



Appropriate Workplace Behaviour Policy

(September 2020)

1. Introduction

1.1 Purpose

The purpose of the Society of Construction Law Australia's (**SoCLA**) Appropriate Workplace Behaviour Policy (**AWB Policy**) is to make you aware of:

- (a) what 'unlawful discrimination', 'unlawful harassment' and 'workplace bullying' mean;
- (b) your obligations in relation to unlawful discrimination, unlawful harassment and workplace bullying;
- (c) the procedures that SoCLA has in place to deal with complaints relating to discrimination, harassment and bullying; and
- (d) who you can talk to at SoCLA if you wish to make a complaint.

1.2 Who needs to comply with this AWB Policy?

This AWB Policy applies to all employees, officers, contractors and volunteers (**Personnel**) of SoCLA.

1.3 What does this AWB Policy apply to?

This AWB Policy applies to behaviour or conduct by Personnel in connection with work including:

- (a) in the workplace, including while working outside normal working hours;
- (b) while undertaking work activities, including interaction with members or other third parties or while working away from the office; and
- (c) at SoCLA-related events (eg, member functions, social functions and conferences).

2. Unlawful Discrimination

2.1 What is unlawful discrimination?

Unlawful discrimination means treating one person or group less favourably than another, or causing them disadvantage, in certain circumstances.

Australia has laws regarding discrimination at the Federal level – such as the *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth) – and in each state or territory.

These laws make discrimination unlawful on a variety of grounds (unlawful grounds), including a person's:

- (a) sex, pregnancy or breastfeeding;
- (b) marital or relationship status;
- (c) sexual orientation, transgender status, gender identity, intersex status;
- (d) race, colour, descent, nationality, national origin, ethnicity, ethno-religious origin or social origin;
- (e) religious belief or activity;
- (f) political belief or activity;
- (g) family responsibilities or responsibilities as a carer;
- (h) disability or impairment;
- (i) age;
- (j) service in the voluntary defence forces; or
- (k) others, depending on the state or territory in which you work.

Whether it is unlawful to discriminate against a person for one of these reasons will depend on the particular circumstances and the legislation which applies.

2.2 How can unlawful discrimination occur?

Discrimination can occur in the recruitment process, during the course of work or upon termination of employment. Discrimination can also occur in the provision of goods and services (whether for reward or not). Personnel should not discriminate against colleagues or members. Similarly, suppliers should not discriminate against Personnel.

Discrimination can be direct or indirect.

Direct discrimination occurs where someone is treated less favourably because of their sex, age or race etc. An example of direct discrimination is when an employee misses out on an internal promotion because they are considered too old for the job.

Indirect discrimination occurs where everyone is treated on the same terms according to a rule, policy or directive but which has the effect of being less favourable to people of a particular sex, age, race, and which is not reasonable in all the circumstances. An example of indirect discrimination would be a security company that has height and weight requirements for its employees – this may exclude a large proportion of women – and this requirement is not reasonable.

There are exceptions from anti-discrimination law which may apply in some situations – for example, because of the inherent requirements of a particular job.

Bullying may also occur at the same time as unlawful discrimination and may also be a breach of work health and safety laws. Complaints regarding bullying are dealt with separately to unlawful discrimination under SoCLA's Anti Bullying Policy.

3. Unlawful Harassment

3.1 What is unlawful harassment?

Unlawful harassment is a form of unlawful discrimination. Unlawful harassment includes sexual harassment and other types of harassment which the law does not allow in particular circumstances. In general, unlawful harassment is any form of behaviour that:

- (a) is unwelcome (not wanted) or uninvited (not asked for);
- (b) a reasonable person would have anticipated would humiliate, offend or intimidate the person exposed to the conduct; and
- (c) is based on one of the grounds of unlawful discrimination.

In some cases a single action or incident can create unlawful harassment. In other cases there may need to be a persistent pattern of behaviour before unlawful harassment has occurred.

Harassment will not be unlawful, as such, if it is not based on one of the unlawful grounds, although it may amount to bullying and be a breach of work health and safety laws. Complaints regarding bullying are dealt with separately to unlawful harassment under SoCLA's Anti Bullying Policy.

In any event, SoCLA expects its Personnel to treat each other and other people with whom they come into contact as representatives of SoCLA with respect and courtesy.

3.2 Examples of unlawful harassment

Unlawful harassment can include, but is not limited to:

- (a) sexual harassment (see below);
- (b) verbal abuse or comments that degrade or stereotype people because of their race, sexual orientation, pregnancy, disability, etc;
- (c) jokes based on race, sexual orientation, pregnancy, disability etc;
- (d) mimicking someone's accent, or the habits of someone with a disability;
- (e) offensive gestures based on race, sexual orientation, pregnancy, disability etc;

- (f) ignoring or isolating a person or group because of their race, sexual orientation, pregnancy, disability, etc; or
- (g) display or circulation of racist, pornographic or other offensive material (including in electronic format).

3.3 What is unlawful sexual harassment?

Unlawful sexual harassment occurs where a person:

- (a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the other person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated **the possibility** that the person harassed would be offended, humiliated or intimidated.

Unlawful sexual harassment includes, but is not limited to:

- (a) pressure or demands for dates or sexual favours;
- (b) unnecessary familiarity - for example, deliberately brushing against a person or constantly staring at a person;
- (c) unwanted physical contact - for example, touching or fondling;
- (d) sexual jokes or innuendo;
- (e) offensive telephone calls;
- (f) offensive sexual gestures;
- (g) unwelcome comments or questions about a person's sex life;
- (h) display or circulation of sexual material, including magazines, posters or pictures and email messages (including in electronic format);
- (i) sending email or text messages which contain sexual content or tone; or
- (j) sexual assault.

It is important to understand that some of these forms of sexual harassment are also criminal behaviour and may be treated as a criminal offence. These include:

- (a) sexual assault;
- (b) physically molesting a person;
- (c) indecent exposure; and
- (d) obscene phone calls or emails/letters.

3.4 What is not unlawful sexual harassment?

Mutual attraction between people is not sexual harassment. Conduct which is welcome or consensual is not unlawful, and friendships (sexual or otherwise) which develop between people who meet at work are a private concern provided they do not adversely impact on the workplace or create a conflict of interest.

However, you should take great care before engaging in conduct you believe to be welcome. Always remember that some people may not feel comfortable telling you that your behaviour is offending them and is not welcome. This may be because of their personality or may be because of the relative status of the people involved (eg, they are too worried about the possible impact on their employment if they complain).

It is your responsibility to ensure that you do not engage in conduct which is not welcome.

You should also remember that even conduct which is welcome may not be appropriate in the workplace. If you are unsure whether conduct is appropriate, you should speak to one of the Executive of SoCLA (the Chair, the Vice-Chair, the Treasurer, or the Secretary) whose details are available on our website.

4. Workplace Bullying

4.1 Introduction

Everyone at SoCLA has a legal obligation not to bully any of SoCLA's Personnel.

SoCLA expects all Personnel to treat each other with respect and courtesy and is committed to preventing workplace bullying, as far as reasonably practicable, as part of providing a safe and healthy work environment.

The purpose of this anti bullying policy is to make you aware of:

- (a) what 'bullying' means;
- (b) the procedures SoCLA has in place to deal with workplace complaints relating to bullying; and
- (c) who you can talk to at SoCLA if you wish to make a complaint about bullying.

4.2 When does this anti bullying policy apply?

This anti bullying policy applies to all Personnel and applies to behaviour:

- (a) in the workplace, including when working outside normal working hours;
- (b) while undertaking work activities, including interactions with third parties and while working away from SoCLA's premises;
- (c) at SoCLA-related events, including conferences and social functions (including while undertaking business trips); and
- (d) outside of work hours, if that interaction involves other Personnel, including where interaction is through email, text messaging or social media.

SoCLA and everyone else at the workplace has a work health and safety duty, and can help to ensure workplace bullying does not occur.

4.3 What is workplace bullying?

Workplace bullying is repeated and unreasonable behaviour directed toward a Worker or a group of Workers that creates a risk to health and safety.

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

Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

A single incident of unreasonable behaviour is not considered to be workplace bullying.

Bullying in our workplace is unacceptable and will not be tolerated. If you are found to have breached this policy, this may result in disciplinary action being taken against you, which may include the termination of your employment or engagement with SoCLA.

Bullying may also give rise to legal proceedings being initiated against you directly, including for breaching applicable workplace health and safety laws or for breaching the anti-bullying provisions of the *Fair Work Act 2009* (Cth). In some jurisdictions, criminal charges can be laid against a person who engages in serious bullying (which could include imprisonment or fines).

Bullying may also occur at the same time as unlawful discrimination or harassment (including sexual harassment). Complaints regarding unlawful discrimination and harassment are dealt with separately to complaints regarding bullying (and are covered by sections 2 and 3 of this policy).

4.4 What are examples of workplace bullying?

The following types of behaviour, whether intentional or unintentional, may be considered to be workplace bullying if they are repeated, unreasonable and create a risk to health and safety:

- (a) abusive, insulting or offensive language or comments;
- (b) unjustified criticism or complaints;
- (c) withholding information that is vital for effective work performance;

- (d) intentionally setting unreasonable timelines or constantly changing deadlines;
- (e) intentionally setting tasks that are unreasonably below or beyond a person's skill level;
- (f) denying access to information, supervision, consultation or resources to the detriment of Personnel;
- (g) spreading misinformation or malicious rumours;
- (h) changing work arrangements such as rosters and leave to deliberately inconvenience a particular Personnel; and
- (i) deliberately excluding someone from work activities.

Other types of behaviour may also constitute workplace bullying.

Bullying can be carried out in a variety of ways, including in person, through email or text messaging, internet chat rooms, instant messaging or other social media channels. It can be directed at one or more Personnel and be carried out by one or more persons.

4.5 What isn't workplace bullying?

Reasonable management action carried out lawfully and in a reasonable manner is not bullying.

For example, it is reasonable for SoCLA's managers and supervisors to allocate work and to give feedback on its Personnel's performance.

Examples of reasonable management action include, but are not limited to:

- (a) setting reasonable performance goals, standards and deadlines;
- (b) rostering and allocating working hours where the requirements are reasonable;
- (c) transferring Personnel for operational reasons;
- (d) informing an employee about inappropriate behaviour in an objective and confidential way;
- (e) implementing organisational changes or restructuring; and
- (f) taking disciplinary action, including suspension or terminating employment.

In addition, differences of opinion and disagreements are not considered workplace bullying. People can have disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety

5. What Are Your Obligations?

Everyone at SoCLA has an obligation not to discriminate against, harass for any unlawful reason, or bully any Personnel, supplier or member of SoCLA. In addition, Personnel are required to cooperate with SoCLA in any action it takes to ensure compliance with this policy, including any action to investigate breaches.

You must always consider how your behaviour will be viewed by the person or people you are dealing with. You might unlawfully discriminate against, unlawfully harass or bully someone even if you do not mean to do or say anything offensive. It is not a legally acceptable defence to say that 'it was just a joke' or that you did not mean to, or intend to, humiliate, offend or intimidate someone else.

It is sometimes difficult to know whether someone will find your behaviour acceptable. What is offensive to one person may not be offensive to another. You should be careful not to risk being misunderstood and, as a result, becoming the subject of a complaint.

You will be personally liable for your own actions if you engage in unlawful discrimination, unlawful harassment or workplace bullying. SoCLA may be required to share liability for your actions because of the legal principle relating to vicarious liability, although generally not where it has made you aware of your own obligations.

6. What can you do if you are being unlawfully discriminated against, harassed or bullied?

If you feel that you are being unlawfully discriminated against, harassed or bullied, then we encourage you to take action which may resolve the problem.

Do not ignore circumstances where you feel you are being unlawfully discriminated against or harassed, thinking it will go away. Ignoring the behaviour could be taken as tacit approval of the behaviour by the person causing the discrimination, harassment or bullying.

Where you feel comfortable ask the person to stop, or make it clear that you find the behaviour offensive or unwelcome. Maybe the alleged discriminator/harasser/bully is not aware that his/her behaviour is intimidating or unwelcome and will stop once they are told. It may be useful to speak with a member of the SoCLA Executive in the first instance to seek guidance on how to do this.

Alternatively, or concurrently, you may wish to make a complaint to a member of the SoCLA Executive under this AWB Policy, as soon as possible after the incident(s) have occurred.

Although you may feel the need to tell a trusted friend or work colleague about the matter, you should be careful. Accusations of discrimination, harassment or bullying can harm the reputation of those involved and could ultimately lead to legal action for defamation. Do not allow rumours to spread.

Workplace bullying complaints may also be referred to external bodies such as the applicable State-based work, health and safety regulator – although SoCLA encourages Personnel to try to resolve complaints internally by using this policy.

7. What will happen if you make a complaint?

7.1 SoCLA

All complaints will be treated seriously and generally in accordance with this AWB Policy. As each complaint will differ, SoCLA will determine the most appropriate method of dealing with the complaint. This may vary depending on the nature of the specific complaint and a number of other factors. Potential steps SoCLA may take include informal or facilitated discussions, mediation or an internal or external investigation.

SoCLA will treat the matter as confidentially as possible but may need to speak to others to appropriately deal with the complaint.

SoCLA will take whatever action it considers appropriate if there has been unlawful discrimination, harassment or workplace bullying, including disciplining or dismissing offenders.

7.2 You

You should also be aware that if you make a complaint you are responsible for ensuring that you:

- (a) make the complaint honestly and in good faith;
- (b) provide all facts relevant to the complaint;
- (c) co-operate with the resolution process; and
- (d) keep the complaint confidential within the resolution process.

If the complaint is vexatious or if you lie about or exaggerate a complaint, or do not provide all facts relevant to the complaint at the outset, or do not co-operate with the process SoCLA adopts to address the complaint, SoCLA will view this as a very serious matter, and you may be disciplined or dismissed.

8. What will happen if a complaint is made about you?

If a complaint has been made about you, you are responsible for ensuring that you:

- (a) cooperate with the resolution process;

- (b) provide a written or verbal response to the complaint which has been raised, if requested; and
- (c) provide all relevant facts to the person dealing with the complaint, if requested.

9. Victimisation

You must not victimise a person because they made or propose to make a complaint of unlawful discrimination, harassment or workplace bullying or because they have provided information in relation to a complaint. Victimisation means subjecting a person to some detriment, for example, ostracising a person.

If you feel that you are being victimised because you have made or propose to make a complaint of unlawful discrimination, harassment or workplace bullying or because you have provided information in relation to a complaint you should raise the issue as soon as possible with a member of the SoCLA Executive.

10. Contact person

If at any time you have any questions regarding this AWB Policy, your obligations or the complaints process outlined above, we encourage you to contact a member of the SoCLA Executive (whose details are available on the SoCLA website).

11. General

You are required to comply with this policy in your work with SoCLA. However, this policy is not incorporated into the contract of employment or the terms of engagement of any Personnel with SoCLA and does not impose any contractual duties, implied or otherwise, on SoCLA. This policy may be varied by SoCLA from time to time at its discretion. SoCLA may, at its discretion, depart from this policy in circumstances where it determines it is appropriate to do so.