

Bullying at Work: Advice for Workers



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WHAT IS THIS GUIDE ABOUT?

Bullying harms workers. A worker's business or undertaking (the person conducting a business or undertaking – PCBU) must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work.

The business or undertaking must, so far as is reasonably practicable, minimise the likelihood of bullying by putting in place control measures such as having a code of conduct, reporting procedures for unreasonable behaviour and manager training.

See WorkSafe's good practice guidelines *Preventing and Responding to Bullying at Work* for examples of possible control measures.

While the business or undertaking must effectively deal with bullying at work, everyone at work has a role in dealing with it.

This is a quick guide with advice for workers about what bullying at work can look like, and what they can do if they think they are being bullied, or are accused of being a bully.

You should take opportunities such as worker surveys and focus groups to let your business or undertaking know if the control measures are working to minimise the likelihood of bullying at your workplace.

02

BULLYING AT WORK

WHAT IS WORKPLACE BULLYING?

Workplace bullying is: repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.

- > **Repeated** behaviour is persistent (occurs more than once) and can involve a range of actions over time.
- > **Unreasonable** behaviour means actions that a reasonable person in the same circumstances would see as unreasonable. It includes victimising, humiliating, intimidating or threatening a person.
- > Bullying may also include harassment, discrimination or violence (see Section 4 of this guide for how these are dealt with).

Note: The bullying definition is adapted from Safe Work Australia's definition.

Workplace bullying is not:

- > one-off or occasional instances of forgetfulness, rudeness or tactlessness
- > setting high performance standards
- > constructive feedback and legitimate advice or peer review
- > a manager requiring reasonable verbal or written work instructions to be carried out
- > warning or disciplining workers in line with the business or undertaking's code of conduct
- > a single incident of unreasonable behaviour
- > reasonable management actions delivered in a reasonable way
- > differences in opinion or personality clashes that do not escalate into bullying, harassment or violence.

Figure 1: Definition of bullying at work

HOW CAN BULLYING HARM WORKERS?

Bullying harms workers. Bullying can affect the health and well-being of workers as described in Figure 2.

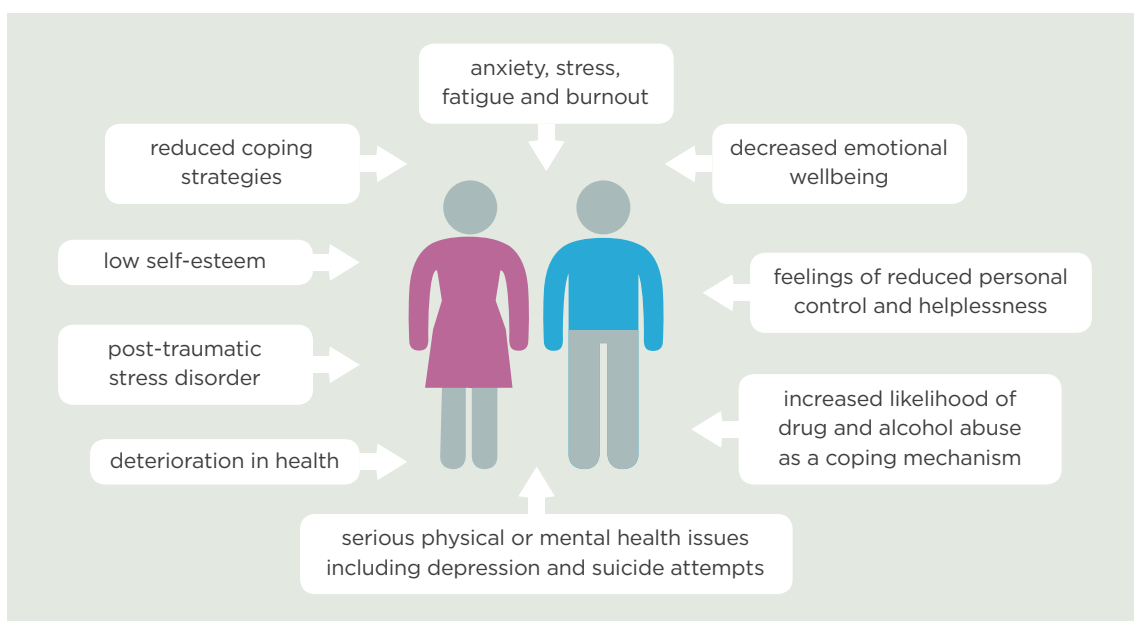


Figure 2: Harms from bullying

WHEN CAN BULLYING HAPPEN?

Bullying can happen at any time and at all levels of a business or undertaking.

Bullying:

- > isn't limited to managers targeting staff or staff targeting managers – it can also happen between co-workers, and between workers and other people at workplaces such as clients, customers or visitors
- > can occur when, because of how an organisation operates, behaviour is allowed to occur that offends or unduly stresses or unreasonably burdens workers without concern for their well-being (eg unrealistic deadlines)
- > can be carried out by one or more persons
- > can be directed at a single person or a group
- > may occur outside normal work hours.

Bullying can be carried out in a variety of ways including through email, text messaging, internet chat rooms or other social media channels (called cyberbullying).

For further information on cyberbullying, see NetSafe's website: www.netsafe.org.nz/advice/harmfuldigitalcommunications

WHAT KIND OF BEHAVIOURS CAN BE PERCEIVED AS BULLYING?

There are different types of bullying and types of bullying behaviours.

Bullying can be physical, verbal or relational/social (eg excluding someone from a peer group, spreading rumours).¹

Common bullying behaviours fit in two main categories:

- > attacks that are direct and personal or
- > indirect and task-related.

Examples of these behaviours are described in Table 1.

Some of these behaviours may also fall under other types of behaviour such as discrimination or violence.

If you consider that the behaviour you are experiencing is bullying or other unreasonable behaviour, go to Section 3 of this guide for what you could do.

¹ From www.education.govt.nz/school/student-support/student-wellbeing/health-and-wellbeing-programmes/bullying-prevention-and-response/bullying-prevention-and-response-a-guide-for-schools/section/2

PERSONAL ATTACKS (DIRECT) examples include:	TASK-RELATED ATTACKS (INDIRECT) examples include:
Belittling remarks – undermining integrity – lies being told – sense of judgment questioned – opinions marginalised	Giving unachievable tasks – impossible deadlines – unmanageable workloads – overloading – ‘setting up to fail’
Ignoring – excluding – silent treatment – isolating	Meaningless tasks – unpleasant jobs – belittling a person’s ability – undermining
Attacking a person’s beliefs, attitude, lifestyle or appearance – gender references – accusations of being mentally disturbed	Withholding or concealing information – information goes missing – failing to return calls or pass on messages
Ridiculing – insulting – teasing – jokes – ‘funny surprises’ – sarcasm	Undervaluing contribution – no credit where it’s due – taking credit for work that’s not their own
Being shouted or yelled at	Constant criticism of work
Threats of violence	Underwork – working below competence – removing responsibility – demotion
Insulting comments about private life	Unreasonable or inappropriate monitoring
Physical attacks	Offensive sanctions (eg denying leave where there is no reason to do so)
Humiliation (in public or private)	Excluding – isolating – ignoring views
Persistent and/or public criticism	Changing goalposts or targets
Using obscene or offensive language, gestures, material	Not giving enough training or resources
Ganging up – colleagues/clients encouraged to criticise or spy – witch hunt – dirty tricks campaign – singled out	Reducing opportunities for expression – interrupting when speaking
Intimidation – acting in a condescending manner	Supplying incorrect or unclear information
Intruding on privacy (eg spying, stalking, harassed by calls when on leave or at weekends)	Making hints or threats about job security
Unwanted sexual approaches, offers, or physical contact	No support from manager
Verbal abuse	Scapegoating
Inaccurate accusations	Denial of opportunity
Suggestive glances, gestures, or dirty looks	Judging wrongly
Tampering with personal effects – theft – destruction of property	Forced or unjustified disciplinary hearings
Encouraged to feel guilty	Lack of role clarity
	Not trusting
	Sabotage

Table 1: Examples of bullying behaviours²

² Adapted from Health and Safety Executive. (2003). Research report: *Bullying at work: A review of the literature*.



WHAT ARE YOUR OPTIONS IF YOU THINK YOU ARE BEING BULLIED OR EXPERIENCING OTHER UNREASONABLE BEHAVIOUR?

Note: All current or prospective workers are legally protected from discrimination and dismissal by a PCBU (adverse conduct) for carrying out health and safety-related activities or raising health and safety issues or concerns. See WorkSafe's special guide *Introduction to Health and Safety at Work Act 2015* for further information.

You have a number of options available to you as described below.

GATHER INFORMATION

For each incident keep records of:

- > the date, time and where it occurred
- > what happened (who was present, what was said, who said what)
- > if there were any witnesses
- > how you felt.

WORK OUT WHAT TO DO

You could take one or more of the options in Figure 3.

Seek advice and support

You could get a 'sense check' that what you are experiencing is unreasonable behaviour by talking with a trusted person (eg a leader, a friend).

You could seek advice from others such as managers, co-workers, Health and Safety Representatives (HSRs), the union (eg approaching your union delegate, organiser or the union's support centre), an employee assistance programme (if available), your local Community Law Centre or Citizens Advice Bureau, or helplines such as Lifeline 0800 543 354 – see Section 7 of this guide.

You could also go to the Human Resources team.

You can have a support person present at interviews and meetings. To avoid conflicts of interest, the same support person should not support the people on both sides of a complaint.

Deal with it yourself

This means approaching the other party to talk about your concerns. **But only do this if you feel OK to do so.**

Report the behaviour to your business or undertaking³

Your business or undertaking should have processes for reporting bullying or other unreasonable behaviour.

The business or undertaking should consider the information provided and then decide what to do (taking into account the seriousness of the issue and your views).

They could decide to run a formal investigation (such as for reports that involve senior management, occur over a long period of time, or involve multiple workers) or take another approach.

Make a formal written complaint to your business or undertaking³

Your business or undertaking should have processes for making formal complaints.

Formal complaints should trigger a formal investigation.

You will need to know how to format the complaint and who to send it to. The complaint should be as specific as possible. It needs to include specific allegations, dates, times and names of any witnesses.

Figure 3: Options for responding to unreasonable behaviour

Mediation can be used early on in the situation or at other times (eg after an investigation). Both parties should request and freely agree to take part in mediation.

Mediation involves a trained and impartial mediator sitting with all parties concerned to try to get an agreement and a way forward. It's important that mediation creates a safe and constructive environment. If there are genuine safety concerns, parties should inform the mediator before the mediation begins.

³ If your business or undertaking does not have a report or complaint form to fill out, go to the WorkSafe website: www.worksafe.govt.nz for one you can use.

WHAT SHOULD HAPPEN WHEN YOU SUBMIT A REPORT OR COMPLAINT?

When you submit a report or complaint, the business or undertaking should:

- > take reasonable steps to protect you from reprisals
- > ensure both you and the subject of the complaint are supported
- > decide what interim measures will be taken to ensure your safety and welfare during any investigation. Interim measures may include suspension of the subject of the complaint pending the outcome of an investigation, or reassignment to other duties until an investigation is complete
- > give guidance to you about how to respond to the subject of the complaint if you remain in day-to-day contact.

WHAT SHOULD HAPPEN IF AN INVESTIGATION OCCURS?

Investigations should be carried out by independent and unbiased investigators.

Table 2 outlines the principles that the business or undertaking should consider when dealing with allegations of bullying. These principles are based in part on the principles of natural justice. Natural justice covers both parties to a complaint.

The investigator should interview all parties involved and any witnesses, and review any relevant documentation to determine the facts. They will provide a written report on their findings and recommended solutions to the business or undertaking. The subject of the complaint should be given reasonable opportunity to respond to the allegations/concerns.

The business or undertaking should meet with you and the subject of the complaint separately to discuss the recommended solution.

You should receive a copy of the report and told about your right to appeal and what the process to do this is.

The final decisions and actions should be reported back to you (taking into account the privacy of the subject of the complaint). You should be told of what your business or undertaking's processes are if you are unhappy with the final decision.

What role can Health and Safety Representatives (HSRs) have in dealing with bullying?

HSRs can help their business or undertaking to develop its bullying policies and procedures, and advise workers on them. HSRs can help you to report bullying including:

- > by telling you how to make a report or
- > submitting a report on your behalf (with your permission).

HSRs do not need to resolve the matter themselves, but can help to support workers that are parties to a complaint. To avoid conflicts of interest, the same HSR should not support the people on both sides of a complaint.

Ideally HSRs should be trained to provide this kind of support.

PRINCIPLE	WHAT DOES THIS MEAN?
Treat all matters seriously	<ul style="list-style-type: none"> > Take all complaints and reports seriously. Assess all reports on their merits and facts. > Ensure the people (internal or external) who deal with the complaint are trained to do a fair and thorough investigation, and use the principles of natural justice.
Act promptly	<ul style="list-style-type: none"> > Reports should be dealt with quickly, courteously, fairly and within established timelines.
Ensure non-victimisation	<ul style="list-style-type: none"> > It's important to ensure that anyone who raises an issue of bullying isn't victimised for doing so. Whoever the complaint is made against and any witnesses should also be protected from victimisation.
Support all parties	<ul style="list-style-type: none"> > Once a complaint has been made, both parties should be told what support is available (eg employee assistance programmes or peer support systems). > Treat all parties involved with sensitivity, respect and courtesy. > Anyone involved is entitled to have a support person present at interviews or meetings (eg Health and Safety Representative (HSR), contact person, the union or friend).
Be neutral	<ul style="list-style-type: none"> > Impartiality towards everyone involved is critical during the process. > Where possible, the person in charge of the investigation or resolution process should not have been directly involved in the incidents and must avoid any personal or professional bias.
Communicate the process and outcomes	<ul style="list-style-type: none"> > All parties need to be told what to expect during the process, how long it will take, the reasons for any delays and what will happen at the end. > Give them clear reasons for any actions that are taken or not taken.
Maintain privacy (confidentiality)	<ul style="list-style-type: none"> > The process should ensure privacy for all parties involved. Details of the matter should only be known to those directly concerned (except their representative or support person).
Keep good documentation	<ul style="list-style-type: none"> > Documentation is important to any formal investigation. Even if the issue isn't formally investigated, keep a record of all informal conversations, meetings and interviews detailing dates and times, who was present, what was discussed and the agreed outcomes.

Table 2: General principles for how businesses or undertakings should deal with reports or complaints

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WHO CAN HELP?

Bullying complaints may be dealt with by different Government bodies depending on the circumstances. If you are not satisfied by the business or undertakings' actions, and have made reasonable efforts to try to resolve the issue using internal processes, you may decide to seek external help.

In addition, certain behaviour should be dealt with externally in the first instance, for example, physical assault should be dealt with by the Police.

As outlined in Table 3, there is a range of legislation and external help available depending upon what type of bullying occurs.

LEGISLATION	WHAT DOES IT COVER
The Employment Relations Act 2000 (ERA)	<ul style="list-style-type: none"> > The ERA aims to build productive employment (eg employer/employee) relationships. > The ERA outlines penalties for certain breaches of duty of good faith within an employment relationship. Repeated verbal or emotional attacks on an employee may breach the duty of good faith - where parties to an employment relationship are required to be active and constructive in maintaining an employment relationship. > If the employee has resigned as a result of the employer's failure, they may be able to raise a personal grievance for unjustified dismissal or constructive dismissal. If they haven't resigned, they may still be able to claim unjustified disadvantage under the ERA, as well as breach of contract. Employees that feel that bullying behaviour led to their unjustified disadvantage or unjustified dismissal might raise a personal grievance. > In terms of harassment, the ERA only provides protection from sexual and racial harassment, which is also covered by the Human Rights Act 1993 (HRA). This gives grounds for a personal grievance under the ERA, or a claim under the HRA. > MBIE's free mediation service (Phone 0800 20 90 20; https://employment.govt.nz/resolving-problems/steps-to-resolve/mediation/request-meditation) is available to any employer or employee and can help parties resolve an employment relationship problem. The mediation service is available to assist as soon as an issue arises, and may arrange to facilitate a meeting, with the agreement of both parties. > If mediation is unsuccessful, the Employment Relations Authority (http://era.govt.nz) can resolve disputes about a range of employment issues (including treatment that employees find unfair or unreasonable) such as: <ul style="list-style-type: none"> - payment of wages - personal grievances for unjustified disadvantage - personal grievances for unjustified dismissal - being asked to do work that would expose the worker to a serious health and safety risk arising from immediate or imminent exposure to a hazard (workers can refuse such work under section 83 of HSWA). An unreasonable management decision may be an instruction to undertake unsafe work. > Like the Employment Relations Authority, the Employment Court deals with cases about employment disputes. The Employment Court also deals with challenges to Employment Relations Authority decisions (https://employmentcourt.govt.nz).

LEGISLATION	WHAT DOES IT COVER
The Health and Safety at Work Act 2015 (HSWA)	<ul style="list-style-type: none"> > HSWA is the primary work health and safety legislation. > WorkSafe is the primary work health and safety regulator - although Maritime New Zealand and the Civil Aviation Authority also carry out certain health and safety functions for their industries. > HSWA requires certain health and safety matters to be notified to WorkSafe. People may also contact WorkSafe voluntarily if they have a question or request about health and safety, or want to tell WorkSafe about a health and safety concern. > WorkSafe prioritises incoming notifications, requests, concerns and enquiries using risk-based processes and criteria. > WorkSafe has a range of possible responses that are suitable for health and safety matters of different levels of seriousness, urgency and risk. Please note that not all concerns and notifications will meet WorkSafe's threshold for initiating a response. > WorkSafe can be contacted on 0800 030 040 (24 hours). Issues can be raised anonymously or in confidence.
The Harmful Digital Communications Act 2015 (HDCA)	<ul style="list-style-type: none"> > The purpose of the HDCA is to deter, prevent and mitigate harm caused to individuals by digital communications. Harm means serious emotional distress. > The HDCA aims to provide a quick, efficient and relatively cheap legal avenue for people dealing with serious or repeated harmful digital communications. > The HDCA lays out 10 communication principles which are plain expressions of unacceptable ways to communicate online. > Harmful communications could include people using phones to send threatening or offensive messages, publishing threatening or offensive messages online, spreading damaging or degrading rumours and publishing invasive or distressing photographs or videos. This covers cyberbullying. > Digital communications means any form of electronic communication and includes emails, texts, websites, blogs, comments sections, online forums (chat rooms), social media sites, or phone apps. > The HDCA simplifies the process for taking harmful communications off the internet quickly, and has criminal and civil sanctions. > For information about what to do if you are experiencing cyberbullying, online harassment and abuse, visit: www.netsafe.org.nz > Before applying to the Courts, you must have had your complaint investigated by NetSafe. > For information on how to apply to the Court, visit: www.victimsinfo.govt.nz/staying-safe/staying-safe-online/harmful-digital-communications
The Human Rights Act 1993 (HRA)	<ul style="list-style-type: none"> > Discrimination can be part of bullying. > Discrimination occurs when a person is treated unfairly or less favourable than another person in the same or similar circumstances. > The HRA's intention is to ensure everyone is treated fairly and equally. > The HRA makes it illegal to discriminate on the grounds of: <ul style="list-style-type: none"> - sex - marital status - religious belief - ethical belief - colour, race, or ethnic or national origins - disability - age - political opinion - employment status - family status - sexual orientation. > It also covers sexual and racial harassment at work, school and other areas. > The Human Rights Commission deals with complaints about discrimination: www.hrc.co.nz

LEGISLATION	WHAT DOES IT COVER
Harassment Act 1997 (HA)	<ul style="list-style-type: none"> > Harassment can be part of bullying. > Harassment takes place when someone engages in a pattern of behaviour that is directed against another person (including watching, loitering, following, accosting, interfering with another person's property or acting in ways that causes the person to fear for their safety) at least twice in a 12-month period. > The HA makes harassment a criminal offence in certain circumstances. It provides for restraining orders. See the ERA and HRA above for dealing with racial and sexual harassment. > Harassment has the potential to cause humiliation, offence or intimidation. It's usually repeated behaviour but even one instance may cause reasonable concern. > People who are being harassed may be able to obtain restraining orders against the person harassing them. Help may be found at organisations such as community law centres (http://communitylaw.org.nz) and the Citizens Advice Bureau (www.cab.org.nz/vat/gl/laws/Pages/Harassment.aspx).
Crimes Act 1961 and other legislation administered by the New Zealand Police	<ul style="list-style-type: none"> > Acts of violence towards a person can be verbal (verbal abuse, threats, shouting, swearing) or physical (stalking, throwing objects, hitting, damage to property). > Violence is illegal and should be referred to the Police. > Criminal charges can be filed by the Police.

Table 3: Legislation that deals with aspects of bullying



WHAT SHOULD YOU DO IF YOU ARE ACCUSED OF BEING A BULLY?

If you are accused of bullying, you should take the complaint seriously.

You should be informed as soon as possible after a complaint has been received.

You could also be the subject of a formal investigation. See Section 3 of this guide for information about investigations.

You should expect to be notified about:

- > the details of the complaint and who made it (eg details of the allegations, including a copy of the written complaint and any investigation material)
- > the process and your rights (including the right to have a support person present)
- > the requirement for confidentiality and non-victimisation
- > the possible consequences (eg if it's a formal employment investigation that could result in dismissal)
- > expectations of behaviour during any investigation (to remain professional).
- > interim measures will be taken to ensure the safety and welfare of the person who complained during any investigation. Interim measures may include your suspension pending the outcome of any investigation, or reassignment to other duties until any investigation is complete.

You should consider what has been said, and how the person making the complaint about you might be feeling/thinking to have made this complaint.

You can seek advice and support from others such as managers, colleagues, Health and Safety Representatives (HSRs), your union, your local Community Law Centre or Citizens Advice Bureau, an employee assistance programme (if available), helplines (see Section 7 of this guide), or the Human Resources team. To avoid conflicts of interest, the same support person should not support the people on both sides of a complaint.



WHAT SHOULD YOU DO IF YOU SEE BULLYING?

Bystanders (people that see bullying occurring) can have an important role when dealing with bullying.

When they feel safe to, bystanders could use words and actions to safely and effectively help someone being bullied (eg speak up when you see unreasonable behaviour).

Bystanders can also report bullying on someone else's behalf.



GLOSSARY AND WHERE TO FIND MORE INFORMATION

GLOSSARY

TERM	EXPLANATION OR LEGAL DEFINITION (AS NOTED)
Persons conducting a business or undertaking (PCBUs)	<p>A PCBU is a 'person conducting a business or undertaking'. A PCBU may be an individual person or an organisation. This does not include workers or officers of PCBUs (to the extent they are solely workers or officers), volunteer associations (that do not have employees), or home occupiers that employ or engage a tradesperson to carry out residential work.</p> <p>A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work.</p> <p>PCBUs must, so far as is reasonably practicable, minimise the likelihood of bullying by putting in place control measures.</p> <p>PCBUs must provide information, training, instruction or supervision needed to protect all people from health and safety risks from the work being carried out.</p>
Workers	<p>A worker is an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. It also includes an individual PCBU that carries out work for the business or undertaking.</p> <p>Workers can be at any level (eg managers are workers too).</p> <p>Workers have duties to take reasonable care to keep themselves and others healthy and safe when carrying out work.</p> <p>Workers must co-operate with reasonable policies and procedures about bullying the PCBU has in place that have been notified to them.</p> <p>Workers must comply, so far as is reasonably practicable, with any reasonable instruction about bullying given by the PCBU so the PCBU can comply with the law.</p>
Other persons at workplaces such as visitors	<p>Examples of other persons at workplaces include workplace visitors, casual volunteers at workplaces and customers.</p> <p>Other persons have duties to take reasonable care for their own health and safety and to take reasonable care that they don't harm others at a workplace.</p> <p>They must comply, so far as is reasonably practicable, with any reasonable instruction about bullying given by the PCBU so the PCBU can comply with the law.</p>

FURTHER INFORMATION

For more information about dealing with bullying at work see WorkSafe's good practice guidelines *Preventing and Responding to Bullying at Work*. The www.worksafe.govt.nz website will also have tools that you may find useful.

Advice may be found from places like:

- > unions
- > community law centres: <http://communitylaw.org.nz>
- > the Citizens Advice Bureau: www.cab.org.nz/Pages/home.aspx
- > employee assistance programs (if available at your workplace)
- > helplines such as Lifeline 0800 543 354, Samaritans 0800 726 666 and Healthline 0800 611 116 (for more information see: www.mentalhealth.org.nz/get-help/in-crisis/helplines)
- > NetSafe (for cyberbullying): www.netsafe.org.nz/what-is-cyberbullying
- > Human Rights Commission (for complaints about discrimination): <https://www.hrc.co.nz>

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