

Individual/Organisational name: Chamber of Commerce and Industry
Queensland (CCIQ)

Model Work Health and Safety Code of Practice Preventing and Responding to Workplace Bullying - Public Comment Response Form

Code or Guide

See Page 2 of the draft model Code of Practice

Comments:

CCIQ strongly considers that the material in the draft Code of Practice (the draft Code) should be issued as a guide. We acknowledge that employers require guidance on how to meet their obligations under workplace health and safety; however, if the material in the draft Code was admissible in court proceedings of what is known about a hazard, risk or control in the context of workplace bullying, small and medium employers would be required to undertake costly, time consuming and impractical measures in order to guard against workplace bullying.

In particular, the draft Code does not meet Safe Work Australia's criteria for determining that a document is suitable as a code of practice.

- **'Guidance is a necessary part of enabling compliance with the duties contained in the WHS Act or Regulations, particularly to support legislative provisions that are outcome focussed or do not provide much detail.'** CCIQ agrees that guidance material is a valuable part of enabling compliance with the relevant WHS legislation; however, this should only be as a means to provide suggestions or options that a business can take. Businesses already have significant obligations in place with respect to the safety of their workers under a range of different legislative regimes, and the draft Code merely adds to that regulatory burden. It should also be noted that much of the guidance material in the Code is highly subjective in nature; this adds to the argument that the material in the draft Code should be issued as guidance, in that it gives suggestions or options to employers that they may choose to follow *if appropriate* in a given workplace.
- **'There is clear evidence of a significant risk or widespread work health and safety problem where evidentiary status of a code will elevate the importance of the issue.'** The evidence of the incidence of workplace bullying is extremely unclear, and it has become apparent in recent attempts to develop a federal regulatory response to workplace bullying that there is a significant lack of data to support the need for new regulation. As mentioned above, there are a number of other areas of regulation (including anti-discrimination legislation and industrial laws) that could be cited in a case of workplace bullying which negates the needs for a code with evidentiary status.
- **'There are certain preferred or recommended methods to be used (or standards to be met) to achieve compliance.'** Methods employed to achieve compliance will differ significantly between small, medium and large businesses, and will depend on the nature of the business carried on in a given workplace. One of the major problems with the draft Code is that it seeks to impose a 'one-size fits all' approach that is far more appropriate to the resources and structures of large businesses.
- **'The information on the hazard, risks and control measures is well-established, reflects the state of knowledge and therefore will not require frequent updating.'** One of the major issues around workplace bullying in Australia is the pronounced lack of data on the number of incidences which occur, and of those incidences which are reported, which correctly fall into the category of workplace bullying. It therefore follows that control measures are not well-established or that the Code would not need to be updated to reflect new data or control measures.

Model Code of Practice – Preventing and Responding to Workplace Bullying

Chapter 1: Introduction

Comments: (Please include section/page numbers).

- 1.1 The definition of workplace bullying should specifically exclude 'reasonable management action', and a definition of 'reasonable management action' should be included in the definitions provided in 1.1. Many of the examples of 'unreasonable behaviour' are subjective in nature (for example, 'unjustified criticisms or complaints', 'excessive scrutiny at work' and 'changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular worker or workers') and the exclusion of 'reasonable management action' in the definition of workplace bullying would make clarify what behaviour will be unreasonable.

Chapter 2: Preventing workplace bullying

Comments: (Please include section/page numbers).

Individual/Organisational name: Chamber of Commerce and Industry Queensland (CCIQ)

2.1 'Identifying the hazard'

The examples given of processes that may assist in identifying workplace bullying or the potential for it to occur place a significant burden on employers and managers to identify signs of workplace bullying. They also assume the existence of structures such as health and safety committees, which are often not present in small workplaces.

2.2 Page 11 b) Design safe systems of work

Some of the examples of control measures listed here place a significant burden on employers and managers to monitor and prevent workplace bullying. On page 12, it is suggested that a control measure could include 'planning all change and consult with workers affected as early as possible.' This would not be appropriate nor practicable in a number of workplaces.

2.3 Page 14, Monitoring and reviewing

The requirement that control measures should be monitored and reviewed, and that reviews 'must be carried out in consultation with workers and health and safety representatives (if any)' is likely to be burdensome, time-consuming and impractical for a small business, and is indicative of the manner in which the draft Code is better geared to a larger business. Again, it should be emphasised that the draft Code should be issued as guidance material, in which the material around 'monitoring and reviewing' was intended to provide suggestions and options.

Chapter 3: Responding to Workplace bullying

Comments: (Please include section/page numbers).

With respect to Chapter 3, CCIQ considers that given the potentially subjective nature of workplace bullying claims, employers may be at risk of being required to adhere to lengthy response/issue resolution procedures that add to an already significant reporting burden. This poses particular difficulties for small and medium businesses, where in the absence of health and safety representatives, owner-managers, for example, will be required to undertake the response process.

Chapter 4: Investigations

Comments: (Please include section/page numbers).

4.1 Page 18 'Who should conduct the investigation?'

It will often not be practicable for a small business to bring in an external person to conduct an investigation in to workplace bullying, and no account is taken of this – i.e. 'For small businesses consideration should be given to the advantages of engaging an external person to carry out the investigation'. This provides no alternatives for small businesses to pursue, and provides no acknowledgement of the expense or impracticality that doing so involves. The most realistic course of response for a small or medium business, where a serious case of workplace bullying has allegedly occurred, would be to notify the relevant workplace health and safety authority.

General Comments

The draft Code is overly long, and is of itself a significant regulatory burden (if it is issued as a Code, rather than guidance material) if it is to be admissible in court proceedings as evidence of what is known about a hazard, risk or control. It places a significant additional burden on small and medium businesses in particular to monitor for and prevent workplace bullying, and much of the material is more appropriately directed toward large businesses.

The draft Code, if issued as a Code and not as guidance material, would also add to an overly complex regulatory framework in place to protect against workplace bullying that small and medium businesses must contend with.

Workers Guide

A Worker s Guide to Managing Workplace Bullying

Comments: (Please include section/page numbers).