

Discrimination, bullying, and sexual harassment: fact sheet



For support, contact RACS on (Australia) 1800 892 491
or (New Zealand) 0800 787 470



The Royal Australasian College of Surgeons (RACS) is committed to building a culture of respect in surgery and improving patient safety through identifying and addressing unacceptable behaviours. Unacceptable behaviour adversely affects our co-workers as well as our patients, and it is up to all of us to take appropriate action to address it.

Legislation in Australia at Federal, State and Territory levels, and in New Zealand, defines specific types of unacceptable behaviours. Knowing the relevant legislation is the responsibility of every professional in the workplace.

Unacceptable behaviour covers a broad range of behaviours. Colloquially, terms such as bullying and harassment are often used interchangeably but sometimes incorrectly to describe rude or disrespectful behaviour. Legislation, however, defines and differentiates bullying, discrimination and sexual harassment as specific types of unacceptable behaviours.

This fact sheet provides a guide to help you identify and better understand what constitutes bullying, discrimination and sexual harassment and what you can do, if you experience it in your workplace.

BULLYING

Bullying is unreasonable and inappropriate behaviour that creates a risk to health and safety. It is behaviour that is repeated over time or occurs as part of a pattern of behaviour.

Such behaviour intimidates, threatens, offends, degrades, insults or humiliates. There are psychological and physical forms of bullying. Bullying may result from a combination of different behaviours.

Examples include:

- Repeated hurtful remarks, attacks or abuse, such as making fun of a person's work, their family, or them as a person
- Psychological harassment such as playing mind games, taunting, excluding or ganging up on someone
- Intimidating, derogatory or abusive interactions
- Assigning meaningless tasks for the purpose of embarrassing or undermining someone
- Repeatedly giving someone impossible jobs that cannot be done in the given time, or with the resources provided, or for which they do not have the required training
- Deliberately changing work conditions to make it difficult for someone
- Initiation, pranks or hazing
- Intentionally spreading malicious gossip or providing misleading information.

Behaviours that can be confused with bullying:

Workplace tension can surface on occasion and may not be bullying. A one-off abrupt comment is not bullying. Some practices in the workplace may seem unfair, but will not necessarily amount to bullying.

Assigning work and setting performance goals, informing and warning a worker

about inappropriate behaviour or unsatisfactory work performance, undertaking performance reviews and providing constructive feedback conducted in a fair way, are not examples of bullying.

Employers are allowed to transfer, demote, discipline, counsel, retrench, terminate employment or not renew contracts, as long as they are acting reasonably and have ensured procedural fairness.

DISCRIMINATION

Discrimination means treating a person *less favourably*, including offending, intimidating, harassing or humiliating on the basis of legally protected attributes or personal characteristics.

Legislation outlines a list of attributes and personal characteristics against which discrimination is unlawful, including sex, age, religious belief, political belief, pregnancy, breastfeeding, disability, impairment, marital status, family responsibilities, sexual orientation, gender identity, race and cultural background.

Examples include:

- Passing over someone for promotion because of their racial background
- Denying someone operating lists due to their family or parental responsibilities
- Referring to the male trainees by name but to the female trainees as 'sweetheart' or similar term
- Excluding someone from a meeting directly related to their role, due to their religious belief

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- Assigning someone meaningless tasks unrelated to their role, due to age
- Excluding a person from social events where other colleagues have been invited, due to that persons' sexual orientation.

Indirect discrimination occurs when a work requirement, condition, rule or practice appears neutral and seems to apply equally to everyone, when in fact it unfairly disadvantages an individual or a group of people on the basis of a legally protected attribute or personal characteristic.

Examples include:

- Requiring all staff to park in the staff car park located a block away from the hospital, including the doctor with one leg who uses crutches, when there are limited parking spaces closer to the hospital
- Requiring all staff to work a 12-hour shift over the peak period, including the employee with a young baby who is breastfeeding.

HARASSMENT

Harassment, as described in legislation, is a form of *attribute based discrimination*.

Harassment is unwanted, unwelcomed or uninvited behaviour that makes a person feel humiliated, intimidated or offended.

It is based on specific attributes or characteristics.

It can include racial hatred, be related to a disability, or relate to the victimisation of a person who has made a complaint. A single incident can amount to attribute based harassment.

Examples include telling a registrar who made a mistake that her pregnancy or gender were letting her down.

The following examples illustrate the difference between discrimination and harassment:

- Excluding a trainee from presenting cases because they speak with an accent or impediment (discrimination)
- Mocking or mimicking a person about their speech or impediment (harassment).

SEXUAL HARASSMENT

Sexual harassment includes unwelcome sexual advances, requests for sexual favours and other unwelcome conduct of a sexual nature, which offends, humiliates or intimidates a person or group. A single incident can amount to sexual harassment, as can behaviour of a sexual nature that creates a hostile working environment or permeates a work or training environment.

Sexual harassment can occur at work or in a work-related environment, including via e-mail, text messaging or social media. It can also take place when interacting at a work-related social function, or during internal or external training.

Examples include:

- Staring, leering, wolf whistling or gestures of a suggestive or sexual nature
- Unnecessary familiarity or intimacy, unwelcome touching such as deliberately brushing up against a person, hugging or kissing
- Sending or forwarding sexually explicit emails or text messages
- Displaying sexually suggestive pictures, videos, music, emails, blogs, books or objects
- Sexual taunts or innuendo, sexually explicit or offensive jokes
- Questions or insinuations about a person's sexual or private life
- Persistent requests for dates, propositions or pressure for sexual favours
- Molestation, indecent exposure, indecent assault, sexual assault or rape.

Sexual harassment, including stalking and obscene communications, can amount to a criminal offence.

WHO DECIDES WHAT IS UNACCEPTABLE BEHAVIOUR?

In determining whether a behaviour is unacceptable, the "reasonable person's test" is applied. This refers to whether a reasonable person, having regard to all the circumstances, would consider the behaviour to bully, discriminate or harass a person. A person's intent or motive is irrelevant – it is the impact and the nature of the behaviour that is assessed.

WHAT IF I HAVE EXPERIENCED UNACCEPTABLE BEHAVIOURS?

If you have experienced unacceptable behaviour, seek support from your peer network, mentor, colleagues or RACS.

Ask someone you trust to speak to the person who has demonstrated the unacceptable behaviour, and see if there is an opportunity to find out what their perspective is. Sometimes the person demonstrating the unacceptable behaviour does not understand the impact of their behaviour, and this provides an opportunity for them to reflect and amend their behaviour.

Be familiar with your organisation's policies on discrimination, bullying and sexual harassment.

Document the event or nature of the behaviour.

Discuss it with your manager, a health and safety representative, or someone in authority to understand your rights and options.

Consider reporting the event or making a formal complaint to the relevant department in your organisation i.e. People and Culture, Human Resources etc.



REPORTING TO RACS

RACS are here to support you.

Whilst we encourage issues to be addressed in the workplace, you can also contact RACS. Our team can assist you if you need to discuss or report your concern.

Australia: 1800 892 491

New Zealand: 0800 787 470

Email: complaints@surgeons.org

If you have experienced unacceptable behaviour by a Fellow, Trainee or Specialist International Medical Graduate (SIMG) we value your feedback and will listen to your concerns.

Our Support and Complaints team can talk through your enquiries, concerns and complaints with you. Sometimes, this conversation helps clarify that other agencies are better placed to deal with the issue. We can support this referral.

Find out more about our processes and how we can support you at <https://www.surgeons.org/about-racs/Feedback-and-complaints/Enquiries-concerns-and-complaints>

EXTERNAL AGENCIES

You may wish to make an inquiry or a complaint to an external agency.

Australian Federal, State and Territorial legislation varies, as does New Zealand legislation.

Australia

Fair Work Commission

You can submit a request to have bullying behaviour stopped through the Fair Work Commission.

Phone: 1300 799 675

Website: www.fwc.gov.au

ACT

ACT Human Rights Commission: 02 6205 2222

NSW

Anti-Discrimination New South Wales:
1800 670 812

NT

Northern Territory Anti-Discrimination Commission: 1800 813 846

QLD

Queensland Human Rights Commission:
1300 130 670

SA

Equal Opportunity Commission
South Australia: 1800 188 163

TAS

Equal Opportunity Tasmania: 1300 305 062

VIC

Victorian Equal Opportunity and Human Rights Commission: 1300 891 848

WA

Equal Opportunity Commission
Western Australia: 1800 198 149

New Zealand

New Zealand Human Rights Commission Phone: 0800 496 877

Website: <https://www.hrc.co.nz/>

Worksafe New Zealand

Phone: 0800 030 040

Website: <http://www.worksafe.govt.nz/worksafe>