

Office of the President

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Committee Secretary
House Standing Committee on Education and Employment
House of Representatives
PO Box 6021
Parliament House, Canberra ACT 2600

By Post and Email to: workplacebullying.reps@aph.gov.au

Dear Committee Secretary

INQUIRY INTO WORKPLACE BULLYING

Thank you for providing Queensland Law Society with the opportunity to contribute to your inquiry into workplace bullying. This letter has been written with the assistance of our Industrial Law Committee. We would like to provide some brief comments on a few important aspects of the terms of reference.

1. Need for education on workplace bullying legal concepts

One key feature that we consider is missing in the discussion of workplace bullying is the need for clarity as to what legally constitutes workplace bullying. Our members observe that misconceptions frequently occur concerning the various concepts involved in this area of law. For example, what constitutes 'reasonable management action' under section 32(5) of the Queensland *Workers' Compensation and Rehabilitation Act 2003* is not understood well in the community. This perhaps leads to misrepresentation about the prevalence of genuine cases of workplace bullying.

Therefore, just as concerted efforts should be made to eliminate workplace bullying, similar efforts should be made in education of the wider community about the conduct that falls within and falls outside of the definition of workplace bullying.

2. Workplace-based bullying policies and procedures

The Society supports the use of workplace-based policies and procedures as an effective way to influence workplace bullying incidence and severity. We consider that proactive policies and procedures can be successful when accompanied by ongoing training for staff and positive action by both employers and employees. In saying this, we do consider that there should be guidelines for how these policies should be drafted so that they sufficiently cover legal duties under various legislative frameworks.

guideline as to what should be included in workplace-based policies would assist businesses (particularly smaller businesses) to cope with the demands of complying with constantly changing laws. In the past few years we have seen changes to work health and safety laws, consumer laws and the introduction of the Personal Property Securities regime to name a few. These reforms have added compliance costs to business. In our view, the majority of businesses aim to comply with all legislative requirements but find it difficult to do so given the cost and time involved. Clear and simple guidelines can assist businesses in this regard.

We also consider that guidelines should be made available regarding the content of training to be provided to staff on workplace bullying issues, including guidance on the regularity of, and manner in which, such training should be conducted.

3. Existing regulatory framework and regulatory gaps

The Society considers that there are situations in which internal complaint processes do not resolve workplace bullying issues, and the matters also do not fall readily within one of the already existing legal avenues for redress. Genuine cases of workplace bullying can sometimes 'fall between the cracks' if no concurrent elements are present that would bring the conduct within the scope of proscribed conduct in other legislation (e.g. - sexual harassment, adverse action or unfair dismissal claims).

Given the difficulty in accessing a cause of action experienced by genuine victims of workplace bullying, the Society believes that there is merit in the development of a stand-alone cause of action to facilitate victims' access to justice. The Society has not formed a final view as to whether legal reform should be made to a particular jurisdiction to accommodate a new cause of action. However, the Society considers that two options that may be available would be to utilise the expertise and processes of the Australian Human Rights Commission or Fair Work Australia with any subsequent proceedings being taken in the federal courts. The Society acknowledges that there would need to be consideration of the implications for existing legislative frameworks (particularly in the Fair Work jurisdiction) and the workload of the relevant bodies.

Accordingly, we consider that there should be some further detailed consideration of the appropriate legal avenue if this current Inquiry finds that a dedicated legal avenue should be part of the solution to addressing workplace bullying issues.

Thank you for considering our comments. The Society would be pleased to be involved in any further consultations on workplace bullying.

Yours faithfully

Dr John de Groot
President