

## Prevention and Management of Unacceptable Workplace Behaviours in NSW Health - JMO Module

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**Functional Sub group** Corporate Administration - Security  
Personnel/Workforce - Conduct and ethics  
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**Summary** The purpose of this Policy Directive is to prevent and combat workplace bullying in all NSW Health workplaces and to outline the additional considerations and specific processes in the management of unacceptable workplace behaviour complaints arising from the junior medical workforce. It should be read in association with PD2011\_018.

**Author Branch** Workplace Relations

**Branch contact** Workplace Relations 02 9461 7207

**Applies to** Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, Government Medical Officers, NSW Ambulance Service, Ministry of Health, Public Health Units, Public Hospitals, NSW Health Pathology, Cancer Institute (NSW)

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### Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

## PREVENTION AND MANAGEMENT OF UNACCEPTABLE WORKPLACE BEHAVIOURS IN NSW HEALTH – JUNIOR MEDICAL OFFICER MODULE

### PURPOSE

NSW Health is committed to providing a safe and equitable workplace for all staff, where the contribution of everyone is valued and respected. As part of this commitment, workplace bullying will not be tolerated under any circumstances. The purpose of this Policy Directive is to prevent and combat workplace bullying in all NSW Health workplaces and to outline the additional considerations and specific processes in the management of unacceptable workplace behaviour complaints arising from the junior medical workforce.

### MANDATORY REQUIREMENTS

Staff are expected to contribute to the achievement of a professional and productive workplace culture by carefully considering their own behaviour and its possible effects on others. All managers are responsible for fostering a work environment which is free from bullying. Managers must identify, assess and eliminate or minimise the potential for workplace bullying.

All complaints about bullying must be treated sensitively, seriously and fairly and acted on promptly. An initial assessment of a complaint must be conducted within three working days. Managers are responsible for ensuring that identified risks, related to a complaint, are assessed and managed.

Those involved in a complaint have both the right to confidentiality, and the responsibility for maintaining confidentiality.

Complaints should be managed as informally and as locally as appropriate in the first instance. If an investigation is warranted, it must be managed in accordance with NSW Health policy for managing potential misconduct. All involved parties must be made aware of the process and expected timelines and kept up-to-date about progress.

All stages of the process (including the initial assessment) must be appropriately documented and this documentation maintained in accordance with the *NSW State Records Act 1998*.

Agencies must continue to collect and provide de-identified data to the NSW Ministry of Health on a quarterly basis.

### IMPLEMENTATION

#### ROLES AND RESPONSIBILITIES

##### *NSW Ministry of Health*

- Monitoring the implementation of policy obligations and
- Collecting data from across NSW Health on the timeliness and outcomes of bullying complaint management processes.

**Secretary, NSW Ministry of Health and Chief Executives** are responsible for:

- Providing overall direction for the policy, procedures and management of bullying complaints
- Ensuring that the mandatory standards outlined in NSW Health policy are implemented
- Monitoring the performance of bullying prevention and management strategies.

**Directors of Workforce / Workforce Directorates / Human Resources Departments** are responsible for:

- Ensuring provision of information and training as necessary to support the effective implementation of this Policy Directive and
- Monitoring compliance with the mandatory standards outlined in this Policy Directive and reporting on compliance to Chief Executives.

**Supervisors / Managers** are responsible for:

- Implementing appropriate strategies to prevent workplace bullying
- Managing bullying complaints, in accordance with this Policy Directive and any local bullying complaint resolution processes
- Acting immediately to eliminate any inappropriate behaviour that might constitute bullying.

**Anti-Bullying Management Advisors** are responsible for:

- Providing information and coaching to managers on effective bullying complaints management.

**Anti-Bullying Advice Line** is responsible for:

- Providing independent advice to staff on processes for managing bullying complaints.

**JMO Support Officer / JMO Complaints Officer / Investigator** (Sections 4.1.7, 4.1.8, 4.1.10)

- Ensuring that complaints are managed fairly, confidentially and in a timely manner
- Ensuring that all actions taken to manage a bullying complaint are appropriately documented.

**All staff** are responsible for:

- Recognising their individual role in developing and maintaining harmonious workplace relations and promoting a positive and cooperative workplace culture
- Taking responsibility for their own actions in the workplace, and where the actions of others are disagreeable to them, attempting to settle matters, where appropriate, with that other person(s) in the first instance
- Raising matters of concern at an early stage and actively participating in the bullying complaint management process

- Providing managers with specific information regarding the perceived bullying and being prepared to have their complaint made known to the person they are making the complaint about, to allow for fair management of the complaint
- Maintaining confidentiality and not discussing or releasing information relating to a bullying complaint to any third party who has no legitimate involvement in the process
- Ensuring that any allegations relating to bullying are made honestly and not vexatiously or maliciously, or to impede legitimate managerial action and
- Cooperating with any complaint procedure in a timely and cooperative manner.

### **BREACHES OF THIS POLICY**

- Any manager or staff member who is found to have breached this policy by engaging in bullying will be managed in accordance with NSW Health policy for managing misconduct.

### **REVISION HISTORY**

<b>Version</b>	<b>Approved by</b>	<b>Amendment notes</b>
September 2016 (PD2016_044)	Deputy Secretary, Governance. Workforce and Corporate	Module specific to Junior Medical Officers in the context of their dual training/employee roles. Related to <i>Prevention and Management of Workplace Bullying in NSW Health – Procedures (PD2011_018)</i> .

### **ATTACHMENT**

1. Prevention and Management of Unacceptable Workplace Behaviours in NSW Health – Junior Medical Officer Module: Procedures.

**Prevention and Management of Unacceptable  
Workplace Behaviours in NSW Health – Junior Medical  
Officer Module**



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**Issue date:** September 2016

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## 1 BACKGROUND

### 1.1 Purpose and scope of the Junior Medical Officer (JMO) Module

NSW Health Policy Directive PD2011\_018 *Bullying – Prevention and Management of Workplace Bullying in NSW Health* (‘the general policy’) sets out the principles and processes guiding the prevention, identification and eradication of workplace bullying in all NSW Health workplaces.

This JMO Module outlines the additional, modified or differing circumstances that exist in relation to Junior Medical Officers in the context of both accredited trainees and unaccredited trainees who are seeking to enter vocational training.

The purpose of the JMO Module is to:

- Define unacceptable workplace behaviours, including bullying, harassment, sexual harassment and discrimination (BHSHD)
- Address specific issues in relation to unacceptable workplace behaviour towards JMOs by Senior Medical Officers (SMOs) in the context of specialist training programs
- Provide information for JMOs around their rights, obligations and available options for raising concerns around unacceptable workplace behaviour
- Provide guidelines for the effective and timely management of complaints that instils confidence in the complaint management process and supports JMOs in coming forward to report unacceptable workplace behaviour
- Outline the procedures to be followed where a complaint is lodged by a JMO against an SMO for BHSHD
- Assist Local Health Districts / Networks (LHDs / Networks) to fulfil their obligation to eliminate or minimise the risk of bullying and other unacceptable workplace behaviours and manage complaints relating to such behaviours
- Ensure that the complaint management process does not rely on complaints made to the manager, given that in the training environment, the manager may be difficult to identify and / or it may be the supervisor of training who is the subject of the complaint.

The Procedures are supported by a number of Appendices that are listed in section 6 of the general policy and for this purpose are common documents. These documents include a list of rights and responsibilities, a sample data collection form, a policy information sheet, and a table of suggested time frames.

### 1.2 Definitions

BHSHD is a collective acronym for the purposes of this Module that covers bullying, harassment, sexual harassment and discrimination.

Bullying is defined by Safe Work Australia as:

*“Repeated and unreasonable behaviour directed towards a worker or a group of*

*workers that creates a risk to health and safety.”*

Repeated behaviour refers to the “*persistent nature of the behaviour and can involve a range of behaviours over time*”. This includes repeated behaviour directed towards one individual and single incidents of behaviour involving separate individuals.

Unreasonable behaviour means “*behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.*”

Workplace bullying will generally meet the following criteria:

1. It is repeated and systematic (although a serious single incident can also constitute bullying)
2. It is unwelcome and unsolicited
3. The recipient considers the behaviour to be offensive, intimidating, intended to humiliate or threatening
4. A reasonable person would consider the behaviour to be offensive, intimidating, humiliating or threatening.

Discrimination is defined as treating someone less favourably than others on the basis of particular protected attributes. It is unlawful under the *NSW Anti-Discrimination Act 1977* to discriminate against or harass employees in the workplace on the ground of their:

- Race (including colour, descent, nationality or ethnic origin, ethno-religious background)
- Religion
- Gender (including transgender, pregnancy or potential pregnancy, breastfeeding);
- Marital or domestic status
- Disability (including physical, intellectual, psychiatric, neurological, illnesses such as HIV / AIDS)
- Carer responsibilities
- Age.

It is also unlawful to indirectly discriminate by imposing an unreasonable requirement or policy that is the same for everyone but has an unfair effect on people with a particular protected attribute.

Employer means the Secretary NSW Ministry of Health exercising employer functions on behalf of the Government of New South Wales.

Harassment is defined as behaviour which is unwelcome and unsolicited and creates a hostile working environment. Harassment is behaviour that intimidates, offends or humiliates a person on the basis of a protected attribute such as their race, gender, disability, sexual orientation, age or other characteristics specified under anti-discrimination or human rights legislation.

Harassment can be a single act or a series of acts; it does not need to be repeated or continuous to constitute harassment.

Harassment includes behaviour such as:

- Telling offensive jokes about a particular racial or religious group
- Making derogatory comments or taunts about a person's disability or sexual orientation.

While all forms of sexual harassment are unlawful, some types of harassment are also criminal offences, such as:

- Sexual assault
- Stalking
- Obscene communications, including using electronic devices to send inappropriate messages or images.

JMO Complaints Officer is a LHD / Network Director of Clinical Services, Director of Medical Services or comparable senior position holder appropriately trained in complaints management and this Module.

JMO Support Officer is a position established by the NSW Ministry of Health and is external to the LHDs / Networks. The JMO Support Officer is experienced in managing or training staff and appropriately trained in complaint management.

Junior Medical Officer means a person employed on a term basis under the Public Hospital Medical Officers Award to provide services to the employer while undergoing postgraduate training in a hospital or service delivery environment.

NSW Health Agency means a public health organisation or any other administrative unit or entity under the control of the Secretary or the Health Administration Corporation in respect of which staff of the NSW Health Service are employed.

Senior Medical Officer for the purposes of this Module means a Career Medical Officer, a Staff Specialist or a Visiting Practitioner employed or contracted by the employer as such.

Sexual harassment is associated with unwelcome conduct of a sexual nature by which a reasonable person would be offended, humiliated or intimidated. Sexual harassment is unlawful.

Sexual harassment includes behaviours such as:

- Unwelcome sexual advances
- Requests for sexual favours
- Leering or sexual comments about a person's body
- Sending or displaying sexually suggestive materials (including pictures, emails, etc)
- Sexually explicit jokes
- Intrusive questions or suggestive remarks about a person's sexual or private life
- Unwelcome touching
- Molestation

- Sexual assault (including unwelcome touching of genitals and breasts).

Unacceptable workplace behaviours, for the purposes of this Module, includes bullying, harassment, sexual harassment and discrimination. The definition of each is distinct, but the behaviours do not necessarily occur in isolation.

### **1.3 Reasons for this Module specific to JMOs**

The JMO Module recognises the unique circumstances relating to the junior medical workforce and that it requires specific procedures to deal with allegations of unacceptable workplace behaviour, including that:

- They rotate between facilities, which can result in short-term employment within a LHD / Network and a lack of peer support networks
- Their manager is often in the position of signing off on their progress through the training program and the general policy states that an employee's manager should be their first point of call
- Their dual role as trainees and employees requires additional factors to be taken into account when bullying, harassment, sexual harassment or discrimination is alleged to have occurred
- Given the perception of an entrenched culture of unacceptable workplace behaviour in the medical workforce and the potentially detrimental impact that raising a complaint may have on their career in terms of assessment, vocational training opportunities and employment prospects, JMOs are a particularly vulnerable group who may be reluctant to raise concerns in relation to unacceptable behaviour.

### **1.4 Related policies**

The JMO Module supports the following NSW Health policies:

- Work Health and Safety: Better Practice Procedures PD2013\_050, *Work Health and Safety: Better Practice Procedures*
- Managing Misconduct PD2014\_042, *Managing Misconduct*

See also:

- Premier's Memorandum *M2007-02 Dignity and Respect: Policy and Guidelines on Preventing and Managing Workplace Bullying*
- Public Service Commission Positive and Productive Workplaces Guidelines G2016\_03 <http://www.psc.nsw.gov.au/Workplace-Culture---Diversity/Workplace-Culture/positive-and-productive-workplaces>

## 2 INTRODUCTION

### 2.1 Rights and responsibilities

NSW Health is committed to providing a safe and equitable workplace for all staff. As part of this commitment, unacceptable workplace behaviours will not be tolerated under any circumstances. The purpose of the JMO Module is to prevent unacceptable workplace behaviour and deal with allegations of such behaviours in all NSW Health workplaces.

NSW Health is committed to:

- Creating a working environment that is free from unacceptable workplace behaviours and where all staff members are treated with dignity, courtesy and respect
- Implementing training and awareness-raising strategies to ensure that all employees know their rights and responsibilities with respect to unacceptable workplace behaviours
- Providing an effective complaint management procedure based on the principle of procedural fairness
- Encouraging the reporting of behaviour that breaches the policy
- Treating all complaints in a sensitive, confidential, procedurally correct and timely manner;
- Guaranteeing protection against any victimisation or reprisals for those making a complaint
- Promoting and enforcing appropriate standards of conduct at all times.

**Appendix 1** of the general policy provides detailed information on rights and responsibilities of parties involved in bullying complaints management.

**Appendix 3** of the general policy details the recommended time frame for managing bullying complaints. Matters dealt with under this Module should be dealt with in a consistent time frame.

### 2.2 What is workplace bullying behaviour?

Bullying behaviour can take many different forms. It can range from overtly aggressive behaviour such as shouting, physical confrontation or using an abusive or aggressive tone in speaking to other staff members, to more subtle behaviours such as encouraging or allowing others to engage in bullying, publicly criticising others, spreading rumours.

Bullying behaviour can be by one or more persons against any other person or persons. Managers and staff at any level can either be responsible for carrying out bullying or be the target of bullying conduct.

The above points should not be applied rigidly or without appropriate regard to all relevant factors.

The *Safe Work Australia Guide for Preventing and Responding to Workplace Bullying* provides the following examples of bullying:

- Abusive, insulting or offensive language or comments
- Unjustified criticism or complaints
- Deliberately excluding someone from workplace activities
- Withholding information that is vital for effective work performance
- Setting unreasonable timelines or constantly changing deadlines
- Setting tasks that are unreasonably below or beyond a person's skill level
- Denying access to information, supervision, consultation or resources to the detriment of the worker
- Spreading misinformation or malicious rumours
- Changing work arrangements such as rosters and leave to deliberately inconvenience a particular worker or workers.

Bullying may also be discrimination if it targets a person on the basis of their age, gender, pregnancy, race, disability, sexual orientation, religion or certain other protected attributes.

### **2.3 What is not workplace bullying behaviour?**

Reasonable management action taken in a reasonable way does not constitute bullying. Legitimate and reasonable managerial actions are those taken to direct and control how work is done in the workplace.

Reasonable managerial actions may include:

- Providing appropriate feedback on a staff member's work or their performance on the training program (the fact that a staff member may find the feedback upsetting or unsettling does not of itself constitute bullying)
- Appropriate actions taken to protect patient safety
- Managing performance or underperformance issues
- Issuing reasonable directions about work allocation and performance, and about attendance at the workplace
- Transferring a staff member or taking action to make a staff member redundant where the process is conducted fairly and equitably
- Making justifiable decisions related to recruitment, selection and other development opportunities
- Ensuring that workplace policies are implemented
- Managing allegations of misconduct and utilising disciplinary actions where appropriate
- Overseeing injury and illness processes in accordance with WHS, injury management and workers compensation legislation and policies.

Workplace conflict such as differences of opinion and disagreements are not generally considered to be workplace bullying unless they are repeated, unreasonable behaviours that create a risk to health and safety.

### **3 PREVENTION OF UNACCEPTABLE WORKPLACE BEHAVIOUR**

#### **3.1 A risk management approach**

These Procedures take a risk management approach to the prevention of unacceptable workplace behaviour as required by Work Health & Safety (WHS) legislation.

For the purposes of this module the procedures set out herein apply to unacceptable workplace behaviour affecting JMOs as described in sections 1 and 2 above. That is, workplace bullying, harassment, sexual harassment and discrimination.

**The term ‘bullying’ is frequently employed in the text for clarity of exposition, but the procedures equally apply to discrimination, harassment and sexual harassment affecting JMOs where these latter terms better describe the workplace behaviour that is unacceptable.**

NSW Health must ensure, so far as is reasonably practicable, the health and safety of workers.

NSW Health staff have a responsibility to:

- Take reasonable care for their own health and safety
- Take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons.

As with all foreseeable workplace risks, the potential for workplace bullying must be identified, assessed, and eliminated or minimised as far as possible. Appropriate risk controls must be put in place. Consultation with staff and their representatives should take place at all stages of the process, and their input considered when determining and implementing bullying risk controls (see NSW Health Policy Directive PD2013\_050 - *Work Health and Safety: Better Practice Procedures*).

**The key consideration is that where management becomes aware of a significant WHS workplace risk, they have a responsibility to intervene and eliminate or minimise the risk.**

#### **3.2 Identifying and assessing risk**

Managers must consult with staff to identify and assess the potential for bullying to create risk in the workplace. The Safe Work Australia publication *Guide for Preventing and Responding to Workplace Bullying* may assist with this process. The document is accessible from the following link:

<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/827/Guide-preventing-responding-workplace-bullying.pdf>

### **3.3 Implementing risk controls**

Controlling the risk of bullying will involve implementing preventative and management policies and procedures, and training to eliminate, avoid, or minimise the risk of harm occurring through bullying.

Managers should implement the following strategies in their areas of responsibility, as far as reasonably practicable:

- Ensure that all staff have an awareness of their obligations not to engage in unacceptable workplace behaviour
- Promote an anti-bullying workplace environment by their own conduct and behaviour in the workplace
- Ensure that information about what types of behaviours do, and do not, constitute unacceptable workplace behaviour are communicated to all staff, with a particular emphasis on any high risk areas identified through a risk assessment process
- Ensure that NSW Health policy in relation to grievance resolution (*PD2010\_007 Grievance – Effective Workplace Resolution*) is communicated to all staff
- Encourage and support staff in the self-resolution of conflict and workplace grievances by providing appropriate information and training where necessary, e.g. conflict resolution
- Provide a clear and simple process for reporting unacceptable workplace behaviour
- Ensure they are equipped to, and do, respond promptly and effectively to complaints related to unacceptable workplace behaviour
- Ensure induction programs include the organisation's commitment to zero tolerance of unacceptable workplace behaviour.

For further information regarding implementing risk controls refer to the Safe Work Australia *Guide for Preventing and Responding to Workplace Bullying* referenced at 3.2 above.

### **3.4 Monitoring, reviewing and evaluating risk controls**

The agency must have procedures in place to monitor anti-bullying strategies, review their ongoing relevance, and capture information about any substantiated complaints of unacceptable workplace behaviour in order to evaluate and improve existing procedures.

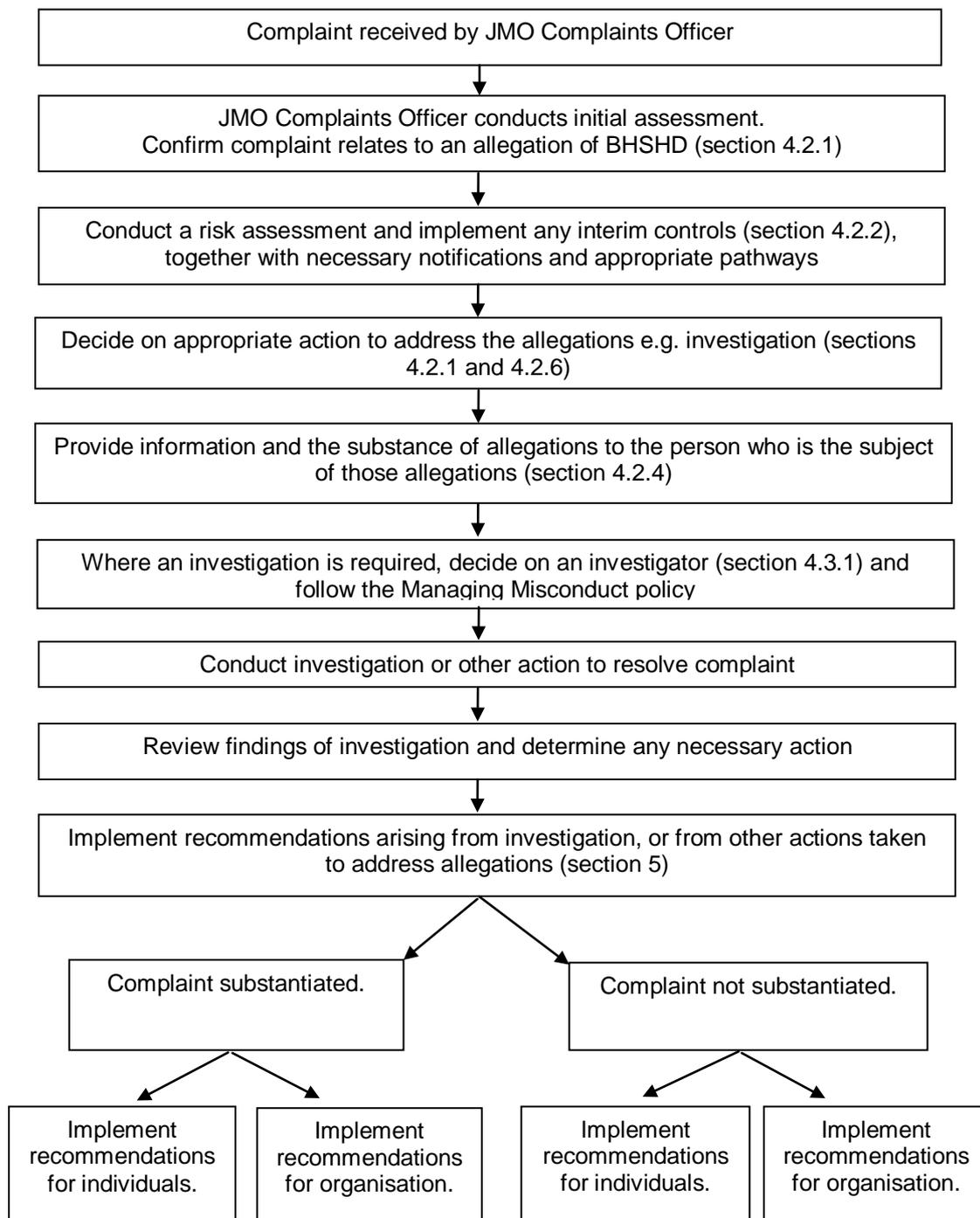
Agencies must audit bullying complaints and provide de-identified data to the NSW Ministry of Health on a quarterly basis (refer to **Appendix 4** of the general policy).

The data collected by these audits allow NSW Health to benchmark performance and identify areas where improvement is required.

## **4 MANAGING A BULLYING / HARASSMENT / SEXUAL HARASSMENT / DISCRIMINATION (BSHSD) COMPLAINT**

### **4.1 Process for Managing a BSHSD Complaint**

The following flowchart is intended as a summary of the key stages. Further, more detailed, information is included in the sections following.



#### **4.1.1 Confidentiality**

All staff have rights and responsibilities in relation to confidentiality. Information about a BSHHD complaint should only be provided on a 'need to know' basis, and should not be provided to third parties with no legitimate involvement in the process. Unless they are the subject of complaint, Directors of Prevocational Education and Training and Directors of Medical specialist training programs should be informed with the consent of the complainant so that they can provide appropriate support to the JMO concerned to ensure they continue to meet their training needs while actions are taken to investigate and resolve the issue.

Those involved in a BSHHD complaint have both the *right* to confidentiality, and the *responsibility* for maintaining confidentiality in respect of both the identity of those involved, as well as the subject matter. The inappropriate release of information relating to a BSHHD complaint or a person involved with a complaint, or to any third party with no legitimate involvement in the process, should be dealt with in accordance with NSW Health policy for Managing Misconduct.

The person against whom a BSHHD complaint is made needs to be provided with enough information to allow them to make a full response to the issues raised. In particular, as most BSHHD complaints usually involve a complaint by one person against another, the person against whom a complaint is made will generally need to know who raised the complaint, in order to be able to adequately respond to the matters raised.

The situation may arise where a staff member makes a complaint of unacceptable workplace behaviour, but wishes their identity to be kept anonymous, or in particular not disclosed to the person against whom the complaint was made. Anonymity usually prevents an adequate investigation of a complaint, in addition to impeding the making of a response. In most circumstances, complainants should be advised that effective action to deal with a complaint requires their identity to be made known. (See sections 4.1.3 below dealing with reluctance to complain formally and 4.1.4 dealing with anonymous complaints.)

#### **4.1.2 Making a complaint**

Where a JMO feels that they are, or have been, the subject of BSHHD, they should have ready access to sufficient information that will help them determine how best to respond and their options for raising their concerns.

This information can be obtained from the JMO Support Officer, an Anti-Bullying Contact Officer (if available in their workplace), the Anti-Bullying Advice Line (ABAL) on 1300 416 088 or via the intranet, or the Human Resources staff within their LHD / Network in the first instance. Information can also be obtained from the Australian Salaried Medical Officers' Federation of NSW (ASMOF) and the Australian Medical Association (AMA) NSW.

Given that JMOs may be apprehensive when making a complaint against a SMO who supervises the JMO's training program or who occupies a position of significant influence, JMOs have the option to obtain independent advice and support from a JMO Support Officer as an initial step in dealing with this behaviour (refer to section 4.1.6 below).

The JMO may also proceed directly to lodging a formal complaint at any time. It is not required that they go through the JMO Support Officer.

While it is desirable that a verbal complaint be followed up in writing, responding to the complaint should not be dependent on its receipt in writing. However, the person receiving the complaint should take some notes in the first instance and confirm with the complainant that the notes reflect the essence of their concerns.

#### **4.1.3 What happens if the JMO requests no action be taken?**

A JMO may advise that they are being bullied but do not wish to make a formal complaint. This may be appropriate where the allegation does not meet the definition of BSHSD and could be resolved using a grievance resolution model. However, it could be that the JMO fears that making a complaint will cause them more stress, make the work situation worse or make them the subject of reprisals.

In these circumstances, the JMO should be advised of options to resolve the matter. Any concerns regarding the process should be explored with the JMO and addressed as far as possible.

Where the JMO still does not want to go ahead with the complaint, there may still be an obligation, depending on the individual circumstances, to take action. For example, if the allegation meets the definition of BSHSD, if the JMO appears significantly distressed, or where it becomes evident over time that the situation is not improving or is getting worse, a significant workplace risk may arise which requires action. There may also be reporting obligations on the receiving person because of the nature of the complaint that is brought to their notice. The JMO should be advised of these reporting obligations.

While any management response will need careful consideration in such circumstances, it may be possible to discuss some potential organisational responses with the JMO, in the context of the organisation's responsibilities to ensure as far as practicable a risk free workplace.

Appropriate organisational responses could include:

- Reissuing and reinforcing the organisation's anti-bullying policies
- Reminding all staff of their obligations under WHS legislation and relevant NSW Health policies
- Requiring staff to attend bullying prevention briefings or training
- Emphasising that all complaints will be taken seriously.

#### **4.1.4 Anonymous complaints**

Anonymous complaints are not encouraged. However, where they are received they need to be assessed and appropriate action taken. While individual matters may not be able to be followed up, a general organisational response may be required such as meeting with the relevant group of staff and encouraging them to come forward with any complaints or providing them with general information on how to make bullying complaints. Where allegations can be independently verified, this should occur and appropriate action be taken.

The organisation should have processes in place to monitor the performance of other JMOs who may subsequently rotate into the term / position about which an anonymous complaint has been made. This will assist in deciding whether the term provides a suitable long term environment that supports teaching and training of JMOs.

#### **4.1.5 Complaint via workers' compensation claim**

A manager may first become aware of a potential bullying issue as a result of a workers' compensation claim.

While the processes in this Module to manage a complaint will need to be followed as far as possible, there should be liaison with the treating clinician in relation to any alternative work arrangements and to determine when the JMO is fit enough to be interviewed as part of any investigation.

There may also be a need to liaise with the relevant Insurer's Claims Manager if there is to be a 'fact finding' exercise undertaken for insurance related purposes, and any concurrent injury management and return-to-work program will need to be considered when conducting any assessment and / or internal investigation. Depending on the circumstances, the organisation's return-to-work coordinator may also have a role to play in supporting the staff member.

#### **4.1.6 Complaint via third party (e.g. College, Association)**

A complaint may also be made via the relevant College or Association who will liaise with the LHD / Network as appropriate to ensure the complaint is managed through the appropriate pathway.

#### **4.1.7 Role of JMO Support Officer**

The role of the JMO Support Officer is to provide a safe source of information and support for JMOs.

JMO Support Officer positions, established by the NSW Ministry of Health, will be situated outside the LHD / Network and promoted via the LHD / Network intranet.

The JMO Support Officer will be a senior medical practitioner experienced in managing or training medical staff and appropriately trained in complaint management. They will be able to discuss the situation with the JMO and:

- Act as a sounding board for the JMO (for example, discuss their concerns and the nature of the behaviour experienced)
- Assist the JMO to develop strategies to deal with the behaviour described
- Provide information on other support services available to the JMO (e.g. support services from industrial organisations, Colleges, EAP etc)
- Describe the complaints process as set out in this policy.

The JMO Support Officer will have a range of resources to which the JMO can be referred, including education courses, the Doctors' Health Advisory Service, and other services provided by the LHD / Network.

The JMO Support Officer will conduct a risk assessment to identify whether alleged serious and / or ongoing conduct is involved such as:

- The conduct described by the JMO may amount to a serious criminal offence (e.g. an assault)
- The matter complained about constitutes conduct which must be reported under legislation
- The JMO making the complaint is at risk.

In such instances, the JMO Support Officer has an obligation to refer the complaint to the LHD / Network JMO Complaints Officer for further action.

The JMO Support Officer will be independent from any ensuing complaint process. Their role does not include contacting the person whose behaviour is the subject of the complaint, or involvement in an investigating role.

If ongoing counselling of the JMO is appropriate, this should be undertaken by an appropriate dedicated counselling service.

#### **4.1.8 Role of JMO Complaints Officer**

Local Health Districts and Networks are to have an identified LHD / Network JMO Complaints Officer who is sufficiently senior within the LHD / Network, e.g. a Director of Clinical Services or Director of Medical Services or comparable position and who is appropriately trained in complaints management in accordance with the general policy and this module.

The JMO Complaints Officer will:

- Receive the complaint / allegation from the JMO
- Advise the JMO of the availability of a JMO Support Officer if appropriate
- Outline the complaint process to the JMO
- Document the complaint
- Conduct a risk assessment to determine whether the JMO, other JMOs or patients are at risk and consult with relevant LHD / Network officers on interim risk controls (or review the risk assessment by the JMO Support Officer)
- Assess the complaint and determine the appropriate course of action
- Inform the person who is the subject of the complaint as to the nature of the complaint and the identity of the complainant
- Provide ongoing feedback to complainant and respondent on progress of the management of the complaint.

Options for dealing with the complaint include:

- Managing the complaint in accordance with other relevant policy (e.g. Effective Workplace Grievance Resolution) where the alleged behaviour described does not meet the definition of BSHSD
- Investigation in accordance with the Managing Misconduct policy where the alleged behaviour meets the definition of BSHSD)

- Recommending immediate action to the appropriate delegated authority where the facts are not contested or urgent action is required.

In some cases, the appropriate response may be a combination of the above, e.g. a recommendation for immediate interim risk controls may be required while an investigation is conducted.

#### **4.1.9 Role of Investigator**

The investigator must be appropriately skilled and experienced. They must be independent in that they have no direct involvement with or interest in the matter under investigation.

The investigator does not make decisions in relation to the matter under investigation.

LHDs / Networks should engage an appropriate skilled investigator with the expertise to deal with specific JMO issues. The investigator will provide a written report to the JMO Complaints Officer. The report will make findings as to whether the complaint is substantiated and recommendations for actions, including remedial or disciplinary action.

The investigation report is to be provided to the decision-maker (in accordance with the Delegations Manual) for their consideration. The decision-maker should not be involved in the conduct of the investigation. The decision-maker is responsible for advising the respondent of the proposed findings and providing an opportunity to respond to any proposed actions (remedial or disciplinary). The decision-maker is required to communicate the outcome of the investigation to the complainant and respondent.

## **4.2 Assessing a BSHSD complaint**

All complaints must be treated seriously and confidentially, and acted on promptly. Prompt action should reinforce the message that unacceptable workplace behaviours will not be tolerated and is also consistent with the organisation's duty of care under WHS legislation. Section 4.1 above provides a flow chart outlining the overall process for managing a complaint.

### **4.2.1 Initial assessment of a complaint**

Within three working days of the receipt of a complaint, an initial assessment of the complaint should be conducted. Refer to **Appendix 2** of the general policy to help determine the most appropriate pathway for managing a complaint where it is determined that it does not relate to BSHSD. **Appendix 3** of the general policy provides the recommended time frames for the BSHSD complaints management process.

This initial assessment is separate from, and should be undertaken prior to, taking action to address the complaint, and generally involves seeking as much information as possible, in discussion with the complainant, in order to:

- Assess the potential seriousness of the matter
- Reduce the likelihood that significant time and resources are allocated to frivolous or vexatious complaints
- Determine whether any immediate action needs to be taken.

For example, in some instances complaints about bullying may actually relate to a work performance issue and may need to be managed in line with NSW Health Policy Directive PD2013\_034 *Managing for Performance*.

[http://www0.health.nsw.gov.au/policies/pd/2013/pdf/PD2013\\_034.pdf](http://www0.health.nsw.gov.au/policies/pd/2013/pdf/PD2013_034.pdf)

If the matter appears relatively minor, it may be more appropriate to manage the complaint as a grievance. For further information on the initial assessment, see NSW Health Policy Directive PD2010\_007 *Grievance – Effective Workplace Resolution*. [http://www0.health.nsw.gov.au/policies/pd/2010/pdf/PD2010\\_007.pdf](http://www0.health.nsw.gov.au/policies/pd/2010/pdf/PD2010_007.pdf)

Where the initial assessment suggests that the behaviour being complained about meets the definition of BSHSD as set out in section 2.2, the complaint should be managed in accordance with the *Managing Misconduct* policy.

Additional circumstances to take into consideration include:

- Where there is a significant number of complainants
- Available information suggests the unacceptable workplace behaviour has been severe or frequent in nature
- There is a history of complaints against the same SMO
- There is a history of complaints being made by the same JMO.

Where it appears to the recipient of the complaint that some immediate response is necessary until a more detailed risk assessment can be undertaken (e.g. the complainant seems deeply distressed), immediate options should be raised having regard to the views of the complainant (e.g. short term leave or transfer to a different work area). Any action taken in these circumstances must be determined in the context of managing the immediate safety and welfare of the individual, other staff and patients and should not be based on the validity or otherwise of the complaint.

#### **4.2.2 Risk assessment of a complaint**

After immediate issues are addressed by way of an initial assessment, an assessment of potential ongoing risks to all parties involved with the complaint in respect of current work arrangements should be conducted. This will determine whether any further action needs to be taken to ensure as far as practicable the wellbeing of those involved until matters connected with the complaint are finalised.

In determining an appropriate response, the following should be considered:

- Relevant information from the initial assessment or any information / assessment provided by a support officer
- The physical / psychological state of the complainant, and where necessary, the person against whom a complaint is made
- How long the alleged behaviour has been going on
- How serious the initial allegations appear to be
- The degree of disruption the issue appears to be causing in the working environment

- Any evident complicating factors e.g. previous history of conflict between the parties etc
- Any relevant previous history of allegations of unacceptable workplace behaviour involving the parties to the complaint and the outcome
- The views of the complainant about possible management options during the investigation
- The potential for the complainant to be subjected to reprisals
- The impact that the alleged behaviour is having on a JMO completing their training requirements.

Proposed temporary arrangements should be discussed with the complainant, and their views considered. Depending on the circumstances, it may also be useful to separately discuss these options with the person against whom the complaint was made, particularly where significant changes to the way work or training is currently being done may be contemplated.

As far as possible, and again this will be governed by the particular circumstances of the complaint, neither party should be unduly disadvantaged by these arrangements. However, where the situation is such that decisive action is required, this consideration should not solely be used to impede an appropriate management response. Depending on the complaint, the risk assessment may indicate suspension of the SMO against whom the complaint is made. The Policy Directive - Managing Misconduct should be consulted regarding such a decision.

Action resulting from the risk assessment should not be based on any presumption that the alleged behaviour has occurred. It should be specific to the individual circumstances, be practical and proportionate to those circumstances, be for a defined time frame, and identify a review date. If at any time during the investigation, information arises that is relevant to the risk assessment, the actions should be reviewed to ensure they remain appropriate. In considering potential temporary action, every effort should be made to ensure that there is minimal disruption to the complainant meeting any training requirements. Training requirements may include completing minimum time in an accredited position. In considering actions, the relevant Director of Training for the LHD / Network may need to be consulted for those complainants enrolled in a vocational training program.

Examples of potential temporary action include (but are not limited to):

- Appointment of another supervisor
- Making arrangements to ensure that any assessments of the complainant are made by someone who is not a party to the complaint but can provide advice about the JMO's performance
- Rotating the complainant to another accredited training position within the facility or training network
- Alternative working arrangements
- Alternative work design

- Alternative work locations, reporting lines or shift arrangements in line with delegation to approve
- Making appropriate arrangements to manage any necessary work interactions between the parties.

JMO positions are often filled by doctors undertaking three or six month rotations. A risk assessment needs to be undertaken on whether it is appropriate to rotate other junior staff into the position before the complaint is resolved.

Consideration also needs to be given to other junior medical staff working in the medical team and the impact on them when action is taken to address the complainant's concerns. For example, if the complainant is a trainee supervising interns and is moved to another term or workplace, the interns will not have direct supervision and may also then be exposed to the unacceptable behaviour to which the trainee was allegedly subjected. Therefore, an assessment may need to be made on whether all junior medical staff should be temporarily moved from the position, even though not all have made a formal complaint.

If the alleged behaviour involves violence, for example physical assault or threat of physical assault, it must be reported to the police. The JMO should be provided with the necessary support and assistance. Investigation of the alleged behaviour should proceed even if the police decide not to pursue the allegations.

The risk assessment may also conclude that a complaint is frivolous, misconceived, reckless, vexatious or malicious, in which case no further action is required in relation to the substance of the complaint. Refer to section 5.1.1 for recommended management.

#### **4.2.3 Suspension**

NSW Health policy clearly identifies that suspension of a staff member is **only** to be considered in very narrow, specific circumstances. For further information, see the NSW Health policy *Managing Misconduct* PD2014\_042.

#### **4.2.4 Notifying the person against whom a complaint is made**

The person against whom a bullying complaint is made should be provided with the substance of the complaint as soon as it is safe and appropriate to do so. They must be given reasonable opportunity to respond to the allegations.

Consideration should be given to the most appropriate way of advising a member of staff that a bullying complaint has been made against them. Generally speaking, a face to face meeting with the JMO Complaints Officer is the preferred means of initially advising that a complaint has been received. Such an approach avoids causing unnecessary distress which might readily arise if the person against whom a complaint has been made simply receives a letter containing little information other than that they must attend a meeting.

This initial meeting should be separate from and undertaken prior to, any further action to resolve the complaint and should be followed up by correspondence confirming the information relayed during the meeting. While such a meeting may not be possible or appropriate in all circumstances, the communication, be it verbal or written, needs to be clear, concise, polite, include all necessary information, and name a contact person.

Both the complainant and the person against whom a complaint is made have rights and responsibilities and should therefore be provided with the following information at the appropriate time:

- Any immediate action deemed necessary
- An overview of how the complaint will be managed
- An assurance that their right to privacy and confidentiality will be maintained, and that no information in relation to the complaint will be provided to third parties, unless considered necessary and / or where reporting obligations apply
- Their own roles in ensuring that confidentiality is maintained
- That they will be given a fair opportunity to put forward their case
- That it is expected they will make themselves available in order to assist in resolving the complaint, and where necessary facilitate this availability by providing contact details and numbers, including when on leave
- That they will be provided with information on progress of the investigation and on any decisions made that may affect them
- That access to EAP services is offered
- The right to seek independent advice, including from a union / association representative
- The right to a support person, and the role of that support person (the role of a support person is described in Appendix 1 of the general policy).

#### **4.2.5 Documenting the assessment**

Appropriate documentation of all assessments, including the initial assessment, must be kept. The type of documentation and level of detail will depend on the type of issue, whether the matter was low or high level in the nature of its seriousness and level of complexity. For low level complaints that do not require investigation or a possible disciplinary response, brief notes should be maintained locally and, as stated in **3.4**, de-identified data must be provided to the NSW Ministry of Health on a quarterly basis to allow NSW Health to identify areas where improvement is required (refer to **Appendix 4** of the general policy).

The record of the initial assessment should document the issue raised, state what advice has been provided, and the actions taken and why. It should be dated and signed and kept confidential. Where further action to resolve a complaint occurs, such as an investigation, a copy of the initial assessment must be maintained with all other documentation on a confidential file.

#### **4.2.6 Deciding on action to resolve a complaint**

A range of options exist to assist parties to resolve complaints promptly and effectively and an appropriate option would have been considered as part of the initial assessment. Due to the potential diversity of issues involved, it is important that each complaint is considered individually, in order to determine the best option(s) to utilise, and the most

appropriate way to resolve it. Action should commence immediately to implement the preferred option.

### **4.3 Investigating the complaint**

It is not always necessary to conduct an investigation. An investigation is only necessary where there is a significant dispute about the facts involved, complex issues arise which require clarification for the complaint to be dealt with, or where the complaint makes credible assertions of serious misconduct. The purpose of an investigation is to gather and analyse all relevant information to help identify whether or not the complaint is able to be substantiated, and whether there are any extenuating circumstances or other contributing factors that may need to be considered.

#### **4.3.1 Determining who should conduct an investigation**

The person (or persons) identified to do the investigation should possess the skills necessary for undertaking the type of investigation that is required, and be able to act impartially.

The decision to use an external investigator is a decision to be made by the agency, after considering all relevant information. Where an external investigator is used, the scope of the services to be provided needs to be developed that clearly identifies what is to be done, and include time frames, the type of report to be provided and confidentiality requirements.

#### **4.3.2 Conducting and finalising an investigation**

Any investigation process must be fair, impartial, and professionally conducted. The process outlined in the NSW Health policy for Managing Misconduct - PD2014\_042 (as may be amended from time to time) must be followed.

#### **4.3.3 Investigation where complainant has left the facility**

A JMO who lodges a complaint after they have rotated / moved away from the facility where the alleged conduct took place, can do so with the JMO Complaints Officer of the LHD / Network where the alleged conduct took place or where they are currently located, regardless of where the complainant or respondent are currently employed.

The JMO Complaints Officer will pursue a complaint, regardless of whether or not the complainant or respondent are still employed in the LHD / Network.

Any report arising from the investigation of a complaint is to be provided to the decision-maker of the LHD / Network where the conduct is alleged to have taken place. The outcome of the investigation shall be communicated to the complainant and respondent regardless of whether or not they are still employed in the LHD / Network.

#### **4.3.4 Investigation where complainant is on rotation to private hospital**

Irrespective of the avenue by which the JMO lodges a complaint, the private hospital where the unacceptable workplace behaviour is alleged to have occurred and where the person against whom the allegations are made is employed has a responsibility to ensure the welfare of its employees and to eliminate or minimise workplace behaviours that pose a risk to health and safety.

## **5 RESPONDING TO OUTCOME OF A BSHSD COMPLAINT**

### **5.1 Responding to the findings**

#### **5.1.1 Where the complaint is substantiated**

Substantiated allegations of bullying, harassment, discrimination and sexual harassment constitute serious misconduct and should be dealt with in accordance with the Managing Misconduct policy.

Where a complaint is substantiated, in determining what action is to be taken the following should be considered:

- Material gathered during any investigation
- The extent to which there is uncertainty about the facts involved ie the strength of the evidence
- Findings, and recommendations, where provided
- Any identified extenuating circumstances
- Any submission from the person against whom a complaint has been made regarding adverse findings
- Previous relevant disciplinary history.

The form of action to be taken must be decided on a case by case basis. Action should include focusing on preventing a continuation / repetition of the behaviour at both the individual and organisational level, and managing and repairing as far as possible future work relationships. The complainant must also be protected against any victimisation for having made the complaint in the first place.

Actions for managing individual behaviour may include, depending on the circumstances:

- Gaining commitment that the behaviour is to cease – this is a non-negotiable first point in any management response to a substantiated complaint
- Requiring an acknowledgement from the person who has engaged in unacceptable workplace behaviour to the person who has been subjected to the behaviour, of the impact of that behaviour and offering an apology
- Counselling the person against whom a complaint is made
- Ongoing performance management and monitoring
- Transfer of the person against whom a complaint is made to a different role
- Reinforcing the requirement for all staff to refrain from conduct that constitutes unacceptable workplace behaviour
- Providing training in what constitutes unacceptable workplace behaviour, appropriate communications skills, managing workplace relationships, giving feedback etc
- Disciplinary action if warranted
- Withdrawal / non-assignment of JMOs

- Disaccreditation of term
- Notification to relevant College in accordance with 5.1.6.

### **5.1.2 Where the complaint is not substantiated**

Where the findings suggest it is unlikely that bullying occurred, an organisational response may still be necessary. The investigation may have identified gaps in the bullying prevention and risk management framework that require remedying. Action may also be necessary to re-establish effective working relationships, even where allegations were not substantiated. Where the findings suggest that a complaint was not made honestly and was intentionally malicious or vexatious, the matter should be managed in accordance with current NSW Health policy for Managing Misconduct.

### **5.1.3 Organisational responses to unacceptable workplace behaviour**

Strategies for managing organisational issues that may have been identified as permitting or facilitating unacceptable workplace behaviour include:

- Addressing any identified workplace culture issues, work practices and / or supervisory arrangements that may contribute to unacceptable workplace behaviour
- Ensuring that all staff understand what constitutes unacceptable workplace behaviour and that such behaviour will not be tolerated
- Reviewing related training to ensure it is appropriate
- Reviewing existing conflict resolution mechanisms
- Promoting a positive workplace culture including communicating and discussing with staff the NSW Health's values and aspirations, and the NSW Health Code of Conduct.

### **5.1.4 Disciplinary action**

If ensuing disciplinary action is considered appropriate, it should be managed separately from but consistent with organisational responses. Substantiated allegations of BSHSD constitute serious misconduct and should be dealt with in accordance with the Managing Misconduct policy.

### **5.1.5 Ongoing work arrangements**

Regardless of the outcome of a complaint, consideration may need to be given to ongoing work arrangements, particularly where interim changes occurred as a risk management strategy. While the aim should be to re-establish normal working arrangements, this will depend on the circumstances, and any perceived ongoing risk to the welfare of either party.

Consideration also needs to be given as to whether the position remains suitable for other JMOs who will be rotating into the position. If it is determined that the position is no longer suitable for JMOs then other staffing arrangements need to be determined and put in place to ensure patient care is maintained.

It is recognised that one JMO position is usually part of a team of JMOs working for SMOs. If a decision is made to remove one JMO from the team as a risk management strategy, an assessment needs to be undertaken on how this may impact on other remaining JMOs and suitable arrangements put in place to manage workload, supervision and training issues. Confidentiality must be maintained as to why the JMO has moved from the team.

The relevant accrediting College and delegated director of specialty training needs to be informed as staffing changes may affect the position's ongoing suitability for training. HETI also needs to be advised of any staffing changes in relation to terms.

If changes in SMO arrangements are made consideration needs to be given on how this may impact on college training requirements, together with the workload and supervisory responsibilities of affected SMOs. The Director of Prevocational Education and Training should be consulted on this issue.

### **5.1.6 Notifications**

If an investigation substantiates unsatisfactory professional conduct or professional misconduct, notification should be made to:

- The relevant NSW Health Professional Council (such as the Medical Council)
- The relevant health practitioner Board of Australia (such as the Medical Board)
- The Health Care Complaints Commission
- The relevant medical college.

Notification of adverse findings relating to BSHSD and / or any employment conditions (including suspension or termination of employment) relating to a staff member who is an accredited trainer with a medical college should also be communicated to the relevant college for the college to assess the member's continuing accreditation in terms of:

- Supervising trainees / International Medical Graduates
- Teaching medical college courses
- Being an examiner
- Changes that threaten the educational quality of the training program
- College accreditation of the training posts and the hospital as a Provider of Training.

Notification to HETI of any change in circumstances in relation to a term is required. The Prevocational Accreditation Committee (PAC) oversees the HETI accreditation program and may place conditions on or disaccredit a term or Provider and remove prevocational trainees if the term is assessed as not meeting the standards or if there has been notification of a breach of the standards.

## **5.2 Documentation**

All documents relating to the management of the complaint, regardless of the outcome, should be kept on a confidential file. A separate, confidential file should be kept for each

complaint. This should not impede having systems in place to assist in identifying possible patterns of unacceptable workplace behaviour by individuals.

The findings from the investigation will dictate what, if any, information regarding the matter is to be placed on the personnel file of a person against whom a complaint was made, or the complainant's personnel file where vexatious or malicious claims have been made. To obtain guidance on what material should be placed on personnel files for NSW Health Service staff see current NSW Health policy for Managing Misconduct.

### **5.3 Review and evaluation**

The agency should have mechanisms in place to evaluate whether their systems for managing BSHD complaints are effective and timely.

A summary sheet for each formal complaint should be maintained (refer to **Appendix 4** of the general policy for information to be collected).

Aggregated reports developed from the summaries will help identify any sections / units of the workplace with a high frequency of BSHD complaints, as well as problems with unacceptable delays in responding to complaints, deficiencies in the management of complaints e.g. failure to conduct the initial assessment and / or the risk assessment, regular need for further action following the review etc. This process in turn allows the organisation to take appropriate remedial action and systems improvements e.g. further training for those managing or investigating complaints, improvements to the prevention systems in areas with a high frequency of complaints etc.

## **6 RELATED DOCUMENTS**

<b>Related Documents</b>	<b>Title and link</b>
	The following information is available in Policy Directive PD2011_018 <i>Bullying – Prevention and Management of Workplace Bullying in NSW Health</i> : <a href="http://www0.health.nsw.gov.au/policies/pd/2011/pdf/PD2011_018.pdf">http://www0.health.nsw.gov.au/policies/pd/2011/pdf/PD2011_018.pdf</a>
	<b>Appendix 1 Rights and Responsibilities in Management of Bullying Complaints</b>
	<b>Appendix 2 NSW Health Complaints / Issues Management Policies and Guidelines</b>
	<b>Appendix 3 Recommended time frames for managing a bullying complaint.</b>
	<b>Appendix 4 Bullying Complaint Case Management Form</b>
	<i>Additional appendices may be added to this list from time to time.</i>