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ACCI SUBMISSION

House Standing Committee on Education and
Employment

Inquiry into Workplace Bullying

JUNE 2012

House Standing Committee on Education and Employment Inquiry –
Workplace Bullying

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1. ABOUT ACCI

1.1 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All state and territory chambers of commerce
- 28 national industry associations
- Bilateral and multilateral business organisations

In this way, ACCI provides leadership for more than 350,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia

1.2 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

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Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including Fair Work Australia, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

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2. INTRODUCTION

1. The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide a written submission in relation to the Committee's inquiry into workplace bullying.
2. ACCI members may make submissions to this inquiry. This submission is made without prejudice to ACCI or its members' views.

3. KEY ISSUES

Background

3. On 26 May, the Prime Minister, Hon Julia Gillard MP and the Minister for Employment and Workplace Relations, Hon. Bill Shorten MP, announced a review into “*bullying in the workplace*”.

4. An extract from the relevant media release, *inter alia*, states:¹

The aim of the review is to look at the nature, causes and extent of workplace bullying and consider proposals to prevent bullying cultures developing in the workplace and help individuals who have been affected by bullying to return to work.

...

The Review will be undertaken by the House Standing Committee on Education and Employment, comprising members from both major parties. It will consult extensively with the community and will report by 30 November 2012.

The Australian Government is already working with state and territory governments, as well as employer and employee representatives, to harmonise work health and safety laws in Australia. Safe Work Australia is working on a Code of Practice to provide guidance to workplaces on how to prevent bullying becoming a health and safety risk in the workplace.

In addition, some states have passed legislation to deal with bullying – such as Brodie’s law. The review will complement the work being undertaken by Safe Work Australia and State and Territory governments.

5. On 31 May 2012 the Minister for Employment and Workplace Relations, requested the House Standing Committee on Education and Employment to inquire into and report on “*workplace bullying*”.²
6. ACCI notes that there is no definition of “*bullying*” or “*workplace*” for the purposes of the inquiry.
7. ACCI has generally adopted a definition of workplace bullying derived from the occupational health and safety context, as:³

¹ Media Release, “*Review into bullying in the workplace*” (26 May 2012).

² Media Release, House Of Representatives Standing Committee On Education And Employment, “*Review into bullying in the workplace*”, (1 June 2012).

- a. **Repeated behaviour** that is **unreasonable** or **inappropriate behaviour** directed towards a worker, or a group of workers, **that creates a risk to health and safety;**
 - b. Is distinguishable from **legitimate management practices**.⁴
8. Bullying involves a range of behaviours and actions and inevitably involves complex human interactions. Legislative frameworks (including definitions), data and research (both domestic and international) is not homogenous and it is therefore important for the Committee to note the inherent limitations in assessing the actual incidence of bullying (whether it is in the workplace or other areas of public life).
9. It is important to assess any existing data on the incidence of bullying, including the incidence of work related injuries within those limitations. For example, the Productivity Commission's (PC) recent Research Report, *"Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety"* (March 2010), makes a number of observations, including that trends in workers' compensation claims statistics for mental stress, *"may [also] indicate that greater attention has been given to risk management practices by employers in relation to psychological hazards in recent years and reflect improved reporting"*⁵. Due to differences in definitions and concepts, the PC also observed that these differences *"are likely to result in confusion for coders and may provide some explanation for the differences in figures provided across the jurisdictions"*.⁶ In relation to data for *"workplace bullying/harassment and occupational violence"* between 2002-03 and 2007-8, the PC indicated that the:⁷

[D]ata show significant declines in the rate of combined claims ... in the Commonwealth, Queensland, South Australia and Western Australia, and to a lesser extent in New South Wales. Tasmania was the only jurisdiction to record an increase in the rate of claims during the interval while the rate of accepted claims in Victoria, the Northern Territory and ACT Government were relatively stable.

The relatively high figure recorded for bullying/harassment claims in Victoria may have been affected by the regulator being more active in

³ Productivity Commission Research Report, *"Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety"* (March 2010), pp 288 – 290; Table 11.4.

⁴ This includes action taken by the employer to discipline, counsel, demote, dismiss, or decisions not to award or provide a promotion, transfer or benefit to a worker. Productivity Commission Research Report, *"Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety"* (March 2010), p.289.

⁵ Ibid, at p.281.

⁶ Ibid, at p.282.

⁷ Ibid, at pp. 284 – 285.

highlighting bullying and harassment in the workplace through a combination of education programmes, proactive worksite visits by inspectors, and pursuing the prosecution of employers, owners and employees who have allowed bullying behaviour to persist in the workplace. In other words, bringing more attention to the problem may have encouraged more victims to come forward and make a claim for mental stress.

10. The PC noted that as no surveys have been conducted in Australia on the incidence of bullying, researchers in Australia “*have used survey findings from other countries to estimate the numbers of people subjected to bullying*”.⁸ Therefore, the data on the impact and costs of bullying is not a robust proxy for measuring the actual or estimated incidence of bullying across Australian workplaces.
11. The Committee should be cautious to extrapolate the incidence of bullying based on limited research, assuming individual cases reflect general practice.
12. ACCI supports consideration of how improved research and data, not confined to the workplace, can be obtained in order for policy makers and stakeholders to assess the incidence and impact of bullying within the community and in the workplace.

ACCI Policy Position

13. Australian employers, including their business organisations, have a zero tolerance to serious misconduct in the workplace, including threats of or actual violence, intimidation, harassment or bullying. Within that context, the Committee should recognise that the business community has a legitimate role in expressing their views on the appropriate legal framework, which may affect them in their capacity as an employer.
14. Employers remain concerned that allegations of workplace bullying raise contemporaneous legal requirements on the employer to ensure that they do not breach any legal rights of the alleged perpetrator or the alleged victim, which can be challenging to manage. Where there are allegations of misconduct between co-workers, employers often find themselves in an invidious situation when they attempt to investigate or enforce disciplinary action against the perpetrator (for example, issuing warnings or terminating their employment), only to find that they may be exposed to legal action (for example, in the form of an unfair dismissal or breach of contract claim).

⁸ Ibid, at p.287.

15. Employers also find themselves in a difficult situation when the alleged victim may not be satisfied that the allegation, which has been raised with a supervisor or with management, has been appropriately dealt with by the employer through investigations or inquiries, and risk legal action taken by the person aggrieved by a decision or outcome.⁹
16. Notwithstanding the challenges that employers have in managing allegations of bullying or any other claims of serious misconduct, ACCI and its Chambers of Commerce and Industry Association members, remain committed to raising awareness in the workplace and providing tools and resources to assist employers understand their legal obligations and how to minimise, to the extent reasonably possible, the incidence of bullying in the workplace.¹⁰

Incidence of Bullying in the Community

17. It is generally accepted that bullying is not confined to any particular parts of the community, and is not isolated to the workplace. It is a community wide issue which requires a community wide policy response. Whilst the terms of reference confine the focus of this inquiry to bullying within the workplace, the Committee should be mindful of the fact workplace bullying does not occur in isolation and is in part a reflection of behaviour to be found in the community generally.
18. Bullying behaviour occurs across private and public sectors of the workforce and in school yards.¹¹
19. All governments recently acknowledged that the focus of bullying should not be confined to the workplace when Federal, State and Territory Attorneys-General met on 18 November 2011, during the inaugural meeting of the Standing Council on Law and Justice (SCLJ) meeting. The relevant extract from the communiqué states (emphasis added):

⁹ For an example of a recent case which included allegations of bullying and which was rejected in a comprehensive manner by the Federal Court see *Dye v Commonwealth Securities Limited* [2012] FCA 242 (16 March 2012). The Court finding that each proceeding initiated was “without any relevant factual foundation or any legal substance”. The Court subsequently ordered that the applicant pay the respondents’ a total of \$5.85 million in legal costs after a lengthy process of legal proceedings.

¹⁰ For example, ACCI Chambers of Commerce and Industry Association members provide educational resources, training and advice to employers, supervisors and managers (particularly from the SME sector), on how to manage allegations of bullying, how to construct appropriate policies and how to enforce those policies in a lawful manner. An example of such training provided by ACCI member, The Victorian Employers’ Chamber of Commerce and Industry can be found here: http://www.vecci.org.au/Training/Pages/Equal_Opportunity.aspx

¹¹ Australian Financial Review (online), “Parliament House staff bullied, inquiry told”, (2 May 2012).

Anti-bullying legislation (Brodie’s Law)

Ministers noted the importance of finding effective means of dealing with all forms of bullying whether in the workplace, school yard, sporting club, cyberspace or elsewhere. Ministers noted the introduction of *Brodie’s Law* in Victoria.

20. The broad range of behaviours which can involve repeated acts of violence, intimidation or harassment, in the community (particularly amongst students) is not unique to Australia and is not a new policy problem. Recently a prominent example from overseas, described by the media as “bullying” also demonstrates that such conduct not only occurs between school aged peers, but can also extend towards adults.¹²
21. Bullying amongst school aged children and teenagers has become particularly prominent in the media.¹³ As access to telecommunication devices has become more mainstream for younger persons, there appears to be a commensurate increase in the use of electronic communication as a medium or tool to engage in anti-social (or indeed, illegal) conduct.¹⁴ As the Minister for Employment and Workplace Relations, Hon Bill Shorten MP, indicated on the National Day of Action against Bullying and Violence: “Bullying is a serious issue, which not only impacts kids when they are at school, but can affect them long into adulthood.”¹⁵
22. It must also be noted that instances of significant intimidation, harassment or coercion, which are connected to the workplace, can be initiated by third parties, including clients, suppliers, and other persons who have a formal or informal role in the workplace.¹⁶

¹² Sydney Morning Herald, “Bullied bus monitor not ready to forgive”, (24 June 2012).

¹³ The Age, “Bridgeway suicide not preventable, coroner says”, (27 June 2012).

¹⁴ See one recent federal policy initiative to counter “cyberbullying”:
<http://www.cybersmart.gov.au/>.

¹⁵ Media Release, “Bill Shorten visits local school to discuss cyber bullying” (16 March 2012).

¹⁶ Those persons that have a formal or informal role include, *inter alia*, union officials, some of whom are bargaining representatives for union members, or who are able to exercise right of entry under the *Fair Work Act 2009*. The FWO has recently announced a prosecution against a number of union officials which are alleged to have breached adverse action and coercion provisions of the *Fair Work Act 2009*. FWO Media Release, “Court action over alleged distribution of posters labelling workers ‘scabs’”, (23 June 2012). For a recent example of industrial coercion under the now repealed *Building and Construction Industry Improvement Act 2005*, see *Williams v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union* [2010] FCA 754 (28 July 2010) and *Helal v Brookfield Multiplex Limited* [2012] FCA 653 (21 June 2012). In *Helal*, the agreed statement of facts outlining the unlawful conduct was summarised by Bromberg J at [9] – [12] as follows:

On Friday 31 July 2009, Permark terminated its employment of each of Grunwald and Davis for misconduct, consisting of two unexplained and unauthorised failures by those employees to

23. If the focus of the inquiry remains only on the workplace, the risk is that the Committee will not deal with the important cultural and developmental factors, which appear to be relevant to understanding the phenomenon and overall incidence of bullying in the community. By the time young people join the workforce they have been exposed to many situations which cause them to define what is or is not acceptable behaviour. Therefore, consideration of what happens in the workplace must include consideration of the wider context. The community expects employers to assist in reducing the incidence of bullying in the workplace, just as employers have an expectation that bullying is reduced, to the extent possible, in the school yard.
24. The key is to get the balance right within the existing legal framework by looking at ways education, support and assistance can be delivered to imbed permanent and long lasting cultural and behavioural changes.
25. Where cases of bullying occur in the workplace, it is important that the debate not be focused solely on the failures or actions of the employer. Even where employers have appropriately put in place detailed policies and procedures dealing with misconduct in the workplace, this cannot prevent individuals behaving unlawfully at work or outside of the workplace.

Legal Framework

26. There exists a comprehensive legal framework for dealing with serious misconduct, including allegations and instances of bullying (including

attend for work at the site. On Saturday 1 August 2009, Grunwald nevertheless attended for work.

On that same day, Mates telephoned the General Manager of Permark, during which he said, in a threatening and angry tone, words to the following effect:

(a) You had no right to dismiss Davis and Grunwald. Permark will have to pay Grunwald whether or not he is actually performing any work today. Permark either pays him to sit in the sheds, or it pays him to work;

(b) I will stop all Permark employees from working on the site if Permark does not reinstate Davis and Grunwald; and

(c) I can make things very difficult for Permark – you will have difficulty getting another job.

The making of the threat caused the General Manager of Permark to feel upset and frightened.

As a consequence of the threat, Permark re-employed Grunwald with effect from Saturday 1 August 2009, and Davis with effect from Tuesday 4 August 2009.

unlawful harassment, intimidation or coercion) at federal, state and territory levels.

27. Depending on the factual circumstances, an employee or worker alleging bullying (whether they are the victim of bullying, or raise allegations about bullying occurring in the workplace) may have a statutory cause of action against an employer under Part 3-1 of the *Fair Work Act 2009* (general protections) or Part 3-2 of the *Fair Work Act 2009* (unfair dismissal).¹⁷
28. Claims could also be made pursuant to federal, state or territory anti-discrimination laws (including unlawful harassment), if it is alleged that the bullying occurred because the person possessed a protected attribute.¹⁸
29. Occupational Health and Safety (OH&S) laws applies in each jurisdiction and requires employers to ensure the health, safety and welfare of workers.¹⁹
30. Depending on the harm or injury suffered as a result of bullying, statutory compensation may be available through relevant “no-fault” workers’ compensation schemes applying in each jurisdiction.²⁰
31. It is possible that bullying may also involve a breach of a relevant industrial instrument²¹ or contractual term²². Tortious or equitable causes of action may also be pursued through the courts.²³

¹⁷ For example, see *Barnes v Flight Centre Limited & Ors*, VID360/2012.

¹⁸ See the Australian Human Rights Commission Fact Sheet (Workplace Bullying), accessible here: http://www.hreoc.gov.au/info_for_employers/fact/workplace.html. The Fair Work Ombudsman can also investigate and prosecute an employer (or any person knowingly involved in a contravention) if the bullying involves “adverse action” taken for a prohibited reason under the *Fair Work Act 2009*, see:

<http://www.fairwork.gov.au/employment/discrimination/pages/bullying-and-harassment.aspx>

¹⁹ There is also industry specific OH&S regulation in some jurisdictions.

²⁰ For example, under the *Victorian Accident Compensation Act 1985* (Vic) for bullying which results in a compensable injury.

²¹ For example, under ss 545 and 546 of the *Fair Work Act 2009*. There are a range of orders that can be made, including civil penalties imposed on an employer or “any person who is involved in a contravention of a civil remedy provision” under s 550. This may extend to the imposition of penalties and compensation against an employee, such as a manager or supervisor involved in a contravention.

²² Contractual terms can be express or implied. For a case involving a breach of an express contractual term (contained in a policy document), see *Nikolich v Goldman Sachs J B Were Services Pty Ltd* [2006] FCA 784 (23 June 2006). Every contract of employment will have implied a term requiring the employer to take reasonable care to avoid exposing employees to unnecessary risks of injury.

²³ Significant compensation was awarded against an employer in *Naidu v Group 4 Securitas & Anor* [2005] NSWSC 618; *Naidu v Group 4 Securitas Pty Ltd & Anor* [2006] NSWSC 144; and *ISS Security Pty Limited v Naidu & Anor* [2007] NSWCA 377.

Occupational Health and Safety Legislation

32. ACCI is a key stakeholder in progressing the harmonisation of OH&S laws and represents industry on Safe Work Australia (SWA).
33. ACCI has represented Australian industry on SWA's predecessor bodies including, the National Occupational Health and Safety Commission (NOHSC) and the Australian Safety and Compensation Council (ASCC).
34. In July 2008, the Council of Australian Governments (COAG) formally committed to harmonising the occupational health and safety laws in Australia by signing the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA).
35. The IGA commits all jurisdictions to adopt model work health and safety (WHS) laws, consisting of a model WHS Act, supported by model Regulations, model Codes of Practice and a National Compliance and Enforcement Policy.
36. The model WHS Act was endorsed by the Workplace Relations Ministers' Council (the Ministerial Council) in December 2009. The model WHS Regulations, 11 model Codes of Practice and a National Compliance and Enforcement Policy were endorsed by the Ministerial Council in September 2011.
37. Since 1 January 2012, six jurisdictions have implemented new WHS laws based on the model WHS laws: Queensland, New South Wales, Tasmania (with a commencement date of 1 January 2013), the Northern Territory, the Australian Capital Territory and the Commonwealth.
38. SWA is responsible for developing the model WHS laws. SWA has tripartite representation, comprising an independent Chair, nine members representing the Commonwealth and each State and Territory, two representing the interests of workers, two representing the interests of employers and the Chief Executive Officer of SWA.
39. SWA is progressing a number of measures as part of the harmonisation of OHS laws across all jurisdictions.
40. Through SWA the ACCI member network has been involved in the preparation of draft papers and guidance material.
41. Throughout the process ACCI has remained committed to advocating for an effective health and safety culture that requires all those

involved in the workplace to accept shared responsibilities, to take those responsibilities seriously and work collaboratively to ensure a workplace is safe, so far as is reasonably practicable.

42. Whilst the legislative framework is important, it is also essential that workplace cultures, attitudes, and behaviours are aligned to ensure positive safety outcomes are realised.
43. SWA is currently working on a draft model Code of Practice, “*Preventing and Responding to Workplace Bullying*”. Whilst the nature of tripartite discussions will inevitably involve differences of opinion with respect to specific content, the fact that significant constructive work is being undertaken by representatives of employees, employers and governments, illustrates the willingness of all stakeholders to work together to achieve a balanced framework of legal rights and duties. As regulation generally applies to a range of industry sectors and to a diversity of employers of various sizes, capacities and resources, the importance of tripartite dialogue remains vital.
44. In the interim, and until SWA has finalised the draft model Code, there exists guidance material in each jurisdiction on workplace bullying from an OH&S perspective.
45. The Committee should note the extensive work currently undertaken by SWA, industry and employers.
46. ACCI welcomes the opportunity to brief the Committee on this process.
47. ACCI continues to support a range of SWA initiatives which promotes OH&S best practice and awareness, including the National Safe Work Australia Week and the Annual Safe Work Australia Awards. ACCI Chambers of Commerce and Industry Association members also promote similar state and territory initiatives.²⁴

Victorian Crimes Act 1958 Amendments (Brodie’s Law)

48. The *Crimes Amendment (Bullying) Bill 2011* (Vic) was introduced in response to the tragic consequences of significant bullying when an

²⁴ For example, see Safe Work Awards (South Australia):
<http://www.safework.sa.gov.au/sw2012/awards.html>

employee, Brodie Panlock, committed suicide in 2006 after persistent harassment by co-workers.

49. In February 2010, the company, its owner, manager and two employees, were convicted of offences under the *Occupational Health & Safety Act 2004* (Vic) and fined a total of \$335,000. This followed a recommendation by the Coroner that “*WorkSafe Victoria examines the evidence in this case and, in consultation with its legal advisers, takes such action against person(s) named in this finding as it deems now to be appropriate*”.²⁵
50. A Bill was introduced to amend the *Crimes Act 1958* (Vic) to make the offence of stalking apply to situations of serious bullying (as defined). The offence is not limited to a defined category of individuals in the workplace (ie. an employee only – it applies to any person) nor is it confined to the workplace.
51. The offence of stalking is punishable by a maximum term of 10 years imprisonment.
52. The Bill also introduced amendments to the *Stalking Intervention Orders Act 2008* (Vic) and the *Personal Safety Intervention Orders Act 2010* (Vic), to allow victims to apply for intervention orders.
53. The new criminal offence is targeted towards punishing the offender and clearly sends a strong signal to the community that anyone who commits the offence will be potentially liable to incarceration – the most serious form of sanction that the state can impose on an individual.
54. ACCI believes that the impact of these recent changes in Victoria should be monitored and evaluated.

Reducing the Incidence of Bullying

55. There are particular legal difficulties for employers when an allegation of bullying is raised by an employee. For example, employees who are dismissed for breaching policies on bullying or harassment (or other instances of serious misconduct) are able to pursue the employer

²⁵ Report Case Number 3625/06, 16 May 2008, p.7:
<http://www.coronerscourt.vic.gov.au/resources/8c4c36a6-90eb-41d1-b352-89078d795cee/panlock.pdf>

under a range of statutory and non-statutory causes of action where they believe their termination was unjustified or otherwise unlawful.²⁶

56. An employer's ability to enforce relevant workplace policies is undermined when the alleged perpetrator of bullying or harassment is able to sue an employer and potentially win compensation or reinstatement. Employers should be provided with much more legal certainty in such double-jeopardy situations in order to enforce policies on bullying in the workplace.²⁷

Role of Chambers of Commerce and Industry Associations

57. Many ACCI Chambers of Commerce and Industry Association members have developed services for employers which includes the provision of relevant advice and information on how employers may implement appropriate policies and practices to deal with allegations of serious misconduct, including bullying. In addition, Chambers of Commerce and Industry Associations offer training to supervisors and managers on how to lawfully investigate and manage allegations of bullying in the workplace.

²⁶ See for example the following cases: *Wendy Bann v Sunshine Coast Newspaper Company Ltd Pty* [2003] AIRC 915 (30 July 2003); *Pecotic v AV Jennings Holdings Limited* [2007] NSWIRComm 1001 (6 June 2007); *Bilson v Mission Australia* [2010] FWA 6297 (31 August 2010); *R White v Caterpillar of Australia Ltd* [2001] AIRC 1193 (14 November 2001); *Breene v Jenny Craig Weight Loss Centre Pty Ltd* [2004] AIRC 187 (27 February 2004); *Ozzimo v Australian Postal Corporation T/A Australia Post* [2011] FWA 7831 (30 November 2011).

²⁷ With respect to unfair dismissal claims that are able to be pursued under the *Fair Work Act 2009*, the Small Business Fair Dismissal Code currently applies to small firms (under 15 employees). Where a small business employer relies on the Code and can demonstrate compliance with the Code, the termination will be considered fair and provide a defence to the employer. ACCI has recommended a number of amendments in its submission to the Independent Review of the *Fair Work Act 2009* which would provide greater legal certainty for employers, as follows:

Fair Dismissal Code Extended to all Employers

12.3 Where an employer relies on the Code and declares that they have relied upon the Code in good faith, the termination should be considered fair and provide a defence to the employer.

12.4 The Code should be modified to apply to all employers, regardless of size and should be modified to clearly indicate that a termination will be considered fair if the employee was dismissed for the dominant purpose of complying with laws relating to discrimination, sexual harassment or any other relevant federal, state or territory law.

Valid Reason Should be a Complete Defence

12.5 A valid reason should be prima facie a complete defence to a claim of unfair dismissal. Procedural defects in carrying out the termination should not be considered once a valid reason is found.

58. Governments should utilise the established network of business associations and their distribution and communication channels to collaboratively implement national information and education campaigns, including considering how particular industry sectors may benefit with focused attention where there is evidence of particular problems.

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MASCOT NSW 2020

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F: 02 6230 6898
E: enquiries@bic.asn.au
www.bic.asn.au

AUSTRALIAN BEVERAGES COUNCIL

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6-8 CREWE PLACE
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F: 02 9662 2899
E: info@australianbeverages.org
www.australianbeverages.org

AUSTRALIAN MADE, AUSTRALIAN GROWN CAMPAIGN

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www.australianmade.com.au

CONSULT AUSTRALIA

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F: 02 9957 2484
E: info@consultaaustralia.com.au
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AUSTRALIAN DENTAL INDUSTRY ASSOCIATION

LEVEL 5, 757 ELIZABETH STREET
ZETLAND NSW 2017
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F: 02 9319 5381
E: NATIONAL.OFFICE@ADIA.ORG.AU
www.adia.org.au

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F: 03 9614 3970
E: vicamma@amma.org.au
www.amma.org.au

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79 CONSTITUTION AVENUE,
CAMPBELL ACT 2612
T: 02 6245 1300
F: 02 6257 5658
E: ENQUIRY@HIA.COM.AU
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House Standing Committee on Education and Employment Inquiry –
Workplace Bullying

LIVE PERFORMANCE AUSTRALIA

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F: 03 9614 1166
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AUSTRALIA**

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SERVICES ASSOCIATION OF
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F: 03 9329 5060
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ASSOCIATION**

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E: vacc@vacc.asn.au
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**NATIONAL BAKING INDUSTRY
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SPRING HILL QLD 4000
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**NATIONAL ELECTRICAL &
COMMUNICATIONS
ASSOCIATION**

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**PLASTICS & CHEMICALS INDUSTRIES
ASSOCIATION**

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ATTACHMENT A

Crimes Act 1958 - SECT 21A

Stalking

21A. Stalking

(1) A person must not stalk another person.

Penalty: Level 5 imprisonment (10 years maximum).

(2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following-

- (a) following the victim or any other person;
- (b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;
- (ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material-
 - (i) relating to the victim or any other person; or
 - (ii) purporting to relate to, or to originate from, the victim or any other person;
- (bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person;
- (bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;
- (c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;
- (d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);
 - (da) making threats to the victim;
 - (db) using abusive or offensive words to or in the presence of the victim;
 - (dc) performing abusive or offensive acts in the presence of the victim;
 - (dd) directing abusive or offensive acts towards the victim;

(e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;

(f) keeping the victim or any other person under surveillance;

(g) acting in any other way that could reasonably be expected-

(i) to cause physical or mental harm to the victim, including self-harm;

or

(ii) to arouse apprehension or fear in the victim for his or her own safety

or that of any other person- with the intention of causing physical or

mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or

that

of any other person.

(3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim, including self-harm, or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if-

(a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or

(b) the offender in all the particular circumstances ought to have understood that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.

(4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of-

(a) the enforcement of the criminal law; or

(b) the administration of any Act; or

(c) the enforcement of a law imposing a pecuniary penalty; or

(d) the execution of a warrant; or

(e) the protection of the public revenue-

that, but for this subsection, would constitute an offence against subsection

(1).

(4A) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice-

- (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
- (b) for the purpose of an industrial dispute; or
- (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

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(6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred.

(7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria.

(8) In this section-
mental harm includes-

- (a) psychological harm; and
- (b) suicidal thoughts. Note The [Personal Safety Intervention Orders Act 2010](#) provides that the Court within the meaning of that Act may make a personal safety intervention order in respect of stalking.

Media release

Court action over alleged distribution of posters labelling workers ‘scabs’

23 June 2012

The Fair Work Ombudsman has launched a prosecution against the Maritime Union of Australia (MUA) and one of its WA officials over the alleged distribution of posters labelling workers who had not engaged in industrial action as ‘scabs’.

Facing Court are the MUA and the Assistant Secretary of the MUA’s WA Branch, William Tracey.

The Fair Work Ombudsman alleges that the MUA and Mr Tracey distributed posters entitled ‘Attention: Scabs in Fremantle’ at Fremantle Port, the Kwinana Bulk Terminal and other locations between December 6 and December 9, 2011.

The posters allegedly named five individual Fremantle Port Authority employees as ‘scabs’ because they did not engage in industrial activity taken by the majority of Fremantle Port Authority employees from December 1 to December 3, 2011.

It is alleged the posters stated that the five employees had ‘turned on their colleagues’, described the employees’ behaviour as ‘treacherous’ and stated that the employees’ behaviour ‘should stand condemned by all workers in Fremantle’.

It is alleged the posters stated that no one had ‘a right to SCAB’ so long as drowning or hanging was an available option and stated that those branded as scabs are ‘marked for life’.

The posters were allegedly distributed with intent to coerce the five employees to engage in further industrial action that was planned.

It is alleged that the conduct of the MUA and Mr Tracey breached the adverse action and coercion provisions of workplace laws.

Fair Work Ombudsman Nicholas Wilson says that the decision to prosecute was made because of the seriousness of the alleged breaches.

Mr Tracey was allegedly involved in the MUA committing a number of breaches of workplace laws. Mr Tracey faces maximum penalties of \$6600 per breach and the MUA faces maximum penalties of a further \$33,000 per breach.

The Fair Work Ombudsman is also seeking a Court Order for the MUA to pay compensation to the five allegedly affected employees. The case is being heard in the Federal Court in Perth.