



Bullying

In 2010 the Productivity Commission reported that the cost to the Australian economy of bullying and its close relative, harassment, ranged from \$6 billion to \$36 billion a year!

Josh Bornstein, an industrial lawyer, wrote in the Australian Financial Review (August 30, 2011) that workplace bullying

".....corrodes dignity, self-esteem, job satisfaction, motivation and ultimately mental and physical health. In particularly bad cases, employees who experience bullying are so damaged they are unable to return to the labour market. Years of workers' compensation or social security payments await them....."

Workplace bullying is repeated, unreasonable behaviour directed toward an employee or group of employees that creates a risk to health and safety.

'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 victimising, humiliating, undermining or threatening.

'risk to health and safety' includes risk to the mental or physical health of the employee.

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

- Verbal abuse;
- Exclusion or isolation of individuals, i.e. 'sending them to Coventry';
- Psychological harassment, including constant 'put-downs', persistent and unreasonable criticism of work performance or inappropriate comments about personal appearance;
- Intimidation or aggression;
- The assignment of meaningless tasks unrelated to the job;
- The assignment of impossible tasks;
- The deliberate changing of work rosters or positioning within the office to inconvenience particular individuals;
- The deliberate withholding of information that is vital for effective work performance
- Threats of sacking or prejudice in employment; &
- The assignment of unpleasant tasks to particular individuals or the allocation of a workload to them unequally.

The list is not exhaustive. Other types of behaviour (including some forms of practical jokes or the lodging of vexatious complaints of either sexual harassment or workplace bullying) may also constitute bullying or 'unreasonable behaviour'.

Useful general information on Bullying from SafeWork Australia:

<http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/workers-guideworkplace-bullying>

Causes of Bullying

Similar to other health & safety hazards, such as manual handling, the hazards that increase the likelihood of bullying are many. Each hazard by itself may not constitute bullying but, alone or in combination may increase the risk of bullying behaviour. The following are useful questions to ask:

- Is the workload or task demands excessive (unreasonable performance measures or timeframes)?
- Are there role conflicts (contradictory demands or expectations)?
- Is there uncertainty about the way work should be done (lack of training)?
- Is there job insecurity or unpredictable/unexplained change (rosters changing without notice, lack of training on changes in work methods or organisation, continual change lines of reporting)?
- Is there support from co-workers and supervisors?
- Are there groups of workers more likely to be exposed to bullying e.g. young workers or non permanent workers?
- Are workplace relationships characterised by:
 - unnecessary criticism and other negative interactions
 - negative relationships between supervisors and workers
 - poor communication or inadequate consultation
 - certain workers being excluded or isolated?

Reasonable management action, carried out in a fair way, is not bullying. Managers need to be trained to make sure they are able to perform their roles in a fair and just manner: for example when directing the way work is carried out;

- directing the way work is carried out;
- monitoring work; and
- giving feedback on performance.

Fair Work Anti Bullying

Since January 2014, workers are able to take their bullying case to the Fair Work Commission, to ask that the bullying stop.

The Fair Work Commission can order individuals and employers to stop the bullying and to make other changes to prevent the recurrence of bullying.

If you are considering applying to the Fair Work Commission please contact your union organiser or the HelpDesk on 1300 732 698. It is very important to get assistance before applying to FWA, as the process needs to be followed correctly.

<https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/workplace-issuesdisputes/anti-bullying>

Dealing with allegations of bullying

It is important that the procedures to deal with an allegation of bullying are fair. Employers have tended to encourage informal processes to deal with allegations. This can mean that:

- the employer “brushes the complaint under the carpet”;
- there are no consequences for those who breach company policy or the law; and
- there is no ability to track complaints and systemic concerns within an organisation.

It is important that when there is an allegation of bullying that the following is observed: All complaints are taken seriously.

Reports should be dealt with quickly, courteously, fairly and within established timelines. Everyone should be advised of how long it will take to deal with the report and should be kept informed of the progress.

Ensure everyone is protected from victimisation: the person who raises an issue of bullying, the person(s) accused of bullying and any witnesses.

Involved worker(s) are given the following information:

- what support is available
- given the option for representation at any discussion or interview (e.g. HSR, union delegate)
- offered to have a support person present at interviews or meetings.

Impartiality is critical.

The person in charge of an investigation must never have been directly involved in the incident they are investigating or attempting to address.

All parties should be informed of the process: how long it will take, what to expect during the process and at the end. Everyone must be given clear reasons for any actions taken or not taken.

Confidentiality is essential for all involved. Details of the matter should only be known by those directly concerned.

Documentation is important to any formal or informal investigation.

A record should be made of all meetings and interviews i.e. who was present and the agreed outcomes.

Bullying

At the request of AMWU activists the AMWU has drafted the following Bullying Clause for Enterprise Agreements.

1. All employees are entitled to be treated with respect and dignity in their employment. The employer has a duty of care to provide a workplace that is free of bullying and harassment and to eliminate a hazard, or if that is not possible, control those risk factors, which increase the risk of bullying occurring.

2. “Bullying” is defined as repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Single incidents of unreasonable behaviour can also create a risk to health and safety and are also not acceptable.

3. The employer must take appropriate measures to prevent employees being subjected to bullying in their employment. Such measures include, but are not limited to:

- *Ensuring that the all persons at the workplace are aware of this Agreement’s prohibition of bullying and victimisation;*
- *Ensuring that all persons at the workplace are made aware of relevant legislation or other law, (such as those regulating health and safety, workers’ compensation, antidiscrimination, and equal opportunity etc.) and their rights and responsibilities under such legislation or law;*
- *Providing training that informs all employees and supervisors of types of behaviour that constitute bullying, including identifying and recognising any working arrangements or workplace cultural activities that are considered normal but may comprise or lead to bullying;*
- *Providing training to health and safety representatives and other health and safety personnel on the risk factors and relevant control measures to address the potential of bullying occurring;*
- *Ensuring access to an internal procedure for dealing with complaints about alleged bullying.*

The internal procedure will be set up by agreement and will:

- Be procedurally fair;*
- Be enforceable;*
- Be timely;*
- Allow for confidentiality where appropriate;*
- Provide the right for union representation; and*
- If requested by any party, require a qualified and agreed independent person to:*
 - investigate, establish the facts, make findings and*

develop recommendations for the resolution of the complaint; and

b. provide a written report to the complainant.

4. Any person covered by this agreement, has the right to take any complaint to the Fair Work Commission or relevant industrial commission for resolution by mediation, conciliation or arbitration.

5. This clause is in addition to any right not to be bullied that is provided for by legislation or other law and is not intended to reduce or diminish any rights provided for by them.



Notes: