

PREVENTING WORKPLACE BULLYING

A PRACTICAL GUIDE FOR EMPLOYERS



Workplace bullying is a significant problem in today's workforce. In 2005 the **Interagency Round Table on Workplace Bullying** was created to draw on the experience of organisations, non-government and government agencies that were involved in the provision of advocacy, information and advice, or investigation of workplace bullying. The following agencies were represented on the Interagency Round Table.



**Government
of South Australia**

Department of Further Education,
Employment, Science and Technology

Equal Opportunity Commission SA

Office of Public Employment and Review

Public Sector Workforce Relations

SafeWork SA



DISCLAIMER

This resource has been developed with the assistance of the **Interagency Round Table on Workplace Bullying**. Every effort has been made to ensure that the information contained in this practical guide is free from error and/or omissions. However it does not substitute for appropriate advice and the authors accept no responsibility for any claim that may arise from any person acting on information contained herein.

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INTRODUCTION

Workplace bullying constitutes a significant threat to the health, safety and welfare of people in the workplace and potentially has wider implications for employers, including reduced profitability, low morale, and increased absenteeism and staff turnover.

Employers need to be aware that workplace bullying may not always be committed by an employee. It may be perpetrated by a client, customer, person in position of authority, or other business contact and can also be carried out by an individual or a group. Employers may ultimately remain responsible for the consequences of such behaviours even if committed by people other than employees as a result of the employer's duty of care at common law and under the *Occupational Health, Safety and Welfare Act 1986* (the Act).

Despite the potential legal ramifications and penalties that may be imposed, many employers are largely unaware of their legal responsibilities in relation to workplace bullying.

Whilst this practical guide has been developed to assist all workplaces, it is of particular value to small business, to identify, assess, minimise, control and review the risks to health, safety and welfare caused by workplace bullying. It aims to provide practical advice and information on making workplaces safer for everyone concerned.

Although it is recognised a client or customer may commit bullying behaviour, this guide only addresses the management of bullying behaviour committed within the workplace. Employers also have the responsibility to minimise risks to their staff from bullying behaviours that may arise from clients or customers.

It is strongly recommended that professional advice be sought in relation to workplace bullying issues. The content of this practical guide is for general information only and is not intended to be used in substitution of professional advice.

WHAT IS WORKPLACE BULLYING?

The following definition is included in section 55A (1) of the Act:

‘Workplace bullying means any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.’

Repeated refers to the persistent or ongoing nature of the behaviour and can refer to a range of different types of behaviour over time.

Systematic refers to having, showing or involving a method or plan. Whether behaviour is systematic or not will depend on an analysis of the circumstances of each individual case with this general guideline in mind.

Risk to health and safety includes the risk to the emotional, mental or physical health of the person(s) in the workplace.

EXAMPLES OF BULLYING BEHAVIOUR

Bullying behaviour can be obvious and aggressive. Examples could include:

- abusive, insulting or offensive language
- behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling and screaming
- teasing or regularly making someone the brunt of practical jokes
- displaying material that is degrading or offending
- spreading gossip, rumours and innuendo of a malicious nature.

Violence, assault and stalking are extreme forms of bullying that constitute a criminal offence. Such behaviour should be reported directly to the police. Examples include, but are not limited to:

- harmful or offensive initiation practices
- physical assault or unlawful threats.

Workplace bullying can also be subtle and may include behaviour such as:

- deliberately excluding, isolating or marginalising a person from normal workplace activities
- intruding on a person’s space by pestering, spying or tampering with their personal effects or work equipment
- intimidating a person through inappropriate personal comments, belittling opinions or unjustified criticism.

Covert behaviour that undermines, treats less favourably or disempowers others is also bullying. Examples include:

- overloading a person with work
- setting timelines that are very difficult to achieve, or constantly changing deadlines
- setting tasks that are unreasonably beyond a person’s ability
- ignoring or isolating a person
- deliberately denying access to information, consultation or resources
- unfair treatment in relation to accessing workplace entitlements, such as leave or training.

WHAT ISN'T BULLYING BEHAVIOUR?

As stated in section 55A (2) of the Act bullying behaviour does not include:

- reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee
- a decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee's employment
- reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment
- reasonable action taken in a reasonable manner under an Act affecting an employee.

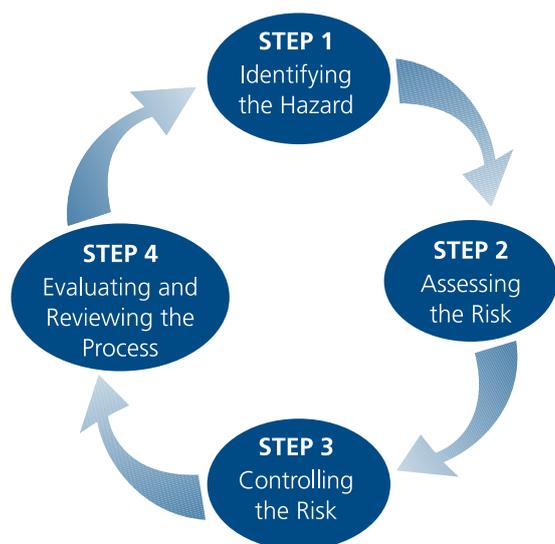
RECOGNISING AND REMOVING THE RISKS OF WORKPLACE BULLYING

Although primarily a psychological issue, workplace bullying should be managed like any other occupational health and safety (OHS) hazard. That is, once identified the degree of risk should be assessed and the risk controlled and reviewed to ensure that workplace bullying does not become, or continue to be, a problem within the workplace. Behaviours that may amount to breaches of criminal law should be immediately reported to the police. Examples include, but are not limited to, assault and unlawful threats.

An assessment of the risks within a workplace should also consider the risks to the employer if workplace bullying is not appropriately dealt with.

THE FOUR STEP PROCESS

By using a four step process, employers should be able to minimise the direct and indirect costs associated with bullying in their workplace and ensure that the health, safety and welfare of staff and associated people is not compromised.



STEP 1 – IDENTIFYING THE HAZARD

The first step in the process is establishing whether workplace bullying actually exists, or whether there is a potential for bullying to occur in the workplace at some point in the future. Workplace bullying is often subtle or hidden. Although there may be no obvious signs of workplace bullying, it does not mean that such behaviour or conduct does not exist (refer the 'Identification Checklist' in Appendix One).

The onus is upon the employer to actively take reasonable steps to help identify whether workplace bullying exists, or has the potential to exist. It is, therefore, recommended that employers:

- consider the work required and work procedures, to determine if there are factors in the workplace that make it more likely that bullying can occur
- focus on the systems of work rather than on the individuals
- conduct a survey of employees on the issues of workplace bullying

- monitor patterns of absenteeism, sick leave, staff turnover, grievances, injury reports and other such records to establish any regular patterns or sudden unexplained changes
- monitor deterioration in workplace relationships between employees, clients or managers
- monitor feedback from exit interviews or feedback given directly from managers/supervisors or any other internal or external party.

STEP 2 – ASSESSING THE RISK

The second step involves determining, in consultation with those affected, the specific behaviours and circumstances that may result in incidents of workplace bullying, and assessing the likelihood of these behaviours affecting the health, safety and welfare of employees.

Employers should check whether the following situations are occurring, or have been identified through the process undertaken in Step 1:

- repeated and unjustified criticism, that is targeted at an individual or individuals, rather than at work performance
- threats of punishment for no justifiable reason
- overloading a particular person with too much work or an unreasonable share of unpleasant jobs
- unwarranted or unjustified constant checking of an employee's work quality, output or whereabouts
- humiliating a person through criticism, sarcasm and/or insults, especially in front of other staff, customers or clients
- denying opportunities for training, promotion, interesting jobs or assignments
- deliberately withholding information necessary for a person to be able to perform work to the required standard
- sabotaging a particular person's work
- excluding a particular person from workplace social events;
- spreading gossip or false rumour about a particular person
- dangerous practical jokes or forms of ritual humiliation, including initiations.

STEP 3 – CONTROLLING THE RISK

The third step involves developing and implementing strategies and plans to minimise and control the risks relating to workplace bullying. It is recommended that these include:

- developing a workplace bullying policy (refer Appendix Two)
- establishing expectations of appropriate behaviour and the consequences for failing to comply with expectations of appropriate behaviour;
- developing a complaint handling and investigation procedure (refer pp 7 & 8)
- providing training, education, information and awareness on workplace bullying for all employees
- ensuring that managers (and persons of responsibility) are aware of the responsibilities they have to assist the employer in complying with their obligations
- nominating a contact officer(s) within the workplace and providing training for the role
- providing clear job descriptions that include an outline of the specific roles and responsibilities for each position within the workplace
- keeping statistical records and information relating to productivity, absenteeism, grievances, work related injuries, customer complaints, disciplinary actions and so on.

The strategies and plans that are used to minimise or control the risks relating to workplace bullying need to suit the specific size and structure of the workplace, as well as being realistic and achievable. They should be designed to create long-term change within the workplace and not used as a quick fix for the problem.

STEP 4 – EVALUATING AND REVIEWING THE PROCESS

The fourth step involves the ongoing review and evaluation of the specific strategies and plans that have been implemented into a workplace to prevent and control workplace bullying.

The evaluation and review process should ensure that the strategies implemented are effective in preventing or minimising incidents of workplace bullying within the workplace.

If the strategies have not been effective, it is important that further analysis of the situation occurs in order to determine how the employer can rectify the situation.

Recognising and removing the risks is not a once-off process. Employers should ensure that the four-step process is a continual cycle within their workplace in order to prevent workplace bullying from recurring.

HEALTH AND SAFETY REPRESENTATIVES AND HEALTH AND SAFETY COMMITTEES

If you have a Health and Safety Representative (HSR) or Health and Safety Committee, consultation with them should be part of the processes used to develop anti-bullying strategies and the ongoing monitoring and review of the effectiveness of the strategies.

The functions of an elected HSR include liaising with employees on health, safety and welfare matters, and reporting to the employer any hazard or potential hazard to which employees might be exposed. Where there is a Health and Safety Committee, the HSR may refer the matter to that committee.

If workplace bullying is reported, the employer should consider the extent to which the HSR should be involved in resolving the issue, and the rights of both parties to confidentiality pending investigation.

The workplace policy and procedures should address both of these issues.

COMPLAINT RESOLUTION PROCESS

A complaint resolution process is designed to remove the risks of bullying behaviour at work by implementing a planned and systematic approach to the management of this workplace hazard.

It is important that all employees are made aware that a procedure exists in the event that they experience bullying behaviour at work. It is useful to provide a number of resolution options to employees that range from taking action personally, to lodging either an informal or formal complaint.

PERSONAL OPTIONS

An employee may choose to speak to the perpetrator directly. They should be advised to keep a record of that conversation.

Employees can be advised that information and advice may be sought from the following:

- Contact Officer
- HSR
- human resource manager
- union representative
- manager
- professional counsellor.

INFORMAL RESOLUTION PROCESS

An informal resolution process aims to ensure that the bullying incident is resolved as quickly as possible.

Although an employee has the right to make either a formal or an informal complaint, they should be encouraged to commence with the informal process first. This can usually achieve a more timely and satisfactory resolution for both parties.

No investigation or disciplinary action should be taken as a result of an informal complaint. Rather, a no-blame, conciliatory approach should be used to assist the individuals in reaching an outcome that will ensure appropriate conduct in the future. The main focus is to return the individuals to productive work without further interruption. No records resulting from this action should be kept after resolution of the issue.

Conciliation is a confidential process that only involves the conciliator and the affected employees. The purpose of conciliation is to provide a quick response to an incident by an impartial, suitably skilled person.

A manager or another person in the workplace may conciliate the matter if they have the skills and it is appropriate for them to do so, or you may arrange for professional intervention. It is important that the employee can trust and respect the conciliator.

Sometimes an employee's manager may not be the most appropriate person to act as the conciliator. That is particularly the case when the manager is the alleged bully or the employee has indicated that they are uncomfortable involving the manager in this process.

If the informal resolution process fails to provide an agreed outcome, then the employee should be told that they could pursue a formal complaint leading to investigation.

FORMAL INVESTIGATION PROCESS

It is important that employees clearly understand what to expect from making a formal complaint. For example, you may wish to inform them that:

- the investigation procedures will adhere to natural justice principles and ensure fairness for all concerned
- an investigation will occur as soon as possible after the complaint is received
- an impartial person who can carry out the investigation without hindrance will conduct the investigation.

A formal process usually has the following steps:

1. Lodging the complaint

Ensure that the complainant knows how and to whom they should lodge their complaint. For example, the complaint should be in writing with specific allegations including dates, times and names of any witnesses.

2. Initial response

Arrange for an appropriate senior manager to meet separately with both parties as soon as possible and explain the formal process and their rights and responsibilities.

For example:

- the expected timetable for resolution of the complaint
- how the complaint will be investigated, for example, interviews with the complainant, the alleged bully and witnesses
- who will receive copies of any statements or records of interview if obtained
- who can be present at interviews
- whether parties can refuse to participate;
- what interim measure will be taken to ensure the safety and welfare of the complainant during the investigation.

Interim measures may need to be actioned including suspension of the alleged bully or the assignment to alternative duties until the investigation is complete.

3. Appointment of an investigator

Arrange for an independent investigator to investigate the complaint. Ensure the investigator understands their role, the rights of the alleged bully and what the expected outcomes may be. Either party has the right to challenge the independence and impartiality of the investigator, providing they present reasonable grounds to do so.

4. The investigation

The investigator should contact the alleged bully in writing and notify them about:

- the details of the complaint
- interview time, process and their rights (including their right to have a representative present)
- timeframe for the investigation
- requirement for confidentiality
- the possible consequences.

The investigator should then interview the alleged bully. If they admit to the behaviour, the matter can be referred back to the employer for appropriate action. This may include disciplinary procedures or referral to support services (e.g. anger management counselling).

If the alleged bully disputes the allegation, further investigation should be carried out in an attempt to determine the facts. This will include meeting with the complainant and available witnesses.

5. Findings

The investigator should provide the employer with a written report on the findings of the investigation. The employer should then meet with both parties individually to explain to them the findings of the investigation, as well as notifying them in writing.

If the allegation cannot be substantiated, this does not necessarily mean the bullying did not occur. Employers need to identify what can be done to assist the individuals to return to a working relationship. This may involve mediation, counselling, changed working arrangements and redressing other organisational issues that may have contributed to the circumstances of the complaint. This may include possible disciplinary action against the complainant if their complaint is proven to be unwarranted or vexatious.

If the allegation is substantiated, you need to determine what is appropriate action, including disciplinary action against the bully. This may include:

- requiring the bully to provide an apology and assurance that the behaviour will not occur again
- a formal warning
- counselling
- transfer to another work area
- suspension from work or, as a final resort, dismissal.

6. Appeal

Provide mechanisms to enable the parties to appeal against the decision if they consider this warranted.

7. Access to counselling and/or rehabilitation

This should be provided for:

- the complainant, to assist him or her to find coping strategies to deal with the alleged bully while the matter is being resolved
- the alleged bully, to enable him or her to recognise and change their behaviour
- any affected work team member.

8. Review

Ensure the resolutions and continuing wellbeing are reviewed with the complainant and alleged bully for a period of time following resolution to ensure that your actions to stop the bullying have been effective.

YOUR LEGAL OBLIGATIONS

OCCUPATIONAL HEALTH, SAFETY AND WELFARE

The Act deals with the general wellbeing of employees at work. The prevention of work related injuries and illness are both matters related to occupational health, safety and welfare [refer sections 4(4)(a) and 4(4)(b)].

Incidences of workplace bullying can have an adverse impact on the psychological wellbeing of an employee and prolonged bullying often manifests as a physical health issue for the aggrieved party. As such, matters of workplace bullying fall within the jurisdiction of the Act.

A person who is the subject of bullying behaviour can make a complaint to SafeWork SA. SafeWork SA will investigate and ensure the employer and employees meet their obligations under the Act.

An OHS Inspector does not mediate between the employer and employee or between the bully and bullied person(s). However, the inspector may refer the matter to the Industrial Relations Commission for conciliation or mediation.

Employer responsibilities

The Act places a duty-of-care on employers to **ensure**, as far as reasonably practicable, that employees are safe from injury and risk to health while at work [refer section 19 (1)]

This requires the employer to actively take steps to prevent incidents that may injure an employee or place the health of an employee at risk. Employers must also take steps to minimise or reduce risks, when elimination of the risk is not possible.

In regard to workplace bullying, the duty also requires an employer to investigate complaints (relating to any staff member), address and document the issues raised, and take appropriate action when necessary.

An employer who does not take reasonable steps to reduce or eliminate bullying in their workplace may be in breach of the Act and be liable to penalties prescribed by section 19 of the Act. The maximum penalty for breaching an employer's duty under the Act is \$300,000 for the first offence and \$600,000 for a subsequent offence.

Employee responsibilities

Employees have a duty under the Act to take reasonable care to avoid adversely affecting the health and safety of any other person through an act or omission at work [refer section 21 (1a)].

This duty means an employee may actually be in breach of the Act by failing to act where appropriate. Such action does not necessarily mean an employee must directly intervene when they become aware of workplace bullying. In some circumstances it may be more prudent to bring the matter to the attention of the appropriate person within the workplace.

All staff should be made aware of their duty toward fellow employees, particularly those in positions of authority, whose actions and messages to lower status employees may have a more significant impact than anticipated or intended. The maximum penalty for breaching section 21 (1a) of the Act is a fine of \$10,000.

Responsibilities of all persons

When a person (who could be an employer or employee) has actual knowledge that another person's health and safety is being endangered, and is recklessly indifferent as to whether this person is being endangered, that person could be liable for committing an aggravated offence [refer section 59)].

Offences under this section of the Act are considered very serious. They are minor indictable criminal offences, and can carry a maximum five-year term of imprisonment, and/or double the prescribed penalty. While this section would only be used in extreme circumstances, it could be applicable if an employer (or employee) acted or failed to act in situations of serious bullying.

EQUAL OPPORTUNITY

Sometimes bullying behaviour involves elements of discrimination. The types of discrimination covered by South Australian law include disability, race, sex, age, sexuality, pregnancy and marital status.

Employees being bullied on any of these grounds can make complaints to the Equal Opportunity Commission, who will try to resolve the complaint privately by conciliation. If settlement cannot be reached, cases can be referred to the Equal Opportunity Tribunal for a public hearing and decision.

Under discrimination laws, all types of employees are covered, including casuals, volunteers and those on contract or probation. Employers are vicariously liable for the actions of their employees towards each other or to customers.

An extensive section 'eo for business', containing detailed information about how to manage your equal opportunity obligations, can be found at www.eoc.sa.gov.au

APPRENTICESHIPS AND TRAINEESHIPS

In South Australia, contracts of training are the legal basis for traineeships and apprenticeships, which are governed by the *Training and Skills Development Act 2008* (the T&SD Act).

Contracts of training and the T&SD Act set out some of the rights and responsibilities of employers, trainees and apprentices. For example, the contract of training requires employers to meet all legal requirements, including OHS requirements. It also requires employers, trainees and apprentices to try to resolve any complaint, grievance or dispute between themselves.

If they cannot resolve the issues, they are required to contact Traineeship and Apprenticeship Services to request assistance or to access the appropriate dispute resolution processes.

WORKERS COMPENSATION

Though the *Workers Rehabilitation and Compensation Act 1986* does not mention bullying specifically, psychiatric disabilities caused by bullying at work, are compensable if, and only if, the employment was a substantial cause of the disability. An employee may make a claim for compensation regarding any compensable injury that arises out of, or in the course of their employment.

For more details refer to section 30A of the *Workers Rehabilitation and Compensation Act 1986*.

INDUSTRIAL RELATIONS

State public service employees and local government employees

There is no specific provision in the *Fair Work Act 1994* that deals with workplace bullying. However, where an employee is dismissed or forced to resign as a result of workplace bullying, the worker may be entitled to make a claim under the unfair dismissal provisions of that Act.

Where it can be demonstrated that an industrial dispute exists between an employer and employee, and all of the necessary requirements of the Act have been met, a notice of industrial dispute can be lodged with the Industrial Relations Commission of South Australia to seek its assistance to resolve the dispute.

All other types of employees

From 1 January 2010 the provisions of the South Australian *Fair Work Act 1994* only apply to the state public service (including most government business enterprises) and the local government sector.

Private sector employers and employees are now covered by the Commonwealth *Fair Work Act 2009*. This Act contains provisions dealing with unfair dismissals, unlawful terminations, adverse action, unlawful discrimination and dispute resolution that in certain circumstances may be utilised in bullying and harassment matters.

Enquiries about the application of these provisions should be directed as relevant either to Fair Work Australia or the Fair Work Ombudsman.

CRIMINAL LAW

Workplace bullying may also amount to criminal behaviour in breach of various criminal legislation. Examples include assault and unlawful threats.

Refer Appendix Three for an overview of the relevant legislation and legal obligations.

FACTORS CONTRIBUTING TO WORKPLACE BULLYING

There are a variety of reasons why a person may bully another person in the workplace.

POWER

A person may use their position of power or their physical dominance over those who are perceived to be weaker. The bullying is often dependent upon the perceived power of the bully over their victim.

SELF-ESTEEM

Bullies may put down others to boost their own self-esteem and confidence to help deal with personal feelings of inadequacy.

DIFFERENCE

An individual or group may become targets of workplace bullying because others perceive them as being new or different.

PERCEIVED THREAT

Some people bully others because the other person is perceived as a threat to them either personally or to their position within the company.

ORGANISATIONAL CULTURE

The culture of a workplace is often shown by its values, beliefs and what is considered to be normal behaviour.

When the culture is positive, it encourages individuals to adopt appropriate behaviours that promote respect of others.

Conversely, employees may find themselves in a negative culture where inappropriate behaviours and attitudes are encouraged or condoned by management and bullying is seen as normal behaviour for the majority of people in the workplace.

ORGANISATIONAL FACTORS

People may harass or bully others due to dissatisfaction with organisational arrangements. Factors may include:

- job insecurity
- restructuring or downsizing
- changes such as a new manager/supervisor, new rosters or new procedures
- inadequate supervision
- change in ownership
- introduction of new technology
- inappropriate initiation practices
- inadequate support or training
- poor skills and practices in people management.

WORKING ARRANGEMENTS

Some working arrangements mean that individual employees or work groups may:

- work in isolated environments for periods of time
- work in different geographical locations other than a central place of work
- work shift work or hours that isolate them from other staff
- work in isolated areas of the building or office
- work from home (either their home or another person's home) for periods of time
- work in rural or remote areas of the country.

These working arrangements can sometimes put employees at increased risk of bullying and other types of inappropriate workplace behaviours (such as sexual harassment). It is important that employers have a safety strategy in place for all of their employees who may be at increased risk because of their isolated working arrangements.

Employees who are working in isolation have the same rights to a safe working environment (and responsibilities in relation to workplace conduct) as all other employees in the organisation.

CLIENT CONTACT

In some industries it is the client or customer who can pose a threat of employees being exposed to workplace bullying behaviour. If this is identified as a risk, then it should be controlled in the same way as other identified risks. Training staff in dealing with difficult customers, procedures for withdrawal from potentially risky situations and access to counselling/debriefing can all assist to control this risk.

IMPACT OF WORKPLACE BULLYING

CONSEQUENCES FOR EMPLOYERS

The consequences of workplace bullying may include the following, bearing in mind that many of these points may be as a result of other internal or external factors:

- reduced efficiency, productivity and profitability
- increased absenteeism, sick leave and staff turnover
- poor morale, erosion of employee loyalty and commitment
- increased costs associated with recruitment and training
- increased workers compensation claims
- increased indirect costs such as management time, engaging mediators or counsellors
- adverse publicity and poor public image
- an unsafe work environment and potential fines for breaches of the OHS legislation
- costs resulting from failure to meet legislative provisions including civil and criminal actions;
- legal costs incurred defending a claim of workplace bullying
- vicarious liability and other associated employer liabilities
- potential increase to insurance and workers compensation premiums.

CONSEQUENCES FOR INDIVIDUALS

Workplace bullying can cause extensive health problems for employees exposed to this hazard, including physical and psychological illnesses and injuries. It can have detrimental effects and costs for the employer, as well as impacting on co-workers, clients, customers, business associates, family and friends.

Bullying can disrupt work to the extent that action has to be taken to restore order and confidence. The implications are even more serious if bullied employees suffer ill-health and stay away from the workplace.

The reaction of individual employees will vary according to the nature of the bullying. It is possible that employees who are bullied may experience some of the following effects:

- stress, anxiety or sleep disturbance
- panic attacks or impaired ability to make decisions
- incapacity to work, concentration problems, loss of self-confidence and self-esteem or reduced output and performance
- depression or a sense of isolation
- physical injury
- reduced quality of home and family life
- suicide.

The costs to the organisation include reduced efficiency, unsafe work environment, increased absenteeism, poor morale, increased workers compensation claims and civil action.

Therefore, it is in an organisation's best interests to maintain a bullying-free workplace rather than having to intervene or mediate during an established pattern of bullying.

WHY BULLYING GOES UNREPORTED

It is in the best interest of employers to take action to minimise the likelihood of bullying in their workplace. Left unmanaged it can severely affect efficiency, productivity and profitability through increased absenteeism, staff turnover and poor morale.

However, it needs to be recognised that sometimes employees may fear retribution from the bully or bullies if they report grievances and cooperate with inquiries.

Bullying can severely undermine an individual's confidence and self-esteem, making it difficult to speak up, especially if bullying is perceived to be part of the workplace culture. They may fear speaking out will compromise their future opportunities and wellbeing at work, particularly when others in the workplace are reluctant to support them.

It is important, therefore, that employers promote a clear message that bullying is unacceptable in the workplace. Employers should also ensure that all the employees are aware that the workplace has established anti-bullying procedures, know the process for the reporting of it and have an understanding that their reports will be dealt with in a proper manner.

Remember, even if a person does not make a complaint about workplace bullying, they may still be offended or adversely affected by the behaviour and therefore the behaviour may still be unacceptable.

Appendix One

IDENTIFICATION CHECKLIST

	YES	NO
Do you have workplace procedures and reporting procedures in place relating to workplace bullying?	<input type="checkbox"/>	<input type="checkbox"/>
Have you established and promoted expectations for appropriate behaviour?	<input type="checkbox"/>	<input type="checkbox"/>
Are your employees made aware of workplace bullying procedures, their specific roles and responsibilities, and appropriate behaviours concerning workplace bullying?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a clear process or procedure for dealing with and resolving conflict and aggression within your workplace?	<input type="checkbox"/>	<input type="checkbox"/>
Are your employees aware of the <i>South Australian Equal Opportunity Act 1984</i> , in particular, that acts of discrimination or harassment are unlawful and will not be condoned in the workplace?	<input type="checkbox"/>	<input type="checkbox"/>
If you have answered 'No' to any of the above checkpoints, you may need to conduct a risk assessment of your workplace and develop the appropriate policies and procedures.		
Have grievances or complaints previously been raised by your employees concerning workplace bullying?	<input type="checkbox"/>	<input type="checkbox"/>
Do absenteeism or sickness rates or patterns suggest that workplace bullying may be an issue in your workplace?	<input type="checkbox"/>	<input type="checkbox"/>
Are there blatant incidents or acts of workplace bullying that are condoned or accepted in your workplace, such as the initiation of new employees, offensive literature, pictures or behaviour, etc, that a reasonable person would consider inappropriate?	<input type="checkbox"/>	<input type="checkbox"/>
Are there unusual levels of staff turnover or requests for transfer that may be attributed to incidents or acts of workplace bullying?	<input type="checkbox"/>	<input type="checkbox"/>
If you have answered 'Yes' to any of the above checkpoints you may need to conduct a risk assessment of your workplace.		

Appendix Two

GUIDANCE FOR DEVELOPING A POLICY AND PROCEDURE

A policy dealing with the prevention of workplace bullying should be produced following consultation with the staff representatives, where possible at all work team levels. It should be in writing, dated, signed and reviewed periodically. It should be available and applicable to all staff and highlighted as part of the induction process, as well as being publicised amongst existing staff on an ongoing basis.

A workplace bullying policy should contain:

- a statement that the workplace is committed to preventing workplace bullying
- a statement of what constitutes expectations for appropriate behaviour
- a statement that malicious, vexatious or frivolous allegations of workplace harassment or bullying, that are unfounded, will constitute a disciplinary offence that could lead to dismissal
- a definition of what constitutes workplace bullying and examples of what is deemed to be unacceptable
- a definition of what does not constitute workplace bullying and examples of what is deemed to be acceptable behaviour
- a statement outlining that workplace bullying will not be tolerated under any circumstances and that it may be treated as a disciplinary offence that could lead to dismissal
- details of people within the workplace who may provide advice, information and support or receive complaints relating to workplace bullying
- a list of people's rights in relation to workplace bullying
- a list of both formal and informal procedures available to employees for resolving incidents of workplace bullying and the potential outcomes of these resolution processes
- an undertaking that the workplace will, insofar as is practicable, conduct a full, immediate and confidential investigation into all allegations of workplace bullying at the earliest practicable opportunity and have a list of people's rights in regard to the investigation

- training requirements and necessary training to be undertaken by all employees in relation to bullying within the workplace
- details of external agencies that can give advice and support regarding workplace bullying
- review date of the policy and procedures.

NOMINATED CONTACT OFFICER

There is no legal requirement to have a contact officer for workplace bullying. However, appropriately trained contact people can be a useful part of a workplace's response to workplace bullying.

A contact officer should be objective, unbiased and able to provide initial advice, support and assistance to the employee(s) directly involved and should not be directly accountable to the investigation.

The contact officer should be provided with appropriate training and clear guidelines on the role.

RELATED POLICIES

In developing a workplace bullying policy, it is important to note that the policy should form part of an overall approach in relation to workplace policies and procedures.

A workplace bullying policy should be implemented in conjunction with the following other policies:

- Code of Conduct Policy, including agreed expectations for appropriate behaviour
- OHS Policy
- Discipline and Termination Policy
- Grievance Policy
- Equal Opportunity Policy
- Sexual Harassment Policy
- Training and Development Policy.

Appendix Three

OVERVIEW OF RELEVANT LEGISLATION AND LEGAL OBLIGATIONS

LEGISLATION	SITUATION
<p>Common Law and/or Employment Acts</p>	<p>Behaviour that is workplace bullying, pursuant to the <i>Occupational Health, Safety and Welfare Act 1986</i>, may also be in breach of an employee's contract of employment at common law and/or an Act of Parliament under which the employee is employed. This may render the employee, responsible for the bullying behaviour, liable to disciplinary action.</p>
<p>Commonwealth Legislation</p> <ul style="list-style-type: none"> - <i>Racial Discrimination Act 1975</i> - <i>Sex Discrimination Act 1984</i> - <i>Disability Discrimination Act 1992</i> - <i>Human Rights and Equal Opportunity Commission Act 1986</i> - <i>Trade Practices Act 1974</i> - <i>Age Discrimination Act 2004</i> - <i>Fair Work Act 2009</i> 	<p>Commonwealth discrimination laws protect people from discrimination in the workplace and in public life. Complaints are assessed in order to determine whether they should be investigated under Commonwealth law or referred to the State law. Private sector employers and employees are now covered by the Commonwealth <i>Fair Work Act 2009</i>. This Act contains provisions dealing with unfair dismissals, unlawful terminations, adverse action, unlawful discrimination and dispute resolution that in certain circumstances may be utilised in bullying and harassment matters. Enquiries about the application of these provisions should be directed as relevant either to Fair Work Australia or the Office of the Fair Work Ombudsman.</p>
<p>Criminal Law</p>	<p>When workplace bullying involves behaviour that is in breach of criminal laws, the incident becomes a police matter and may be dealt with in the criminal jurisdiction.</p>
<p>Duty of Care</p>	<p>An employer has a duty-of-care at common law to reasonably protect employees from behaviours that amount to bullying under the <i>Occupational Health, Safety and Welfare Act 1986</i>.</p>
<p>Fair Work Act 1994 (for State public service employees, including most government business enterprises and local government employees only)</p>	<p>There is no specific provision in the <i>Fair Work Act 1994</i> that deals with workplace bullying. However, where an employee is dismissed or forced to resign as a result of workplace bullying, the employee may be entitled to make a claim under the unfair dismissal provisions of that Act. Where it can be demonstrated that an industrial dispute exists between an employer and an employee, and all the necessary requirements of the Act have been met, a notice of industrial dispute can be lodged with the Industrial Relations Commission of South Australia to seek its assistance to resolve the dispute.</p>

OVERVIEW OF RELEVANT LEGISLATION AND LEGAL OBLIGATIONS

LEGISLATION	SITUATION
<p><i>Industrial Instruments</i></p>	<p>Industrial instruments such as enterprise agreements and awards usually contain grievance procedures that can be used to assist in resolving disputes involving bullying.</p>
<p><i>Occupational Health, Safety and Welfare Act 1986</i></p>	<p>Section 19 of the Act requires that all employers provide a safe working environment and this applies to all areas, including the employee’s mental health and wellbeing.</p> <p>Section 21 (1a) of the Act requires that an employee must take reasonable care to avoid adversely affecting the health or safety of any other person through an act or omission at work.</p> <p>Section 55A of the Amended Act includes a definition of workplace bullying and details the methodology involved for the investigation, mediation and conciliation of involved parties.</p>
<p><i>South Australian Equal Opportunity Act 1984</i></p>	<p>Where bullying in the workplace involves acts of discrimination, a complaint may be lodged with the Commissioner for Equal Opportunity. Discrimination, includes unfair treatment based on a person’s disability, race, sex, age, sexuality, pregnancy and marital status.</p> <p>Equal opportunity laws also protect employees against sexual harassment.</p> <p>It is also unlawful for anyone to victimise a person because they have made, or intend to make, a discrimination complaint.</p>
<p><i>Workers Rehabilitation and Compensation Act 1986</i></p>	<p>An employee may make a claim for compensation regarding any compensable injury if it arises out of, or in the course of, their employment.</p> <p>Though the Act does not mention bullying specifically, psychiatric disabilities caused by bullying at work, are compensable if, and only if, the employment was a substantial cause of the disability.</p> <p>Refer to section 30A of this Act.</p>

Appendix Four

WHERE TO GO FOR FURTHER INFORMATION AND ASSISTANCE

These guidelines and other information on bullying are available at the 'Stop Bullying in SA' website

www.stopbullyingsa.com.au

Contact one of the following organisations for more information, resources and assistance.

BUSINESS SA

Provides employer members with advice, training, mediation, support and specialist consultancy.

Telephone: (08) 8300 0101 (for appointments)

8am to 5.30pm, Monday to Friday

Location: 136 Greenhill Road, Unley.

For more information go to

www.business-sa.com

EQUAL OPPORTUNITY COMMISSION

Provides an independent complaint handling service to help employees address issues of sexual harassment or discrimination (based on disability, race, sex, age, sexuality, pregnancy or marital status). Also takes up discrimination complaints from job seekers, customers, students and tenants.

Telephone: (08) 8207 1977

1800 188 163 (country callers)

9.30am to 4.30pm, Monday to Friday

Location: Level 10, 30 Currie Street, Adelaide.

For more information go to

www.eoc.sa.gov.au

FAIR WORK AUSTRALIA

Fair Work Australia is the national workplace relations tribunal. It is an independent body with power to carry out a range of functions including hearing applications for unfair dismissals, unlawful terminations, enforcement of minimum wages and employment conditions, adverse action, unlawful discrimination and dispute resolution.

Telephone: 1300 799 675

For more information go to

www.fairwork.gov.au

FAIR WORK OMBUDSMAN

Works with employees, employers, contractors and the community to promote harmonious, productive and cooperative workplaces. This includes investigating workplace complaints and enforcing compliance with Australian workplace laws.

Telephone: Fair Work Infoline on 13 13 94

For more information go to

www.fwo.gov.au

INDUSTRIAL RELATIONS COMMISSION

Provides mediation, alternative dispute resolution and support to persons (and their representatives) involved in employment related disputes.

Telephone: (08) 8207 0999

8.30am to 5pm, Monday to Friday

Location: Level 6, Riverside Centre, North Terrace, Adelaide.

For more information go to

www.industrialcourt.sa.gov.au

OFFICE OF THE EMPLOYEE OMBUDSMAN

Provides advice and guidance to employees and employers about workplace matters. Can help with issues including awards, enterprise agreements, workers compensation or occupational health and safety. Can point you in the right direction or provide practical ideas that will assist the resolution of problems at work.

Telephone: (08) 8207 1970

9am to 5pm, Monday to Friday

Location: Level 10, 30 Currie Street, Adelaide.

For more information go to

www.employeeombudsman.sa.gov.au

Appendix Four (continued)

WHERE TO GO FOR FURTHER INFORMATION AND ASSISTANCE

SAFEWORK SA

SafeWork SA, South Australia's OHS agency, is responsible for administering OHS legislation and certain industrial laws, and for managing all OHS functions in our state.

SafeWork SA conducts a range of investigations and compliance activities under OHS legislation, and provides information to all South Australian employees who have been unable to resolve their complaints through their employer's internal grievance process.

Telephone: Help Centre on 1300 365 255
8.30am to 5.30pm, Monday to Friday
(closes at 4.15pm on Wednesdays)

Location: Level 4, 33 Richmond Road, Keswick.

For more information go to
www.safework.sa.gov.au

SA UNIONS

Provides information, training, advocacy, support, mediation and conciliation, investigation and access to alternative dispute resolution to all union members. The SA Unions Young Workers Legal Service provides free legal advice that assists all workers under the age of 30 years.

Telephone: (08) 8279 2222
9am to 5pm, Monday to Friday
Location: 46 Greenhill Road, Wayville.

For more information go to
www.saunions.org.au

TRAINEESHIP AND APPRENTICESHIP SERVICES

Provides information, advice and support to both employers and trainees, apprentices (and their parents and guardians if they are under 18 years of age) who are engaged on training contracts. Registers employers to employ and train apprentices and trainees.

Telephone: 1800 673 097
8.30am to 5.30pm, Monday to Friday
Location: Level 4, 11 Waymouth Street, Adelaide.

For more information go to
www.skills.sa.gov.au/apprenticeships-traineeships

WORKCOVERSA

Provides information and a complaint resolution service for employers and employees and/or representatives on procedures, rights and obligations under the *Workers Rehabilitation and Compensation Act 1986*.

Telephone: 13 18 55
8.30am to 5pm, Monday to Friday
Location: 400 King William Street, Adelaide.

For more information go to
www.workcover.com

WORKING WOMEN'S CENTRE

Provides resources, information, support, training and advocacy for working women who are not members of a union. Also provides resources, some training and consultancy for organisations who wish to implement strategies to address workplace bullying.

Telephone: 1800 652 697
9am to 5pm, Monday, Wednesday, Thursday and Friday
Location: Level 1, Station Arcade,
52 Hindley Street, Adelaide.

For more information go to
www.wwc.org.au

