



New South Wales Bar Association

Model Bullying Best Practice Guideline

This model bullying best practice guideline was approved by Bar Council on 19 June 2014 for adoption by individual chambers/floors of the private Bar and to be applicable in the additional circumstances described below. This best practice guideline:

- (a) Provides a structure to assist in resolving issues of workplace bullying and to assist in minimising any associated liability;
- (b) Aids the promotion of compliance with Rule 123 of the Legal Profession Uniform Conduct (Barristers' Rules) (the **Barristers' Conduct Rules**); and
- (c) Operates in conjunction with and furtherance of the New South Wales Bar Association Diversity and Equity Policy adopted by Bar Council in 2013.

The New South Wales Bar Association (the **Bar Association**) will, in accordance with this best practice guideline, organise CPD seminars relating to employment law, including issues of workplace bullying.

The Bar Association encourages each set of chambers/floors to seek independent legal advice with respect to the application of the model best practice guideline to its chambers, members and staff. Nothing in this model best practice guideline should be taken as legal advice with respect to the obligations imposed on chambers, members and staff under Commonwealth or New South Wales law.

DEFINITIONS

The term *workplace bullying* and other terms used in this best practice guideline are defined at Schedule A. Hereinafter, the term *Floor* is used to describe chambers and/or floors of the private Bar. The term *Participating Floor* is used to describe a Floor that has adopted this best practice guideline.

APPLICATION OF THIS BEST PRACTICE GUIDELINE

This best practice guideline is applicable to:

1. Participating Floors in respect of:
 - a. The members and/or licensees of the Floor (paying and non-paying), including all readers; and

- b. All workers engaged by and/or working on the Floor in any capacity (including employees, contractors, casuals, volunteers, students and/or trainees, whether engaged by the Floor or directly by barristers on the Floor), solicitors, clients, other visitors and/or other barristers working with members of the Floor.

STRUCTURE OF THIS BEST PRACTICE GUIDELINE

2. Structure of this best practice guideline:
 - a. Part A below applies to Participating Floors, floor members/licenseses and the workers/employees of those floors.

THE LAW

3. Rule 123(c) of the Barristers' Conduct Rules provides that a barrister must not in the course of practice engage in conduct which constitutes workplace bullying.
4. Workplace bullying can in addition constitute a breach of other Barristers' Conduct Rules.
5. Orders are also available under Part 6-4B of the *Fair Work Act 2009* (Cth) (the **FW Act**) to stop workplace bullying where the complainant worker is at work at a 'constitutionally covered-business' (as **defined in Schedule A**).
6. The definition of workplace bullying relevant for this Model Bullying Best Practice Guideline is that contained in Rule 123(c) of the Barristers' Conduct Rules.
7. Workplace bullying can also constitute a breach of anti-discrimination, workplace safety and/or other laws where it amounts to discrimination, a workplace safety risk, a breach of an employment contract and/or breach of duty.
8. Discrimination and/or sexual harassment, including where it constitutes a breach of the Barristers' Conduct Rules, can constitute professional misconduct and/or unsatisfactory professional conduct within the meaning of Division 1, Part 5.4 of the *Legal Profession Uniform Law* (NSW) (the **Legal Profession Uniform Law**).

LIABILITY

9. A Floor, employer, principal or legal practitioner :
 - a. Who fails to take all reasonable steps to prevent employees, agents or fellow workplace participants from engaging in unlawful discrimination, harassment, vilification and/or victimisation, where that conduct also constitutes bullying, may be vicariously liable for such acts or treated as permitting those acts to have occurred.
 - b. May be liable under the common law, work health and safety legislation and/or other laws in certain circumstances for conduct of employees or agents engaging in workplace bullying.
10. Any legal practitioner may be:

- a. Personally liable under the FW Act and/or other laws for conduct constituting workplace bullying; and/or
- b. Found to have engaged in professional misconduct and/or unsatisfactory professional conduct within the meaning of Division 1, Part 5.4 of the *Legal Profession Uniform Law* by reason of having engaged in conduct constituting workplace bullying.

PART A: BEST PRACTICE GUIDELINE FOR PARTICIPATING FLOORS

11. The members and licensees of this Floor are committed to ensuring that each other and any worker engaged by and/or working on the Floor in any capacity (including employees, contractors, casuals, volunteers, students and/or trainees, whether engaged by the Floor or directly by barristers on the Floor), solicitors, clients, other visitors and/or other barristers working with members of this Floor are free from workplace bullying whilst on the Floor.
12. Workplace bullying engaged in:
 - a. By any member and/or licensee of this Floor, or
 - b. By any worker engaged by this Floor or engaged by any barrister on this Floor,toward:
 - c. Any member and/or licensee of this Floor,
 - d. Any worker engaged by this Floor or engaged by any barrister on this Floor, or
 - e. Any person visiting the Floor including solicitors, workers engaged by those solicitors and/or clients,constitutes a contravention of this best practice guideline and will not be tolerated.
13. Members and licensees of this Floor, and workers engaged by and on this Floor, have a responsibility to help maintain a work environment that is free from all forms of workplace bullying.

PURPOSE OF THIS BEST PRACTICE GUIDELINE

14. The purpose of this best practice guideline is to:
 - a. Assist with the elimination and/or prevention of all forms of workplace bullying on this Floor;
 - b. Record that this Floor has adopted this best practice guideline, including for the purposes of assisting to minimise the risk of liability associated with any contravention of the relevant laws;
 - c. Implement a procedure whereby any complaint relating to conduct in contravention or alleged contravention of this best practice guideline and/or the relevant laws can be dealt with in accordance with the Model Grievance Handling Best Practice Guideline; and

- d. Enable any Participating Floor, where necessary, to seek relevant referrals from the Bar Association Equal Opportunity Committee (**EO Committee**) in respect of the implementation and/or management of this best practice guideline.

GRIEVANCE/COMPLAINTS PROCEDURE

15. Any enquiry, concern or complaint made in respect of this best practice guideline should be made in accordance with the Bar Association Model Grievance Handling Best Practice Guideline.

CONTRAVENTION OF THIS BEST PRACTICE GUIDELINE

16. Conduct found to have occurred in contravention of this best practice guideline may result in:
 - a. disciplinary action by any employing entity up to and including termination of employment; and/or
 - b. a complaint being made to the Commissioner for Uniform Legal Services Regulation under Part 5.2 of the Legal Profession Uniform Law and/or other relevant body where appropriate.

ADDITIONAL MATTERS

17. Participating Floors will:
 - a. Publish this best practice guideline in a place accessible to relevant persons;
 - b. Inform new floor members, licensees and/or workers of this best practice guideline upon that person joining the floor;
 - c. Provide appropriate training in and information about the operation and effect of this best practice guideline;
 - d. Regularly remind floor members, licensees and/or workers of their obligations under this best practice guideline;
 - e. Review the content and operation of this best practice guideline from time to time as necessary.

DATED: 19 JUNE 2014 (updated March 2016)

SCHEDULE A: Definitions

Barrister means ‘barrister’ as defined in section 46 of the *Legal Profession Uniform Law*.

Workplace bullying means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate or cause serious offence to a person working in a workplace as defined in the Barristers’ Conduct Rules.

Worker includes an employee, contractor or subcontractor, an employee of a contractor or subcontractor, an employee of a labour hire company, an apprentice or trainee, a student gaining work experience or a volunteer as defined in s 7(1) of the *Work Health and Safety Act 2011* (Cth) adopted by s 789FC of the *Fair Work Act*.

Some examples of workplace bullying (as described by the Fair Work Commission in its Guide to the operation of the anti-bullying provisions in the *Fair Work Act*); workplace bullying can include but is not limited to the following types of behaviour:

- Aggressive or intimidating conduct, such as swearing, shouting, intimidation or threatening violence.
- Threats to make, or actively making, someone’s work or home life difficult e.g. repeatedly calling the person at home late at night or on weekends.
- Threats of, or actual assault against someone, or damaging or threatening to damage someone’s property.
- Belittling or humiliating comments, including through digital media.
- Spreading malicious rumours.
- Teasing, practical jokes or 'initiation ceremonies'.
- Exclusion, including 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.

Meaning of *constitutionally-covered business* for the purposes of subsection 789FD(3) of the FW Act:

A business or undertaking is a ‘constitutionally-covered business’ if a person conducts a business or undertaking (within the meaning of the *Work Health and Safety Act 2011*) and either:

- (a) the person is a constitutional corporation; or the Commonwealth; or a Commonwealth authority; or a body corporate incorporated in a Territory; or
- (b) the business or undertaking is conducted principally in a Territory or Commonwealth place.