



## BAR ASSOCIATION OF QUEENSLAND

### MODEL BULLYING BEST PRACTICE GUIDELINE (BAQ WORKER)

1. This *Model Bullying Best Practice Guideline (BAQ Worker)* (**Best Practice Guideline**) was approved by Bar Council on 14 May 2018.
2. It applies in addition to the *Model Bullying Best Practice Guideline* approved by Bar Council on 18 May 2015 (or any guideline amending or replacing that 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 all forms of workplace bullying within the Bar Association of Queensland (**BAQ**) for all member, regulatory and other services it provides;
  - B. implement a procedure whereby any complaint relating to conduct of a member in contravention or alleged contravention of this *Best Practice Guideline* and/or the relevant laws can be dealt with; and
  - C. enable relevant referrals to the President and/or Chief Executive in respect of the implementation and/or management of this *Best Practice Guideline*.

#### The 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 BAQ members in dealings with BAQ workers in respect of the use of any member, regulatory or other services BAQ provides, including but not limited to 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.

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

9. Workplace bullying engaged in:
  - A. by any member attending BAQ premises, or any premises on which BAQ hosts events, functions and/or seminars are convened,  
  
toward:
  - B. any BAQ worker,  
  
constitutes a contravention of this *Best Practice Guideline*.

### **Grievance/Complaints Procedure**

10. A BAQ worker who has been subjected to workplace bullying (or has observed or otherwise has personal knowledge of workplace bullying towards a BAQ worker) can take the steps set out below in the event of an enquiry, concern or complaint against this *Best Practice Guideline*:

- A. A complainant requesting assistance, should seek guidance from either the Chief Executive or the President, who is required to keep information imparted by the complainant strictly confidential;
  - B. where appropriate and where the complainant consents, the Chief Executive or the President, as the case may be, may investigate the complaint by making confidential enquiries of those alleged to be involved;
  - C. in the case of a request for assistance or complaint directed to the Chief Executive, if the Chief Executive is satisfied that conduct has occurred in contravention of this *Best Practice Guide*, the Chief Executive shall notify the President, and together they manage the discipline process.
  - D. Management of the discipline process is at the discretion of the President and the Chief Executive, and may involve the President or Chief Executive performing the following, only where appropriate and with the complainant's consent:
    - (i) endeavour to resolve the complaint by informal and confidential mediation between the persons involved;
    - (ii) make a complaint to the Legal Services Commissioner and/or other relevant bodies regarding the member's alleged conduct;
    - (iii) any other steps the President and/or Chief Executive considers reasonable and appropriate to deal with the complaint.
11. 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

**BAQ worker** means a person undertaking work for the BAQ whether as 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.

**Workplace bullying** means unreasonable and repeated behaviour directed towards a worker or a group of workers 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).