

# Guide

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## Anti-bullying

### 1. About the jurisdiction

The Fair Work Commission (the Commission) has powers to make orders to prevent bullying at work. These powers come from the *Fair Work Act 2009* and are triggered by an application from a worker who genuinely believes that they have been bullied at work.

The focus of the jurisdiction is to address complaints of bullying in the workplace quickly, so that further bullying can be prevented and people can resume mutually safe and productive working relationships.

The Commission is a Tribunal and deals with applications for orders to stop bullying by conducting conferences or hearings. It can also assist parties to reach an agreed resolution to issues of bullying together through mediation or conciliation.

In cases where positive measures have already been put in place to resolve complaints of bullying, the Commission may find that orders to stop bullying are not required.

In cases where a risk remains, the Commission can make orders to prevent future bullying behaviour from occurring in the workplace concerned.

### 2. About bullying at work

#### What is bullying at work?

The *Fair Work Act 2009* specifies that bullying occurs when two criteria are met:

- a person or a group of people **repeatedly** behaves unreasonably towards a worker or a group of workers **at work**
- AND
- the behaviour creates a risk to health and safety.

This behavior must occur repeatedly – that is, more than once - and must create a risk to health and safety in order for it to be considered bullying.

Bullying behaviour may involve any of the following types of unreasonable behaviour:

- aggressive or intimidating conduct
- belittling or humiliating comments
- spreading malicious rumours
- teasing, practical jokes or 'initiation ceremonies'
- exclusion from work-related events
- unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- displaying offensive material
- Pressure to behave in an inappropriate manner

#### Inside

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1. About the jurisdiction
2. About bullying at work
3. What to do when bullying occurs
4. What can the Commission do to stop bullying?
5. Who can apply to the Commission?
6. How to apply for an order
7. What happens when an application is lodged?
8. Costs
9. Privacy
10. Where to get help

These behaviours are just a sample of what could be considered bullying.

The persons alleged to have engaged in bullying behaviour may be workers or other individuals who are involved in the workplace concerned.

### **What is reasonable management action?**

Some actions, though they feel uncomfortable and unpleasant for a worker, are not considered bullying behaviour.

According to the *Fair Work Act 2009*, **bullying does not include reasonable management action** carried out in a **reasonable manner**.

Reasonable management action may include:

- performance management processes
- disciplinary action for misconduct
- informing a worker about unsatisfactory work performance or inappropriate work behaviour
- directing a worker to perform duties in keeping with their job
- maintaining reasonable workplace goals and standards.

A manager is entitled to carry out actions and give directions that are consistent with managing the workplace. However, any reasonable management actions must not only be reasonable but must also be conducted in a reasonable manner. If not, they could still be bullying.

For more information on the ways to manage workers who are not performing their job as required, download the Fair Work Ombudsman's *Best Practice Guide - Managing underperformance* from [www.fairwork.gov.au](http://www.fairwork.gov.au).

## **3. What to do if there is bullying, or reports of bullying, at work**

### **If you believe you are being bullied**

When a worker feels as though they are being bullied in the workplace, there are several avenues available to them to deal with the issue.

To put a stop to bullying behaviour, it is best to address issues of bullying as soon as they arise. This can be done through internal workplace processes, however if it happens repeatedly, an application can also be made to the Commission for assistance.

Where possible and safe to do so, workers are encouraged to raise the issues with their:

- supervisor and/or manager
- health and safety representative
- human resources department

Workers can speak to their union for information and advice on how to raise and deal with issues in the workplace.

Federal, state or territory work health and safety (WHS) regulators may also be able to provide information on how to raise issues of bullying at work. Further information can be found in *Where to get help* at section 10 of this guide.

## **If you are made aware of alleged bullying behaviour**

**Employers and principals** have a duty of care to provide a safe workplace under WHS laws, and as such are encouraged to respond quickly and appropriately to issues of bullying. Specific information about where to seek assistance in responding to issues of bullying can be found in section 10 of this guide.

### **An employer or principal is:**

- the person or business that employs or engages the worker who is alleging they are being bullied at work, and/or
- the person or business that employs or engages a person against whom bullying has been alleged.

When responding to applications, all parties should consider that the purpose of the anti-bullying jurisdiction is to preserve and promote mutually safe and productive working relationships.

Employers and principals should note that when dealing with an application for an order to stop bullying, the Commission takes into account what, if any action has already been taken to prevent further bullying behaviour. In cases where employers have already taken positive action to resolve issues of bullying, the Commission may find that that orders are not required.

Employer and principals should also note that a worker who has made a bullying application may have exercised a workplace right, and that any adverse actions taken against such a worker may be a breach of the General Protections provisions of the Act.

Further information about general protections disputes can be found on the Commission's website [www.fwc.gov.au](http://www.fwc.gov.au).

## **If you are named in the application**

Individuals who are named in an application as having allegedly engaged in bullying behaviour also have important rights, and will be afforded an opportunity to put in a response to the application and to be involved in the processes conducted by the Commission.

Individuals may seek support and guidance from a variety of sources. Further information about where to get help can be found in section 10 of this guide.

## **Take care of your health and wellbeing**

Bullying at work is a serious issue that can affect people in a number of ways. Having allegations of bullying conduct made against you is also a difficult matter.

If you have been assaulted or fear that you may be assaulted you may wish to consider contacting the police.

If you are feeling anxious or depressed it is important to speak to someone. Many workplaces have an employee assistance program (EAP) that can offer confidential support and assistance. Otherwise you can:

- make an appointment to visit your doctor, or
- call Lifeline on 13 11 14. Lifeline is a 24 hour service.

## 4. What can the Commission do to stop bullying?

The focus of the Commission in dealing with an application for an order to stop bullying is to resolve bullying disputes so people can resume mutually safe and productive working relationships.

In trying to prevent bullying from occurring in the future, the Commission may schedule a mediation session to try to help parties resolve the dispute themselves.

If the Commission thinks that the matter is not suitable for mediation, or if the matter can't be resolved at mediation, the Commission may hold a conference or hearing, the purpose of which is to enable the Commission to explore how best to approach a matter, or to determine whether an order to stop bullying can and should be made.

Most bullying matters are resolved without orders being required. In some cases, the Commission will make an order if it is satisfied that:

- the worker has been bullied at work by an individual or group of individuals, and
- there is a risk that the worker will continue to be bullied at work by that same individual or group.

It is important to note that the Commission can only make an order if there is a risk that the worker will **continue** to be bullied at work by a particular individual or group whose behaviors have led to the application. Orders cannot be made where issues of bullying have already been sufficiently dealt with within the workplace, or where a worker is no longer engaged in connection with the workplace where they alleged the bullying conduct occurred.

### What is an order?

An **order** is a ruling made by a Commission Member after he or she has heard and determined a matter. Once an order has been made, anyone bound by the order must comply with it. Courts can impose substantial penalties on parties who fail to comply with orders.

In anti-bullying matters, a Commission Member can make any order the Member considers appropriate to prevent the worker being bullied.

### An order to stop bullying cannot include a financial penalty or any kind of financial compensation.

The focus of any orders the Commission may make must be to prevent further bullying. Actions that the Commission might consider could include:

- requiring the individual or group of individuals to stop the specified behaviour
- regular monitoring of behaviours by an employer or principal
- compliance with an employer or principal's bullying policy
- the provision of information and additional support and training to workers
- review of the employer's or principal's bullying policy.

However each case will be considered on its merits and parties should consider the specific circumstances of the workplace when seeking orders or responding to proposals for orders.

## 5. Who can apply to the Fair Work Commission?

The national anti-bullying laws only apply to certain workers in Australia. To make an application for an order to stop bullying, a person must:

- be covered by the national anti-bullying laws, and

- meet the definition of a ‘worker’.

A **worker** includes:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour hire company who has been assigned to work in a particular business or organisation
- an outworker
- an apprentice or trainee
- a student gaining work experience
- a volunteer (except in a wholly volunteer association).

Workers are only covered by the national anti-bullying laws if they are at work in a constitutionally-covered business’. This includes a business or undertaking conducted:

- by a constitutional corporation—for example, a proprietary limited company or an incorporated association conducting trading or financial operations
- by the Commonwealth or a Commonwealth authority
- by a body corporate incorporated in a Territory
- principally in a Territory or Commonwealth place.

### **Who is not covered by these anti-bullying laws?**

Workers in businesses that are not constitutionally-covered are not covered by the Commission’s anti-bullying laws. These may include businesses or undertakings conducted by:

- sole traders or partnerships
- state government departments and some state public sector agencies
- some local government organisations
- corporations whose main activity is not trading or financial.

Members of the Australian Defence Force are not covered by these laws, and the Commission may dismiss an application if it considers that the application might involve matters that relate to Australia’s defence or national security.

## **6. How to apply for an order to stop bullying**

Applications for orders to stop bullying must be made using the appropriate form. The form used to make an application for an order is Form F72—Application for an order to stop bullying. This form is available on the Commission’s website [www.fwc.gov.au](http://www.fwc.gov.au).

It is also available from the Commission’s public counters in each capital city, or can be acquired by calling the Commission on 1300 799 675.

Applications can be lodged by email, fax, post, in person at a Commission office or online using the Commission’s Online Lodgment Service.

Applicants are required to pay an application fee. The current application fee is available on the Commission’s website (<http://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/lodge-application>).

If the fee will cause serious financial hardship, an application can be made to have the fee waived. The waiver form should be lodged at the same time as the application.

Copies of the waiver form are available:

- on the Commission's website [www.fwc.gov.au](http://www.fwc.gov.au)
- by calling the Commission on 1300 799 675
- from the Commission's public counters in each capital city.

## 7. What happens once an application is lodged?

Once the Commission has received an application form, a staff member will call the worker to discuss their application and confirm that they want to proceed.

The Commission will then contact the other people involved in the matter to make them aware of the application and seek their initial response, usually this will be:

- the employer(s)/principal(s) who engage the worker and any other parties, and
- in most cases, the person or people against whom the bullying has been alleged

Parties to a matter are provided with template forms on which to make their responses. The forms provide the first opportunity to respond to the allegations outlined in the worker's application. It is not necessary to provide evidence or supporting material along with the completed form, as there will be further opportunity to provide additional material as the matter progresses.

**Once responses have been received, the Commission will consider all material and refer the matter for a mediation, conference or hearing.**

### Mediation

**If appropriate, the Commission will schedule a mediation session to try to help parties to a matter resolve the dispute themselves.**

Mediation is an informal, voluntary, private and generally confidential process facilitated by a Commission Member or by one of the Commission's anti-bullying mediators. The Members and mediators are independent and do not take sides.

Mediation is usually conducted by telephone, but may take place in person or by video conference if required.

### Conferences & hearings

**If the Commission thinks that a matter is not suitable for mediation, or if a matter can't be resolved by parties at mediation, the Commission may hold a conference or hearing in order to explore mutually safe and productive outcomes or to determine the application.**

Where the Commission is seeking to have the matter resolved, the Member may conduct a mediation or conciliation conference. This will be conducted informally and its purpose will be to involve all parties in generating and considering future conduct and actions that will facilitate ongoing working arrangements.

Where the Commission is determining the matter, a conference or hearing will be held. The purpose of a determinative conference or hearing is to receive evidence from the parties and to determine whether an order to stop bullying should be made. A conference is generally conducted in private, while a hearing is generally open to the public.

Early on in the process, the Commission may also hold a preliminary conference so as to better inform the Member about the parties and issues involved.

## 8. Costs

In general, parties to an application for an order to stop bullying will bear their own costs.

However, the Commission may order a party to pay some or all of the costs incurred by another party if the Commission is satisfied that:

- the application or response to the application was made vexatiously, or without reasonable cause, or
- it should have been reasonably apparent that the application or response to the application had no reasonable prospects of success.

## 9. Privacy

In general, applications for orders to stop bullying and discussions in private conferences are confidential between the parties. Where formal hearings are conducted, these are open to the public unless the Commission orders otherwise.

The Commission is required by law to publish its decisions. Decisions are published on the website [www.fwc.gov.au](http://www.fwc.gov.au) and generally include the names of parties to the matter.

If parties do not want their matters heard in public or their names and other details published in Court Lists or decisions, they will need to make an application to the Commission for an order to that effect. This application can be made in writing to the Member of the Commission dealing with the matter.

For further details of the Commission's practices in collecting, using and disclosing personal information, you can access the Privacy Notice for anti-bullying matters at [www.fwc.gov.au](http://www.fwc.gov.au), or ask for a hard copy to be provided to you.

## 10. Where to get help

### Assistance for individuals

Bullying at work can be a breach of health and safety laws, which are administered by regulators federally and in each state and territory. Regulators may decide to respond to complaints of bullying at work and can prosecute for breaches of health and safety laws. Like the Commission, the regulators cannot award financial compensation. Contact details for the state and territory regulators can be found on the Commission's website [www.fwc.gov.au](http://www.fwc.gov.au).

If you think you are being bullied for a discriminatory reason, this may be a breach of equal opportunity laws. Contact details for anti-discrimination and equal opportunity bodies in each state and territory can be found on the Commission's website [www.fwc.gov.au](http://www.fwc.gov.au).

Other specific laws also apply to some workers, such as public servants and defence personnel.

### Assistance for employers and principals

Many of the state and territory WHS regulators have guides for employers/principals on how to deal with bullying at work, which can be found on their websites.

Employer organisations, industry or trade groups registered with the Commission, chambers of commerce and peak industry bodies may also be able to provide information on how to resolve issues of bullying at work.

The Department of Business (or equivalent) in most States and Territories often has information to assist small businesses manage their staff, resolve disputes and develop HR policies (including policies that deal with bullying).

### **Legal or other representation**

Representation is where another person (such as a lawyer, union official or family member) speaks or acts on your behalf.

There is no requirement for you to be represented when you appear at the Commission. In any conferences or hearings, you will need the permission of the Commission Member dealing with your case if you wish to be represented by a lawyer or paid agent unless that person is:

- one of your employees or officers (if you are an employer/principal) or
- employed by a union or employer organisation, a peak union or peak employer body.

If you decide to represent yourself in proceedings you will need to make sure you are well prepared. You are welcome to bring one or more individuals with you for support. There are generally no objections to this, although in a private conference you should be prepared to tell the Commission why you would like the person to be present.

Different arrangements apply when voluntary mediations are conducted by staff of the Commission and you will be advised of these in advance of any such process.

### **Commission staff & resources**

Commission staff cannot provide legal advice or advice on how best to run a case. Commission staff can, however, can give you information on:

- processes in the Commission
- how to make an application to the Commission and how to respond to an application that affects you
- how to fill out forms
- where to find documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au) also contains a range of information on workplace bullying that may be of assistance.

### **Videos**

The Commission has prepared a Virtual tour to assist parties in anti-bullying matters. You can view the videos at the links below.

- [The Fair Work Commission's role in stopping bullying](#)
- [What is workplace bullying?](#)
- [How to deal with workplace bullying](#)
- [How to make an anti-bullying application](#)
- [What happens when an anti-bullying application is made](#)
- [How to respond to an anti-bullying application](#)
- [How bullying matters are resolved](#)

### **Interpreters**

The Commission can arrange for an interpreter to be present at your mediation session, conference and/or hearing at no cost to you. However, you must notify the Commission as early as possible of your need for an interpreter, and provide details of the required language.



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This fact sheet is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.