



WORKSAFE VICTORIA

WORKPLACE VIOLENCE AND BULLYING

June 2005

**YOUR RIGHTS, WHAT TO DO,
AND WHERE TO GO FOR HELP.**



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Disclaimer

The information contained in this booklet is intended as a guide only and is current as of June 2005. It is not a substitute for professional legal advice. Legislation varies from state to state and is liable to change, so up-to-date information should always be sought.

Readers should not act on the basis of any information in this booklet without first obtaining legal advice.

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| | |
|------------------------------------|----|
| Introduction | 2 |
| 1. Workplace violence and bullying | 3 |
| 2. Forms of workplace violence | 6 |
| 3. Legal options | 14 |
| 4. Where to go for help | 17 |

INTRODUCTION

This guide has been written to give you information about your rights and how to deal with workplace violence and bullying. The guide looks separately at areas of workplace violence such as assault and other crimes, threats, sexual harassment, racial abuse, and bullying. It also informs you about where to go for help, who can intervene in situations of workplace violence and bullying and various legal options that may be available.

1. WORKPLACE VIOLENCE AND BULLYING

By law every worker has the right to be safe and free from risk of injury when they are at work. If you are experiencing violence or bullying in your workplace, then you are not safe. Being employed does not give your boss or co-workers permission to assault, threaten, harass or repeatedly bully you.

What is workplace violence?

Any incident where an employee is physically attacked or threatened in the workplace.

What sorts of things could be workplace violence?

- Someone threatening to hurt you
- Objects being thrown at you
- Pushing, shoving, punching, kicking
- Being touched up and any other type of indecent physical contact
- Racial abuse
- Unwelcome sexual comments

All these are examples of workplace violence and some of these are also crimes.

What is workplace bullying?

Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

What sorts of things could be workplace bullying?

All sorts of behaviour can be bullying. Below are just some examples:

- Practical jokes
- Being sworn at
- Someone insulting you
- Being excessively supervised
- Being constantly criticised
- Being put down in public
- Rumours being spread about you
- Being overloaded with work or not given enough work to do
- Not getting the information you need to do your job
- Your personal effects or work equipment being damaged
- Being threatened with the sack

This guide concentrates on workplace violence and bullying that is carried out at the workplace by co-workers, supervisors or bosses.

1. WORKPLACE VIOLENCE AND BULLYING

Who can intervene in situations of workplace violence and bullying?

In situations of workplace violence and bullying, various parties have the power to intervene in order to protect an employee.

Employees who are union members can seek the assistance and advice of their union. An employee who works in a workplace with an occupational health and safety representative (or equivalent) can seek their assistance. Where no health and safety representative is present, an employee can seek assistance from WorkSafe Victoria.

In large organisations, an employee might also seek assistance from a personnel or human resources officer or manager. Employees can even seek the assistance of the police where necessary.

While this range of parties have different roles and powers to intervene in situations of workplace violence or bullying; employers have most responsibility for what happens in their workplaces.

Employers and workplace violence and bullying

Employers have quite strict responsibilities in relation to workplace violence and bullying. Co-workers also do, but it is employers who have final responsibility for what happens in their workplaces (in legal terms, this is called vicarious liability).

Health and Safety and workplace violence and bullying

Employers have a duty of care in relation to the health and safety of their employees at work. This duty cannot be delegated (passed on) to anyone else, and is strengthened by Victoria's *Occupational Health and Safety Act 2004* (OHS Act), which sets out various duties for employers in relation to their employees including:

section 21 (1) *An employer shall provide and maintain so far as is reasonably practicable for employees a working environment that is safe and without risks to health.*

Employees in a workplace also have duties under this Act. The main duties that relate to workplace violence and bullying are:

section 25 (1) *While at work, an employee must – take reasonable care for his or her own health and safety and for the health and safety of anyone else who may be affected by his or her acts or omissions at the workplace;*

1. WORKPLACE VIOLENCE AND BULLYING

section 25 (2) *An employee must not intentionally or recklessly interfere with or misuse anything provided at the workplace in the interest of health, safety and welfare.*

WorkSafe Victoria, a division of the Victorian WorkCover Authority, is the organisation that administers the OHS Act and helps make sure the law is complied with. In February 2003 WorkSafe Victoria issued a Guidance Note on the prevention of bullying and violence at work.

If you are put at risk

TELL YOUR EMPLOYER WHAT HAPPENED, AND ALSO:

1. Go to the doctor, if necessary, and get a WorkCover medical certificate. Take photographs of any injuries.
2. Get advice from Job Watch, your union or solicitor.
3. Report what happened to you to WorkSafe Victoria.
4. Keep a diary of events and keep copies of any relevant documents eg medical certificates; WorkCover claim.

Note: all contact numbers are at the back of this guide.

If the situation is one where you feel you are at immediate risk of injury at work you can refuse to work in this dangerous situation. The OHS Act gives you the right to refuse to work where you believe you are in immediate danger.

Apprentices and workplace violence and bullying

Apprentices have certain rights because they are employed under a training agreement. In Victoria, training agreements and the employment of apprentices are governed by a law called the *Vocational Education and Training Act 1990*. This law sets out some of the rights and responsibilities of both apprentices and employers.

Incidents of workplace violence or bullying against apprentices should always be reported to an Apprenticeship Field Officer (AFO) or directly to the Office of Training and Tertiary Education (Apprenticeship Administration Branch). In certain circumstances, an employer can have the approval to employ apprentices revoked or withdrawn by this department.

2. FORMS OF WORKPLACE VIOLENCE

Criminal Acts: Police and workplace violence

The police can investigate and prosecute criminal acts of workplace violence. The laws that set out what constitutes criminal behaviour in Victoria are the *Crimes Act 1958* and the *Summary Offences Act 1966*. Some of the definitions of crimes contained in this legislation may cover the treatment you have experienced (see definitions from the Crimes Act section on pages 7 to 9).

What to do

Only the police can investigate and prosecute under the Crimes Act. If the behaviour you have been subjected to falls into any of the categories mentioned below, you should go to your local police station to make a statement.

Evidence is important for any type of criminal investigation and prosecution. Witnesses are important too, but even if there weren't any witnesses, still report what has happened to the police.

If you have been assaulted, it is important to go to the police to make a statement as soon as possible.

Always tell the employer what happened to you as well, and make a note of telling them or inform them about what happened in writing. Then, if they do nothing about the assault or criminal behaviour, you have evidence you reported it to them. You should also go to the doctor to get any injuries recorded and treated. If it is possible, also take photos of the injuries.

2. FORMS OF WORKPLACE VIOLENCE

Checklist for criminal workplace violence

REMEMBER, TELL YOUR EMPLOYER WHAT HAPPENED, AND ALSO:

1. Go to the doctor, if necessary, and get a WorkCover medical certificate. If you have visible injuries or damaged clothing etc., take photographs of them.
2. Go to the police and make a statement. In cases of indecent or sexual assault, also contact CASA (Centre Against Sexual Assault).
3. Get advice from Job Watch, your union or a solicitor.
4. Report what happened to you to WorkSafe Victoria.
5. Keep a diary of events and keep copies of any relevant documents e.g. medical certificates; your police statement.

Note: all contact numbers are at the back of this guide.

Definitions from the Crimes Act 1958 (Vic)

Below are some sections of the *Crimes Act 1958* that show what forms of workplace violence can be crimes.

INTENTIONALLY OR RECKLESSLY CAUSING SERIOUS INJURY (SECTIONS 16 AND 17)

These sections cover behaviour that is either reckless¹ (with disregard for the outcome) or intentional² (means to have the outcome) and causes serious injury to the victim.

INTENTIONALLY OR RECKLESSLY CAUSING INJURY (SECTION 18)

This section covers behaviour that is either reckless or intentional and causes injury to the victim.

THREATS TO KILL (SECTION 20)

This section covers threats that intentionally put a person in fear that the threat to kill would be carried out. It also covers threats to kill where the threats are reckless as to whether or not the person feared the threat would be carried out.

¹ Section 17

² Section 16

2. FORMS OF WORKPLACE VIOLENCE

THREATS TO INFLECT SERIOUS INJURY (SECTION 21)

This section covers threats that intentionally put a person in fear that the threat to inflict serious injury would be carried out. It also covers threats to inflict serious injury where the threats are reckless as to whether or not the person feared the threat would be carried out.

STALKING (SECTION 21A)

Stalking is engaging in a course of conduct (occurring more than once) toward a victim, or any other person, which includes any of the following conduct:

- Following, phoning, sending electronic messages (e.g. emails)
- Entering or loitering outside their place of residence or business or any other place regularly frequented
- Interfering with their property
- Giving offensive material or leaving it where it will be found by, or given to, the person or brought to their attention
- Surveillance
- Acting in any other way that could reasonably be expected to arouse apprehension or fear

Such repeated actions are stalking when done with the intention of causing physical or mental harm or of arousing apprehension or fear in the victim, or any other person, for his or her own safety. It is also stalking when the course of conduct engaged in has such effects on the victim.

It is also stalking when a person knows, or should have known, that engaging in such repeated actions would cause harm or result in the victim fearing for their safety.

The definition includes behaviour directed at the victim, or any other person, e.g. acts directed at family, friends or relatives of the victim.

CONDUCT ENDANGERING LIFE (SECTION 22)

Conduct endangering life is behaviour that places, or could place, another person in danger of death. This section also covers behaviour that is reckless.

CONDUCT ENDANGERING PERSONS (SECTION 23)

This section covers behaviour that recklessly places, or may place, another person in danger of serious injury.

2. FORMS OF WORKPLACE VIOLENCE

ASSAULTS (SECTION 31)

An assault under this section of the Crimes Act is "the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person where the application of force is.....with intent to inflict, or being reckless as to the infliction of bodily injury, pain, discomfort, damage, insult or deprivation of liberty and results in the infliction of any such consequence" (section 31 (2)).

An application of force in this section of the Act includes applying heat, light, electric currents or any form of energy and the application of matter in solid, liquid or gaseous form.

The concept of assault in the Crimes Act includes threatened assault. It also covers behaviour that is either reckless or intentional.

SEXUAL HARASSMENT

What is sexual harassment?

Sexual harassment is **unwelcome** conduct or behaviour of a sexual nature. Unwelcome conduct means that you didn't invite the conduct or behaviour. Sexual harassment is also behaviour that offends, humiliates, intimidates or undermines you. It can be a single incident, or repeated behaviour. There are two laws that operate in Victoria and provide employees with protection from sexual harassment. They are the *Equal Opportunity Act 1995* (Vic) and the *Sex Discrimination Act 1984* (Cwlth). These laws make sexual harassment unlawful.

All sorts of behaviour can be sexual harassment. Below are just some examples:

- Name calling (e.g. slut, bitch, poof..)
- Asking personal questions (e.g. Do you have a boyfriend? Did you have sex on the weekend? Do you like sex?)
- Brushing up against someone; kissing you; touching you
- Asking you for sex
- Indecent assault
- Showing you pornography, or leaving it where you will see it

Remember – what is important is what has offended, humiliated or intimidated you. Under the law, the motive (intention or reason) of the harasser, or person discriminating against you, is irrelevant.

2. FORMS OF WORKPLACE VIOLENCE

Just because some behaviour may be tolerated by others in your workplace does not mean you have to put up with it. Under the law, the motive behind any harassment, or unlawful discrimination against a person, is irrelevant. In fact, some workplaces may be called **sexually hostile work environments**. This is where the workplace atmosphere, or culture, is sexually permeated or hostile. A sexually hostile work environment is also considered a form of sexual harassment.

Things that can indicate a sexually hostile working environment may be:

- Display of pornographic materials
- Consistent talk about sex
- Crude conversation and jokes
- Sexual innuendo

Some forms of sexual harassment may also be crimes – things such as stalking and indecent or sexual assault. If criminal behaviour has occurred, you should contact the police and CASA (see page 17 for contact details).

Sexual harassment is an unlawful form of discrimination. You can make a complaint to get what is termed a **remedy**. A remedy can involve compensation, an apology and the harasser and/or workplace undergoing training in sexual harassment prevention.

An application under the Equal Opportunity Act is made to the Equal Opportunity Commission of Victoria (EOCV). An application made under the Sex Discrimination Act is made to the Human Rights and Equal Opportunity Commission (HREOC). There are differences between these two laws, so you should always get advice about which one to choose. The **time limit** for making an application under either law is **12 months**.

Once you have lodged a claim of discrimination with the EOCV or HREOC, you are protected from being victimised by the employer and/or harasser. Victimisation is being treated badly or being punished in some way for lodging a claim.

2. FORMS OF WORKPLACE VIOLENCE

What to do

REMEMBER, TELL YOUR EMPLOYER WHAT HAPPENED, AND ALSO:

1. Keep a diary of the harassment, and keep any evidence like notes, pictures, and hard copies of emails.
2. Get advice from Job Watch, your union, the EOCV or solicitor and then lodge a claim of discrimination with either the EOCV or HREOC.
3. If you are an apprentice, contact your Apprenticeship Field Officer, or the Apprenticeship Administration Branch of the Office of Training and Tertiary Education.

Note: all contact numbers are at the back of this guide.

Racial abuse

Racial abuse is a form of unlawful discrimination. Abusing someone because of their ethnic or racial origin is unlawful under the Victorian *Equal Opportunity Act 1995* and the Federal *Racial Discrimination Act 1975*. Because racial abuse is an unlawful form of discrimination, you can make a complaint under either of the laws to get a "remedy".

Remedy

A remedy can involve compensation, an apology and even the workplace or harasser undergoing training in discrimination prevention. An application made under the *Equal Opportunity Act* is made to the Equal Opportunity Commission of Victoria (EOCV). An application made under the *Racial Discrimination Act* is made to the Human Rights and Equal Opportunity Commission (HREOC). There are differences between these two laws, so you should always get advice about which one to choose. The **time limit** for making an application under either law is **12 months**.

Once you have lodged the claim of discrimination with the EOCV or HREOC, you are protected from being victimised by the employer and/or harasser. Victimisation is being treated badly or being punished in some way for lodging a claim.

2. FORMS OF WORKPLACE VIOLENCE

What to do

Let the employer know what is happening. Write this in a memo or letter. Don't rely on telling them verbally. Keep a copy of your note too! Putting it in writing is important because then you have proof. Copies of notes or memos can be important evidence when, or if, you take legal action.

REMEMBER, TELL YOUR EMPLOYER WHAT HAPPENED, AND ALSO:

1. Keep a diary about the harassment and keep any evidence such as notes, pictures, and hard copies of emails.
2. Get advice from Job Watch, your union, the EOCV or a solicitor; and then lodge a claim of discrimination with either the EOCV or HREOC.

Note: all contact numbers are at the back of this guide.

Bullying

Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

It is behaviour that offends, humiliates, intimidates or undermines a person.

Bullying usually occurs over a period of time. It is a repeated pattern of behaviour that can be made up of different types of incidents. For example, it may include being sworn at, excessively supervised, threatened with the sack and having personal effects damaged.

If you experience bullying keep a diary or record of the incidents that have occurred. Tell the person or persons who are bullying you to stop. If they do not stop report what has happened to your supervisor or boss. Also make a record or note in your diary when you reported the bullying, and who you reported it to in your workplace.

If the bullying continues you should write a memo to your supervisor or boss asking them to do something about it.

2. FORMS OF WORKPLACE VIOLENCE

In some cases, bullying that is not dealt with appropriately can turn into a constructive dismissal (see page 14 for more information).

What to do

REMEMBER, ALWAYS TELL YOUR EMPLOYER WHAT HAPPENED, AND ALSO:

1. Keep a diary or record of the incidents that have occurred and keep any hard evidence like notes, pictures, memos, and emails if there are any.
2. Get advice from Job Watch, your union or a solicitor.
3. If nothing is done after you have reported the bullying to your supervisor or employer, write a memo or letter outlining what has happened and asking them to do something about it.

Note: all contact numbers are at the back of this guide.

3. LEGAL OPTIONS

Any legal action will have time limits for making a claim.

Therefore always seek advice as soon as possible.

Intervention orders

Intervention orders can be sought in the case of stalking. An intervention order can restrict the contact the offender has with you, and restrict the way they have been behaving towards you (e.g. assaulting, harassing, molesting or threatening you). You can apply for an intervention order at your local Magistrates' Court. For more information about intervention orders, contact your local community legal centre (see page 17 for contact details).

Police involvement

Contacting the police and making a statement to them about criminal acts of workplace violence can result in perpetrators being investigated and possibly prosecuted. Always go to the police as soon as possible after the assault, or other criminal offence, so that any evidence can be gathered.

For more information on what to do in cases of criminal workplace violence, see pages 6 and 7 of this booklet.

Unfair or unlawful dismissals

If an employee is dismissed after experiencing or reporting workplace violence or bullying, they may be able to make a claim for unfair or unlawful dismissal. An employee can seek reinstatement or compensation through this process.

Not all employees are protected by the unfair or unlawful dismissal laws and there are strict time limits. You should always get legal advice. For more information on unfair or unlawful dismissal, contact Job Watch.

The **time limit** for unfair or unlawful dismissal applications made under the *Workplace Relations Act 1996* is **21 days** from the date the termination took effect.

Constructive dismissal

Constructive dismissal is a way of arguing for unfair or unlawful dismissal when it is the employee who is forced to leave the workplace. For example, this can happen when an employer has failed to do something about workplace violence or bullying when it has been reported to them.

Constructive dismissals are not straightforward cases. Getting legal advice before you leave a workplace, or take any other form of action, is essential. For more information on constructive dismissal, contact Job Watch.

Equal opportunity laws

Equal opportunity laws are used to challenge the treatment that falls into the category of unlawful discrimination. Attributes that cannot be used as a reason to treat you less favourably than other workers are:

age, breastfeeding, status as a carer, disability/impairment, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief or activity, pregnancy, race or ethnic origin, religious belief or activity, sex, sexual orientation, being associated with someone with any of these attributes, and sexual harassment.

If the workplace violence or bullying you have experienced is motivated by unlawful discrimination, you can lodge a claim under Victorian or federal law. Claims of unlawful discrimination under the Victorian *Equal Opportunity Act 1995* are lodged with the EOCV. Claims of unlawful discrimination under the federal *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* are lodged with HREOC.

It is also unlawful for an employer to further victimise you because you have made a complaint of discrimination.

Because you may have to choose which law you want to lodge a claim under, it is always important to get advice. Contact your union, Job Watch, the EOCV or a solicitor for more information.

Claims of unlawful discrimination should be made within **12 months** of the date that the discrimination or harassment occurred.

Assistance for victims of crime

A victims of crime assistance scheme operates in Victoria. Under the scheme, victims can apply for compensation. The compensation available under certain circumstances includes reimbursement of medical expenses, counselling, income support, payments for pain and suffering called "special financial assistance".

3. LEGAL OPTIONS

For more information on assistance for victims of crime, contact the Victims Support Agency Helpline (see page 17 for contact details).

WorkCover

The WorkCover scheme in Victoria provides compensation to employees who are injured in the course of their employment. Injury covers more than just physical injuries, psychological injuries are covered too. The WorkCover scheme provides income support for the period of work incapacity, payment of all reasonable medical and like costs, and lump sum payments for permanent impairment.

If you are going to make a claim under the WorkCover scheme, you must notify your employer of the injury within **30 days** of becoming aware of it.

The right of seriously injured workers to sue negligent employers for common law damages was restored from 20 October 1999. To access common law, workers will have to satisfy one of two gateways to the Serious Injury Test.

Please note: Please seek up-to-date advice from the WorkCover Advisory Service if you require further information.

4. WHERE TO GO FOR HELP

| | |
|--|--|
| ACTU Member Connect For referral to a union | 1300 362 223 |
| Centre Against Sexual Assault (CASA) For referral to closest CASA | 9344 2210 (business hours) 9349 1766 (after hours) 1800 806 292 (toll-free after hours) 9349 2466 (TTY) |
| Equal Opportunity Commission of Victoria For information on discrimination under state laws | 9281 7100 1800 134 142 |
| Federation of Community Legal Centres For referral to your local community legal centre | 9654 2204 |
| Human Rights and Equal Opportunity Commission For information on discrimination under federal laws | 1300 369 711 1300 656 419 |
| Job Watch For advice about workplace violence and bullying | 9662 1933 1800 331 617 |
| Office of Training and Tertiary Education For apprentices and trainees to report workplace violence and bullying, and to access the Apprenticeship Field Officer | 1300 722 603 |
| Police | 000 |
| Victims Support Agency Helpline For information about crimes compensation | 1800 819 817 |
| Victorian Trades Hall Council For referral to a union | 9662 3511 |
| WorkCover Advisory Service | 9641 1444 1800 136 089 (business hours) |

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