

## Factsheet – Bullying, Discrimination, & Harassment

### Why It Matters

Workplace bullying, discrimination and harassment are significant problems for Australian businesses. The cost to Australian business has been estimated at up to \$36 billion per year<sup>1</sup> with the average direct cost of a bullying and/or harassment related workers' compensation claim being \$23 000<sup>2</sup>. In 2014-15 it is estimated that between 13.1 and 14.6 percent of employees in the Transport and Storage Industry were the subject of bullying.<sup>3</sup> The impact on individual employees can be devastating, resulting in reduced performance, mental health issues, and even self-harm.

For your business it can mean reduced safety performance, lower productivity, distraction from your business objectives, workforce turnover, increased workers' compensation costs, reputational damage, and exposure to legal costs and penalties. In some cases, even criminal prosecution is possible. As an owner or manager of a business you also have an individual accountability for bullying, discrimination and harassment that occurs in your business. In short, you need protect your team members, your business and yourself by proactively promoting a harm free workplace and addressing all bullying, discrimination, and harassment when it occurs.

### The Basics

Bullying, discrimination and harassment are words that are often used and sometimes misused. They are all expressions of legal concepts arising from a range of Federal, state and territory laws. This legal context must be kept in mind when managing bullying, discrimination and harassment issues in the workplace. As a business owner or manager, your legal duties throughout all aspects of employing people extend to:

- Providing a workplace that is free of bullying, discrimination, and harassment
- Eliminating bullying, discrimination, and harassment
- Responding appropriately to any instances of bullying, discrimination, and harassment

This responsibility can be discharged through having well known policies and business practices that prohibit bullying, discrimination and harassment, educating your team members about appropriate

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<sup>1</sup> SafeWork Australia *Bullying & Harassment In Australian Workplaces: Results From The Australian Workplace Barometer Project 2014/2015* p. 5

<sup>2</sup> SafeWork Australia *Psychosocial Health & Safety & Bullying In Australian Workplaces Annual Statement 2<sup>nd</sup> Edition 2015* p. 2

<sup>3</sup> Op cit *Bullying & Harassment In Australian Workplaces* p. 26

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behaviour, and providing a means for employees that believe they have been bullied, discriminated against, or harassed to seek to have the situation corrected.

In addition to the legal obligations, eliminating bullying, discrimination and harassment is just the right thing to do. Making sure your team members are not harmed by working in your business is good business practice.

## The Detail

### What's it all mean?

It is important to be clear about what is meant by bullying, discrimination and harassment when educating employees and managing issues raised by a team member. There are a range of Federal and state laws that prohibit bullying, discrimination and harassment. Whilst they all have similar definitions, there are some significant differences. There are also behaviours like vilification and victimisation that can come into play that also have legal definitions. Which legal definition applies to an issue needs to be checked in each case. An issue might also be classed as more than one type of behaviour. For example, a person that is bullied because of their religion is also being discriminated against.

Generally, though bullying, discrimination and harassment and related issues can be described as:

- **Bullying:** It is repeated unreasonable behaviour directed towards a person or group of people that creates a risk to health and safety.  
  
Bullying can take many forms, such as publicly humiliating someone, verbal abuse or spreading malicious rumours or gossip.  
  
Bullying can be verbal or in writing, including online, and can be carried out by more than one person.  
  
It does not matter whether a person intends to bully or not.  
  
Extreme bullying can be considered a crime in some states, such as Victoria.  
  
Bullying does not include reasonable management action taken towards an employee.
- **Discrimination:** Any action that stops a person or group of people from having a benefit or opportunity, or greatly reduces the chances of getting it, because of an irrelevant personal characteristic.  
  
It does not matter whether a person intends to discriminate or not.

Discrimination includes direct and indirect discrimination.

Discrimination does not include reasonable management action taken towards an employee.

**Harassment:**

It includes any uninvited or unwelcome and unreturned behaviour directed towards a person or group of people because of a personal characteristic. Harassment can be something that happens in plain sight or less obvious ways. It can take many forms and be verbal, written, visual or physical behaviour. It does not matter whether a person intends to harass someone or not.

Sexual harassment is making sexual advances or any unwelcome request for sexual favours or any other unwelcome conduct of a sexual nature. This can include any physical, visual, verbal or non-verbal conduct of a sexual nature.

Some types of harassment may also be offences under the criminal law, including:

- Physical molestation or assault
- Indecent exposure
- Sexual assault
- Stalking
- Obscene communications (telephone calls, letters etc.)

Harassment does not include reasonable management action taken towards an employee.

**Personal Characteristics /Attributes:**

A characteristic that a person, or group of people has, and it is unlawful to discriminate against, or harass them, that person or group because of that characteristic. Personal characteristics include:

- Race, nationality, colour or ethnic origin
- Sex
- Marital status
- Age
- Medical records
- HIV status

- Sexual orientation
- Pregnancy or potential pregnancy
- Gender identity
- Breast feeding
- Family responsibilities, such as being a carer or parent
- Physical or intellectual impairment
- Trade union activity or inactivity
- Irrelevant criminal records.
- Physical features
- Religious or political beliefs or activities
- Personal association with a person or group of people identified by, or assumed to have, one of the characteristics named above

**Vilification:** Is when a person publicly incites hatred, serious contempt for, or severe ridicule of, a person or group of people because of the person's or group's:

- Race
- Homosexuality
- HIV/Aids status
- Transgender status

**Victimisation:** Is when a person is threatened with, or suffers, a negative effect because an issue involving bullying, discrimination, or harassment has been raised. A negative effect includes demotion, dismissal, transfer, suspension, loss of benefits, being isolated at work or work related social events, and having gossip spread about a person.

**Reasonable Management or Administrative Action:** Is an employer using its legitimate authority to direct and control the way work is done or how an employee behaves at, or in connection with, work. This includes things like setting performance goals and deadlines, allocating work, rostering work hours, deciding not to select a worker for a promotion or informing a worker about unsatisfactory work performance or inappropriate behaviour.

**Vicarious Liability:** Your business, and you as a business owner, can be held legally liable for any bullying, discrimination and harassment caused by your employees. Taking reasonable precautions to prevent bullying, discrimination and harassment can be a defence to allegations of vicarious liability.

## Take A Stand

Your business needs to develop a public position on bullying, discrimination and harassment in your workplace. Normally this is through having a written policy that states your business:

- Prohibits bullying, discrimination and harassment
- Educates your employees and others working for your business, such as contractors and suppliers, about your business's policy and acceptable workplace behaviour
- Provides a means for employees with bullying, discrimination, and harassment concerns to raise them and have them addressed appropriately

If you develop a policy, you need to mean what you say and demonstrate your commitment to your policy by the way you treat employees in practice.

In some states, such as Victoria, an employer has a positive duty of care to take steps to prevent bullying, discrimination and harassment. Likewise, an employer is normally liable for the actions of its employees. Developing a suitable policy will help with both these burdens.

## Train Your Team

You cannot expect your team members to comply with your policy if you do not explain it to them, along with what is acceptable and not acceptable workplace behaviour. There are many ways that can be done, including:

- Tool box meeting topic
- Short team briefings
- Online, self-paced learning
- Computer system sign-on acknowledging the policy
- Full day training courses
- Distributing printed materials to employees
- Posters in the workplace

## Airing Concerns

An essential part of having a workplace free of bullying, discrimination and harassment is to have a means for team members to raise a concern about how they are being treated, to investigate that concern, and take appropriate corrective action if needed. This is because:

- Problems are better resolved by the people involved directly.

- Your team members need to believe that your business has their welfare at heart.
- Your business needs to be able to show it has done all reasonably possible to prevent and address bullying, discrimination and harassment to discharge its obligations and protect its position at law.

More information about internal review mechanisms can be found in NatRoad’s Factsheet – [Resolving Fair Treatment Issues and Grievances](#).

### Going External

An employee that believes they have been bullied, discriminated against, or harassed can make a complaint to a government agency to have that complaint investigated and a finding made. There are a range of these agencies at the Federal, state and territory level. Each has their own legislation, powers and processes. Some can only make orders for the unacceptable conduct to stop, others can award significant financial compensation and damages. Therefore, you will need to know and understand which agency and which laws are being accessed by an employee to effectively respond to their complaint.

The various laws and agencies are:

Jurisdiction	Law	Agency
Commonwealth	<i>Age Discrimination Act 2004</i> <i>Australian Human Rights Commission Act 1986</i> <i>Disability Discrimination Act 1992</i> <i>Racial Discrimination Act 1975</i> <i>Sex Discrimination Act 1984.</i>	<a href="#">Australian Human Rights Commission</a>
	<i>Fair Work Act 2009</i>	<a href="#">Fair Work Commission</a>
Australian Territory	<i>Capital Discrimination Act 1991</i>	<a href="#">ACT Human Rights Commission</a>
New South Wales	<i>Anti-Discrimination Act 1977</i>	<a href="#">Anti-Discrimination Board</a>
Northern Territory	<i>Anti-Discrimination Act 1996</i>	<a href="#">Anti-Discrimination Commission</a>
Queensland	<i>Anti-Discrimination Act 1991</i>	<a href="#">Anti-Discrimination Commission Queensland</a>
South Australia	<i>Equal Opportunity Act 1984</i>	<a href="#">Equal Opportunity Commission</a>

Tasmania	<i>Anti-Discrimination Act 1998</i>	<a href="#">Equal Opportunity Tasmania</a>
Victoria	<i>Equal Opportunity Act 2010</i>	<a href="#">Victorian Equal Opportunity &amp; Human Rights Commission</a>
Western Australia	<i>Equal Opportunity Act 1984.</i>	<a href="#">Equal Opportunity Commission</a>

## Need More

Publications, posters and training materials can be sourced from the Commonwealth's Human Rights Commission and your local human rights/discrimination agency.

NatRoad's advisers have substantial experience in complaint case management, representation in anti-discrimination proceedings, policy construction, advice, and training development and delivery. For more information and advice about bullying, discrimination, and harassment issues, contact a NatRoad adviser on (02) 6295 3000 or [info@natroad.com.au](mailto:info@natroad.com.au).