

Am I being treated fairly at work?

What are my employment rights?

Where do I go for help?

WORKPLACE BULLYING

Your Rights

DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

Who can use this infosheet?

This infosheet is designed for **Victorian** and national system employees in **Tasmania** and **Queensland** only.

If you are a **Victorian** employee, you can use this infosheet unless you were employed in a sector that provides essential services of core government functions, including state infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this infosheet unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this infosheet unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

What is bullying?

Workplace bullying has been characterised by WorkSafe as *'persistent and repeated negative behaviour directed at an employee that creates a risk to health and safety'*.

Under the *Fair Work Act 2009* (Cth) (FW Act) workplace bullying occurs when *'an individual or group of individuals repeatedly behaves unreasonably towards a worker or group of workers and the behaviour creates a risk to health and safety'*.

However, reasonable management action conducted in a reasonable manner does not constitute workplace bullying.

Some examples of bullying

Examples of workplace bullying may include the following behaviours:

- Insulting, abusive or offensive language
- Offensive or harmful initiation practices

© Job Watch Inc - July 2020

Employment Rights Information for Workers – Job Watch Inc is an independent, not for profit, employment rights community legal centre. It provides a free, confidential telephone information and referral service and other assistance to workers. Hours: Mon-Fri 9am-5pm (Wednesdays until 8:30pm).

- Inappropriate comments about a person’s appearance or lifestyle
- Physical assaults or threats
- Spreading malicious rumours
- Behaviour or language that frightens, humiliates, or degrades
- Overloading a person with too much or too little work
- Setting tasks above or below a person’s skill level
- Isolating or ignoring a person
- Unfair treatment in relation to accessing workplace entitlements
- Setting unachievable or constantly changing deadlines
- Inappropriate letters, emails, phone calls, text messages or social media

Some examples of what may NOT be bullying

Not all actions amount to bullying. When carried out in a fair way some actions are seen as reasonable management actions and can include:

- Allocating work to a worker
- Setting performance goals, standards and deadlines
- Transferring a worker
- Allocation and rostering working hours
- Informing a worker about unsatisfactory work performance
- Informing a worker about inappropriate behaviour
- Deciding not to select a worker for promotion
- Constructive feedback
- Performance management processes
- Implementing organisational changes
- Downsizing

Bullying is not the same as conflict:

Disagreement and conflict happen at most workplaces. However, if a person’s behaviour is repeated, persistent, negative and unreasonable, carrying with it a risk to another person’s health and safety, it may be a case of workplace bullying. However, bullying doesn’t include one off instances of rudeness or insensitivity to the individual.

What can you do about bullying?

Bullying should not be ignored if it is occurring in your workplace. Workplace bullying creates an unsafe working environment and it is unlawful.

Practical options:

There are a number of practical options available to employees who believe they are being bullied:

Direct approach

Tell the person (the bully) that their behaviour is unreasonable and inappropriate, that you are offended and want it to stop. This option is possible only if you feel safe and comfortable to do so and you are confident your employer will not dismiss you or take other adverse action against you (see “Legal options” below).

Seek advice

Most workplaces have a health and safety representative who you can go to and seek advice. You can also seek professional counselling and/or advice outside of your workplace, for example, from your doctor.

Keep a diary

Keep a record of the episodes of bullying in a diary. Include details such as:

- Names of people involved
- Any witnesses
- What happened, on what date and at what time
- How you felt
- What you have done to try and stop it
- Any documentation if it exists

Report/Dispute settlement

Be familiar with and utilise workplace or occupational health and safety (OHS) procedure to inform your workplace of the situation. Your complaint may be informal or formal, but should be acted upon. Alternatively, if your workplace is covered by an enterprise agreement you may activate the dispute resolution procedure in relation to bullying which is an OHS issue. If your workplace is not covered by an enterprise agreement, your employer may still have a grievance procedure policy which may be applicable. Nevertheless, before complaining, consider that it is always possible that your employer may dismiss you or take other adverse action against you for complaining (see legal options below).

Talk

Discuss the situation with someone you trust at your workplace – such as your supervisor, manager, a co-worker, union or other representative or someone in Human Resources.

Legal options:

1: Application to the Fair Work Commission for an order to stop bullying

Workplace bullying may be covered by a number of areas of law. As of 1 January 2014, a national law came into effect which specifically targets workplace bullying, giving individuals (including employees, independent contractors and volunteers) the right to make an application to the Fair Work Commission for an ‘Order to Stop Bullying’.

To be eligible to make an application for this order, you must still be working at the business where you are being bullied. The business where you are working must also be a constitutionally covered business. In Victoria, Tasmania and Queensland this includes:

- Constitutional corporations (for example a Pty Ltd company whose business is in trade or finance);
- The Australian Government and its agencies; and
- Incorporated volunteer associations that have at least 1 employee.

A worker who works for a sole trader, partnership, a state government department or local council that is not a trading or financial corporation is not eligible to apply for a stop bullying order. However, the worker may still be able to make a complaint to WorkSafe in their State and/or take other legal action (see below).

There are no time limits for filing a stop bullying application at the Fair Work Commission.

If the Fair Work Commission is satisfied on the evidence that a worker is eligible to make a stop bullying application, is being bullied and that the bullying is likely to continue, it can make any orders it considers appropriate to prevent the bullying from continuing. If the Fair Work Commission's order is breached, the worker has 6 years from the date of the breach to apply to the Federal Court or the Federal Circuit Court for a remedy. The Courts can make any orders they deem fit including an order for financial compensation.

Application Form

The application form for a stop bullying order is called an 'Order to Stop Bullying' (Form F72). The application form is available from the Fair Work Commission. The Fair Work Commission also has other helpful information regarding stop bullying orders on its website including an anti-bullying benchbook and application process flowchart.

Fair Work Commission Level 4, 11 Exhibition Street Melbourne 3000 (GPO Box 1994)	Tel: 1300 799 675 Fax: (03) 9655 0401 Website: www.fwc.gov.au
--	---

Fees

A small filing fee is required to be paid with your claim. If payment of the fee will cause you financial hardship you can apply to have the fee waived, this must be done at the same time as you lodge your application. The fee waiver application form is also on the Fair Work Commission's website.

Before you apply for an 'Order to Stop Bullying', consider whether you have any other legal or practical options available to you (e.g. internal grievance procedure or WorkSafe complaint (see below)) because the Fair Work Commission may prefer you to have at least tried other options before filing your application.

2: Police complaint (No requirement to be a national system employee)

In Victoria, recent amendments to the Crimes Act 1958 (Vic) broadened the offence of stalking to include serious workplace bullying behaviour.

Although not an exhaustive list, a person stalks another if they engage in a course of conduct that includes:

- Interfering with property in the victim's possession
- Using abusive or offensive words to or in the presence of the victim
- Performing abusive or offensive acts in the presence of the victim
- Directing abusive or offensive acts in the presence of the victim
- Acting in any way which could cause physical or mental harm to the victim
- Arousing apprehension or fear in the victim

Bullying in the form of physical or sexual assault, or threats to a person or their property may also be a matter for the police.

What to do: If this is happening to you at work, make a complaint at your local police station. There is no time limit to make a complaint however the earlier it is made the sooner it may help stop the behaviour and also preserve evidence for prosecution.

The maximum penalty is 10 years imprisonment if the behaviour was intended to cause harm or fear. Although there is no compensation remedy available to the victim, intervention orders can be applied for in the Magistrates' Court of Victoria to stop the behaviour from persisting. To grant an intervention order, the court must be satisfied on the balance of probabilities that the intervention order is necessary to ensure the safety of the person affected by the bullying. Compensation may be available via the Victims of Crime Assistance Tribunal (VOCAT).

In Tasmania, if a bully has threatened you, or physically or sexually assaulted you, you can report this to **police**. You can contact the police directly - <http://www.police.tas.gov.au/find-station/>. If the bully has committed a **crime**, you may also be entitled to Victims Compensation. For more information about this see - Tasmania Department of Justice Victims Support Services Website: http://www.justice.tas.gov.au/victims/financialassistance/awards_and_payments.

You should also consider applying to the Magistrates Court of Tasmania for a restraint order which is a court order that orders the bully to stop behaving in a certain way or doing the things that make you feel threatened. See: http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/restraint_orders

In Queensland, if you have experienced violence, assault, or stalking you should [report abuse directly to police](#). If you are a victim of **crime**, you may be able to get some compensation (called financial assistance) from the government - call Victims Linkup on 1300 546 587, or visit their website: <https://www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/financial-assistance/applying-for-financial-assistance/>. You should also consider applying for a peace and good behaviour order or a restraining order in the Magistrates Court of Queensland - see <http://www.courts.qld.gov.au/courts/magistrates-court>.

3: WorkSafe complaint (No requirement to be a national system employee)

In Victoria, WorkSafe Victoria enforces occupational health and safety law and can investigate bullying complaints. A person can make a complaint to WorkSafe under the Occupational Health and Safety Act 2004 (Vic). A person who is being bullied in their workplace may make a complaint to WorkSafe Victoria if their employer has failed to, 'so far as is reasonably practicable, provide and maintain for employees... a working environment that is safe and without risks to health.' A risk to health includes a risk to psychological health and therefore extends to psychological injuries caused by bullying.

What to do: Call WorkSafe Victoria and speak to its Advisory Service which is able to refer the matter to an inspector. An inspector has the power to visit the workplace and issue improvement notices and prohibition notices.

An employee's loss and suffering is not compensable and a victim of bullying is not able to commence proceedings themselves, only the inspector or Authority is able to initiate legal proceedings. Despite this, WorkSafe may be able to change the workplace behaviour to stop workplace bullying from continuing.

In Queensland, under the *Work Health and Safety Act 2011* WorkSafe Queensland can deal with bullying (workplace harassment) where a person is at risk of injury or illness from bullying behaviour that:

- is repeated, unwelcome and unsolicited
- the person considers to be offensive, intimidating, humiliating or threatening
- a reasonable person would consider to be offensive, humiliating, intimidating or threatening
- is not unlawful discrimination sexual harassment or vilification.

However, if you want to make a complaint to Workplace Health and Safety Queensland, you must first raise the issue in the workplace and try to resolve it there.

If WorkSafe Queensland decides to prosecute, your employer and the bully may be ordered to pay substantial fines.

What to do: Call WorkSafe Queensland on **1300 362 128** to find out more about making a workplace bullying complaint.

In Tasmania, WorkSafe will only investigate when:

- the bullying is still occurring, and
- the victim has exhausted all options within their workplace to stop the bullying

It is the inspector's role to investigate and determine if those involved have met their obligations under the law: for example, if your employer has a policy and procedure in place for preventing and responding to bullying.

It is **not** the inspector's role to mediate between the victim and the alleged bully or become involved in the specific details of the reported bullying activities. The inspector may issue verbal advice and/or improvement or prohibition notices, according to WorkSafe's [enforcement policy](#).

If WorkSafe Tasmania decides to prosecute, your employer and the bully may be ordered to pay substantial fines.

What to do: Call the WorkSafe Tasmania Helpline on **1300 366 322** to find out more about making a workplace bullying complaint.

4: Worker's injury compensation claim (No requirement to be a national system employee)

An employee who suffers a work related injury as a result of workplace bullying may be able to make a worker's injury compensation claim (also known as a WorkCover or WorkSafe claim). A successful claim may result in compensation for a percentage of wages lost, medical expenses and further compensation in certain circumstances.

Workers Injury Compensation Claims are very complicated so you should obtain advice from a personal injuries lawyer as soon as possible – See 'where to get help' below.

To make a worker's injury claim:

In Victoria

- Notify your employer of your injury within 30 days of becoming aware of the injury.
- Ensure that the injury is noted in the Register of Injuries of your workplace.
- Complete a worker's injury claim form and obtain a Certificate of Capacity from your doctor to include with the claim form which you must give to your employer.
- The employer should then complete the claim form and is responsible for submitting it to their WorkSafe Agent, otherwise you can send it to the agent directly.
- Continue to obtain Certificates of Capacity for the period of time that you don't have the capacity or have a limited capacity to work.

In Tasmania

- Seek treatment and get a workers compensation certificate from your doctor. Your doctor must be accredited by the WorkCover Tasmania Board to issue these certificates if they reside or provide a medical service in this Tasmania.
- Tell your employer about your injury/illness as soon as possible. Preferably, this should be done in writing but can be done verbally.
- Your employer must give you a *Notice of Right to Make a Workers Compensation Claim* form within 14 days of you telling them about your injury. Your employer must then tell their insurer within 3 working days about your injury.

- If you wish to make a claim, ask your employer for a workers compensation claim form. You should usually do this within **6 months** of the date your injury and, if you decide to leave your employment, you must do this before you leave.
- Complete the claim form and give it to your employer, along with your workers compensation medical certificate. You can do this in person, or by post.
- Your employer must tell their insurer within 3 working days that they have received your claim and forward it within 5 working days.
- Your employer’s insurer will tell you and the employer they have received the claim within 28 days. They will also supply both of you with information about your rights, roles and responsibilities during the compensation process.
- Make sure you continue to promptly supply medical certificates and invoices to your employer while your injury is ongoing.
- Call WorkSafe Tasmania on **1300 366 322** for further information.

In Queensland

- Phone **1300 362 128** to make a claim as soon as you become aware that you have suffered a work related injury as a result of bullying.
- You may also complete and submit the [online claim form](#).
- You may also complete a [claim form](#) and
 - fax to 1300 651 387; or
 - post to GPO Box 2459, Brisbane Qld 4001.
- You can also lodge through your doctor. If you're unsure if this has happened, you can either call WorkSafe Queensland or your GP to check.

5: ComCare claim

An employee who suffers a work related injury as a result of workplace bullying may be able to claim compensation under ComCare. A successful claim may result in compensation for a percentage of wages lost, medical expenses and further compensation in certain circumstances. ComCare is a national scheme which covers employees of:

- Commonwealth Government agencies and statutory authorities (excluding serving members of the Australian Defence Force);
- ACT Government and agencies; and
- corporations who have been granted a licence to self-insure.

To make a ComCare claim:

- Report your injury to your employer, ensure the necessary workplace procedures are followed.
- Obtain a Certificate of Capacity from your medical practitioner.
- Notify ComCare and your employer in writing as soon as practicable of your injury or illness.
- Complete a Claim for Worker’s Compensation Form and hand that along with your Certificate of Capacity to your employer.
- Your employer will then complete the second half of the claim form and submit it to ComCare or alternatively you can provide the form and the medical certificate to ComCare and they will then liaise with the employer to complete the second half of the form.
- Continue to obtain Certificates of Capacity for the period of time that you don’t have the capacity or have a limited capacity to work.

6: Anti-discrimination action (No requirement to be a national system employee)

State and federal laws exist that prohibit discrimination or harassment based on **protected attributes** which include race, colour, sex, sexual preference, age, religion, physical or mental disability, marital status, family or carer's responsibility, pregnancy, political opinion, national extraction or social origin.

An employee who is bullied because of a protected attribute may make a **discrimination claim**. It is important to seek legal advice before making a claim as the law varies between state and federal jurisdictions and a complaint cannot change from state to federal jurisdiction once made.

VICTORIA

If a worker is bullied because of one of these protected attributes, within **12 months** of the bullying behaviour occurring, a person can:

1. Apply to the Victorian Civil and Administrative Tribunal (**VCAT**) to have the matter heard by the tribunal. This can be done after conciliation at the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) or directly without a conciliation occurring.
2. Before VCAT, it is possible to apply to **VEOHRC** for a **voluntary conciliation conference** to occur.

TASMANIA

If a worker is bullied because of one of these protected attributes, within **12 months** of the bullying behaviour occurring, a person can:

1. Apply to Equal Opportunity Tasmania who will investigate and hold a conciliation to try to resolve the matter by agreement.
2. If the matter is not resolved at conciliation, your matter can be referred to the Anti-discrimination Tribunal for a hearing.

You should contact Equal Opportunity Tasmania for further information - www.equalopportunity.tas.gov.au or 1300 305 062.

QUEENSLAND

If a worker is bullied because of one of these protected attributes, within **12 months** of the bullying behaviour occurring, a person can:

1. Apply to the Anti-discrimination Commission Queensland who will investigate and hold a conciliation to try to resolve the matter by agreement.
2. If the matter is not resolved at conciliation, your matter can be referred to the Queensland Civil and Administrative Tribunal for a hearing.

You should contact the Anti-discrimination Commission Queensland for further information - <http://www.adcq.qld.gov.au> or 1300 130 670.

NATIONAL

At the federal level, four pieces of key legislation collectively protect an employee from being the target of bullying based on the protected attributes of sex, race, disability and age as well as sexual harassment and victimisation.

If a person is the target of workplace bullying because of one of these attributes, within **12 months** from the date the discrimination occurred:

- A complaint can be made to The Australian Human Rights Commission (**AHRC**). The AHRC President is then able to conduct a conciliation conference, attendance of which can be compulsory.
- If the complaint is not resolved at the AHRC, the applicant then has **60 days** to commence legal proceedings in the Federal Court.

Get Legal Advice from:

- A private lawyer
- Your Local Community Legal Centre
- Legal Aid in your State

7: If you are dismissed

You have the right to report bullying that occurs in the workplace and to expect that something will be done about it. If you make a complaint about bullying and as a result you are dismissed this may amount to:

Unfair dismissal:

If eligible for unfair dismissal protection, a claim for unfair dismissal may be made where your dismissal was harsh, unjust or unreasonable. You have **21 days** from the date the termination of your employment takes effect to lodge a claim with the Fair Work Commission. Be aware that strict eligibility requirements apply to unfair dismissal applicants. See JobWatch’s ‘Unfair Dismissal’ infosheet to check if you are eligible to make an unfair dismissal claim.

Constructive dismissal

To be able to make an Unfair Dismissal claim (or possibly a General Protections Termination claim – see below), the termination of your employment must be at the initiative of your employer. In certain circumstances, an employee may have no reasonable option but to leave their employment due to workplace bullying. In these circumstances, the termination of the employee’s employment may be considered to be at the employer’s initiative. You should obtain specific legal advice before considering that you have been constructively dismissed because constructive dismissal claims can be very difficult to prove. See JobWatch’s ‘Constructive Dismissal’ infosheet for more information.

General Protections Dispute – Termination claim:

It is unlawful to terminate your employment because you make a bullying complaint. This is because it is unlawful for ‘adverse action’ to be taken by an employer against an employee in circumstances where an employee exercises a workplace right which includes complaining to their employer about workplace bullying and making a complaint to WorkSafe.

Further, it is unlawful for an employer to terminate your employment or take other unlawful adverse action against you because you have a workplace right or a protected attribute similar to anti-discrimination laws. If the reason for your termination is that you have complained about bullying, the existence of a workplace right, or due to a discriminatory reason, you may have the option to make a general protections dispute termination claim.

You have **21 days** from the date the termination of your employment takes effect to lodge a General Protections Dispute (Termination Claim) with the Fair Work Commission. See JobWatch’s ‘General Protections’ infosheet.

Fair Work Commission Website: www.fwc.gov.au/

Forms are available online and can be submitted in person, by e-mail, online or in the mail. Call 1300 799 675 if you have further questions about this process.

8: If Adverse Action is taken against you but you are not dismissed

Unlawful 'adverse action' can also include injuring an employee in their employment, altering their position or discriminating against them. If unlawful 'adverse action' is taken against an employee but it does not amount to a dismissal, a person has **6 years** to file a General Protections (non-termination claim) in the Federal Court or the Federal Circuit Court, however an optional conciliation conference can be held at the Fair Work Commission first.

Fair Work Commission Website: www.fwc.gov.au/

Forms are available online and can be submitted in person, by e-mail, online or in the mail. Call 1300 799 675 if you have further questions about this process.

9: Common Law Action (No requirement to be a national system employee)

It may, in certain circumstances, be possible for an employee to seek a remedy under the common law for a breach of duty of care or breach of contract. The time limit for filing in Court for breach of contract is **6 years** from the date of the breach but you should obtain specific legal advice first and as soon as possible because this is a very complicated area of law.

Get Legal Advice from:

- A private lawyer
- Your Local Community Legal Centre
- Legal Aid in your State

For more information see JobWatch's "Unfair Dismissal and General Protections Dispute" infosheets.

Where to get help

General/Federal

Australian Human Rights Commission

(Complaints Infoline)

1300 656 419

(General Enquiries)

1300 369 711

<https://www.humanrights.gov.au/>

Fair Work Commission Helpline

1300 799 675

<https://www.fwc.gov.au/>

National Association of Community Legal Centres (*for your local CLC*)

(02) 9264 9595

<http://www.naclc.org.au/>

Job Watch Inc.

(Telephone interpreters available for non-English speakers.)

Metro: (03) 9662 1933

Rural: 1800 331 617

<http://www.jobwatch.org.au>

ACTU Member Connect

(03) 9664 7333

1300 362 223

<http://www.actu.org.au/>

Victoria

Law Institute of Victoria Legal Referral Service

(03) 9607 9311

<https://www.liv.asn.au/>

Workcover Assist

(03) 9941 0537

<http://www.workcoverassist.vic.gov.au/>

WorkSafe Victoria Advisory Service

(03) 9641 1444

1800 136 089

<http://www.worksafe.vic.gov.au/>

Victoria Police (Switchboard)

(03) 9247 6666

http://www.police.vic.gov.au/content.asp?Document_ID=2

Victoria Trades Hall Council

(03) 9639 6144

<http://www.vthc.org.au/>

Victorian Civil & Administrative Tribunal

(03) 9628 9900

<https://www.vcat.vic.gov.au/>

Victorian Equal Opportunity & Human Rights Commission

1300 292 153

(interpreter)

1300 152 494

<http://www.humanrightscommission.vic.gov.au/>

1300 792 387

Victoria Legal Aid

<https://www.legalaid.vic.gov.au/>

Tasmania

Law Society of Tasmania

(03) 6234 4133

<http://lst.org.au/>

Legal Aid Commission Tasmania

1300 366 611

www.legalaid.tas.gov.au/

WorkSafe Tasmania

1300 366 322

<http://www.worksafe.tas.gov.au/>

Tasmanian Police

(03) 6230 2111

<http://www.police.tas.gov.au/>

Equal Opportunity Tasmania

1300 305 062

<http://equalopportunity.tas.gov.au/>

Anti-discrimination Tribunal (Tas)

1300 135 513

http://www.justice.tas.gov.au/tribunals/tribunal_sites/Anti-Discrimination_Tribunal

Unions Tasmania

(03) 6234 9553

<http://unionstas.com.au>

Queensland

Anti-discrimination Commission
Queensland

1300 130 670

<https://www.adcq.qld.gov.au/>

Queensland Civil and Administrative
Tribunal

1300 753 228

<http://www.qcat.qld.gov.au/>

Queensland Police

131 444

<https://www.police.qld.gov.au/>

Legal Aid Queensland

1300 65 11 88

www.legalaid.qld.gov.au/

Law Society of Queensland

1300 367 757

<https://www.qis.com.au/Home>

WorkSafe Queensland

1300 362 128

<https://www.worksafe.qld.gov.au>

Queensland Council of Unions

(07) 3010 2555

<http://queenslandunions.org/>

JobWatch acknowledges and is grateful for the financial and other support it has received from both the Commonwealth of Australia Attorney-General's Department, the Victorian State Government and Victoria Legal Aid.

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.