

House of Representatives Standing Committee on Education and Employment

Inquiry into Workplace Bullying

(Victorian Parliament, Wednesday 11 July 2012)

ACCI OPENING STATEMENT

The Australian Chamber of Commerce and Industry welcomes the opportunity to appear in support of our written submission on an issue of significance for Australian employers and the wider community. ACCI is the peak council of Australia's business organisations – comprising of 8 State and Territory Chambers and 28 National Industry Associations. The ACCI member network represents over 350,000 employers across Australia and is at the forefront of providing leadership, tools and assistance to employers in order to assist in the shared goal of reducing the incidence of bullying in the workplace.

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.

Bullying involves a range of behaviours and actions and inevitably involves complex human interactions. 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.

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.

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.

Bullying behaviour occurs across private and public sectors of the workforce, in school yards and other areas of the community. A Standing Council on Law and Justice meeting attending by all federal, state and territory 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."*

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.

Bullying amongst school aged children and teenagers has become particularly prominent in the media. 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 illegal conduct. 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."*

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.

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.

ACCI has recommended in its submission that it 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.

There exists a comprehensive legal framework for dealing with serious misconduct, including allegations and instances of bullying, including unlawful harassment, intimidation or coercion, at federal, state and territory levels. Recent changes to the Victorian Crimes Act known as Brodie's Law should be monitored and evaluated.

ACCI is a key stakeholder in progressing the harmonisation of OH&S laws and represents industry on Safe Work Australia (SWA). 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.

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.

ACCI continues to support a range of Safe Work Australia 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.

ACCI's submission outlines how an employer's ability to enforce relevant workplace policies can be undermined when an 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. ACCI has reiterated that reforms to the unfair dismissal system are warranted to assist business manage instances of serious misconduct.

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.

ACCI has recommended in its submission that governments 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.

ACCI welcomes the opportunity to assist the Committee with its inquiry and will endeavour to provide further information to any questions on notice.

That is our opening statement to the Committee.