

Bullying - Prevention and Management of Workplace Bullying: Guidelines for NSW Health

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Summary The Guidelines support NSW Health policy directives PD2005_223 and PD2005_250, which direct that workplace bullying will not be tolerated in NSW Health. The Guidelines provide detailed information on how to prevent workplace bullying using a risk management approach, and how to effectively manage and resolve workplace bullying complaints.

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**PREVENTION AND MANAGEMENT
OF
WORKPLACE BULLYING**

**GUIDELINES
FOR NSW HEALTH**

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1. About this document

- 1.1 Prevention and Management of Workplace Bullying** Copies may be obtained at <http://www.health.nsw.gov.au/policies/index.html>
- 1.2 Responsibility** HR Policy
- 1.3 Version** June 2007
- 1.4 Updates and feedback** Feedback is welcome, and should be addressed to the Manager, HR Policy, NSW Department of Health.
- 1.5 Related policies** References to relevant NSW Health policies are listed in the left hand column throughout the document. Policy directives are available at <http://www.health.nsw.gov.au/policies/index.html>
- 1.6 Related legislation** Reference to related legislation is contained within the body of the guidelines, or is listed in the left hand column of the document. All current legislation is available at <http://www.legislation.nsw.gov.au/>
- 1.7 Additional resources** Where relevant, subject specific resources have been included in the left hand column of the document.

Additional references and resources include:

- *Bullies Not Wanted*, Office of the Employee Ombudsman, SA http://www.oeo.sa.gov.au/info/BULLIES_NOT_WANTED.doc
- *Dignity and Respect in the Workplace Charter*, Unions NSW, 2005
- *Prevention of Bullying and Violence at Work*, WorkSafe Victoria, 2003. <http://www.workcover.vic.gov.au/vwa/publica.nsf/docsbyunid/625a31551654a53aca256fd30008932c>
- *Prevention of Workplace Harassment Advisory Standard*, Queensland Department of Industrial Relations, 2004. <http://www.dir.qld.gov.au/workplace/law/codes/harassment/index.htm>
- Premier's Memorandum 2007-02 *Dignity and Respect: Policy and Guidelines on Preventing and Managing Workplace Bullying*. <http://www.premiers.nsw.gov.au/TrainingAndResources/Publications/MemosAndCirculars/Memos/2007/M2007-02.htm>
- Mayhew C and Chappel D. *The Occupational Violence Experience of 400 Australian Health Workers: An Exploratory Study*. Journal of Occupational Health and Safety 19(6) pp 3-43
- *Internal Violence (or Bullying) and the Health Workforce*. Discussion Paper 3 University of NSW 2001. NSW Health Taskforce on the Prevention and Management of Violence in the Health Workplace.
- *Incidence of Workplace Bullying in Victoria: Summary of Findings*. Victorian WorkCover Authority.
- *Prevention of Workplace Bullying: a tool for change* (CD ROM) The Law Society of NSW
- *Bullying and Harassment at Work: a good practice guide for RCN negotiators and health care practitioners* <http://www.rcn.org.uk/publications/pdf/bullying-managers-guide.pdf>

2. Introduction

2.1 Purpose and scope of this document

The purpose of these Guidelines is to assist in ensuring that all workplaces within NSW Health have systems in place to prevent, as far as practicable, and effectively manage, workplace bullying issues, risks and complaints.

The Guidelines support NSW Health policies [PD2005 223](#) *Bullying, Harassment and Discrimination - Joint Management / Employee Association Policy Statement*, [PD2005 250](#) *Bullying, Harassment and Discrimination – Joint Management, PSA and Nursing Association Statement*, [PD2005 409](#) *Workplace Health and Safety: Policy and Better Practice Guide* and [PD2005 626](#) the *NSW Health Code of Conduct*, as amended from time to time, and should be read in conjunction with these documents.

For copies of the Premier's Memorandum see <http://www.premiers.nsw.gov.au/>.

Copies of the Dignity and Respect Charter can be obtained from Unions NSW

The Guidelines also support and reflect Premier's Memorandum 2007-02 *Dignity and Respect: Policy and Guidelines on Preventing and Managing Workplace Bullying*. The Director-General has endorsed the Unions NSW *Dignity and Respect Workplace Charter*, which reflects key principles from the Premier's Memorandum, and it is recommended that the Charter also be endorsed by each Division's Joint Consultative Committee.

The Guidelines apply to all workplaces in the NSW public health system and the Department of Health, including non-declared affiliated health organisations.

The processes in the Guidelines should also be applied when responding to allegations of bullying made against members of the Health Executive Service (HES), or against Visiting Medical Officers (VMOs).

This document also complements the NSW Health [grievance resolution policy and guidelines](#).

The document consists of two parts. The first part provides advice to employers and managers on how to prevent workplace bullying using a risk management approach. The second part provides advice to managers and staff on raising and responding to bullying complaints.

In this document the term

- **must** – indicates a mandatory action required by law, industrial instrument, or existing Departmental policy directive
- **should** – indicates a recommended action that should be followed unless there are sound reasons for taking a different course of action.

2.2 What is workplace bullying?

The literature cites a range of definitions for bullying. Following a review of this information, and stakeholder consultation, a working definition has been drafted for the purposes of these Guidelines. The definition is not meant to be applied rigidly, or take the place of common sense in considering a complaint. However, it will help with the initial assessment of the complaint, and to determine whether these Guidelines are the most appropriate framework to manage the complaint.

For the purposes of this document, workplace bullying means unreasonable, undesirable behaviour at the workplace, or in the course of or related to employment that will generally meet all the following criteria:

1. It is repeated
2. It is unwelcome and unsolicited
3. The recipient/s consider/s the behaviour to be offensive, intimidating, humiliating or threatening
4. A reasonable person would consider the behaviour to be offensive, intimidating, humiliating or threatening.

2.3 What is bullying behaviour?

In the context of the above definition, bullying behaviour can take many different forms. It can range from aggressive behaviour such as shouting and physical confrontations to more subtle behaviours, including passive bullying, such as not initiating the bullying, but participating once it has started, or tacitly supporting bullying by allowing it to continue.

Examples of bullying behaviour can include verbal abuse; watching and following; exclusion from receiving information or workplace social interactions; belittling or undermining, sarcasm; touching, pushing, standing over; damage to personal property; persistent teasing; threats of dismissal or use of organisational processes to offend, intimidate, humiliate or threaten. Such processes could include regularly allocating the heaviest workload to a particular staff member, blocking reasonable access to professional development or leave entitlements, or subjecting the work of a particular staff member to unwarranted excessive scrutiny.

Bullying behaviour may also include the actions of more than one staff member, often referred to as mobbing. Mobbing is generally defined as a malicious, deliberate attempt by co-workers to force a person (peer, supervisor or manager) out of the workplace through harassment, humiliation, unjust accusations etc.

It should be noted that while a single serious incident such as an individual being abused and humiliated in front of others, may not specifically fall into this definition of bullying, such incidents must still be responded to appropriately, and the procedures outlined in this document may be used as a guide to managing such incidents.

Behaviour is considered to be unreasonable if a reasonable person, based on the available information, would expect the behaviour to offend, intimidate, humiliate, or threaten the individual to whom it is directed. Such behaviour may also negatively impact on those witnessing the behaviour.

Example A

A staff member complained to her supervisor that she felt like she was being excluded from the team. Specifically, she noted that staff meetings were held when she was unable to attend, that most of her allocated work denied her team interaction and that social functions were arranged for times when she would be absent from the office. The supervisor was very dismissive of her complaint, responding that the staff member was 'paranoid' and 'imagining things', and made no change to current practices.

The staff member became increasingly anxious when nothing changed. In addition, she began to feel like other members of the group were also excluding her from work and social interaction. The staff member decided to speak to her manager about the issue.

Following an investigation of the complaint, the manager determined that there was a subtle pattern of bullying involving organisational processes such as decision-making and work allocation. It was also found that a reasonable person would feel intimidated by these actions, particularly given the small size of the team.

Example B

An Aboriginal woman is a supervisor in a busy workplace. One of her staff, an older Aboriginal male, constantly questions her decisions in front of other staff and clients. He has also been overheard telling colleagues that his supervisor is incompetent and not suited to her role. The supervisor has tried to resolve the issue by approaching the staff member. This has only made matters worse, particularly as the staff member justifies his behaviour as being culturally appropriate. The supervisor feels she has no other option but to raise the matter with her manager.

Following an investigation of the complaint, the organisation determined that the supervisor was being bullied.

2.4 Who engages in bullying behaviour?	People who engage in bullying behaviour come in all shapes, sizes, ages, and from all ethnic and racial backgrounds. Bullying behaviour is not limited to a particular position, gender or personality type, and can be exhibited by managers, supervisors, fellow workers, clients or members of external organisations.
2.5 Who can be a target?	Targets of bullying do not have a particular personality type, occupational grouping, gender or racial background etc. A manager may be bullied by a staff member, a younger person may bully an older person, or the most cheerful member of the team can be bullied by the rest of the group.
2.6 What is not bullying behaviour?	<p>Legitimate, reasonable and soundly based managerial actions to direct and control how work is done in the workplace do not constitute workplace bullying.</p> <p>Legitimate managerial actions may include:</p> <ul style="list-style-type: none"> • Providing constructive feedback on a staff member's work performance (sometimes the staff member may find the feedback upsetting, but this alone does not constitute bullying) • Managing performance or underperformance issues • Transferring, terminating or taking action to make a staff member redundant where the process is conducted fairly and equitably • Taking justifiable decisions related to recruitment, selection and other development opportunities • Allocating work in compliance with systems and policies • Ensuring that workplace policies are implemented • Undertaking disciplinary procedures for proven misconduct, or for actions involving significant breaches of other policies • Overseeing injury and illness processes in accordance with OHS, injury management and workers compensation legislation and policies. <p>Ill-founded management actions and processes may be a means of bullying, or creating an environment conducive to bullying.</p>

Example C

A staff member in a rural location complained to his manager that his new supervisor was bullying him. His specific complaint was that his supervisor was requiring him to keep accurate vehicle logs and timesheets, and keep in regular contact with the office, particularly on long trips.

The manager, in investigating the claim, found that the supervisor was legitimately monitoring all staff compliance with existing policies and procedures. Importantly, the supervisor's actions were found to be consistent with OHS policy, which requires that all staff be provided with appropriate supervision to ensure their safety.

2.7 What is the extent of bullying in the workplace? The literature on bullying suggests that around 10% of employees experience workplace bullying or harassment every year. This figure is in addition to the estimated 2% who have been subjected to physical violence from work colleagues.

A similar picture is emerging from recent studies of Australian workplaces, including those working in the health system. For example, a 2003 study of four hundred Australian health workers found that 10.5% reported having been bullied in the past twelve months (see References).

Studies conducted in Australia and overseas found that bullying is rarely formally reported. Reasons for non-reporting include fear of repercussions, fear of being labelled weak or a whinger, concern that reporting may affect career prospects, and/or a belief that nothing can or will be done about it.

2.8 What is the impact of bullying on staff? Workplace bullying affects individuals in a range of ways, and the impact tends to escalate over time. Studies have also found that ongoing bullying can have a more severe impact on an individual than a one-off act of physical violence.

For the individual, bullying may lead to poor self-esteem, loss of self-confidence, health problems eg anxiety, sleep disturbances, panic attacks, and diminished income and career opportunities.

2.9 What is the impact of bullying on the workplace? Bullying has the potential to cause problems for workplaces, including:

- Service continuity problems due to absenteeism and staff turn-over
- Reduced efficiency and productivity
- Poor motivation, morale and a negative workplace culture
- Increased work errors and accidents, workers compensation claims and workers compensation premiums
- Industrial problems
- Escalating litigation costs
- Negative publicity/loss of credibility with staff and regulatory authorities.

Indirect costs associated with increased resources spent on complaints management, employee assistance and recruitment and training of new staff may also be incurred. Estimates of overall costs to employers vary, with conservative estimates between \$6 and \$13 billion per year. Other studies estimate that workplace bullying costs Australian business as much as \$36 billion per year.

2.10 Legislative framework Employers have certain legislative responsibilities in relation to their staff. Key areas of legislation that are related to bullying are briefly discussed below.

2.10.1 OHS legislation OHS legislation in NSW requires employers to ensure the health and safety of all staff members. As workplace bullying may harm the health and safety of staff, the employer's obligations extend to ensuring that workplace bullying is prevented or stopped. The legislation also places an obligation on staff to take reasonable care for the safety of others in the workplace, and cooperate with the employer in its efforts to provide a safe workplace.

For more information on OHS legislation see NSW Health policies on [workplace health and safety](#).

Example D

Following a workplace bullying incident, Worksafe Victoria imposed substantial fines on an employer for failing to provide instruction, training and supervision to its staff members in relation to bullying, and for failing to provide a safe workplace. The employer was also ordered to pay costs. It was also found that the employer had no complaints system in place, and should have stopped the bullying when it became aware of it. Worksafe Victoria also fined the staff member for subjecting fellow workers to verbal abuse and threats of violence.

2.10.2 Anti-discrimination legislation Discrimination occurs when a person is treated less favourably than someone else on the basis of race, sex (including pregnancy), transgender, marital status, disability, carer's responsibilities, homosexuality or age.

Bullying may manifest itself in discriminatory behaviour, and may therefore be unlawful under a number of Acts, including:

- Anti-Discrimination Act 1977 (NSW)
- Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth).
- Sex Discrimination Act 1984 (Commonwealth)
- Disability Discrimination Act 1992 (Commonwealth)
- Age Discrimination Act 2004 (Commonwealth).

For more information see NSW Health policies and guidelines on promoting a fair and equitable workplace.

Example E

A complainant, who was initially a willing participant in swapping crude sexual banter in the workplace, changed her way of thinking upon becoming pregnant. When the now unwelcome conduct of her colleagues continued despite her requests that it stop, the woman complained to her employer, then the Human Rights and Equal Opportunity Commission.

A Federal Magistrate found that the woman had been sexually harassed. The Magistrate also found that the case satisfied the definition of bullying because 'everyone was entitled to draw the line somewhere, and those activities crossed the line'. The employer was also found to be vicariously liable.

2.10.3 Industrial relations legislation

Both NSW and Commonwealth industrial relations laws prohibit harassment on the grounds of trade union activity. A staff member may also be entitled to lodge a claim under either jurisdiction, if bullying is a factor in the termination of employment.

Example F

A team leader ignored medical certificates specifying exactly what work a staff member on a return-to-work program could perform. The same team leader also allegedly bullied the staff member until she resigned. The staff member lodged a complaint with the Australian Industrial Relations Commission. In her submission, she also stated that the HR Manager, who was aware of the problem, took no action to resolve the issue.

The Commissioner held that bullying had brought about the staff member's resignation. The Commissioner also stated that the conduct of the HR Manager was 'appalling' and was 'just as guilty' as the team leader. The Commissioner ordered that the staff member be reinstated in another area of the organisation and be reimbursed for lost income.

2.11 Related definitions

Bullying contact officer

A nominated staff member who is available to provide independent assistance and information on the procedures for making a complaint of bullying. Bullying contact officers do not become involved in the investigation of a complaint.

Bullying Complaint

A written or verbal complaint of bullying raised by an individual or group of individuals on their own behalf, or on behalf of another/s.

Complainant/s

The person/s making the complaint.

Disciplinary process

A process for managing allegations of misconduct, serious performance issues or inappropriate behaviour by NSW Health staff, usually involving breaches of NSW Health policy, which, if proven, would lead to the staff member being formally disciplined.

Employer

For the purposes of this document, means any person authorised to exercise the functions of the employer of staff to which this policy applies.

Initial assessment

An initial review by the person receiving the complaint, to ensure that the most appropriate management process is followed.

NSW Health

Consists of the Department of Health and the NSW public health system.

NSW Health Service

Consists of staff employed in all Area Health Services, all statutory health corporations, any declared affiliated health organisations, the Ambulance Service of NSW and Public Health System Support Division.

2.11 Related definitions (cont)

NSW Public Health System

Consists of all Area Health Services, all statutory health corporations, all affiliated health organisations in respect of their recognised services, the Ambulance Service of NSW and the Public Health System Support Division (currently includes the Institute for Medical Education and Training, Health Technology and Health Support).

Organisation

For the purposes of this document, refers to any entity that is part of the NSW Public Health System.

Respondent

The person(s) against whom the complaint of bullying is made.

Sexual harassment

Under NSW law, a person sexually harasses another person when they

- make an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- engage in other unwelcome conduct of a sexual nature in relation to the other person

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Staff member

Any person working in any capacity in NSW Health including volunteers, students, visiting medical officers and contractors.

3. Prevention of workplace bullying – A risk management approach

3.1 A risk management approach

Like all foreseeable workplace risks, the potential for workplace bullying must be identified and assessed, and eliminated as far as possible. If the risk is unable to be eliminated, 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.

Detailed information on the risk management process can be found in NSW Health policies on [occupational health and safety](#), [violence prevention](#) and [security](#). Further information on the consultation process can be found in the publication *WorkCover OHS Consultation Code of Practice 2001*.

3.1.1 Identifying and assessing risk

A detailed tool to assist in the bullying risk identification and assessment process is provided at **Appendix One**. The tool can be used at an Area, facility or unit level.

Qualitative and quantitative information that may also help identify and assess the risk of bullying include:

- De-identified data of known cases of workplace bullying
- De-identified data of staff grievances and complaints relating to bullying eg increased numbers of cases, repeated conflict in the same area etc
- Records of damage to personal effects eg increased numbers in a particular work area, damage caused by 'mysterious' events etc
- Records of industrial relations matters where bullying is cited
- Workers compensation data eg number of psychological injuries
- Sick leave and other absenteeism data eg increased levels, changed individual patterns of leave etc
- Employee Assistance Program data citing workplace bullying
- Exit interviews data citing grievances, bullying and harassment
- Unexpected deterioration in individual / group performance
- Information gleaned from staff consultation eg anonymous staff surveys, inviting written submissions etc
- Information gained from talking to relevant individuals or groups eg union representatives, HR personnel, industrial relations personnel, OHS Committees, Complaints Managers, Equity Coordinators, Aboriginal Employment Networks.

Findings from the above needs to be analysed for patterns and trends that may point to areas at increased risk of bullying, or where bullying is already occurring. High-risk environments should be dealt with as a matter of urgency and priority. Managers should also take action in low risk environments, especially where there are simple and/or inexpensive ways of raising awareness about workplace bullying prevention.

3.1.2 Identifying performance indicators

This information can also help determine potential performance indicators and base-line data for future evaluation of the risk elimination and control program.

Examples of performance indicators may include:

- Short-term increase in bullying complaints due to increased awareness
- Overall decrease in complaints over the medium to long-term
- Improved staff perception about the organisation's response to bullying

See also WorkCover HAZPAK –Making Your Workplace Safer: A Practical Guide to Basic Risk Management.

- Increasing numbers of managers and/or staff that have attended bullying prevention and management training
- Increased number of strategies to prevent and manage bullying.

3.1.3 Implementing risk controls

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

NSW Health employers should implement the following strategies in their areas of responsibility, as far as practicable:

- Provide good physical workplace design eg adequate lighting, ventilation, workspace and staff facilities, and minimising use of areas where individuals or small groups of staff work in isolation
- Ensure that all staff demonstrate an understanding of, and commitment to the NSW Health Code of Conduct
- Ensure that information about what types of behaviour do, and do not, constitute workplace bullying are communicated to all staff, with a particular emphasis on any high risk areas identified through the risk assessment process
- Ensure that NSW Health policy in relation to grievance resolution is clearly reflected in local grievance management processes, and that those processes are communicated to all staff
- Ensure senior managers consistently promote a bullying free environment
- Encourage and support staff in the self-resolution of conflict and workplace grievances by providing appropriate instruction, information and training where necessary eg conflict resolution
- Provide a clear and simple process for reporting bullying
- Ensure managers are equipped to, and do, respond promptly and effectively to complaints related to bullying, in line with the requirements of this Guideline
- Ensure that staff have accurate and up to date position descriptions, so they have a good understanding of their role and responsibilities
- Accommodate appropriate working schedules so that staff are used in the most effective way, while allowing staff to manage work, life and family responsibilities
- Encourage consultation and staff involvement in decision-making.

See the [NSW Health Code of Conduct](#), and NSW Health policy for [communicating the code](#), and for [grievance resolution](#).

3.1.4 Monitoring, reviewing and evaluating risk controls

Employers and managers should have procedures in place to monitor bullying controls, review the ongoing relevance of such controls, and capture relevant information about new cases in order to evaluate existing systems, policies and procedures. This information can then be used to improve controls and strengthen workplace strategies to prevent bullying. Review is particularly important during times of significant workplace change eg restructures, or when a serious case of workplace bullying occurs.

The risk control program should also be evaluated at least every one to two years to determine whether it has been effective in preventing and managing workplace bullying. This responsibility should be formally allocated to a senior manager, and staff should be invited to participate in the evaluation process.

4. Managing a workplace bullying complaint

4.1 Making a bullying complaint

As part of the organisation's bullying risk management strategy, all staff should be aware of their rights and responsibilities in relation to bullying prevention and management. This includes the organisation's commitment to eliminating bullying as far as possible, and responding promptly to bullying if it does occur.

4.1.1 Access to relevant information

Similarly, where a staff member feels that they are being bullied, they should have ready access to sufficient information that will help them determine how best to respond, and their options for raising their concerns.

Sources of information should include:

- Bullying prevention and management policies and procedures
- Reporting procedures that are not unnecessarily onerous or complicated
- A nominated bullying contact officer, grievance contact officer or the human resource department
- Supervisor or manager as appropriate.

Those positions identified as points for further information should primarily provide independent policy and process information. As this may include providing advice to potentially all parties to a complaint, these individuals should not be involved in investigating or managing the complaint.

Bullying complaints should be made according to the organisation's complaints procedures, and would usually be made to the supervisor or line manager. Where the complaint is against either of those parties, or where there may be a conflict of interest, the complaint should be made to the next line management position.

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.

4.1.2 Reluctance to formally complain

Sometimes a staff member will tell a manager that he/she is being bullied, but does not want anything to be done about it. This could mean the matter is not serious enough to be managed as bullying and could be resolved by more informal means. However, it could also mean the complainant fears that an investigation will cause them more stress, make the work situation worse or make them the subject of reprisals.

In these circumstances the staff member should be advised of formal and informal options to resolve the matter. Any concerns regarding the process should be explored with the complainant and addressed as far as possible.

Where the staff member still does not want to go ahead with the complaint, depending on the individual circumstances, there may still be an obligation on the manager to respond. For example, if the staff member appears significantly distressed, or it becomes evident over time that the situation is not improving or is getting worse, this may constitute a significant workplace risk, and some action will be required.

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

Such organisational responses could include:

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

The key consideration is that where management becomes aware of a significant workplace risk, they have a responsibility to intervene.

The situation may also arise where a staff member makes a complaint of bullying, but wishes their identity to be kept confidential ie not disclosed to the alleged perpetrator. In such circumstances it needs to be explained to the complainant that because of the usually personal nature of bullying, it would be impossible to ensure a fair process. For example, withholding identity would not allow for an adequate investigation, or for providing the alleged perpetrator with enough information to allow them to be able to adequately respond to such a complaint.

4.1.3 Complaint via workers compensation claim

Where the organisation first becomes aware of a potential bullying issue as a result of a workers compensation claim, the staff member may have already been significantly affected by the behaviour.

While the processes in this document will still need to be followed to investigate and manage the matter as far as possible, the situation will need to be managed with particular sensitivity. There should be liaison with the treating clinician in relation to any alternate work arrangements and to determine when the staff member is fit enough to be interviewed as part of any investigation.

For details on managing workplace injury, refer to the current NSW Health policy on [injury management and return-to-work](#).

There may also need to be liaison with the TMF Fund Manager if there is to be a 'fact finding' 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.

Staff members suffering a work related psychological injury have the same entitlements under workers compensation legislation in NSW as those who have suffered a physical injury, and need to be managed accordingly.

4.2 Immediate Response

All bullying complaints must be treated sensitively and seriously, and acted on promptly. This will reinforce the message that workplace bullying is unacceptable, and is also consistent with the employer's duty of care towards all staff under OHS legislation. See **Appendix Two** for a flow chart outlining the overall process for managing a bullying complaint.

4.2.1 Initial assessment

At the time the complaint is received, or as soon as possible afterwards, an initial assessment of the complaint should be conducted.

The initial assessment is separate, and prior to, the more formal investigation process, and generally involves seeking as much information as possible from the complainant in order to:

*See **Appendix Three** to help determine most appropriate policy pathway/s for managing the complaint.*

- Get a sense of 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
- Identify policy/s relevant to the complaint and the best process for its management.

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 current [performance management policy and guidelines](#). In other instances the complaint may involve physical violence or other criminal activity and should be managed in line with NSW Health policy directives relating to [management of violence](#) and [criminal allegations against staff](#).

For further information on the initial assessment see the NSW Health policy on [grievance resolution](#).

If the matter appears relatively minor, it may be more appropriate to manage it as a grievance, taking into account the views of the staff member. However, it is important to note that the NSW Health grievance resolution process is for managing minor workplace issues only and is not to be used to manage potentially serious workplace issues.

Where the initial assessment suggests that the behaviour being complained about falls under the definition in section 2.2, particularly where efforts by the staff member to resolve the matter, or other interim strategies such as mediation or conciliation have failed, these Guidelines should be used to manage the complaint.

Where it appears to the recipient of the complaint that some immediate response is necessary until a more detailed risk assessment can be undertaken (eg the complainant seems deeply distressed), discussing some immediate options may be necessary eg short term leave or relocation options. Any action taken in these circumstances must be determined in the context of managing the immediate welfare of the individual, and should not be based on any assumption about the guilt or innocence of any parties.

4.2.2 Advice and support

Both the complainant and the person being complained about have rights and responsibilities during the process, and should therefore be provided with the following information at the appropriate time:

- Any immediate action deemed necessary in the circumstances
- That there is no assumption of guilt or innocence
- An overview of how the complaint will be managed
- Their right to privacy and that no information in relation to the complaint will be provided to third parties, unless absolutely necessary
- Their own roles in ensuring that confidentiality is maintained
- That they will be given a fair opportunity to put forward their case
- That they will be provided with information on progress of the investigation and on any decisions made that may affect them
- Access to EAP services is offered
- Right to seek independent advice, including a union
- Right to a support person, and the role of that support person.

In addition, the respondent should be provided with the substance of the complaint in the first instance, and advised that they will be given reasonable opportunity to respond to the complaint.

Consideration should be given to the most appropriate way of first advising a member of staff that a bullying complaint has been made against them. If the respondent first becomes aware via a letter containing little information other than that they must attend for interview in response to a bullying complaint, this can be very distressing, particularly if the person is unaware anyone found their behaviour inappropriate.

Generally speaking, a face to face meeting of the respondent and an appropriate management representative is the preferred means of initially advising that a complaint has been received.

The meeting should be separate, and prior to the investigation process, 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 principles that should be adhered to is that the communication, be it verbal or written, is clear, concise, respectful, provides all necessary information, and includes a contact person.

4.2.3 Risk assessment

After immediate issues are addressed, an assessment of potential ongoing risks to both parties to the complaint associated with current work arrangements should be conducted. This will determine whether any further action needs to be taken to ensure as far as practical, the wellbeing of those involved until the investigation is completed.

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 respondent
- 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 eg previous history of conflict between the parties etc
- Any relevant previous history of bullying allegations against the respondent and their outcomes
- The views of the complainant about possible management options during the investigation
- The potential need to protect the complainant from 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 respondent, particularly where they may require significant changes to the way work is currently being done.

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 of guilt. 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.

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

- Alternative employment arrangements
- Alternative work locations, reporting lines or shift arrangements
- Making appropriate arrangements to manage any necessary work interactions between the parties.

4.2.4 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 [disciplinary issues management process](#). See the [Personnel Handbook](#) for Departmental staff.

4.3 Investigating the complaint

The facts of the matter need to be determined, and this usually requires an investigation. The purpose of the investigation is to gather and analyse all relevant information to help identify whether the complaint can be substantiated, and whether there are any extenuating circumstances or other contributing factors that may need to be considered.

4.3.1 Identifying who should investigate

The person (or persons should the situation warrant) identified to do the investigation should be competent in the investigation process, be appropriate to the particular circumstances, and be impartial. Investigating bullying complaints can be very challenging, and information gleaned during the initial assessment and the risk assessment should be considered to help determine who should investigate.

If the complaint is fairly straightforward, the manager who received the complaint may be appropriate to do the investigation. Examples include complaints involving a single complainant and respondent, or where both parties are peers or have a close working relationship, the incidents are limited in frequency and severity, there is no history of previous complaints etc. Depending on the knowledge, skills and experience of the manager, liaison with local HR services may be required to ensure the appropriate processes are followed.

In more complicated matters, it may be necessary for someone else in the organisation with a good understanding of bullying issues and experience in investigating complaints to undertake the investigation. For example, it may be useful to include an appropriate clinician when investigating a bullying complaint made by, or against a clinician, because of their better understanding of the clinical environment, or where there may be possible overlaying clinically related performance, cultural or local working environment issues.

More complicated matters may include circumstances where:

- There is a significant number of complainants
- Information suggests the incidents have been frequent and/or severe
- There appears to be a history of complaints against the respondent, or some history to the current complaint
- There may be complicating gender, ethnic, cultural or age issues
- There may be complicating local workplace issues eg culture/history of bullying
- Efforts in the past to resolve the matters have failed
- The wellbeing of the complainant and/or respondent appear 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 expert to investigate a bullying complaint.

These circumstances include where:

- It is difficult to identify an internal person who is able to be impartial eg in a small facility
- Where very senior staff are involved
- Where there is no one available internally with the appropriate skills
- Where the situation is likely to come under external scrutiny or attract external attention.

This is a decision to be made by the organisation, after considering all relevant information.

Where an external investigator is used, a scope of services or similar needs to be developed that clearly identifies what is to be done, and include time frames and confidentiality requirements. As with all contracted services, the organisation must nominate someone to manage the contractor, and ensure that their services are provided in a timely, efficient and professional manner, and to the appropriate standard.

4.3.2 Conducting the investigation

As the outcome of the investigation may result in disciplinary action, the investigation process must be fair, impartial, professionally conducted, and consistently applied in all NSW Health workplaces. Therefore, the processes outlined in the NSW Health [disciplinary issues management process](#) policy directive must be followed in all NSW Health Service workplaces. For Departmental staff, the relevant provisions of the [Personnel Handbook](#) must be adhered to.

4.4 Responding to the findings

In determining what action the organisation is to take, the following should be considered:

- Information gathered during the investigation
- Findings, and recommendations where provided
- Any extenuating circumstances
- Any submission from the respondent regarding adverse findings
- Previous relevant disciplinary history.

4.4.1 Where the complaint is not supported

Where the findings suggest it is unlikely that bullying occurred, an organisational response may still be necessary eg the respondent's behaviour may still require some performance management. The investigation may have identified gaps in the organisation's bullying prevention and risk management framework that require remedying, and action may also be necessary to re-establish effective work relationships.

4.4.2 Where the complaint is supported

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

Options for managing the individual (respondent) 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
- Requiring an acknowledgement from the respondent to the complainant of the inappropriateness of the behaviour, the impact of the behaviour, and offering an apology
- Counselling the respondent about their behaviour
- Reinforcing the requirement to abide by the NSW Health Code of Conduct, and existing policies aimed at preventing bullying
- Providing training in what constitutes bullying, appropriate communications skills, managing workplace relationships etc
- Considering disciplinary action if warranted.

Depending on the particulars of the findings, it may be useful to consider the following organisational options:

- Review existing anti-bullying policies and procedures – are they appropriate, have they been actively communicated, implemented and supported, are reporting requirements unnecessarily onerous, is it seen as a credible policy in the eyes of staff etc

- Address any particular working environment, work practices and/or supervisory arrangements that may have contributed to the bullying occurring
- Ensure that staff understand what constitutes bullying, that bullying will not be tolerated and the relationship between grievance resolution and bullying prevention policies eg review related training to ensure it is appropriate
- Review existing conflict resolution and mediation mechanisms.

4.4.3 Disciplinary action

If ensuing disciplinary action is considered appropriate, it should be managed quite separately from the investigation process and should not generally commence until the investigation process is complete.

4.4.4 Ongoing work arrangements

Regardless of the outcome, consideration may need to be given to ongoing work arrangements, particularly where changes were made during the investigation. 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.

4.5 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.

The findings from the investigation will dictate what, if any, information regarding the matter is to be placed on the respondent's personnel file. For NSW Health Service staff see [disciplinary issues management process](#), and for Departmental staff, the relevant provisions of the [Personnel Handbook](#).

4.6 Review and evaluation

Employers should have mechanisms in place to evaluate whether their systems for managing bullying complaints are effective and timely.

A simple summary sheet for each formal complaint should be maintained that includes the following information:

- Date complaint received
- Date of initial assessment and any outcomes
- Date of risk assessment and any outcomes
- Employment group of complainant and respondent (if different)
- Type of bullying eg verbal abuse, work isolation, harassment etc
- Number of times particular complaint made (is this the first time)
- Work location (to the level that those involved cannot be identified)
- Date investigation commenced
- Date investigation concluded
- Findings (bullying did, or did not occur)
- Summary of actions taken (at both organisational and individual level)
- Timeframes
- Whether the review process was activated
- Outcomes from the review.

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

APPENDIX ONE

Bullying Risk Identification and Assessment Checklist:

This checklist can be used at the public health organisation level, facility level or individual workplace level to help identify and assess the potential for bullying to be a workplace risk. It will also help identify potential risk control strategies that could be implemented to reduce the risk.

Workplace features:

Is there a high level of temporary, casual or contract workers?

Is there a lack of staff consultation or involvement in key decision making?

Is there a high incidence of workplace complaints and grievances, or interpersonal conflict?

Is there a lot of industrial unrest?

Are there regular complaints of lack of support, intimidation etc from new staff, rotating graduates or students etc?

Is there a lot of workplace change going on?

Is the workplace designed so that individuals or groups work in isolation?

Is the workplace excessively noisy?

Are workplace facilities eg lighting, space, ventilation, rest areas etc adequate?

Is there inadequate separation between staff, the public and clients?

The greater the number of 'Yes' responses, the greater the potential for bullying to be, or to become, a workplace issue.

Administrative policies and procedures:

Is there a code of conduct?

Is there a mechanism for ensuring that everyone is aware of its requirements?

Is there a grievance resolution policy and reporting process?

Is it well understood by staff?

Are formal grievances responded to promptly?

Is there an anti-bullying policy and reporting process?

Is it well understood by staff?

Are complaints of bullying behaviour responded to promptly?

Are there mechanisms for addressing workplace conflict?

Are they regularly communicated to staff?

Are alternative disputes resolution strategies eg mediation, conciliation etc available to staff?

Are there clear processes for managing workplace issues that may result in disciplinary action?

Is there an employee assistance program (EAP) for staff?

Are all policies, procedures etc readily available to staff?

Can these policies be accessed confidentially?

Are workplace policies and protocols developed in consultation with key stakeholders and employment groups?

Are they written in plain English?

Are they supported by appropriate distribution strategies?

Are they routinely provided to new employees?

Are they promoted to ensure staff understand the related requirements?

Are they supported by training if necessary?

Are they actively implemented and enforced in the workplace?

The greater the number of 'No' responses, the greater the potential for bullying to be, or to become, a workplace issue.

Information, instruction and training:

Are staff aware of their roles and responsibilities in creating a harmonious, bullying free workplace?

Are staff aware that bullying will not be tolerated in the workplace?

Do all staff know how to raise a workplace grievance?

Do managers know how to respond to a workplace grievance?

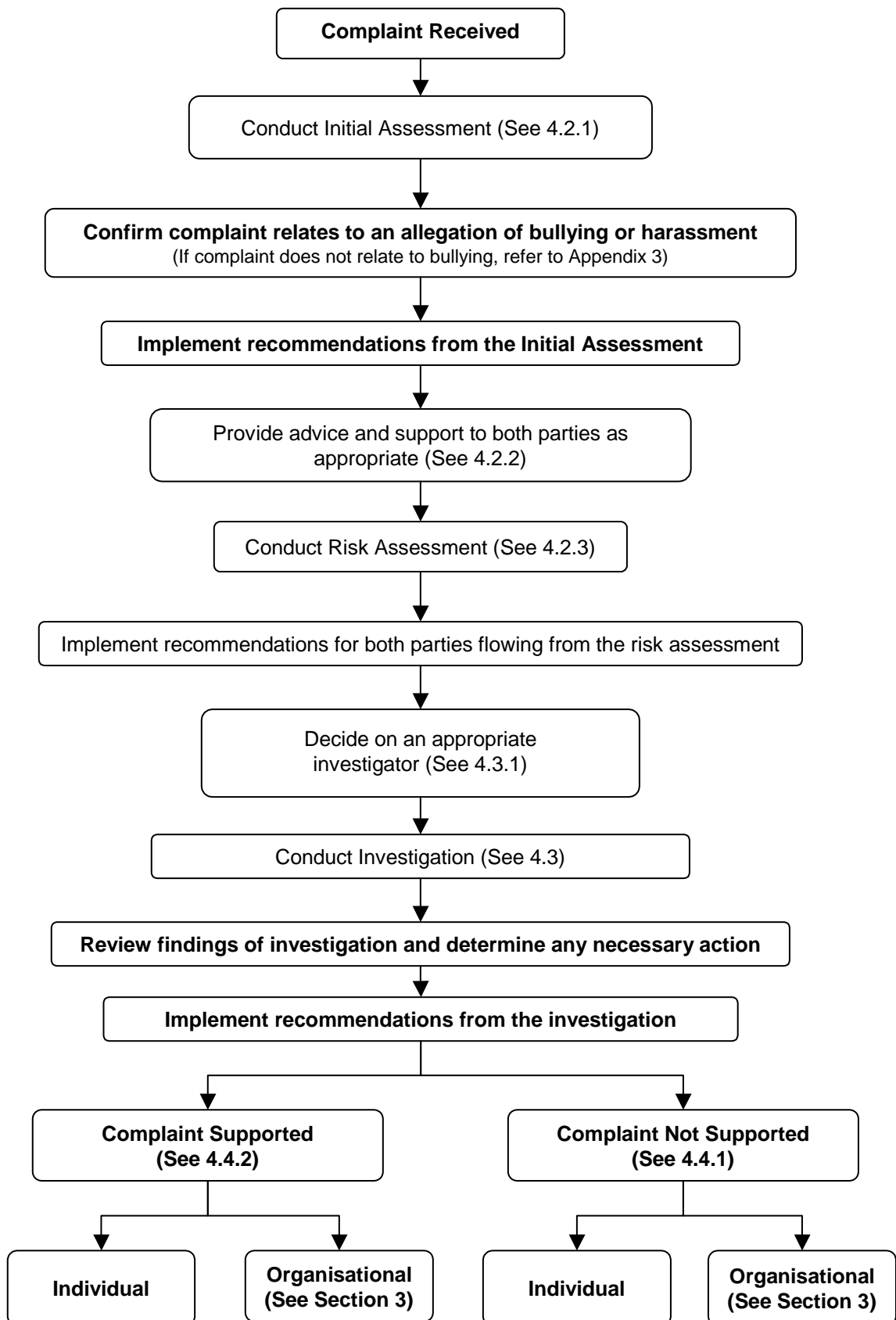
Do all staff know how to make a bullying complaint?

Do managers know how to respond to bullying complaints?

Are staff provided with training in conflict resolution where necessary?

The greater the number of 'No' responses, the greater the potential for bullying to be, or to become, a workplace issue.

Managing a Bullying Complaint



NSW Health Complaints/Issues 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.

Nature of Issue/Complaint	Guiding NSW Health Policy Directives or Guidelines
<i>Does the complaint primarily consist of a workplace matter raised by an employee that is causing them concern or distress eg interpersonal conflict, the way work is allocated or managed, a perceived unfairness in the workplace?</i>	PD2005_584 Effective Workplace Grievance Resolution: Policy and Better Practice for the Department of Health and Public Health Organisations
<i>Does the complaint primarily relate to bullying, harassment, threatening or discriminatory behaviour?</i>	PD2005_223 Joint Management and Employee Association Statement on Bullying, Harassment and Discrimination (Public Health System Employees) PD_2005_250 Joint Management , PSA and Nursing Association Statement on Bullying, Harassment and Discrimination (Employees of Department of Health)
<i>Does the complaint primarily relate to behaviour or activity that, if sustained, is likely to result in disciplinary procedures?</i>	PD2005_225 A Framework for Managing the Disciplinary Process in NSW Health
<i>Does the complaint primarily relate to a work performance issue?</i>	PD2005_180 Managing for Performance – A Better Practice Approach.
<i>Does the complaint primarily relate to the clinical behaviour or performance of a clinician or public health organisation?</i>	GL2006_002 Guideline on the Management of a Complaint or Concern about a Clinician
	PD 2006_007 Model Policy on the Management of a Complaint or Concern About a Clinician.
<i>Does the complaint primarily relate to matters that may be criminal, or may constitute corrupt conduct, maladministration or substantial waste?</i>	PD2005_173 Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption; PD2005_109 Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations of Improper Conduct; PD2005_315 Zero Tolerance Response to Violence; PD2005_135 Policy and Guidelines for the Development of Protected Disclosures Procedures in Health Services.
<i>Has the complaint been lodged as a protected disclosure, as defined in the Protected Disclosures Act 1994?</i>	PD2005_135 as above.
<i>Does the complaint primarily relate to allegations of sexual, physical or emotional abuse of a patient or client by an employee?</i>	PD2005_109 as above. PD2005_299 Protecting Children and Young People.
<i>Does the complaint primarily relate to allegations of sexual, physical or emotional abuse of a child by an employee, or others?</i>	PD2005_109 as above.
<i>Does the complaint primarily relate to a serious breach of the Code of Conduct?</i>	PD2005_626 NSW Health Code of Conduct.