



Australian Government

Australian Government response to the report
Workplace Bullying “We just want it to stop”

FEBRUARY 2013

The Australian Government welcomes the report by the House of Representatives Standing Committee on Education and Employment, *Workplace Bullying "We just want it to stop"*. We acknowledge the significant and in many cases very personal contribution made by more than 300 individuals and organisations to the Inquiry through evidence and submissions.

The Government is committed to making sure all Australian workplaces are safe, healthy and productive workplaces that promote a zero tolerance approach to bullying in the workplace.

Australia's continued economic prosperity depends on using the skills and abilities of our workforce to create high-performing, adaptive and resilient workplaces. Bullying and harassment have no place in any Australian workplace.

The Government announced this Inquiry in May 2012 in response to increasing community concerns about the impact of bullying across workplaces and industries. As the evidence presented to the Committee shows, workplace bullying is having a damaging and in many cases long-lasting effect on individuals, their families, their colleagues and employers. For individuals who are bullied the personal costs can include physical and psychological injuries, a loss of enjoyment and satisfaction from work, and in some cases the loss of a job and future career opportunities. For employers the costs can include reduced employee morale and productivity, increased absenteeism and staff turnover, increased workers compensation costs and an overall loss of reputation.

These costs are too great. Workplace bullying can be stamped out through early intervention, increased awareness and understanding in workplaces both large and small. All workers, managers and employers have a leadership role to play promoting a work culture where all workers are treated with respect and dignity and bullying and harassment are not tolerated in any form.

Those organisations charged with promoting and regulating work health and safety around Australia also have a key role in supporting managers and employers to create workplaces free of bullying and in assisting workers who have been bullied. The Government recognises the work that is already occurring across jurisdictions and will build on existing activities. The Government is committed to working in partnership with state and territory governments, and employer and employee organisations, to prevent bullying and ensure that those who are affected by bullying receive the help they need.

The Government supports or supports in principle 19 of the 23 recommendations, and notes four recommendations. The Government thanks the Committee, and all the contributors to the Inquiry, for their efforts in developing this report.

Recommendation 1

The Committee recommends that the Commonwealth Government promote national adoption of the following definition: workplace bullying is repeated, unreasonable behaviour directed towards a worker or group of workers, that creates a risk to health and safety.

The Australian Government supports a national definition of bullying because it will:

- provide certainty to all Australian workers and employers about the type of behaviour that is not acceptable in the workplace
- allow for a nationally consistent approach to determining when behaviour is classified as bullying, and
- facilitate the collection of more comprehensive and consistent data on the prevalence of workplace bullying in Australia and its cost to the community.

The definition proposed by the Committee is contained in the Draft Code of Practice: *Preventing and Responding to Workplace Bullying*, which is being developed by Safe Work Australia. The Code will provide practical guidance on what bullying is, how to prevent bullying becoming a health and safety risk in the workplace and what to do if it does occur. A revised draft of the Code is expected to be released by Safe Work Australia for public comment in March/April 2013.

The Government will be encouraging all Members of Safe Work Australia and Ministers of the Select Council on Workplace Relations to support and endorse the Code of Practice to help employers and workers prevent and respond quickly and effectively to bullying in the workplace.

Recommendation 2

The Committee recommends that the Commonwealth Government develop a national advisory service that provides practical and operational advice on what does and does not constitute workplace bullying, and offers self-assessment and guidance materials to workers and employers to determine whether behaviour meets the workplace bullying definition established in Recommendation 1.

The Government supports the provision of practical and operational guidance material and self-assessment tools to workers and employers.

Advice on workplace bullying is also available through the Fair Work Ombudsman.

The new definition and Code of Practice will also assist employers and employees to better recognise and prevent bullying in the workplace.

In response to recommendation twenty three, the Government will provide a timely right of recourse through the Fair Work Commission, which will assist in resolving bullying behaviour in accordance with the definition established in recommendation one.

Recommendation 3

The Committee recommends that the Commonwealth Government, through Safe Work Australia urgently progresses the draft Code of Practice: Managing the Risk of Workplace Bullying to a final version and that members of Safe Work Australia adopt the code in all jurisdictions.

The Government supports this recommendation. An updated draft of the Code of Practice is expected to be released for public comment in March/April 2013.

The Government will be encouraging all Members of Safe Work Australia and Ministers of the Select Council on Workplace Relations to support and endorse the Code of Practice to help employers and workers prevent and respond quickly and effectively to bullying in the workplace.

Recommendation 4

The Committee recommends that Safe Work Australia work with all jurisdictions to actively promote and implement the Code of Practice and ensure it is embedded in workplaces.

The Government supports this recommendation. The Government will be encouraging all Members of Safe Work Australia and Ministers of the Select Council on Workplace Relations to support and endorse the Code of Practice to help employers and workers prevent and respond quickly and effectively to bullying in the workplace.

Recommendation 5

The Committee recommends that the Commonwealth Government seek agreement through Safe Work Australia for the development and implementation of model Work Health and Safety Regulations that capture the minimum requirements for managing the risks of workplace bullying, applicable to all workplaces, as currently established in the draft Code of Practice: Managing the Risks of Workplace Bullying.

The Government notes this recommendation.

Work Health and Safety laws require employers and other duty holders to eliminate or minimise all health and safety risks in a workplace so far as is reasonably practicable. This duty includes the risk of workplace bullying, as it may cause harm to the health and safety of workers.

The proposed Code of Practice: *Preventing and Responding to Workplace Bullying* aims to provide guidance to duty holders on how to achieve compliance with this duty. The Code of Practice will set a minimum standard on how to prevent workplace bullying and how to respond effectively if it does occur.

The development and implementation of a specific regulation to complement these measures by capturing the minimum requirements for managing the risks of workplace bullying can be considered as part of the 2014 Council of Australian

Governments Review of Model Work Health and Safety laws announced on 13 April 2012.

Recommendation 6

The Commonwealth recommends that Safe Work Australia develop advice materials for employers that provide guidance on how to maintain the confidentiality of parties when responding to reports of workplace bullying, whilst also enabling the response to be transparent, similar to the risk management responses of other work health and safety hazards.

The Government supports this recommendation and has asked Safe Work Australia to develop materials for employers on how to maintain confidentiality in tandem with its work to finalise and promote the *Code of Practice: Preventing and Responding to Workplace Bullying*. The material will also take into account any related obligations of employers under other laws including privacy and workplace relations legislation.

This advice will complement other materials being developed for employers under Recommendation 9.

Recommendation 7

The Committee recommends that the Minister for Employment and Workplace Relations commence a feasibility study of the Commonwealth Government providing an independent investigation referral service, and include consultation of the relevant stakeholders when conducting that study.

The Government notes this recommendation and will consult further with stakeholders through Safe Work Australia, in recognition that a number of jurisdictions have experience in this area, on the feasibility of an independent investigation referral service to specifically address allegations of workplace bullying.

Recommendation 8

The Committee recommends that the Commonwealth Government:

- *Review how the fit for duty test under the Public Service Regulations 1999 is used to respond to bullying across the Australian Public Service and what safeguards are in place for its appropriate use;*
- *Publish a report setting out the findings of that review for transparency and to ensure it is available to all public servants;*
- *Make any necessary amendments to the legislation or public service policies to ensure that there are adequate safeguards in place for the appropriate use of the fit for duty test and there are easily accessible avenues for review should an allegation of misuse be made;*
- *Require the Australian Public Service Commission to collect data about the particular grounds on which fit for duty review applications are made to the Merit Protection Commissioner to ensure accountability for the use of that power;*

- *Encourage its state and territory counterparts to similarly ensure there are safeguards in place in regards to the comparable provision their public service legislation.*

The Government supports this recommendation. The Australian Public Service Commissioner will conduct a review of use of the power conferred by Public Service Regulation 3.2 (Direction to attend medical examination), in cases involving workplace bullying to start within the next six months. The review will be subject to data availability and include examination of current agency fitness for duty practices and delegations, including current safeguards for appropriate use of the regulation. A report on the findings of the review will be finalised and published within six months of completion of the review.

Subject to the outcome of the review, the Public Service Commissioner will consider whether it is necessary to recommend legislative amendment and/or update guidance material for agencies.

The Merit Protection Commissioner's statutory review functions are supported by a management information system database. The database will be redesigned so that it can capture the grounds on which all future fit for duty review applications are made to the Merit Protection Commissioner and the outcome of such applications. A planned implementation date is 1 July 2013. In the meantime, data for relevant cases received from 1 January 2013 will be recorded manually until it can be entered into the database.

The Public Service Commissioner will raise the use of Public Service Regulation 3.2 at relevant joint forums, such as the Public Service Commissioners' Conference which is held twice a year and is attended by all state and territory Public Service Commissioners.

Recommendation 9

The Committee recommends that the Commonwealth Government, through Safe Work Australia, develop advice materials for employers that detail appropriate responses to and outcomes for reports of workplace bullying.

The Government supports this recommendation and has asked Safe Work Australia to develop material for employers on how to respond to allegations of bullying in tandem with its work to finalise and promote the *Code of Practice: Preventing and Responding to Workplace Bullying*. This advice will complement other materials being developed for employers under Recommendation 6.

Recommendation 10

The Committee recommends that the Commonwealth Government, through the Centre of Workplace Leadership and in conjunction with industry and employer groups, work to promote the economic benefits of positive working environments that are free from workplace bullying.

The Government supports in principle this recommendation. The Minister will consult and work with the Centre for Workplace Leadership and the National Workplace Relations Consultative Council to promote the economic benefits of positive working environments that are free from workplace bullying.

The objective of the Centre for Workplace Leadership is to improve leadership capability in workplaces of all sizes, across all industries, sectors and regions of Australia. Promoting the economic benefits of positive working environments that are free from workplace bullying complements this goal. The Centre will assist managers and leaders at all levels, not just those at the top of organisations, to promote healthy and positive workplace environments where people give their best through their everyday relationships at work.

The Centre is a joint venture with industry and operates at arm's length from Government. Recommendation 10 complements the Centre objectives and it is anticipated that the successful provider of the Centre will be amenable to promoting the economic benefits of positive working environments that are free from workplace bullying.

Recommendation 11

The Committee recommends that the Commonwealth Government, in consultation with stakeholders, establish a new national service to provide advice, assistance and resolution services to employers and workers. Its activities should include:

- *A hotline service to provide advice to employers and workers alike on a variety of topics including:
 - *Practical, preventative and proactive steps that employers can take to reduce the risk of workplace bullying;*
 - *Empowering workers to respond early to the problem behaviour they encounter;*
 - *Provide advice to workers who have been accused of bullying others in their workplace.**
- *Providing downloadable training packages for employers to tailor to their industry and size;*
- *A proactive, onsite and ongoing education service targeting specific industries where bullying is known to be particularly problematic;*
- *Resolution assistance services including information about how and when to engage, mediation sessions between the workers concerned; and*
- *Collating information when providing the above services, and contributing to improving the national evidence base in Australia on workplace bullying.*

The Government supports in principle this recommendation, and acknowledges and supports the positive work, assistance and information already being provided by state and territory work health and safety regulators and the Fair Work Ombudsman.

The Government agrees that employees who suffer bullying at work should have access to a timely right of recourse and be supported to take positive steps to prevent bullying. The provision of advice and assistance to workers and employers is an element of early intervention through a right of recourse.

Recommendation 12

The Committee recommends that the Commonwealth Government, through Safe Work Australia, develop an accredited training program for managers and health and safety representatives to equip them to deal with workplace bullying.

The Government supports this recommendation. Training is a significant factor in preventing and managing workplace bullying, particularly to enable early intervention in workplace conflict before it potentially escalates into bullying. The Government has asked Safe Work Australia to work with stakeholders to determine how such training can be developed or incorporated into existing training packages.

Recommendation 13

The Committee recommends that the Minister for Employment and Workplace Relations develop a trial mediation service for resolution of conflicts where there is a risk of bullying arising out of poor workplace behaviour, prioritising small and medium enterprises, and where employers and workers jointly request the use of the service in an effort to resolve the matter.

The Government notes this recommendation.

The Government in response to recommendation twenty three will assist individuals who suffer bullying at work by providing a timely right of recourse through the Fair Work Commission to intervene quickly to resolve workplace bullying.

Recommendation 14

The Committee recommends the Commonwealth Government work with its state and territory counterparts to develop better cross-agency protocols in respect of workplace bullying, to allow for better information-sharing, cross-jurisdictional advice and complaint referrals across the following areas of regulation:

- *Work health and safety laws;*
- *Industrial relations laws;*
- *Antidiscrimination laws;*
- *Workers' compensation laws; and*
- *Relevant criminal laws*

The Government supports this recommendation in principle and continues to support better information sharing across states and territories and agencies that deal with addressing workplace bullying.

The Government will lead discussions with states and territories and agencies to develop cross agency protocols that relate to workplace bullying.

For example, the Government notes that, in 2011, the Standing Council on Police and Emergency Management endorsed a protocol for law enforcement agencies on cybercrime investigations, which already applies to cooperation between law enforcement agencies on cases of cyberbullying warranting a criminal justice response.

Recommendation 15

The Committee recommends that the Minister for Employment and Workplace Relations consider implementing, in conjunction with stakeholders, a voluntary national accreditation system to recognise and award employers who achieve best practice and meet defined standards of psychosocial health and safety.

The Government notes this recommendation and believes that the emphasis should be on achieving productive and positive workplace cultures.

The Minister for Employment and Workplace Relations in response to recommendation sixteen has asked Safe Work Australia to consider an award or activity to recognise good practice in workplace psychosocial health and safety as part of its review.

The Minister in response to recommendation ten will consult and work with the Centre for Workplace Leadership and the National Workplace Relations Consultative Council to promote the economic benefits of positive working environments that are free from workplace bullying.

Recommendation 16

The Committee recommends that the Minister for Employment and Workplace Relations work with state and territory counterparts to specifically recognise good practice in workplace psychosocial health and safety and instituting annual employer awards in all jurisdictions throughout Australia.

The Government supports this recommendation. Safe Work Australia currently conducts annual awards to recognise good work health and safety practices by employers and individuals. Safe Work Australia is reviewing its communication and awareness raising activities including these awards. The Minister for Employment and Workplace Relations has asked Safe Work Australia to consider an award or activity to recognise good practice in workplace psychosocial health and safety as part of its review.

Recommendation 17

The Committee recommends the Minister commission research into the prevalence and long term trends of workplace bullying in Australia using the definition in recommendation 1.

The Government supports this recommendation and will support efforts across jurisdictions, and by researchers for future research to use the national definition to be agreed through Safe Work Australia processes as part of recommendation one.

The most recent research is the *Australian Workplace Barometer: report on psychosocial safety climate and worker health in Australia* which covered all jurisdictions except Victoria and Queensland. Data collated by Safe Work Australia to inform an annual national statement (as per Recommendation 18) will assist in identifying long term trends with regard to workplace bullying.

Recommendation 18

The Committee recommends that Safe Work Australia issues an annual national statement which updates any emerging trends of its collated data from each of the state and territory regulators and Commonwealth, with respect to psychosocial health and safety generally and workplace bullying specifically.

The Government supports this recommendation and the Minister for Employment and Workplace Relations has asked Safe Work Australia to work with jurisdictions to collect data and issue an annual statement on trends in psychosocial health and safety generally and workplace bullying.

The national statement will be used to inform future research as per Recommendation 17.

Recommendation 19

The Committee recommends that the Minister for Youth and Minister for Employment and Workplace Relations work with their state and territory counterparts to develop targeted initiatives for young Australians undertaking the transition from school to work, about their rights and responsibilities.

The Government supports this recommendation and will use existing national career development resources to raise young people's awareness of their rights and responsibilities in respect of workplace bullying. Information on workplace rights, what constitutes good workplace behaviour, and how to seek further assistance will be developed for the *myfuture* website. The *myfuture* website is Australia's national career information and exploration service, which contains comprehensive career information and interactive tools to support effective career decisions.

In July 2011, the Department of Education, Employment and Workplace Relations (DEEWR) launched the Young Worker Toolkit, an online resource released designed

to inform young people of their rights and obligations under the *Fair Work Act 2009* and assist them with any employment issues.

The Young Worker Toolkit has been optimised for smart phone use to help young people deal with any common questions and issues they may want to know about in the workplace and directs them where to get further help. Topics covered in the Toolkit include getting started at work and the different types of employment, pay and conditions, workplace safety, bullying and harassment, the fair dismissal code, and where to go for help. Moreover, if a young person is unsure about their entitlements or is asked to do something that they think is not safe at work, the Toolkit can help them to find out where they stand. The Toolkit can be found at www.youngworkertoolkit.youth.gov.au.

Recommendation 20

The Committee recommends that the Commonwealth Government, through Safe Work Australia, develop a national accredited training program for all work health and safety inspectors that equips inspectors to identify and address instances of workplace bullying.

The Government supports this recommendation and has asked Comcare to lead the implementation of this recommendation in liaison with state and territory work health and safety regulators to implement a national accredited program for all work health and safety inspectors.

Recommendation 21

The Committee recommends that the Commonwealth Government seek agreement from work health and safety regulators of each jurisdiction through the Safe Work Australia process, for the development and endorsement of a uniform national approach to compliance and enforcement policy for preventing and responding to workplace bullying matters.

The Government supports this recommendation and has asked Comcare to lead the implementation of this recommendation in liaison with state and territory work health and safety regulators to develop a uniform national approach to compliance and enforcement policy to strengthen work health and safety regulator's compliance and enforcement policy for preventing and responding to workplace bullying matters.

Recommendation 22

The Committee recommends that, through the Standing Council on Law and Justice, the Commonwealth Government:

- *Encourage all state and territory governments to coordinate and collaborate to ensure that their criminal laws are as extensive as Brodie's Law; and*
- *Encourage state and territory governments to consider greater enforcement of their criminal laws in cases of serious workplace bullying, regardless of whether work health and safety laws are being enforced.*

The Government supports this recommendation and agrees that strong, nationally consistent criminal laws applying to serious cases of bullying will assist to deter workplace bullying behaviour.

The Standing Council on Law and Justice has previously considered the issue of the application of the criminal law to workplace bullying. Most recently, on 18 November 2011 the Standing Council on Law and Justice considered anti-bullying legislation, and noted:

- The introduction of Brodie's Law in Victoria, and
- The importance of finding effective means of dealing with all forms of bullying whether in the workplace, school yard, sporting, club, cyberspace or elsewhere.

The Government agrees to encourage state and territory governments in respect of the application of the criminal justice system to serious workplace bullying.

Recommendation 23

The Committee recommends that the Commonwealth Government implement arrangements that would allow an individual right of recourse for people who are targeted by workplace bullying to seek remedies through an adjudicative process.

The Government supports this recommendation and will assist individuals who suffer bullying at work by providing a timely right of recourse through the Fair Work Commission. The Government will amend the *Fair Work Act 2009* to allow a worker affected by bullying at the workplace to apply to the Fair Work Commission to deal with a bullying complaint. The Fair Work Commission will be required to deal with any application as a matter of priority including by listing the matter for consideration within 14 days.

Employers are obliged under the Work Health and Safety (WHS) laws to ensure health and safety by eliminating or minimising risks to health and safety. This obligation will be reflected in the Fair Work Act, which will utilise the definition of bullying proposed by the House of Representatives Committee:

Bullying, harassment or victimisation means repeated, unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

Bullying does not include reasonable management practices including performance management conducted in a reasonable manner.

Should the Fair Work Commission be satisfied that a person has been subjected to workplace bullying it could make orders it considers appropriate to remedy or prevent such conduct from recurring.

This may include:

- making orders requiring the employee's employer to do, or not do, certain things to resolve the bullying complaint and prevent further bullying
- making orders relating to the employee, or other employees at the workplace, if required
- publishing the orders to assist in preventing further bullying at the workplace.

A failure to comply with an order of the Commission will be a civil penalty offence and the employer will be liable for a fine of up to \$33 000.

If the Commission considers that a bullying complaint should be investigated by a WHS regulator through workplace health and safety legislation, the Commission may refer the matter to the WHS regulator in the relevant jurisdiction for investigation and appropriate action under the regulator's compliance and enforcement policy. If adverse action (including dismissal) occurs as a result of making the bullying complaint recourse to remedies under the Fair Work Act or the WHS laws remain available.