



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 117 of the New South Wales Barristers' Rules introduced on 6 January 2014; 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 and with clause 176 of the Legal Profession Regulation 2005, 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.
2. The Bar Association in respect of all services it provides, including events, functions and/or seminars it convenes in relation to any matter on any premises, including in respect of all social functions, all continuing professional development seminars, the Bar Practice Course and associated seminars and the bar examinations;
3. Bar Association event attendees, committee members and examination candidates as follows:
 - a. all barristers attending any event, function and/or seminar convened by the Bar Association, including barristers attending any social function, any continuing professional development seminars, the Bar Practice Course and associated seminars (**Bar Association event attendees**);
 - b. all barrister members of Bar Association committees and sections while attending any such committee or section meetings, events, functions and/or seminars convened by such committees and sections and/or while undertaking any committee or section duties or functions (**Bar Association committee members**); and
 - c. all examination candidates while sitting the bar examinations conducted by the Bar Association (**Bar Association examination candidates**).

Structure of this Best Practice Guideline

4. Structure of this best practice guideline:
 - a. Part A below applies to Participating Floors, floor members/licensees and the workers/employees of those floors.
 - b. Part B below applies to the Bar Association event attendees, Bar Association committee members, Bar Association examination candidates and the services provided by the Bar Association described above at paragraph 2.

The Law

5. Rule 117(c) of the New South Wales Barristers' Rules provides that a barrister must not in the course of practice engage in conduct which constitutes workplace bullying.
6. Workplace bullying can in addition constitute a breach of other New South Wales Barristers' Rules.
7. 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**).
8. The definition of workplace bullying relevant for this Model Bullying Best Practice Guideline is that contained in Rule 117(c) of the New South Wales Barristers' Rules.
9. Workplace bullying can also constitute a breach of anti-discrimination, workplace safety and other laws where it amounts to discrimination, a workplace safety risk, a breach of an employment contract and/or breach of duty.
10. Discrimination and/or sexual harassment, including where it constitutes a breach of the New South Wales Barristers' Rules and/or Regulation 175 of the Legal Profession Regulation 2005 (NSW), can constitute professional misconduct and/or unsatisfactory professional conduct within the meaning of sections 496 and 497 of the *Legal Profession Act 2004* (NSW).

Liability

11. 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.
12. 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 sections 496 and 497 of the *Legal Profession Act 2004* (NSW) by reason of having engaged in conduct constituting workplace bullying.

PART A: Best Practice Guideline for Participating Floors

13. 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.

14. 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,
- f. constitutes a contravention of this best practice guideline and will not be tolerated.

15. 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

16. 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

- 17. 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

- 18. 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 Legal Services Commissioner and/or other relevant body where appropriate.

PART B: Best Practice Guideline Applicable to the New South Wales Bar Association

- 19. The New South Wales Bar Association is committed to ensuring that:
 - a. its employees and any other workers engaged by it in any capacity (including contractors, casuals, volunteers, students and/or trainees);
 - b. barristers (including readers) attending the Bar Association premises and any premises on which Bar Association events, functions and/or seminars are convened, including all social functions, continuing professional development seminars, the Bar Practice Course and associated seminars, including for the purposes of assisting with the conduct of any such events, functions and/or seminars;
 - c. barristers (including readers) who are members of any Bar Association committees and sections; and

- d. any other visitors to the Bar Association premises and any premises on which Bar Association events, functions and/or seminars are convened, including all social functions, continuing professional development seminars, the Bar Practice Course and associated seminars,

are free from workplace bullying, including in connection with:

- e. all services provided by the Bar Association, including events, functions and/or seminars it convenes in relation to any matter on any premises, including all social functions and in respect of all continuing professional development seminars, the Bar Practice Course and associated seminars and the bar examinations; and
- f. The interactions of the members of all Bar Association committees and sections while attending such committee or section meetings and/or performing the duties or functions of such committees and sections, and while attending any events, functions and/or seminars convened by such committees and sections.

20. Workplace bullying engaged in by any barristers (including readers) attending the Bar Association premises and any premises on which Bar Association events, functions and/or seminars are convened, including all social functions, continuing professional development seminars, the Bar Practice Course and associated seminars, including for the purposes of assisting with the conduct of any such events, functions and/or seminars, **toward any person** constitutes a contravention of this best practice guideline and will not be tolerated.

Purpose of this Best Practice Guideline

21. The purpose of this best practice guideline is to:

- a. assist with the elimination and/or prevention of all forms of workplace bullying within the Bar Association and at all Bar Association events, functions and/or seminars;
- b. record that the Bar Association has adopted this policy, 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 procedure below; and

- d. enable the Bar Association to, where necessary, seek relevant referrals from the EO Committee in respect of the implementation and/or management of this best practice guideline.

Grievance/Complaints Procedure

- 22. Any enquiry, concern or complaint made in respect of this best practice guideline should be made in accordance with the Model Grievance Handling Procedure.

Contravention of this Best Practice Guideline

- 23. Conduct found to have occurred in contravention of this best practice guideline may result in disciplinary action including up to termination of employment or engagement in respect of any worker engaged by the Bar Association.

Additional Matters

- 24. 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

SCHEDULE A: Definitions

Barrister means ‘barrister’ as defined in section 4 of the *Legal Profession Act 2004* (NSW).

Workplace bullying means behaviour that could reasonably be expected to offend, intimidate, degrade, humiliate, isolate or alienate a person working in a workplace as defined in the NSW Barristers’ Rules dated 6 January 2014.

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.