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Committee Secretary  
House of Representatives Standing Committee on  
Education and Employment  
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Sent via email to: workplacebullying.reps@aph.gov.au

Dear Sir/Madam,

Master Electricians Australia (MEA) is grateful for the opportunity to contribute to the Education and Employment Committee inquiry into workplace bullying.

**Master Electricians Australia Ltd (MEA)** is a not-for-profit organisation that provides a national accreditation program to electrical contractors seeking to differentiate themselves from other contractors - similar to that process adopted by Master Builders within the construction industry. MEA is part of the ECA Group of Companies and operates nationally. The organisation's website is: <http://www.masterelectricians.com.au>.

The **Electrical Contractors Association (ECA)** is the leading voice of the electrical industry and is committed to improving and advancing this sector. ECA is registered as an industrial organisation under Queensland legislation with its operation in Queensland. The association's website is: <http://www.masterelectricians.com.au/page/ECA/>.

References to MEA and opinions expressed by the MEA, within this submission, should be read as both Master Electricians Australia and the Electrical Contractors Association.

Any legislative measures that will discourage workplace bullying and harassment and penalise the perpetrators is fully supported by MEA. Bullying is far too prevalent throughout Australian workplaces and a strong all of government response is key to protecting workers from harassment. MEA also believes that there is capacity for further development in the government's current approach to the prevention of bullying in the workplace.

### **Definition of bullying**

While there is currently no standardised definition of bullying that is used across all Australian jurisdictions, there are common elements in the existing legislation and Codes of Practice relating to bullying throughout the different states and territories. Bullying or workplace harassment is generally described as behaviour that has the following characteristics:

1. Occurs more than once, i.e. is not an isolated incident;
2. Is against a person by a co-worker, employer or group of co-workers;
3. Is unwelcome and unsolicited;
4. The victim considers to be offensive, humiliating, intimidating or threatening; and
5. A reasonable person would consider the behaviour to be offensive, humiliating, intimidating or threatening.

The majority of legislation also specifies that reasonable management action does not fall under the definition of workplace bullying, a point that MEA strongly supports. In a work situation, a key factor of employment law is that of implied responsibilities. Of particular interest in this area is:

- The employee duty to obey all lawful and reasonable orders and take reasonable care; and
- The employer duty to take reasonable care and avoid unnecessary risk and not act in a manner calculated to destroy mutual trust and confidence.

As such, MEA would suggest that examples and clear wording be included in future explanatory memorandums, statutory examples and learning material that explain in detail that an employer directing an employee to undertake work within their training and competence is not considered bullying. A lawful and legal direction as described by precedent should never be seen as bullying, even if an employee's initial reaction maybe to refuse, not "enjoy" undertaking a particular task or see the direction as a retaliation for a particular issue.

In harmonising Work Health and Safety laws it is hoped that all of the elements discussed above will be incorporated into any definitions of bullying to ensure consistency in each jurisdiction and to avoid any ambiguity.

It is also important that there be consistency in the application of the harmonised Work Health and Safety Legislation anti-bullying provisions and the newly introduced anti-bullying laws under Victoria's *Crimes Act*. There is the potential for confusion if serious bullying behaviour in Victoria leads to a criminal conviction, but similar behaviour in another jurisdiction is found to not be in breach of the *Work Health and Safety Act*. There is also the possibility that a person could be found not guilty of serious bullying under the stalking provisions of the *Crimes Act* in Victoria but may have a successful action taken against them under the *Work Health and Safety Act* for the offence of workplace harassment. There needs to be a clear distinction between bullying behaviour that warrants a fine under the Work, Health and Safety legislation and what factors escalate that bullying behaviour into being worthy of a criminal conviction.

### **Multi-jurisdictional approach**

MEA does have concerns with the current and past multi-jurisdictional approach towards the regulation of workplace bullying. Workplace bullying is now addressed by harmonised Work Health and Safety Legislation in all states except Victoria and Western Australia, the Fair Work Act, the Human Rights and Equal Opportunity Commission, state and territory anti-discrimination legislation, state and federal workers compensation actions and the common law via breach of contract.

The recent inclusion of bullying in Victoria's *Crimes Act 1958* is another layer of legislative coverage for bullying. In light of this, we urge the government to consider the potential impact on all business if multiple claims are lodged with different bodies by an employee relating to the same or a similar incident. While we would never advocate an employee being denied the right to pursue a claim for being subjected to bullying, there must be some protections in place for business, particularly small business, who can ill afford defending allegations in multiple forums. Clear guidelines need to be developed that will prevent multiple claims being lodged for the same incident. The *Fair Work Act* at Part 6-1 ensures that no claim can be lodged with Fair Work Australia if alternative actions have already been commenced. All other relevant jurisdictions should ensure that similar provisions are in place.

## **Regulation vs. Education**

MEA firmly believes that education is the key to decreasing the prevalence of workplace bullying. While regulation has its place and may provide some deterrence to potential perpetrators, the real long-term solution lies in preventative measures, namely broad scale education across all industries. The current seemingly ad-hoc approach to the prevention of workplace bullying through the introduction of further regulation does not appear to be making any significant impact on the incidence, or severity, of bullying in the workplace.

Government investment in comprehensive bullying and harassment education could have significant flow-on benefits for the community and the Australian economy. According to the Australian Human Rights Commission, workplace bullying costs Australian employers between \$6 and \$36 billion every year when hidden and lost opportunity costs are considered. These costs can include decreased productivity, increased absenteeism, high staff turnover and the associated recruitment costs, re-training of new staff, legal and workers' compensation costs and management time in addressing cases of workplace bullying. Intangible costs such as low staff morale and motivation are further burdens that bullying places on a business. Considering the damage workplace bullying can do to an organisation and the economy as a whole, government expenditure on educating the community about recognising, responding to and preventing bullying within workplaces is a small price to pay. Prevention is indeed better than a cure.

## **Bullying education and government funding**

It may even be beneficial for government funding to be linked to bullying prevention procedures implemented in a workplace. Organisations that receive government assistance, such as those in the not-for-profit sector, would need to demonstrate a certain level of bullying and harassment education within their business in order to be eligible for funds. This could provide an added motivation for companies to take the time to build an anti-bullying culture, develop appropriate procedures and to educate employees at all levels on how they can recognise and respond to bullying and harassment.

## **Bullying education and small business**

Government endorsed bullying education would be of particular benefit to small businesses, who in most cases, would not have a dedicated human resources officer on-site with experience recognising and responding to incidents of workplace bullying. These time and resource poor employers are likely to be unversed in the signs of bullying in their business and, as a result, any such incidents may go unchecked. A government endorsed education campaign that is specifically geared towards small business would be invaluable in this regard. It would allow these employers to identify when workplace bullying is occurring and provide steps on what they can do to address it.

## **Community approach**

Any bullying education campaign needs to target not only employers, but also employees, to arm them with the relevant tools to recognise when bullying is occurring around them and what steps they can take in response. Placing sole responsibility on employers to identify and respond to bullying in a workplace is of limited value. Workplace bullying is a community problem requiring a whole of community response. While employers may be held directly or vicariously liable for workplace harassment and bullying under the law, the rising incidence of workplace bullying will only be remedied if the whole of an organisation is involved in the solution.



## **Workplace cultures**

Workplace culture can play a large role in the prevention of workplace bullying. It is important that procedures are in place in every organisation to facilitate bullying incidents being resolved internally before it is necessary for the issue to be taken outside of the workplace. Workplace cultures need to be such that employees feel comfortable and are in fact encouraged to utilise internal complaints handling procedures to address bullying at the first instance. If approaching the employer directly is not appropriate, employees should be able to access support via an internal human resources area if available, a harassment contact officer or the relevant union who can act as a mediator to address the situation and hopefully resolve the issue at the source before a legal remedy is pursued. Again, widespread education on how to create this “anti-bullying” culture would be invaluable to business.

## **Commercial considerations**

Businesses subject to a bullying or workplace harassment claim often need to make a commercial decision as to the worth of defending such an allegation through the court system. Excessive legal costs, coupled with the adverse publicity such a claim attracts, can cause significant harm to a business and a quick monetary settlement paid to a complainant may be preferable, even if the allegations are unsubstantiated. The significant consequences of these commercial decisions are demonstrated by two separate cases that concern allegations of harassment in the workplace involving the David Jones Group and Commonwealth Securities Limited (CommSec).

The case involving the David Jones Group saw claims of harassment being made by an employee against the David Jones CEO. The decision was made by the retail group to settle the case with a payment of \$850,000 to the former employee who made the allegations. In contrast, a harassment claim made by an employee of CommSec was comprehensively dismissed by the Federal Court resulting in an indemnity costs order of \$5.85 million being made against the employee who made the accusations. However, as the employee was not in the financial position to be able to pay these costs, CommSec was left with a successful verdict in court but faced a loss of close to \$9 million for making the choice to defend the harassment charges over the five years it took for the case to be finalised. The David Jones and CommSec cases demonstrate the difficult commercial decisions facing a business that is subject to accusations of bullying or harassment. Defending such charges, even when the allegations are fallacious and damaging to a company’s reputation, may not be worth the time and expense involved.

Government may need to review the legal system’s current approach to cases involving allegations of workplace bullying or harassment whereby complainants are able to repeatedly pursue allegations against an employer. Whilst a large corporation may have the capacity to absorb the excessive legal costs incurred to defend their innocence, small business would not be able to do so. This leaves them with the difficult choice of either settling the case out of court, and in so doing potentially damage their reputation in the community, or face bankruptcy under the weight of legal fees.

Vexatious allegations also make it more difficult for genuine victims of bullying and harassment to have their claims recognised and dealt with by the courts. Any baseless bullying or harassment allegations can damage the credibility of the genuine victims and may prevent perpetrators from paying the price for their behaviour.

MEA welcomes the government's commitment to the prevention of bullying in Australian workplaces. We are optimistic that this inquiry will allow the government to work together with business to develop targeted regulatory and educational measures to ensure bullying is no longer such a damaging force in Australian workplaces.

Yours sincerely

Jason O'Dwyer  
Workplace Relations Manager