

Work Health and Safety (Bullying) Amendment Bill 2011

Explanatory Statement

Overview

The Work Health and Safety (Bullying) Amendment Bill 2011 (the Bill) proposes to amend the *Work Health and Safety Act 2011* to:

1. Require the ACT's Work Health and Safety Authority, WorkSafe, to appoint at least 3 inspectors that have specialised expertise or experience in dealing with bullying in the workplace and other workplace psychosocial issues;
2. Establish an expert advisory committee in relation to bullying in the workplace and other workplace psychosocial issues.

The purpose is to improve the ACT's ability to respond, take preventative action, and implement best practice and innovative laws and procedures in relation to workplace bullying and psychosocial hazards.

Workplace bullying is a damaging practice that has a serious impact on people's health and on the Territory's economy. Data suggests that it is prevalent in Australian workplaces, and that it is a particular issue that needs to be addressed in the ACT. For example, bullying and harassment make up almost 40% of accepted mental stress claims in the ACT public sector. This is a figure well above the national average.

The Bill recognises that workplace bullying and other psychosocial hazards are different to traditional physical hazards in the workplace. Their detection, management and regulation require particular attention.

Specialist inspectors are appropriate given the complex social and psychological issues often involved in bullying claims, and the fact that workplace bullying and other psychosocial hazards are not given the same attention as physical hazards in work safety legislation, nor by inspectors.¹

The expert advisory committee will create a process through which the ACT can develop reforms to procedures and legislation governing workplace bullying and other psychosocial hazards. Research and practice in this area of work health and safety is evolving quickly. The expert advisory committee will ensure the ACT has the information, data, and expert advice to implement best practice laws and procedures.

Notes on Clauses

Clause 1 - Name of Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 - Commencement

¹ The Productivity Commission expressed this view in its 2010 report: *Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety*, March 2010

This clause explains that the proposed Act will commence on a day fixed by the Minister by written notice. If the Minister does not fix a commencement day the Act will automatically commence 9 months from the Act's notification day.

Usually, under section 79 of the *Legislation Act 2001*, if the Minister does not fix a commencement day, the Act would automatically commence 6 months from its notification day.

In this case section 79 has been displaced to allow a 9 month default commencement period. Nine months is considered an appropriate period to ensure that the regulator has sufficient time from the Act's notification day to recruit and/or train inspectors to satisfy the new requirements. The Minister is still able to commence the Act at an earlier time if the regulator is able to recruit/train inspectors more quickly.

Clause 3 - Legislation Amended

This clause is a formal provision to identify that the Bill amends the *Work Health and Safety Act 2011*.

Clause 4 - Appointment of Inspectors - New section 156(1)

New section 156(1) requires the regulator to appoint at least 3 inspectors with specialist experience or expertise in dealing with bullying in the workplace and other workplace psychosocial issues.

It is anticipated that specialised inspectors will:

- handle complaints concerning workplace bullying and other workplace psychosocial hazards;
- facilitate victims to come forward by investigating complaints in a timely way, that is sensitive to psychological and social complexities;
- help prevent workplace bullying and workplace psychosocial hazards by improving WorkSafe ACT's capacity to undertake workplace inspections and education;
- train and advise generalist inspectors in best practice strategies for handling workplace bullying and workplace psychosocial matters; and
- provide practical support to victims as well as facilitating access to mental health treatment and other social support services.

The section does not restrict the matters on which specialist inspectors can work, ensuring that WorkSafe ACT has flexibility in how it uses its resources.

Subsection (1)(b) confirms that the regulator can also appoint other generalist inspectors, which is the standard practice.

"Workplace bullying" is not defined in the principal Act but is described in the ACT Code of Practice for Preventing and Responding to Bullying as "repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety".

The term "psychosocial issues" is not defined in the Act, or in ACT codes of practice or guidance material. It refers broadly to psychological and social stressors in the workplace that can affect workers' health. These include workplace bullying, but also wider issues such as occupational violence, aggression from customers, excessive work demands, exposure to trauma, workplace fatigue and burnout, and alcohol and drug misuse.

Clause 5 - Section 156

This section recasts existing section 156 as section 156 (2) consequential on the insertion of new section 156 (1). This amendment also makes it clear that for subsection (1), all the inspectors, including the specialist inspectors, must be chosen from the categories of people listed in subsection (2).

Clause 6 - Schedule 2, new section 2.16A and 2.16B

This clause inserts new sections 2.16A and 2.16B in Schedule 2.

Section 2.16A: requires the Work Safety Council to establish an advisory committee in relation to bullying in the workplace and other workplace psychosocial issues. The Work Safety Council is the body tasked with advising the relevant ACT Minister on matters relating to work safety or workers compensation.

The workplace bullying advisory committee will draw on the knowledge and experience of a range of people. It will include the following the members:

- A person nominated by WorkSafe ACT;
- A person nominated by Unions ACT;
- An academic with expertise in a field relevant to workplace bullying and other workplace psychosocial issues; and
- A person with professional or clinical knowledge and experience in relation to workplace bullying and other workplace psychosocial issues.

Subsection (3) allows the Council to also appoint other suitably qualified people to the committee. For example, this could include a representative of employers, or a person who represents victims of bullying.

Section 2.16B sets out the functions of the committee. The committee will operate as an expert advisory body on workplace bullying and workplace psychosocial issues. It will monitor:

- the development and operation of laws and procedures in the territory and other jurisdictions in relation to workplace bullying and other psychosocial issues;
- recommend amendments to territory laws and procedures; and
- report to the council at least twice a year on these matters.

The intention is for the committee to help the ACT develop new laws and procedures in the coming years that will make it a leader in addressing workplace bullying and other psychosocial hazards.

Clause 7 - Dictionary, note 2

This clause inserts the term ‘territory law’ in the dictionary, note 2. Note 2 lists terms used in the Act that are defined in the *Legislation Act 2001*.

Clause 8 - Dictionary, new definition of *workplace bullying advisory committee*

This clause adds a reference to the dictionary of the Act to tell readers where to find the definition of “workplace bullying advisory committee”.