

LEGAL FRAMEWORKS SURROUNDING BULLYING IN THE WORKPLACE

Cilla Robinson, Partner

CLAYTON UTZ

6 December 2019

© Clayton Utz

WORKPLACE BULLYING - A LEGAL PERSPECTIVE

1

What is workplace bullying

2

Reasonable management action

3

Legal risks and costs

4

Q&A

WHAT IS WORKPLACE BULLYING?

"Workplace bullying" is defined as

"repeated, unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety"

Repeated behaviour

"Repeated" behaviour refers to the persistent nature of the behaviour and can refer to a range of behaviours over time

Unreasonable behaviour

"Unreasonable" behaviour is behaviour that a reasonable person would see as unreasonable, including behaviour that is **victimising, humiliating, intimidating or threatening**

Not included

Does not include reasonable management practices that are conducted in a reasonable manner

EXAMPLES OF WORKPLACE BULLYING

Abusive, insulting, offensive language and/or comments

Unjustified criticisms, complaints, excessive scrutiny

Deliberately excluding someone from workplace activities

Withholding information that is vital for effective performance

Setting unreasonable tasks or deadlines (or constantly changing them)

Setting tasks unreasonably below or beyond a person's skill level

Denying access to information, supervision, consultation or resources to person's detriment

Spreading misinformation, malicious rumours (individual or group)

Changing work arrangements (rosters, leave) to deliberately inconvenience or upset someone

Physical intimidation or assault

"Initiation" rites and hazing

Pranks and practical jokes at someone's expense

WHAT IS NOT BULLYING?



Reasonable management action



Conducting performance discussions



Setting key performance indicators (KPI)



Supervision and management (including performance management)



Operational decisions

REASONABLE MANAGEMENT ACTION

#reasonablenotperfect

Management action:

- ▶ can amount to bullying if carried out unreasonably
- ▶ does not need to be perfect or ideal to be considered reasonable
- ▶ must be lawful and not irrational, absurd or ridiculous
- ▶ should follow established policies and procedures



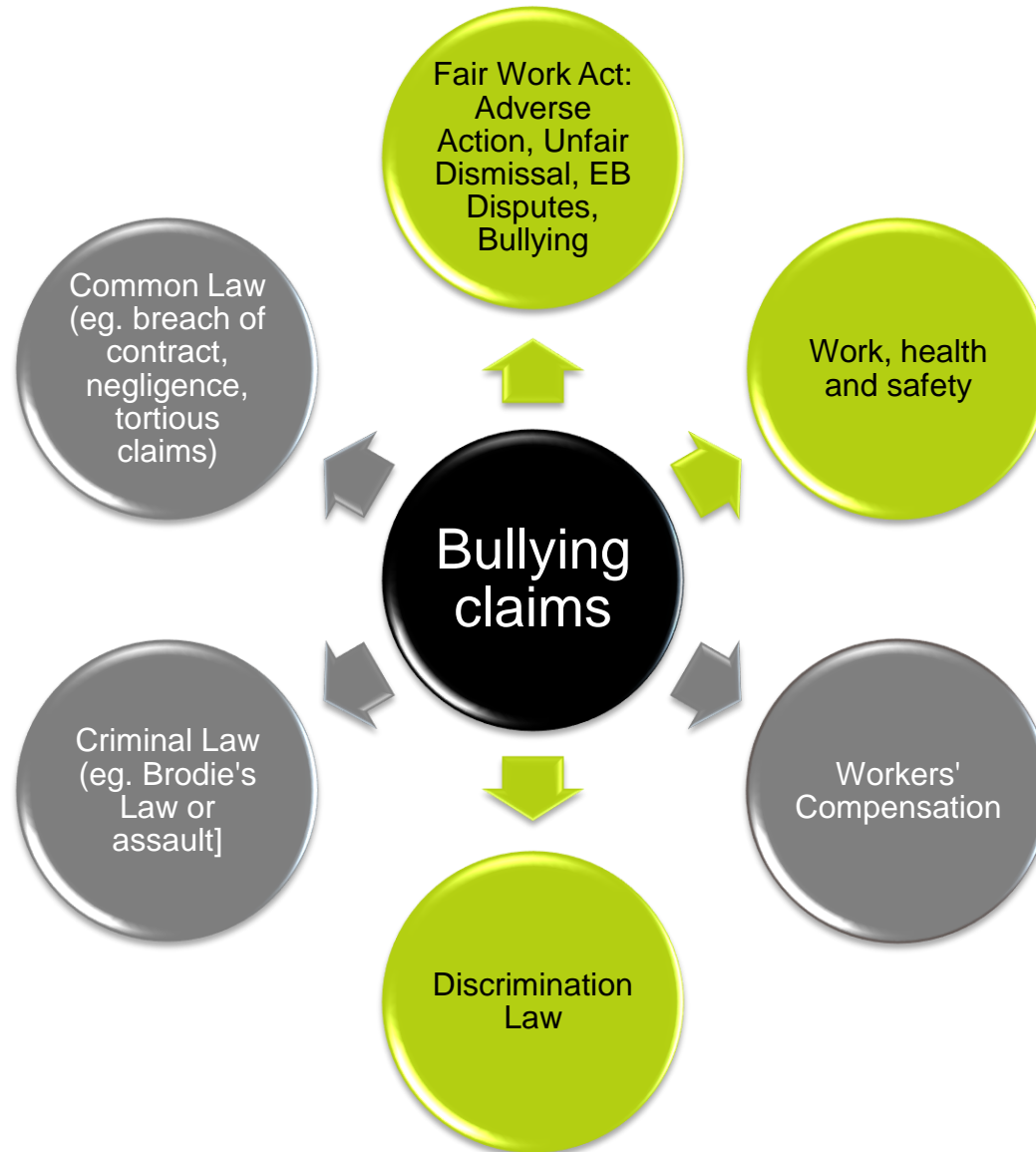
CASE EXAMPLE: REASONABLE MANAGEMENT ACTION NOT CARRIED OUT IN A REASONABLE MANNER

Application by Ms A [2018] FWC 4147

- ▶ The applicant was a contractor engaged by the respondent to provide strata management services to a body corporate
- ▶ The respondent was frequently sending emails to the applicant about matters which were not urgent, and at times, unreasonable.
- ▶ The emails contained sarcastic and derogatory language, and were disseminated to other individuals of the strata committee
- ▶ The FWC rejected that such conduct fell within 'reasonable management action' and ordered that the respondent contact the applicant by telephone before sending an email, and if an email is required, that it be affected in an appropriate manner



LEGAL RISKS AND CONSEQUENCES



IMPACTS ON WORK HEALTH AND SAFETY

Bullying is a health and safety issue



Poses risks to health and safety (psychological and/or physical)



Employers are required to **identify and eliminate** risks to health and safety



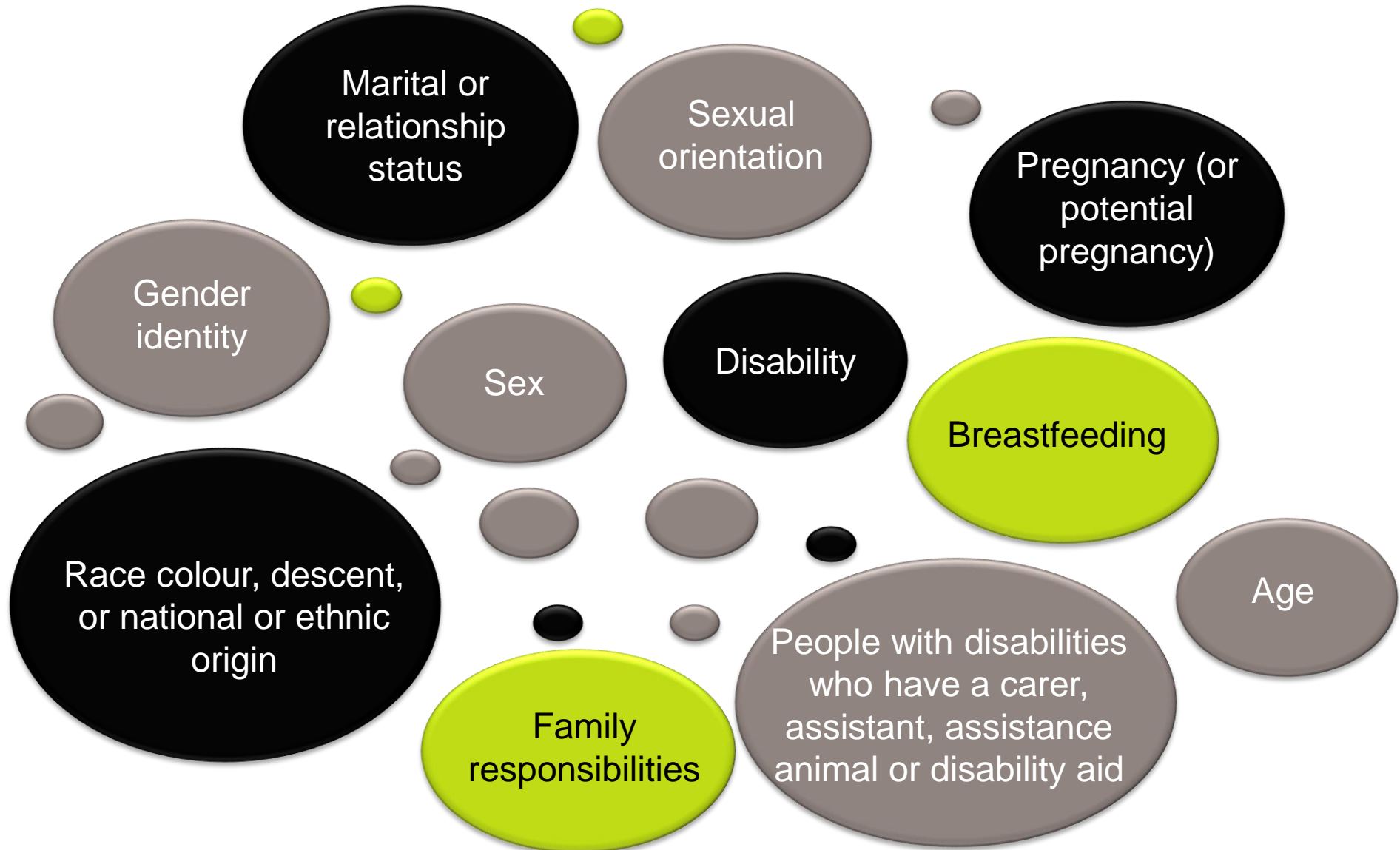
Risks that cannot be eliminated be minimised and controlled as low as **is reasonably practicable**

RESPONSIBILITIES UNDER WORKPLACE HEALTH AND SAFETY LEGISLATION


Officers must exercise **due diligence** to ensure that Comcare complies with its health and safety duties

Workers must take **reasonable care** for their own health and safety *and* the safety of others who may be affected by their actions

ANTI-DISCRIMINATION LAWS



LIABILITY IN DISCRIMINATION CLAIMS



**Vicarious
liability**
(of employer)



**Accessorial
liability**
(of individuals)

KEY TAKEAWAYS



QUESTIONS





GET IN TOUCH

Cilla Robinson

Partner

Clayton Utz



+61 2 9353 4624



crobinson@claytonutz.com

www.claytonutz.com