Bullying - Prevention and Management of Workplace Bullying in NSW Health

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Personnel/Workforce - Occupational Health & Safety
Personnel/Workforce - Industrial and Employee Relations
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Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is mandatory for NSW Health and is a condition of subsidy for public health organisations.
PREVENTION AND MANAGEMENT OF WORKPLACE BULLYING
IN NSW HEALTH

PURPOSE

NSW Health is committed to providing a safe and equitable workplace for all staff, where the contribution of everyone is valued and respected. As part of this commitment, workplace bullying will not be tolerated under any circumstances. The purpose of this policy is to prevent and combat workplace bullying in all NSW Health workplaces.

Attached to this policy are procedures to assist managers in meeting this obligation.

DEFINITIONS

Agency: means, for the purposes of this policy, all public health organisations, the Department of Health, the Ambulance Service of NSW and all other bodies and organisations under the control and direction of the Minister for Health or the Director-General of Health.

NSW Health: means, for the purposes of this policy, all public health organisations, the Department of Health, the Ambulance Service of NSW and all other bodies and organisations under the control and direction of the Minister for Health or the Director-General of Health.

Staff: means all persons employed in any capacity in the NSW Health Service and the Department of Health, all persons engaged by public health organisations such as visiting practitioners, and any person working in any capacity in NSW Health including volunteers and students.

MANDATORY REQUIREMENTS

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

All complaints about bullying must be treated sensitively, seriously and fairly and acted on promptly. An initial assessment of a complaint must be conducted within 3 working days. Managers are responsible for ensuring that identified risks, related to a complaint, are assessed and managed.

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

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

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

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

IMPLEMENTATION

ROLES AND RESPONSIBILITIES

NSW Department of Health

- Monitoring the implementation of policy obligations and
- Collecting data from across NSW Health on the timeliness and outcomes of bullying complaint management processes.
**Director-General, NSW Department of Health and Chief Executives** are responsible for:

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

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

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

**Supervisors/Managers** are responsible for:

- Implementing appropriate strategies to prevent workplace bullying
- Managing bullying complaints, in accordance with this Policy Directive and any local bullying complaint resolution processes
- Acting immediately to eliminate any inappropriate behaviour that might constitute bullying
- Ensuring that complaints are managed fairly, confidentially and in a timely manner
- Ensuring that action and recommendations arising from cases of bullying are implemented in a timely manner and
- Ensuring that all actions taken to manage a bullying complaint are appropriately documented.

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

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

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

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

**All staff** are responsible for:

- Recognising their individual role in developing and maintaining harmonious workplace relations and promoting a positive and cooperative workplace culture
- Taking responsibility for their own actions in the workplace, and where the actions of others are disagreeable to them, attempting to settle matters, where appropriate, with that other person/s in the first instance
- Raising matters of concern at an early stage and actively participating in the bullying complaint management process
- Providing managers with specific information regarding the perceived bullying and being prepared to have their complaint made known to the person they are making the complaint about, to allow for fair management of the complaint
- Maintaining confidentiality and not discussing or releasing information relating to a bullying complaint to any third party who has no legitimate involvement in the process
- Ensuring that any allegations relating to bullying are made honestly and not vexatiously or maliciously, or to impede legitimate managerial action and
- Cooperating with any complaint procedure in a timely and cooperative manner.

**BREACHES OF THIS POLICY**

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

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<th>Version</th>
<th>Approved by</th>
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<td>March 2011</td>
<td>Deputy Director-General Health System Support</td>
<td>Replaces GL2007_011. Reviewed to include relevant recommendations arising from the Special Commission of Inquiry (SCOI) were reflected in NSW Health policy.</td>
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<td>Bullying - Prevention and Management of Workplace Bullying: Guidelines for NSW Health provided information on how to prevent workplace bullying and how to manage and resolve workplace bullying complaints.</td>
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ATTACHMENTS

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

1.1 How to use these Procedures
These Procedures are intended to assist managers to:

- Fulfil their obligations to eliminate or minimise the risk of bullying, and manage complaints relating to bullying; and
- Provide staff with information on their rights and obligations where they make a complaint.

These Procedures are 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 timeframes.

1.2 Provision of advice about workplace bullying
Further and more specific advice about bullying is available from the following sources:

**Anti-Bullying Advice Unit/Line (ABAL)**
This Unit, based within Health Support Services, provides a confidential telephone advice service for staff (Ph 1300 416 088). ABAL is also able to be accessed via the intranet.

The Unit provides confidential advice for callers on processes, but not on the substance of complaints. The Unit does not manage complaints, as this is the responsibility of the relevant manager. The Unit 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 procedures for making a complaint of bullying. Anti-Bullying Contact Officers do not become involved in the investigation or management of individual complaints.

**Unions**
Staff who are members of a union may contact the relevant union for advice and assistance.

1.3 Related policies:
These Procedures support the following NSW Health policies:

- [Bullying, Harassment and Discrimination - Joint Management/Employee Association Policy Statement](PD2005_223)
- [Bullying, Harassment and Discrimination – Joint Management, PSA and Nursing Association Statement](PD2005_250)

See also:
- Dignity and Respect in the Workplace Charter, Unions NSW, 2005
2 INTRODUCTION

2.1 Rights and responsibilities
See Appendix 1 for detailed information on rights and responsibilities of parties involved in bullying complaints management.

2.2 What is workplace bullying?
For the purposes of this document, workplace bullying means behaviour which is offensive, intimidating, intended to humiliate or threatening and is directed at a staff member or a group of staff members, and occurring in the course of or related to work in NSW Health. Workplace bullying will generally meet the following criteria:

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

In the context of the above definition, bullying behaviour can take many different forms. It can range from more overtly aggressive behaviour such as shouting and physical confrontations. It may involve using an abusive or aggressive tone in speaking to other staff members. It can include more subtle behaviours, such as passive bullying, or tacitly supporting bullying by allowing it to continue.

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

There is no precise or legal definition of bullying. In considering what is workplace bullying it is necessary to apply common sense. The above points should not be applied rigidly or without regard to all relevant factors.

2.3 What is not bullying behaviour?
Legitimate and reasonable managerial actions to direct and control how work is done in the workplace do not constitute workplace bullying.

Legitimate managerial actions may include:
- Providing appropriate feedback on a staff member’s work performance (the fact that a staff member may find the feedback upsetting, does not of itself constitute bullying)
- Managing performance or underperformance issues
- Issuing reasonable directions about work allocation and performance, and about attendance at the workplace
- Transferring a staff member or taking action to make a staff member redundant where the process is conducted fairly and equitably
- Making justifiable decisions related to recruitment, selection and other development opportunities
- Ensuring that workplace policies are implemented
- Managing allegations of misconduct and utilising disciplinary actions where appropriate or
- Overseeing injury and illness processes in accordance with OHS, injury management and workers compensation legislation and policies.
3. PREVENTION OF WORKPLACE BULLYING - A RISK MANAGEMENT APPROACH

3.1 A risk management approach
These Procedures take a risk management approach to the prevention of bullying as required by Occupational Health & Safety (OH&S) legislation.

As with all foreseeable workplace risks, the potential for workplace bullying must be identified, assessed, and eliminated or minimised as far as possible. Appropriate risk controls must be put in place. Consultation with staff and their representatives should take place at all stages of the process, and their input considered when determining and implementing bullying risk controls (see NSW Health Workplace Health and Safety: Policy and Better Practice Guide PD2005_409).

3.1.1 Identifying and assessing risk
Managers must consult with staff to identify and assess the potential for bullying to create risk in the workplace. WorkCover NSW publication Preventing and Responding to Bullying at Work may assist with this process. The document is located at the following address:

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

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

- Ensure that all staff have an awareness of their obligations not to engage in bullying behaviour
- Promote an anti-bullying workplace environment by their own conduct and behaviour in the workplace
- Ensure that information about what types of behaviours do, and do not, constitute workplace bullying are communicated to all staff, with a particular emphasis on any high risk areas identified through a risk assessment process
- Ensure that NSW Health policy in relation to grievance resolution (PD2010_007 Grievance-Effective Workplace Resolution) is communicated to all staff
- Encourage and support staff in the self-resolution of conflict and workplace grievances by providing appropriate information and training where necessary eg conflict resolution
- Provide a clear and simple process for reporting bullying
- Ensure they are equipped to, and do, respond promptly and effectively to complaints related to bullying
- Ensure induction programs also include the organisation’s commitment to zero tolerance of bullying

For further information regarding implementing risk controls refer to WorkCover NSW document Preventing and Responding to Bullying at Work at the following address:

3.1.3 Monitoring, reviewing and evaluating risk controls
The agency must have procedures in place to monitor anti-bullying strategies, review their ongoing relevance, and capture information about any substantiated complaints of bullying in order to evaluate and improve existing procedures.
Agencies must audit bullying complaints and provide de-identified data to the Department of Health on a quarterly basis (refer to Appendix 4).

The data collected by these audits allow NSW Health to benchmark performance and identify areas where improvement is required.
4 MANAGING A WORKPLACE BULLYING COMPLAINT

4.1. Process for Managing a Bullying Complaint

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

Complaint received.

Conduct initial assessment. Confirm complaint relates to an allegation of bullying. Determine any immediate action required (Section 4.2.1).

Provide information and the substance of allegations to the person who is the subject of those allegations (Section 4.2.4).

Decide on appropriate action to address the allegations eg mediation, facilitation, investigation (Section 4.2.1 & 4.2.6).

Conduct a risk assessment and implement any interim controls (Section 4.2.2).

Where an investigation is required, decide on an investigator (Section 4.3.1).

Conduct investigation or other action to resolve complaint.

Review findings of investigation and determine any necessary action.

Implement recommendations arising from investigation, or from other actions taken to address allegations (Section 5).

Complaint substantiated.

Implement recommendations for individuals.

Implement recommendations for organisation.

Complaint not substantiated.

Implement recommendations for individuals.

Implement recommendations for organisation.
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, and should not be provided to third parties with no legitimate involvement in the process. Those involved in a bullying 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 bullying 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 for managing misconduct.

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

The situation may arise where a staff member makes a complaint of bullying, but wishes his or her identity to be kept anonymous, or in particular not disclosed to the person against whom the complaint was made. Anonymity usually prevents an adequate investigation of a complaint, in addition to impeding the making of a response. In most circumstances, complainants should be advised that effective action to deal with a complaint requires their identity to be made known. (See section 4.1.4 below dealing with reluctance to complain formally and 4.1.5 dealing with anonymous complaints.)

4.1.2 Making a complaint

Where a staff member feels that he or she is 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.

This information can be obtained from their manager, an Anti-Bullying Contact Officer (if available in their workplace), the Anti-Bullying Advice Line (ABAL) (Ph 1300 416 088) or via the intranet or the Human Resources (HR) staff within their agency.

Bullying complaints should usually be made to the relevant manager. Where the complaint is against the manager or where there may be a conflict of interest, the complaint should be made to the next more senior 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.

4.1.3 Role of HR Units in bullying complaints management

It is usually the role of a manager to take the lead in managing bullying complaints raised by their staff. To support this approach, Anti-Bullying Management Advisors are available to provide advice and guidance to managers on effective bullying complaint management.

4.1.4 Reluctance to complain formally

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 reluctance could mean the matter is not serious enough to be managed as bullying and could be resolved using a grievance resolution model. However, it could also mean the staff member fears that making a complaint will cause them more stress, make the work situation worse or make them the subject of reprisals (refer 4.1.5 Anonymous complaints).
In these circumstances the staff member should be advised of options to resolve the matter. Any concerns regarding the process should be explored with the staff member and addressed as far as possible.

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

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 the manager's responsibilities to ensure as far as practicable a risk free workplace.

Appropriate organisational responses could include:
- Reissuing and reinforcing the organisation's anti-bullying policies
- Reminding all staff of their obligations under OH&S legislation and relevant NSW Health policies
- Requiring staff to attend bullying prevention briefings or training
- Emphasising that all complaints will be taken seriously

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

4.1.5 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 ie meeting with the relevant group of staff and encouraging them to come forward with any complaints or providing them with general information on how to make bullying complaints. Where allegations can be independently verified, this should occur and appropriate action taken.

4.1.6 Complaint via workers compensation claim
A manager may first become aware of a potential bullying issue as a result of a workers’ compensation claim.

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

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

4.2 Assessing a Bullying Complaint
All bullying complaints must be treated seriously and confidentially, and acted on promptly. Prompt action should reinforce the message that workplace bullying is unacceptable, and is also consistent with the manager’s duty of care under OH&S legislation. Section 4.1 provides a flow chart outlining the overall process for managing a bullying complaint.
4.2.1 Initial assessment of a bullying complaint
Within 3 working days of the receipt of a complaint of bullying, an initial assessment of the complaint should be conducted. Refer to Appendix 2 to help determine the most appropriate policy pathway/s for managing a complaint where it is determined that it does not relate to bullying. Appendix 3 provides the recommended timeframes for the bullying complaints management process.

This initial assessment is separate from, and should be undertaken prior to, taking action to address the complaint, and generally involves seeking as much information as possible, in discussion with the complainant, in order to:
- Assess the potential seriousness of the matter
- Reduce the likelihood that significant time and resources are allocated to frivolous or vexatious complaints
- Determine whether any immediate action needs to be taken
- Identify policy/s relevant to the complaint and the best process for its management
- Identify initial proposed action for proceeding eg mediation, facilitation or investigation.

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.

If the matter appears relatively minor, it may be more appropriate to manage the complaint as a grievance. For further information on the initial assessment, mediation and facilitation see the NSW Health policy on grievance resolution PD2010_007.

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Where the initial assessment suggests that the behaviour being complained about falls under the definition of bullying as set out in Section 2.3, and particularly where efforts by the staff member to resolve the matter, or other interim strategies to deal with the matter as a grievance have failed, then these procedures 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), immediate options should be raised having regard to the views of the complainant, eg short term leave or transfer to a different work area. Any action taken in these circumstances must be determined in the context of managing the immediate welfare of the individual, and should not be based on the validity or otherwise of any complaint.

4.2.2 Risk assessment of a bullying complaint
After immediate issues are addressed by way of an initial assessment, an assessment of potential ongoing risks to all parties involved with the complaint in respect of current work arrangements should be conducted. This will determine whether any further action needs to be taken to ensure as far as practical the wellbeing of those involved until any action to address the complaint 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 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 eg previous history of conflict between the parties etc
- Any relevant previous history of bullying allegations involving the parties to the complaint and the outcome
• The views of the complainant about possible management options during the investigation and
• The potential for the complainant to be subjected to reprisals.

Proposed temporary arrangements should be discussed with the complainant, and his or her 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 a complaint of bullying has occurred. It should be specific to the individual circumstances, be practical and proportionate to those circumstances, be for a defined time frame, and identify a review date. If at any time during the investigation, information arises that is relevant to the risk assessment, the actions should be reviewed to ensure they remain appropriate.

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

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

The risk assessment may also conclude that a complaint is frivolous, misconceived, reckless, vexatious or malicious, in which case no further action is required in relation to the substance of the complaint (refer Sect 5.1.1).

4.2.3 Suspension
NSW Health policy clearly identifies that suspension of a staff member is only to be considered in very narrow, specific circumstances. For further information, see the NSW Health policy for managing allegations of misconduct. See the Personnel Handbook for Department of Health staff.

4.2.4 Notifying the person against whom a complaint is made
The person against whom a bullying complaint is made should be provided with the substance of the complaint as soon as possible after they have been advised of the complaint. They must be given reasonable opportunity to respond to the allegations.

Consideration should be given to the most appropriate way of advising a member of staff that a bullying complaint has been made against them. Generally speaking, a face to face meeting with 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.

This initial meeting should be separate from, and undertaken prior to, any further action to resolve the complaint and should be followed up by correspondence confirming the information relayed during the meeting. While such a meeting may not be possible or appropriate in all circumstances, the communication, be it verbal or written, needs to be clear, concise, polite, include all necessary information, and name a contact person.
Both the complainant and the person against whom a complaint is made have rights and responsibilities and should therefore be provided with the following information at the appropriate time:

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

4.2.5 Documenting the assessments

Appropriate documentation of all assessments, including the initial assessment, must be kept. The type of documentation and level of detail will depend on the type of issue, whether it was managed informally or formally and its level of complexity. For informal complaints that can be managed locally, it may be enough to keep brief notes and maintain them locally.

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

4.2.6 Deciding on action to resolve a complaint

A range of options exist to assist parties to resolve complaints promptly and effectively including mediation or facilitation and an appropriate option would have been considered as part of the initial assessment. Due to the potential diversity of issues involved it is important that each complaint is considered individually, in order to determine the best option/s to utilise, and the most appropriate way/s to resolve it. Action should commence immediately to implement the preferred option.

4.3 Investigating the complaint

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

4.3.1 Determining who should conduct an investigation

The person (or persons) identified to do the investigation should posses 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 are 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 eg 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 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 investigator 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

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, the scope of the services to be provided needs to be developed that clearly identifies what is to be done, and include time frames, the type of report to be provided and confidentiality requirements.

4.3.2 Conducting and finalising an investigation

Any investigation process must be fair, impartial, and professionally conducted. The process outlined in the NSW Health policy for *Disciplinary Process in NSW Health - A Framework for Managing PD2005_225* must be followed. For Department of Health staff only, there must be compliance with the relevant provisions of the *Personnel Handbook*. 
5 RESPONDING TO OUTCOMES OF A WORKPLACE BULLYING COMPLAINT

5.1 Responding to the findings

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

5.1.2 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 focussing 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 written 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 bullying behaviour to the person who has been bullied of the inappropriateness of the behaviour, the impact of the behaviour, and offering an apology
- Counselling the person against whom a complaint is made
- Counselling the complainant
- Ongoing performance management and monitoring
- Transfer of the person against whom a complaint is made to a different role
- Reinforcing the requirement for all staff to refrain from conduct that constitutes bullying
- Providing training in what constitutes bullying, appropriate communications skills, managing workplace relationships etc
- Considering disciplinary action if warranted.

5.1.3 Organisational responses to bullying
Strategies for managing organisational issues that may have been identified as permitting or facilitating 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 bullying will not be tolerated
• Reviewing related training to ensure it is appropriate
• Reviewing existing conflict resolution and mediation mechanisms
• Promoting a positive workplace culture including communicating and discussing with staff the NSW Health’s values and aspirations, and the NSW Health Code of Conduct.

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

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.

5.2 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.

The findings from the investigation will dictate what, if any, information regarding the matter is to be placed on the personnel file of a person against whom a complaint was made out, or the complainant’s personnel file where vexatious or malicious claims have been made. To obtain guidance on what material should be placed on personnel files for NSW Health Service staff see current NSW Health policy for managing allegations of misconduct, and for Departmental staff, the relevant provisions of the Personnel Handbook.

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 4 for information to be collected).

Aggregated reports developed from the summaries will help identify any sections 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 eg failure to conduct the initial assessment and/or the risk assessment, regular need for further action following the review etc. This process in turn allows the organisation to take appropriate remedial action and systems improvements eg further training for those managing or investigating complaints, improvements to the prevention systems in areas with a high frequency of complaints etc.
## 6 RELATED DOCUMENTS

<table>
<thead>
<tr>
<th>Related Documents</th>
<th>Title and link</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix 1</td>
<td>Rights and Responsibilities in Management of Bullying Complaints</td>
</tr>
<tr>
<td>Appendix 2</td>
<td>NSW Health Complaints/Issues Management Policies and Guidelines</td>
</tr>
<tr>
<td>Appendix 3</td>
<td>Recommended timeframes for managing a bullying complaint.</td>
</tr>
<tr>
<td>Appendix 4</td>
<td>Bullying Complaint Case Management Form</td>
</tr>
</tbody>
</table>
APPENDIX 1

Rights and Responsibilities in Management of Bullying 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 bullying 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 informed of all decisions and progress 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 access to any records of meetings which they attended to enable them to confirm that they are an accurate and true record
- To have a support person present at any meetings they attend relating to the complaint
- To seek advice from management and professional and confidential support offered through the Employee Assistance Program (EAP) or other support services.

Key responsibilities include:
- To recognise their individual role in developing harmonious workplace relations and promoting a positive and cooperative workplace culture
- To take responsibility for their own actions in the workplace, and where the actions of others are disagreeable to them, attempt to settle matters, where appropriate, with that other person/s in the first instance
- To raise matters of concern at an early stage and actively participate in the bullying complaint resolution process
- To provide management with specific information regarding the perceived 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 bullying complaint to any third party who have no legitimate involvement in the process
- To ensure that any allegations relating to 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 occupational health and safety by 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 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 bullying 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.
- To have the issues raised treated in a fair and appropriately confidential manner
- To be informed of all decisions and progress made which may affect them, including with respect to any substantiated complaints, with consideration given to the privacy of other parties
- To have a support person present at any meetings they attend relating to the complaint
- To have access to any records of meetings which they attended to enable them to confirm that they are
an accurate and true record.

**Key responsibilities include:**
- 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 when a complaint is substantiated.

**Supervisor/Manager**

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

**Key responsibilities include:**
- To ensure all staff are aware of their rights and responsibilities in respect of bullying and know how to access the bullying complaint resolution process
- To treat all workplace bullying complaints fairly, confidentially and in a timely manner.
- Where they are unable, 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 bullying complaint procedures are being followed, there should be as little disruption to work as possible
- To protect staff members from victimisation and harassment
- To take a pro-active approach to prevent bullying in the workplace.

**Support Person**

**Key rights include**
- To be provided with a copy of the *Prevention and Management of Workplace Bullying in NSW Health* policy and procedure

**Key responsibilities include:**
- To provide support to a person they are present with at a meeting, but not to advocate on behalf of that person
- To attend meetings with the person they are supporting, related to the complaint, unless the party no longer requires their involvement.
- To maintain appropriate confidentiality.
APPENDIX 2

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.

<table>
<thead>
<tr>
<th>Nature of Issue/Complaint</th>
<th>Guiding NSW Health Policy Directives or Guidelines (Refer to the following PD’s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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?</td>
<td>PD2010_007 Grievance – Effective Workplace Resolution</td>
</tr>
<tr>
<td>Does the complaint primarily relate to bullying, harassment, threatening or discriminatory behaviour?</td>
<td>PD2011_008 Prevention and Management of Workplace Bullying in NSW Health PD2005_223 Joint Management and Employee Association Statement on Bullying, Harassment and Discrimination (Public Health System Staff) PD_2005_250 Joint Management , PSA and Nursing Association Statement on Bullying, Harassment and Discrimination (Staff of Department of Health)</td>
</tr>
<tr>
<td>Does the complaint primarily relate to behaviour or activity that, if sustained, is likely to result in disciplinary procedures?</td>
<td>Refer to the following PD PD2005_225 A Framework for Managing the Disciplinary Process in NSW Health</td>
</tr>
<tr>
<td>Does the complaint primarily relate to the clinical behaviour or performance of a clinician or public health organisation?</td>
<td>PD2006_007 Complaint or Concern about a Clinician – Principles for Action GL2006_002 Complaint or Concern about a Clinician - Management Guidelines .</td>
</tr>
<tr>
<td>Does the complaint primarily relate to matters that may be criminal, or may constitute corrupt conduct, maladministration or substantial waste?</td>
<td>PD2009_034 Corrupt Conduct – Reporting to Independent Commission Against Corruption (ICAC) ; PD2008_029 Employment Screening Policy; PD2005_315 Zero Tolerance Response to Violence; PD2005_135 Policy and Guidelines for the Development of Protected Disclosures Procedures in Health Services.</td>
</tr>
<tr>
<td>Has the complaint been lodged as a protected disclosure, as defined in the Protected Disclosures Act 1994?</td>
<td>PD2005_135 as above.</td>
</tr>
<tr>
<td>Does the complaint primarily relate to allegations of sexual, physical or emotional abuse of a patient or client by an employee?</td>
<td>PD2008_029 as above. PD2005_299 Protecting Children and Young People.</td>
</tr>
<tr>
<td>Question</td>
<td>Reference</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Does the complaint primarily relate to allegations of sexual, physical</td>
<td>PD2008_029 as above.</td>
</tr>
<tr>
<td>or emotional abuse of a child by an employee, or others?</td>
<td></td>
</tr>
<tr>
<td>Does the complaint primarily relate to a serious breach of the Code</td>
<td>PD2005_626 NSW Health Code of Conduct.</td>
</tr>
</tbody>
</table>
APPENDIX 3

**Recommended time frame for managing bullying complaints**

- **Process must commence as soon as a bullying complaint is made**

<table>
<thead>
<tr>
<th>Week</th>
<th>Process step</th>
<th>Strategies/ Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Conduct initial assessment</strong> of complaint within 3 days and determine whether any immediate action needs to be taken (see section 4.2.1).</td>
<td>If any delays occur in conducting the initial assessment the complainant must be advised immediately and kept informed of progress.</td>
</tr>
<tr>
<td>1</td>
<td>Confirm complaint relates to an allegation of bullying.</td>
<td>If the complaint does not relate to an allegation of bullying, the appropriate process eg grievance procedure or performance management should be put in place (see document 2).</td>
</tr>
<tr>
<td>1</td>
<td>Notify the person against whom the complaint is directed. Provide advice and support to both parties, as appropriate.</td>
<td>The person against whom a complaint is directed should be provided with the substance of the complaint in the first instance, usually by a face to face meeting and advised that they will be given reasonable opportunity to respond.</td>
</tr>
</tbody>
</table>
## Prevention and Management of Workplace Bullying in NSW Health

### 1-2 Conduct Risk Assessment to assess potential ongoing risks to parties to the complaint including in regard to current work arrangements (see section 4.2.2).

Some issues to be considered:
- Relevant information from initial assessment
- Psychological state of complainant and person against whom a complaint is made
- How long alleged bullying has been going on
- Seriousness of allegations
- Degree of disruption to work environment
- Any complicating factors eg previous history of conflict between parties
- Any previous history of bullying allegations involving either of the same parties and the outcomes
- Potential need to protect complainant from reprisals.

### 2 Implement required actions for both parties following risk assessment

Action resulting from the risk assessment should not be based on any presumption that a complaint has occurred. It should be specific to individual circumstances, be practical and be for a defined timeframe with a review date set.

### 2 Determine what action is to be taken to manage the complaint (see section 4.2.6).

### 2 If an investigation is necessary, scope the investigation (see section 4.3) and decide on an appropriate investigator (see section 4.3.1).

Usually the manager who received the complaint may be appropriate to do the investigation. Depending on knowledge, skills & experience of the manager, liaison with local HR services may be required.

### 3-9 Undertake investigation.

The processes outlined in the NSW Health disciplinary issues management process policy directive must be followed. For Departmental staff, the relevant provisions of the Personnel Handbook must be adhered to.

### 3-9 Where there is to be no investigation implement action to resolve the complaint ie mediation, facilitation

### 4-9 Complaint finalised (either substantiated or unsubstantiated) or agreement on resolution reached.
<table>
<thead>
<tr>
<th>Period</th>
<th>Action Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>+ 1 week</td>
<td>- Findings communicated to both parties. Consideration of any feedback</td>
</tr>
<tr>
<td>+ 2 weeks</td>
<td>- Recommendations for action arising from the findings communicated to parties</td>
</tr>
<tr>
<td>+ 3 weeks</td>
<td>- Implement recommendations/ action required resulting from investigation</td>
</tr>
</tbody>
</table>
## APPENDIX 4

### BULLYING COMPLAINT CASE MANAGEMENT FORM

<table>
<thead>
<tr>
<th>Reference Number: (eg NCAHS01)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Status of complaint</td>
</tr>
</tbody>
</table>

#### 1. Complainant Details

| Employment Group (Complainant): |
| Health Service: |
| Award Classification: |
| Site (Optional): |
| Grade / Level (If known): |

#### 2. Respondent Details

| Employment Group (Respondent): |
| Health Service: |
| Award Classification: |
| Site (Optional): |
| Grade / Level (If known): |
| Relationship to complainant |

#### 3. Notification and Assessment Details

| Health Service file number (optional) |

3.1 Date AHS HR received notification of complaint:  
3.2 Date complaint assessed by AHS HR:  
3.3 Number of days between date complaint notified (3.1) and date complaint assessed (3.2):  
3.4 If over 3 days, reason for delay between notification and assessment:  

#### 3.5. Nature of alleged Bullying (may be multiple responses)

<table>
<thead>
<tr>
<th>Verbal abuse</th>
<th>Sarcasm</th>
<th>Standing over</th>
<th>Watching &amp; following</th>
<th>Persistent teasing</th>
<th>Exclusion</th>
<th>Threat to personal safety</th>
<th>Intimidation</th>
<th>Other or further detail if needed:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Damage to property</th>
<th>unwanted sexual advances</th>
<th>Undermining / Belittling</th>
<th>Touching</th>
<th>Pushing</th>
<th>Threats of inappropriate dismissal/use of organisational processes</th>
<th>Humiliation</th>
</tr>
</thead>
</table>

#### 4. Action Details

---

**PD2011_018**  
**Issue date:** March 2011  
**Page 22 of 23**
4.1 Action taken after assessment at (3.2):
4.2 Comments (if required from 4.1)

4.3 Date action commenced (eg investigator identified/date of mediation scheduled):
4.4 Number of days between assessment (at 3.2) and action commencing (at 4.3)
4.5 If over 14 days, reason for delay in commencing action (4.3):

4.6 Where action is investigation, date investigation report/findings is forwarded to decision maker:
4.7 Where action is investigation, number of days between commencement of investigation (4.3) and report handed to decision maker (4.6):

4.8 For all actions, outcome of complaint:
4.9 Comments (May be multiple outcomes):
4.10 Date complaint finalised eg final decision on outcomes communicated to relevant parties:
4.11 Where action was investigation the number of days between (4.6) and (4.10):
4.12 For all actions, if over 70 days, reason for delay in finalising complaint (4.3) and (4.10):

4.13 Actions Arising from complaint (at 4.10):
- Training (complainant / respondent)
- Disciplinary action (complainant / respondent)
- Performance Improvement Plan (complainant / respondent)
- Change of work system / environment
- Transfer (complainant / respondent)
- Organisation wide changes (e.g. policy review, general training for all staff etc)

Other / Additional comments:

4.14 Total number of days between notification of complaint (3.1) and finalisation of complaint (4.10)

5. Process Review
5.1 Process Review Requested:
5.2 Type of Process Review:
5.3 Outcome of Review / Comments: