



Research Brief

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Crimes Amendment (Bullying) Bill 2011

Introduction	2
1. Second Reading Speech	2
2. Background.....	3
Definition and Effects of Workplace Bullying.....	3
Workplace Bullying and Current Victorian Law	4
The Brodie Panlock Case	5
3. Main Provisions of the Bill.....	7
Part 1 – Preliminary.....	7
Part 2 – Amendment of the Crimes Act 1958.....	7
Part 3 – Amendment of the Stalking Intervention Orders Act 2008	8
Part 4 – Amendment of the Personal Safety Intervention Orders Act 2010.....	9
4. Stakeholder Views	10
5. Other Jurisdictions	10
References	13

NB: Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ <http://www.legislation.vic.gov.au>.

Introduction

The Victorian government introduced the Crimes Amendment (Bullying) Bill 2011 ('the Bill') on 5 April 2011. The Bill provides for the criminalisation of serious bullying. It has been drafted in the context of the suicide in 2006 of a young Victorian woman, Brodie Panlock, who was the victim of serious workplace bullying. At present, serious bullying behaviour can fall within the definition of stalking in the *Crimes Act 1958*. Under the Crimes Act, the penalty for stalking is up to ten years' imprisonment. The Bill amends the Crimes Act so as to clarify that the stalking provisions apply to serious bullying and to strengthen those provisions. To these ends, the Bill adds new provisions to the Crimes Act so that the course of conduct and intention that constitute stalking encompass the behaviours of serious bullying. The Bill also adds the same provisions to the *Stalking Intervention Orders Act 2008* and the *Personal Safety Intervention Orders Act 2010*, so that the three Acts are consistent and victims of serious bullying can make applications for the issue of intervention orders.

1. Second Reading Speech

The Attorney-General, the Hon. Robert Clark, gave the second reading speech for the Crimes Amendment (Bullying) Bill on 6 April 2011. Mr Clark stated that the government is committed to addressing serious bullying in the community. He said that the death of Brodie Panlock, a 19 year old woman who ended her life after enduring a persistent campaign of bullying, was a tragic reminder of the serious consequences that bullying can have on victims, their families and the community. He said that the tragedy was compounded by the fact that none of those responsible for the bullying was charged with a serious criminal offence under the Crimes Act, but were instead convicted and fined under the provisions of the *Occupational Health and Safety Act 2004*. Mr Clark said that the case of Brodie Panlock demonstrates that the worst cases of serious bullying demand redress through the criminal law. Accordingly, the Bill provides for the prosecution of serious bullying under the Crimes Act for the offence of stalking.¹

Mr Clark stated that in order to ensure that serious bullying is clearly dealt with by the Crimes Act, the Bill amends the current stalking provisions in four key ways. Firstly, the Bill clarifies that threats and abusive and offensive words or acts may form part of the course of bullying conduct. Secondly, the Bill broadens the description of a 'course of conduct' to include any conduct that could reasonably be expected to cause a victim to physically harm themselves. Thirdly, the Bill provides that the fault element includes the intention to cause the victim to physically harm themselves. Fourthly, the Bill expressly provides that, for the purposes of this offence, mental harm includes psychological harm and causing the victim to engage in suicidal thoughts.²

Mr Clark further stated that, in addition to enabling prosecution under the Crimes Act for serious bullying that has already occurred, the Bill allows steps to be taken to prevent serious bullying through the use of intervention orders. He said that if the Magistrates' Court is satisfied an applicant is being seriously bullied and that it is likely to continue, an intervention order can be issued under the Stalking Intervention Orders Act 2008. Breach of the intervention order can then be charged as a separate criminal offence.³ Mr Clark concluded his speech by saying that where serious bullying occurs it

¹ Victoria, Legislative Assembly (2011) *Debates*, 6 April, Book 5, p. 1019.

² *ibid.*, pp. 1019-1020.

³ *ibid.*, p. 1020.

will now be charged and punished with 'the full force and stigma of the criminal law', with serious bullying conduct being punishable by up to 10 years' imprisonment.⁴

2. Background

Since the 1990s, bullying has become an increasingly high profile issue in Australia, as recognition has grown of the significant physical and psychological harm bullying can cause to victims. According to Rigby and Griffiths, bullying can broadly be described as 'the systematic abuse of power in interpersonal relations'. It involves 'a more powerful person or group deliberately seeking to hurt and threaten an individual or group that is unable to defend themselves adequately'.⁵ Bullying can occur in workplaces, schools and other social environments.⁶ It can be direct, as in a physical attack or verbal abuse, and it can be indirect, as in unfairly excluding people and spreading malicious gossip.⁷ Bullying can also be carried out through electronic media, such as email, mobile phones, and internet social networking sites, in which case it is termed 'cyberbullying'.⁸ The Bill provides for the criminalisation of serious bullying and will apply to serious bullying in all Victorian environments. However, due to the fact that the Bill has been drafted in response to the Brodie Panlock case of workplace bullying, much of the attendant commentary and discussion has focussed on the issue of bullying in the workplace.

Definition and Effects of Workplace Bullying

There is no standardised definition of workplace bullying across institutions and jurisdictions, however, definitions of workplace bullying usually contain the following elements: behaviour that is repeated and systematic (a one off event does not constitute bullying), unreasonableness in the circumstances, and a risk that an employee may suffer mental or physical injury to health.⁹ WorkSafe Victoria defines workplace bullying as 'repeated unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety'. WorkSafe adds that 'in most cases, this behaviour is persistent and happens over a period of time'.¹⁰ Reasonable management action that is carried out in a fair way – to counsel, dismiss, transfer, or not promote an employee – is not considered bullying.¹¹ Behaviour that may be considered bullying includes:

⁴ *ibid.*

⁵ K. Rigby & C. Griffiths (2010) *Applying the Method of Shared Concern in Australian Schools: An Evaluative Study*, National Centre Against Bullying, viewed 20 April 2011, <<http://www.ncab.org.au/research/>>, p. 6.

⁶ Victorian Law Reform Commission (2010) 'Serious Bullying – Terms of Reference', Melbourne, VLRC, viewed 20 April 2011, <<http://www.lawreform.vic.gov.au/wps/wcm/connect/justlib/Law+Reform/Home/Current+Projects/Serious+Bullying/LAWREFORM++Serious+Bullying++Terms+of+Reference>>.

⁷ Rigby & Griffiths (2010) *op. cit.*

⁸ For further information on cyberbullying see M. Price & J. Dagleish (2010) 'Cyberbullying: Experiences, Impacts and Coping Strategies as Described by Australian Young People', *Youth Studies Australia*, vol. 29, no. 2, pp. 51-59.

⁹ D. Jones (2009) 'Workplace Bullying: Causes, Symptoms, Effects and the Law', *Brief*, Fremantle, vol. 36, no. 3, p. 14.

¹⁰ WorkSafe Victoria (2011) 'Safety & Prevention: What is Bullying?', Melbourne, State Government of Victoria, viewed 27 April 2011, <<http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/WorkSafe/Home/Safety+and+Prevention/Health+And+Safety+Topics/Bullying/What+is+bullying/>>.

¹¹ D. Jones (2009) *op. cit.*; C. Caponecchia & A. Wyatt (2009) 'Distinguishing Between Workplace Bullying, Harassment and Violence: A Risk Management Approach', *Journal of Occupational Health and Safety, Australia and New Zealand*, vol. 25, no. 6, pp. 440-441; WorkSafe Victoria (2009) *Preventing and Responding to Bullying at Work*, Edition no. 3, Melbourne, Victorian WorkCover Authority, viewed 28 April 2011,

- Abusive language or behaviour that offends, frightens, belittles or humiliates,
- Intimidation or threats,
- Interfering with a person's property or work equipment,
- Undue public criticism,
- Withholding information necessary for the person to do their job,
- Spreading gossip or malicious rumours,
- Social or physical isolation,
- Overloading a person with work or not giving them enough work,
- Teasing, name-calling or regularly making someone the brunt of practical jokes or pranks.¹²

Research on the effects of bullying on individuals and organisations shows that victims of bullying can experience a range of negative effects including stress, low self-esteem, poor work performance, depression, anxiety, and in some cases, suicidal thoughts. Bullying can also negatively impact on organisations. It can lead to reduced productivity, higher rates of absenteeism, low employee morale, increased staff turnover, workers compensation claims, and legal action.¹³ In April 2011, the State Services Authority (SSA) released a report detailing the results of its 2010 People Matter Survey of bullying in the Victorian public sector, which gained some media attention. The SSA has conducted the survey each year since 2004 and states that the percentage of survey respondents reporting having experienced or witnessed bullying has remained consistent across the 2004-2010 period.¹⁴

Workplace Bullying and Current Victorian Law

There are different legal avenues available to victims of workplace bullying in Victoria according to the type of bullying that has occurred. If the bullying behaviour constitutes discrimination (such as discrimination on the basis of personal characteristics, sexual harassment, or racial or religious vilification) then state or commonwealth anti-discrimination or equal opportunity legislation may apply¹⁵ and assistance can be sought from the Victorian Equal Opportunity and Human Rights Commission. If the bullying involves violence, it may amount to an offence, such as assault, under the Crimes Act, and can be reported to the police. Some forms of bullying may constitute the offence of stalking under the current provisions of the Crimes Act (section 21A of the Crimes Act states that it is illegal to act in a way that could reasonably be expected to arouse apprehension or fear in a person for their safety, with the intention of causing physical or mental harm).¹⁶ If the bullying involves disputes over work conditions or

<http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/worksafe/home/forms+and+publications/publications/preventing+and+addressing+bullying+at+work>>, p. 5.

¹² D. Jones (2009) op. cit.; C. Caponecchia & A. Wyatt (2009) op. cit., p. 440; WorkSafe Victoria (2009) op. cit., pp. 3-4.

¹³ State Services Authority (2011) *Trends in Bullying in the Victorian Public Sector: People Matter Survey 2004-2010*, Melbourne, SSA, viewed 14 April 2011, <<http://www.ssa.vic.gov.au/CA2571410025903D/09CF696362E0F37D1CA25768F00136806?OpenDocument>>; D. Jones (2009) op. cit., p.15; WorkSafe Victoria (2009) op. cit., p. 1.

¹⁴ See State Services Authority (2011) op. cit. Please note that responding to the survey was voluntary. For explanation of the methodology of the SSA People Matter Survey see State Services Authority (2011) op. cit., p. 6 & pp. 30-31. For information on problems with workplace bullying surveys, see C. Caponecchia & A. Wyatt (2009) op. cit., p. 441.

¹⁵ Relevant legislation includes the *Equal Opportunity Act 1995* (Vic), *Racial and Religious Intolerance Act 2000* (Vic), *Human Rights and Equal Opportunity Act 1986* (Cth), *Racial Discrimination Act 1975* (Cth), *Age Discrimination Act 2004* (Cth) and the *Disability Discrimination Act 1992* (Cth). This is not an exhaustive list.

¹⁶ S. Stevens (2010) 'Anti-bullying a Priority for All', President's LIJ Column, Law Institute of Victoria, Melbourne, LIV, viewed 19 April 2011, <<http://www.liv.asn.au/About-LIV/Media-Centre/President-s-Page/Anti-bullying-a-priority-for-all>>.

unfair or constructive dismissal it may constitute a breach of the *Workplace Relations Act 1996*, and assistance can be sought from the Commonwealth Fair Work Ombudsman. At common law, a complaint of workplace bullying may also give rise to an action for breach of contract, if the bullied person's employment contract stipulated the provision of a safe working environment.¹⁷ Workplace bullying in general is covered by the *Occupational Health and Safety Act 2004* ('the OHS Act'). The OHS Act does not contain a definition of bullying but does provide that employers must ensure a safe work environment (s 21) and that employees have a responsibility for the health and safety of other persons in the workplace (s 25).

The Brodie Panlock Case

Ms Brodie Panlock commenced employment at Café Vamp in Hawthorn in early 2005, aged 18. She was employed in a full-time capacity, six days a week, and worked shifts that frequently kept her at work for up to 12 hours.¹⁸ In September 2006, Ms Panlock took her own life, aged 19. A coronial inquest was held into her death in late 2007 and early 2008. The coroner, Mr Peter White, found that Ms Panlock had been systematically bullied by her co-workers – Nicholas Smallwood (head waiter and manager), Rhys MacAlpine (waiter), and to a lesser extent Gabriel Toomey (chef) – during the course of her employment at Café Vamp, and that the conduct had caused her anxiety and unhappiness. He found that the bullying had been led by Smallwood who was also having a sexual relationship with Ms Panlock. The coroner additionally found that the owner of the Café, Marc Da Cruz, had 'turned a blind eye' to the bullying and 'did nothing' to prevent it. The coroner concluded that Ms Panlock had committed suicide as a consequence of the 'almost daily routine of inappropriate pressure at work' and the 'unbearable level of humiliation' she felt over her relationship with Smallwood. The coroner recommended that WorkSafe Victoria examine the evidence in the case and, in consultation with legal advisors, take action against the persons named in the findings as it deemed appropriate.¹⁹

Following the coronial inquest, WorkSafe Victoria investigated the case and found that Ms Panlock had been subjected to persistent physical and psychological bullying. WorkSafe stated that the bullying had included: direct verbal insults, including unwarranted personal criticism/taunts/name-calling, degrading sexual comments, offensive comments about her appearance, and taunts relating to her attempt to commit suicide earlier in 2006; and, direct physical bullying, including throwing food, kicking, spitting, restraining her, slapping, damaging her clothes and possessions, and placing rat poison in her bag after her suicide attempt.²⁰

In July 2009, WorkSafe Victoria prosecuted Smallwood, MacAlpine, Toomey and Da Cruz for breaches of the OHS Act in the Magistrates' Court of Victoria. Smallwood, MacAlpine and Toomey were charged under section 25 of the OHS Act which sets out the duties of employees and states that, while at work, an employee must take

¹⁷ WorkSafe Victoria (2011) 'Safety and Prevention: Bullying at Work', Melbourne, WorkCover Authority, viewed 28 April 2011, <<http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/WorkSafe/Home/Safety+and+Prevention/Health+And+Safety+Topics/Bullying/>>; D. Jones (2009) op. cit., pp. 15-19; C. Caponecchia & A. Wyatt (2009) op. cit., p. 442.

¹⁸ State Coroner Victoria (2008) *Record of Investigation into the Death of Brodie Rae Constance Panlock*, 16 May, Southbank, State Coroners Office, p. 6.

¹⁹ State Coroner Victoria (2008) op. cit., pp. 6-7.

²⁰ WorkSafe Victoria (2010) 'Prosecution Results Summaries: Incident Summary: MAP Foundation Pty Ltd, 08/02/2010', Melbourne, Victorian WorkCover Authority, viewed 21 April 2011, <http://www5.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/WorkSafe/Home/Laws+and+Regulations/Enforcement/Prosecution+Result+Summaries/D_Prosecution+Results+Summaries/>.

reasonable care for the health and safety of persons who may be affected by the employees' acts or omissions at a workplace. Notably, the definition of 'health' in the OHS Act includes psychological health (s 5). The Café owner, Da Cruz, was charged under section 21 of the OHS Act which sets out the duties of employers to employees and states that an employer must, so far as is reasonably practicable, provide and maintain for employees of the employer, a work environment that is safe and without risks to health. Da Cruz, as the sole director of the company Map Foundation Pty Ltd which traded as Café Vamp, was also charged under section 144 of the OHS Act which provides for the liability of officers of bodies corporate for contraventions of the Act. The four individual defendants pleaded guilty as charged and on 8 February 2010, Magistrate Peter Lauritsen convicted and fined them as follows:²¹

Map Foundation Pty Ltd trading as Café Vamp:

1 x s21(1) & (2)(a) of the OHS Act 2004. Convicted and fined \$110,000.

1 x s21(1) & (2)(e) of the OHS Act 2004. Convicted and fined \$110,000.

Marc Da Cruz – Director of Map Foundation Pty Ltd:

1 x s21(1) & (2)(a) and s144 of the OHS Act 2004 - Convicted and fined \$15,000

1 x s21(1) & (2)(e) and s144 of the OHS Act 2004 - Convicted and fined \$15,000.

Nicholas Smallwood:

1 x s25(1)(b) of the OHS Act 2004 - Convicted and fined \$45,000.

Rhys MacAlpine:

1 x s25(1)(b) of the OHS Act 2004 - Convicted and fined \$30,000.

Gabriel Toomey:

1 x s25(1)(b) of the OHS Act 2004 - Convicted and fined \$10,000.²²

The Brodie Panlock case was the focus of intense media interest and generated concern within the community that the four men convicted and fined under the OHS Act should have received harsher punishments for their actions and been sentenced to jail terms.²³ In late 2010, the Brumby government referred the matter of serious bullying to the Victorian Law Reform Commission (VLRC). The VLRC was asked to review the adequacy of Victoria's criminal laws in dealing with serious bullying and provide a report by December 2011. Following the change in state government in November 2011, the Attorney-General withdrew the VLRC's serious bullying reference and opted to address the issue by amending the stalking provisions within the Crimes Act to encompass serious bullying.²⁴

²¹ The Magistrate's judgement of the case is not publicly available. Personal communication with the Magistrates' Court of Victoria, 21 April 2011.

²² WorkSafe Victoria (2010) 'Business, Director, Three Workers Convicted and Fined for Bullying', 9 February, Melbourne, WorkSafe Victoria, viewed 21 April 2011, <<http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/worksafe/sitertools/news/business-director-three-workers-convicted-fined-for-bullying>>; WorkSafe Victoria (2010) 'Prosecution Results Summaries' op. cit.

²³ See for example: S. Butcher (2009) 'Brodie's Torment', *The Age*, 11 December, p.1; Herald Sun Editorial (2010) 'No Justice for Young Brodie', *Herald Sun*, 9 February, p. 22; N. Mitchell (2010) 'Time to Stop the Torment', *Herald Sun*, 11 February, pp. 34-35.

²⁴ Victorian Law Reform Commission (2011) 'Serious Bullying', Melbourne, VLRC, viewed 2 May 2011, <<http://www.lawreform.vic.gov.au/wps/wcm/connect/justlib/Law+Reform/Home/Current+Projects/Serious+Bullying/>>.

3. Main Provisions of the Bill

This section of the Research Brief provides an overview of the main provisions of the Crimes Amendment (Bullying) Bill 2011.

Part 1 – Preliminary

Purposes

Clause 1 of the Bill states that the purposes of the Bill are:

- a) to amend the *Crimes Act 1958* in relation to the offence of stalking; and
- b) to make consequential amendments to the *Stalking Intervention Orders Act 2010*; and
- c) to make minor amendments of a statute law revision nature.

Commencement

Clause 2(1) of the Bill provides that Part 1 of the Bill will come into operation on the day on which the Bill receives Royal Assent. Clauses 2(2) and 2(3) enable minor revisions to the Crimes Act and the Stalking Intervention Orders Act respectively, by providing that clauses 5(2) and 8 of the Bill operate retrospectively. Those clauses have nothing to do with bullying.²⁵ Clause 2(4) states that the remaining provisions of the Bill come into operation on the day after the day on which it receives Royal Assent.

Part 2 – Amendment of the Crimes Act 1958

Stalking

Clause 3 of the Bill adds new provisions to section 21A of the Crimes Act, which deals with the offence of stalking, so that section 21A encompasses serious bullying. Section 21A(1) of the Crimes Act states that a person must not stalk another person and that the penalty for doing so is up to 10 years' imprisonment. Section 21A(2) of the Crimes Act then defines the 'course of conduct' that constitutes stalking.

Clause 3(1) of the Bill inserts the following new provisions after section 21A(2)(d) of the Crimes Act so that the course of conduct that constitutes stalking includes:

- (da) making threats to the victim;
- (db) using abusive or offensive words to or in the presence of the victim;
- (dc) performing abusive or offensive acts in the presence of the victim;
- (dd) directing abusive or offensive acts toward the victim.

Clauses 3(2) of the Bill expands the range of conduct that constitutes stalking to include conduct that could reasonably be expected to cause harm, including self-harm. Clause 3(2) of the Bill replaces existing section 21A(2)(g) with a new paragraph (g). Section 21A(2)(g) currently states that the course of conduct which constitutes stalking includes:

acting in any other way that could reasonably be expected to arouse apprehension or fear in a victim for his or her own safety or that of any other person – with the intention of causing physical or mental harm to the victim or of

²⁵ Clause 5(2) of the Bill relates to how the finger printing provisions of the Crimes Act interacts with the *Prevention of Cruelty to Animals Act 1986*. Clause 8 of the Bill deals with section 75(5) of the Stalking Intervention Orders Act 2008 which refers to the *Firearms Act 1996*. Please see the Explanatory Memorandum for a detailed explanation of the effect of clauses 2(2) and 2(3) of the Bill.

arousing apprehension of fear in the victim for his or her own safety or that of any other person.

The new paragraph (g) substituted by clause 3(2) of the Bill reiterates parts of the existing section and provides for the inclusion of self-harm:

- (g) acting in any other way that could reasonable be expected –
 - (i) to cause physical or mental harm to the victim, including self-harm; or
 - (ii) to arouse apprehension or fear in the victim for his or her own safety or that of any other person.

Clause 3(3) of the Bill then amends the final part of section 21A(2)(g), which deals with the intention of causing physical or mental harm, in order to add 'including self-harm'. Clause 3(4) of the Bill similarly adds 'including self-harm' to section 21A(3) of the Act, which further defines the intention required for conduct to constitute stalking.

Clause 3(5) of the Bill inserts new section 21A(8) into the Crimes Act, in order to provide that the term 'mental harm' includes 'psychological harm' and 'suicidal thoughts'.

Clause 4 of the Bill inserts new section 617 into the Crimes Act which acts as a transitional provision and states that all amendments made to section 21A by clause 3 of the Bill apply only to offences alleged to have been committed on or after the commencement of section 3 of the Bill.²⁶

Part 3 – Amendment of the Stalking Intervention Orders Act 2008

Meaning of Stalking

Clause 6 of the Bill makes consequential amendments to the *Stalking Intervention Orders Act 2008* to ensure that it is consistent with the newly amended section 21A of the Crimes Act. Clause 6 of the Bill essentially makes the same amendments to section 4 of the Stalking Intervention Orders Act that clause 3 of the Bill makes to section 21A of the Crimes Act. Section 4 of the Stalking Intervention Orders Act sets out the conduct that can constitute stalking, and the intention required for it to constitute stalking, in the same terms as section 21A of the Crimes Act, except that the Crimes Act uses the terms 'offender' and 'victim' whereas the Stalking Intervention Orders Act uses the terms 'first person' and 'second person'.

Clause 6(1) of the Bill amends section 4(1)(a) of the Stalking Intervention Orders Act by inserting 'including self-harm' after the words 'with the intention of causing physical or mental harm to the second person'.

Clause 6(2) of the Bill inserts the same new provisions after section 4(1)(b)(vii) of the Stalking Intervention Orders Act, as are inserted by clause 3(1) of the Bill into the Crimes Act. Clauses 6(3) and 6(4) of the Bill expand the conduct and intention that constitute stalking in the Stalking Intervention Orders Act to include references to self-harm. Clause 6(5) of the Bill inserts new section 4(3) into the Stalking Intervention Orders Act to provide that mental harm includes 'psychological harm' and 'suicidal thoughts'.

Clause 7 of the Bill inserts a transitional provision into the Stalking Intervention Orders Act (in the same way as section 4 of the Bill inserts a transitional provision into the

²⁶ Explanatory Memorandum p. 2.

Crimes Act) to provide that the amendments made to section 4 of the Stalking Intervention Orders Act only apply to applications for intervention orders made on or after the commencement of the amending Act.

Part 4 – Amendment of the Personal Safety Intervention Orders Act 2010

Meaning of Stalking

Clause 9 of the Bill makes consequential amendments to section 10 of the Personal Safety Intervention Orders Act 2010, to ensure that it is also consistent with the newly amended Crimes Act and the Stalking Intervention Orders Act. These amendments are the same as for the preceding two Acts.

4. Stakeholder Views

On 5 April 2011, the Australian Council of Trade Unions (ACTU) issued a media release on the subject of the Crimes Amendment (Bullying) Bill. The media release was titled 'New Victorian anti-bullying laws welcome but employers cannot shirk responsibility'.²⁷ In the media release, ACTU President Ged Kearney emphasised that while the ACTU supports the new laws, it strongly believes that employers must continue to be held responsible for the provision of a safe and harassment-free environment for all their workers. Ms Kearney said that she hoped the increased penalties would deter people from bullying but she also wanted the government to send a strong message to employers that holding individual bullies to account would not absolve workplaces of their obligations. She stated that:

Serious bullying should be treated as a crime, but it is also an occupational health and safety issue... ultimate responsibility for providing a safe workplace is with the employer and in no way should new laws absolve them of that responsibility, or of their liability.²⁸

On 12 April 2011, the Victorian Employers' Chamber of Commerce and Industry (VECCI) issued a statement entitled 'Workplace bullying: national approach needed'.²⁹ In the statement VECCI said that the anti-bullying legislation before the state parliament should be used to create a federal model, to ensure consistency of regulations. VECCI further stated that:

VECCI is seeking more detail about the proposed laws to ensure they strike the right balance. We know that most employers have solid practices in place to deal with workplace bullies and are aware of their obligations to provide a safe workplace for all their employees. They will continue to do so with the full knowledge of the penalties that may apply under the amended Act.³⁰

5. Other Jurisdictions

Victoria is the first Australian state to introduce a bill for the criminalisation of serious bullying. In the other Australian states, the legislation that covers bullying is similar to Victoria's current legislative framework. In each state, bullying behaviour may amount to a criminal offence if an assault or threat has been committed. Other types of behaviour that may also constitute bullying are covered by anti-discrimination and equal opportunity legislation. Workplace bullying is covered by OHS legislation, which places a general obligation on employers to ensure a safe work environment for employees. The different legislative frameworks for each state are outlined below.

Readers should note that from 1 January 2012, most jurisdictions in Australia will transition to the Model Work Health and Safety Act. The Act is the product of the National Review into Model OHS laws, implemented by the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and*

²⁷ Australian Council of Trade Unions (2011) 'New Victorian anti-bullying laws welcome but employers cannot shirk responsibility', media release, 5 April, ACTU, viewed 14 April 2011, <<http://www.actu.org.au/Media/Mediareleases/NewVictorianantibullyinglawswelcomebutemployerscannotshirkresponsibility.aspx>>.

²⁸ *ibid.*

²⁹ This article first appeared on the VECCI Website. Victorian Employers' Chamber of Commerce and Industry (2011) 'Workplace bullying: national approach needed', Melbourne, VECCI, viewed 28 April 2011, <<http://www.vecci.org.au/news/Pages/Workplace-bullying-national-approach-needed.aspx>>.

³⁰ *ibid.*

Safety.³¹ The purpose of the agreement was to formalise cooperation between all Australian jurisdictions to harmonise OHS legislation.³²

New South Wales

The primary piece of legislation that covers bullying in the workplace in New South Wales is the *Occupational Health and Safety Act 2000*. Under section 8(1) '[a]n employer must ensure the health, safety and welfare at work of all the employees of the employer'. A similar duty is imposed on employees to take reasonable care for the health and safety of others who may be affected by the employee's acts or omissions (s 20). Although bullying is not specifically mentioned in the Act, the NSW Government Industrial Relations website states that the legal duty under section 8(1) 'could include eliminating risks arising from workplace bullying'.³³ Procedures for addressing a health and safety risk in the workplace, such as bullying, are contained in the *Occupational Health and Safety Regulation 2001* (s 29).

In addition to the general provisions under the *Occupational Health and Safety Act 2000*, specific types of bullying are legislated against under other Acts. For example, the *Anti-Discrimination Act 1977* prohibits various types of discrimination and harassing behaviour that may also constitute bullying, such as: racial discrimination (Part 2), sexual harassment (Part 2A), sex discrimination (Part 3), discrimination on transgender grounds (Part 3A), and discrimination on the grounds of homosexuality (Part 4C).

Queensland

In Queensland, the *Workplace Health and Safety Act 1995* places a legal obligation on people at a workplace to ensure workplace health and safety (Part 3). As with New South Wales, the obligation applies to all persons at the workplace and not just the employer. The *Workplace Health and Safety Regulation 2008* outlines the procedures for preventing and controlling risks, which may include bullying and harassment.³⁴ Similar to New South Wales, the *Anti-Discrimination Act 1991* prohibits specific types of harassment.

In addition to the principle Acts and relevant Regulations, the *Prevention of Workplace Harassment Code of Practice 2004* must also be complied with. The Code details the meaning of 'workplace harassment'³⁵ and outlines the risk management procedure that should be followed.³⁶ The Code also places an obligation on employers to have a workplace harassment prevention policy, a complaint handling system, training and education to prevent harassment, and a system of monitoring and reviewing procedures.³⁷

³¹ Council of Australian Governments (2011) 'Guide to Intergovernmental Agreements', Canberra, COAG, viewed 28 April 2011, <http://www.coag.gov.au/intergov_agreements/>.

³² For details of the review see: Australian Government (2011) 'National Review into Model OHS Laws', Canberra, Australian Government, viewed 28 April 2011. <<http://www.nationalohsreview.gov.au/ohs/>>.

³³ New South Wales Industrial Relations (2009) 'Anti-discrimination law and employment', Sydney, NSW Government, viewed 28 April 2011, <http://www.industrialrelations.nsw.gov.au/Employers/Employer_responsibilities/Anti-discrimination_law_and_employment.html>.

³⁴ Queensland Workplace Health and Safety (2011) 'What law applies', Brisbane, Queensland Government, viewed 28 April, <<http://www.deir.qld.gov.au/workplace/subjects/harassment/law/index.htm>>.

³⁵ Queensland Workplace Health and Safety (2004) *Prevention of Workplace Harassment Code of Practice 2004*, Brisbane, Department of Justice and Attorney General, p. 1.

³⁶ *ibid.*, p. 6.

³⁷ *ibid.*, pp. 12-19.

South Australia

Similar to other jurisdictions, the South Australian *Occupational Health, Safety and Welfare Act 1986* places a general obligation on employers to ensure a safe workplace (s 19). However, unlike New South Wales and Queensland, South Australia includes a definition of bullying in section 55A(1) of the Occupational Health, Safety and Welfare Act, which states that:

‘Workplace bullying means any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety’.

The Act also provides for an inspector to take reasonable steps to resolve an instance of bullying, including referring the matter to the Industrial Commission (55A(3)). The Industrial Commission may then resolve the matter by conciliation or mediation (55A(6)). Other procedures for dealing with health and safety issues are contained in the regulations.

Tasmania

In Tasmania, section 9 of the *Workplace Health and Safety Act 1995*, places a legal duty on employers to ensure a safe workplace. A similar duty is placed on employees under section 16 of the Act. As is the case in New South Wales and Queensland, the Act creates to a general duty and does not specifically mention bullying. However, other forms of bullying are legislated against under the *Anti-Discrimination Act 1998* such as discrimination based on a prescribed attribute (ss 14, 15 and 16), sexual harassment (s 17), victimisation (s 18), and inciting hatred (s 19).

Western Australia

Workplace bullying in Western Australia is dealt with by the *Occupational Safety and Health Act 1984*. Bullying is not specifically mentioned in the Act, however, the general obligation to provide a safe workplace renders bullying a health and safety risk that must be addressed by employers (s 19). The Act requires employers to take steps to resolve any health and safety issues (s 24). If the issue is not resolved in the workplace, an inspector may investigate and take steps to seek a resolution (s 25). If the bullying involves sexual, racial or some other form of discriminatory harassment it may also fall under the scope of the *Equal Opportunity Act 1984*.

The Department of Commerce has recently updated the Code of Practice for *Violence, Aggression and Bullying at work*,³⁸ which has been implemented by the Minister pursuant to section 57 of the Occupational Safety and Health Act. The Code is designed to provide guidance for satisfying the requirements under the OHS Act and Regulations relating to workplace violence, aggression and bullying. Part 2 of the Code deals specifically with bullying and provides background information on the causes of bullying, advice on how to prevent bullying, and steps that can be taken to respond to incidents of bullying.³⁹

³⁸ Western Australia Government (2010) *Code of Practice: Violence, aggression and bullying at work*, Perth, Department of Commerce.

³⁹ *ibid.*

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