



DRAFT

Code of Practice

PREVENTING AND RESPONDING TO WORKPLACE BULLYING



safe work australia

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FOREWORD

This Code of Practice for preventing and responding to workplace bullying is an approved code of practice under section 274 of the *Work Health and Safety Act* (the WHS Act).

An approved code of practice is a practical guide to achieving the standards of health, safety and welfare required under the WHS Act and the Work Health and Safety Regulations (the WHS Regulations).

A code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act, in relation to the subject matter of the code. Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks which may arise. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.

Codes of practice are admissible in court proceedings under the WHS Act and Regulations. Courts may regard a code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Compliance with the WHS Act and Regulations may be achieved by following another method, such as a technical or an industry standard, if it provides an equivalent or higher standard of work health and safety than the code.

An inspector may refer to an approved code of practice when issuing an improvement or prohibition notice.

This Code of Practice has been developed by Safe Work Australia as a model code of practice under the Council of Australian Governments' *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* for adoption by the Commonwealth, state and territory governments.

A draft of this Code of Practice was released for public consultation on 26 September 2011 and was endorsed by the Workplace Relations Ministers Council on *[to be completed]*.

SCOPE AND APPLICATION

This Code of Practice provides practical guidance on what bullying is, how to prevent bullying becoming a health and safety risk in the workplace and what to do if it does occur. This Code is applicable to any workplace and contains information that is relevant to all persons conducting a business or undertaking and their workers.

How to use this code of practice

In providing guidance, the word 'should' is used in this Code to indicate a recommended course of action, while 'may' is used to indicate an optional course of action.

This Code also includes various references to provisions of the WHS Act and Regulations which set out the legal requirements. These references are not exhaustive. The words 'must', 'requires' or 'mandatory' indicate that a legal requirement exists and must be complied with.

1. INTRODUCTION

Bullying can happen in all types of workplaces. Any person is capable of engaging in bullying behaviour in some circumstances and anyone could be a target of the behaviour.

Bullying is a hazard because it may affect the emotional, mental and physical health of workers. The risk of bullying is minimised in workplaces where everyone treats each other with dignity and respect.

1.1 Who has duties in relation to workplace bullying?

Everyone in the workplace has a legal responsibility in relation to preventing bullying.

A **person conducting a business or undertaking** has the primary duty under the WHS Act to ensure, so far as is reasonably practicable, that workers and other persons are not exposed to health and safety risks arising from the business or undertaking.

The duty includes a requirement to ensure, so far as is reasonably practicable,

- the provision and maintenance of a work environment that is without risk to health and safety
- the provision and maintenance of safe systems of work, and
- the health of workers and the conditions of the workplace are monitored for the purpose of preventing illness or injury.

The WHS Act defines 'health' as both physical and psychological health. This means the duty to ensure health and safety extends to ensuring the emotional and mental health of workers.

A person conducting a business or undertaking may be an employer, self-employed, a principal contractor, a person with management or control of a workplace, a designer, manufacturer, supplier, importer or installer.

Officers, such as company directors, must exercise due diligence to ensure the business or undertaking complies with the WHS Act and Regulations. This includes taking reasonable steps to ensure the business or undertaking has and uses appropriate resources and processes to eliminate or minimise risks associated with bullying.

Workers and other persons at the workplace must:

- take reasonable care for their own health and safety,
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons, and
- comply, so far as is reasonably practicable, with any reasonable instruction given by the person conducting the business or undertaking.

1.2 What is workplace bullying?

Workplace bullying is *repeated, unreasonable behaviour directed towards a worker or a group of workers, that creates a risk to health and safety.*

'*Repeated behaviour*' refers to the persistent nature of the behaviour and can refer to a range of behaviours over time.

'*Unreasonable behaviour*' means behaviour that a reasonable person, having regard for the circumstances, would see as victimising, humiliating, undermining or threatening.

Direct or indirect bullying

Bullying can occur face-to-face, over the phone, via email, instant messaging or using mobile phone technologies including text messaging. Bullying can involve many different forms of unreasonable behaviour, which can be obvious (direct) or subtle (indirect).

Examples of direct bullying include:

- abusive, insulting or offensive language
- spreading misinformation or malicious rumours
- behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling or screaming
- displaying offensive material
- inappropriate comments about a person's appearance, lifestyle, or their family
- teasing or regularly making someone the brunt of pranks or practical jokes
- interfering with a person's personal property or work equipment, or
- harmful or offensive initiation practices.

Examples of indirect bullying include:

- unreasonably overloading a person with work or not providing enough work
- setting timelines that are difficult to achieve or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person's skill level
- deliberately excluding, isolating or marginalising a person from normal work activities
- withholding information that is vital for effective work performance
- deliberately denying access to information, consultation or resources
- deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker or workers, or
- unfair treatment in relation to accessing workplace entitlements such as leave or training.

Intentional or unintentional bullying

Bullying can be intentional, where the actions are intended to humiliate, offend, intimidate or distress, whether or not the behaviour did have that effect.

Bullying can also be unintentional, where actions which, although not intended to humiliate, offend, intimidate or distress, cause and should reasonably have been expected to cause that effect. Sometimes people do not realise that their behaviour can be harmful to others. In some situations, behaviours may unintentionally cause distress and be perceived as bullying.

Bullying can be directed at a single worker or a group of workers and be carried out by one or more workers. Bullying can be:

- **Downwards** from managers to workers – for example, a manager or supervisor in a position of power may have a management style that seems to be strict or disciplinary when in fact it is bullying.
- **Sideways** between workers or co-workers – for example, a co-worker seeking to enhance their position or sense of power in the workplace.
- **Upwards** from workers to supervisors or managers – for example, workers may bully their manager or supervisor to try and drive them from the workplace.

Impact of workplace bullying

Bullying can be harmful for the workers who experience it and those who witness it. Each individual will react differently to bullying and in response to different situations. Reactions may include any combination of the following:

- distress, anxiety, panic attacks or sleep disturbance
- physical illness, such as muscular tension, headaches and digestive problems
- reduced work performance
- loss of self-esteem and feelings of isolation
- deteriorating relationships with colleagues, family and friends
- depression and risk of suicide.

Those who witness bullying may experience guilt and fear because they cannot help or support the affected person in case they too get bullied. Witnesses may feel angry, unhappy or stressed with the workplace and may become unmotivated to work.

Bullying can also damage organisations. It can lead to:

- high staff turnover and associated recruitment and training costs
- low morale and motivation
- increased absenteeism
- lost productivity
- disruption to work when complex complaints are being investigated, and
- costly workers' compensation claims or legal action.

1.3 What is not considered to be workplace bullying?

Many things that happen at work are generally not considered to be bullying, although some experiences can be uncomfortable for those involved. Differences of opinion, performance management, conflicts and personality clashes can happen in any workplace, but usually they do not result in bullying.

A single incident of unreasonable behaviour is not bullying, although it may have the potential to escalate into bullying and therefore should not be ignored.

Reasonable management action, carried out in a fair way, is not bullying. Managers have a right to direct the way work is carried out and to monitor and give feedback on performance, but the way that this is done is a risk factor in determining the likelihood of bullying occurring.

Examples of reasonable management action include:

- setting reasonable performance goals, standards and deadlines in consultation with workers and after considering their respective skills and experience
- allocating work to a worker in a transparent way
- fairly rostering and allocating working hours
- transferring a worker for legitimate and explained operational reasons
- deciding not to select a worker for promotion, following a fair and documented process
- informing a worker about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements
- informing a worker about inappropriate behaviour in an objective and confidential way
- implementing organisational changes or restructuring, and
- performance management processes.

Case study: Reasonable management action that is not bullying

Mira works in the purchasing department of a large organisation. She has been there for six months and works with six other staff. The department is busy and the work required is routine and shared evenly among the seven workers.

On a regular basis, Mira falls behind schedule with her tasks. To help develop her admin skills and improve her work performance, the purchasing manager asked Mira to attend a two-day training course. Mira feels humiliated and singled out, even though her manager assures her that her job is not under threat.

Case study: Unreasonable management action that is bullying

John provides IT support for an insurance company and works with three other staff. The IT section has experienced a high staff turnover. John finds that his workload continues to rise however, there does not appear to have been any change in the amount of work received by his colleagues.

John's manager has been criticising him a lot and ignores the fact that John has been working extra hours to try and keep up. John requests a performance review but his manager keeps postponing the meeting. John feels upset about the way he is being managed and lodges a grievance.

Harassment and discrimination

Harassment involves intimidating, offending or humiliating behaviour directed toward a person on the basis of a particular personal characteristic such as race, age or gender.

Discrimination involves the unfair treatment of a person based on a personal characteristic, for example not hiring or promoting a woman to a position because she may become pregnant or has children.

Unlike bullying, harassment and discrimination do not have to be repeated and have to be based on some characteristic of the target.

Discrimination and harassment are dealt with separately under anti-discrimination, industrial and human rights laws. The WHS Act includes specific protections against discriminatory conduct for persons raising health and safety concerns or performing legitimate safety-related functions.

A worker can be bullied, harassed and discriminated against at the same time.

Bullying and violence

Violence usually involves physical assault or the threat of physical assault. Bullying and violence can both result from conflict and can occur together. However, bullying does not always result in violence. Threats to harm someone, violence and damage to property are criminal matters that should be referred to the police.

1.4 What is involved in preventing workplace bullying?

A step by step process

Bullying is best dealt with by taking steps to prevent it long before it becomes a risk to health and safety. This can be achieved by following a risk management process which involves the following steps:

- **identify** bullying risk factors
- **assess** the likelihood of bullying occurring and its impact
- **control** the risks by eliminating them, or where that is not reasonably practicable, minimising the risk as far as reasonably practicable, and
- **review** the effectiveness of the control measures.

Further guidance on the risk management process generally is available in the *Code of Practice: How to Manage Work Health and Safety Risks*.

Consulting workers

Consultation involves sharing of information, giving workers a reasonable opportunity to express views and taking those views into account before making decisions on health and safety matters.

The WHS Act requires that you consult, so far as is reasonably practicable, with workers who carry out work for you who are (or are likely to be) directly affected by a work health and safety matter. If the workers are represented by a health and safety representative, the consultation must involve that representative.

Consultation with workers and their health and safety representatives must occur at each step of the risk management process. Consultation must also be carried out in the development of any policies and procedures related to bullying, including complaints procedures. Consultation will help ensure that workers 'own' and engage with the policy and procedure and that these are tailored to suit the workplace circumstances.

Consulting, co-operating and co-ordinating activities with other duty holders

The WHS Act requires a person consult, co-operate and co-ordinate activities with all other persons who have a work health or safety duty in relation to the same matter, so far as is reasonably practicable.

In some situations, there may be a risk of bullying between workers engaged by different businesses who work together on the same job or at the same workplace. For example, an employee in a retail store may bully a cleaner who has been contracted by the shopping centre management to clean the premises. The business operators of the retail store, the shopping centre and the cleaning company each owe duties. They should communicate with each other and work together to prevent and respond to bullying in an effective way, for example by clearly defining roles and responsibilities in contracts, developing joint policies about not tolerating bullying behaviour and agreeing on how any incidents of bullying will be reported and resolved.

Further guidance on consultation is available in the *Code of Practice: Work Health and Safety Consultation, Co-operation and Co-ordination*.

2. IDENTIFYING AND ASSESSING THE RISK OF WORKPLACE BULLYING

Identifying hazards involves finding all of the things and situations that could potentially contribute to bullying in the workplace and cause harm to people. Although there may be no obvious signs of workplace bullying, this does not mean such behaviour or conduct does not exist.

Sources of information that can assist in identifying whether bullying is, or could be, a problem include:

- patterns of absenteeism, complaints, sick leave and staff turnover
- results from workforce surveys
- direct feedback from workers, managers or supervisors
- hazard reports
- exit interviews
- issues raised by health and safety representatives, and
- workers' compensation claims.

The presence of bullying in the workplace can be the result of a workplace culture and environment that allows or encourages such behaviours to occur. It can also be the product of poor people management skills and lack of supportive leadership. The risk factors that make it more likely for bullying to occur involve:

- organisational culture
- negative leadership styles
- inappropriate systems of work
- poor workplace relationships, and
- workforce characteristics.

2.1 Identifying risk factors

Organisational culture

The culture of an organisation is made up of shared values, beliefs and assumptions that define how an organisation views itself and its environment. These underlying values may encourage acts of bullying and expect targets to endure the behaviour or make it acceptable for management to ignore bullying complaints, for example, when bullying and aggressive behaviour is seen as necessary to get the job done or to 'toughen people up' for the rigours of the industry.

A group within an organisation can differentiate itself from the wider organisational culture, where attitudes and behaviours that are unacceptable in the wider organisation may be established and passed on to new workers in the group.

Leadership styles

Autocratic leadership styles are strict and directive, where workers are not involved in decision making and may have little control or flexibility over their work.

Conversely a leader may have a style that is too relaxed. A relaxed leadership style is characterised by a tendency to avoid making decisions, inadequate or absent supervision of workers, inappropriate delegation of tasks to subordinates and little or no guidance or performance feedback being provided to workers.

Systems of work

The way in which work is organised and designed can have a significant impact on stress and conflict in the workplace, which is related to the occurrence of workplace bullying. Inappropriate systems of work that may lead to incidents of bullying include:

- workload and excessive task demands (for example, through unreasonable performance measures or timeframes)
- role conflict (perception of contradictory demands and expectations to carry out the job)

- role ambiguity (being unsure about what tasks are part of one's own job, as opposed to someone else's job)
- uncertainty about the way work should be done (for example, through a lack of training)
- job insecurity and change (for example, due to restructuring, downsizing, outsourcing, new rosters or changes in work methods), and
- lack of support systems.

Workplace relationships

Poor workplace relationships may be characterised by:

- criticism and other negative interactions
- negative relationships between supervisors and workers
- poor communication or inadequate consultation
- interpersonal conflict, or
- workers being excluded or isolated.

Workforce characteristics

Although all workers are potentially at risk of being bullied, the following groups of workers may be at higher risk:

- young workers
- new workers
- apprentices
- injured workers and workers on return to work plans
- piece workers, and
- workers in a minority group because of ethnicity, religion, disability, gender or sexual preferences.

2.2 Assessing the risks

A risk assessment can help determine:

- the frequency and severity of bullying behaviours
- whether any existing control measures are effective
- what action should be taken to control the risk, and
- how urgently the action needs to be taken.

The risk indicator in *Appendix A* may help you assess whether factors in your work environment create a risk of bullying. It should be used in consultation with workers and their health and safety representatives. Areas of highest risk revealed in the risk assessment should be addressed first.

When assessing the likelihood of bullying occurring, it is important to recognise the risk factors can be interrelated and therefore should not be considered in isolation.

3. CONTROLLING THE RISK OF WORKPLACE BULLYING

The best way to control bullying risks is to eliminate the factors that can cause it. If that is not reasonably practicable, implement measures to minimise the risk. The following control measures should be considered:

- managing the risks in the work environment
- developing a workplace bullying policy
- developing effective complaints resolution procedures
- providing information and training on workplace bullying to workers, and
- encouraging reporting of workplace bullying incidents.

A number of control measures should be implemented together to manage the risks of bullying, as a single control used in isolation is likely to be ineffective or incomplete. Measures may need to be implemented across the whole organisation, as well as in a specific work area.

3.1 Managing the risks in the work environment

Organisational culture

Creating a culture where everyone in the workplace is treated with dignity and respect and where bullying is not tolerated involves:

- developing a code of conduct
- raising awareness of unacceptable behaviour and its damaging effects
- a management commitment to take reports of unacceptable behaviour seriously and ensure they are dealt with confidentially, fairly and in a timely manner
- developing appropriate human resource policies and procedures, for example relating to recruitment and performance management practices
- empowering supervisors and managers to respond effectively to bullying incidents
- discouraging exclusive 'clubs' and cliques
- facilitating teamwork and cooperation.

Leadership styles

- Recruit persons who are competent in people management into management roles
- Provide training for managers, particularly on how to:
 - Communicate effectively and engage workers in decision-making
 - Provide constructive feedback, formally and informally
 - Effectively manage workloads
- Mentor and support new and poor performing managers
- Implement and review performance improvement/development plans
- Provide regular feedback on management performance
- Provide regular leadership skills training
- Include leadership questions (e.g. conduct and performance of leaders) in exit interviews and worker opinion surveys

Systems of work

- Review and monitor workloads and staffing levels
- Allow workers to control their work and be involved in decision making
- Redesign and clearly define jobs
- Reduce excessive working hours
- Seek regular feedback from staff over concerns about roles and responsibilities
- Develop and implement standard operating procedures
- Plan all change and consult with workers affected as early as possible
- Develop and maintain effective communication throughout workplace change such as restructuring or downsizing.

Workplace relationships

- Develop and implement an issue resolution process, in accordance with the requirements under the WHS Act and Regulations. This may include using mediation to resolve conflict.
- Provide training (e.g. interpersonal communication skills)
- Ensure supervisors act on inappropriate behaviour in a timely manner

Workforce characteristics

- Develop and implement systems to support and protect workers at higher risk of bullying, for example, a 'buddy' system for new workers
- Train line managers to support workers at higher risk
- Provide access to external employee support services or implement a contact officer system to provide support and advice

3.2 Workplace bullying policy

A bullying policy should be developed by the person conducting the business or undertaking in consultation with workers and their health and safety representatives. It should set out the standards of expected behaviour and make a clear statement that inappropriate behaviour will not be tolerated. A bullying policy should support other risk control measures.

The policy may be developed as a specific bullying policy or incorporated into an existing work health and safety policy or handbook. If the business has a human resources section, the policy may be included as a part of other human resources policies.

A workplace bullying policy should contain:

- a statement that the organisation is committed to preventing bullying
- the standards of appropriate behaviour,
- a process to encourage reporting, including contact points
- a definition of bullying with examples of bullying behaviour, and
- the consequences for not complying with the policy.

3.3 Complaints procedures

Developing effective procedures to resolve complaints will help ensure bullying incidents are dealt with in a consistent and fair way. The procedure should be used each time a complaint is made and should be flexible enough to fit the different circumstances of each incident.

The complaints procedure should provide a clear process for reporting and dealing with workplace bullying, including how complaints will be handled, investigated and resolved. It should also nominate the persons in the organisation who are responsible for receiving and investigating complaints.

Like the bullying policy, it must be developed in consultation with workers and their health and safety representatives. All workers should be made aware that procedures exist for resolving bullying in the workplace.

The complaints procedures should:

- be in plain English and, if necessary, available in other languages
- ensure there is no bias and there is a fair hearing
- ensure privacy and confidentiality
- aim to resolve the problem as quickly as possible
- provide the option to make an informal (verbal) complaint or a formal (written) complaint with mechanisms available to address these
- outline what is involved in the complaint handling process, both formal and informal
- include methods for ensuring people are not victimised as a result of lodging a complaint
- clearly state the roles of responsible individuals such as managers and supervisors, contact officers or grievance officers,
- contain review procedures and a process for appeal of outcomes, and

- identify external avenues available to workers where grievances have been unable to be resolved internally.

Using mediation to resolve conflict

In cases of conflict at work which have not yet escalated into bullying, mediation may be a useful tool. Mediation is a voluntary process where an impartial third party (preferably a trained mediator) assists the parties put their respective cases before each other. The role of a mediator is to assist both parties understand the perspective of the other and to find an agreement the parties are willing to abide by. Mediation is an example of early intervention that may prevent bullying.

3.4 Information and training

Information to raise awareness of bullying and its impacts in the workplace may be provided in various ways, for example:

- information sessions
- team meetings or toolbox talks
- newsletters, pamphlets
- payslip attachments
- posters
- intranet announcements, or
- email messages.

All workers, managers and supervisors should be trained to recognise and deal with bullying as it occurs. A training program should also cover:

- the workplace policy and procedures
- how to comply with the policy
- how to deal with bullying
- how to report bullying, and
- measures used in the workplace to prevent bullying.

Training may need to be tailored to meet the needs of particular worker groups. The training should suit the work experience, gender, disability, ethnicity and/or levels of literacy of the group.

Face-to-face training with facilitated role plays, group work and opportunities to ask questions are often most effective. When providing training about bullying, it is not appropriate to include specific examples of bullying incidents that have occurred in the workplace or details of investigation outcomes.

Bullying has been linked to situations of role conflict and ambiguity. Workers should understand their role and have the appropriate skills to do their job. This includes ensuring that workers who manage or supervise others have good communication and people management skills, or if necessary, providing training to acquire these skills before they start supervisory duties.

Workers who have a designated role in handling reports of bullying should undertake specific training to assist them to carry out their role effectively.

Information and training on workplace bullying, including any relevant policies and procedures, should be included in worker inductions.

3.5 Encourage reporting

Workers should be encouraged to report bullying incidents. This will help ensure intervention occurs as early as possible so prompt assistance and support can be provided to workers. It will also help assess whether bullying prevention measures are working.

Reporting can be encouraged by:

- supervisors and managers promoting reporting

- consistent and effective responses to reports
- regularly providing information (e.g. quarterly) to health and safety committees on numbers of reports made, how they were resolved and what control measures were put in place to address underlying risk factors, and
- making this information available to health and safety representatives and workers.

Contact officers

In some workplaces, it may be useful appointing a person within the workplace as a first point of contact for workers who believe they have been bullied at work. A contact officer should be suitably trained to provide workers with confidential information and support about how best to address an incident. They should have access to information about the options for complaints resolution both inside and outside the business and they should understand the bullying policy.

The contact officer's role involves:

- listening to the target and acting as a support person
- maintaining confidentiality and not taking sides
- explaining and providing information about what constitutes bullying
- providing information about the options available to deal with the issue and the likely results
- providing information on rights and duties under WHS Act and Regulations and other relevant laws, and
- referring the target to counselling or other support services if necessary.

4. RESPONDING TO WORKPLACE BULLYING

Dealing with bullying incidents quickly and impartially will lessen the impact on the workers involved and the business.

4.1 Principles for handling workplace bullying incidents

There are a number of principles that should guide a response to a bullying incident, outlined in the table below.

Table 1: Principles for dealing with bullying incidents

Treat all matters seriously	Take all complaints seriously. Assess all reports on their merits and facts.
Act promptly	Reports should be dealt with quickly, courteously, fairly and within established timelines. All relevant parties should be advised of how long it will take to deal with the report and should be kept informed of the progress (e.g. a regular update, even if there has been little progress, to provide reassurance that the complaint has not been forgotten or ignored). If additional time is required to address the issues, all relevant parties should be advised of the additional time required and the reasons for the delay.
Do not victimise	It is important to ensure anyone who raises an issue of bullying is not victimised for doing so. The person accused of bullying and any witnesses should also be protected from victimisation.
Support all parties	Once a complaint has been made, the workers involved should be told what support is available (e.g. worker assistance programs and peer support systems) and allowed to have a support person present at interviews or meetings (e.g. health and safety representative, union representative or friend).
Be neutral	Impartiality towards everyone involved is critical. This includes the way people are treated in any process. The person in charge of an investigation or resolution process should never have been directly involved in the incident they are investigating or attempting to address. They should also avoid any personal or professional bias.
Communicate process and outcomes	All parties should be informed of the process, how long it will take and what they can expect will happen during the process and at the end. Provide all parties with clear reasons for any actions that have been taken and, in some circumstances, not taken.
Maintain confidentiality	The process should ensure confidentiality for the target and also ensure confidentiality for other parties involved. Details of the matter should only be known by those directly concerned.
Keep records	Documentation is important to any formal investigation. Even if the matter is not formally investigated, a record should be made of all meetings and interviews detailing who was present and the agreed outcomes.

4.2 Resolving bullying complaints

Bullying complaints can be resolved using an informal resolution and/or a formal investigation approach. The aim of a complaints resolution process is to ensure workers are able to return to a productive working relationship as quickly as possible. At times, all that may be needed is for the person engaging in bullying behaviour to be told how their behaviour is impacting on others. Where the person denies wrong doing or is not open to change a more formal process may be required.

The approach taken should reflect the seriousness of the situation. It is important that the worker who reported the situation agrees with the proposed approach or combination of approaches that

will be used.

4.3 Informal resolution

The informal options open to a worker who believes they are experiencing bullying at work include:

- reporting it to their manager but doing nothing themselves. The manager is then responsible for identifying and minimising any risk without implicating the person
- speaking to a contact officer, union representative, manager or human resource for advice and support, or
- speaking to the person engaging in bullying behaviour directly, being mindful of personal safety and the possibility of reprisals.

If a worker chooses to speak directly to the person engaging in bullying behaviour, the procedures should advise them to keep a record of that conversation. If a worker chooses to resolve the issue themselves their manager or supervisor is responsible for ensuring they are protected from any reprisals.

Although a worker has the right to make either a formal or an informal complaint, the procedure should encourage them to consider the informal process first, as this can often achieve a better result for both parties.

The informal approach should not include an investigation or disciplinary action. Instead, a 'no-blame' approach should be used. The main focus in an informal process is to return the individuals to productive work as soon as possible without further bullying behaviour.

A record of the incident should be made for use in the risk management process and when the control measures are next reviewed. The information recorded should cover the nature of the incident, its impact on the work area and the outcome of the informal process. The parties to the incident do not need to be identified in these records. There is no need to include details of the incident in the personnel files of those involved, as this is only necessary once a formal process is initiated.

4.4 Formal resolution

The formal process involves the target of the bullying making a formal complaint in writing which is then formally investigated.

It is important workers clearly understand what to expect from making a formal complaint. For example, workers should be told that:

- the investigation procedures will ensure fairness for all concerned
- an investigation will occur as soon as possible after the complaint is received,
- an impartial and independent (preferably external) person will conduct the investigation.

A formal complaints procedure will differ depending on the size of the business. Some businesses may not need to use all of the steps in the formal process. In such cases the process may involve interviewing each person involved and making a determination based on the information received. In businesses with a human resources section, the process may include all of the steps in the formal process.

The formal process is made up of:

- lodging a complaint
- initial response to the incident by the manager
- a formal investigation
- outcomes of the investigation, including any disciplinary action
- possible appeals process, if necessary, and
- monitoring the situation following the investigation.

Principles of natural justice

Principles of natural justice should be followed in all formal investigations. These principles are designed to protect all parties.

- The person who is alleged to have committed the bullying should be treated as innocent unless the allegations are proved to be true.
- Allegations should be investigated promptly.
- All allegations need to be put to the person they are made against.
- The person the allegations are made against must be given a chance to explain his or her version of events.
- If the complaint is upheld, any disciplinary action that is taken needs to reflect the seriousness of the matter.
- Right of appeal is explained.
- Mitigating factors should be taken into account when assessing if disciplinary action is necessary.

Step 1 - Lodging the complaint

The first step involves the target of the bullying behaviour informing their supervisor or owner of the business they wish to lodge a formal complaint. If the target's manager or supervisor is the person engaging in the bullying behaviour, then the complaint should be received by the next person of seniority in the hierarchy. The bullying contact officer may also receive bullying complaints.

It is the responsibility of the person who receives the verbal notification to:

- protect the target from reprisals
- ensure confidentiality is maintained
- ensure adequate support is provided to both parties
- ask the human resource team (if there is one) to organise the investigation process, and
- provide assistance to the target to submit the written complaint.

The complaint should be in writing with specific allegations including dates, times and names of any witnesses. A template may be included as a part of the complaint procedure to make the reporting process easier.

Step 2 - Initial Response

A suitable manager should meet separately with both parties as soon as possible and explain the formal process and their rights and responsibilities. The discussion should include:

- the expected timetable for investigation and resolution of the complaint
- how the complaint will be investigated (e.g. interviews with the target, the person accused of bullying behaviour and any witnesses; viewing documentary evidence)
- who will receive copies of any statements and records of interview, if obtained
- who can be present at interviews
- whether parties can refuse to participate
- what support mechanisms will be in place for each party, and
- what interim measures will be taken to ensure the safety and welfare of the target during the investigation (interim measures may include suspension of the person accused of bullying behaviour pending the outcome of the investigation, or assignment to other duties until the investigation is complete).

Step 3 - The Investigation

An independent investigator should investigate the complaint. The investigator may be a manager from another work area or someone external to the business. Either party should have the right to challenge the independence and impartiality of the investigator, providing they present reasonable grounds for doing so.

The investigator should notify the person accused of bullying behaviour in writing about:

- the details of the complaint
- the interview time
- the process and their rights (including the right to have a representative)
- time frames for the investigation
- requirements for confidentiality, and
- the possible consequences of the investigation.

The investigator should then interview the person accused of bullying behaviour. If they admit to the behaviour, the matter can be referred back to their supervisor or manager for appropriate action. This may include disciplinary action and/or referral to counselling and training services. The admission of the behaviour and any remorse expressed should be viewed positively and should be taken into account when determining what disciplinary action should be taken, if any.

If the person accused of bullying behaviour disputes the allegations, further enquiries should be carried out in an attempt to determine the facts. This may involve speaking to the target, the person accused of bullying behaviour and any witnesses and may also involve considering relevant documentation.

Step 4 - Investigation outcomes

The investigator should provide a report on the outcomes of the investigation. The findings should be communicated to the parties in writing.

If the allegation cannot be substantiated, this does not mean the bullying did not occur and assistance should be provided to remedy the conflict. This may involve mediation, counselling, changed working arrangements or addressing other organisational issues that may have contributed to the circumstances of the complaint.

If the complaint is found to be vexatious or malicious, counselling should be provided for the target. This action should be considered very seriously and should only be undertaken in the rarest of circumstances.

If the allegation is found to be substantiated, disciplinary action should be taken. The action will depend on the severity of the bullying and may include:

- an apology (if the target requests it and an apology can be sincerely given)
- a verbal or written warning
- professional counselling
- remedial training (i.e. leadership training or communication training)
- an undertaking that the behaviour will not be repeated, with regular monitoring and/or inclusion in performance agreements
- transfer to another work area
- demotion, or
- dismissal (this should only occur in the most severe cases or if it is a repeated case of bullying, and is subject to industrial laws).

Assistance should also be provided for the target, such as:

- offering professional counselling
- redressing any inequality resulting from the bullying behaviour
- re-instating of any lost privileges resulting from the bullying behaviour (e.g. re-crediting leave)
- mentoring and support from a senior manager
- providing training (i.e. resilience training, assertive communication or self-esteem programs), or

- organising an opportunity to work in a new area (this should only be done if the victim agrees and if there is no risk of bullying in the new area).

Note that mediation is not an appropriate intervention if an allegation of bullying has been substantiated. Expecting a person who has been targeted by bullying behaviour to enter into agreements with their abuser may constitute a form of punishment for the target.

Step 5 – Post investigation

The procedures should provide mechanisms to enable both parties to appeal against the decision if they feel they have a reason to do so.

There should also be a follow-up review to ensure the wellbeing of the parties involved and actions taken to stop the bullying have been effective.

5. MONITORING AND REVIEWING CONTROL MEASURES

Once control measures have been implemented, you should be checking and reviewing them to ensure they are effective in preventing and managing bullying behaviour.

The review must be carried out in consultation with workers and their health and safety representatives. Information for the review can be obtained from the same sources used in the hazard identification stage, including:

- confidential surveys
- exit interviews
- records of sick leave and complaints.

The following questions may assist in the review:

- Are supervisors and managers trained to recognise and deal with workplace bullying? Has the training been effective?
- Has awareness been raised amongst staff about bullying in the workplace?
- Are workers not afraid to speak up about unacceptable behaviour?
- Has there been a noticeable change in workplace morale and behaviour over time?
- Are complaints being dealt with quickly and effectively?

The risk management process should be a continual cycle in order to prevent workplace bullying from recurring. If the strategies have not been effective, it is important to analyse the situation further to determine how to fix the problem.

The review can be conducted at any time, but is recommended:

- when an incident of bullying has been substantiated
- at the request of an WHS representative or WHS committee
- when new or additional information about bullying becomes available, and
- according to a scheduled review date.

Results of reviews should be reported to managers, health and safety representatives and health and safety committees.

APPENDIX A – IDENTIFYING, ASSESSING AND CONTROLLING BULLYING RISKS



