SAFE BUDDHISM: LEGAL FRAMEWORK – SEXUAL ASSAULT, SEXUAL HARASSMENT AND VICTIMIZATION

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LEGAL FRAMEWORK/S

Disclaimer: this is policy education, not legal advice, which differs from jurisdiction to jurisdiction and can only be offered by qualified practitioners

The law is the basic foundation, the ground on which we stand

We have a responsibility to adhere to it and support others to understand it.

But we also have a responsibility to do more than the bare minimum - we have a positive duty in many circumstances to prevent harm

Basic legal education is paramount for Buddhist communities

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A BUDDHIST ORGANISATION IS…

Not just a spiritual space

can be a workplace with paid staff and/or volunteers

can be a registered charity or not for profit

can be a public space with associated public liability

can be a "child-safe" organization – i.e. youth group, school or creche

can be a social/community service, i.e. hospice work

All such entities have associated legal responsibilities

CRIMINAL LAW: SEXUAL ASSAULT AND RAPE

- A sexual act that does not have the free, voluntary consent of the individual
- In NSW jurisdiction this requires affirmative consent, meaning a belief in consent may not be reasonable if the accused did not say or do anything to ascertain consent
- In WA, consent requires free agreement. It is not consent where there is fear, coercion, intimidation, pressure or incapacity

Minimum Response

- Safety first
- Believe enough to act
- Do not investigate
- Encourage independent support – i.e. sexual assault and rape centres
- Preserve confidentiality and evidence
- Report if mandatory

CIVIL PROTECTIONS: SEXUAL HARASSMENT

Sexual harassment is defined as

"an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; o engages in other unwelcome conduct of a sexual nature in relation to the person harassed;cin circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated."

Extends to volunteers

https://humanrights.gov.au/our-work/campaigns/sex-and-gender-rights/speaking-from-experience-archived/workplace-sexual-harassment-resources

Workplaces can help prevent sexual harassment by:

creating a safe physical and online working environment

providing information, instruction, training and support about the importance of preventing and addressing sexual harassment in the workplace

addressing unwanted or offensive behaviour early

encouraging reporting of sexual harassment and having effective complaints procedures.

CIVIL PROTECTIONS: VICTIMISATION

- Victimisation occurs when one person subjects, or threatens to subject, another person to any detriment because that person has taken, or plans to take, action under the relevant fair work, discrimination or human rights laws.
- This includes where the person has made or intends to make a complaint, start proceedings, provide information or documents, attend a conference, appear as a witness, assert their own or another person's rights, or make an allegation of unlawful conduct.
- It also applies where the person doing the victimising merely believes the other person has done, or may do, any of these things.
- However, if the victimisation charge relates to an allegation of unlawful conduct, there is a defence if the allegation is proven to be false and not made in good faith.

CHILD PROTECTION AND REPORTABLE CONDUCT

Mandatory reporting laws require specified people to report designated types of child maltreatment to state or territory authorities. These laws also outline the circumstances under which a report must be made, including the level of certainty that activates the person's duty to report.

Sexual abuse must always be reported

NSW: religious ministry and people providing religion-based activities to children are mandatory reporters.

WA: ministers of religion and listed professionals must report reasonable beliefs of child sexual abuse.

GOVERNANCE AND SAFEGUARDING

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- Make safety a shared, trained practice, not the burden of the person harmed
- Listen and believe enough to act; do not interrogate
- Manage immediate risk
- Maintain confidentiality (excluding reportable conduct)
- Support independent advice, counselling, psychosocial support and cultural safety
- Understand the role of internal mechanisms vis-a-vis external bodies, i.e. tribunals and police
- Note: complainants have the right to contact external bodies irrespective of whether internal procedure has been followed

THE ROLE OF ALLIES

A small, trained group independent of organization's hierarchy

- Could be named contacts for disclosures
- Such individuals may have gender/cultural diversity training
- Trauma-informed bystander training

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THANK YOU

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