

## *Bullying in the Workplace*

### Factsheet 10: Is Bullying Illegal?

If you are being bullied at work and have tried to deal with it by using other methods described in these fact sheets, but without success, what other option can you take? You may decide at this point to look at your legal options to stop the workplace bullying. There are a range of laws that can be applied, depending on the nature and type of bullying.

No Australian law specifically defines workplace bullying. However, there are several laws that make various forms of bullying behaviour unlawful. The combined effect of these laws means that bullying can be defined as behaviour that:

- Offends, humiliates or intimidates someone; and
- Could put that person or someone else's health safety or welfare, including that person's psychological welfare, at risk.

Although these behaviours are illegal, one problem is that employers and workers often do not realize that it is. Another problem is that the behaviour can sometimes be difficult to prove. That is why other Fact Sheets in this kit are useful to guide you when you believe that bullying is occurring at work.

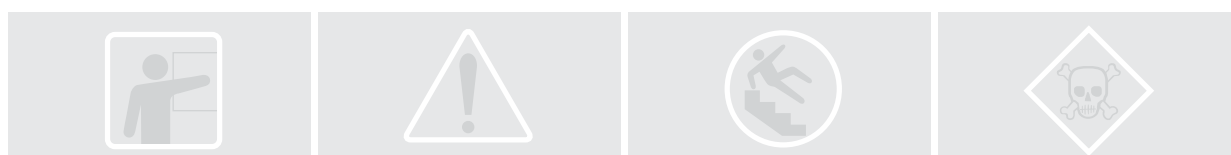
If you are forced to resign because you are being bullied, you may be able to claim this as an unfair dismissal. This and other examples of legal actions you might be able to take are listed below and overleaf.

### Occupational Health & Safety Legislation

Under NSW Occupational Health and Safety laws it is an offence for an employer or a worker, to fail to take reasonable care for the safety of others at the workplace. The employer must remove risks from the workplace that may cause harm or injury to workers. This includes workplace violence, bullying and harassment that expose employees to health or safety risk. If these are not removed, either an employer or a worker may have action taken against them for a breach of the Occupational Health and Safety Act or Regulations.

One of the objectives of the *NSW OHS Act 2000* (Part 1 sec 3c) is to "promote a safe and healthy environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs."

The *OHS Regulation 2001* causes the employers to identify hazards arising from "the potential for workplace violence", among other things (Chap.2 clause 9 (j)). *WorkCover's Guide to Violence in the Workplace* includes verbal and emotional abuse or threats, ganging up, bullying and intimidation.



## Workers Compensation Legislation

If you are being bullied or harassed at work, you may suffer physical or psychological injury such as a stress related illness. If you become unwell as a result of inappropriate management action, you may be able to make a claim under the NSW Workers Compensation and Injury Management Act 2000.

### Unfair Dismissal

If you feel you have to resign because persistent bullying has made your life miserable at work and you feel you have no other choice, you may be able to make an unfair dismissal claim against your employer. Under Industrial Relations Law this could be considered as "constructive dismissal".

### Civil Claim for Damages

If you are thinking of taking any form of legal action then you need to speak to your union or one of the other organisations listed (see fact sheet 12) first. They will assist you to see if you have a case under law.

## Discrimination

If you are being bullied or harassed on the basis of your race, sex, pregnancy, marital status, religious belief, homosexuality, disability, union membership or a range of other things covered by anti-discrimination law you could take legal action on the basis of discrimination in the workplace.

If workers believe that they are being harassed because of their gender, sexual preference, race, or disability other legislation that may be relevant includes

- *Human Rights and Equal Opportunity Commission Act 1986*
- *Racial Discrimination Act 1975*
- *Sex discrimination Act 1984*
- *Disability Discrimination Act 1992*

These may be seen at [www.hreoc.gov.au](http://www.hreoc.gov.au).

### Criminal Prosecution

If bullying is allowed to go unchecked, it may escalate and result in circumstances amounting to assault or other criminal offences. Even just putting someone in fear of personal injury is considered to be assault.

The types of bullying that could amount to a prosecution in this case would be

- Physical or sexual assault or threatened assault
- Deliberate damage to property
- Harassing phone calls
- Stalking

Workers have sometimes successfully used Apprehended Violence Orders (AVOs) to protect them from bullies.

### Case Studies

Motor dealership fined \$45,000 under Victoria's OHS Act in 1999 for failing to provide adequate training and supervision following 5 incidences of abuse of an apprentice over 18 months.

Owner of a vehicle repair business was fined \$15,000 after 3 workers were subjected to almost 10 months of sustained and continuous verbal and physical abuse by 2 supervisors. 2 employees were also fined for the same behaviours.