



29 June 2012

Amanda Rishworth MP
House of Representatives Standing Committee on Education and Employment
PO BOX 3021
Parliament House
Canberra ACT 2600

Via email to: workplacebullying.reps@aph.gov.au

Dear Ms Rishworth

Education and Employment Committee Inquiry into Workplace Bullying

The Law Institute of Victoria (LIV) welcomes the opportunity to comment on the Standing Committee on Education and Employment (the Committee) review into bullying in the workplace. We appreciate that the Committee has recognised the increasingly serious nature of bullying across workplaces in Australia, its health and wellbeing impact on individuals and on workplace culture. The LIV commends the Committee for responding to the need for guidance for both employees and employers.

The LIV Workplace Relations Section's Discrimination Law, Occupational Health & Safety, and Employment & Industrial Relations Law Committees have discussed the Inquiry's terms of reference which we address in point form below.

- **The prevalence of workplace bullying in Australia and the experience of victims of workplace bullying.**

The LIV notes that it is difficult to ascertain the prevalence of workplace bullying from victims' perspectives, due the fact that LIV members represent a broad spectrum of individuals and organisations, including lawyers who represent both employers and employees. The LIV does not collect this type of statistical data from our membership.

However, we note that JobWatch's statistics provide that approximately 20% of calls made to their legal assistance telephone service relate to bullying or harassment.

We also note that WorkSafe Victoria (WorkSafe) reportedly received over 6000 bullying complaints between 2010 and 2011, of which 10% were referred to their bullying response unit.

- **The role of workplace cultures in preventing and responding to bullying and the capacity for workplace-based policies and procedures to influence the incidence and seriousness of workplace bullying.**

The LIV submits that it is vitally important for employers and employees to understand what constitutes bullying, what does not constitute bullying, and who has duties in relation to bullying in the workplace.



In an [LIV submission to SafeWork Australia](#) in December 2011, the LIV outlined some reasonable and practical steps to require that employers;

1. Develop a workplace bullying policy consisting of:
 - a statement that the organisation is committed to preventing bullying;
 - the standards of appropriate behaviour;
 - a process to encourage reporting, including contact points;
 - a definition of bullying with examples of bullying behaviour; and
 - the consequences for not complying with the policy.
2. Develop an effective complaints resolution process;
3. Provide information and training on workplace bullying to staff; and
4. Encourage the reporting of workplace bullying incidents.

The LIV recommends that a workplace complaints procedure should create a safe environment within which a complaint can be made. This may involve creating several contact points or avenues for a bullying complaint to be made, which is important, as different employees will need to approach the issue differently, particularly if they feel that an organisation has directly or indirectly contributed to the bullying.

It is also useful for employers to provide an external confidential resource to which employees can speak if they wish to discuss how to make a bullying claim within the organisation but are unsure of whom to approach. This may include organisations such as Jobwatch, WorkSafe (or other State equivalent) or a private and confidential counselling service.

Undertaking and effectively implementing these initiatives should ensure employers meet their legislative duties to their employees.

- **The adequacy of existing education and support services to prevent and respond to workplace bullying and whether there are further opportunities to raise awareness of workplace bullying such as community forums.**

The LIV submits that education and training should begin as part of the school curriculum. It is imperative that there be further types of educative programs made available prior to entering the workplace which focus on preventative as well as responsive measures.

The LIV supports the concept of providing further awareness of bullying in general through community forums.

- **Scope to improve coordination between governments, regulators, health service providers and other stakeholders to address and prevent workplace bullying; and**
- **Whether there are regulatory, administrative or cross-jurisdictional and international legal and policy gaps that should be addressed in the interests of enhancing protection against and providing an early response to workplace bullying, including through appropriate complaint mechanisms.**

The LIV notes that there is currently no single national anti-bullying statute and no nationally-acceptable legal or legislative definition of what constitutes bullying. As a result, individuals rely on a range of state legislation together with the common law when responding to bullying claims.

In Victoria, LIV members refer to the WorkSafe Guidance Note: [Preventing and Responding to Bullying at Work](#) which defines bullying as, *“repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.”*

The LIV submits that there needs to be a nationally recognised legislative definition of bullying, which should include a detailed series of clear examples of what constitutes bullying conduct. Additionally,

with regards to 'bullying in the workplace', the term 'workplace' should be further defined to confirm that it encompasses instances where bullying takes place outside the workplace, for example, work functions or events, and or online.

Having a nationally accepted legislative definition should ensure that when complaints are received, it is possible to clearly identify them as bullying. This may also discourage any unwarranted or vexatious claims.

- **Whether the existing regulatory frameworks provide a sufficient deterrent against workplace bullying;**
- **The most appropriate ways of ensuring bullying culture or behaviours are not transferred from one workplace to another; and**
- **Possible improvements to the national evidence base on workplace bullying.**

The LIV notes that currently, there are already a number of legal mechanisms in place to address and respond to different categories of bullying through WorkSafe, Fair Work Australia and, in cases of discrimination, the Australian Human Rights Commission and the Victorian Equal Opportunity & Human Rights Commission.

Due to the subjective and broad nature of bullying, legal remedies are quite varied and are available under various anti-discrimination, occupational health & safety and criminal laws. However, these remedies respond to behaviour which is unlawful under a variety of different legislative regimes, for example those regulating instances of assault and workplace discrimination or harassment, rather than bullying behaviour in general. It is in this context that the LIV recommends that legislation be introduced to provide a quick, cost effective civil remedy through an appropriate tribunal for bullying in the workplace.

Conclusion

The LIV recommends that this Inquiry process undertakes not only a review of deterrence and response mechanisms to bullying, but also to implement practical avenues of extending community education so that bullying in general is clearly identifiable. This will ensure the likelihood of practical bullying policies being successfully implemented in workplaces.

The LIV further recommends that legislation be introduced to provide a quick, cost effective civil remedy through an appropriate tribunal.

If you wish to discuss any of the matters addressed in this letter, please contact Policy Advisor for the Workplace Relations Section on _____ or via email at _____

Yours faithfully

Michael Holcroft
President
Law Institute of Victoria