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Australian Hotels Association

Submission in relation to:

Inquiry into Workplace Bullying

House of Representatives
Standing Committee on Education and Employment
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29 June 2012

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Summary

The Australian Hotels Association (AHA), the peak employer representation association in the hospitality and accommodation sectors, is pleased to provide this submission addressing the Terms of Reference set out by the House of Representatives Standing Committee on Education and Employment.

The AHA's membership comprises more than 5,000 hotel businesses across all states and territories. While some hotels are part of national or international chains or corporate entities that operate in several jurisdictions, the majority are small owner-operated businesses serving their local communities in accordance with the laws of their particular state or territory.

In providing a response to the issue of "workplace bullying", the AHA notes this is a term which is not clearly defined.

Existing state and territory legislation operates with varying degrees of prescription over health, safety and welfare, equal opportunity and human rights legislation.

There is no universally accepted definition of "workplace bullying". The concept has become more visible through the publication of cases and incidents that relate to workplace behaviour and may also be referred to as harassment, violence or personal complaints of how employees "perceive" they are or have been treated in the performance of their duties. The issue of perceived inappropriate treatment/behaviour in the workplace from work colleagues is being misinterpreted as "bullying".

Despite the variations in the definition of "workplace bullying" there is a general acceptance that for the behaviour to be considered bullying it would need to be **repeated** and **systematic**.

A general concept of what is "workplace bullying" could best be covered by the following words:

Behaviour directed towards an employee or a group of employees that is repeated and systematic and that a reasonable person, having regard to all circumstances, would expect to victimise, humiliate, undermine or threaten the employee or employees to whom the behaviour is directed and that creates a risk to health and safety.

The recognition of workplace behaviour issues generally occurs through workers compensation claims in applicable jurisdictions, or claims lodged in legislation that has provisions relating to inappropriate behaviours or bullying.

Data relating to these issues has been established through the Australian Bureau of Statistics and Safe Work Australia. These sources should be the common reference for understanding claims/issues relating to workplace behaviours and related issues that may be bullying/harassment or inappropriate behaviour.

As outlined in this response what this behaviour might be is unclear as there is no clear definition.

On the basis of the above general overview of what workplace bullying may be, the AHA makes the responses herein to the Terms of Reference.

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About the AHA

The Australian Hotels Association (AHA) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. Its membership of more than 5,000 licensed hotel businesses includes pub-style hotels plus three, four and five-star accommodation hotels located in each state and territory. The AHA's accommodation hotel members are serviced by Tourism Accommodation Australia, a division of the AHA. The AHA has branches located in every Australian capital city and a Canberra-based national office.

About the hotel industry

The hotel industry is a significant employer, with more than 278,000 persons employed between the hotel sector (188,000)¹ and the accommodation sector (90,000)², and an annual wages and salaries contribution of \$5.41 billion. In addition there are an estimated 20,000 employees in the casino sector³. Although some hotels are large-scale operations with hundreds of employees which form part of national or international chains, the majority of AHA members are small, locally-owned businesses serving their surrounding communities. In 2005-06 only 145 of 65,197 businesses in the ABS Accommodation, Cafes & Restaurants sector employed more than 100 people.⁴

¹ PricewaterhouseCoopers (2009) *Australian hotels: More than just a drink and a flutter*

² Australian Fair Pay Commission (August 2008), *Accommodation, Cafes and Restaurants Industry Profile, Research Report No. 1/09*

³ Australasian Casino Association, *Submission to the Parliamentary Joint Select Committee on Gambling Reform*, 31 January 2011

⁴ Australian Bureau of Statistics (2007), *Australian Industry 2005-06*

Response to the Terms of Reference

1. The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying.

Data relating to these issues has been established through the Australian Bureau of Statistics (“ABS”) and Safe Work Australia. The ABS and Safe Work Australia are the only formal sources where actual issues have been identified, referred and resolved and therefore should be the common reference for understanding claims/issues relating to workplace behaviours and related issues that may be bullying/harassment or inappropriate behaviour.

Although data is limited, the AHA submits that the vast majority of complaints and issues arising from behaviour in the workplace are resolved internally within the business through the deployment of best-practice management, including the principles of procedural fair play. It is rare that formal proceedings are required to resolve a workplace behavioural issue and generally these instances are resolved to the satisfaction of all parties.

2. 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 hotel industry is generally well-advanced in its implementation of policies and procedures aimed at minimising the risk of harm or injury occurring from unsafe working practices, as well as processes for management to be involved in preventing or responding to workplace behavioural issues that may arise from time to time.

Hotel policies and procedures manuals now generally include a section outlining the processes for dealing with workplace behavioural issues within the business, ensuring that employees are aware of their rights and obligations and providing a structure to deal with any concerns that may arise.

The formalisation of the Principles of Procedural Fair Play in the industrial relations system has reaffirmed the necessity for employers to ensure fair and reasonable processes for dealing with behavioural issues and compels management to act to prevent and address any inappropriate behaviour.

3. 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.

The information and education process of appropriate workplace behaviours and practices has been ongoing since the awareness of the issues of “perception” of inappropriate behaviours and subsequent identification of “workplace harassment/bullying” terminology.

Ongoing information and awareness is necessary, in particular awareness of those situations that are still occurring and should not occur.

Awareness of the “Bodie Case” is a practical example of what the Courts have determined as being inappropriate behaviour.

4. Whether there is scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying.

As outlined in the points above, there is an ongoing need for further coordination of this nature to ensure inappropriate workplace behaviour is managed and reduced.

5. 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.

Legislation is currently in place in some form as outlined in this submission that exists in all States and Territories and therefore it is not necessary to duplicate these current practices by introducing federal legislation.

We would support the existence of guidance materials produced at a national level which reinforce employer awareness of their obligations, but not the introduction of additional legislation.

The AHA position on this issue was outlined in its response to the Safe Work Australia Draft Codes of Practice on Workplace Bullying and Managing Workplace Fatigue as lodged on 16 December 2011, which is attached for reference to this point as Annexure 2.

6. Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying.

The response provided in point 5 above also addresses this point.

7. The most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another.

The ongoing Education/Awareness/Information process as outlined in points 3, 4 and 5 above is the best insurance against the spread of unsafe working practices and inappropriate behaviours.

Awareness of the risk for prosecution as a result of inappropriate behaviour in the workplace will help to deter this sort of behaviour from occurring.

8. Possible improvements to the national evidence base on workplace bullying.

As outlined in our earlier comments, particularly in the opening and in our response to point 1, the current statistical information, which is based on current legislation proceedings/claims (i.e. Workers Compensation, Human Rights) is the only practical evidence base at this point.

Workplace behaviours that are resolved within businesses by the application of appropriate management practices should remain in the workplace and remain confidential, as they have been managed to eliminate the need for formal actions to occur.