

**Senate Standing Committee on Education Employment and Workplace  
Relations**

**QUESTIONS ON NOTICE  
Additional Estimates 2012-2013**

**Outcome 4 - Workplace Relations and Economic Strategy**

**DEEWR Question No.** EW0941\_13

**Senator Abetz asked on 13 February 2013, Hansard page 114**

**Question**

**Workplace Bullying - Capacity to Legislate**

Senator ABETZ: Can they go to the Fair Work Commission under this proposal without having told their employer? Mr Kovacic: Clearly it is a matter that will be part of the consultations. Senator ABETZ: So we do not even— Mr Kovacic: It could be. Senator ABETZ: It is still going to be done by the end of March? Please, Parliamentary Secretary! Ms Paul: Obviously that is a matter that various parties will want to be consulted on. Senator ABETZ: Clearly that is not going to happen. Have you seen the press release of 12 February which says that giving the federal IR Commission jurisdiction over workplace bullying is a limited measure that crosses state laws and cannot be enforced? Did the government receive any legal advice in relation to its capacity to legislate in this area? Mr Kovacic: I am not aware of that. I will take it on notice. ....(page 115 ) Senator ABETZ: With respect to the press release of 12 February 2013, another issue they raise is that on health and safety matters state inspectorates and courts exercise that power. Have we sought any legal advice in relation to jurisdiction? Mr Kovacic: I will add that to the question on notice that I took before about the issue of legal advice.

**Answer**

Following the tabling of the House of Representatives Standing Committee on Education and Employment report *Workplace bullying "We just want it to stop"* the Department provided advice to the Government on its response. This included legal advice on the Commonwealth's capacity to legislate to give effect to the Committee's recommendation that the Government provide an individual right of recourse for persons who are bullied at work (recommendation 23).

Options for responding to the Committee's report were developed in consultation with legal advisors in the department, and were also informed by discussions with the Australian Government Solicitor's office. Appropriate legal advice has been obtained to inform the development of the legislation, including the Commonwealth's capacity to legislate in this regard, and the Fair Work Commission's jurisdictional capacity to make orders with respect to bullying.