

2012

**ACT GOVERNMENT
SUBMISSION**

TO THE

**PARLIAMENT OF AUSTRALIA
HOUSE STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT**

INQUIRY INTO WORKPLACE BULLYING

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ACT Chief Minister

Introduction

Everybody has the right to be and feel safe at work. Every person deserves to be treated with respect and courtesy. These principles are at the heart of the ACT Government's continuing efforts to eliminate bullying at work. The elimination of violence, threats, intimidation and all forms of bullying behaviour requires transparency, leadership and cultural change – in our communities as well as individual workplaces.

The ACT Government supports the Australian Government's efforts to secure the safety of people at work against bullying and welcomes this opportunity to provide input into the Inquiry into Workplace Bullying conducted by the House Standing Committee on Education and Employment. We share the view that the incidence and cost of workplace bullying, in both human and financial terms, requires continuing attention and a strong, coordinated government response in all jurisdictions.

Executive Summary

As one of the Territory's largest employers the ACT Public Service is leading by example, fostering a positive workplace culture by exposing unacceptable behaviour and taking fresh steps to drive cultural change where needed. We recognise that a safe workplace is fundamental to our business, our workers and our role as a leader among employers. Measures to address bullying at work must form part of an integrated strategy that identifies and controls the same behaviour in our families and communities.

The ACT's regulator, WorkSafe ACT, is proactively working with community organisations, worker and business representatives and other jurisdictions to identify and implement best practice awareness, education and enforcement measures. Having implemented national model work health and safety laws, the Territory is also participating in efforts to produce a national Code of Practice on workplace bullying through Safe Work Australia (SWA). These efforts would be assisted by a further offence in the *Work Health and Safety Act 2011* that targets negligent conduct with an appropriate maximum penalty.

Further efforts must target the incentives that drive individual behaviour but also systems that foster or allow poor behaviour. Education and awareness raising campaigns that support effective reporting and incident handling require additional support. Likewise, employers are looking for practical support and advice to manage incidents and build a positive work culture through means such as peer intervention and role modelling. Guidance and advice must be as specific as possible and meet the needs of small and micro-businesses, preferably by clearly covering all relevant legal issues. Relevant Commonwealth laws must effectively balance the need for privacy and fairness with support for complainants and transparent outcomes that deter bullying.

Where we are now

Work health and safety and workers' compensation laws set the principal framework for securing worker safety. Operating under national legislation since 1 January 2012, WorkSafe ACT undertakes a range of education and enforcement activities to improve compliance.

Work Health and Safety laws

The Territory provides for the proactive management of bullying in all workplaces through the *Work Health and Safety Act 2011* ('WHS Act'). The WHS Act and supporting Regulations reflect a common approach to safety at work across the ACT, Commonwealth, NSW, Queensland and the Northern Territory.

The WHS Act covers physical and psychological health and welfare. Businesses and other undertakings must take positive steps to ensure the health and safety of workers and others people affected by their enterprise through managing risk. They must provide and maintain a safe workplace and systems of work and report incidents to WorkSafe ACT. In this sense, they have responsibilities in preventing and responding to bullying and violence in their workplaces, no matter the cause, so far as is reasonably practicable. In the same way, workers must not expose themselves or others to risks because of their work. The Act covers a range of people as 'workers' including contractors, apprentices and volunteers.

The WHS Act requires a proactive approach, placing new obligations on individuals to ensure safety. It requires officers of businesses to exercise *due diligence* to ensure the business complies with its duties. This includes taking reasonable steps:

- to acquire and keep up-to-date knowledge of work health and safety matters;
- to gain an understanding of the nature of operations and generally of the hazards and risks associated with them;
- to ensure the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks from work carried out;
- to ensure the business or undertaking has appropriate processes for receiving and considering information about incidents, hazards and risks and timely responses;
- to ensure the business or undertaking has, and implements, processes for complying with any duties under the WHS Act; and
- to verify the provision and use of these resources and processes.

In adopting the WHS Act, the ACT removed the protection of Crown immunity from prosecution in respect of work health and safety matters. As such, the above duties apply equally in respect of the public and private sector in the Territory. A person who commits the highest category offence under section 31 of the WHS Act (Reckless conduct - category 1) is liable to a maximum penalty of \$600 000 and/or five years imprisonment (businesses and officers), \$300 000 and/or five years imprisonment (other individuals), or \$3 000 000 (bodies corporate).

ACT Code of Practice

In 2010, the ACT introduced a Code of Practice for Preventing and Responding to Bullying at Work under the WHS Act. This sets the minimum standard for businesses and undertakings. Bullying is described as "*repeated unreasonable behaviour directed towards a worker or group work of workers that creates a risk to health and safety.*" A broad range of behaviours can be direct bullying such as verbal abuse, put downs, spreading rumours or interfering with property or work equipment. Indirect bullying may include unjustified

criticism, deliberate exclusion, withholding vital information or excessive scrutiny. While the definition of bullying does not capture single incidents, it is clear that they should not be ignored. Measures are then set out to address matters before they escalate into bullying.

Serious behaviours that may be bullying but require resolution by ACT Policing are clearly distinguished – this includes threats of harm, violence and property damage. This behaviour may be perpetrated by a supervisor, colleague, client or other external person. Conversely, it describes reasonable management action, which is not bullying when carried out in a fair way (for example, setting standards, allocating work, managing unsatisfactory performance or restructuring).

A National Bullying Code

Through SWA Territory officials are assisting the development of a new national Code on bullying at work. We understand that the SWA agency is evaluating public comment received between September and December 2011 with the assistance of an expert consultant. The Territory intends to adopt the final national Code to replace the ACT's current Code (above) as soon as it is finalised.

Regulating Workplace Bullying

WorkSafe ACT inspectors have been actively involved in educating business and workers on their respective roles and obligations under work health and safety laws. In part, this campaign has placed significant emphasis on the prevention and elimination of bullying and harassment in the workplace. In addition, the ACT Work Safety Commissioner is appointed under the WHS Act to: promote understanding, acceptance and compliance with work safety laws; undertake research; develop educational and other Programs to promote work safety; and provide advice to Government on relevant matters.

Inspection activities are undertaken to ensure compliance with WHS Act obligations. Since 2008-09, WorkSafe ACT has received a number of complaints alleging workplace bullying. The number of complaints received is:

- 2008-09 – 14;
- 2009-10 – 35; and
- 2010-11 – 36 (31 were determined to require further investigation).

One of the primary roles of WorkSafe ACT is to investigate matters in order to determine whether a duty holder is complying with their obligations under the WHS Act. In response to a complaint about bullying or harassment at work, WorkSafe determines whether:

- the business has systems and procedures in place that are designed to prevent bullying or harassment of workers;
- the business has systems and procedures in place to competently manage any complaints regarding bullying or harassment of workers;
- the systems and procedures established are operating effectively;

- actions taken by a business (and their managers/supervisors) in response to complaints are consistent with those systems and procedures and are consistent with their duties under the WHS Act;
- the business is taking all reasonable steps to ensure that workers are not bullied or harassed at work; and
- any other duty holder has failed to meet their legal obligations.

In 2010-11 four improvement notices and one prohibition notice were issued by WorkSafe ACT in response to specific matters involving allegations of bullying at work.

ACT Human Rights Commission

The ACT Human Rights & Discrimination Commissioner has jurisdiction to handle workplace bullying incidents where such behaviour is motivated by one of 15 'protected attributes' under the ACT *Discrimination Act 1991*. Such attributes include disability, race, age, sex, religious conviction, political conviction, gender identity and industrial activity. In comparison, the protection offered by the Australian Human Rights Commission only relates to the attributes of sex, disability, age and race. The ACT Discrimination Act also makes it unlawful to sexually harass a colleague in the workplace, and puts obligations on employers to prevent such behaviour. Vilification, on the basis of race, sexuality, gender identity and HIV/AIDS status, which may occur in the workplace through public acts, is also unlawful. Only racial vilification in the workplace is protected at the Commonwealth level.

In relation to services complaints handled by the Commission, workplace bullying may also be a factor influencing organisational culture. Accordingly, complaints are made to the Commission regarding the following services where bullying is impacting upon service delivery:

- Health services;
- Services for older people;
- Services for people with a disability;
- Services for children and young people; and
- Services for carers of children and young people, older people, people with a disability, and people accessing health services.

Additionally, the Children and Young People Commissioner also handles complaints about bullying of children and young people within schools and other services for children and young people.

Education and Awareness

WorkSafe ACT offers information and training on preventing and managing bullying and harassment at work. These are designed to encourage greater understanding of the nature and impacts of bullying in the workplace as well as strategies to prevent or reduce the likelihood of incidents. This covers topics such as best practice policies and procedures, how to manage alleged bullies and responding to bullying at all levels (individual, management and corporate). A further half-day workshop is also available to help raise awareness about

prevention and management of bullying amongst workers. In 2010-11, 82 workshops were held with approximately 2000 people attending.

WorkSafe ACT also provides resources to assist duty holders to develop a shared understanding of acceptable behaviour. This includes:

- *Ten Steps to Managing and Preventing Bullying at Work;*
- *What someone should do if they think they are being bullied;*
- *Recognising and Responding to Bullying at Work;*
- *Preventing and Responding to Bullying at Work; and*
- *A Complete Complaints Resolution Process.*

WorkSafe ACT is currently preparing a guide for small businesses for dealing effectively with incidents of, and issues arising from, workplace bullying.

Finally, in relation to education and awareness, the ACT Human Rights Commission also provides printed materials and face-to-face training on discrimination, workplace bullying, sexual harassment, contact and harassment officers and the Government's Respect Equity and Diversity Framework.

Working with Stakeholders

The ACT Work Safety Council advises the Minister for Industrial Relations on work safety and workers compensation matters and may also inquire into and report to the Minister on matters referred to it in respect of these matters. The Council is comprised of representatives of workers, business, the community and the regulator.

This year, the Government appointed an academic with specialist expertise in bullying and workplace culture to assist the Council in its work. Legislation establishing the Council has also been changed to clarify that workplace bullying and other psychosocial issues are part of its functions. The Council has recently formed an advisory committee to facilitate more detailed examination of the causes of bullying and make recommendations to Government on ways to eliminate or reduce bullying behaviour in ACT workplaces.

Relevant ACT Criminal Offences

Offences in the ACT's *Crimes Act 1900* and Commonwealth's *Crimes Act 1914* may apply in circumstances where an employee is experiencing workplace bullying. Further, the *Domestic Violence Protection Orders Act 2008* provides for workplace protection orders to be granted in circumstances where an employee is experiencing personal violence.

The Crimes Act (ACT) features the following offences that may apply in circumstances where a person has been assaulted or threatened in their workplace. The relevance of each offence will depend on the conduct that has been engaged in and the specific circumstances.

Section 17	Suicide-aiding etc	This offence will apply where a person aids or abets the suicide or attempted suicide of another person. This is punishable by imprisonment for 10 years.
Section 19	Intentionally inflicting grievous bodily harm	This offence applies where a person intentionally inflicts grievous bodily harm on another person. This is punishable by imprisonment for 15 years.
Section 20	Recklessly inflicting grievous bodily harm	This offence applies where a person recklessly inflicts grievous bodily harm on another person. This is punishable by imprisonment for 10 years.
Section 23	Inflicting actual bodily harm	This offence applies where a person intentionally or recklessly inflicts actual bodily harm on another person. This is punishable by imprisonment for 5 years, or, 7 years for an aggravated offence.
Section 24	Assault occasioning actual bodily harm	This offence applies where a person assaults another person and by the assault occasions actual bodily harm. This is punishable by imprisonment for 5 years.
Section 25	Causing grievous bodily harm	This offence applies where a person, by any unlawful or negligent act or omission, causes grievous bodily harm to another person. This is punishable by imprisonment for 2 years.
Section 26	Common assault	This offence applies to a person who assaults another person. This is punishable by imprisonment for 2 years.
Section 35	Stalking	This offence applies where a person stalks another person with the intent of causing apprehension, or fear of harm, in the person stalked or someone else; or with the intent of causing harm to the person stalked or someone else; or with the intent of harassing the person stalked. This is punishable by imprisonment for 5 years (if the conduct is in breach of a court order or where an offensive weapon is used) and 2 years imprisonment in any other case.

In addition, section 474.17 of the Crimes Act (Commonwealth) (using a carriage service to menace, harass or cause offence) would apply to any online harassment or abuse. This carries a maximum penalty of three years imprisonment.

The *Domestic Violence and Protection Orders Act 2008* (the DVPO Act) provides an alternative to criminal offences to address instances of personal violence in the workplace. The DVPO Act allows a person to apply for a personal protection order to restrain the respondent from engaging in personal violence, or a threat to cause personal violence, in

relation to the workplace. Section 52 of the DVPO Act provides the grounds for making a workplace personal protection order. The Magistrates Court will make a workplace personal protection order if the respondent has engaged in personal violence in relation to the workplace and may engage in personal violence in the workplace if the order is not made.

'Personal violence' is defined by section 50 of the DVPO Act to include conduct that:

- (a) causes personal injury, or threatens to cause personal injury, to an employee in the employee's capacity as an employee at the workplace; or
- (b) causes damage to property, or threatens to cause damage to property, in the workplace in a way that causes reasonable fear in an employee; or
- (c) is harassing or offensive to an employee in the employee's capacity as an employee of the workplace.

Personal injury is not defined in the DVPO Act, apart from section 13 noting that personal injury includes nervous shock. Conduct that constitutes harassment or conduct offensive to the person in their capacity as an employee of the workplace was discussed in the ACT Supreme Court in *Firestone v The Australian National University* (2004) ACTSC 76. This decision concluded that harassing or offensive conduct had been engaged in (telephone calls) in relation to persons at the workplace as well as at their homes. Conduct that occurred at the homes of the employees fell within the definition of 'personal violence'.

Industrial Manslaughter

Part 2A of the Crimes Act also provides for the offence of industrial manslaughter. The ACT is the first jurisdiction to create an offence of this kind, which came into effect on 1 March 2004. These offences apply where an employer or senior officer of an employer causes the death of a worker through recklessness or negligence. The death of the worker would need to occur in the course of the worker's employment. As in the Commonwealth, the definitions of negligence and recklessness are set out in sections 20 and 21 of the *Criminal Code 2002*. This does not impose vicarious liability for the actions of others and the employer's own recklessness or negligence, proven to a criminal standard, must have substantially caused the death of the worker. The purpose of the law is to more effectively apply the law of manslaughter to corporate employers whose conduct is grossly negligent or who take unjustifiable risks with the lives of their workers.

These provisions allow for substantial penalties, including financial penalties which can be applied to either natural persons or corporations. For both employers and senior officers, the maximum penalty is 2 000 penalty units and/or 20 years imprisonment (a penalty unit is currently \$110 for individuals and \$550 for a corporation). It also allows the court to order corporations to take actions including publicising the offence, notifying specified persons of the offence, or carrying out a specified project for the public interest. These offences apply to both the public and private sector in the ACT.

Brodie's Law

One option to expand current regulatory controls would be to implement a common national law on workplace bullying based on Brodie's law (VIC).

On 7 June 2011 the *Crimes Amendment (Bullying) Act 2011* ('the Victorian Bullying Act') came into effect in Victoria. This amended the existing offence of stalking to put beyond doubt that the offence covers serious instances of bullying (including at work) and may result in a maximum 10 years imprisonment.

Offences under the Crimes Act (ACT), the *Criminal Code 2002* (ACT) and the Crimes Act (Commonwealth) provide comprehensive powers and offences for responding to the types of conduct that gave rise to the Victorian Bullying Act.

The primary amendment in the Victorian Bullying Act was to reform the offence of stalking at section 21A of the Victorian *Crimes Act 1958*. It also made consequential amendments to the *Stalking Intervention Orders Act 2008* and the *Personal Safety Intervention Orders Act 2010*.

Amendments to the stalking offence in the Victorian Act expanded the conduct that could be included a course of conduct that would amount to stalking. The amendments included the inclusion of making threats to a victim, using abusive or offensive words to or in the presence of the victim and directing abusive or offensive acts towards the victim. Addressing this conduct is already provided for in the ACT.

The amendments to the stalking offence included 'self-harm' and 'suicidal thoughts' as categories of 'mental harm'. In the ACT, section 35 (6) of the *Crimes Act 1900* defines 'harm' for the stalking offence. 'Harm' means physical harm, harm to mental health, or disease, whether permanent or temporary. The definition notes that 'harm to mental health' includes psychological harm. It is arguable, however, whether the ACT's definition of 'harm' definitely includes 'self-harm and 'suicidal thoughts'.

The ACTPS – Embedding a Positive Work Culture

The ACT Government has long recognised its legal and moral obligation to create and maintain a safe workplace. We also recognise the critical importance of creating a positive work culture across the ACT Public Service (ACTPS). A safe workplace is fundamental to our undertaking, our workers and our role as a leader among employers. The ACT Government is committed to leading by example in exposing unacceptable behaviour within the Service as a critical first step to eliminating it from our workplaces. Over time, we aim to achieve the highest possible safety standards – a key element is fostering a positive culture that reflects interpersonal respect, equity and diversity. This will require effective leadership behaviours that model our values and set the tone for 'how things are done around here.'

The ACTPS has developed and implemented a robust framework supported by whole of government policies, programs and safe systems of work so that, to the extent possible, it is able to protect its employees from assault and bullying. In addition to its duties under the WHS Act, section 8(d) of the *Public Sector Management Act 1994* provides that all ACTPS

agencies be administered to provide safe and healthy working conditions. This outcome is pursued through a range of whole of government policies including WHS and occupational violence policy statements, the Respect, Equity and Diversity (RED) Framework, ACTPS Code of Ethics and Integrity policy. This may form a useful example for other large or public sector employers and could feature in any future national guidance material on prevention.

RED Framework

As part of the ACT's commitment to a working environment in which workers feel valued, safe and respected a new RED Framework was launched in December 2010. This Framework provides policy guidance, procedures and training to reinforce the ACTPS Code of Conduct and sets standard of behaviour to promote equity, diversity and respect as part of a positive workplace culture. In addition, guidance on preventing bullying and an 'open-door' protocol have been implemented. A RED Executive sponsor and trained contact officers in each Directorate are also in place. This system is designed to empower staff to speak up in support of both themselves and others and provides a system that supports early resolution of interpersonal issues at work.

Values and Signature Behaviours

On 18 May 2012 the ACT Head of Service, Mr Andrew Cappie-Wood, launched a new set of whole-of-government values and signature behaviours following consultation with staff across the Service. These values are Respect, Integrity, Collaboration and Innovation and a signature behaviour that reflects Respect is "relating to colleagues and clients in a fair, decent and professional manner." The outcomes of this work have informed a new draft Code of Conduct on which staff are being consulted. This will then form part of the Standards under the *Public Sector Management Act 1994*.

Resolving Complaints

The ACTPS has a strong reporting culture. Most reported instances in recent years relate to client initiated violence or harassment and involve front line staff in health, education and community services agencies. A very small percentage of incidents relate to bullying and harassment within the Service. Many of our front line staff assist the most stressed and vulnerable members of our society. They often encounter clients and customers when they are at breaking point. They suffer abuse, threats and violence in serving our community. Citizens we serve daily must understand our officials are not expected to put themselves in a position where they may be harmed.

Directorates have in place mechanisms to eliminate or reduce risk of workplace violence and aggression. Our workforce in front line service delivery has access to systems, processes and procedures to assess and reduce the risk of violence. We accept, however, that incidents of bullying are likely to be significantly underreported in all workplaces. As a result, our own data is likely to capture a small proportion of bullying behaviour and reflect the more serious incidents that involve violence, threats and overt harassment.

The ACTPS as a whole has systems in place to deal with incidents when they occur. Later this year a new government incident reporting system will come on line to improve timely

reporting and investigation of incidents. We have a strong legislative and policy framework to resolve individual complaints internally. Our Enterprise Agreements provide that:

“...[b]ullying and harassment and discrimination of any kind will not be tolerated in ACT Government workplaces. It is recognised that bullying and harassment in the workplace has both emotional and financial costs and that both systemic and individual instances of bullying and harassment are not acceptable.”

If any Directorate is made aware of alleged instances of bullying and harassment or discrimination, or independently considers that inappropriate behaviour may be occurring, action will be taken, as soon as possible, in a manner consistent with the seriousness of the issue. Where appropriate the Directorate will investigate the concerns in accordance with the Workplace Behaviours provisions in their Enterprise Agreement.

The ACT Commissioner for Public Administration advises the Chief Minister on the management of the Service. The Commissioner may also:

- authorise management reviews of the service or its functions;
- conduct inspections, make inquiries or investigations into the operations of government agencies for the purpose of carrying out his or her functions; and
- perform a range of functions given under legislation.

These functions and powers allow the Commissioner to receive and respond to complaints within the Service including those about workplace bullying. The Commissioner is currently investigating a number of bullying and harassment complaints at the Canberra Institute of Technology with a view to addressing specific individual and systemic issues. Lessons learned for the ACTPS will also be identified and acted upon.

On 7 June 2012 the Public Interest Disclosure Bill 2012 was introduced into the Legislative Assembly. This Bill provides for extra protection for whistleblowers in the public sector, provides more avenues for disclosures to be made, sets out clear oversight responsibilities and allows for compensation in some instances where individuals suffer for bringing wrongdoing to light. The Bill also provides protections against false, misleading or vexatious disclosures.

Improving return to work

It is of paramount importance that the ACTPS reduce the risk of illness and injury in the workplace and improve health and return to work outcomes for those that are injured. In the case of psychological injuries in particular, this will require continued and focused effort over time to stamp out inappropriate behaviour.

The ACTPS has implemented a workers' compensation and work safety improvement plan which consists of a series of aligned and mutually reinforcing strategies to optimise maximum improvement in compensation and safety outcomes. This covers:

- a new case management model with screening and triage of injured workers and regular and systematic progress reviews;

- a targeted program to strengthen capability of supervisors, case and line managers;
- enhancements to a whole of government redeployment framework;
- a new partnership agreement with Comcare as our workers' compensation insurer;
- overhaul of existing performance reporting for injury prevention and compensation;
- a compensation review and dispute committee to assist us to fulfil our governance obligations; and
- a new accident and incident ICT system.

Where we want to be

Effectively reducing the incidence and severity of bullying at work will be most effective where the same behaviours are simultaneously addressed in our families and communities. What is occurring in our workplaces reflects broader social standards of behaviour that are experienced in our schools, community groups, sporting teams and homes. In this context, the task facing regulators, employers and workers is made more difficult. Similarly, strategies must target the actions of individuals but also broader cultural and systemic issues that are known to increase the incidence of bullying and other inappropriate behaviour at work.

Strategies to prevent bullying should focus on improving awareness, supporting workers to report issues and effectively handling complaints. Poor behaviour must have unambiguous consequences that deter both the bully and others from continuing the same behaviour. This requires a zero-tolerance policy coupled with vigilant monitoring of behaviour. Supervisors, managers and small business owners need practical support and advice so they can deal with these people and performance issues well. Greater promotion of risk factors that promote bullying (for example, inadequate supervision, poor relationships, vulnerable workers and front-line service roles) would empower employers to reduce the risk of bullying occurring. For example, in many industries proactive plans that control specific risks have proven effective in mitigating the risk of violence, threats and harassment from clients.

At the same time, employers should actively build a positive culture at work. Leaders must foster and role-model the behaviour they expect and promote appropriate peer intervention to report incidents and support those they see being bullied. While general guidance, training and education can assist, it is important that this includes specific examples relevant to the workplace and is targeted to help small and micro-businesses.

Experience of past bullying incidents illustrates that complaints must be handled quickly and transparently. Where grievance policies do not exist, are not clearly understood or issues do not seem to be taken seriously, workers will not trust the process and will not report incidents. Early reporting often allows behaviour to be managed before the consequences for individuals have escalated. It is also critical that individuals that report are supported and kept informed about the progress and outcome of any response, whether that involves counselling, mediation or formal investigation. If this does not occur, workers will be deterred from reporting in future. Staff training and consultation on appropriate behaviour and effective responses is essential to both preventing and responding to bullying.

Recommendations

The Commonwealth's ongoing commitment to assist in the elimination of workplace bullying is acknowledged and appreciated. The Territory believes that the joint challenge of governments as regulators is to more effectively use existing laws, including the *Work Health Safety Act 2011* and respective criminal laws, to ensure serious bullying is effectively penalised and deterred. While the ACT Government would be prepared to consider further any regulatory gaps identified in other criminal laws, we believe the principal approach to bullying as a whole should be driven proactively through work health and safety laws.

In this respect, we recommend an amendment to the national model WHS laws to introduce a separate offence of negligent conduct in the principal Act with a greater maximum penalty than the Category 3 strict liability offence (including a term of imprisonment). The ACT Government has continuously advocated the inclusion of a specific negligence based offence in this context. A negligence offence would ensure conduct that leads to harm can be judged on a subjective (through offences of recklessness) as well as an objective basis. Currently only those offences where recklessness is proven can be subject to serious criminal penalties and imprisonment terms. This is inadequate and forces negligent behaviour, where the prosecution is unable to prove an element of conscious thought and foresight that a person's conduct might result in harm, to be treated as a less serious Category 3 (strict liability) offence.

In contrast, inclusion of a negligence offence would allow regulators and prosecutors to pursue serious negligent conduct that constitutes such a grave falling short of industry standards and is considered so serious that it merits criminal punishment. Negligent conduct is decided on an objective basis; it captures the most rogue behaviour where no level of thought or foresight has occurred, and applies in situations where there is a gross falling short of accepted community and industry standards. A negligence offence is desirable generally, but would also help to deal with instances of bullying where businesses fail to take any steps to counter bullying, are grossly ignorant of their duties and yet recklessness cannot be established.

The Government considers this would also increase the capacity of regulators to require employers to take a proactive response to bullying in their workplaces. Further, ongoing work through Safe Work Australia to develop a national Code of Practice could be usefully supplemented by new common inspector training and guidelines on how incidents are resolved and, if necessary, investigated. Further work to clarify and articulate a common role for work health and safety inspectors in preventing and responding to bullying would also be beneficial.

It would be most helpful for the Commonwealth to review the role played by the *Fair Work Act 2009* and *Privacy Act 1988* to ensure employers are able to effectively and fairly address poor behaviour and to communicate their response to complaints consistently with the law. This may be a matter of renewed awareness, guidance and training rather than legislative reform and could form part of broader awareness-raising measures nationally. It is critical that further resources devoted to guidance and training have a practical, on-the-ground approach that is expressed briefly and in plain terms. Ideally, these would be citizen-focused and cover industrial, privacy, criminal and safety aspects of managing incidents. It is likely

that different approaches would be needed for large, small and micro businesses in producing and promoting this assistance.

We also believe there is scope for Commonwealth agencies to build more specific procedural protections into scheme arrangements for apprentice and traineeships, including supervisor training and awareness. This could usefully encompass awareness of bullying as well as related safety and entitlement matters.

Contact

Further discussion regarding any aspects of this submission should be directed to the Director, Office of Industrial Relations, Chief Minister and Cabinet Directorate, ACT Government, Ms Fiona Barbaro at .