

### What this fact sheet is about

This fact sheet is about how bullying is covered by anti-discrimination and workplace legislation in Queensland.

The Anti-Discrimination Commission Queensland deals with complaints made under the *Anti-Discrimination Act 1991* (Qld).

Workplace Health and Safety Queensland deals with workplace bullying complaints made under the *Work Health and Safety Act 2011* (Qld).

The Fair Work Commission deals with applications for orders to stop workplace bullying under the *Fair Work Act 2009* (Cth).

### Bullying behaviours

Bullying behaviour is not just one type of behaviour. It can involve abuse, violence, intimidation, ridicule, humiliation and making unreasonable demands. But it can also be less obvious and aimed at isolating a person from their colleagues, peers or friends.

As well as face-to-face encounters, bullying can happen through the use of social media sites, email and texting.

### Violent and threatening behaviour

If bullying is violent, threatening or involves stalking, it may be a criminal offence and you should contact the police.

### Who can be a bully

Bullying is often done by a person who has power or influence over another person, but can be done by:

- co-workers or groups of co-workers;
- managers or employers;
- clients and customers;
- students;
- teachers;
- 'friends'.

Bullying happens in daily life, at work, school, or in social situations.

### When bullying is discrimination

The word bullying is not used in anti-discrimination legislation.



However, a complaint of discrimination may be made to the Anti-Discrimination Commission Queensland if bullying behaviour happens to a person because of their:

- sex;
- relationship status;
- pregnancy, breastfeeding, parental status or family responsibility;
- age;
- race;
- impairment;
- religious belief or religious activity;
- political belief or activity;
- trade union activity;
- lawful sexual activity as a sex worker;
- gender identify;
- sexuality;
- association with, or relation to, a person identified on the basis of any of the above attributes.

while

- at work;
- at school or studying;
- getting accommodation;
- getting services and making purchases;
- dealing with state or local government officials or representatives.

### Examples of bullying covered by the *Anti-Discrimination Act*

Behaviour	Example	Attribute
Abusing or yelling at a person (usually when others are present)	A male manager regularly abused a woman worker in terms such as 'dumb bitch, useless female, stupid cow...'	Sex
Humiliating a person through gestures, sarcasm, criticism and insults, often in front of others	A teacher mimicked a student's stutter in front of the whole class.	Impairment
Undermining a person's achievements continually	A gay man was not liked by his 'straight' boss who always found fault with his work and ridiculed him in front of colleagues, but praised even sloppy work by others. He knew that the boss called him 'that faggot' behind his back.	Sexuality
Making hurtful remarks or verbal attacks, making fun of a person's work, or the person themselves (e.g. their race or culture, impairment, sex, sexuality)	An Aboriginal worker was called 'ape man' as a nick name by workers, and they made monkey gestures and noises. The supervisor just laughed and did nothing to stop it.	Race
Making a person perform meaningless or unreasonable tasks or setting unachievable targets	A worker with a mobility impairment was given all the boring and menial work and no account was taken of her skills and education. She was continually told that she should be grateful because not many places would take on a 'handicapped' person.	Impairment
Sabotaging a person's work, deliberately withholding or giving incorrect information, hiding documents or equipment, not passing on messages, getting a person into trouble in other ways;	The supervisor of an older worker with more than 20 years' service deliberately excluded him from receiving information on IT training and skill development. He put pressure on the worker to resign, constantly saying that he doesn't pick things up quickly and maybe he's 'past his use by date' and 'time to give a young bloke a go'.	Age (older worker)
Making repeated threats to dismiss a person for no good reason	A supervisor made the comment 'I hate Vietnamese' and told employees not to speak Vietnamese at work, followed by 'Anyone who speaks Vietnamese, get out'. Later a Vietnamese woman who was in all respects a good worker, had her employment terminated.	Race
Hurting a person physically, pushing, shoving, tripping	A teacher told a Sikh student on a number of occasions to 'just ignore it; brush it off' when he reported that other students regularly punch him, knock him over, call him 'towel head' and throw his lunch in the bin.	Religion

Examples of bullying covered by the *Anti-Discrimination Act* continued

Behaviour	Example	Attribute
Subjecting a person to initiation ceremonies, making a person do humiliating or inappropriate things to be accepted as part of a group	A 16 year old apprentice was stripped naked and hosed with a fire hose while everyone else looked on and laughed.	Age (young worker) Sexual harassment
Criticising about petty, irrelevant or insignificant matters	A pregnant woman's work was continually criticised once her pregnancy became known, when she previously got lots of praise. It was suggested that she should give up work 'for the sake of the baby'.	Pregnancy
Excluding or isolating a person from activities or an online group	An office worker who recently immigrated from Sri Lanka was always asked to stay behind to look after the office over lunch, and when there were work functions. Her co-worker said things like 'you wouldn't like it anyway... you wouldn't fit in.'	Race
Getting back at a person to punish them for a personal affront	A woman refused the repeated sexual advances of her manager, who then became vindictive and suggested to senior staff that she was a 'dud' and should be sacked.	Sexual harassment
Spreading gossip, false or malicious rumours about a person with intent to cause harm	A man spent time in a psychiatric ward some years ago but is now well. This became known to other workers who call him 'Psycho' amongst themselves and now say they are afraid to work alone with him.	Impairment
Posting photos or videos using social media to embarrass or hurt a person	A teenage girl had a falling out with a friend. The friend photo-shopped a picture of her to look like a sex worker and posted it to Instagram with the comment 'just a fat slut'. Others joined in with posts like 'yeah who hasn't she slept with?'.	Sexual harassment
	A student who was born a boy but identifies as a girl and wears a girl's school uniform was the subject of a hateful Facebook page ridiculing the student and asking others to like the page.	Gender identity

## When bullying is sexual harassment

Sometimes bullying can be sexual harassment.

Sexual harassment happens if a person:

- subjects another person to an unsolicited act of physical intimacy; or
- makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- makes a remark with sexual connotations relating to the other person; or
- engages in any other unwelcome conduct of a sexual nature in relation to the other person.

You can make a complaint of sexual harassment to the Anti-Discrimination Commission Queensland.

## Examples where bullying is sexual harassment

Two young female students rent a house, and the landlord collects the rent in person each week. When he comes round to the house he leers at the girls, asks if they are 'getting enough' and talks about his own sex life. He says that his wife is a 'slag' and that he'd like to get 'a bit of young stuff'. He often threatens to increase the rent, but says he'll forget about that if they 'show him a good time'.

A young man broke up with his girlfriend. Using her social media networks, the former girlfriend then sent out embarrassing nude photos of him along with private, sexually explicit text messages he had sent to her when they were together.

## Victimisation

If you complain about bullying behaviour that is discrimination or sexual harassment, and because of that you are treated badly, it is victimisation.

This type of victimisation is unlawful and you can make a complaint to the Anti-Discrimination Commission Queensland.

## When bullying is vilification

Sometimes public bullying can be vilification.

Vilification is a public act or statement capable of inciting others to hate or ridicule a person or their group because of their:

- race;
- religion;
- gender identity or;
- sexuality.

## Example where bullying is vilification

A transgender woman heard yelling outside her unit late at night. She looked out and recognised a neighbour in the street with a group of drunk friends. They wrenched palings off her fence, yelled obscenities in the direction of her unit ('You f\*\*\*ing faggot; you have your f\*\*\*ing dick in a jar') and threatened to burn her house down ('Has anyone got a box of matches so we can burn the f\*\*\*ing faggot's place down?')

## Bullying at work

If the reason for bullying at work is because of your race, sexuality, age, impairment or other attribute as outlined above, you can make a complaint to the Anti-Discrimination Commission Queensland.

If the reason for the bullying at work is not because of any of these attributes, and is not sexual harassment or vilification, you may be able to make a complaint to Workplace Health and Safety Queensland, or apply to the Fair Work Commission to stop the bullying.

## Bullying under the Qld Workplace Health and Safety Act

Under the *Work Health and Safety Act 2011*, Workplace Health and Safety 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.

## Orders to stop bullying under the federal Fair Work Act

The Fair Work Commission has the power to make an order to stop bullying which is ongoing in the workplace if there is a risk that the worker will continue to be bullied.

A person being bullied can make an application to the Fair Work Commission to stop the bullying, and the Fair Work Commission must start to deal with the application within 14 days after it is made.

The Fair Work Commission can order the bullying to stop where repeated unreasonable behaviour towards a worker creates a risk to the health and safety of the worker, but cannot order compensation or deal with the matter if the worker is no longer employed at the workplace where the bullying occurred.

These three elements must be present:

- repeated behaviour;
- unreasonable behaviour;
- risk to health and safety.

This option is available to most employees contractors and labour hire personnel, but does not apply to Queensland public sector employees or members of the Defence Force.

## Reasonable management action

Under the *Anti-Discrimination Act*, the *Work Health and Safety Act* and the *Fair Work Act*, reasonable management action taken in a reasonable way is not bullying.

Reasonable management action can include:

- setting reasonable performance goals, standards and deadlines;
- informing a worker of their unsatisfactory work performance;
- deciding not to select a worker for promotion where a reasonable process was followed;
- informing a worker of their inappropriate behaviour in an objective and confidential way;
- rostering and allocating working hours where the requirements are reasonable;
- transferring a worker for operational reasons;
- implementing organisational changes or restructuring;
- taking disciplinary action including suspension or termination of employment when warranted.

## Preventing bullying

Employers and education authorities have a duty to provide a safe environment for workers and students. Businesses that provide goods and services should do so without discrimination, sexual harassment or vilification.

The key elements of an effective anti-bullying policy are:

- identifying the types of behaviour that constitute bullying;
- making a clear statement that bullying is not acceptable and will not be tolerated;
- providing a transparent process for complaining about bullying and dealing with bullying complaints;
- conducting training and awareness-raising.

The aim is to develop a culture in which people feel safe to report bullying if they experience it or witness it.

Campaigns which promote a culture of anti-bullying such as 'Bullying No Way' and 'Racism it stops with me' raise awareness of the harm done by bullying and encourage bystanders to be part of the solution.

## Effective performance management

An effective staff performance management process helps managers to behave appropriately and reduce the risk of a bullying complaint.

Performance management should be based on agreement and a shared understanding between managers and their staff of the outcomes to be achieved. Targets set should be realistic and regularly reviewed.

## Getting help to deal with bullying

If bullying, harassment, discrimination or violence happens:

### at school

- Report the behaviour to a person who can help, such as a parent or guardian, teacher, school counsellor or other trusted person.

### at work

- Seek help to deal with the situation. Speak with your manager, contact an equity contact officer, workplace health and safety officer, human resources personnel, industrial or union representative.
- Use employee assistance schemes when available, and get professional attention from a doctor or other health professional if needed.

## Where to make a complaint

Event	Complain to	Outcomes
<p>Bullying because of:</p> <ul style="list-style-type: none"> <li>an attribute such as race, age, sexuality etc; or</li> <li>sexual harassment; or</li> <li>vilification.</li> </ul>	<p>Anti-Discrimination Commission Queensland</p> <p>Phone 1300 130 670</p> <p>TTY 1300 130 680</p> <p><a href="http://www.adcq.qld.gov.au">www.adcq.qld.gov.au</a></p>	<p>Agreement through conciliation - with or without compensation.</p> <p>If not resolved through conciliation, may refer to Qld Civil &amp; Administrative Tribunal for determination.</p>
<p>Bullying at work:</p> <ul style="list-style-type: none"> <li>other than unlawful discrimination, sexual harassment or vilification; and</li> <li>have tried to resolve it in the workplace</li> <li>risk of injury or illness.</li> </ul>	<p>Workplace Health and Safety Queensland</p> <p>Phone 1300 369 915</p> <p><a href="http://www.deir.qld.gov.au/workplace/index.htm">http://www.deir.qld.gov.au/workplace/index.htm</a></p>	<p>Inspector assigned to investigate and:</p> <ul style="list-style-type: none"> <li>request evidence that the risk of injury or illness from bullying is being managed;</li> <li>assess the risk and review the controls in the workplace;</li> <li>use compliance and enforcement including advice, directions, improvement and infringement notices.</li> </ul> <p>No mediation or compensation.</p>
<p>Bullying at work where there is a:</p> <ul style="list-style-type: none"> <li>risk the bullying will continue.</li> </ul>	<p>Fair Work Commission</p> <p>Phone 1300 799 675</p> <p><a href="https://beta.fwc.gov.au/">https://beta.fwc.gov.au/</a></p>	<p>Conference or formal hearing.</p> <p>Order to stop the bullying.</p> <p>No compensation.</p> <p>Focus on enabling working relationships to resume.</p>

Contact the Anti-Discrimination Commission  
Queensland

Phone 1300 130 670 | TTY 1300 130 680

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