

# MEMBER ASSISTANCE KIT WORKPLACE BULLYING AND HARASSMENT



MEMBER INFORMATION AND  
RECORD KEEPING TOOL

**UNITE**  
WORKERS UNION



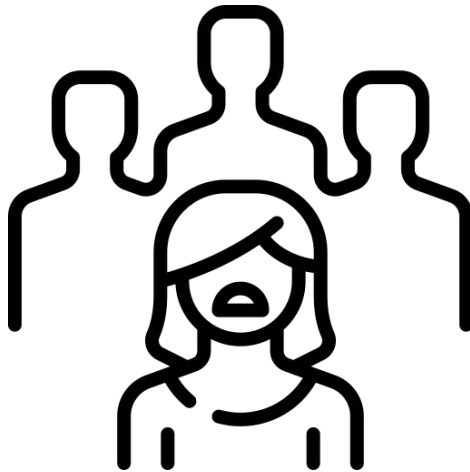
## INTRODUCTION

This kit contains general advice about your rights and entitlements if you have suffered from bullying or harassment in the workplace.

*(This information is not legal advice).*

### The kit will explain:

1. What bullying and harassment is.
2. Who is responsible for stopping bullying and harassment in the workplace.
3. What to do if you are bullied or harassed at work.
4. What can be done if the bullying or harassment does not stop.
5. Who you can talk to for support - if you have suffered bullying or harassment in the workplace.



# 1. WHAT IS WORKPLACE BULLYING AND HARASSMENT?

The law defines bullying and harassment differently. The law also recognises that “reasonable management action” is not bullying or harassment.

## **BULLYING**

Bullying is repeated behaviour which is designed to intimidate, offend, degrade or humiliate. It can be either psychological or physical in nature and creates a risk to health and safety.

The Fair Work Act 2009 (Cth) provides:

### ***A worker is bullied at work if:***

- An individual or a group of individuals;
- Repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and
- That behaviour creates a risk to health and safety.

### **What kind of behaviour is unreasonable?**

**As a general guide, it includes unreasonable behaviour that is intimidating, offensive, degrading or humiliating. It can be either physical or psychological and direct or indirect. Some examples of unreasonable behaviour are:**

- Abusive, insulting or offensive language;
- Criticism that is delivered unreasonably;
- Inappropriate comments;
- Teasing or practical jokes;
- Spreading rumours;
- Excluding a person;
- Setting tasks or timelines that are unreasonable; and
- Deliberately denying access to information, resources or training.

You can be bullied even if the unreasonable behaviour is not intentional. It is also important to note that not all behaviour which makes you feel upset or angry will constitute bullying.

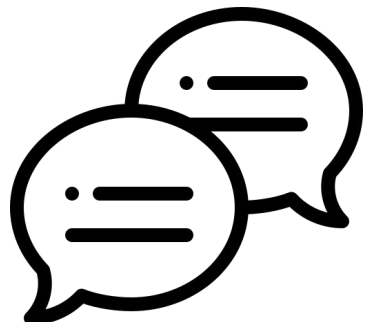
## **WHAT ISN'T BULLYING?**

Behaviour that does not meet the criteria set out in the definition above will not constitute workplace bullying. It is also important to note that under the Fair Work Act, reasonable management action carried out in a reasonable manner is not bullying.

**This is consistent with an employer's general right to direct how work is done and provide feedback on an employee's performance and conduct. Examples of reasonable management directives are:**

- Setting reasonable performance goals, standards, and deadlines in consultation with workers and after considering their respective skills and experience.
- Allocating work to an employee in a fair and transparent manner.
- Transferring an employee into a different role based on legitimate and explained operational reasons.
- Deciding not to select an employee for promotion after following a fair and documented process
- Informing an employee about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements.
- Informing an employee about inappropriate behaviour in an objective and confidential manner.
- Initiating a performance management processes.
- Refusing an employee permission to return to work due to a medical condition

**The above actions by management must be carried out in a reasonable manner that does not lead to the employee feeling intimidated, humiliated, or offended.**



## **HARASSMENT**

Harassment, including sexual harassment, is unwelcome conduct that intimidates, humiliates, offends or causes a state of fear or apprehension in another person. It includes continual verbal attacks or questioning and can also include physical attacks.

**Sexual harassment** can consist of unwanted sexual comments, unwanted and unreciprocated sexual advances/flirting, or inappropriate and unwanted physical touching (which may also be criminal assault).

**Racial harassment** consists of unwanted or derogatory comments about a person's race, ethnicity or nationality.

## **2. WHO IS RESPONSIBLE FOR STOPPING BULLYING AND HARASSMENT IN THE WORKPLACE?**

The law requires that the employer takes all reasonable steps to maintain a safe workplace. This means your employer has a legal obligation to stop any bullying or harassment that occurs in your workplace.

However, if your employer is not made aware of the bullying or harassment, they cannot be held responsible if it continues to occur.

**Therefore, it is important to report bullying or harassment concerns to your employer.**



### 3. WHAT TO DO IF YOU ARE BULLIED OR HARASSED WHILE WORKING

1

Find out what bullying/harassment/complaints policies or procedure your employer has in place.

2

Consider whether the conduct is workplace bullying or harassment.

3

Once you believe you have enough evidence to show an ongoing repeated bullying or harassment behaviour, make detailed records of incidents you feel may be bullying or harassment (fill in an Incident Report as it appears below).

4

If there is no set process for you to follow you should collate your Incident Reports, put together a written report and submit this to your employer.

5

Your employer should now investigate your report.

6

You should participate in any investigation, and, where applicable, engage with any strategies your employer develops to stop the bullying or harassment.

7

If the bullying or harassment does not stop after you have been through this process you should contact the Member Rights Centre in your State for further assistance. You should not put up with ongoing bullying or harassment.

#### YOUR RIGHTS WHEN REPORTING BULLYING AND HARASSMENT

You have a workplace right under the General Protections in the Fair Work Act 2009 to make a complaint in relation to your employment. Your employer cannot discipline or fire you for making a complaint about being bullied or harassed during the course of your employment. If your employer does try to discipline you because you are making a complaint, please call the Member Rights Centre in your State immediately for assistance.

Your employer should keep your complaint confidential, raising it only with those people necessary to progress the investigation.

You are welcome to contact the Member Rights Centre in your State at any time throughout the process if you require further assistance at any stage.

## **4. WHAT CAN BE DONE IF YOUR EMPLOYER DOES NOT STOP THE BULLYING OR HARASSMENT?**

**If your employer fails to stop the bullying or harassment, you should contact the Union for assistance. We will assist you to resolve your issue.**

This support may include further correspondence and meetings with your employer or, where appropriate, an application to one of the various independent organisations with the power to deal with bullying or harassment in the workplace.

## **5. WHO TO TALK TO FOR SUPPORT, IF YOU HAVE SUFFERED BULLYING OR HARASSMENT IN THE WORKPLACE**

If you're experiencing bullying or harassment, or struggling with the effects, don't suffer in silence. Counselling is available through a range of free and confidential counselling services, which often include an Employee Assistance Program provided through your employer.

**The Member Rights Centre in your state is also able to assist you and/or refer you to a number of different services for further support and assistance.**

**If you experience a physical assault (for example, inappropriate touching) or the threat of physical assault, you should make a report to the police.**

**If it is an emergency, you should call 000 immediately.**



**FOR MORE INFO, CONTACT THE MEMBERS RIGHTS CENTRE:**

**ACT:** 1800 805 027

**NSW:** 1800 805 027

**QLD:** 1800 065 885

**VIC:** (03) 9235 7777 (all VIC)

1800 819 087 (country VIC)

**WA:** 1800 199 890

**SA:** 1800 825 468

**TAS:** 1800 625 119

# INCIDENT RECORD

<b>Date:</b>		<b>Time:</b>	
<b>Location:</b>			
<b>Names of people involved:</b>			

**FACTS:**

*(Include copies of text messages, rosters, emails, memos, or any other relevant evidence and information)*

**HOW THIS AFFECTED YOU:**

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**HOW THIS AFFECTED YOU:**





# THE UNION YOU CAN DEPEND ON

The Members' Rights Centre assists members in a broad range of work-related\* matters, including:

- Return to Work
- Disciplinarys
- Leave Entitlements
- Rosters and Hours
- Wage Rates
- Unfair Dismissals
- Underpayment of Wages
- Redundancy
- Workplace Bullying
- Health and Safety\*

*\*United Workers Union does not represent members in civil or criminal matters*



## FOR MORE INFO, CONTACT THE MEMBERS RIGHTS CENTRE:

**ACT:** 1800 805 027  
[act@unitedworkers.org.au](mailto:act@unitedworkers.org.au)

**SA:** 1800 825 468  
[samrt@unitedworkers.org.au](mailto:samrt@unitedworkers.org.au)

**NSW:** 1800 805 027  
[nswmrt@unitedworkers.org.au](mailto:nswmrt@unitedworkers.org.au)

**TAS:** 1800 625 119  
[TAS@unitedworkers.org.au](mailto:TAS@unitedworkers.org.au)

**NT:** (08) 8924 4700  
[nt@unitedworkers.org.au](mailto:nt@unitedworkers.org.au)

**VIC:** (03) 9235 7777 (all VIC)  
1800 819 087 (country VIC)  
[vic@unitedworkers.org.au](mailto:vic@unitedworkers.org.au)

**QLD:** 1800 065 885  
[memberassist@unitedworkers.org.au](mailto:memberassist@unitedworkers.org.au)

**WA:** 1800 199 890  
[wa@unitedworkers.org.au](mailto:wa@unitedworkers.org.au)



**KNOW WHERE YOU STAND - JOIN YOUR UNION!**  
[www.unitedworkers.org.au](http://www.unitedworkers.org.au)