

Bullying and Occupational Violence

A person conducting a business or enterprise, in this case being clubs with at least one paid employee, have a legal obligation to ensure the provision of a safe and healthy environment that is without risks to the wellbeing of employees and volunteers by controlling workplace bullying and occupational violence.

Clubs must develop and implement a workplace culture where bullying and violence is not tolerated and that counselling and disciplinary procedures are in place to deal with instances of bullying and occupational violence that may occur.

Line management, supervisors and committees must identify and take appropriate action in any cases of bullying and occupational violence that may occur in areas under their control and ensure that all parties involved receive appropriate counselling.

Volunteer run organisations without any paid employees should also ensure that their organisations are free from bullying and occupational violence and that a safe environment is provided to all.

1. TYPES OF OCCUPATIONAL VIOLENCE

Occupational violence can be separated into three categories to allow the development and implementation of preventative measures and remedial strategies:

- “external” violence which is perpetrated by persons from outside the business, such as armed hold-ups.
- “client initiated” violence which is inflicted on the employees by their patrons or customers.
- “internal” violence occurs between co-employees in an organisation, such as bullying between a supervisor and an employee, between individual employees or a group of employees, or “initiation rites” inflicted on an apprentice or a new employee by other employees.

While all types of occupational violence can occur in the one workplace at any given time, wide disparities may be evident. The perpetrators of the different forms may have different characteristics, the severity of the impact on the recipients may differ, the responsible jurisdiction may vary (eg. criminal justice system, contravention of the SA WH&S Act 2012, etc.) and the most effective prevention strategies may vary markedly.

Various opinions exist about what does or does not constitute bullying, but it is agreed that the term refers to a series of repeated negative behaviours inflicted on the targeted recipient with the severity escalating over time. These negative behaviours may range from belittling, public humiliation, aggressive emails and texts, denial of basic rights at work, extreme work overload, unfair and erroneous performance appraisals, abusive language and even physical attacks.

For the purpose of this fact sheet, internal violence and workplace bullying will be the focus.

2. WORKPLACE BULLYING

“**Workplace bullying**” is defined as repeated, unreasonable and unwelcome behaviour directed towards a worker or group of workers that creates a risk to their health and safety.

A wide range of negative outcomes can arise from bullying, including anxiety, depression, insomnia, stress, and in a number of severe cases, self-harm up to and including suicide.

Differences of opinion, conflicts, personality clashes and problems in working relationships are part of working life. A conflict cannot be called bullying if the incident is an isolated event or if two parties of approximately equal ‘strength’ are in conflict. However, if the behaviour is repeated or increases in intensity and becomes offensive, humiliating or threatening to the person, then workplace bullying exists, and as a work health and safety risk, must be stopped.

Opinions differ as to what constitutes “bullying”, however, all authoritative sources refer to a series of **repeated negative behaviours** inflicted on the targeted recipient with the severity **escalating over time**.

Workplace bullying has been described as:

“Harassing, offending, socially excluding someone or negatively affecting someone’s work tasks. In order for the label ‘bullying’ to be applied to a particular activity, interaction or process, it has to occur repeatedly and regularly over a period of time. Bullying is an escalating process in the course of which the person confronted ends up in an inferior position and becomes the target of negative social acts. A conflict cannot be called bullying if the incident is an isolated event or if two parties of approximately equal ‘strength’ are in conflict”.

Workplace bullying can be seen as psychological and physical violence and can include:

Persistent and repeated aggressive behaviour that makes a person feel victimised, intimidated or humiliated, constant ridicule and being put down usually when others are present.
Any physical abuse or assault including groping, inappropriate touching and sexual assault.
Threats to the victim (with or without a weapon), threats to harm family or friends of the victim.
Repeated threats of dismissal or other severe punishment for no reason.
Vindictive, offensive, cruel or malicious behaviour.
Sabotaging a person’s work, deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages or getting a person into trouble in other ways.
Malicious exclusion and isolation of a person from workplace activities.
Constantly being singled out or targeted for practical jokes or gossip.
Persistent unjustified criticism, often about irrelevant or insignificant matters.
Initiation practices (some of these have resulted in serious injury to the victim with heavy fines imposed on the employers and directors and the perpetrators of the assault).

There have been a series of common law judgements where both a business and worker perpetrators have had adverse decisions made against them. **Businesses have also been held vicariously liable when they have failed to take steps to prevent violence**, particularly when they were aware that the potential for an incident existed but they did not intervene.

3. PERSONS AT RISK

Persons particularly vulnerable to workplace bullying:

Anyone whom may be perceived to be different - employees whose first language is other than English, or from a racial or religious minority.
Female employees who work in a predominantly male workforce (or vice versa).
Employees with actual or perceived disabilities.
Young or new employees, and older employees whose skills and experience are not appropriately valued.
Employees in insecure employment who fear they might lose their job if they complain.
People working in the education, community services, healthcare and service industries such as Hospitality are particularly at risk from violent clients, patients, customers and visitors.

The higher-risk environments for workplace bullying should be noted and processes to reduce the incidence of bullying introduced:

Environments where organisational restructuring is in progress.
High levels of external market pressure.
A quasi-military hierarchy.
An over-riding focus on productivity.
Environments where aggressive interpersonal interactions are tolerated.
Reward systems focused on results rather than processes.
Where sanctioning of recipients (rather than perpetrators) is the norm.

Individual employees at risk include atypical new employees in environments with long term groups such as:

A sole employee in a workplace of the opposite gender.
A young worker in an older work group.
A person of different sexual orientation, etc.

4. EFFECTS OF BULLYING

(a) On the victim

Victims of bullying may –

- Feel shame, weakness, loss of self-esteem, nervous, afraid, insecure and reluctant to go to work;
- be unable to concentrate or to do their work properly;
- experience physical or emotional harm and stress related illness; and
- have their life outside of work affected as well, e.g., turning to use of alcohol or drugs.

A victim may not report bullying because they may think that –

- Reporting the bullying may not stop it;

- the bully will retaliate if the bullying is reported;
- reporting the bullying would make them “look weak” or a “whinger”;
- reporting the bullying will harm their future career prospects; or
- bullying is a normal part of workplace relationships that they have to put up with.

(b) Co-workers who witness what is happening may –

- Realise what is happening is wrong, but feel guilty because they believe they can’t do anything;
- be afraid to support or help the victim out of fear that they may be bullied as well; and
- feel angry or dissatisfied about the workplace culture and management who allow it to occur.

(c) On the bully

A bully may not realise the effect they are having on others. They may not consider themselves to be a bully, and may deny it if challenged. A bully may –

- Believe that bullying is the only way to manage employees;
- have personal issues contributing to their behaviour;
- lack the leadership skills required to be able to lead people without using bullying; or
- be responding to similar behaviour e.g. imitating the inappropriate behaviour of another person without realising its effect.

A workplace bully risks –

- Rejection by other employees and possible retaliation from their victims; and
- disciplinary action, dismissal and legal action.

(d) On the workplace

Bullying can affect health and safety in the workplace –

- Increased accidents and injuries, with higher direct and indirect workers’ compensation costs; and
- increase lateness, absenteeism, lost time and staff turnover.

Other adverse effects in the workplace include –

- Impaired job performance, disciplinary or behavioural problems;
- poor teamwork, lack of cooperation, dysfunctional workplace relationships;
- an unhealthy workplace environment or culture, with loss of respect for management that appears to condone bullying by allowing it to continue;
- lowered morale leading to disrupted or reduced productivity, with resultant financial losses; and
- lost business from a poor public image.

5. EXCLUSIONS

(a) Single incidents

A single incident of harassing type behaviour is not considered to be bullying, however, single incidents should not be ignored or allowed. Well managed interventions in response to single incidents will assist in preventing a potential situation from escalating.

(b) Managerial actions

Reasonable managerial actions taken in a reasonable manner also does not constitute bullying and includes legitimate –

- Performance management processes.
- Action taken to transfer or retrench an employee.
- A decision not to provide a promotion in connection with the employee's employment.
- Disciplinary action.
- Allocation of work in compliance with systems and policies.
- Illness and injury procedures.
- Business processes such as workplace change or restructure.

The following management action may however constitute bullying –

- Managerial actions that are primarily used to offend, humiliate, intimidate or threaten employees; and
- processes that create an environment where workplace bullying and harassment is more likely to occur.

6. PREVENTING BULLYING & DEALING WITH COMPLAINTS

Management and committees can seek to prevent bullying from occurring via such means as:

- Implementing a clear bullying policy setting out what bullying is, expectations and consequences if someone breaches this policy;
- setting appropriate standards via their own actions;
- dealing with any unreasonable behaviour in a timely and appropriate manner;
- taking any reporting of bullying seriously and properly investigating it;
- consulting with workers on behaviours and workplace environments;
- providing training and information to members of the committee, management and workers on bullying; and
- monitoring and reviewing any instances of bullying to see what could be improved on.

Looking further at what should be done when a bullying complaint is received, this should be dealt with as soon as possible by management or the committee. **If a bullying policy is in place then any procedures set out in it need to be followed.**

Generally speaking, though the parties involved should firstly be spoken to separately in a private and confidential manner by a suitable independent party, information about the alleged bullying behaviour should

be gathered. The complainant can also be asked about how they would like the matter resolved, however, if the matter is sufficiently serious then they should be informed that you are obliged to properly investigate the issue and to act accordingly.

An assessment should then be made as to whether, on the facts presented, this could be seen to meet the definition of bullying eg. is it repeated unreasonable behaviour.

If the behaviour can reasonably be said to not be bullying then the parties should be notified of this, although efforts should still be made to resolve the matter internally.

If the behaviour may be bullying then the matter will need to be properly investigated, including speaking to any witnesses that may have been present to this behaviour. Investigators can be both internal or external but whichever is chosen it is important that the person doing so carries this out in an unbiased manner and has sufficient knowledge of what bullying entails.

All investigations should be done confidentially and only involve those who are reasonably involved in the matter. Parties to an investigation need to be told who will be conducting the investigation, the need for confidentiality, expected timeframes, who can be present with them during meetings eg. support people etc.

Responses, information and records of meetings should be recorded for evidence and so a report can be created at the end outlining the investigation's findings.

Once a matter has been investigated, the parties will need to be informed of the outcome. The parties should be invited into separate meetings with suitable notice and allowed a support person. Should the claims be substantiated then appropriate disciplinary action will need to be taken against the perpetrator. Those with a policy need to check if it specifies the types of disciplinary action that could be taken but generally it could include:

- A formal apology being made to the person who was bullied by the bully;
- a formal warning being issued;
- the provision of counselling to the person found to have bullied to deal with any ongoing issues such as anger management, substance abuse or inappropriate management style; and
- in serious cases, termination of employment or of the volunteer relationship.

If the person who brought the complaint is not satisfied with the response then they may seek to escalate the complaint to someone higher up internally or to an external body (discussed further in the next section).

7. LEGISLATION & EXTERNAL OPTIONS FOR A PERSON BEING BULLIED

Bullying can be a breach of both the *Fair Work Act 2009* (Cth) (FW Act) & the *Work Health & Safety Act 2012* (SA) (WHS Act).

The WHS Act imposes a duty on organisations that are deemed to be a "person conducting a business or undertaking" (PCBU) to provide a safe work environment for all their workers which includes employees, volunteers and contractors.

In regards to whether a Club will be deemed a PCBU, generally speaking they are unless deemed to be a “volunteer association”. A volunteer association means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association. Essentially if a Club employs at least one person then they will be a PCBU for the purposes of the WHS Act.

Failure by a PCBU to stop a worker from being bullied could therefore contravene the WHS Act as the PCBU has not provided them with an appropriately safe working environment.

Where an employee or volunteer who works at a PCBU believes they have been bullied and this has not been resolved internally, they can contact SafeWork SA to make a complaint.

If a complaint is made to SafeWork SA, they will firstly need to confirm if the complaint has merit under the legal definitions and whether the PCBU has taken appropriate measures or actions to reasonably eliminate or reduce the issue. If it is determined that they have not, then statutory notices for breaches of work health and safety laws can be issued.

The FW Act also prohibits workers from being bullied at work and allows certain workers to apply for a stop bullying order. Where internal avenues to resolve a bullying issue have failed and a worker is still at the workplace where bullying is occurring, they can look to apply to the Fair Work Commission (FWC) for an order.

A person can apply if they are a worker (**which includes employees, volunteers and contractors**) at a constitutionally covered business.

For the purposes of Clubs, to be a constitutionally covered business, the Club would firstly have to be a PCBU, meaning that volunteers at purely volunteer run associations aren't eligible. The Club will then have to be a trading or financial corporation formed within the limits of the Commonwealth, which means that they are providing goods or services for payment. If this constitutes a “sufficiently significant” portion of a Clubs activities then it will be held as a constitutionally covered business. It is important to note that it is the activities, not the purpose for which a Club was formed that is looked at.

Where an application is made to the FWC and they find that bullying has occurred, the FWC makes orders that it considers appropriate to prevent the continuation of the bullying behavior, such as an order for the bully to cease their behaviour. The FWC can't however order financial compensation.

Safety obligations also exist under the Common Law of negligence and if a club is found to have owed a duty of care to someone such as a volunteer. If they breach this duty and it causes damages then they can be found liable. This could apply to Clubs that have employees and also those purely run by volunteers..

Where the bullying is as a result of a discriminatory reason or it involves harassment then a worker can also look to go to the Australian Human Rights Commission or the Equal Opportunity Commission of South Australia.