



## BAR ASSOCIATION OF QUEENSLAND

### MODEL BULLYING BEST PRACTICE GUIDELINE

1. This *Model Bullying Best Practice Guideline (Best Practice Guideline)* was approved by Bar Council on [18 May 2015] for adoption by individual Chambers/floors of the private Bar and to be applicable in the additional circumstances described below.
2. This *Best Practice Guideline* provides a structure to assist in resolving issues of workplace bullying and to assist in minimising any associated liability.
3. The Bar Association of Queensland (**BAQ**) will organise CPD seminars relating to employment law, including issues of workplace bullying.
4. BAQ 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 *Best Practice Guideline* should be taken as legal advice with respect to the obligations imposed on chambers, members and staff under Commonwealth or Queensland Law.

#### **Definitions**

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

#### **Application of this Best Practice Guideline**

6. This *Best Practice Guideline* is applicable to:
  - (a) Participating Floors in respect of:
    - (i) the members and/or licensees of the Floor (paying and non-paying), including all readers; and

- (ii) 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.
- (b) BAQ 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;
- (c) BAQ event attendees, committee members and examination candidates as follows:
  - (i) all barristers attending any event, function and/or seminar convened by BAQ, including barristers attending any social function, any continuing professional development seminars, the Bar Practice Course and associated seminars (**Bar Practice Course attendees**);
  - (ii) all barrister members of BAQ 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 of functions (**BAQ committee members**); and
  - (iii) all examination candidates while sitting the bar examinations conducted by BAQ (**BAQ examination candidates**).

### **The Law**

7. Workplace bullying can constitute a breach of rule 12(a) of the *Bar Association of Queensland Barristers' Conduct Rules* (that is, a barrister must not engage in conduct which is discreditable to a barrister).
8. 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 Schedule A hereto).

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.

### **Liability**

10. 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.
11. 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 by reasons of having engaged in conduct constituting workplace bullying.

### **Best Practice Guideline for Participating Floors**

12. The members and licensees of the 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 the Floor are free from workplace bullying whilst on the Floor.
13. Workplace bullying engaged in:
- (a) by any member and/or licensee of the Floor, or

(b) by any worker engaged by the Floor or engaged by any barrister on the Floor, toward:

- (i) any member and/or licensee of the Floor;
- (ii) any worker engaged by the Floor or engaged by any barrister on the Floor; or
- (iii) any person visiting the Floor including solicitors, workers engaged by those solicitors and/or clients,

constitutes a contravention of this *Best Practice Guideline* and will not be tolerated.

14. Members and licensees of the Floor, and workers engaged by and on the 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**

15. The purpose of this *Best Practice Guideline* is to:

- (a) assist with the elimination and/or prevention of all forms of workplace bullying on the Floor;
- (b) record that the 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 BAQ's *Complaint Processes Policy*; and
- (d) enable any Participating Floor, where necessary, to seek relevant referrals from BAQ Equal Opportunity Committee (**EO Committee**) in respect of the implementation and/or management of this *Best Practice Guideline*.

#### **Grievance/Complaints Procedure**

16. Any enquiry, concern or complaint made in respect of this best practice guideline

should be made in accordance with BAQ's *Complaint Processes Policy*.

**Contravention of this *Best Practice Guideline***

17. 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.

**Best Practice Guideline Applicable to BAQ**

18. BAQ 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 BAQ premises and any premises on which BAQ 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 BAQ committees and sections; and
  - (d) any other visitors to BAQ premises and any premises on which BAQ 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:
- (i) all services provided by BAQ, 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

- (ii) the interactions of the members of all BAQ 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.

19. Workplace bullying engaged in by any barristers (including readers) attending BAQ premises and any premises on which BAQ 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, **towards any person** constitutes a contravention of this *Best Practice Guideline* and will not be tolerated.

**Purpose of this Best Practice Guideline**

20. The purpose of this *Best Practice Guideline* is to:
- (a) assist with the elimination and/or prevention of all forms of workplace bullying within BAQ and at all BAQ events, functions and/or seminars;
  - (b) record that BAQ 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 1
  - (d) enable BAQ 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**

21. Any enquiry, concern or complaint made in respect of this *Best Practice Guideline* should be made in accordance with BAQ's *Complaint Processes Policy*.

**Contravention of this Best Practice Guideline**

22. 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 BAQ.

**Additional Matters**

23. 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.

## 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 behaviour that 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.

**Constitutionally-covered business** for the purposes of s.789FD(3) of the *Fair Work Act* is a



business or undertaking which conducts a business or undertaking (within the meaning of the *Work Health and Safety Act*) 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.

***Floor*** means chambers and/or floors of the private bar.

***Participating floor*** means a Floor that has adopted this *Best Practice Guideline*.