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Committee Secretary
House of Representatives Standing Committee on
Education and Employment
PO Box 6021
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CANBERRA ACT 2600

A SOUTH AUSTRALIAN EXPERIENCE

CAVEAT

The writer requests his name be excluded if the submission is published.

ABSTRACT

The submission relates to the writer's experience with South Australia's OHSW Act 1986; Section 55A - Inappropriate behaviour towards an employee (bullying).

There are no prosecutions from applying section 55A.

SafeWork SA and the Industrial Relations Commission, South Australia (IRC) are either not resourced to manage section 55A or have little power to enforce it. Crown Law gives the impression it does not want to be involved; providing opinion in preference to giving direction.

Only when 'bullying' is a criminal offence and all investigation of bullying is conducted by an external agency (police) can bullying be stopped.

AN OVERVIEW

Over the last 4 years, team members and I were subject to workplace bullying by individual line managers, supported by their line managers, in a workplace culture that rewarded workplace bullying. Where the provocateurs got either higher work classifications, higher allowances or more career opportunities. While bullied victims were marginalised, made to feel unwelcome, not given work or moved to another work location with an indeterminate career future.

The staff and I lodged complaints and incident reports, attempted to meet with the senior manager and posted letters to the Chief Executive (and OHSW Responsible Officer) raising the issue about workplace bullying. There was no response and bullying did not stop.

> *The employer was in breach of section 19 (1)(3)and 58 (1)OHSW Act and their policy and procedures*.

An external consultant investigated one workplace-bullying event. They reported their findings to the same line managers who had been identified as the workplace bullies or who had condoned their actions or did not respond to staff requests to stop the bullying. The consultant failed to follow-up another complaint that was referred to them by the employer. The employer overlooked this.

The employer was in breach of their policy and procedures. The contractor (deemed a worker) did not fully carry-out their responsibility within section 21(1) 22(2) to report the matter.

Over time, a number of bullied victims became unwell, fled or left the office or got separation packages. Presenteeism increased, work performance decreased and some bullied victims were placed above head count in other workplaces. The alleged perpetrators continued in short-term promotional positions. The bullying behaviour continued, work performance decreased and the writer had to find his own way of coping with bullying.

The employer was in breach of section 19 (1)(3)and 58 (1)OHSW Act and their policy and procedures.

The writer and others (all who are health and safety representatives) attempted to raise workplace bullying to the employer many times but they did not respond.

The employer was in breach of section 19 (1)(3) and 58 (1) OHSW Act and their policy and procedures. Also may include section 56 (1)(b)(c)

The employer – Responsible Officer - did not allow a member of the OHSW consultative committee to call a meeting of the OHSW consultative committee to discuss the workplace bullying matter.

The employer was in breach of section 31(11) 33(1)(a)(b)(g). The protocol is a member can request to convene a meeting through the Chairperson, who informs the committee members of the matter and their determination to meet. If 50% or more of the committee members agree, then the committee meets. This did not happen.

The internal investigation process into workplace bullying did not follow an Incident Causation Analysis Method (ICAM).

There appears to be no model of investigation applied.

There is a lot of information about how to manage workplace bullying. In this case, the employer did not comply with them nor were they held accountable for not doing so.

Bullying investigation process gives the impression it is acting from a' presumption of guilt' where the complainant is the guilty party.

The writer lodged a bullying complaint with SafeWork SA within the provisions of Section 55A OHSW Act 1986.

Because the employer was resistant to SafeWork SA request to meet them and the writer (complainant) to discuss the workplace bullying, SafeWork SA referred the complaint to the IRC for mediation.

On May the employer apologised to the IRC Commissioner that the writer's case, of 2 years, had 'slipped through their net'. They had not followed-up on the bullying complaints.

The employer did not admit they had done anything wrong or beached any OHSW legislation or internal policy/protocols related to managing workplace bullying. The employer was not held accountable for their breaches of the legislation.

The IRC was not able to correct the employer systems failure and breach of OHSW legislation because the matter was referred to them within a specific section of the act. The IRC powers are limited and the employer knows this.

Safework SA said they could not respond to identified breaches of the OHSW act because their primary relationship is the section 55A complaint. Because they referred the matter to the IRC for resolution, they have no further involvement.

Another staff has lodged a complaint to SafeWork SA over similar matters. Had the original complaint been dealt with there would not have been a second complaint from me.

In a similar, yet different matter, another staff has approached their State Member of Parliament (who has given his support) and an interested party to complain about the employer's bullying behaviour, by the same senior line managers. These matters are ongoing.

MATTERS

The experience identified a number of legislative and systemic problems that need to change if the employer is to provide a productive and safe employment for its staff. These are listed in the dot point summary:

- There has been no prosecutions within the provisions of Section 55A OHSW Act 1986. There is insufficient support from SafeWork SA and the IRC to make it work. There appears to be a lack of willingness from either the government or crown law to pursue reported workplace bullying.

- If section 55A is removed from the legislation there appears to no specific strategy how to report and respond to allegations of workplace bullying.

- The definition of bullying varies between the act and employer's policy and procedures. There is no requirement to synchronise the definitions.

- The present legislative definition is concerned with long-term bullying and does not consider short-term targeted occurrences.

- Claimants are told of the shortcomings of SafeWork SA and the IRC to resolve bullying behaviour. Staff are advised to lodge a workers compensation claim or resign. Exercising this strategy may help the provocateur remove a staff; it does not stop further incidents of bullying occurring or increase work productivity.

- It is difficult to ascertain the usefulness of reporting workplace bullying to SafeWork SA. It is the writer's perception that he has been no change going through an agreed formal process that exposed the employer's indiscretions to SafeWork SA and the IRC.

The employer's saving-grace is SafeWork SA and the IRC are not in a position to intervene to correct their identified behaviour; and they know this.

- The writer incorrectly believed any contractor must report a breach of the OHSW legislation to the employer or regulator. This did not happen. If they did so, no responsive action by the employer happened. What is apparent is SafeWork SA will only respond to the specific matter raised with them (in this case, section 55 A). They do not take action if they observe a breach of other sections of the act in the course of responding to a section 55A case.

- It is not known what Crown Law responsibility or liability is. It is a public service department acting under the same OHSW legislation. The employee presents information – evidence supporting workplace bullying but they seem not to take any action in accordance with legislation. Although they may claim legal privileged – confidentiality it is does not negate their responsibility to act fairly and ethically to protect both the employer and the employee. Presently it appears Crown Law protects the interest of the employer at the expense of the employee. If Crown Law is compromised with managing workplace bullying may be it should be referred to external agency for initial investigation, like the Police.

- The IRC was considerate to the level of intervention they may be able to exercise in a mediation environment to preserve/protect the employee after the mediation event.

- It is apparent the IRC is not resourced or delegated enough opportunity to develop a strategy to manage workplace bullying.

- The employer asserts there is a difference between an 'industrial relations' definition and 'health and safety' definition of bullying. Accordingly, they managed it differently. If you report bullying under the OHSW legislation you get a lesser employer response. The employer resources are dedicated to industrial relations matters.

- Workers compensation claim and data software does not require the claimant to register 'bullying behaviour'. Other terms like conflict, stress or psychological illness are used. There is no internal or external requirement to review or do a risk assessment of this injury type. This is unusual when I am told stress/psychological/conflict/etc claims amount to about 51% of compensation budget or 12% of total claim numbers (the employer has about 20,000 employees).

- WorkCoverSA evaluation of exempt employers may identify system gaps. They may provide an assessment and recommendations. They may administer a penalty of about $35,000 to an employer. However, it is not strong enough to warrant the employer to dedicate resources. It is presumed paying the nominal penalty is cheaper than adding to its prevention costs. It maybe their compensation budget is more open – forgiving.

- There is an apparent conflict of interest when an employer's internal investigations of bullying is linked with the alleged bullying and when the perpetrators are in a position to effect decisions resulting from those investigations. This is why bullying allegations must be managed by an external agency.

- Internal investigation processes do not come from an agreed model of practice, like ICAM. Internal investigations tend to ‘act from a presumption of guilt’ where the complainant is treated as the guilty party. Internal investigators are not trained to investigate a bullying complaint.
- The employer does not have a safety management system that uses risk assessment, or monitors reported bullying cases when they are required to do so.

APPENDIX A

RELEVANT SECTIONS OF THE

OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT 1986 - SECT 55A

19—Duties of employers

(1) An employer must, in respect of each employee employed or engaged by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health and, in particular—

(a) must provide and maintain so far as is reasonably practicable—

(i) a safe working environment;

(ii) safe systems of work;

(iii) plant and substances in a safe condition; and

(b) must provide adequate facilities of a prescribed kind for the welfare of employees at any workplace that is under the control and management of the employer; and

(c) must provide such information, instruction, training and supervision as are reasonably necessary to ensure that each employee is safe from injury and risks to health.

Maximum penalty:

(a) for a first offence—Division 2 fine;

(b) for a subsequent offence—Division 1 fine.

(3) Without derogating from the operation of subsection (1), an employer must so far as is reasonably practicable—

(a) monitor the health and welfare of the employer's employees in their employment with the employer, insofar as that monitoring is relevant to the prevention of work-related injuries; and

(b) keep information and records relating to work-related injuries suffered by employees in their employment with the employer and retain that information and those records for such period as may be prescribed; and

(c) provide information to the employer's employees (in such languages as are appropriate) in relation to health, safety and welfare in the workplace (including the names of persons to whom the employees may make inquiries and complaints about matters affecting occupational health, safety or welfare); and

(d) ensure that any employee who is to undertake work of a hazardous nature not previously performed by the employee receives proper information, instruction and training before he or she commences that work; and

(da) keep information and records relating to occupational health, safety or welfare training undertaken by any of the employer's employees during their employment with the employer; and ensure that any employee who is inexperienced in the performance of any work of a hazardous nature receives such supervision as is reasonably necessary to ensure his or her health and safety; and

(f) ensure that any employee who could be put at risk by a change in the workplace, in any work or work practice, in any activity or process, or in any plant—

(i) is given proper information, instruction and training before the change occurs; and

(ii) receives such supervision as is reasonably necessary to ensure his or her health and safety; and

(g) ensure that any manager or supervisor is provided with such information, instruction and training as are necessary to ensure that each employee under his or her management or supervision is, while at work, so far as is reasonably practicable, safe from injury and risks to health; and

(h) monitor working conditions at any workplace that is under the management and control of the employer; and

(i) ensure that any accommodation, or eating, recreational or other facility, provided for the benefit of the employer's employees while they are at work, or in connection with the performance of their work, and under the management or control of the employer (either wholly or substantially), is maintained in a safe and healthy condition

20—Employers' statements for health and safety at work

(1) Every employer must—

(a) prepare and maintain, in consultation with—

(i) health and safety committees; and

(ii) the employer's employees; and

(iii) any health and safety representative who represents those employees; and

(iv) on the application of an employee—a registered association of which that employee is a member; and

(v) if the employer so decides—any other registered association nominated by the employer of which the employer is a member, policies relating to occupational health, safety and welfare at the workplace; and

(b) —

(i) prepare and keep up to date a written statement setting out with reasonable particularity the arrangements, practices and procedures at the workplace protecting the health and safety of the employer'semployees at the workplace; and

(ii) take reasonable steps to bring the contents of that statement to the notice of those employees.

Maximum penalty: Division 6 fine.

21—Duties of workers

(1) An employee must take reasonable care to protect the employee's own health and safety at work.

Maximum penalty: Division 7 fine.

(1a) An employee must take reasonable care to avoid adversely affecting the health or safety of any other person through an act or omission at work.

Maximum penalty: Division 6 fine.

31—Health and safety committees

(1) At the request of—

(a) a health and safety representative; or

(b) a prescribed number of employees; or

(c) a majority of the employees at any work place,the employer must, within two months of the request, establish one or more health and safety committees.

(1a) An employer must also establish one or more health and safety committees if required to do so by or under the regulations.

(2) The composition of a health and safety committee must be determined by agreement between the employer, the health and safety representative and any interested employees.

(3) If an employee is a member of a registered association, that registered association must, at the request of the employee, be consulted in relation to the composition of a health and safety committee under this section.

(4) The membership of a committee should, so far as is reasonably practicable, represent a reasonable cross-section of the persons whose activities, work, or health, safety or welfare (whether as principal, manager, supervisor or employee) could be within the responsibilities of the committee subject however to the following qualifications:

(a) any relevant health and safety representative should be encouraged to be a member of the committee; and

(b) at least half of the members of the committee must be employees

(5) If at any time agreement cannot be reached on any matter relating to the establish mentor composition of a health and safety committee, an interested party may refer the matter to the Industrial Commission to resolve the disagreement.

(6) Where a matter is referred to the Industrial Commission under subsection (5), the Industrial Commission must attempt to resolve the matter by conciliation.

(7) If a matter cannot be resolved within a reasonable time by conciliation under subsection (6), the Industrial Commission must refer the matter to the President of the Industrial Court for determination by a review committee.

(8) The review committee may determine any matter relating to the establishment or composition of a health and safety committee and its decision is binding on all the parties.

(9) Subject to the regulations, the proceedings of a health and safety committee will be conducted in such manner as the committee may determine.

(10) A health and safety committee must hold at least one meeting in every 3 months.

(11) A meeting of a health and safety committee must be held—

(a) on the request of at least half of the members of the committee; or

(b) on the request of a health and safety representative; or

(c) on the request of the employer.

(12) The composition of a health and safety committee may be varied at any time by agreement between the employer, any relevant health and safety representative, and any interested employees who are within the responsibility of the committee.

(13) In addition to the other matters provided by this section, the regulations may make provision for—

(a) the term of office of a member of a health and safety committee;

(b) the disqualification of a person from acting, or continuing to act, as a member of a health and safety committee;

(c) the appointment of a person to a casual vacancy in the membership of a health and safety committee.

(14) This section does not apply to a prescribed employer or an employer of a prescribed class (if any).

33—Functions of health and safety committees

(1) The functions of a health and safety committee are—

(a) to facilitate co-operation between an employer and the employees of the employer in initiating, developing, carrying out and monitoring measures designed to ensure the health, safety and welfare at work of the employees; and

(b) to assist in the resolution of issues relating to occupational health, safety or welfare that arise at any relevant workplace; and

(c) to assist in the formulation, review and dissemination (in such languages as are appropriate) to employees of the occupational health, safety and welfare practices, procedures and policies that are to be followed at any relevant workplace; and

(d) to consult with the employer on any proposed changes to occupational health, safety or welfare practices, procedures or policies; and

(e) to keep under review—

(i) developments in the field of rehabilitation of employees who suffer work-related injuries; and

(ii) the employment of employees who suffer from any form of disability; and

(f) to assist— (i) in the return to work of employees who have suffered work-related injuries; and

(ii) in the employment of employees who suffer from any form of disability; and

(g) such other functions as are prescribed or agreed upon by the employer and the health and safety committee.

(2) A health and safety committee may establish such sub-committees as it thinks fit (which may, but need not consist of, or include, members of the committee) to provide advice or to assist it in the performance of its functions under this Act.

(3) A health and safety committee may delegate any of its functions to a sub-committee established under subsection (2).

(4) A delegation under subsection (3)—

(a) may be made subject to such conditions as the health and safety committee thinks fit; and

(b) is revocable at will; and

(c) does not derogate from the power of the committee to act in any matter itself.

34—Responsibilities of employers

(1) An employer must—

(a) consult any relevant health and safety representatives and health and safety committees on any proposed changes to any workplace, the plant used at any workplace, the substances used, handled, processed or stored at any workplace, the work to be conducted at any workplace or the procedures for carrying out work at any workplace, where those changes might affect the health, safety or welfare of employees at the workplace; and

(b) consult any relevant health and safety representatives and health and safety committees on the occupational health, safety and welfare practices, procedures and policies that are to be followed at any workplace; and

(c) consult any relevant health and safety representatives and health and safety committees on any proposed changes to occupational health, safety and welfare practices, procedures or policies; and

(d) consult any relevant health and safety representatives on any proposed application to the designated person for the modification of the requirements of any regulation; and

(e) at the request of the employee, permit a health and safety representative to be present at any interview concerning occupational health, safety or welfare between the employer (or a representative of the employer) and an employee who is a member of the work group that the health and safety representative represents; and

(f) permit any relevant health and safety representative to accompany an inspector during an inspection of any workplace; and

(g) permit a health and safety representative to have access to such information as the employer possesses or can reasonably obtain—

(i) relating to risks that arise or may arise at any workplace where employees who are members of the work group that the health and safety representative represents work, out of work conducted at any workplace or out of plant or substances used at any workplace; or

(ii) concerning the health and safety of the employees of the employer (but personal information regarding the health of an employee must not be divulged under this subparagraph without the consent of the employee), and, when requested to do so, supply a copy of that information to the health and safety representative; and

(h) immediately notify a health and safety representative of the occurrence of an accident, dangerous occurrence, imminent danger or risk or hazardous situation that affects or may affect any employee who is a member of the work group that the health and safety representative represents; and

(i) notify a health and safety representative of the occurrence of any work-related injury to an employee who is a member of the work group that the health and safety representative represents; and

(j) provide such other facilities and assistance to health and safety representatives as are necessary or prescribed to enable them to perform their functions under this Act.

(2) An employer is not required to give to a health and safety representative under subsection (1)(g)—

(a) information that is privileged on the ground of legal professional privilege; or

(b) information that is relevant to proceedings that have been commenced under this Act.

(3) A health and safety representative is entitled to take such time off work as is reasonably necessary for the purposes of performing the functions of a health and safety representative under this Act.

(4) A health and safety representative who takes time off work under subsection (3)—

(a) is entitled to take that time without the loss of any remuneration (payable by the employer) that the health and safety representative would have received had he or she been at work for the relevant time; and

(b) is entitled to be reimbursed by the employer for any reasonable expenses reasonably incurred by the health and safety representative with respect to—

(i) travelling; or

(ii) obtaining meals or accommodation; or

(iii) parking fees; or

(iv) other matters (if any) prescribed by the regulations, to the extent that these expenses are over and above, or additional to, expenses that the health

and safety representative would have incurred in any event had he or she been at work at the relevant

(5) A health and safety representative must take reasonable steps to obtain the agreement of the employer before incurring any expenses that he or she intends to claim under subsection (4)(b) (and that agreement must not be unreasonably withheld).

(5a) The Advisory Committee may prepare and publish guidelines in relation to the operation of subsections (3), (4) and (5).

(6) If a dispute arises in relation to the entitlement of a health and safety representative under subsection (3) or (4), the health and safety representative or the employer may refer the dispute to the Industrial Commission.

(7) The Industrial Commission may determine the dispute and the decision of the Commission is binding on the health and safety representative and the employer.

Division 4—Resolution of health, safety or welfare issues

35—Default notices

(1) Where a health and safety representative is of the opinion that a person—

(a) is contravening a provision of this Act; or

(b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated, the health and safety representative must consult with the employer in relation to the matter.

(2) If the health and safety representative and the employer are unable within a reasonable time to resolve a particular matter pursuant to subsection (1), the matter must, if there is a health and safety committee that has responsibility in relation to the matter, be referred to that committee or, if there is no such committee, the matter may be referred to an inspector.

(3) Despite subsections (1) and (2), if after taking reasonable steps to stop by consultation a contravention of this Act or prevent a repeated contravention of this Act the health and safety representative is of the opinion that the matter has not been satisfactorily resolved, the health and safety representative may issue a default notice requiring the person to whom the notice is addressed to remedy the contravention.

(4) A health and safety representative must not issue a default notice in relation to any matter that is the subject of an improvement notice or a prohibition notice.

Maximum penalty: Division 7 fine.

(5) Where a health and safety representative issues a default notice, the notice must—

(a) state that the health and safety representative is of the opinion that a person—

(i) is contravening a provision of this Act; or

(ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated; and

(b) state the grounds of the health and safety representative's opinion.

(6) A health and safety representative may specify in a default notice a day by which the matters referred to in the notice must be remedied.

(7) Where a default notice is issued to an employee, the employee must, as soon as is reasonably practicable after receiving it, give the notice, or a copy of the notice, to his or her employer.

Maximum penalty: Division 6 fine.

(8) Subject to subsection (11), a person to whom a default notice is addressed or, where that person is an employee, that person's employer, must take all reasonable steps to remedy—

(a) if a day has been specified under subsection (6)—by that day;

(b) if a day has not been specified under subsection (6)—within a reasonable time, the matters referred to in the notice.

Maximum penalty: Division 3 fine.

(9) If—

(a) a person to whom a default notice is addressed or, where that person is an employee, that person's employer, considers that a default notice need not have been issued or is, for some other reason, inappropriate; or

(b) a health and safety representative—

(i) considers that there has been unreasonable delay in taking action under subsection (8); or

(ii) is dissatisfied with the action taken under that subsection in response to the notice, an inspector may be requested to attend at the workplace.

(10) A request under subsection (9)(a) must be made by a person within 14 days of the receipt of the default notice (or a copy of the notice) by the person.

(11) Where an inspector has been requested to attend at a workplace under subsection (9)(a), the operation of the default notice is, pending the attendance of the inspector, suspended.

(12) Where a default notice is issued, the person to whom notice is addressed must, on receipt of the notice (or a copy of the notice)—

(a) bring the notice to the attention of any person whose work is affected by the notice; and

(b) display the notice or a copy of the notice in a prominent place at or near any workplace that is affected by the notice; and

(c) keep a copy of the notice for such period as may be prescribed.

Maximum penalty: Division 6 fine.

(13) A person must not remove a notice or a copy of a notice displayed pursuant to subsection (12) while the notice is in force.

Maximum penalty: Division 6 fine.

(14) A default notice may be cancelled—

(a) at any time, by the health and safety representative who issued the notice; or

(b) if the health and safety representative is absent from the workplace and cannot reasonably be contacted, by a health and safety committee that has responsibilities in relation to the matter.

55A—Inappropriate behaviour towards an employee

(1) For the purposes of this section, bullying is behaviour—

(a) that is directed towards an employee or a group of employees, that is repeated and systematic, and that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the employee or employees to whom the behaviour is directed; and

(b) that creates a risk to health or safety.

(2) However, bullying does not include—

(a) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee; or

(b) a decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee's employment; or

(c) reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment; or

(d) reasonable action taken in a reasonable manner under an Act affecting an employee.

(3) If—

(a) an inspector receives a complaint from an employee that he or she is being bullied or abused at work; and

(b) the inspector, after an investigation of the matter, has reason to believe that the matter is capable of resolution under this section, the inspector may—

(c) take reasonable steps to resolve the matter between the parties himself or herself; and

(d) if the matter remains unresolved after taking the steps required under paragraph

(c), after consultation with the parties, refer the matter to the Industrial Commission for conciliation or mediation.

(4) A reference under subsection (3) will be made by written instrument that complies with any prescribed requirements.

(5) The inspector must ensure that the parties are furnished with a copy of any reference under subsection (3).

(6) If a matter is referred to the Industrial Commission under subsection (3), the Industrial Commission must attempt to resolve the matter by—

(a) conciliation; or

(b) mediation,as the Industrial Commission thinks fit.

(7) For the purposes of this section—

(a) conciliation is a process where the parties meet with the conciliator with a view to the conciliator identifying the issues and resolving the matter by making recommendations if the matter is not settled by agreement; and

(b) mediation is a process where the mediator seeks to resolve the matter by facilitating an amicable agreement between the parties.

(8) The Industrial Commission must seek to commence any conciliation or mediation within 5 business days after the matter is referred to the Industrial Commission under this section.

(9) For the purposes of any conciliation or mediation, the Industrial Commission may(subject to subsection (10))—

(a) interview the parties separately or together; and

(b) inform itself in any other way as it thinks fit.

(10) The person undertaking a conciliation or mediation must—

(a) at the request of a party, attend at a workplace (on at least 1 occasion) for the purposes of the conciliation or mediation;

(b) deal with the matter with a minimum of formality.

(11) For the purposes of any conciliation, the conciliator may call a compulsory conference of the parties.

(12) The Industrial Commission may at any time bring any conciliation or mediation to an end if the Industrial Commission considers that the conciliation or mediation will not result in the resolution of the matter.

(13) Subject to subsection (14), nothing said or done in any conciliation or mediation under this section may subsequently be given in evidence without the consent of the parties to the conciliation or mediation.

(14) The terms of any agreement between the parties to any conciliation or mediation maybe given in evidence in subsequent proceedings (without the restriction imposed by subsection (13)).

(15) The Industrial Commission must inform the Department when any conciliation or mediation under this section is concluded or brought to an end.

(16) The Industrial Commission and the Department may consult from time to time about the processes and arrangements that should apply under this section, and prepare and publish information and guidelines to assist persons who may become involved in conciliation or mediation under this section.

(17) The President of the Industrial Commission may make rules relating to—

(a) representation before the Industrial Commission in connection with the operation of this section; or

(b) the conduct of the parties to a conciliation or mediation under this section; or

(c) any other matter that, in the opinion of the President, is necessary or convenient for the purposes of any conciliation or mediation under this section.

56—Discrimination against workers

(1) An employer must not dismiss an employee, injure an employee in employment or threaten, intimidate or coerce an employee by reason of the fact that the employee—

(a) is a health and safety representative or a member of a health and safety committee or has performed the functions of a health and safety representative or of a member of a health and safety committee; or

(b) has assisted or given information to an inspector, health and safety representative or health and safety committee; or

(c) has made a complaint in relation to a matter affecting health, safety or welfare.

Maximum penalty: Division 5 fine.

(2) An employer or prospective employer must not refuse or deliberately omit to offer employment to a prospective employee or treat a prospective employee less favourably than another prospective employee would be treated in relation to the terms on which employment is offered by reason of the fact that the prospective employee—

(a) has been a health and safety representative or a member of a health and safety committee or has performed the functions of a health and safety representative or of a member of a health and safety committee; or

(b) has assisted or given information to an inspector, health and safety representative or health and safety committee; or

(c) has made a complaint in relation to a matter affecting health, safety or welfare.

Maximum penalty: Division 5 fine.

(3) If in proceedings for an offence against this section all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the act of discrimination was not actuated by the reason alleged in the charge lies on the defendant.

(4) Where a person is convicted of an offence against this section, the court may, in addition to any penalty it may impose, make one or both of the following orders:

(a) it may order the person to pay within a specified period to the person discriminated against such damages as it thinks fit to compensate that person;

(b) it may order that an employee be re-instated or re-employed in the employee's former position or, where that position is not reasonably available, in a similar position, on conditions determined by the court, or that a prospective employee be employed in the position for which the prospective employee had applied or a similar position.

(5) This section does not derogate from any right under any other Act or law of a person against whom an offence has been committed.

58—Offences

(1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided is liable to a Division 5 fine.

(3) Subject to this Act, offences against this Act are summary offences.

(4) The issuing of a default notice, improvement notice or prohibition notice under this Act does not prevent the institution of proceedings for an offence against this Act in relation to the subject matter of the notice.

(5) Proceedings for an offence against this Act may be brought against—

(a) an agency or instrumentality of the Crown;

(ab) an administrative unit in the Public Service of the State;

(b) a person employed by or under the Crown.

(5a) For the purposes of subsection (5)—

(a) the proceedings will be taken against the relevant agency, instrumentality, administrative unit or person (the *responsible agency*) as if it were a distinct entity or person; and

(b) the responsible agency is to be specified in the charge for the offence; and

(c) except for proceedings against a natural person, the responsible agency may, during any proceedings for an offence, be changed by the prosecutor with the leave of the relevant court on the ground that there is now a successor to the relevant agency, instrumentality or administrative unit; and

(d) in proceedings against an administrative unit, the chief executive of the administrative unit, or a person authorised by that chief executive, may appear and provide evidence and make admissions on behalf of the administrative unit; and

(e) any penalty may be imposed against the responsible agency.

(6) Subject to subsection (6a), proceedings for a summary offence against this Act must e commenced—

(a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;

(b) in any other case—within 2 years of the date on which the offence is alleged to have been committed.

(6a) The Director of Public Prosecutions may, by instrument in writing, extend a time limit that would otherwise apply under subsection (6) in a particular case if the Director of Public Prosecutions is satisfied that a prosecution could not reasonably be commenced within the relevant period due to a delay in the onset or manifestation of an injury or disease, a condition or defect of any kind, or any other relevant factor or circumstance.

(6b) An apparently genuine document purporting to be signed by the Director of Public Prosecutions and to be an extension under subsection (6) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of an extension in a particular case.

(7) Proceedings for an offence against this Act may only be brought—

(a) by the Minister; or

(ab) by the Director of Public Prosecutions; or

(ac) by the Director; or

(b) by an inspector; or

(c) if an employee has suffered injury as a result of an act or omission which is alleged to constitute an offence against this Act and proceedings have not been commenced by the Minister, the Director of Public Prosecutions, the

Director or an inspector within 1 year of the date on which the offence is alleged to have been committed—by the employee.

(8) However—

(a) proceedings for an offence against an administrative unit in the Public Service of the State may only be brought by—

(i) the Director of Public Prosecutions; or

(ii) the Director; and

(b) the approval of the Minister is required to bring proceedings under

subsection (7)(c) unless 18 months have elapsed since the date on which the relevant offence is alleged to have been committed.

(9) An apparently genuine document purporting to be signed by the Minister and to give an approval for the purposes of subsection (8)(b) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the approval.

(10) An inspector is authorised to give expiation notices for alleged offences by or under this Act that are expiable.

59—Aggravated offence

(1) Where a person contravenes a provision of Part 3—

(a) knowing that the contravention was likely to endanger seriously the health or safety of another; and

(b) being recklessly indifferent as to whether the health or safety of another was so endangered, the person is guilty of an aggravated offence and liable upon conviction to a monetary penalty not exceeding double the monetary penalty that would otherwise apply under

Part 3 for that offence or imprisonment for a term not exceeding 5 years or both.

(2) An offence against this section is a minor indictable offence.

62—Health and safety in the public sector

(1) The chief executive officer of each administrative unit in the Public Service of the State must appoint a person to be responsible for the implementation of the requirements of this Act in that administrative unit.

(2) For the purposes of this Act, an administrative unit will be taken to be the employer of any Public Sector employees assigned to work in the administrative unit (and may be held to be liable for any offence for which an employer may be liable).