

Schedule 3 – Anti-bullying measure

- 3.1 Schedule 3 of the Fair Work Amendment Bill 2013 (the Bill) amends the *Fair Work Act 2009* (the Act) to include a new Part 6-4B that implements the Government's response to this Committee's report, *Workplace Bullying: 'We just want it to stop'*, (the workplace bullying report) specifically recommendations 1 and 23.¹
- 3.2 The workplace bullying inquiry heard extensive evidence that existing criminal offences for breaches of work health and safety (WHS) laws, (matters that for most employees constitutionally remain with state governments) can be deficient in responding to instances of workplace bullying.²
- 3.3 Further, WHS laws do not provide an individual worker with a right of recourse. Rather commencement of action under these laws is exclusively engaged by state or territory regulators. The ability for an individual worker to concurrently pursue recourse swiftly and inexpensively through workplace relations law was a key recommendation of the workplace bullying report.³
- 3.4 The Bill proposes to allow a worker who has been bullied at work, to apply to the Fair Work Commission (FWC) for an order to stop the bullying.⁴ This individual right to recourse will exist concurrently with

1 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: 'We just want it to stop'*, October 2012, Canberra. Fair Work Amendment Bill 2013, Explanatory Memorandum, 27.

2 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: 'We just want it to stop'*, October 2012, Canberra, pp. 64-65.

3 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: 'We just want it to stop'*, October 2012, Canberra, Recommendation 23.

4 Item 6, Schedule 3, Fair Work Amendment Bill 2013 (proposed new section 789FF).

actions to be brought under WHS laws of each state and territory.⁵ The FWC may also refer matters to the appropriate WHS regulator.

- 3.5 Under the amendments, the FWC would be enabled to make any order it considers appropriate (other than a pecuniary fine) to stop the bullying.⁶ The Explanatory Memorandum (EM) provides:

Orders will not necessarily be limited or apply only to the employer of the worker who is bullied, but could also apply to others, such as co-workers and visitors to the workplace.⁷

- 3.6 The EM states that 'the focus is on resolving the matter and enabling normal working relationships to resume'.⁸ The types of orders that the FWC may make include orders that require:

- the individual or group of individuals to stop the specified behaviour;
- regular monitoring of behaviours by an employer;
- compliance with an employer's workplace bullying policy;
- the provision of information and additional support and training to workers; or
- a review of the employer's workplace bullying policy.⁹

- 3.7 A broad range of workers would be eligible to apply to the FWC under the Bill. This includes any individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience, or a volunteer.¹⁰ This mirrors the broad definition of 'worker' as established in the *Work Health and Safety Act 2011*, and not the traditional 'employee' definition used in industrial relations laws.¹¹

- 3.8 The Bill would require the FWC to commence processing an application for an order to stop bullying within 14 days of the application being made,¹² which reflects individuals who have experienced workplace bullying expressed desire for a swift resolution process.¹³

5 Item 6, Schedule 3, Fair Work Amendment Bill 2013 (proposed new section 789FH).

6 Item 6, Schedule 3, Fair Work Amendment Bill 2013 (proposed new section 789FF).

7 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 30.

8 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 30.

9 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 30.

10 Item 6, Schedule 3, Fair Work Amendment Bill 2013 (proposed new section 789FC).

11 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 29.

12 Item 6, Schedule 3, Fair Work Amendment Bill 2013 (proposed new section 789FE).

13 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: 'We just want it to stop'*, October 2012, Canberra, pp. 185-186.

- 3.9 According to the Explanatory Memorandum, ‘commencement’ may include the FWC ‘taking steps to inform itself of the matters..., conducting a conference..., or deciding to hold a hearing’.¹⁴
- 3.10 When deciding if a worker has been bullied, it is proposed that the FWC will use the definition developed by Safe Work Australia,¹⁵ adopted in the national model Code of Practice, and supported by this Committee:¹⁶
- A worker is bullied at work if an individual or group of individuals, repeatedly behaves unreasonably towards the worker, or a group of workers, and that behaviour creates a risk to health and safety.¹⁷
- 3.11 In considering the terms of an order to prevent the worker from being bullied at work, the FWC must consider:
- any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body;
 - the procedures, if any, available to the worker to resolve grievances or disputes within the workplace;
 - any final or interim outcomes arising out of any procedure available to the worker to resolve the dispute at the workplace level; and
 - any other matters the FWC considers relevant.¹⁸
- 3.12 Importantly, this proposed new section would permit the FWC to ‘frame the order in a way that has regard to compliance action being taken by the employer or a health and safety regulator or another body, and to ensure consistency with those actions’.¹⁹
- 3.13 An application for an order may be made by person affected by the contravention, an inspector or an industrial association. An application may be made to the Federal Court, the Federal Magistrates Court or an eligible State or Territory court.²⁰
- 3.14 The Department of Education, Employment and Workplace Relations (DEEWR) submitted that a breach of an order made by the FWC will engage a civil remedy provision attracting a maximum penalty of \$10,200

14 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 30.

15 Safe Work Australia, *Submission 74 to the inquiry into Workplace Bullying of the House of Representatives Standing Committee on Education and Employment*, p. 10.

16 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: ‘We just want it to stop’*, October 2012, Canberra, Recommendation 1, p. 18.

17 Item 6, Schedule 3, Fair Work Amendment Bill 2013 (proposed new section 789FD).

18 Item 6, Schedule 3, Fair Work Amendment Bill 2013 (proposed new subsection 789FF(2)).

19 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 31.

20 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 28.

for individuals or \$51,000 for a corporate entity.²¹ According to DEEWR, these penalties align with existing provisions for similar breaches of FWC orders.²²

Stakeholder feedback

- 3.15 The anti-bullying measures contained in Schedule 3 were strongly supported by employee representative organisations and some legal practitioners.²³
- 3.16 The Australian Council of Trade Unions (ACTU) supported the Bill's definition of workplace bullying, as well as the nature of FWC proceedings and the discretion and flexibility of the orders which FWC may grant following an application.²⁴
- 3.17 The Community and Public Sector Union (CPSU) expressed hope that the individual-employee mechanism proposed in the Bill will have a corresponding effect on employers and 'encourage them to be pro-active at managing and rectifying workplace bullying complaints'.²⁵
- 3.18 Business and employer organisations were either reserved in their support of the Bill's anti-bullying measures or expressed clear opposition.²⁶
- 3.19 The Australian Industry Group (AiG) was opposed to the Bill's anti-bullying measures, stating the Schedule would increase existing widespread confusion as well as rates of disputation in workplaces.²⁷

21 Department of Education, Employment and Workplace Relations (DEEWR), *Submission 16*, p. 18.

22 DEEWR, *Submission 16*, p. 18.

23 Australian Council of Trade Unions (ACTU), *Submission 9*, p. 17; Community and Public Service Union (CPSU), *Submission 4*, p. 5; Australian Nursing Federation (Victoria Branch) (ANF-Vic), *Submission 5*, p. 4; National Working Women's Centres (NWWCs), *Submission 8*, p. 3; United Services Union (USU), *Submission 26*, p. 3; Australian Nursing Federation (ANF), *Submission 22*, p. 2; ; Shop, Distributive and Allied Employees' Association (SDA), *Submission 37*, p. 17; Textile, Clothing and Footwear Union of Australia (TCFUA), *Submission 39*, p. 6; Launceston Community Legal Centre, *Submission 31*, pp. 1-2; Law Society of New South Wales, *Submission 6*, p. 7; Beasley Legal, *Submission 36*, p. 1; Employment Law Centre of Western Australia, *Submission 40*, p. 4.

24 ACTU, *Submission 9*, pp. 19, 20.

25 CPSU, *Submission 4*, p. 5.

26 Business SA, *Submission 2*, p. 4; Business Council of Australia (BCA), *Submission 34*, p. 7; Australian Industry Group (AiG), *Submission 32*, p. 10; Australian Chamber of Commerce and Industry (ACCI), *Submission 12*, p. 22; Housing Industry Association (HIA), *Submission 19*, p. 10; Master Builders Australia (MBA), *Submission 14*, p. 14; Australian Business Industrial (ABI), *Submission 15*, p. 19; Victorian Employers' Chamber of Commerce and Industry (VECCI), *Submission 17*, p. 7; Australian Mines & Metals Association (AMMA), *Submission 23*, p. 40; Australian Federation of Employers and Industries (AFEI), *Submission 38*, p. 17.

- 3.20 Though supporting the majority of recommendations in the workplace bullying report, the Australian Chamber of Commerce and Industry (ACCI) opposed the proposal to create a new jurisdiction within the FWC.²⁸ ACCI was also concerned that the orders which the FWC could issue are too broad, specifically with reference to the proposed new sections that would allow the FWC's orders to apply to third parties such as visitors and members of the public.²⁹
- 3.21 The Queensland Law Society commented:
- It is contrary to the principles of procedural fairness and natural justice to empower the FWC to make orders that would affect a person or entity that is not a party to the application. [The Society] recommend that [this proposed section] be amended so that the FWC is only empowered to make orders binding the parties to the application.³⁰
- 3.22 Broadly, stakeholder feedback can be categorised under the following headings:
- opposition to the Bill on the basis that workplace bullying should remain within the WHS space only;
 - questions regarding the constitutionality of the measures;
 - concerns regarding projected costs to business, particularly small business;
 - arguments for a requirement that internal procedures of the workplace be exhausted prior to applying to the FWC;
 - recommendations that improve the Bill's clarity;
 - state and territory public service concerns;
 - concerns that the FWC be properly funded and resourced to meet its additional responsibilities; and
 - concerns about a perceived lack of consultation in the development of the measures.
- 3.23 Each of these is addressed below.

27 AiG, *Submission 32*, p. 10.

28 ACCI, *Submission 12*, p. 22.

29 ACCI, *Submission 12*, p. 23.

30 Queensland Law Society, *Submission 33*, p. 2.

Jurisdictional character of anti-bullying laws

- 3.24 Business and employer organisations, opposing the Bill's anti-bullying measures, advocated that workplace bullying should remain exclusively within the WHS jurisdictions.³¹
- 3.25 AiG stated that though bullying is an issue that employers take very seriously, it 'is not an industrial relations issue [rather] it is primarily a work health and safety issue'.³² As behaviour assessed as a risk to WHS, the National Farmers' Federation (NFF), Master Electricians Australia (MEA), Housing Industry Association, Australian Mines & Metals Association (AMMA), and Australian Motor Industry Foundation all argued that workplace bullying should remain exclusively within the WHS jurisdiction.³³
- 3.26 Australian Business Industrial (ABI) observed that individuals could pursue complaints both in the FWC and through the WHS regulators' mechanisms.³⁴ The NFF commented that concurrent jurisdictions will 'encourage forum shopping'.³⁵
- 3.27 The Northern Territory Government (NT Government) further commented:
- Whilst it is important to provide this opportunities for remedies for those workers who are bullied at work; it is equally important that once a matter is heard in one jurisdiction that the matter be considered resolved so that the parties can get on with their business.³⁶
- 3.28 The NT Government added that concurrent jurisdiction would contribute to already high-levels of confusion in the community.³⁷
- 3.29 The Business Council of Australia argued that the Government's focus should be on prevention rather than providing new avenues of individual recourse that are likely to make workplaces more divisive.³⁸

31 Business SA, *Submission 2*, p. 4; ACCI, *Submission 12*, pp. 22-23; AiG, *Submission 32*, p. 10; ABI, *Submission 15*, p. 19; National Farmers' Federation (NFF), *Submission 3*, p. 20; Master Electricians Australia (MEA), *Submission 11*, p. 16; HIA, *Submission 19*, p. 11; Australian Motor Industry Federation (AMIF), *Submission 30*, p. 5; BCA, *Submission 34*, p. 7.

32 AiG, *Submission 32*, p. 10.

33 NFF, *Submission 3*, p. 20; MEA, *Submission 11*, p. 16; HIA, *Submission 19*, p. 11; AMMA, *Submission 23*, p. 35; AMIF, *Submission 30*, p. 5.

34 ABI, *Submission 15*, pp. 19-24.

35 NFF, *Submission 3*, p. 20.

36 NT Government, *Submission 7*, p. 7.

37 NT Government, *Submission 7*, p. 7.

38 BCA, *Submission 34*, p. 7.

- 3.30 In contrast, the Law Society of New South Wales, referring to previous submissions and evidence given to this Committee in its inquiry into workplace bullying, confirmed that the FWC is an ‘appropriate forum to deal with complaints about bullying’.³⁹
- 3.31 DEEWR stated that:
- The provisions are designed to complement, not replace, existing work health and safety obligations and the work done by work health and safety regulators. A person can make an application to both the Fair Work Commission and the relevant work health and safety regulator at the same time in keeping with the different process and outcomes available in each jurisdiction. The Fair Work Commission is working closely with work health and safety regulators on protocols to inform its handling of applications.⁴⁰

Constitutional jurisdiction

- 3.32 As noted above, WHS law is a matter that falls within the residual powers of state governments under the Australian Constitution. The question thus arises as to whether the Commonwealth Government can gain constitutional authority to legislate on workplace bullying which has hitherto been considered a WHS matter, simply by redefining it as an industrial relations matter.
- 3.33 ABI referred to evidence taken (and referenced in its report) during its workplace bullying inquiry.⁴¹ The workplace bullying report stated:
- It is, however, unclear whether the functions of Fair Work Australia [now the FWC] could be expanded to enable them to make determinations about all cases of workplace bullying, regardless of whether they fall under the criteria of the current general protections or unfair dismissal provisions of the *Fair Work Act*. Ms Bernadette O’Neill, General Manager of Fair Work Australia commented that following the High Court’s decision in regards to Work Choices it is very likely that the Commonwealth Government does have the constitutional legal capacity to deal with workplace bullying under industrial relations laws. However, she also acknowledged that it would be a monumental

39 Law Society of NSW, *Submission 6*, p. 7.

40 Mr John Kovacic, Deputy Secretary, Workplace Relations and Economic Strategy, DEEWR, *Transcript of Evidence*, 24 May 2013, Melbourne, p. 24.

change and the legal and constitutional capacity is only one of many factors that would need to be taken into account.⁴²

- 3.34 Responding to these constitutional questions, DEEWR explained that the constitutional basis for the Commonwealth's powers in this regard are already established:

The definition of when a worker is bullied at work is – and this is why it is drafted the way it is – ‘while a worker is at work in a constitutionally covered business’. That is, if you like, the constitution or the head of power under which the Commonwealth can make these laws. We are not really relying on anything other than basically the same laws that underpinned workplace relations law since the Work Choices case. Just to expand on that, if a person is employed in a constitutional corporation by the Commonwealth or a Commonwealth authority, or a body incorporated in a territory, or the business they are undertaking is conducted principally in a territory or Commonwealth place, then you will be covered under this act – so it has got pretty broad coverage. The exemptions would probably be if you are employed in a partnership or not engaged in a territory – those kinds of things. ... Those who would not be covered by the definition of 'constitutionally covered business' would include state government employees and employees of unincorporated bodies such as sole traders, partnerships, not-for-profit associations, volunteer associations and companies not significantly engaged in trading or financial sorts of activities. That is a reflection of the extent of the Commonwealth's constitutional powers in this area.⁴³

Projected costs to business

- 3.35 Another key concern of business and employer organisations was possible additional, unforeseen costs to business, particularly small business.
- 3.36 Business SA commented that
- small businesses would not have the resources, time or experience to be able to actively engage with [the various federal and state]

42 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: 'We just want it to stop'*, October 2012, Canberra, p. 188.

43 Jeremy O'Sullivan, Chief Counsel, DEEWR, *Transcript of Evidence*, 24 May 2013, Melbourne, pp. 28-9.

legal processes and provide a response if a complaint were allowed to be hear[d] under multiple laws.⁴⁴

- 3.37 Referencing its concerns that the Bill was not accompanied by a Regulatory Impact Statement (see para 1.17.), Master Builders Australia (MBA) expressed concern that the measures will require employers to:

establish procedures which demonstrate that reasonable management action has taken place and that it has been applied in a reasonable manner. The cost to employers of establishing these procedures in a sufficiently formal manner to stand as proof in the tribunal has not been considered and costed.⁴⁵

Requirement that internal processes be exhausted

- 3.38 Some stakeholders recommended the Schedule be amended so that internal workplace processes, where they exist, are exhausted prior to applying to the FWC.⁴⁶
- 3.39 For example, Mr Eric Windholz from the Centre of Regulatory Studies at Monash University, recommended that the proposed section be amended to require employees to seek to resolve the matter through internal workplace policies and processes prior to making an application to the FWC, or to state in the application why recourse via the internal processes is not appropriate.⁴⁷ Godfrey Hirst Australia, MEA and AMMA had similar recommendations for amendment.⁴⁸
- 3.40 The Queensland Law Society submitted that ‘there may also be utility in setting prerequisites that must be met in order for a worker to be eligible to make an application’.⁴⁹ The Society therefore recommended that a worker be required to notify their employer of the bullying complaints and give the employer a reasonable opportunity to take action to address the complaint, before an application to the FWC is made.⁵⁰

44 Business SA, *Submission 2*, p. 15.

45 MBA, *Submission 14*, pp. 14-15.

46 Mr Eric Windholz, Centre for Regulatory Studies, Monash University, *Submission 1*, p. 1; Godfrey Hirst Australia Pty Ltd, *Submission 13*, pp. 6-7; MEA, *Submission 11*, p. 14; AMMA, *Submission 23*, pp. 42-43; Rio Tinto, *Submission 35*, p. 9..

47 Mr Eric Windholz, Centre for Regulatory Studies, Monash University, *Submission 1*, p. 1.

48 Godfrey Hirst Australia Pty Ltd, *Submission 13*, pp. 6-7; Master Electricians Australia (MEA), *Submission 11*, p. 14; AMMA, *Submission 23*, pp. 42-43.

49 Queensland Law Society, *Submission 33*, p. 2.

50 Queensland Law Society, *Submission 33*, p. 2.

3.41 In proposing this recommendation, the Society stated:

Such prerequisites would provide businesses with an opportunity to resolve the issue without the need for third party intervention and could also assist in the resolution of issues at an earlier stage and in turn, reduce the level of disputes in this area.⁵¹

Clarifying terms of the Bill

3.42 The definition of workplace bullying adopted in the Bill was endorsed by some stakeholders,⁵² and this reflected the wide support in the Committee's previous inquiry.⁵³

3.43 However, the Australian Nurses Federation (Victoria Branch) (ANF-Vic) proposed that the Bill could be given greater clarity if examples of the types of behaviours that might fall within the definition of workplace bullying were to be included as a note to the proposed section.⁵⁴

3.44 The ANF-VIC also recommended that further clarity be provided about the types of orders that the FWC is able to make.⁵⁵

3.45 Beasley Legal proposed that the Schedule be amended to provide clarity to stakeholders as to what constitutes 'reasonable management action'.

3.46 Beasley Legal further proposed that the employer carry the burden of proof to discharge that the behaviour report was 'reasonable management action' under the following definition: action that was 'commenced based on prima facie evidence; was undertaken in a reasonable manner; and was genuine and not used as an abuse of process against the employee or group of employees'.⁵⁶

3.47 The Queensland Law Society also made recommendations to clarify terms of the Bill. Specifically, that the Schedule be amended to clarify who an application can be brought against.⁵⁷

3.48 The Queensland Law Society also recommended that in most cases it would be appropriate to include both the alleged perpetrator of the bullying conduct as well as the employer:

51 Queensland Law Society, *Submission 33*, p. 3.

52 ACTU, *Submission 9*, p. 19; Law Society of NSW, *Submission 6*, p. 7; Rio Tinto, *Submission 35*, p. 8.

53 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: 'We just want it to stop'*, October 2012, Canberra, pp. 14-16.

54 ANF-Vic, *Submission 5*, p. 4.

55 ANF-Vic, *Submission 5*, p. 4.

56 Beasley Legal, *Submission 36*, p. 1.

57 Queensland Law Society, *Submission 33*, p. 1.

without the participation of both of those parties it will be difficult for the FWC to have a clear understanding of the issues involved and identify ways to resolve the complaint.⁵⁸

Funding and resourcing the Fair Work Commission

- 3.49 Employer and employee organisation, employers and an academic expressed concern that the FWC is not currently resourced sufficiently to meet additional responsibilities proposed in the Bill.⁵⁹
- 3.50 The CPSU expressed doubt that the FWC's existing resources (both financial and human) would be able meet proposed additional responsibilities.⁶⁰
- 3.51 ACCI expressed concern that members of the FWC do not currently have the skills or experience to deal with workplace bullying matters,⁶¹ nor the resources to meet its required standard of commencing an investigation within 14 days of receipt of an application.⁶²
- 3.52 These concerns were raised by the FWC at a Senate Estimates hearing in February 2013. The General Manager, Ms Bernadette O'Neill, commented that, should the Bill be passed and the FWC received additional responsibilities to hear bullying applications, it 'would not be in a position to absorb the costs'.⁶³ Ms O'Neill also indicated that there would be a need for professional development of FWC staff.⁶⁴
- 3.53 In the 2013-2014 Federal Budget the FWC was allocated \$21.4 million over four years to provide a legal remedy for victims of workplace bullying.⁶⁵
- 3.54 The additional funds will be used by the FWC to work with relevant parties to resolve complaints of workplace bullying. Where a worker has been bullied and the matter cannot be resolved between the parties, the

58 Queensland Law Society, *Submission 33*, pp. 1-2.

59 ACCI, *Submission 12*, pp 23-24; CPSU, *Submission 4*, p. 4; NWWCs, *Submission 8*, p. 5; Mr Eric Windholz, Centre for Regulatory Studies, Monash University, *Submission 1*, p. 1; Godfrey Hirst Australia Pty Ltd, *Submission 13*, p. 6; AMMA, *Submission 23*, p. 41; ANF, *Submission 22*, p. 2; MBA, *Submission 14*, p. 17; Rio Tinto, *Submission 35*, p. 10.

60 CPSU, *Submission 4*, p. 4.

61 ACCI, *Submission 12*, p. 23

62 ACCI, *Submission 12*, pp. 23-24.

63 Ms Bernadette O'Neill, General Manager, FWC, *Senate Estimates Committee Hansard*, Senate Education, Employment and Workplace Relations Legislation Committee, Canberra, 13 February 2013, p. 26.

64 Ms O'Neill, FWC, *Senate Estimates Committee Hansard*, Senate Education, Employment and Workplace Relations Legislation Committee, Canberra, 13 February 2013, p. 26.

65 Budget Paper No.2 Budget Measures 2013-2014, Part 2: Expense Measures, Education Employment and Workplace Relations, http://www.budget.gov.au/2013-14/content/bp2/html/bp2_expense-09.htm

FWC will have the power to make an order to prevent bullying in the workplace in the future.⁶⁶

Perceived lack of consultation

3.55 Chapter 1 referred to stakeholders' concerns regarding a perceived lack of consultation. The chapter also canvassed the consultations the Minister and DEEWR have conducted in recent months with the National Workplace Relations Consultative Council and its subcommittee, the Committee on Industrial Legislation, as well as through other mechanisms.

3.56 Despite these consultations, employer representatives submitted that they were not consulted in the development of the anti-bullying measures proposed in the Bill. For example, the Victorian Employers' Chamber of Commerce and Industry stated:

There has been a pitiful lack of consultation with the States ahead of these amendments and the Government has foisted this proposal on the FWC without regard for whether or not it is either resourced or capable of managing a bullying jurisdiction.⁶⁷

3.57 ABI was also concerned by the apparent lack of consultation in the development of the anti-bullying measures.⁶⁸

3.58 ACCI recommended that 'the best way forward is not to progress with these proposals until all stakeholders and the social partners consider how best to progress'.⁶⁹

Committee comment

3.59 The Committee does not accept the concerns expressed by some business and industry groups that the anti-bullying measure has been developed without appropriate consultation. DEEWR noted that:

the Minister for Employment and Workplace Relations, Minister Shorten, consulted with employer organisations and unions via the National Workplace Relations Consultative Council. The department also consulted on the details of the amendments at a number of separate meetings with the National Workplace Relations Consultative Council committee on industrial legislation

66 Budget Paper No.2 Budget Measures 2013-2014, Part 2: Expense Measures, Education Employment and Workplace Relations, http://www.budget.gov.au/2013-14/content/bp2/html/bp2_expense-09.htm

67 VECI, *Submission 17*, p. 7.

68 ABI, *Submission 15*, pp. 19-24.

69 ACCI, *Submission 12*, p. 25.

and also with state and territory officials. In conclusion, I would note that the bill represents a response to a further five recommendations of the Fair Work Act review panel, meaning that the government has responded to 23 of the panel's recommendations.⁷⁰

- 3.60 Furthermore, this Committee consulted widely prior to making its original recommendation to the Commonwealth Government that an avenue of individual recourse be created within federal laws. The Committee travelled to every capital city, held 11 public hearings and received in excess of 300 submissions.⁷¹
- 3.61 During this six month inquiry, the Committee specifically sought feedback from key stakeholders – including business and industry – regarding the possibility of the Parliament legislating new powers for the Australian Government to respond to instances of workplace bullying within its constitutional ambit.
- 3.62 Finally, the referral of this Bill to both this Committee and the Senate Standing Committee on Education, Employment and Workplace Relations, are both methods of consultation and opportunities for business and industry to provide feedback.⁷²

70 John Kovacic, Deputy Secretary, Workplace Relations and Economic Strategy, DEEWR, *Transcript of Evidence*, 24 May 2013, Melbourne, p. 25.

71 House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: "We Just Want it to Stop"*, Canberra, October 2012, pp. 24-25.

72 Information regarding the Senate Committee's inquiry into the Bill available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_ctte/fair_work_2013/index.htm.

