should form the cornerstone of every Australian workplace in order to promote decent workplace relationships and that the Australian Standard of Employment Rights should be seen as the tool to achieve that goal, including the elimination of all forms of workplace bullying.

19. The AIER believes that greater effort needs to be put to rebuilding an environment of genuine tripartism as part of an effort to improve the culture of Australian workplaces. AIER has previously called for support for a Centre for Workplace Citizenship. We renew our call for this initiative via this submission.

## The AIER

20. The AIER is an independent not for profit organisation. The Objectives of AIER state:

"2. Objects of the Institute

Adopting the principles of the International Labour Organisation and its commitment to tripartite processes, the Australian Institute of Employment Rights will promote the recognition and implementation of the rights of employees and employers in a co-operative industrial relations framework.

In particular it will:

- commission academic research
- hold conferences and seminars
- publish and disseminate publications
- contribute to public discourse on employment issues through the media, community debates and public forums
- provide training to industrial participants
- provide advice and other services to industrial participants and governments
- develop a Charter of Employment Rights for Australia

- promote models of workplace arrangements which promote economic efficiency while respecting employment rights and standards
- work co-operatively with academic and community organizations which share similar objectives
- encourage the participation of members who share similar objectives."

21. The AIER is an organisation independent of government or any particular interest group and will implement these Objects with academic rigour and professional integrity.

22. The AIER includes employer and employee interests in its makeup, membership and operation. It is also fortunate to have included in its governance structure and advisory bodies representatives from the academic and legal fraternity.

23. A list of those involved on the AIER Executive Committee and its panel of experts is included as an Annexure to this submission.

24. It is AIER's view that any system of industrial regulation must be founded in principles which reflect:

(a) Rights enshrined in international instruments which Australia has willingly adopted and which as a matter of international law is bound to observe;

(b) Values which have profoundly influenced the nature and aspirations of Australian society and which are embedded in Australia's constitutional and institutional history of industrial/employment law and practice. In particular, values integral to what has been described as the "important guarantee of industrial fairness and reasonableness"[5]; and

(c) Rights appropriate to a modern employment relationship which are recognised by the common law.

25. The AIER is committed to tripartism and is of the view that the loss of a genuine commitment to tripartism in Australian industrial relations is significantly hindering Australia's ability to develop a modern economy committed to both industrial fairness and achieving productivity growth.

## The Australian Charter of Employment Rights

26. In 2007 the AIER published the Australian Charter of Employment Rights (attached with this submission). The Charter is based on the three sources of rights identified above.

27. The Charter's purpose is to unravel the complexity of the regulation of workplace relations and re-define it by identifying the fundamental values which good

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[5] *New South Wales and Others v Commonwealth [2006] HCA 52,* per Kirby J at [523] – [525].

workplace relationships and good law made to enhance such relationships must be based upon.

28. The Charter of Employment Rights and the book which accompanies it, *An Australian Charter of Employment Rights*, is the work of eminent workplace relations practitioners from both the academic and legal communities who are independent of any stakeholders with vested interests. A list of those persons involved is included in the Annexures.

29. In his report from the NSW Government Inquiry into options for a new National Industrial Relations system, Professor George Williams, developed a set of principles that he believed should found a new national system. Williams cited a number of Australian and overseas sources used to develop the principles and gave particular emphasis to AIER's Charter of Employment Rights.

30. The Charter has become a blueprint for assessing government policy, for legislative reform, for company practice and for education about workplace rights. The Institute encourages all Australian workplaces to adopt and apply the Charter. To assist in this, the Institute has published the *Australian Standard of Employment Rights*[6], which converts the ten Charter rights into a practical form that can be applied in every workplace.

31. Our experience tells us that the Charter is being used on a daily basis as a resource by practitioners, managers, tribunal members, academics and even teachers who are utilising the Charter's companion resource for secondary schools, *Workright*[7], to inform 14 and 15 year old students about their rights and responsibilities in the workplace.

## Decent Work & Dignity - new foundations to underpin workplace culture

32. The Australian Charter of Employment Rights deals specifically with the right of all workers to work with dignity and respect and without experiencing negative outcomes, including bullying.

33. The Charter's second identified right - Work with Dignity - states

"*Recognising that labour is not a commodity, workers and employers have the right to be accorded dignity at work and to experience the dignity of work. This includes being:*
*(a)    treated with respect*
*(b)    recognised and valued for the work, managerial or business functions they perform*
*(c)    provided with opportunities for skill enhancement and career progression*
*(d)    protected from bullying, harassment and unwarranted surveillance.*"

*34.* In an enlightened democratic society, given the impact of work on individuals and community, people should be afforded the opportunity to experience decent work.

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[6] Howe J, 2009, *Australian Standard of Employment Rights, A How-to Guide for the workplace*

[7] http://teachworkright.com/

The concept of decent work as a policy, legislative and practical framework for regulating work relationships is gaining acceptance and support around the globe. [8]

35. The ILO describes decent work as follows :

*Decent work means productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have access to income-earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards.[9]*

36. Central to this concept of decent work is the concept that work should be performed in an environment of freedom, equality and security and with the absence of workplace harassment including bullying. Workers' experience of harassment or bullying undermines and negates decent work.

37. The Declaration of Philadelphia, which defined the aims and purposes of the ILO, states that "*all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity*".[10]

38. One of the core founding principles of the ILO is that "labour is not a commodity". As the economist Karl Polanyi put it, the commodity status of labour is simply a convenient fiction that momentarily greases the wheels of commerce but is detrimental for society. The growing emphasis on "flexibility" and increased casualisation of the workforce has increased the commodification of labour and leaves employees vulnerable to negative experiences in the workplace.

39. In recent years the common law has increasingly recognised that workers have an interest in performing work, not just being paid. This is because the benefits of work for an employee can include satisfaction of performing the work, the opportunity to keep the worker's "hand in", and the opportunity to develop experience to ensure employability in other fields. As the English Court of Appeal has noted: "As social conditions have changed the courts have increasingly recognised the importance to the employee of the work, not just the pay".[11]

40. The United Nations Universal Declaration of Human Rights states that

"*Everyone who works has the right to just and favourable remuneration ensuring for himself and his [sic] family an existence worthy of human dignity*".[12]

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[8] Owens 2002 *op cit* p.7

[9] International Labour Office, Report of the Director General, *Decent Work*, International Labour Conference, 87th Session, Geneva, 1999, p 11.

[10] Annex, II(a) of the ILO Convention

[11] William Hill Organisation Ltd v Tucker [1999] ICR 291, see also Blackadder v Ramsey Butchering Services Pty Ltd (2005) 221 CLR 539 at 566.

[12] www.ilo.org/public/english/bureau/inf/download/ecosoc/decentwork.pdf

*41.* The European Union (EU) Charter of Fundamental Rights (2000) proclaims that "Human dignity is inviolable. It must be respected and protected." The EU Council has also adopted a policy on decent work.  Recent European Foundation studies have focused on five key dimensions:

- quality of work and employment
- ensuring career and employment security
- maintaining the health and well-being of workers
- developing skills and competencies and
- reconciling work–life balance. [13]

42. Definitions of dignity usually stress notions of worth, esteem or honour, which are bestowed by others. This includes feelings of pride and self-respect. These definitions denote an abiding sense of respect from others as well as a corresponding sense of self-respect.  Work can enhance or diminish dignity. Workplace bullying involves the removal of any notion of individual self-worth, esteem or self-respect.

43. AIER is concerned that the notion of dignity at work has been lost in public policy frameworks and public discourse around work in Australia.  It is also lacking in day to day practice at the workplace. One of the consequences of this has been increased vulnerability to harassment, including bullying at work.

44. The Australian Charter of Employment Rights Article 2 provides a useful definition of dignity in the workplace [see above at par. 33]. It includes the right to be valued and recognised for work performed and to be treated with respect in the workplace; as well as the absence of negative factors, such as bullying, harassment, victimization and discrimination. AIER believes that these rights are essential because they derive from the innate entitlement to dignity that should be enjoyed by each human person but also because they contribute to healthy workplaces which are more productive than those in which these rights and human values are not respected.

45. To emphasise the point by example, dignity at work includes the capacity to *effectively* participate in determining the terms and conditions of work. This involves the rights of freedom of association, union recognition, collective bargaining, the right to strike and the right to be consulted and participate in decision making. These are all rights that in recent times have been highly contested either in public discourse or indeed in matters before courts and the tribunal.

46. Through an examination of the concept dignity of and dignity at work, and through the Charter in general, the AIER has established a set of indicators that reflect key elements of the decent work agenda.  This concept of decent work establishes a framework more expansive than that which has been traditionally the domain of labour law and industrial relations legislation.  The AIER submits however that the solution to the problems associated with dignity at work – including the absence of harassment or bullying - can only be found in a multipronged, multilayered approach to the issue.

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[13] www.eurofound.europa.eu/areas/qualityofwork/index.htm

47. The AIER therefore submits that all parties including governments, social parties and in fact individual employers and workers should adopt the ILO definition of decent work as their policy objective and framework and utilize this for the development of appropriate new forms of industrial regulation, policy, cultural change and educative initiatives and on the ground practice. This will assist in the elimination of workplace bullying.

## Workplace culture – the key to the elimination of workplace bullying

48. In the submission of AIER, the greatest investment the Australian Government can make in with respect to eliminating workplace bullying is to address the need for cultural reform of Australian workplaces.

49. A person's work and their place of work are essential to their wellbeing. Most Australians spend the majority of their adult life in the workplace, indicating the centrality of work to their existence. As recognised by Emeritus Professor Ron McCallum AO, "the performance of paid work, whether as employees, consultants or contractors, gives us fulfillment, a broad social network, and remuneration to support ourselves and our families". [14]

50. On the other hand, poor workplace culture can have a devastating impact on the physical as well as mental health of working people. There is significant empirical data to suggest that poor management practices, and-sub-optimal workplace cultures can trigger and lead to the development of both physical and mental health problems.[15] This submission concentrates on the latter issue with particular focus on workplace bullying.

51. The causal relationship between workplace culture and health is an issue of increasing prominence.[16] There is a growing level of sophistication in our understanding of the dynamics of work environments at a psychosocial level and the potential for chronically adverse psychosocial work environments to impact on the mental as well as physical wellbeing of employees. At the same time, there is a growing recognition of the effectiveness of preventative, as opposed to reactive, health measures in reducing the harm caused by known health risks.

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[14] R McCallum (2005) *Justice at Work: Industrial Citizenship and the Corporatisation of Australian Labour Law,* The Thirteenth Annual Kingsley Laffer Memorial Lecture, University of Sydney.

[15] Anthony D. LaMontagne et al (2006) "Workplace Stress in Victoria: Developing a Systems Approach", report to the Victoria Health Promotion Foundation. Chapter One of this report provides an excellent overview of the research in this area.

[16] For example, see Rob Moodie & Rachel Jenkins, (2005) "I'm from the government and you want me to invest in mental health promotion. Well why should I?" Promotion and Education, 12:37.

52. Mental and physical health problems arising from sub-standard workplace culture are numerous, and are a concern across all employment sectors and all occupational levels. These adverse health outcomes have implications for the individual employee, their co-workers, the business, the national health system and the international competitiveness of the Australian economy overall. The far reaching consequences of poor workplace culture mandates greater understanding and awareness of the impact of Australia's work environments on the wellbeing of employees.

53. As our understanding of mental health increases, there is a growing body of compelling evidence to suggest that mental health is directly affected by workplace culture.17 We now know that mental health problems and mental illness are among the greatest causes of disability, diminished life quality and reduced productivity in Australia.18 Those affected by mental health problems often have higher levels of morbidity and mortality, experiencing poorer general health and higher rates of death from a range of causes, including suicide.19

54. Another study assessing the link between job strain and mental health found that job strain, and the risk of depression associated with job strain, represented a substantial and preventable public health problem.20 In addition to presenting the results of their particular study, the authors noted the results of related studies conducted in Australia and overseas on the link between psycho-social working conditions, effort and reward imbalance at work, injustice at work, job insecurity and bullying on common mental disorders. The authors concluded that their findings added to the growing evidence base in support of expanded public health interventions to address the adverse effects of job stress.

55. Workers' compensation claims for mental health problems have more than doubled in the past ten years. While the number of overall workers' compensation claims in Australia decreased by 13% between 1996–7 and 2003–4, workers compensation claims categorised as "Mental Stress" increased by 83% from 4585 in 1996–7 to 8410 in 2003–4.[21] In 2005–6, this increased to 8665 claims.[22] Of these, the overwhelming majority were work-related. 41.1% of claims related to "Work

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[17] ABS (2004-05) *Mental Health in Australia: A Snapshot,* ABS Cat No 4824, Canberra.

[18] Ibid.

[19] ABS (2007) *National Survey of Mental Health and Wellbeing: Summary of Results,* ABS Cat No 4325, Canberra.

[20] "Job strain – Attributable depression in a sample of working Australians: Assessing the contribution of health inequalities", Anthony D La Montagne, Tessa Keegel, Deborah Vallance, Aleck Ostry and Rory Wolf, BMC Public Health 2008, 8: 181.

[21] Australian Safety and Compensation Council (2007), *Compendium of Workers' Compensation Statistics Australia 2004–5*, <http://www.ascc.gov.au/NR/rdonlyres/E0C9B5C7-9C4E-45A6-A733-475E90F2DA25/0/Completeversion_WorkCompStats0405.pdf>, p. 72.

[22] Australian Safety and Compensation Council (2008), *Compendium of Workers' Compensation Statistics Australia 2005–6*, <http://www.ascc.gov.au/NR/rdonlyres/656E6571-D7B3-4DD6-846B-78C161CA0F4D/0/Compendium_of_Workers_Compensation_Statistics_200506_Full_version.pdf>, p. 33.

Pressure", 21.5% to "Harassment" and 16.1% to "Exposure to Workplace or Occupational Violence".[23]

56. In terms of both physical and mental health, it is clear that all facets of a person's health is impacted by their place of work. There is compelling evidence to suggest that workplace culture can either aid or diminish a person's physical and mental health.

57. Given these facts in relation to the mental health issues associated with poor workplace culture, of which bullying should be seen as a part, greater resources need to be directed to improving workplace culture in Australia as part of a strategy to deal with workplace bullying, as well as in respect to other aspect of employee health and well-being.

## Workplace culture – need for change

58. Having ascertained that there is a clearly demonstrable connection between workplace culture and both mental and physical health, it is important to assess the quality of Australian workplace culture according to international benchmarks.

59. Workplace culture is a broad term that encompasses a number of different and often intangible, aspects of an organisation reflecting the environment that the organisation creates with, and for, its employees. A supportive workplace culture has been associated with a variety of benefits for both employees and employers, including higher levels of commitment to the organisation, greater staff retention, higher levels of job satisfaction, lower levels of stress and the experience of less conflict between work and family responsibilities.

60. It is disappointing that studies show that Australian workplace culture is falling behind international benchmarks. Cumulatively, the research on Australian workplace culture is clear that there needs to be cultural reform of Australian workplaces so that Australia can become an international leader in people management and so as to minimise the health risks that arise from the existence of poor workplace culture in Australian businesses.

61. A study conducted in 2007 by researchers at Bond University[24] looked at the impact of bad leaders on the employees and the organisations, which were the recipients of that bad leadership. In the report of their research, the authors state that their data indicates that "bad leaders are capable of having an incredibly negative effect both on their subordinates and the organisation as a whole.  At the individual level, followers suffered negative emotional reactions, stress, lowered self esteem and loss of confidence.  While these effects are evident in the workplace, they also intrude into the personal lives of followers, having broader social implications in terms of family stability, personal relationships and health".

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[23] N2 above, p. 72

[24] Erickson, A. Shaw, J.B. Agabe, Z (2007) "An Empirical Investigation of the Antecedents, Behaviours and Outcomes of Bad Leadership" *Journal of Leadership Studies* Vol 1 (3) pp26-43

62. A comprehensive study of workplace culture across different countries has found that Australia lags behind in people management. Human Synergistics International Limited, is involved in organisational development and training and has developed a set of measurement tools for assessing leadership styles, organisational culture and effectiveness. For the past seven years they have published a "State of the Nations Research and Results" book.[25] The publication is a compilation of the data collected from their various measurement tools together with implications for culture, leadership and organisational performance.

63. Human Synergistics uses a framework according to which leadership behaviour can be described as falling within three primary styles, being: a constructive style, a passive/defensive style or an aggressive/defensive style. According to these assessments, the 2008 results indicate that Australian organisation cultures tend to be more passive/defensive and aggressive/defensive, rather than constructive. This has meant that Australian workplaces tend to be associated with higher degrees of stress and conflict, with less receptivity to fresh ideas and innovative practices.

64. The combination of sub-optimal management practices by employers and the experience of increasing pressure on employees have led to the proliferation of poor workplace culture across Australia. This is of growing concern given the adverse link between unsupportive and sub-standard workplace culture and health problems for employees, including bullying.

65. The Australian Government needs to recognise that Australia is lagging behind international benchmarks for people management and workplace culture, and the need for reform in this area as part of the national preventative health strategy, including with respect to the elimination of bullying.

66. The cost of doing so should not be a negative for the Australian economy or an overall cost for employers. On the contrary, the opposite should be the case. Investing in workplace culture improves the success of business, and in turn, the success of the Australian economy overall.

67. Research noted above shows that there is a clear link between workplace culture, the mental and physical wellbeing of employees and business performance. The ability of Australian businesses to manage their workplaces in a fair and reasonable manner provides an opportunity to improve the health of employees and the profitability of the business overall.

68. Research unequivocally shows that when a business invests in workplace culture the benefits are substantial.[26] The first incentive for investment in workplace culture is "responsibility", in a manner analogous with corporate social responsibility. This is

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[25]"The Leadership Culture Performance Connection. Transforming Leadership and Culture. The State of the Nations. The Research Results Book 2008 Australia and New Zealand", Shaun McCarthy, Human Synergistics International

[26] Marmot M, Siegrist J, Theorell T: Health and the psychosocial environment at work. In Social Determinants of Health Second Edition. Edited by Marmot M, Wilkonson WG. New York. Oxford UP; 2006. 97-130

because adverse psychosocial work environments should be reduced to the extent supported by scientific evidence so as to improve employee health.

69. The second incentive is "the cost of inactivity", as a failure to invest in workplace culture will lead to greater costs associated with absenteeism, presenteeism and recruitment and training of new staff. The third incentive to improve workplace culture is the return on investment for improving quality of work organisation, including corporate brand reputation and product innovation.

70. Ultimately, the burden of poor workplace culture on employers is substantial and represents an area in which preventative measures will produce strong efficiency and productivity gains for the business. Increasing focus is being given by researchers to the business case for improving workplace culture.

71. Poor workplace culture adversely impacts an employee's commitment to the business and is usually associated with higher degrees of absenteeism and presenteeism. In contrast to absenteeism, when employees are absent from work, presenteeism encompasses the problems faced when employees come to work in spite of illness, which can have similar negative repercussions on business performance.

72. Research conducted by Econtech in 2008 found that stress-related presenteeism and absenteeism are directly costing employers $10.11 billion a year. The following table summarises the findings of this study:[27]

|  | Stress related presenteeism | Stress related absenteeism | Total |
|---|---|---|---|
| **Total cost to economy** | $9.69b | $5.12b | $14.81b |
| **Direct cost to employers** | $6.63b | $3.48b | $10.11b |
| **Labour productivity lost** | 0.89% | 0.47% | 1.36% |
| **Days lost per worker per year** | 2.1 | 1.1 | 3.2 |

73. A study by the United Kingdom Sainsbury Centre for Mental Health in 2007 noted that "the cost of neglecting mental distress at work is simply too high to be ignored any longer".[28] This study found that mental health problems among staff costs UK

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[27] Medibank Private, "The Cost of Workplace Stress in Australia", Discussion Paper, Research conduced by Econtech, August 2008.

[28] Sainsbury Centre for Mental Health, *Mental health at work: developing the business case,* Policy paper 8, London: SCMH, December 2007.

employers nearly £26 billion per year in the form of sickness absence, reduced productivity at work and replacing staff who leave their jobs because of mental ill health.[29] Another study of workplace culture in the United Kingdom found that stress-related disorders have been estimated to account for up to 60% of absenteeism.[30]

74. According to data from the US Bureau of Labor Statistics, workers who must take time off work because of stress, anxiety or a related disorder will be off the job for about 20 days.[31]

75. Thus, both international and local studies indicate that there is a clear business case for investment in workplace culture. Furthermore, in addition to the costs of presenteeism and absenteeism, it is important to note that the above research findings do not reflect the hidden cost of re-staffing and re-skilling, when stress results in staff turnover. As an employee's stress levels increase, their health may not deteriorate to a clinical state, but they may instead resign before that point. In these cases, employers may not incur the direct costs associated with injury or illness, but may instead incur indirect costs from increased staffing expenses and lost productivity whilst there is no one in the job.

76. Another overriding reason for businesses to invest in workplace culture is that the quality of workplace relationships has been found to be the single most important driver of excellence in Australian workplaces. A comprehensive 2003 study of Australian workplaces found that while other factors such as 'workplace leadership', 'clear values', 'being safe', 'pay and conditions', 'getting feedback' and the like were important, no factor was as important as 'quality working relationships' in driving business excellence.[32]

77. This report concluded that: "In all our 'excellent workplaces' the atmosphere of mutual trust and respect was overwhelming. We became convinced that central to every excellent workplace is an understanding that to produce quality work in Australia, one must have quality working relationships. This applies particularly to workplaces with high levels of uncertainty, demanding skill requirements and turbulent markets. The research revealed that building and maintaining good working relationships requires constant renewal and reaffirmation by all parties".

78. Investment in workplace culture is a key way in which business can achieve quality working relationships and the elimination of negative outcomes such as bullying. A number of steps can be taken to achieve improved workplace culture.

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[29] Sainsbury Centre for Mental Health, *Mental health at work: developing the business case,* Policy paper 8, London: SCMH, December 2007.

[30] VicHealth, *Workplace stress in Victoria: Developing a systems approach,* Summary report, May 2006, p7.

[31] Bureau of Labor Statistics (1996) Bureau of Labor Statistics Homepage [http://stats.bls.gov/]/ Tabular data, 1992-96: Number and percentage distribution of nonfatal occupational injuries and illnesses involving days away from work, by nature of injury or illness and number of days away from work.

[32] D Hull & V Read (2003) *Simply the Best: Workplaces in Australia.* (Working paper no.88), ACIRRT, Sydney, Australia, University of Sydney.

79. The Charter and Australian Standard of Employment Rights provide a clear and concise blueprint covering all facets of the employment relationship as to how employers and employees can improve workplace culture.

80. We raise this matter in the context of this investigation into workplace bullying principally because we think a new approach to defining industrial relationships within Australia is required if the workplace cultures that lead to bullying are to be removed or at least minimalised. One of the major obstacles to achieving this in our view is the loss of genuine, rather than functional tripartism in this arena within Australia. This loss of tripartism means there is limited opportunity to discuss new approaches to regulating work relationships in a non-adversarial climate.

81. The AIER believes that greater effort needs to be put to rebuilding an environment of genuine tripartism. AIER has previously called for support for a <u>Centre for Workplace Citizenship</u>.[33] We renew our call for this initiative via this submission. Our detailed proposal for this Centre is attached as an Appendix to this submission.

82. Secondly, the AIER has called for a National System of Accreditation to encourage workplaces to improve their workplace cultures. It is clear that a systemic approach to managing workplace culture is required. Research shows that improving workplace culture cannot be left to the sole discretion of individual employers as this will mean that some Australians miss out. A case-by-case approach to investment in workplace culture will be subject to the financial conditions of the business, its human resources expertise and the priorities of those in leadership. Given the clear business and community case for investment in workplace culture, this requires a comprehensive national approach.

83. The AIER believes that this is best administered at a federal level. In addition to initiatives such as the development of procurement guidelines, the Australian Government needs to lead the way by developing a National Accreditation System that would educate employers and other workplace participants, and encourage their alignment with the objectives and values of the system. This National Accreditation System should be administered by a National Centre for Workplace Partnerships.

84. The AIER recommends that the National Accreditation System be built around three main objectives.

- Just as the Australian Charter of Employment Rights is intended to apply in all workplaces, the National Accreditation System should be aimed to be accessible to all. This will be achieved by ensuring that the costs and complexity of the system do not preclude small businesses or those with limited human resources expertise from engaging with it.

- The National Accreditation System should also seek to be inclusive of employers, workers and their representatives. The system should be underpinned by a tripartite philosophy that aims to balance the rights and legitimate expectations of workers and employers with the public interest.

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[33] For a more detailed discussion of Industrial citizenship see: Ewing KD (1998) 'Australian and British Labour Law: Differences of Form or Substance', 11 Australian Journal of Labour Law 44; McCallum R (1996), 'The New Millennium and the Higgins Heritage: Industrial Relations in the 21st Century', 38 Journal of Industrial Relations 294; Fudge J (2005) 'After Industrial Citizenship: Market Citizenship or Citizenship at Work?', Industrial Relations, 60(4), pp. 631-653.

- Thirdly, the National Accreditation System should aim to influence workplace culture in Australia by being an educative tool. The system should provide the means by which Australia can become an international employer of choice because of the improved understanding and awareness of workplace culture by all Australian businesses.

85. Ultimately, the National Accreditation System should be used to prevent physical and mental problems [including bullying and harassment] developing from adverse workplace culture. There is a pressing need for reform in this area so that Australian businesses are genuine sites of "fair work" and so that Australia, as a country, is built upon the dignity and respect accorded to every working person.

86. In the area of occupational health and safety, of which elimination of bullying is a subset, it is universally recognised that a systemic approach is required to manage the risks of safety in the workplace. The law has progressed significantly since the Robens Review in the United Kingdom into occupational health and safety. As a result, Australian law places the onus on employers to take responsibility for guaranteeing the health, safety and welfare of all workplace participants. A collaborative approach including all stakeholders is recognised as key to ensuring occupational health and safety in the workplace.

87. While occupational health and safety legislation recognises the onus on employers to protect employees from physical and mental health risks resulting from poor workplace culture, it is extremely rare for an employer to be prosecuted in this area. Enforcement mechanisms exist for ordering penalties for a workplace injury or death arising from a physical hazard. However, for an employee who, having been subject to long term bullying and other negative behaviours at work, develops a serious mental illness or even dies, there is usually no effective mechanism to monitor this abuse and to enforce a penalty against the employer. Without such a mechanism there is little incentive for employers to improve workplace culture, and certainly very little to deter them from the existence of poor workplace culture in their business.

88. Accordingly, the subtle and destructive nature of adverse workplace culture which can manifest itself in a "death by a thousand cuts" needs to be addressed. In this way, a National Accreditation System would address workplace culture over the long term. Such a comprehensive and systemic approach lends itself to focussing on the preventative ability and willingness of the business to minimise physical and mental illness arising from adverse culture in the present, as well as, in the future.

89. It is recommended that the foundation stones of the National Accreditation System be:

- The Australian Charter of Employment Rights ("the Charter"); and

- The Australian Standard of Employment Rights ("the Standard").

90. The Standard translates the rights and values embodied in the Charter into practical principles that can be applied in the workplace. The Standard comprises a number of key components applicable to all workplaces regardless of their industry or background. In using the Standard, the National Accreditation System will encourage business to adapt the components of the Standard to the specific circumstances of their workplace. In this way, the system will recognises that there is no single "right way" to improve workplace culture, but that the best businesses are those that build on the principles in the Standard in a dynamic and innovative way.

91. The Standard encourages business to improve both their reactive and proactive ability, with the particular emphasis of the National Accreditation System being on the latter because of the benefits for preventative health. For example,

- Section 2(a) of the Standard requires employers and workers to commit to recognising and affirming the dignity of every person in the workplace.

- Section 2(b) requires a zero tolerance approach to bullying and harassment in the workplace and

- Section 2(e) mandates that every person in the workplace is committed to treating others with respect.

92. Other examples of the preventative orientation of the Standard are

- Section 10(a) which requires the business to have a well-designed dispute resolution process, accessible to all staff, and offering both formal and informal options, and

- Section 5(a) which requires both employers and workers to reject adversarial workplace relations and commit to seeking mutually beneficial outcomes.

93. The National Accreditation System should be administered by a National Centre for Workplace Citizenship or like body, that fosters cultural change in Australian workplaces. The aim of this Centre would be to:

- promote good faith and industrial fairness

- shift the industrial relations climate to one of engagement around issues of mutual trust

- help to re-orient firms towards developments which improve quality, innovation and responsiveness to emerging market opportunities

- provide a positive role for trade unions to play in the workplace.

94. The potential public benefits are substantial and include:

- reduced transactional costs in forming and maintaining workplace relationships

- reduced levels of industrial disputation and loss of productivity via hidden dissatisfaction and low morale

- more adaptive production base

- accelerated pace of organisational and cultural change

- improved social cohesion resulting from greater satisfaction with work and improved productivity and economic sustainability.

95. A National Centre for Workplace Citizenship should be guided by the following objectives:

- improving the quality of working lives of individual Australians

- creating conditions for business success

- enhancing social cohesion via the promotion of respectful workplaces and workplace partnerships

- educating the Australian public about fair work practices.

96. The Government should provide the seed funding for the establishment of A National Centre for Workplace Citizenship however it should ultimately be resourced and managed by a collaborative arrangement between the union movement and representatives of employers (with some government support) in order that it become a true partnership initiative. It would be complementary to other initiatives carried out by Fair Work Australia and the Fair Work Ombudsman. AIER believes that these existing regulatory and administrative agencies will not readily be able to foster the front-end cultural change that is required. New collaborative institutions should be established.

97. In order to encourage ongoing engagement with the National Centre for Workplace Citizenship, the Federal Government should consider the establishment of tax incentives for businesses that achieve accreditation. This will provide an additional impetus to employers to devote resources, time and energy to improve workplace culture over the long term. The provision of favourable tax structures for businesses that achieve accreditation ensures that improved workplace culture is seen as a genuine and serious preventative health and workplace relations priority of the Federal Government.

## Education of young people

98. Changing workplace cultures is important for all workers if bullying is to be eliminated. So too is education for young people entering the workforce for the first time. Young people need to be educated about their rights and entitlements to a safe and secure workplace free of bullying and other harassment. They also need to know their rights and means of recourse if they do encounter inappropriate behaviour in the workplace.

99. The AIER has worked with the Teacher Learning Network to produce a comprehensive educational resource –called Workright - for use in the classroom dealing with a variety of workplace issues including bullying. These resources can be found at: http://teachworkright.com/.

100. WorkRight is an innovative approach for teachers and adults working with young people on their rights and responsibilities in the workplace. The resource is designed and written to be used by all teachers working with students in Year 10 or at Levels 5 and 6 of VELS. Whilst the specialist expertise of careers teachers is recognised, the resource promotes the view that students' engagement with the work environment is a whole of school, whole of staff responsibility. The package has activities designed for all teachers to use across the curriculum.

101. The Work Right resource includes:

- A comprehensive curriculum resource
- A teacher reference resource
- A student take home resource

The ten themes in the package were identified by students themselves as being relevant to a 'fair go' in the workplace. Intriguingly they match the 10 articles of the Australian Charter for Employment Rights developed by Australia's leading industrial practitioners

The resource covers the following themes:

1. Everyone Should Have a Fair Go at Work
2. Everyone Has a Right to be Treated With Dignity
3. Discrimination and Harassment are Against the Law
4. Everyone Has a Right to a Safe and Healthy Workplace
5. Everyone Should Get a Say About the Things That Affect Them
6. You Should Always be Able to Ask Someone to Speak on Your Behalf
7. No One Should be Asked to Leave Without a Fair Reason
8. Everyone is Entitled to Fair Basic Conditions
9. You (or Your) Representative Should be Allowed to Bargain for a Fairer Deal
10. Disputes Should be Resolved Quickly and Fairly

The resource also includes a substantial list of references and resources for referral and further information.

102. The AIER recommends the use of resources like WorkRight in all schools at an appropriate level.

103. The AIER calls on Commonwealth, State and Territory government to make funds available to make Workright more accessible including to

- support professional development for teachers to enable them to better utilize the resource

- to align the resource to the National Curriculum Framework.

# Annexure 1:

## Australian Institute of Employment Rights Inc.

**Patrons**

The Honourable RJ Hawke

Emeritus Professor Ron McCallum AO

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Mark Irving - Victorian Bar

Anthony Lawrence -  HWL Ebsworth

Tim McCauley - AMWU

Lisa Heap – AIER Executive Director

# Annexure 2

## Charter - Panel of Experts & Charter Advisory Committee

| | |
|---|---|
| Mordy Bromberg SC, Victorian Bar (now Justice of Federal Court) | Professor Barbara Pocock, Centre of Work and Life at the University of Adelaide |
| Professor Joellen Riley, Sydney University | Justice Paul Munro, former Presidential Member of the AIRC |
| Professor Greg Bamber, Monash University | Professor Ron McCallum AO, Sydney Law School |
| Carol Andrades, Ryan Carlisle Thomas | David Chin, NSW Bar |
| Associate Professor Anthony Forsyth, Monash University | Anne Gooley, Partner, Maurice Blackburn Cashman (now Commissioner Fair Work Australia) |
| Associate Professor Colin Fenwick, Melbourne University (and now ILO) | Professor Russell Lansbury, University of Sydney (liaison) |
| Professor Marilyn Pittard, Monash University | Emeritus Professor John Neville, UNSW |
| Professor David Peetz, Griffith University | Associate Professor Peter Kriesler, UNSW |
| Michael Harmer, Harmers Workplace Lawyers | Bob Russell, Griffith University |
| Mark Irving, Victorian Bar | Julia Watson, Melbourne University |
| Peter Rozen, Victorian Bar | |

# Annexure 3

## The Australian Charter of Employment Rights

**Recognising that**: improved workplace relations requires a collaborative culture in which workers commit to the legitimate expectations of the enterprise in which they work and employers provide for the legitimate expectations of their workers.

**And drawing upon**: Australian industrial practice, the common law and international treaty obligations binding on Australia, this Charter has been framed as a statement of the reciprocal rights of workers and employers in Australian workplaces.

### 1. Good faith performance

Every worker and every employer has the right to have their agreed terms of employment performed by them in good faith. They have an obligation to co-operate with each other and ensure a "fair go all round".

### 2. Work with dignity

Recognising that labour is not a mere commodity, workers and employers have the right to be accorded dignity at work and to experience the dignity of work. This includes being: treated with respect recognised and valued for the work, managerial or business functions they perform provided with opportunities for skill enhancement and career progression protected from bullying, harassment and unwarranted surveillance.

### 3. Freedom from discrimination and harassment

Workers and employers have the right to enjoy a workplace that is free of discrimination or harassment based on:

- race, colour, descent, national, social or ethnic origin
- sex, gender identity or sexual orientation
- age
- physical or mental disability
- marital status
- family or carer responsibilities
- pregnancy, potential pregnancy or breastfeeding
- religion or religious belief
- political opinion
- irrelevant criminal record
- union membership or participation in union activities or other collective industrial activity
- membership of an employer organisation or participation in the activities of such a body
- personal association with someone possessing one or more of these attributes.

## 4. A safe and healthy workplace

Every worker has the right to a safe and healthy working environment. Every employer has the right to expect that workers will co-operate with, and assist, their employer to provide a safe working environment.

## 5. Workplace democracy

Employers have the right to responsibly manage their business. Workers have the right to express their views to their employer and have those views duly considered in good faith. Workers have the right to participate in the making of decisions that have significant implications for themselves or their workplace.

## 6. Union membership and representation

Workers have the right to form and join a trade union for the protection of their occupational, social and economic interests.

Workers have the right to require their union to perform and observe its rules, and to have the activities of their union conducted free from employer and governmental interference. Every worker has the right to be represented by their union in the workplace.

## 7. Protection from unfair dismissal

Every worker has the right to security of employment and to be protected against unfair, capricious or arbitrary dismissal without a valid reason related to the worker's performance or conduct or the operational requirements of the enterprise affecting that worker. This right is subject to exceptions consistent with International Labour Organization standards.

## 8. Fair minimum standards

Every worker is entitled to the protection of minimum standards, mandated by law and principally established and maintained by an impartial tribunal independent of government, which provide for a minimum wage and just conditions of work, including safe and family-friendly working hours.

## 9. Fairness and balance in industrial bargaining

Workers have the right to bargain collectively through the representative of their choosing. Workers, workers' representatives and employers have the obligation to conduct any such bargaining in good faith. Subject to compliance with their obligation to bargain in good faith, workers have the right to take industrial action and employers have the right to respond.

Conciliation services are provided where necessary and access to arbitration is available where there is no reasonable prospect of agreement being reached and the public interest so requires. Employers and workers may make individual agreements that do not reduce minimum standards and that do not undermine either the capacity of workers and employers to bargain collectively or the collective agreements made by them.

**10. Effective dispute resolution**

Workers and employers have the right and the obligation to participate in dispute resolution processes in good faith, and, where appropriate, to access an independent tribunal to resolve a grievance or enforce a remedy. The right to an effective remedy for workers includes the power for workers' representatives to visit and inspect workplaces, obtain relevant information and provide representation.

# Annexure 4

## The Australian Standard of Employment Rights

**Recognising that**: improved workplace culture requires workers and employers to recognise their pivotal role as industrial citizens.

**And building upon**: the Australian Charter of Employment Rights, this Standard has been framed as a statement of the reciprocal rights and responsibilities of workers and employers in Australian workplaces which have received the distinction of being a 'Charter-Accredited Workplace'.

### 1. Good faith performance

A. Employers and workers do not seek to mislead, deceive or trick each other but always seek to act in an honest and trustworthy manner.

B. Employers and workers do not abuse any powers or discretions granted to them in the employment contract.

C. No person in or associated with the workplace is subjected to harassment or humiliation so as to cause psychological harm or distress.

D. Workers and employers act in good faith during termination of the employment relationship. Workers are dismissed only for a reason relating to their performance or conduct, or for operational business reasons. Workers are willing to serve the notice period required in their contract if they decide to terminate their employment.

E. Employers and workers do not maliciously damage the reputation of the other.

F. Employers do not seek to place an illegitimate restriction on the freedom of workers to pursue their careers once their employment relationship is over.

### 2. Work with dignity

A. Employers and workers are committed to recognising and affirming the dignity of every person in the workplace.

B. There is no bullying and harassment in the workplace.

C. The employer regularly invests in the skill formation of workers and appropriate career paths are developed within the workplace.

D. Surveillance of the workplace only occurs with the consent of workers and when used for a legitimate purpose.

E. Every person in the workplace is committed to treating others with respect.

### 3. Freedom from discrimination and harassment

A. The employer is committed to achieving a workplace that is free from discrimination and harassment based on protected attributes.

B. The employer makes non-discriminatory decisions about all work related matters by giving every worker and job applicant fair access to all workplace opportunities and benefits.

C. The employer has a clear set of policies and procedures for addressing and managing the risks arising from discrimination and harassment in the workplace. This includes:

> i preparing and distributing a written policy on discrimination and harassment
>
> ii ensuring that there is in place a protective investigation process which deals with complaints promptly and properly
>
> iii maintaining thorough records and (subject to legal requirements) guaranteeing confidentiality
>
> iv promoting the policy throughout the business
>
> v providing training on operation of the policy to all workers, including those in leadership positions
>
> vi if possible, appointing trained discrimination and harassment contact officers
>
> vii reviewing work practices and regularly monitoring and evaluating the workplace culture to ensure compatibility with appropriate standards
>
> viii guaranteeing that no worker will be victimised for making a complaint or for supporting someone who has done so
>
> ix ensuring that all parties to the complaints process are permitted to have a support person, advocate, union official or other similar representative accompany them to any interviews or meetings
>
> x providing a worker who has suffered discrimination or harassment in the workplace with access to counselling services or other employee assistance programs
>
> xi dealing with perpetrators in a manner proportionate to the severity of their behaviour

D. All workers are committed to achieving a workplace that is free from discrimination and harassment based on protected attributes.


## 4. A safe and healthy workplace

A. The employer is committed to making safety part of the lifeblood of the business by minimising exposure to health hazards and taking all steps to minimise deaths and injuries in the workplace.

B. The employer has a systematic, proactive and comprehensive risk management process to ensure the achievement of a safe and healthy workplace.

C. There is consultation with workers about major changes to safety and health measures as well as changes to work that may have safety or health implications.

D. Workers are given the opportunity to be represented in dealings with their employer concerning health and safety issues.


E. There is adequate information, instruction, training and supervision given to workers to enable them to perform their work in a manner that is safe and without risks to health.

F. The workplace is free of bullying, stress, abuse and anxiety that is detrimental to the worker's mental health.

G. All workers are committed to achieving a safe and healthy workplace and to cooperating with management about workplace safety measures.


### 5. Workplace democracy

A. Both employers and workers reject adversarial workplace relations and commit to seeking mutually beneficial outcomes.

B. The employer does not have a blanket managerial prerogative but is committed to managing the business in a responsible manner.

C. Both employers and workers are committed to engaging in constructive dialogue. As part of this, workers are allowed to express their views in the workplace and have their views considered in good faith by their employer.

D. In the case of business decisions that have significant implications for workers such as workplace restructuring, workers have the opportunity to participate in the decision-making process by being provided with information and meaningful consultation.

E. Workers are committed to cooperating with and supporting the employer's right to responsibly manage their business.


### 6. Union membership and representation

A. Workers are not discriminated against or treated detrimentally for joining or being a member of a union or on account of their union activities.

B. No job or other employment benefit is offered on the condition that the worker is not a union member or relinquish the right to union representation.

C. The employer does not refuse to recognise a union or punish its members for participating in lawful industrial activity.

D. The employer recognises that the right to collectively bargain is an integral aspect of union membership.

E. The employer does not restrict the role of the union in representing workers within the workplace.

F. Workers and their unions exercise their right to collectivism, responsibly, in good faith and with regard to their ongoing employment relationship and the dignity of every person in their workplace.


### 7. Protection from unfair dismissal

A. The employer has a systematic and comprehensive risk management process to managing dismissals or terminations of employment in the workplace.

B. The employer has a legitimate reason for termination of employment when that termination relates to the worker's conduct.

C. Prior to termination and where possible, an employer should warn the worker about conduct or performance matters so that the worker has a reasonable opportunity to rectify the conduct or improve performance.

D. Workers who are being dismissed are entitled to procedural fairness in the dismissal process.

E. Where a worker is terminated because of the employer's operational requirements, the termination is to be treated as a redundancy, and procedures for determining and dealing with redundancies are followed.

F. The employer is committed to respecting the dignity of all those involved in the termination process.

## 8. Fair minimum standards

A. The employer is committed to complying with fair minimum standards imposed externally to the workplace.

B. The employer, in consultation with workers, is willing and committed to providing fair standards that build upon the legislative minimum and which are tailored to the needs of the workplace.

C. The employer respects the need of workers to live a fulfilling life and to attain a fair balance between work and the rest of their lives. In recognising this, the business is committed to developing policies on flexible work practices, parental leave, working hours and workloads, and other conditions within the workplace.

## 9. Fairness and balance in industrial bargaining

A. Workers have the right to bargain collectively.

B. All parties involved in bargaining for workplace agreements act in good faith and with due regard for the dignity and integrity of all persons in the workplace and relevant third parties.

C. Workers have a right to use representatives of their choosing in the bargaining process.

D. Workers have the right to use lawful industrial action as part of the bargaining process. Employers have a right to respond to this.

E. The use of statutory individual agreements does not undercut collective agreements and is not used as a mechanism to avoid or undermine collective bargaining with workers.

## 10. Effective dispute resolution

A. The process of dispute resolution is clearly documented and accessible to all workers, offering both formal and informal options.

B. The employer has a well-designed dispute resolution process that aims to:

      i Guarantee timeliness, confidentiality and objectivity

      ii Be administered by trained personnel

      iii Provide clear guidance on the investigation process

      iv Guarantee that no worker is victimised or disadvantaged for making a complaint

v Be regularly reviewed for effectiveness

vi Guarantee that the worker can participate in the dispute resolution process without any loss of remuneration

vii Graduate from informal to formal measures

C. The dispute resolution process is procedurally fair.

D. The process of dispute resolution allows the worker and the employer to be represented. Full access to relevant records and information as to the dispute resolution process is provided to the worker and their representative.

E. If the dispute cannot be resolved at the workplace level, the dispute is referred to an independent and impartial body that has the power to resolve the dispute.

# Annexure 5

## A mechanism to foster and support cultural change – the creation of a Centre for Workplace Citizenship

This proposal is intended to scope the establishment of a national resource to promote fair work practices in Australia.

By resource we mean an organisation/Centre dedicated to:

- Improving the quality of working lives of individual Australians

- Creating conditions for business success

- Enhancing social cohesion via the promotion of respectful workplaces and the understanding of workplace citizenship

- Educating the Australian public about fair work practices and workplace citizenship.

It is proposed that this organisation be independent and ultimately self-sustaining. The resource should be composed of representatives of employers and employees and those who broadly have an interest in the establishment of fair work practices and workplace citizenship.

Whilst the ultimate aim is for the organisation to be self sustaining (founded in the recognition that fair work practices and respectful relationships are directly beneficial to the parties in the labour market), initial seed funding from government is required in order to promote the immediate success of the organisation, public recognition for its purposes and its ability to ensure that its efforts are not narrowly confined.

The present aggressive, adversarial workplace culture requires an injection of resources to overcome learned behavior. There is a substantial public benefit warranting the expenditure of public funds in the manner outlined in this proposal.

Co-operative approaches to stakeholder engagement are being adopted in broader social and economic contexts both within Australia and internationally.

There is also a growing trend internationally for this co-operative approach to promoting innovation and productivity in the workplace.

Different models apply – independent not for profit entities that receive government funds (NZ EEOT), distinct operating units within government bureaucracy (NZ Partnership Centre), independent statutory authorities (Ireland's National Centre for Partnership Performance).

In Australia the Victorian and Queensland Government have sponsored programs designed to showcase the partnerships approach through initiatives such as the Partners at Work Grants (Vic) and Better Work and Family Balance Grants Program (Vic) and the Smart Workplaces Projects (Qld).42

The Australian Institute of Employment Rights (AIER) has occupied a unique space being the only independent body in Australia with employer and employee/union representation in its composition and with the stated aims of promoting the recognition and implementation of

the rights of employees and employers in a cooperative industrial relations framework. The AIER has adopted the principles of the ILO and its commitment to tripartite processes.

With limited resources, and in a difficult political environment, the AIER has been able to produce valuable resources such as its Charter of Employment Rights (and accompanying book), the Australian Standard of Employment Rights and the education resource Workright, participate in and facilitate forums for public debate and input into public inquiries. It has received numerous requests to provide more information and to assist organisations wishing to improve workplace culture.

**The benefits of establishing this resource**

Initiatives of this kind benefit employers, employees and unions. It is logical therefore that employers and the trade union movement will invest in an initiative of this type. There are also substantial public (or third party) benefits associated with the initiative that warrant the injection of public funds.

Without initiatives designed to drive fairness and an understanding of workplace citizenship organisations will continue with their current cost competitive approach and the adversarial industrial relations culture will permeate.

For as long as global competitiveness relies increasingly on flexibility and innovation (rather than price) and the service related industries heavily reliant on the quality of human capital continue to grow in Australia, there is a need to move beyond short term, and adversarial workplace relationships.

New workplace relationships can be fostered that:
- help to re-orient firms towards developments which improve quality, innovation and responsiveness to emerging market opportunities

- shift the industrial relations climate to one of engagement around issues of mutual interest

- ensure, via involvement and respect that maximum value of employees is reached

- provide a positive role for trade unions to play in the workplace. The public benefits associated with this proposal are:

- Reduced transactional costs in forming and maintaining workplace relationships

- Reduced level of industrial disruption and loss of productivity via hidden dissatisfaction and low morale

- More adaptive production base Accelerated pace of organisational and cultural change

- Improved social cohesion resulting from greater satisfaction with work and improved productivity and economic sustainability.

In addition the public benefit should also be measured in terms of the costs of not supporting such an initiative. These costs are largely associated with the lag or delay in achieving cultural change towards fairness where parties are skeptical or find it difficult to move away from past practice or where the improvements with these changes are incremental and difficult to measure. In this environment and without the support of

additional resources the positive more long-term initiatives may be crowded out by immediate short-term agendas.

There is also the potential that without a resource that provides a catalyst for positive change the experience of this change will be narrow. For example solely amongst large organisations with the internal human resources capabilities to manage it themselves.

**The role and function of the resource**

There is a very clear need for this new resource:
- To ensure that fairness moves beyond the machinery of government and to facilitate the development of on the ground of cultural change

- Changes to the nature of the labour market and in particular Australia's skills shortage require innovative responses

- Promoting respecting and trustful environments within workplaces will allow innovation and productivity to flourish

- Industrial parties need support and education to move forward particularly given the recent past.

This resource should be guided by the following objectives:
- Improving the quality of working lives of individual Australians

- Creating conditions for business success

- Enhancing social cohesion via the promotion of respectful workplaces and workplace partnerships

- Educating the Australian public about fair work practices.

It will achieve these objectives through facilitating improvements in workplace and industry relationships, promoting fair work practices and educating the community. It should carry out the following functions:
- Fostering front-end cultural change

- Promoting models of fair work practices

- Educating workplaces, industrial parties and the broader community

- Collecting and analysing data regarding practices within workplaces.

**Fostering front-end cultural change**

The resource will act as a catalyst for cultural change providing on the ground assistance to organisations wanting to take up this challenge. It will assist organisations to build the internal capacity to make themselves fair both in terms of the process of change itself and the implementation of fair practices. The emphasis will be on building the capacity of the organisations themselves to implement effective strategies. To this end the resource will:
- Provide information, resources and examples of fair work practices and processes

- Train internal fair work facilitators from amongst the staff and management of organisations

- Be available to provide advice to organisations and act as a resource and train and accredit others to also provide this resource

- Establish a network of organisations that apply fair work practices that can help and support each other.

**Promotion/demonstration of models of fair work practices**

What is fair? Practices that emerged under WorkChoices provided Australia with many examples of what unfair practices might look like. Whilst we have an idea or general feel for what the difference is between fair and unfair practices, Australian workplaces will need some clear standards as a guide or rule of thumb of what fairness means in practice.

Jurisdictions such as the UK have done this by legislative initiative and providing codes of conduct on a variety of matters. The AIER has attempted to capture the minimum provisions that should exist in any workplace via its Charter of Employment Rights and the Australian Standard of Employment Rights.

This national resource will help organisations to interpret and apply the legislation in practice. To this end it will:
- Create a model standard or set of benchmarks for fairness which are consistent with, and help organisations to meet, the requirements of new legislation

- Publish and promote this standard/benchmark

- Publish and promote case studies of organisations achieving or striving to achieve this standard/benchmark

- Establish a system of voluntary accreditation against the benchmark or standard Publish voluntary codes of conduct

**Educating workplaces, industrial parties and the broader community**

The politicisation of workplace relations has done little to enhance genuine understanding of fairness at work. The dominance of unitarist theory in the training of human resource practitioners that has emerged in Australia since the 1980s has also undermined the partnership approach to workplace participation. It has always been difficult to educate first time entrants to the labour market about the rights and obligations in the workplace and what is fair and reasonable treatment. To this end the national resource should:
- engage in initiatives designed to promote an understanding in the Australian community about what is fairness at work

- engage with academia and those involved in the training of HR/IR practitioners about a values based approach to their teaching/learning and

- assist in the production of resources targeting new entrants to the labour market. It should also hold a biennial conference designed to showcase examples of fair work in practice

- Provide a venue for the presentation of research and academic discussion about trends

- Engage and educate practitioners in the achievement of fair work standards.

**Collecting and analysing data regarding practices within workplaces**

The collection and analysis of what's happening inside workplaces over the next decade will be a crucial tool to assess the depth of cultural change that legislative and policy change has brought about. This new national resource will be well placed to examine qualitatively the level of progress towards fairness within workplaces. To this end the national resource will

- Survey biennially organisations about what is happening to implement fairness in the workplace. This survey will be linked to the fairness standards and accreditation system the organisation has established.

- The surveying process will be established in conjunction with a recognised tertiary institution that has expressed an interest in oversight the survey process. This will ensure the rigour of the process and that the results of the survey will be able to be used to enhance academic endeavours.

- Survey results will be made available publicly for the purposes of promoting fair work practices, enhancing academic endeavour, facilitating public discourse and informing public policy.

- Survey results will be explored at the biennial conference of the resource.

**Relationship to Fair Work Australia & the Fair Work Ombudsman**

The work of this new resource and FWA will be complimentary but not overlap. For example this resource will not be involved in dispute resolution. Its emphasis will be on assisting the process of cultural change, promoting fair work practices and education about these practices and their benefits. It is likely that the new resource will be able to gain the confidence of employers and employees in ways that FWA or the FWO will not be able to be because it will have no enforcement or compliance powers or role and will be able to take a problem solving approach to assisting the parties.