

## **BULLYING – BEST PRACTICE GUIDELINE**

### **INTRODUCTION**

This bullying best practice guideline was approved by members of Nine Selborne Chambers on 20 July 2020.

This best practice guideline:

Provides a structure to assist in resolving issues of workplace bullying and to assist in minimizing any associated liability;

1. Promote the dignity and respect of every person in relation to all protected attributes;
2. Provide a framework, and options, for dealing with alleged contraventions of this Guideline;
3. Clearly articulate the Chamber's attitude against bullying;
4. Aids the promotion of compliance with Rule 123 of the Legal Profession Uniform Conduct (Barristers') Rules (the Barristers' Conduct Rules); and
5. Operates in conjunction with and furtherance of the New South Wales Bar Association Diversity and Equity Policy adopted by Bar Council in 2013.

### **DEFINITIONS**

The term *workplace bullying* and other terms used in this best practice guideline are defined at Schedule A.

### **APPLICATION OF THIS BEST PRACTICE GUIDELINE**

This best practice guideline is applicable to:

1. Ninth Floor Selborne Chambers in respect of:
  - a. The members and/or licensees of the Floor (paying and non-paying), including all readers; and
  - b. All 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.

## THE LAW

Rule 123(c) of the Barristers' Conduct Rules provides that a barrister must not in the course of practice engage in conduct which constitutes workplace bullying.

Workplace bullying can in addition constitute a breach of other Barristers' Conduct Rules. Orders are also available under Part 6-4B of the *Fair Work Act 2009* (Cth) (the **FW Act**) to stop workplace bullying where the complainant worker is at work at a 'constitutionally covered-business' (as **defined in Schedule A**).

The definition of workplace bullying relevant for this Model Bullying Best Practice Guideline is that contained in Rule 123(c) of the Barristers' Conduct Rules.

Discrimination, harassment and bullying may also constitute a breach of Rules 8(a) or 8 (c) of the Barristers' Conduct Rules.

Workplace bullying can also constitute a breach of anti-discrimination, workplace safety and/or other laws where it amounts to discrimination, a workplace safety risk, a breach of an employment contract and/or breach of duty.

Discrimination and/or sexual harassment, including where it constitutes a breach of the Barristers' Conduct Rules, can constitute professional misconduct and/or unsatisfactory professional conduct within the meaning of Division 1, Part 5.4 of the *Legal Profession Uniform Law* (NSW) (the **Legal Profession Uniform Law**).

## LIABILITY

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 victimization, 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.

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 within the meaning of Division 1, Part 5.4 of the *Legal Profession Uniform Law* by reason of having engaged in conduct constituting workplace bullying.

## BEST PRACTICE GUIDELINE

1. The members and licensees of Ninth Floor Selborne Chambers 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 this Floor are free from workplace bullying whilst on the Floor.
2. Workplace bullying engaged in:
  - a. By any member and/or licensee of this Floor, or
  - b. By any worker engaged by this Floor or engaged by any barrister on this Floor, toward:
    - i. Any member and/or licensee of this Floor,
    - ii. Any worker engaged by this Floor or engaged by any barrister on this 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.

3. Members and licensees of this Floor, and workers engaged by and on this 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

4. The purpose of this best practice guideline is to:
  - a. Assist with the elimination and/or prevention of all forms of workplace bullying on this Floor;
  - b. Record that this Floor has adopted this best practice guideline, including for the purposes of assisting to minimize 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 Model Grievance Handling Best Practice Guideline; and
  - d. Enable any Participating Floor, where necessary, to seek relevant referrals from the Bar Association Equal Opportunity Committee (**EO Committee**) in respect of the implementation and/or management of this best practice guideline.

## GRIEVANCE/COMPLAINTS PROCEDURE

5. Any enquiry, concern or complaint made in respect of this best practice guideline should be made in accordance with the Ninth Floor Selborne Chambers' Grievance Handling Best Practice Guideline.
6. If you have been subjected to harassment, discrimination or bullying in connection with your profession, you can obtain help from BarCare (0427 317 958) or the Sexual Harassment Officer ([sexualharassmentofficer@nswbar.asn.au](mailto:sexualharassmentofficer@nswbar.asn.au)). You can also seek support from 1800RESPECT ([www.1800respect.org.au](http://www.1800respect.org.au)) as well as your GP. If you are in danger, call 000.
7. Time limitations may apply for lodging a complaint with an external body. For example, within 24 months of the incident if you wish the Australian Human Rights Commission to assist for complaints relating to the Sex Discrimination Act 1984 (Cth) and six months for other complaints. These are also limitations associated with bringing a bullying claim under the Fair Work Act 2009 (Cth).
8. Complaints can also be made without the Affected Person being identified by contacting the NSW Bar Association's Sexual Harassment Officer on 0427 317 958 or at [sexualharassmentofficer@nswbar.asn.au](mailto:sexualharassmentofficer@nswbar.asn.au), and online via the anonymous reporting platform, Spot: [www.talktopspot.com/nswbar](http://www.talktopspot.com/nswbar).
9. Alternatively, either formal or informal complaints may be made to the OLSC. The Legal Services Commissioner will only investigate formal complaints. Informal complaints to the OLSC may be made by the Affected Person or a Bystander via Elker.
10. There will be no repercussions for those who report issues in good faith.
11. Repercussions are unlawful as well as against the values and policies of the Chambers.
12. Where it is appropriate or necessary for the Chambers to undertake an investigation, the investigation will be conducted to ensure there is procedural fairness and natural justice for all parties involved. This includes:
  - a. giving the Respondent the opportunity to understand the allegations made against them and to respond;
  - b. providing appropriate trauma informed support for all individuals involved and in particular, the Affected Person, during complaint handling and investigations; and
  - c. facilitating a timely and objective process.

## CONTRAVENTION OF THIS BEST PRACTICE GUIDELINE

13. 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 Commissioner for Uniform Legal Services Regulation under Part 5.2 of the Legal Profession Uniform Law and/or other relevant body where appropriate.

### **ADDITIONAL MATTERS**

Ninth Floor Selborne Chambers 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

*Affected Person* means, a person who is the target or focus of conduct alleged to raise a concern under the Guideline (namely sexual harassment, harassment, discrimination, vilification, victimization or bullying), who may or may not also be a Complainant

*Barrister* means ‘barrister’ as defined in section 6 of the *Legal Profession Uniform Law*.

*Bystander* means, a person who:

- i. has directly witnessed an incident that raises a concern under the HDB BPG; and/or
- ii. has direct knowledge of an incident that raises a concern under this Guideline, such as Human Resources personnel, a manager or a clerk or person in chambers to whom the conduct has been reported.

*Complainant* means, a person who makes a complaint under the HDB BPG. The person may be an *Affected Person* or a *Bystander*.

*Cultural Competency* is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables that system, agency, or those professionals to work effectively in cross-cultural situations. Further, cultural competency is the willingness and ability of a system to value the importance of culture in the delivery of services to all segments of the population.

*Repeated behaviour* refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

*Respondent* means a person alleged to have engaged in conduct that is in breach of this Guideline.

*Workplace bullying* means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence to a person working in a workplace as defined in the Barristers’ Conduct Rules.

*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*.

*Some examples of workplace bullying* (as described by the Fair Work Commission in its Guide to the operation of the anti-bullying provisions in the *Fair Work Act*)

Workplace bullying can include but is 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
- Pressure to behave in an inappropriate manner

Meaning of *constitutionally-covered business* for the purposes of subsection 789FD(3) of the FW Act:

A business or undertaking is a 'constitutionally-covered business' if a person [conducts](#) a business or undertaking (within the meaning of the [Work Health and Safety Act 2011](#)) 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](#).