

# **HARASSMENT DON'T COP IT**

WorkCover and other Protections

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Supporting Smarter Workplaces



# Harassment

How the law defines harassment:

- offensive, humiliating, intimidating or threatening
- repeated
- unwelcome or unsolicited
- behaviour of a sexual nature = sexual harassment

A reasonableness test applies

# Harassment Prevention

How the law assists prevention:

- Employer's general duty of care
- Safety legislation
- Anti-discrimination legislation
- Employer's duty of trust and good faith
- Vicarious liability – employer's liability for conduct of its employees
- Harasser held personally liable for their conduct



# Harassment – Acknowledged Effect

The law acknowledges that harassment:

- Causes illness – temporary and long term
- Has financial consequences for the victim
- Can destroy the victim's enjoyment of life and work
- Is contrary to public interest



# Harassment – Remedies for Victims

How the law assists victims:

- Workers compensation payments during any absence
- Damages for any long term illness/injury
- Compensation for distress and humiliation
- Damages for any financial loss
- Orders to prevent re-occurrence

# Harassment – Prevention

It is expected that employers will adopt practices and procedures that prevent workplace harassment and promote a culture in which harassment is not tolerated.



# Harassment – Meeting Requirements

The minimum requirements are:

- Discrimination and harassment policy
- Effective education and training programs
- Effective grievance mechanisms to resolve complaints
- Access to EAP for affected employees
- Procedures to prevent victimisation



# Avoiding Harassment - What Approach Should be adopted

Correct approach to guide an employer?:

- Meeting the duty to an employee to provide a safe place of work
- Avoiding liability for conduct of an employee by taking reasonable steps to prevent unlawful conduct
- Reasonable management action taken in a reasonable way



# Avoiding Harassment - What Approach Should be adopted

Adopting a safety approach:

- Workplace health and safety = guarantee of safety
- Safety is elimination/minimising risk
- Risk is the risk of illness or injury
- Elimination/minimising risk through control measures



# Avoiding Harassment - What Approach Should be adopted

Adopting a safety approach:

- Identify hazards in the workplace
- Assess the risks associated with the hazards
- Decide on control measure to eliminate/minimise risks
- Implement control measures
- Review or audit effectiveness of control measures



# Avoiding Harassment - What Approach Should be adopted

A safety approach:

- Focuses on both organisational and workplace issues
  - Requires careful analysis of the risk of harassment
  - Addresses each risk with a control measure
  - Requires a documented review of measures
- = more effective prevention program**





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