

## Prevention and Management of Workplace Bullying in NSW Health

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**Distributed to** Government Medical Officers, Health Associations Unions, Ministry of Health, NSW Ambulance Service, Public Health System, Tertiary Education Institutes

**Audience** All staff

### Secretary, NSW Health

This Policy Directive may be varied, withdrawn or replaced at any time.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 WORKPLACE BULLYING IN NSW HEALTH

### PURPOSE

NSW Health is committed to providing a safe and equitable workplace for all workers, where everyone's contribution is valued and respected. As part of this commitment, workplace behaviours such as workplace bullying, harassment, sexual harassment and discrimination will not be tolerated. The purpose of this Policy Directive is to provide guidelines for the prevention and management of bullying, harassment, sexual harassment and discrimination in NSW Health.

### MANDATORY REQUIREMENTS

Workers are expected to contribute to the achievement of a positive and productive workplace culture by carefully considering their own behaviour and its possible effects on others. The NSW Health Code of Conduct provides the standards of behaviours and conduct that are expected of all staff workers at all times. Managers are responsible for fostering a work environment that is free from bullying and promotes NSW Health's CORE values. Managers must take all reasonable steps to identify, assess and eliminate or minimise the potential for workplace bullying.

All complaints about bullying must be treated sensitively, seriously, fairly and acted on promptly. An initial assessment must be conducted within three working days of receiving a complaint. Managers (or more senior managers where the complaint involves a manager) 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 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***

- Monitor the implementation of policy obligations
- Collect data from across NSW Health on the timeliness and outcomes of bullying complaint management processes

### ***Secretary, NSW Health and Chief Executives***

- Provide overall direction for the policy, procedures and management of bullying complaints
- Ensure that the mandatory standards outlined in NSW Health policy are implemented
- Monitor the performance of bullying prevention and management strategies

### ***Directors of Workforce / Workforce Directorates / Human Resources Departments***

- Ensure provision of information and training as necessary to support the effective implementation of this Policy Directive
- Monitor compliance with the mandatory standards outlined in this Policy Directive and report on compliance to Chief Executives
- Collect and provide de-identified data on bullying complaints to the NSW Ministry of Health on a quarterly basis

### ***Supervisors / Managers***

- Consult with workers and their representatives in the implementation of this policy as required under Section 70 of the Work Health and Safety Act
- Implement appropriate strategies to prevent workplace bullying
- Manage bullying complaints in accordance with this Policy Directive and any local bullying complaint resolution processes
- Act immediately to eliminate inappropriate behaviour that might constitute bullying
- Ensure complaints are managed fairly, confidentially and in a timely manner
- Ensure action and recommendations arising from cases of bullying are implemented in a timely manner
- Ensure all actions taken to manage a bullying complaint are appropriately documented

### ***Support Person***

- Provide support to but not advocate or make representations on behalf of the worker

### ***Anti-Bullying Management Advisors***

- Provide information and coaching to managers on effective bullying complaints management

### ***Anti-Bullying Advice Line***

- A culturally sensitive service that provides independent advice to workers on processes for managing bullying complaints

### ***Workers***

- Recognise their individual role in developing and maintaining harmonious workplace relations and promoting a positive and cooperative workplace culture

- Take responsibility for their own actions in the workplace and, where the actions of others are disagreeable to them, attempt to settle matters directly with the other person(s) where appropriate in a respectful and collaborative manner that reflects the CORE values
- Raise matters of concern at an early stage and actively participate in the bullying complaint management process
- Provide managers with specific information regarding perceived bullying and be prepared to have their complaint made known to the person they are making the complaint about, to allow for fair management of the complaint
- Maintain confidentiality and not discuss or release information relating to a bullying complaint to any third party who has no legitimate involvement in the process
- Ensure that any allegations relating to bullying are made honestly and not vexatiously, maliciously or to impede legitimate managerial action
- Engage with complaint management procedures in a timely and cooperative manner

## BREACHES OF THIS POLICY

Any worker found to breach this policy by engaging in bullying will be managed in accordance with NSW Health policy for managing misconduct and in line with the principles and processes outlined in this policy.

## REVISION HISTORY

Version	Approved by	Amendment notes
May 2018 (PD2018_016)	Deputy Secretary, People, Culture and Governance	Replaces PD2011_018 Reviewed to reflect current Work Health & Safety legislation and Public Service Commission <i>Positive and Productive Workplaces Guidelines</i> and to bring into line with <i>Prevention and Management of Unacceptable Workplace Behaviours in NSW Health – JMO Module PD2016_044</i> .
March 2011 (PD2011_018)	Deputy-Director-General Health System Support	Replaces GL2007_011 Reviewed to ensure relevant recommendations arising from the Special Commission of Inquiry (SCOI) were reflected in NSW Health policy.
June 2007 (GL2007_011)	Director-General	<i>Bullying – Prevention and Management of Workplace Bullying Guidelines for NSW Health</i> provided information on how to prevent workplace bullying and how to manage and resolve workplace bullying complaints

## ATTACHMENTS

1. Prevention and Management of Workplace Bullying in NSW Health: Procedures

**Prevention and Management of Workplace Bullying in  
NSW Health**



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**Issue date:** May 2018

PD2018\_016

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## 1 BACKGROUND

### 1.1 Purpose and scope of the policy

The policy and procedures set out the principles and processes guiding the prevention, identification and eradication of unacceptable workplace behaviours (bullying, harassment, sexual harassment, discrimination) in all NSW Health workplaces, including outside of work hours / locations where there is a connection to the workplace.

The purpose of the policy is to:

- Define unacceptable workplace behaviours, including bullying, harassment, sexual harassment and discrimination
- Provide information for workers around their rights, obligations and available options for raising concerns about unacceptable workplace behaviour
- Provide guidelines for the effective and timely management of complaints that instils confidence in the complaint management process and supports workers in coming forward to report unacceptable workplace behaviour
- Assist NSW Health agencies to fulfil their obligation to eliminate or minimise the risk of unacceptable workplace behaviours and manage complaints relating to such behaviours.

This policy is supported by a number of Appendices that are listed in Section 6. 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

**Bullying:** 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 and can involve a range of behaviours over time.

*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 (a single incident will generally not meet the threshold for bullying but should be addressed to prevent escalation or repetition)
2. It is unwelcome and unsolicited
3. A reasonable person would consider the behaviour to be offensive, intimidating, humiliating or threatening.

**Discrimination:** 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 others in the workplace on the grounds of their:

- Race (including colour, descent, nationality, ethnic origin, or ethno-religious background)
- Religion
- Gender (including transgender, pregnancy or potential pregnancy, breastfeeding)
- Sexual orientation
- 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. For example, it could be indirect sex discrimination to have a policy that managers must work full-time, as this might disadvantage women because they are more likely to work part-time due to family responsibilities.

Discrimination can be a single act. It does not need to be repeated or continuous to constitute discrimination.

**Employer:** The Secretary, NSW Health exercising employer functions on behalf of the Government of New South Wales.

**Harassment:** 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, marital status, carer responsibilities, pregnancy, breastfeeding 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.

All forms of harassment are unlawful.

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

Sexual harassment: Unwelcome conduct of a sexual nature by which a reasonable person would be offended, humiliated or intimidated. Sexual harassment is unlawful and can be reported to NSW Police.

Sexual harassment includes behaviours such as:

- Unwelcome sexual advances
- Requests for sexual favours
- Leering or sexual comments about a person's body
- Sending obscene communications or displaying sexually suggestive materials, (including using electronic devices to send inappropriate messages or images)
- Sexually explicit jokes
- Intrusive questions or suggestive remarks about a person's sexual or private life
- Unwelcome touching
- Stalking
- Sexual assault (including unwelcome touching of genitals or breasts).

Sexual harassment can be a single act. It does not need to be repeated or continuous to constitute sexual harassment.

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

Worker: All persons employed in any capacity in the NSW Health Service, all persons engaged by public health organisations such as visiting practitioners, and any person working in any capacity in NSW Health including volunteers, contractors and students including:

- Employees
- Contractors, including Visiting Practitioners
- Sub-contractors and employees of sub-contractors
- Employees of a labour hire company, e.g. agency staff
- Volunteers
- Apprentices or trainees
- Students on clinical, work experience or other placements.

### **1.3 Advice about workplace bullying**

Specific advice about bullying is available from the following sources:

*Anti-Bullying Advice Unit / Line (ABAL)*

This unit is based within HealthShare and provides a culturally sensitive, confidential telephone advice service for staff. ABAL can be contacted via telephone 1300 416 088. ABAL can also be accessed via the intranet or [www.abal.health.nsw.gov.au](http://www.abal.health.nsw.gov.au).

ABAL provides confidential advice for callers on processes, but not on the substance of complaints. ABAL does not manage complaints, as this is the responsibility of the relevant manager. ABAL will, however help to facilitate links for callers back to their own organisation for local resolution.

#### *Anti-Bullying Management Advisors*

These frontline advisors provide advice and / or coaching to managers to allow them to manage bullying issues effectively at the time they occur. They also deliver education / training programs to build the capacity of managers to develop harmonious and cooperative workplaces and deal with bullying complaints. Bullying Management Advisors do not become involved in the investigation or management of individual complaints.

#### *Anti-Bullying Contact Officers*

Some agencies across NSW Health have also established Anti-Bullying Contact Officers. This nominated staff member is available to provide independent advice and information on the procedure for making a bullying complaint. Anti-Bullying Contact Officers do not become involved in the investigation or management of individual complaints.

#### *Health and Safety Representatives (HSRs)*

Staff can raise concerns about bullying via their HSR to seek their representation, advice and assistance.

#### *Unions / Staff Associations / Professional bodies*

Staff who are members of a union, association or professional body may contact the relevant body for advice and support.

## **1.4 Related policies**

This policy supports the following NSW Health policies:

- *Prevention and Management of Unacceptable Workplace Behaviours in NSW Health – Junior Medical Officer Module* (PD2016\_044)
- *Work Health and Safety: Better Practice Procedures* (PD2013\_050)
- *Work Health and Safety Audits* (PD2016\_017)
- *Code of Conduct* (PD2015\_049)
- *Managing Misconduct* (PD2014\_042)
- *Resolving Workplace Grievances* (PD2016\_046)
- *Managing for Performance* (PD2016\_040)

See also:

- Premier's Memorandum M2007-02  
*M2007-02 Dignity and Respect: Policy and Guidelines on Preventing and Managing Workplace Bullying*

- Public Service Commission *Positive and Productive Workplaces Guideline*  
<http://www.psc.nsw.gov.au/Workplace-Culture---Diversity/Workplace-Culture/positive-and-productive-workplaces>
- Safe Work Australia *Guide for Preventing and Responding to Workplace Bullying*  
<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/827/Guide-preventing-responding-workplace-bullying.pdf>
- Anti-Bullying Advice Line (ABAL)  
[www.abal.health.nsw.gov.au](http://www.abal.health.nsw.gov.au)

## 2 INTRODUCTION

### 2.1 Rights and responsibilities

NSW Health is committed to:

- Creating a working environment that is free from unacceptable workplace behaviours and where workers are treated with dignity, courtesy and respect
- Implementing training and awareness-raising strategies to ensure that workers know their rights and responsibilities with respect to unacceptable workplace behaviours
- Identifying factors which may increase the risk of workplace bullying occurring and eliminating or minimising these factors as far as is reasonably practicable
- Providing effective complaint management based on the principle of procedural fairness
- Encouraging the reporting of behaviour that breaches the policy where one-to-one resolution processes are not appropriate or have not been successful
- Treating all complaints in a sensitive, confidential, procedurally correct and timely manner
- Taking action against anyone who victimises someone for making a complaint
- Promoting and enforcing appropriate standards of conduct at all times.

**The term 'bullying' is frequently employed in the policy for clarity and exposition, but the policy equally references / identifies harassment, sexual harassment and discrimination as examples of unacceptable workplace behaviour.**

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

**Appendix 2** details the recommended time frames for managing bullying complaints.

## 2.2 What is workplace bullying?

The definition of bullying is provided at Section 1.2.

Bullying 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 workers, 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(s). This may include managers and staff at any level being responsible for engaging in bullying behaviour or being the target of such behaviour. Managers and staff at any level can either be responsible for engaging in bullying behaviour or be the target of bullying.

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
- Aggressive or intimidating conduct
- Unjustified criticism or complaints
- Practical jokes or initiation practices involving abuse or humiliation
- 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?

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) and should be managed under NSW Health Policy Directive PD2016\_046 *Resolving Workplace Grievances*.

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

- Providing appropriate feedback on a staff member's performance (the fact that a staff member may find the feedback upsetting or unsettling does not of itself constitute bullying)
- Appropriate and reasonable actions taken to protect patient safety
- Managing performance issues
- Issuing reasonable directions about work allocation, performance and 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 and 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 Work Health Safety, injury management and workers compensation legislation and policies.

It is reasonable for managers and supervisors to allocate work and give feedback on a worker's performance. These actions are not workplace bullying if they are carried out in a lawful and reasonable way, taking the particular circumstances into account. A manager exercising their legitimate authority at work may result in some discomfort for a worker. The question of whether management action is reasonable is determined by considering the actual management action rather than a worker's perception of it, and where management action involves a departure from established policies or procedures, whether the departure was reasonable in the circumstances.

Examples of reasonable management action include:

- Setting realistic and achievable performance goals, standards and deadlines
- Fair and appropriate rostering and allocation of working hours
- Transferring a worker to another area or role for operational reasons
- Deciding not to select a worker for a promotion where a fair and transparent process is followed
- Informing a worker about unsatisfactory work performance in an honest, fair and constructive way
- Informing a worker about unreasonable behaviour in an objective and confidential way
- Implementing organisational changes or restructuring

- Taking disciplinary action, including suspension or terminating employment where appropriate or justified in the circumstances.

### 3 PREVENTION OF WORKPLACE BULLYING

#### 3.1 A risk management approach

This policy takes a risk management approach to the prevention of workplace bullying as required by Work Health and Safety (WHS) legislation.

NSW Health agencies must ensure, so far as is reasonably practicable, the health and safety of workers. NSW Health workers 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
- Comply with reasonable instruction and policy or procedure.

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

As with all foreseeable workplace risks, the potential for workplace bullying must be identified, assessed and eliminated or minimised as far as practicable. Appropriate risk controls must be put in place. Consultation with workers and their representatives must 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*).

#### 3.2 Identifying and assessing risk

Managers must consult with workers and their representatives to identify and assess the potential for bullying to create risk in the workplace.

Indicators to assess include, but are not limited to:

- staff turnover
- absenteeism
- exit survey information
- conflict between workers
- complaint data.

Factors contributing to risk include:

- leadership style and experience
- change management practices
- work systems

- workload
- staffing levels
- lack of clarity about the expectations of team and individual roles
- skills gaps
- workplace relationships
- work environment.

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 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 workers have an awareness of their workplace conduct requirements as outlined in the NSW Health *Code of Conduct* (PD2015\_049)
- Promote a positive workplace culture and safe working environment by modelling appropriate conduct and behaviour
- Ensure that information about what types of behaviours do, and do not, constitute workplace bullying is 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 *Resolving Workplace Grievances* (PD2016\_046) is communicated to all staff
- Encourage and support staff in the self-resolution of low-level conflict and workplace grievances by providing appropriate information and training where necessary, e.g. conflict resolution
- Provide a clear and simple process for reporting workplace bullying, noting that the current IIMS system does not support reporting of workplace bullying
- Ensure they are equipped to, and do, respond promptly and effectively to complaints related to workplace bullying
- Ensure induction programs include the organisation's commitment to zero tolerance of workplace bullying.

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

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### 3.4 Monitoring, reviewing and evaluating risk controls

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

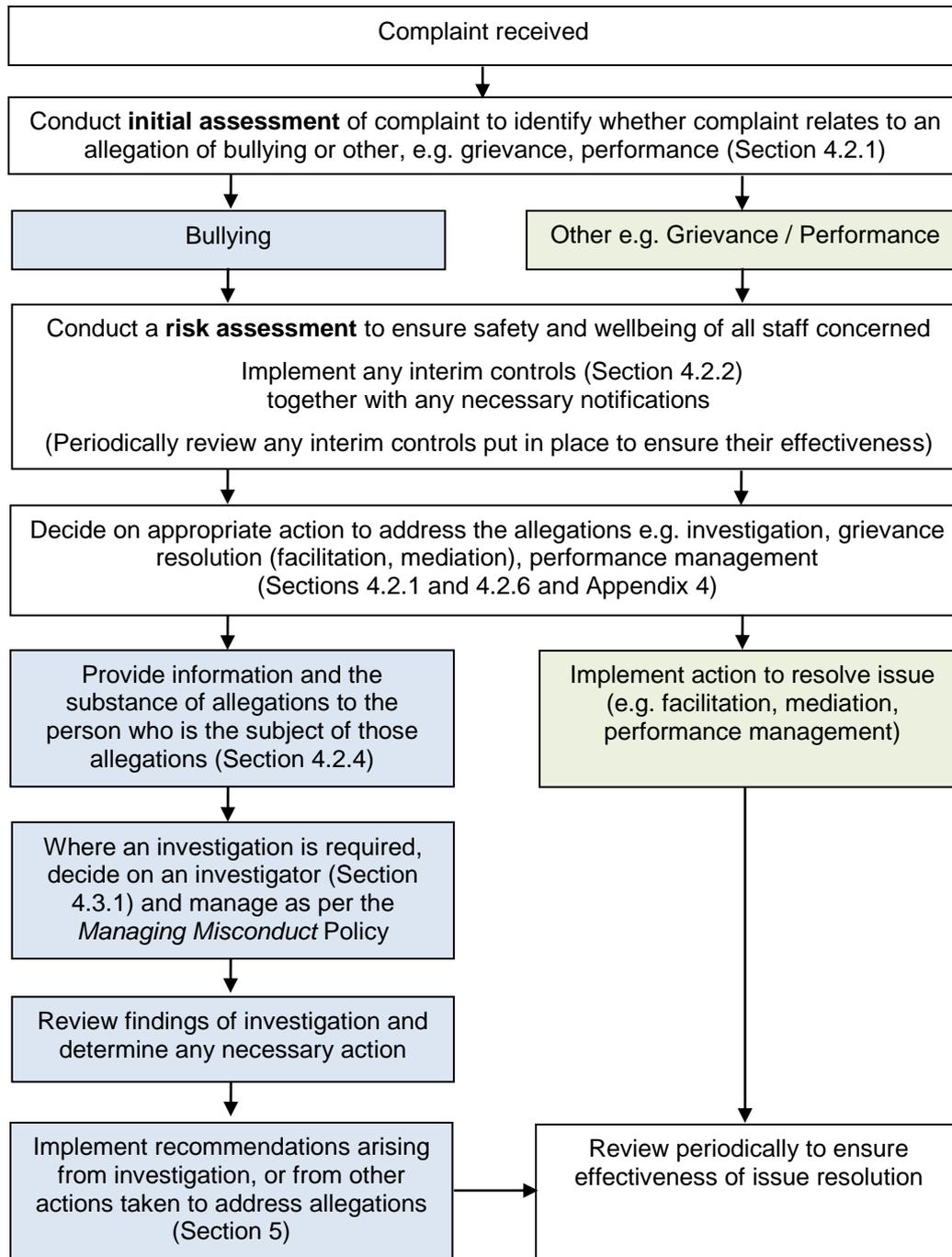
Agencies must audit bullying complaints and provide de-identified data to the NSW Ministry of Health on a quarterly basis (refer to **Appendix 3**).

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

## 4 MANAGING A BULLYING COMPLAINT

### 4.1 Process for managing a complaint

The flowchart is intended as a summary of the key stages. Additional 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 bullying complaint should only be provided on a ‘need to know’ basis (e.g. EAP, union / association representative, manager, investigator – to whom confidentiality also applies) and should not be provided to third parties with no legitimate involvement in the process.

Those involved in a 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. Inappropriate release of information relating to a complaint, or a person involved with a complaint, to any third party with no legitimate involvement in the process should be dealt with in accordance with NSW Health Policy Directive PD2014\_042 *Managing Misconduct*.

The person against whom a complaint is made needs to be provided with sufficient information to allow them to respond fully to the issues raised. As most bullying complaints usually involve a complaint by one person against another, the person against whom the complaint is made will generally need to know who their alleged conduct was directed to in order to adequately respond to the matters raised.

The situation may arise where a staff member makes a complaint of workplace bullying but wishes their identity to be kept anonymous or in particular not disclosed to the person against whom the complaint is made. Anonymity may prevent adequate investigation of a complaint, in addition to impeding a response to allegations. In most circumstances, complainants should be advised that effective action to deal with a complaint requires their identity to be made known (see Section 4.1.3 What if the worker requests no action be taken and 4.1.4 Anonymous complaints).

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

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

Information can be obtained from their manager, the Anti-Bullying Advice Line (ABAL) on 1300 416 088 or via the intranet, the Human Resources staff within their agency, an Anti-Bullying Contact Officer if available in their workplace, or their union. Further guidance material is available from SafeWork NSW and Safe Work Australia.

Complaints should usually be made to the relevant manager. Where the complaint is against the manager or where there may be a perceived conflict of interest, the complaint should be made to the next more senior manager. Where this is not feasible, the complaint should be referred to Human Resources for appropriate action.

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.

The worker must be offered EAP services and may seek advice and support from their union / association. Lifeline is also available to provide support and can be contacted on 13 11 14 or via <https://www.lifeline.org.au/>

#### **4.1.3 What if the worker requests that no action be taken?**

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

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

Where the worker still does not want to go ahead with the complaint, there may still be an obligation on the manager to take action, depending on the individual circumstances. For example, if the allegation meets the definition of bullying, if the worker appears 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 person receiving the complaint because of the nature of the allegation that is brought to their notice. The worker should be advised of these reporting obligations.

While any management response will need careful consideration in such circumstances, it may be possible to discuss potential organisational responses with the worker, in the context of the manager's responsibilities to ensure as far as practicable a safe and healthy workplace.

Appropriate organisational responses could include:

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

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.

#### **4.1.4 Anonymous complaints**

Anonymous complaints are not encouraged. However, where they are received they need to be assessed. 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 workers and encouraging them to come forward with any concerns or providing them with general information on how to make complaints. Where allegations can be independently verified, this should occur and appropriate action should be taken.

#### **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 citing bullying as the cause of injury, usually psychological injury. It needs to be recognised that the two issues are distinct and need to be managed separately.

The manager should follow the process in this policy to manage the bullying complaint. The Recovery at Work Coordinator can assist the manager in liaising with treatment providers such as the psychologist and / or nominated treating doctor to enable the worker to participate in the investigation of the complaint. This process, including any

investigation by the employer, should not be confused with any investigation by the insurer to determine liability or management of the worker's injury.

It is important that the manager and the Recovery at Work Coordinator work together to ensure the resolution of the worker's complaint and the management of the worker's injury.

## 4.2 Assessing a complaint

All complaints must be treated seriously and confidentially, and acted on promptly. Prompt action should reinforce the message that workplace bullying, harassment, sexual harassment and discrimination will not be tolerated and is consistent with the manager's duty of care under WHS legislation. Section 4.1 provides a flowchart 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. **Appendix 2** provides the recommended time frames for managing complaints. Refer to **Appendix 4** to help determine the most appropriate policy pathway for managing a complaint where it is determined that it does not relate to bullying.

The 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 from the complainant in order to:

- Assess the nature of the complaint (e.g. grievance, bullying, harassment, sexual harassment, discrimination, assault)
- 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.

**Appendix 4** provides guidance on assessing the nature of a complaint and determining the most appropriate policy pathway to manage the complaint.

*Example:* A complaint alleging bullying may actually relate to a work performance issue and may need to be managed in line with NSW Health Policy Directive PD2016\_040 *Managing for Performance*.

*Example:* If the matter appears relatively minor (e.g. low-level interpersonal conflict), it may be more appropriate to manage the complaint in line with NSW Health Policy Directive PD2016\_046 *Resolving Workplace Grievances*.

Where the initial assessment suggests that the alleged behaviour meets the definition of bullying as set out in Sections 1.2 and 2.2, the complaint should be managed in line with NSW Health Policy Directive PD2014\_042 *Managing Misconduct*.

Example: Where the behaviour described appears to be serious, or there is a perceived risk to staff, patients, or others in the workplace, even a single incident should be managed as misconduct.

Additional circumstances to take into consideration include:

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

Where it appears to the recipient of the complaint that some immediate response is necessary (e.g. the complainant seems deeply distressed), a risk assessment should be undertaken immediately. Options should be considered having regard to the views of the complainant (e.g. short term leave or temporary transfer of either party to a different work area depending on specific circumstances). Any action taken in these circumstances must be determined in the context of managing the immediate safety and welfare of the individual, other workers and patients and should not be based on the validity or otherwise of the complaint. Any action implemented should be reviewed at appropriate intervals.

#### 4.2.2 Risk assessment of a complaint

After any immediate issues are addressed by way of interim arrangements, more comprehensive assessment of potential ongoing risks to all parties involved with the complaint in respect of current work arrangements should be conducted in consultation with potentially affected workers. This will determine whether any further action needs to be taken to ensure as far as practical the wellbeing of those involved until any action to address the complaint is finalised. NSW Health Policy Directive PD2014\_042 *Managing Misconduct* provides information sheets for conducting a risk assessment and a risk assessment template.

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

- Relevant information from the initial assessment
- 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
- Any 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.

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 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.

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 and be for a defined time frame with an identified date for review. 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.

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

- Increased supervision
- Making appropriate arrangements to manage any necessary work interactions between the parties
- Alternative working arrangements (work location, reporting line, shift arrangements) in line with delegation to approve
- Suspension from duty of an employee consistent with NSW Health Policy Directive *Managing Misconduct* PD2014\_042.

The risk assessment may 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 5.1.2 for recommended management.

**If the alleged behaviour involves violence, for example actual or threatened physical or sexual assault, it must be reported to the police consistent with NSW Health Policy Directive *Managing Misconduct* (PD2014\_042). The worker 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.**

#### 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 NSW Health Policy Directive PD2014\_042 *Managing Misconduct*.

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

The person against whom a complaint is made should be provided with the substance of the complaint as soon as it is safe and appropriate to do so (for e.g. notifying the person against whom a sexual harassment / assault complaint is made may jeopardise a NSW Police investigation). They must be given reasonable opportunity to respond to the allegations.

Consideration should be given to the most appropriate way of advising a worker that a complaint has been made against them. A face-to-face meeting with an appropriate manager 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. Any such face-to-face meetings should be held in a private setting that minimises the risk of breaching confidentiality.

The initial meeting should be separate from and undertaken prior to, any further action to resolve the complaint. It 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 who is the subject of the complaint should 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 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 (**Appendix 1** describes the role of a support person).

#### 4.2.5 Documenting the assessments

Appropriate documentation of all assessments 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.

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 exists to assist parties to resolve complaints promptly and effectively. 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 employ, 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 uncertainty about the relevant facts, 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(s) 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. Usually the manager who receives the complaint is the most appropriate person to investigate.

In some circumstances, the agency may consider it necessary for someone else in the organisation to undertake the investigation. These circumstances may include where:

- There is a significant number of complainants
- Information suggests the episodes of bullying have been frequent and / or severe
- There appears to be a history of complaints against the same person, or some history to the current complaint
- There are complicating gender, ethnic, cultural or age issues
- There are complicating local workplace issues, e.g. culture / history of bullying
- Efforts in the past to resolve the matters have failed
- The wellbeing of the complainant and / or the person against whom the complaints are made appears to be at significant risk

- There is a history of complaints by the complainant.

In certain circumstances, consideration should be given to using an external investigator. These circumstances include where:

- It is difficult to identify an internal person who is able to be impartial, e.g. in a small facility
- Where very senior staff are involved
- Where there is no one available internally with the appropriate skills.

A 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, a scope of services to be provided needs to be developed, clearly identifying what is to be done, the 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 must be followed.

For Ministry of Health staff only, there must be compliance with the relevant provisions of the Employment Portal of the Public Service Commission.

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

The complaint should be actioned, regardless of whether or not the complainant or respondent are still employed in the facility.

Any report arising from the investigation of a complaint is to be provided to the decision-maker of the facility where the conduct is alleged to have taken place. Identifying the appropriate decision-maker is dependent on the action proposed (e.g. mediation, warning, termination) in accordance with the organisation's Delegations Manual.

The outcome of the investigation should be communicated to the complainant and respondent regardless of whether or not they are still employed in the facility.

## **5 RESPONDING TO OUTCOMES OF A COMPLAINT**

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

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

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, i.e. 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 bullying 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 workplace bullying 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 the complaint is made to a different role / location
- Reinforcing the requirement for all staff to refrain from conduct that constitutes bullying
- Providing training in what constitutes as workplace bullying, appropriate communications skills, managing workplace relationships, giving feedback etc.
- Disciplinary action if warranted.

### 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 remedy. 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 NSW Health Policy Directive PD2014\_042 *Managing Misconduct*.

### 5.1.3 Organisational responses to workplace bullying

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

- Addressing any identified workplace culture issues, work practices and / or supervisory arrangements that may contribute to bullying

- Ensuring that all staff understand what constitutes bullying 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 NSW Health's CORE values and *Code of Conduct*.

#### 5.1.4 Disciplinary action

Substantiated allegations of bullying constitute misconduct and should be dealt with in accordance with NSW Health policy for Managing Misconduct.

#### 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.

#### 5.1.6 Notifications

Any required internal or external notifications concerning potential or substantiated misconduct (such as to registration authorities) must be made without delay in accordance with relevant statutory and / or policy provisions.

### 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 workplace bullying 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 an employee 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 staff, see the 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 bullying complaints are effective and timely.

A summary sheet for each formal complaint should be maintained (refer to **Appendix 3** 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 bullying 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 system 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 LIST OF APPENDICES**

<b>Number</b>	<b>Title</b>
Appendix 1	Rights and Responsibilities in Management of Bullying Complaints
Appendix 2	Recommended time frames for managing a complaint
Appendix 3	Bullying Complaint Case Management Form
Appendix 4	NSW Health Complaints / Issues Management Policies and Guidelines

## APPENDIX 1

### Rights and Responsibilities in Management of Complaints

#### Those making complaints (the complainant)

Key rights include:

- To be provided with information regarding their rights and responsibilities
- To raise issues of concern with management
- To withdraw from a complaint at any stage, although the complainant may be advised that management will continue to pursue the complaint if the matter is considered serious or impacts on the organisation's duty of care
- To identify desired outcomes
- To have the issues raised treated in a fair, and appropriately confidential manner
- To be kept informed of progress – and any delays – in the management of the complaint
- To be informed of decisions made which may affect them, with consideration given to the privacy of other parties
- To be given protection against any victimisation or harassment because they have raised a complaint
- To have the opportunity to have a support person present at any meetings they attend relating to the complaint
- To have access to a record of interviews they attend to enable them to confirm that they are an accurate and true record
- To seek advice from management and professional and confidential support offered through the Employee Assistance Program (EAP) or other support services including union / association support, ABAL.

Key responsibilities include:

- To recognise their individual role in developing harmonious workplace relations and promoting a safe and cooperative workplace culture that reflects NSW Health CORE values
- To take responsibility for their own actions in the workplace and, where the actions of others are disagreeable to them, attempt to settle matters with the other person(s) where appropriate
- To raise matters of concern at an early stage and participate fully in the complaint resolution process
- To provide management with specific information regarding the alleged workplace bullying and be prepared to have their complaint made known to the person they are making the complaint about to allow for definitive assessment of the complaint
- To maintain confidentiality and not release information relating to a complaint to any third party who has no legitimate involvement in the process
- To ensure that any allegations relating to workplace bullying are made honestly, and not vexatiously or maliciously
- To cooperate with any complaint procedure in a timely manner
- Consider options to assist with their own health and safety in the workplace
- To recognise management's legitimate role in issuing reasonable directions about work allocation and performance, and about attendance at the workplace.

#### Those who are the subject of allegations of workplace bullying

Key rights include:

- To be provided with information regarding their rights and responsibilities
- To be provided with protection against any vexatious or malicious complaints
- To be informed promptly of the substance of the complaint
- To be provided with sufficiently detailed information to allow them to respond to the complaint, including where necessary the identity of the complainant
- To have an opportunity and sufficient time to respond to the complaint
- To seek advice from management and professional and confidential support offered through the Employee Assistance Program (EAP) or other support services including union / association support, ABAL
- To have the issues raised treated in a fair and appropriately confidential manner
- To be kept informed of progress – and any delays – in the management of the complaint

- To be informed of decisions made which may affect them, with consideration given to the privacy of other parties
- To have the opportunity to have a support person present at any meetings they attend relating to the complaint
- To have access to a record of investigation interviews which they attend to enable them to confirm that they are an accurate and true record.

*Key responsibilities include:*

- To participate fully in the complaint resolution process
- To provide as much information as possible to assist in the effective resolution of the complaint
- To maintain confidentiality
- To be ready to recognise and apologise for inappropriate behaviour where a complaint is substantiated.

### Supervisor/Manager

*Key rights include:*

- To have access to information and coaching on managing complaints
- To issue reasonable directions about work allocation and performance, and about attendance at the workplace
- To refer any complaint of workplace bullying to the next line manager or another appropriate officer if appropriate.

*Key responsibilities include:*

- To take a pro-active approach to prevention of workplace bullying by modelling and promoting the CORE values
- To ensure all staff are aware of their rights and responsibilities in respect of workplace bullying and know how to access the complaint resolution process
- To treat all complaints fairly, confidentially and in a timely manner
- Where they are – or could reasonably be perceived to be – unable to be impartial, to refer a complaint to the next manager in line or another appropriate person
- To document the process undertaken to resolve a complaint and retain the records
- To ensure that all documentation in their possession remains appropriately confidential
- To ensure that each stage of the complaint is handled as expeditiously as possible
- To ensure that while the complaint procedures are being followed, there should be as little disruption to work as possible
- To protect workers from victimisation or reprisals for raising complaints
- To take action following the complaint management process, to rebuild the team and restore positive working relationships.

### Support Person

*Key rights include*

- To be provided with a copy of, or link to, NSW Health Policy Directives *Prevention and Management of Bullying in NSW Health* and the NSW Health *Code of Conduct*.

*Key responsibilities include:*

- To attend meetings related to the complaint with the person they are supporting
- To provide support to the employee during the meetings, but not to advocate on behalf of the employee being interviewed
- To maintain appropriate confidentiality.

## APPENDIX 2

<i>Recommended time frame for managing complaints</i>		
<b>*** Process must commence immediately on receipt of complaint ***</b>		
<b>Week</b>	<b>Process step</b>	<b>Actions</b>
Immediately	<p><b>Risk Assessment</b></p> <p>Assess potential ongoing risks to the safety and welfare of the parties to the complaint (including in regard to current work arrangements), patients, and others.</p> <p>Implement required actions.</p>	<p>Some issues to be considered:</p> <ul style="list-style-type: none"> <li>• Relevant information from initial assessment of the complaint</li> <li>• Psychological state of complainant and person against whom the complaint is made</li> <li>• Is the complainant a JMO? (see PD2016_044 <i>JMO Module</i>)</li> <li>• How long the alleged bullying has been going on and impact to date</li> <li>• Seriousness of allegations</li> <li>• Degree of disruption to work environment</li> <li>• Any complicating factors, e.g. previous history of conflict between parties</li> <li>• Any previous history of bullying allegations involving either of the same parties, and the outcome</li> <li>• Potential need to protect complainant from reprisals.</li> </ul> <p>Actions:</p> <ul style="list-style-type: none"> <li>• Action resulting from the risk assessment (including any interim work arrangements) should not be based on any presumption that the alleged behaviour has occurred, but to ensure the wellbeing of all parties involved. It should be specific to individual circumstances, be practical and be for a defined time frame with a review date set.</li> <li>• Identify appropriate risk management strategies, e.g. alternative interim work arrangements / location / reporting lines / shift arrangements / increased supervision.</li> <li>• Advise affected staff of any interim risk management arrangements. Advise staff that these arrangements do not presume blame but are implemented to ensure the wellbeing of all parties while the complaint is managed.</li> <li>• Any risk control measures must be reviewed at a minimum every 30 days, or each time new relevant information comes to light.</li> </ul>

<p>1 (within 3 days)</p>	<p><b>Complaint Assessment</b> Assess the nature and seriousness of the complaint <i>within 3 days</i>.</p>	<ul style="list-style-type: none"> <li>• If any delays occur in conducting the initial assessment or management of the complaint, the complainant must be advised immediately and kept informed of progress.</li> <li>• Determine the appropriate process for managing the complaint: <ul style="list-style-type: none"> <li>- Assess the <b>nature of the complaint</b>, i.e. whether the behaviour described in the complaint meets the definition of bullying, or is a grievance or performance issue.</li> <li>- Assess the <b>seriousness of the matter</b> and whether it needs to be managed as misconduct or can be managed less formally by the line manager in the first instance.</li> </ul> </li> <li>• Determine whether an investigation is required.</li> <li>• Identify any internal or external reporting / notification requirements.</li> <li>• Determine when and what communication should take place with the staff member who is the subject of the allegations.</li> </ul>
<p>1</p>	<p><b>Advise of Complaint</b> Notify the person who is the subject of the complaint.</p>	<ul style="list-style-type: none"> <li>• In the first instance, the person who is the subject of the complaint should be: <ul style="list-style-type: none"> <li>- provided with the substance of the allegation(s), usually face-to-face in a private setting</li> <li>- advised that they will be given reasonable opportunity to respond</li> <li>- advised of the process that will be undertaken.</li> </ul> </li> <li>• Provide support to the parties involved.</li> </ul>
<p>1-2</p>	<p><b>Where there is to be no investigation</b></p>	<ul style="list-style-type: none"> <li>• Inform parties of the outcome of the matter.</li> <li>• Implement action as appropriate to resolve the complaint, e.g. facilitation, mediation.</li> </ul>
<p>1-2</p>	<p><b>Plan Investigation</b> (if required)</p>	<ul style="list-style-type: none"> <li>• Develop terms of reference.</li> <li>• Decide on an appropriate investigator. Usually the manager who receives the complaint will be the appropriate person to conduct the investigation. Depending on the knowledge, skills and experience of the manager, liaison with local Workforce Services may be required.</li> <li>• If an external investigator is engaged, develop a contract and obtain the required authorisation.</li> </ul>

2-8	<b>Conduct Investigation</b> (if required)	<ul style="list-style-type: none"> <li>• The processes outlined in the NSW Health policy for <i>Managing Misconduct</i> must be followed.</li> <li>• For Ministry of Health staff only, compliance with the relevant provisions of the Employment Portal of the Public Service Commission is required.</li> <li>• The person who is the subject of the complaint must be given sufficient information to enable them to understand and respond fully to the allegations.</li> <li>• Provide reasonable notice of interviews (usually 48 hours).</li> <li>• From analysis of relevant information obtained, make findings:             <ul style="list-style-type: none"> <li>- substantiated / unsubstantiated / partially substantiated (e.g. part of an allegation is substantiated) or not substantiated due to insufficient or inconclusive information (i.e. not able to make a finding)</li> </ul> </li> <li>• Submit investigation report to decision-maker.</li> <li>• Advise parties of any delays in conducting the investigation.</li> </ul>
9-10	<b>Findings</b>	<ul style="list-style-type: none"> <li>• Provide an opportunity for the staff member to respond to findings:             <ul style="list-style-type: none"> <li>- The staff member must be given two calendar weeks to respond.</li> <li>- A response to both adverse findings and proposed disciplinary action may be sought at the same time.</li> <li>- Consider any response and accept / reject findings.</li> </ul> </li> </ul>
10-11	<b>Proposed actions</b>	<ul style="list-style-type: none"> <li>• Decision-maker to determine appropriate action to finalise complaint.</li> <li>• Provide an opportunity for the staff member against whom the action is proposed to respond.             <ul style="list-style-type: none"> <li>- The staff member must be given two calendar weeks to respond.</li> <li>- A response to both adverse findings and proposed disciplinary action may be sought at the same time.</li> <li>- Consider any response and make a final decision about further action.</li> </ul> </li> </ul>
12	<b>Finalise Investigation</b>	<ul style="list-style-type: none"> <li>• Advise all relevant parties as appropriate.             <ul style="list-style-type: none"> <li>- Each party should only be advised of outcomes that pertain to them.</li> <li>- Witnesses interviewed should only be advised that the matter has been finalised and thanking them for their participation.</li> </ul> </li> <li>• Implement actions resulting from the investigation.</li> <li>• Review risk management strategies and advise all parties accordingly.</li> </ul>

## APPENDIX 3

### BULLYING COMPLAINT CASE MANAGEMENT FORM

		Reference Number: (eg NCAHS01)	<input type="text"/>
		Status of complaint	<input type="text"/>
<b>1. Complainant Details</b>			
Employment Group (Complainant):	<input type="text"/>	Health Service:	<input type="text"/>
Award Classification:	<input type="text"/>	Site (Optional):	<input type="text"/>
Grade / Level (If known):	<input type="text"/>		

<b>2. Respondent Details</b>			
Employment Group (Respondent):	<input type="text"/>	Health Service:	<input type="text"/>
Award Classification :	<input type="text"/>	Site (Optional):	<input type="text"/>
Grade / Level (If known):	<input type="text"/>		
Relationship to complainant	<input type="text"/>		

<b>3. Notification and Assessment Details</b>		Health Service file number (optional)	<input type="text"/>
3.1 Date AHS HR received notification of complaint:			<input type="text"/>
3.2 Date complaint assessed by AHS HR:			<input type="text"/>
3.3 Number of days between date complaint notified (3.1) and date complaint assessed (3.2):			<input type="text"/>
3.4 If over 3 days, reason for delay between notification and assessment:			<input type="text"/>

<b>3.5. Nature of alleged Bullying (may be multiple responses)</b>			
Verbal abuse	<input type="text"/>	Damage to property	<input type="text"/>
Sarcasm	<input type="text"/>	unwanted sexual advances	<input type="text"/>
Standing over	<input type="text"/>	Undermining / Belittling	<input type="text"/>
Watching & following	<input type="text"/>	Touching	<input type="text"/>
Persistent teasing	<input type="text"/>	Pushing	<input type="text"/>
	<input type="text"/>	Threats of inappropriate dismissal/use of organisational processes	<input type="text"/>
Exclusion	<input type="text"/>	Humiliation	<input type="text"/>
Threat to personal safety	<input type="text"/>		
Intimidation	<input type="text"/>		
Other or further detail if needed:	<input type="text"/>		



## APPENDIX 4

### NSW Health Complaint / Issue Management Policies and Guidelines

When conducting an initial assessment of a complaint, it is important to ensure that the appropriate policy pathway(s) are identified in order to manage the issue. Depending on the nature and complexity of the matters raised, more than one policy may be relevant, and different pathways may be followed for different aspects of the matters raised.

<b>Nature of Issue / Complaint</b>	<b>NSW Health Policy Directives or Guidelines</b>
<i>Does the complaint primarily consist of a workplace matter eg interpersonal conflict, the way work is allocated or managed, a perceived unfairness in the workplace?</i>	<i>PD2016_046 Resolving Workplace Grievances</i>
<i>Does the complaint primarily relate to a worker's performance issue or unsatisfactory performance?</i>	<i>PD2016_040 Managing for Performance</i>
<i>Does the complaint primarily relate to bullying, harassment, sexual harassment or discriminatory behaviour?</i>	<i>Prevention and Management of Workplace Bullying in NSW Health</i>
<i>Does the complaint primarily relate to alleged behaviour or activity that, if substantiated, is likely to result in disciplinary procedures?</i>	<i>PD2014_042 Managing Misconduct</i>
<i>Does the complaint primarily relate to the clinical behaviour or performance of a clinician or public health organisation?</i>	<i>PD2006_007 Complaint or Concern about a Clinician – Principles for Action</i> <i>GL2006_002 Complaint or Concern about a Clinician - Management Guidelines</i>
<i>Does the complaint primarily relate to matters that may be criminal, or may constitute corrupt conduct, maladministration or substantial waste?</i>	<i>PD2016_029 Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption</i> <i>PD2013_028 Employment Checks – Criminal Record Checks and Working with Children Checks</i> <i>PD2015_001 Preventing and Managing Violence in the NSW Health Workplace – A Zero Tolerance Approach</i> <i>PD2016_027 Public Interest Disclosures</i>
<i>Has the complaint been lodged as a protected disclosure, as defined in the Protected Disclosures Act 1994?</i>	<i>PD2016_027 Public Interest Disclosures</i>
<i>Does the complaint primarily relate to allegations of sexual, physical or emotional abuse of a patient or client by a worker?</i>	<i>PD2013_028 Employment Checks – Criminal Record Checks and Working with Children Checks</i> <i>PD2013_007 Child Wellbeing and Child Protection Policies and Procedures for NSW Health</i>

<i>Does the complaint primarily relate to allegations of sexual, physical or emotional abuse of a child by an employee, or others?</i>	<i>PD2013_028 Employment Checks – Criminal Record Checks and Working with Children Checks</i> <i>PD2013_007 Child Wellbeing and Child Protection Policies and Procedures for NSW Health</i> <i>PD2016_025 Child Related Allegations, Charges and Convictions against NSW Health Staff</i>
<i>Does the complaint primarily relate to a serious breach of the Code of Conduct?</i>	<i>PD2015_049 NSW Health Code of Conduct</i> <i>PD2014_042 Managing Misconduct</i>