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Background

### The role of the Fair Work Commission in the handling of bullying complaints

The Fair Work Commission (FWC) is now responsible for the handling of bullying complaints.

Every employer is affected by this provision and should ensure that their HR practices reflect the requirements for the managing of workplace bullying.

The laws entitle a worker who is subject to bullying in the workplace to lodge an application with the FWC to stop the bullying.

### Involvement of FWC

Once an application is submitted, the FWC will check to ensure it is valid and complete.

Within 14 days the applicant will be contacted to confirm the details and identity of the various parties to the proceeding. This would normally mean details of the alleged bully and the person for whom the alleged bully is working.

The FWC would then question the applicant to make sure that they understand the nature of the application. The applicant will also be asked to confirm that they wish to continue with their application.

Following this, the FWC prepares a report for the member of the FWC leading the Anti-Bullying Panel. This report will cover aspects of:-

1. whether the matter involves jurisdictional issues;
2. the nature of the alleged conduct; and
3. whether the complaint is suitable for mediation.

It is expected that the report will identify factors indicating the degree of urgency and other relevant issues that may affect how the complaint should be handled.

Following the above, the FWC will serve the application on the person in charge of the workplace where the alleged bully is working.

At the same time the application will be served on the alleged bully unless there are grounds not to, such as allegations of physical abuse.

### Actions of the Panel Head

The Panel Head decides whether:-

1. to assign the matter to a FWC member and if so
   1. for mediation; or
   2. determination; or
2. to dismiss the application.

### What is Mediation?

Mediation is a confidential and voluntary process in which the participants, with the assistance of an independent mediator, identify the issues in dispute and endeavour to reach an agreement to resolve the dispute.

### What is Conciliation?

Conciliation is where the member plays an active role in the generation of the potential resolution of the application, including by making assessment and recommendations where appropriate. The parties in the application may be compelled to attend a conciliation conference.

### Resolution of application by FWC member

A member will hear applications that are not processed via mediation or are unsuccessful at mediation.

Where the member is involved then they will generally convene a preliminary conference of the parties for the purpose of:-

1. understanding the issues involved;
2. what is the position of the parties; and
3. what is the best approach to the matter.

### The Order from the FWC

The FWC member may decide to make an order in response to the application.

The FWC is open to making any order it considers appropriate with the exception of a financial payment. However, should the subsequent orders be breached, the employer faces breach penalties of up to $10,200 for an individual, or $51,000 for a body corporate.

The type of order may include:-

1. an individual worker or a group of workers to stop the specified behaviour; and/or
2. that the person for whom the worker works:-
   * monitor behaviours in the workplace;
   * comply with its anti-bullying policy;
   * review its workplace bullying policy;
   * investigate the matter;
   * relocate or transfer the worker or the perpetrator;
   * provide support to the worker; and/or
   * deliver training to workers on bullying and workplace behavioural standards.

### Legal representation?

A lawyer or paid agent needs to seek permission to represent an employer in any formal process undertaken by a FWC member.

The law provides that permission will only be granted if:-

* the representation enables more efficiency;
* it would be unfair to proceed without representation; or
* the applicant continues to be represented by a lawyer / union.

Introduction

The importance of a positive workplace environment is supported by a formal well-documented Workplace Bullying Policy. Our Policy is detailed below.

Intent of Workplace Bullying Policy

(*Organisation*) is committed to developing and supporting positive working relationships and preventing workplace injuries of any kind - physical or otherwise – by taking all reasonable steps to ensure that its working environment is free from unacceptable workplace behaviour such as Bullying.

Unacceptable workplace behaviour will not be tolerated under any circumstances by (*Organisation*).

Legal action can be taken against any person who engages in any Workplace Bullying behaviour because such conduct is against the law.

### Our commitment will be achieved by:

* Implementing the Workplace Bullying Policy and related Procedure that:
  + are accessible and effectively communicated to employees and volunteers;
  + clearly define unacceptable Workplace Bullying behaviour;
  + provide a formal and informal complaints system that gives employees advice and support and a mechanism for reporting, investigating and resolving complaints; and
  + identify and manage cultural and systemic issues.
* Ensuring that our employees, customers, clients, contractors and service providers are informed about (*Organisation’s*) position on working relationships.
* Ensuring that employees, contractors and service providers comply with this Workplace Bullying Policy and related applicable procedures.
* Encouraging employees to use the formal and informal complaints system and procedure, if they believe they have been bullied.
* Ensuring that all complaints are promptly and appropriately managed.

### All employees must ensure they:

* Comply with this Workplace Bullying Policy and the applicable related Procedure.
* Do not engage in unacceptable Workplace Bullying behaviour when they participate in any work related activity, regardless of that activity’s location.
* Do not engage in out-of-hours conduct that creates a hostile workplace for any employee.
* Do not aid or encourage other persons to engage in unacceptable workplace behaviour or related out-of-hours conduct.

***(Organisation’s)* employees deserve to be treated with dignity, courtesy and respect. We operate with honesty and integrity across all aspects of our business and value the relationships we build with related professionals, business partners, customers and our staff.**

Objectives

The important Objectives of this Workplace Bullying Policy are:

* To clearly communicate to our staff and stakeholders that Workplace Bullying behaviour will not be tolerated as part of our Culture.
* To train and educate our staff and stakeholders to fully know and understand the nature and purpose of the Workplace Bullying Policy and procedures in our organisation.
* To ensure that our staff and stakeholders have access to the information and training needed to prevent Workplace Bullying arising; or if arising, then to prevent it from continuing without being properly addressed.
* To ensure there is confidence in addressing any and all Workplace Bullying incidents.
* To encourage the early reporting of any allegations of Workplace Bullying.
* To ensure that proper support is available for those staff and volunteers who report Workplace Bullying.
* To professionally investigate and resolve any complaint of alleged Workplace Bullying that is raised by staff.
* To ensure that our staff are not victimised or disadvantaged as a result of their reporting of any alleged Workplace Bullying.

Scope of Workplace Bullying Policy

All staff, contractors, consultants, service providers, clients, customers, members, constituents, volunteers, stakeholders and visitors, when engaged in our organisation’s activities, are expected to be both aware of and compliant with this Workplace Bullying Policy.

The Policy applies to the interactions between all our employees (full-time, part-time and casual), labour hire agency staff, contractors and volunteers engaged by, or involved in, our organisation. It includes any place a person may enter for the purpose of carrying out any function in relation to their employment in any work-related context, including social functions and conferences.

Safety requirements

As negative Workplace behaviours such as Bullying can result in actual physical injury, anxiety or health problems, employers have a duty under health and safety legislation to provide and maintain for employees, as far as practicable, a working environment that is safe and without risks to health, including psychological health.

(Organisation) supports an Employee Assistance Program in cases where employees feel emotionally distressed as a result of Bullying in the workplace. Alternatively, emotional support is available 24 hours a day from the Lifeline support centre on 13 11 14.

Whether it is intended or not, Bullying creates a health and safety hazard. As such, this procedure has been developed in consultation with (*Organisation’s*) Health and Safety Representatives and endorsed by the Health and Safety Committee.

Expected behaviour

Everyone covered by the scope of this Workplace Bullying Policy is expected to behave so that their actions cannot be considered to be in breach of the requirements set out in this Policy.

As an organisation we have a legal responsibility to prevent and positively manage the area of Workplace Bullying, otherwise we can be held liable for the behaviour of our staff, contractors, consultants, service providers, clients, customers, members, constituents, stakeholders and visitors.

Everyone covered by the scope of this Workplace Bullying Policy is expected to:-

* comply with this Policy;
* behave in a respectful manner;
* support a culture of mutual respect; and
* ensure strict confidentiality concerning any Workplace Bullying complaint or investigation.

Responsibilities

|  |  |
| --- | --- |
| **Role** | **Responsibilities** |
| Employees | Treat fellow employees with dignity and respect and ensure their behaviour is not contrary to the Workplace Bullying Policy (‘The Policy’).  Report incidences of breaches of The Policy to supervisors or management.  In the case of criminal offences, it is usually the responsibility of the complainant to notify the police. He/She may be encouraged to do so. |
| Managers and Supervisors | Model positive and constructive behaviour in their treatment of staff members.  Monitor their workgroups and act if they become aware of any potential hazards.  Address any breaches of The Policy in a timely manner.  Coordinate conciliation for the parties involved, to identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.  Provide regular and ongoing communications about appropriate Work place behaviour.  Maintain confidential, accurate and factual written records of matters.  Conduct investigations of Bullying allegations (or coordinate an appropriate internal person to handle the complaint). |
| Health and Safety Representatives | Liaise with their members on health, safety and welfare matters, and report any hazard to which employees might be exposed.  Health and Safety Representatives (HSRs) may be involved in resolving the issue.  Provide advice to an individual with a concern or complaint, in line with the complaints handling Framework.  HSRs will be consulted when identifying or assessing Bullying risks and when making decisions about developing and implementing procedures for resolving Bullying complaints. |
| Health, Safety and Environment Officer | Provide induction and information to staff in The Policy and this Procedure.  Coordinate conciliation for the parties involved, to identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.  Conduct investigations of Bullying allegations (or coordinate an appropriate internal person to handle the complaint).  Coordinate external mediation if required.  Maintain confidential, accurate and factual written records of matters. |

What is Workplace Bullying?

Workplace Bullying is repeated, unreasonable behaviour directed towards a person or group that creates a risk to Health and Safety. Within this definition:

* “unreasonable behaviour” means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten;
* “behaviour” includes actions of individuals or a group, and may involve using a system of work as a means of victimizing, humiliating, undermining or threatening; and
* “Risk to Health and Safety” includes risk to the mental or physical health of a person or group.

Who may be involved?

Workplace Bullying can involve:-

* an employee and their manager or supervisor;
* fellow employees, including inexperienced and junior in age; and
* an employee and another person in the workplace, e.g. a client or consultant or contractor.

Type of Workplace Bullying behaviours

Bullying will not be tolerated by *(Organisation).*

The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, would be considered Bullying:

* Verbal abuse including shouting, swearing, teasing, making belittling remarks or persistent unjustified criticism;
* Excluding or isolating a person or group;
* Psychological harassment such as intimidation;
* Assigning meaningless tasks to a person unrelated to the person’s job;
* Giving a person an impossible assignment;
* Deliberately changing work rosters to inconvenience a particular person or group; and
* Sabotaging someone’s work or their ability to do their job effectively by not providing them with vital information, appropriate training and/or resources.

Bullying can be carried out verbally, physically or in writing; for example - via email, internet chat rooms, instant messaging and mobile phone technologies such as text messaging.

Some extreme forms of Workplace Bullying, in the form of assault, battery, false imprisonment or stalking, can be criminal matters that can be referred to the police.

What Workplace Bullying is not

There is a clear distinction between Bullying and taking normal disciplinary action in the normal course of business.

* Workplace counselling or discipline actions that are fair and address genuine performance or conduct problems in a constructive manner are not Bullying.
* Reasonable managerial actions, including actions dealing with the operational requirements of the organisation, are not Bullying.

Workplace Bullying is not every communication that you do not like or may react badly to.

Occasionally there will be differences of opinion at work. That is healthy and expected. In some instances those differences may even get to become non-aggressive conflicts. Also irritations and minor problems may arise in your working environment with colleagues. This too is natural but does not indicate the presence of Workplace Bullying.

Another area that is not Workplace Bullying is the legitimate and reasonable management of an employee’s or contractor’s under-performance. This can involve counselling or close monitoring and performance management. This too is part of genuine and legitimate management and does not evidence Workplace Bullying practices.

The wisdom of the “reasonable person” may be drawn on for guidance as to what Workplace Bullying may be. The “reasonable person” is considered to be the objective third person who can observe matters with dispassion and cool judgment.

Therefore, the touchstone of what constitutes Workplace Bullying is what is assessed, through the eyes of a “reasonable person”, as that activity which is Workplace Bullying.

Common risk factors which may lead to Bullying

Bullying can result from a number of different factors in a workplace, from the general culture to poor management skills. Some risk factors which make Bullying more likely to occur are:

1. Organisational change – that is, significant change in the workplace that may lead to job insecurity - for example:

* restructure and redundancy;
* introduction of technology; and
* change in management.

1. The culture – the organisation’s values, views and beliefs can either expressly or implicitly encourage Bullying behaviours - for example:

* when a organisation promotes aggressive behaviour as a means of ensuring its workers are performing their roles; or
* adopts a culture in which it is acceptable to ignore such behaviours.

1. Negative leadership styles – such as:

* strict, autocratic management styles, which do not allow for flexibility or involvement by employees; or
* passive, laissez-faire ‘ management styles’ which are characterised by a tendency to avoid decisions; or
* inadequate supervision and little guidance to workers.

1. Inappropriate systems of work – this includes:

* excessive workloads; or
* unreasonable timeframes; or
* uncertainty about roles and how they should be performed; and / or
* lack of employee support.

1. Poor work relationships –this can be characterised by:

* poor communication between staff and management; or
* negative relationships with supervisors or colleagues; or
* excessive criticism by a manager(s); or
* the exclusion or isolation of workers.

1. Workforce characteristics – a company’s workforce can be made up groups of workers who may be at a higher risk of bullying because of certain characteristics, for example:

* young workers;
* new workers;
* apprentices;
* injured workers; and / or
* workers in a minority group because of their race, disability, religion, gender or sexual preference.

*(Organisation)* will consider these factors when undertaking its risk management process.

Procedure

1. **PURPOSE**

The purpose of this Procedure is to:

* Provide guidance to the (*Organisation*) community on the application of the ‘Workplace Bullying Policy’ in our workplace;
* Ensure the dignity at work of all (*Organisation*) staff members, visitors, suppliers and contractors;
* Build happy and constructive relationships;
* Prevent actions of Bullying, exclusion, unfair treatment and other negative behaviours; and
* Educate and inform staff members as to what conduct and behaviour can be construed as Bullying, and the many different forms this behaviour can take.

1. **FRAMEWORK**

*(Organisation)* has established a Framework to assist staff in resolving Bullying complaints. The Framework provides for complaints to be first managed in an informal manner. If resolution cannot be reached at this level, or the matter is so serious that it requires an immediate formal response, a formal complaint may be lodged. The respective processes are outlined below.

***Note:*** *An individual with a concern or complaint can choose to bring an issue to the attention of their designated Health and Safety Representative (HSR) at any stage of the process. The HSR will advise the individual on how best to handle the matter within this Framework.*

1. **CONFLICT RESOLUTION PROCESS**

**Step 1 - The Direct Approach**

If an individual feels they are a victim of Bullying, by any manager, employee, customer, client or any other person in connection with their employment, they should:

* Not ignore it (this could be taken as implied approval);
* Make it clear to the offender that the behaviour is offensive, unlawful, unacceptable and against (*Organisation*) policy (but only if they are comfortable in doing so).

This gives the individual in question a chance to stop or change what they are doing and the matter may not need to be pursued any further. Frequently, the person is not aware that their behaviour is upsetting or intimidating and they will stop immediately once they are told.

**Step 2 - Report the matter to the corresponding supervisor/line manager**

If the direct approach has not been successful or is not appropriate to the situation, the complainant should raise the matter with their immediate supervisor or line manager.

If for any reason the complainant feels uncomfortable in bringing such matters to the attention of their supervisor or line manager, they should report the matter to the next level of management or the Health, Safety and Environment Officer (HSE Officer).

The person handling the complaint will determine if he/she is the right person to deal with the complaint by considering whether he/she may be biased because of his/her friendship with the person making the allegations or the person allegedly behind the negative behaviour. If this is the case then he/she shall forward the matter to the HSE Officer who will then either handle the complaint or coordinate an appropriate internal person to handle the complaint.

The person handling the complaint will take a written record of the complaint and privately convey the individual’s concerns and reiterate *(Organisation’s)* Policy to the alleged perpetrator, without assessing the merits of the case. This will also allow the alleged perpetrator to communicate their side of the story. The details of such discussions will be communicated to the complainant and possible solutions to the matter will be discussed with the relevant parties.

The person handling the complaint will ensure the agreed solution is implemented and follow up on the effectiveness of the agreed solution.

***NOTE:*** *If someone other than the manager is handling the complaint e.g. HSE Officer or Supervisor, the matter may need to be reported to the relevant manager(s), depending on the seriousness of the allegation, but only with the complainant’s consent.*

**Step 3 – Informal, Internal Mediation**

An informal, internal mediation session between the parties involved can be organised with the aim of resolving the matter. The independent mediator may be the manager or supervisor of the parties involved and/or the HSE Officer. Participation should be agreed from all parties and discussion should focus on solving the problem and agreeing on concrete actions.

**Step 4 – Formal Investigation**

If the matter is not resolved informally through the direct approach, reporting the matter to the supervisor / line manager, or internal mediation, the complainant may choose to lodge a formal, written complaint through the direct line manager or HSE Officer. *(Organisation’s)* Internal Incident Report Form *(Form Number xxxx)* shall be used for this purpose.

The person handling the complaint will determine if he/she is the right person to deal with the complaint by considering whether he/she may be biased because of his/her friendship with the person making the allegations or the person allegedly behind the negative behaviour. If this is the case then an appropriate internal person to handle the complaint shall be coordinated through the HSE Officer.

Similarly, if the complaint involves the direct line manager or HSE Officer, another manager or nominee shall be coordinated to conduct the formal investigation process instead.

A formal complaint may only proceed if the complainant is prepared to have his/her identity made known to the respondent.

The written complaint shall indicate the nature of the complaint; identify the times, dates and places and the name of the other parties and the name of the supporting witnesses; and must be signed and witnessed.

The person responsible for the investigation will begin the formal investigation process in a timely manner. This process focuses on proving whether a complaint can be substantiated.

If a complaint is substantiated, *(Organisation)* will take action deemed appropriate. If the complaint cannot be substantiated, *(Organisation)* will explain reasons for the decisions to the parties involved and monitor the situation.

If, after an investigation, a complaint is found to be false, malicious or frivolous, disciplinary action may be taken against the person who made the complaint.

*(Organisation)* will seek to ensure that all complainants and witnesses are not victimised in any way following the lodgement of a formal complaint.

Confidentiality

Confidentiality must be maintained at all times by all parties.

An accusation can be potentially defamatory and may have serious consequences for the individual(s) involved. The risk of defamatory proceedings against an individual or an employer can be minimised if the complaint is handled by as few people as possible and confidentiality is strictly enforced.

Staff involved in the resolution of a complaint have a responsibility to ensure complaints are investigated without delay and to reinforce to the parties, the importance of confidentiality being maintained.

Responsibility for implementation of the Policy

While everyone is responsible for ensuring that the Workplace Bullying Policy is implemented, nevertheless the Directors, senior managers and supervisors are especially accountable for actively adopting, participating, complying with and promoting this Workplace Bullying Policy.

The Board of Directors and senior management and supervisors are expected to:-

* maintain a working environment that encourages respectful communication between all members of their team;
* identify, prevent and address any Workplace Bullying type issues in a timely fashion and without prejudice to anyone;
* recruit, promote, train, develop and transfer staff on the basis of merit and performance;
* ensure that all HR practices, policies and procedures are applied fairly and consistently;
* be role models in their own behaviours;
* provide confidential and timely advice and information to everyone in need; and
* act promptly and professionally in response to any complaints that have been made or raised.

Consequences of failure to act

It is important to recognise that Workplace Bullying is such an activity, and can have such terrible consequences, that it can come under the requirements and responsibilities of the Occupational Health & Safety legislation.

Therefore, apart from the values and ethics of Workplace Bullying activity, the Board of Directors and senior staff and supervisors are expected to take all such reasonable measures to prevent and manage any Workplace Bullying behaviour in the workplace.

Dealing with breaches of this Policy

All complaints that are made under this Workplace Bullying Policy are to be handled using the Procedure Framework (as outlined above) to assist staff in resolving Bullying complaints.

All reports of Workplace Bullying behaviour will be handled sensitively, treated seriously, and professionally managed via the Workplace Bullying Procedure Framework.

The consequences for breaching the Workplace Bullying Policy will depend on the circumstances. Outcomes may include any of the following:-

* counselling;
* professional development and training;
* disciplinary action;
* action taken against anyone who retaliates as a result of the complaint; and
* in some circumstances, the matter may need to be reported to the Police – if it involved incidents of sexual or physical assault and stalking.