



BAR ASSOCIATION OF QUEENSLAND

MODEL BULLYING BEST PRACTICE GUIDELINE (MEMBERS)

1. This *Model Bullying Best Practice Guideline (Members)* (**Best Practice Guideline**) was approved by Bar Council on 14 May 2018.
2. This *Best Practice Guideline* provides a structure to assist in resolving issues of workplace bullying involving members of the Bar Association of Queensland (**BAQ**) at the private Bar. It replaces the Best Practice Guideline approved by Bar Council on 18 May 2016. Members who are employed barristers and not at the private Bar may be the subject of guidelines issued by their employers and are not the subject of this Best Practice Guideline.

Definitions

3. The term "*workplace bullying*" and other terms used in this *Best Practice Guideline* are defined at Schedule A.

Purpose

4. The purpose of this *Best Practice Guideline* is to:
 - A. assist with the elimination and/or prevention of workplace bullying by or affecting members at the private Bar;
 - B. implement a procedure whereby any complaint relating to conduct of a member in contravention or alleged contravention of this *Best Practice Guideline* may be dealt with; and
 - C. enable persons affected by such conduct to seek relevant referrals to the BAQ Best Practice Counsellors.

The Background Law

5. Workplace bullying can constitute a breach of rule 12 of the *Bar Association of Queensland Barristers' Conduct Rules* (that is, a barrister must not engage in conduct which is discreditable to a barrister or likely to diminish public confidence in the legal profession or otherwise bring the legal profession into disrepute).
6. Orders are also available under Part 6-4B of the *Fair Work Act 2009* (Cth) (*FW Act*) to stop workplace bullying where the complainant worker is at work at a "*constitutionally covered-business*" (as defined in the FW Act).
7. Workplace bullying can also constitute a breach of anti-discrimination, workplace safety and other laws where it amounts to unlawful discrimination, a workplace safety risk, a breach of an employment contract and/or breach of duty.

Application of this Best Practice Guideline

8. This *Best Practice Guideline* is applicable to members at the private Bar in respect of dealings with:
 - A. other barristers;
 - B. workers engaged by and/or working in barristers' chambers in any capacity (including employees, contractors, casuals, volunteers, students and/or trainees, whether engaged by the chambers or directly by barristers) (**workers**); and
 - C. solicitors, clients and other visitors to the chambers of a member at the private Bar.

Behaviour subject to the application of the *Best Practice Guideline*

9. Workplace bullying engaged in by any member at the private Bar toward:
 - A. any other barrister;
 - B. any worker; or
 - C. any person visiting barristers' chambers including solicitors, workers engaged by those solicitors and/or clients,constitutes a contravention of this *Best Practice Guideline*.

Grievance/Complaints Procedure

10. Any person who has been subjected to workplace bullying (or has observed or otherwise has personal knowledge of workplace bullying by a member at the private Bar) can take the steps set out below in the event of an enquiry, concern or complaint against this *Best Practice Guideline*:
 - A. as a first step, where appropriate the complainant should attempt to sort it out with the person or people involved. This should be done as soon as possible;
 - B. if the complainant needs or would prefer to have assistance, s/he can seek guidance from a member of the Best Practice Counsellors of their choosing. Best Practice Counsellors are required to keep information imparted by the complainant strictly confidential;
 - C. where appropriate and where the complainant consents to same, the Best Practice Counsellor may investigate the complaint by making confidential enquiries of those alleged to be involved; and
 - D. if the Best Practice Counsellor is satisfied that the conduct has occurred in contravention of this *Best Practice Guide*, the Best Practice Counsellor may manage the discipline process. Management of the discipline process is at the discretion of the Best Practice Counsellor, and may involve the Best Practice Counsellor performing the following, only where appropriate and with the complaint's consent:
 - (i) escalate the complaint to a more senior Best Practice Counsellor, including but not limited to the Chair of the Best Practice Counsellors;
 - (ii) endeavour to resolve the complaint by informal and confidential mediation between the persons involved;
 - (iii) make a complaint to the Legal Services Commissioner and/or other relevant bodies regarding a legal practitioner's alleged conduct;
 - (iv) any other steps the Best Practice Counsellor considers reasonable and appropriate to deal with the complaint.

11. The BAQ encourages members, individually or through their chamber groups or entities to seek independent legal advice with respect to workplace bullying in their workplaces. Nothing in this *Best Practice Guideline* should be taken as legal advice with respect to the obligations imposed on members, chambers and staff under Commonwealth or Queensland Law.

12. This Best Practice Guideline is made pursuant to rule 18.9 of the Constitution of the Bar Association of Queensland. It is not binding on members, but pursuant to rule 18.10 conduct contrary to it may be taken into account by Bar Council in any decision it has to make.

SCHEDULE A : DEFINITIONS

Barrister means "barrister" as defined in s.4 of the *Legal Profession Act 2004* (Qld).

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*.

Workplace bullying means unreasonable and repeated behaviour that creates a risk to health and safety and could reasonably be expected to offend, intimidate, degrade, humiliate, isolate or alienate a person working in a workplace.

Some examples of workplace bullying (as described by the Fair Work Commission in its guide to the operation of the anti-bullying provisions) include but are 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; and
- Pressure to behave in an inappropriate manner.

The following are examples of conduct that is not workplace bullying:

- a single incident of unreasonable behaviour;
- unreasonable behaviour that involves violence (e.g. physical assault or the threat of physical assault), which should be reported to the police;
- reasonable management action that:
 - is in connection with a BAQ worker's employment;
 - is carried out in a lawful and reasonable way;
 - takes the particular circumstances into account;
- acts of unlawful discrimination or sexual harassment;
- workplace conflict (e.g. differences of opinion).