

# **Bullying and Harassment in the mining industry: understanding the beast, and how to tame it**

Harold Downes and Paul Smith

# 1 Some context and the law

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- It is not an industry for sissies
- The language and behaviour is robust and clear
- All the Acts apply, namely:
  - *Coal Mining Safety and Health Act 2002* (Qld)
  - *Mining and Quarrying Safety and Health Act 1999* (Qld)
  - *Workplace Health and Safety Act 1995* (Qld)

## 2 Definition and the mining acts

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- Workplace bullying and harassment is
  - repeated, unwelcome and unsolicited behaviour;
  - which the person considers to be offensive, intimidating, humiliating or threatening; or
  - a reasonable person would consider to be offensive, humiliating, intimidating or threatening.
- Under mining legislation it is an obligation to take reasonable and necessary action to ensure that a person is not exposed to an unacceptable level of risk

### 3 Language

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Bill works under Keith's supervision. Bill and Keith dislike each other. At a safety meeting Bill raises an issue which Keith disagrees with. At the meeting, Keith calls Bill "an idiot." Since the meeting, Keith refers to Bill as a "wanker" every time he spots him onsite. Is this bullying behaviour ?

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Answer: Yes.

Keith is bullying Bill through the repeated use of offensive and humiliating language.

## 4 Informal Complaints

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**Answer:** Yes. It doesn't matter if Rob is only an operator.

It's the fact of the conduct that matters.

The fact that it has been brought to Rob's attention and a reasonable person would find it offensive means that the behaviour should be investigated.

## 5 Gender Discrimination

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James began working onsite three years ago. Over the past three years, James had undergone full gender reassignment and is now a female by the name of Jane. Since James has returned to work as Jane, she is being refused entry into the female toilets at site. Is this bullying? Are any other legal obligations attracted?



## 5 Gender Discrimination

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James began working onsite three years ago. Over the past three years, James had undergone full gender reassignment and is now a female by the name of Jane. Since James has returned to work as Jane, she is being refused entry into the female toilets at site. Is this bullying? Are any other legal obligations attracted?

Answer: Yes it is bullying.

The repeated refusal or resistance to allow Jane access or any other behaviour which offends Jane is bullying.

It is also gender discrimination.

## 6 Sexual Harassment

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A young female miner and her male colleague work at a remote mine. After working a long shift and having a few beers at the camp, they have consensual sex. While she is sleeping he takes photographs of her on his phone. He uploads them to Facebook. After this, his supervisor posts the photos on the noticeboards in the mess hall. What can she do?

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**Answer:** She can sue him and the supervisor for the damage to her reputation.

She did not consent to the photos being taken or published. It is also an assault and a breach of the mining act and the Anti-Discrimination Act (Qld).

# 7 Initiation

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Jason is a new apprentice at a workshop. On his first day, he undergoes initiation by his workmates. Every day for the first week he gets old grease shoved in his hair and he has to make coffee for everyone at the pre start. Senior managers are aware of the initiation but believe that as long as no one gets hurt, it helps to make new apprentices feel part of the group and belong to the history of the workshop.

Unbeknown to everyone Jason suffers depression. He resigns and shortly afterwards he attempts self harm. Is this bullying?

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## 8 Penalties

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Answer: There is a current prosecution in Queensland but no convictions for bullying.

However other jurisdictions penalties of up to \$45,000.00 for individuals and \$220,000.00 for companies have been imposed.

## 9 Reasonable management action

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- Lift your game Paul.
- You are letting the team down Paul.
- Were you really sick yesterday Paul?
- Why is your vehicle always so slow?

After about a month Harold says to Paul that he probably wont pass his probation. Is this bullying?



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Answer: No. However, it may not pass the test for Reasonable Management Action if a workers compensation claim is made.

## 10 Damage to the Company

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Answer: David Jones. High profile cases, be they bullying or sexual harassment, are associated with the company long after the claim is made

# 11 Summary

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- It is not about good manners, as the great Bob Dylan said “*times they are a changing*”
- It is a safety issue, not just an HR issue
- It applies to everyone at work
- If it goes pear shaped it can consume huge amounts of time and energy (and cost) to get back on track
- It is completely avoidable

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