BULGYING, DISCRIMINATION AND SEXUAL HARASSMENT

INTRODUCTION

Bullying, discrimination and sexual harassment are topics pertinent to fellow and trainee anaesthetists our employers and professional bodies (ANZCA, ASA, NZSA). These behaviours impact on the welfare of anaesthetists, professionalism and potentially patient safety. Bullying has become an endemic issue in the Australian and New Zealand workplace. The full cost of workplace bullying and lost productivity in absenteeism is difficult to quantify, but some Australian-wide estimates have placed it at up to a staggering $26 billion per year.

Bullying discrimination and sexual harassment are all unacceptable behaviours, which contravene ANZCAs code of professional conduct and will not be tolerated when fellows and trainees are acting as college representatives.

ANZCA policy document gives full information on definitions and processes to follow

This document contains support and resources on:
1. What bullying is
2. Observations on bullying behaviour
3. What is not bullying
4. Discrimination
5. Sexual Harassment
6. Duties of Employers and Supervisors
7. What you can do if you experience bullying, harassment or sexual discrimination.
8. Victimisation
9. Further reading

1. What bullying is
Workplace bullying is repeated unreasonable behaviour directed towards a person or group that creates a risk to health and safety.
Within this definition:

- “Unreasonable behaviour” means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.
- “Behaviour” includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening.
- “Risk to health and safety” includes risk to the mental or physical health of the person.

(Bullying behaviour breaches the obligation of an employer to provide a safe workplace. (Fair Work Act 2009 Amendment Act 2013) Bullying can, in some cases be a criminal offence under State and Federal Law.)

Bullying behaviour is “behaviour that intimidates, offends, degrades, insults or humiliates a person, including physical and/or psychological behaviour”.

Examples of direct bullying behaviour include:

- Physical abuse.
- Hostile, threatening or intimidating behaviour.
- Initiation pranks; Verbal abuse and humiliation.
- Written abuse (e.g. via email, internet, instant messaging, the use of social media and texting).
- Humiliation through sarcasm or insult.
- Stalking, physical or via text, email, internet, instant messaging, social networking).
- Displaying written or pictorial material which degrades or offends.
- Exclusion from activities.
- Giving someone the majority of unpleasant tasks.
- Deliberately withholding information/resources necessary for effective performance.

Some bullying behaviours are less obvious, but are clearly intended to have the same effect, (of offending, degrading or humiliating others).

Examples of indirect forms of bullying include:

- Constant belittling a person’s opinions.
- Constant unjustified criticism, insults, persistent nit-picking.
- Setting impossible work expectations or deadlines.
- Changing work rosters to inconvenience others deliberately.
- Constantly singling out a person, and targeting him or her for practical jokes or gossip.

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ACE is a joint initiative of the Australian and New Zealand College of Anaesthetists, Australian Society of Anaesthetists and New Zealand Society of Anaesthetists.
2. Observations on bullying behaviour
Where bullying occurs there is often a power imbalance. This power imbalance may be based on position in the organisation, experience, age, length of time the person has been with the organisation, social position, or other factors that create a power difference between the person perpetrating the bullying behaviour and the person (or people) who are targeted by the bullying behaviour. While there are cases of upward bullying, generally bullying behaviour is often directed at those who lack power. Bullying by senior doctors of junior doctors still occurs, and may be part of the (ancient and endemic) culture in some disciplines.

As senior doctors, we should never underestimate the effect of behaviour on those in our team who have less power. The unintended consequences of bullying behaviour can have dire consequences for the person concerned. Those persons who engage in bullying behaviour may not be aware of the nature of their conduct. The intention of the person in his or her behaviour is irrelevant to whether or not bullying has occurred. They may see themselves as motivated by the best of intentions, but the message delivery is often sub-optimal or unprofessional.

3. What is not bullying?
A single incident of unreasonable behaviour is not bullying, however it may be repeated or escalate and so should not be ignored.

Bullying is not merely a case of poor communication or interpersonal skills. It is not just unsatisfactory management or supervision skills. It is reasonable for managers and supervisors to allocate work and give feedback on performance. These actions are not workplace bullying if they are carried out in a lawful and reasonable way, taking the particular circumstances into account.

4. Discrimination
Direct discrimination happens when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics.

Direct discrimination is unlawful under federal discrimination laws if the discrimination is based on protected characteristics, such as a person’s race, sex, pregnancy, marital status, family responsibilities, breastfeeding, age, disability, sexual orientation, gender identity or intersex status. Some limited exemptions and exceptions apply.

Indirect discrimination occurs when there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who share a particular attribute.

(Example: It could be indirect sex discrimination if a policy says that managers must work full-time, as this might disadvantage women because they are more likely to work part-time because of family responsibilities.)
5. Sexual harassment
Sexual harassment is generally defined as someone making an unwelcome sexual advance, or an unwelcome request for sexual favours, the other person; or engaging in any other unwelcome conduct of a sexual nature in relation to the other person, having regard to all the circumstances would have anticipated that the other person would be offended humiliated or intimidated. This excludes conduct occurring within a relationship of mutual attraction, such as friendships (sexual or otherwise), which are private concerns.

Simply put, sexual harassment is unwelcome conduct of a sexual nature, which offends, humiliates, or intimidates the person towards whom it is directed, regardless of intent.

Sexual harassment may be physical, verbal or written.

Examples of sexual harassment include:
- Unwelcome touching, patting or brushing against.
- Unwanted sexual advances.
- Leering or unnecessary familiarity.
- Offensive jokes, comments or innuendo.
- Sending sexually explicit texts or emails.
- Unwelcome demands for sexual favours.
- Spreading rumours of a sexual nature.

It is wise to find a chaperon if you are examining a patient (of either sex) who might accuse you unjustly of abuse of a sexual nature.

6. Duties of employers and supervisors
Everyone has the right to work in an environment free from bullying, harassment and discrimination.

Employers
All employers have statutory obligations to provide a working environment that is safe and without risks. Policies and processes to deal with bullying should be consistent with The Fair Work Amendment Act 2013. NZ Health and Safety in Employment Act 1992, the Employment Relations Act 2000 and the Human Rights Act 1993 and the Harassment Act 1997. (Work Safe New Zealand Best Practice Guidelines on Preventing and Responding to Workplace Bullying (2014).

Employers are required to develop and implement targeted practices to address inappropriate workplace behaviour and deal effectively with complaints within the organization.

The Occupational Health and Safety Act 2004 (Vic) has significantly increased the personal exposure of officers (directors, board members, senior managers) and employers to fines and imprisonment for breaches of occupational health and safety laws – including bullying. Thus, as a supervisor, you may have increased personal liability. Occupational Health and Safety legislation places employers...
under a clear duty to deal with these issues, therefore bullying issues will mostly be matters dealt with in the workplace (hospitals or other facilities).

Under occupational health and safety legislation (2004), employers and employees are required to comply with any measures that promote health and safety in the workplace. Relevant legislation also includes the Equal Opportunity Act 1995 (Vic)

Supervisors

*Hospitals seeking ANZCA approval for vocational training in anaesthesia must have in place a policy on bullying, discrimination and harassment that pertains to trainees.*

Supervisors and managers must ensure that the principles and practices of the legislation are complied with in their areas of responsibility. Acts of bullying constitute serious misconduct, which may be grounds for summary termination of employment, and/or removal from any ANZCA or other appointed position.

ANZCA expects that supervisors and those holding college positions or positions associated with ANZCA will set an example for fellows and trainees.

**ANZCA policy document gives full information on definitions and processes to follow**


7. **What you can do if you experience bullying, harassment or sexual discrimination**

Workplaces have a duty to prevent bullying, discrimination and harassment. All workers are expected to take steps to identify and eliminate unlawful bullying and harassment in the workplace.

**The following procedure should be followed where anyone has concerns about unlawful bullying discrimination or sexual harassment in the workplace:**

The person who is making the complaint (Complainant) is encouraged, where appropriate, to raise his/her concerns with the person against whom the allegations are made (if that has not already been done). The complainant should make it clear to the bully that his or her behaviour is unacceptable.

If the Complainant does not feel able to do this, then she or he should request assistance from the supervisor or line manager, or, if the complaint relates to that supervisor or manager, then to the relevant human resources officer in his/her institution.

The employer has a responsibility to investigate the incident in a timely manner and coordinate the resolution of the issue.

**If you suspect or are convinced that you the target of workplace bullying, harassment or sexual discrimination by anyone in your workplace.**
• Keep detailed notes and any other available evidence about what is happening. Stick to the objective facts. If a complaint of bullying or harassment is substantiated, disciplinary action may be taken.

• Seek advice and support from your mentor(s), welfare advocate, SOT, your trusted colleague or peer, and/or others in your support network. Being the target of workplace bullying can be an emotionally stressful experience. It is a good idea to obtain professional assistance. For example, you may decide to consult a counsellor or your general medical practitioner (GP)

External assistance and support can be obtained from:
Australian Human Rights Commission: www.humanrights.gov.au
Beyond Bullying: www.beyondbullying.com.au
Department of Labour: https://www.hrc.co.nz

If you are an ANZCA fellow or a trainee, and you suspect or are convinced you are being bullied by a person carrying out their duties to ANZCA you should report it directly to the ANZCA Chief Executive Officer (email: ceo@anzca.edu.au)


The procedures for formal complaint are set out clearly in ANZCAs policy on bullying, discrimination and harassment for Fellows and trainees acting on behalf of the college or undertaking college functions. Your complaints will be taken seriously and investigated in a timely manner

If complaints are not dealt with
As of January 1, 2014, the Fair Work Ombudsman can receive complaints from workers who believed they have been bullied, harassed or discriminated against at work. Further information is available at www.fairwork.gov.au/complaints, http://www.worksafe.govt.nz/worksafe/information-guidance/all-guidance-items/bullying-guidelines/workplace-bullying

8. Victimisation
It is unlawful to victimise a person who complains of, or intends to complain of, bullying, or any witness providing information on matters relating to a complaint of bullying.

Workers who feel they have been victimised should discuss the matter with their supervisor, manager, or the relevant human resources officer.

An act of victimisation constitutes serious misconduct and may be grounds for dismissal.
9. Further Reading

ANZCA policy document on Bullying discrimination and sexual harassment (BDSH)  

Australian and New Zealand College of Anaesthetists (ANZCA) www.anzca.edu.au  
ANZCA Code of Professional Conduct.

Australian and New Zealand College of Anaesthetists (ANZCA) www.anzca.edu.au  
Professional Document. TE1


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Welfare of Anaesthetists Special Interest Group Resource Documents (RDs)  
RD 25 The Disruptive Anaesthetist

Thanks to Mr Michael Gorton AM and the ANZCA working party for reviewing this document.

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