Australian Capital Territory

Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2011*

Notifiable instrument NI 2011 – 761

made under the

***Work Health and Safety Act 2011*, section 274 (Approved Codes of Practice)**

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1   Name of instrument

This instrument is the Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2011.

2   Commencement

This instrument commences on 1 January 2012.

3   Code of Practice Approval

Under section 274 of the *Work Health and Safety Act 2011* (the Act), and being satisfied that this code of practice was developed in accordance with the process described in s274 (2) of the Act, I approve the ACT Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2011.

Dr Chris Bourke
Minister for Industrial Relations
15 December 2011

*Name amended under Legislation Act, s 60

Prevention and Control of Workplace Bullying

ACT Code of Practice 2011

Prevention and Control of Workplace Bullying Code of Practice 2011

Important information about the Prevention and Control of Workplace Bullying Code of Practice 2011

- The code commences on 1 January 2011

Purpose of the Code of Practice

Codes of practice state ways to manage exposure to risks. If a code of practice exists for a risk at your workplace, you must:
- do what the code says; **or**

- adopt another way that identifies and manages exposure to the risk; **and**

- take reasonable precautions and exercise due care in relation to the risk.

What is this code of practice about?

This code of practice provides practical advice about ways to prevent or control exposure to the risk of death, injury or illness created by workplace bullying.

Who should read this code of practice?

You should read this code of practice if you are:
- an employer or person in control of a business or undertaking

- a health and safety officer

- a workplace safety representative or workplace safety committee member

- a manager or supervisor

- a person concerned about workplace bullying.

This Code of Practice forms the minimum standards of acceptable practice for the prevention and control of workplace bullying in the ACT.

Obligations under the *Work Health and Safety Act 2011*

The *Work Health and Safety Act 2011* (the Act) places obligations on certain persons in control of a workplace to ensure workplace health and safety by managing risk.
Persons who have control of a workplace have an obligation to ensure:

- the workplace health and safety of their workers and volunteers

- that any other person is not affected by the conduct of the business or undertaking.

Workers have a duty not to expose themselves, or others who may be affected by their work, to work safety risks because of their work.

Managing risks to health and safety in workplaces means identifying and assessing risks, 'controlling' (i.e taking all reasonably practicable steps to either eliminate or reduce the likelihood or impact of) risks and monitoring and evaluating any steps taken to control risks.

Under the Act, there are three types of instruments to help you meet workplace health and safety obligations – regulations, allowable and disallowable instruments and codes of practice.

If there is a regulation or instrument about a risk, you **must** do what the regulation or notice says.
If there is a code of practice about a risk, you **must** either:

- • do what the code says, **or**

- • do all of the following

    o adopt and follow another way that gives the same or greater level of protection against the risk

    o take reasonable precautions

    o exercise proper diligence.

If there is no regulation, instrument or code of practice about a risk, you must choose an appropriate way to manage exposure to the risk and take reasonable precautions and exercise proper diligence to ensure that your obligations are met.

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1. What is workplace bullying?

1.1. Meaning of 'workplace bullying'

A person is subjected to workplace bullying if the person is subjected to repeated unreasonable behaviour, by a person or group of people in the workplace, including the person's employer that:

    (a)   is potentially harmful to the physical or psychological health or wellbeing of the person

    (b)   the person considers the behaviour to be offensive, intimidating, humiliating or threatening

    (c)   a reasonable person would consider the behaviour to be offensive, humiliating, intimidating or threatening.

Workplace bullying does <u>not</u> include reasonable management action taken in a reasonable way by the person's employer or their representative in connection with the person's employment.

This definition is intended to cover a wide range of behaviours that can have an adverse impact on the workplace health and safety of workers and other persons. Bullying behaviours can range from subtle intimidation to more obvious aggressive tactics.

Listed below are examples of behaviours that may be regarded as workplace bullying, <u>if</u> that behaviour is repeated or occurs as part of a pattern of behaviour. This is not an exhaustive list. However, it does outline some of the more common types of workplace bullying behaviours. Examples include:

- abusing a person loudly, usually when others are present

- repeated threats of dismissal or other severe punishment for no valid reason

- constant ridicule and being put down

- leaving offensive messages on email or the telephone

- sending group emails to embarrass or humiliate a person

- sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways

- maliciously excluding and isolating a person from workplace activities

- persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters

- humiliating a person through gestures, sarcasm, criticism and insults, often in front of contractors, customers, management or other workers

- spreading gossip or false and malicious rumours about a person with an intent to cause the person harm.

1.2. Meaning of 'repeated behaviour'

'Repeated' refers to the constant nature of the behaviour, not the specific type of bullying behaviour. Behaviour is considered 'repeated' if an established pattern can be identified. It may involve a series of diverse incidents – for example, verbal abuse, sabotaging a person's work and unreasonable threats of dismissal.

2. What is <u>not</u> workplace bullying?

There are bound to be occasional differences of opinion, conflicts and problems in working relationships – these are part of working life. However, if the workplace behaviour is repeated, unwelcomed and unsolicited, and offends, intimidates, humiliates or threatens a person, then workplace bullying exists and action must be taken to stop the behaviour.

2.1. Reasonable management practice

Some management practices may be uncomfortable for workers, but, when the management practices are reasonable and when they are taken in a reasonable manner in accordance with work safety legislation, they are not considered to be bullying. Such practices could include:

- performance appraisal processes

- providing negative feedback on work when this is done in a respectful manner and in private

- being found unsuitable for a position in a merit based selection process

- being allocated additional work when this is in keeping with the workload of other workers in the work area

- counselling a worker about poor work performance

- applying harsh conditions that are in keeping with health and safety standards and when these are applied to everyone else in the workplace

- changing a roster in a reasonable way, even when the worker may not like it

- asking for a medical certificate when a worker is off work sick

- moving a worker to a different work area when this is in keeping with their duty statement and the worker is consulted prior to the move

- being left out of meetings that are not relevant to a worker's duties

- business processes, such as, workplace change or restructuring.

However, these management actions may still be relevant to the code of practice where:

- managerial actions are primarily used to offend, intimidate, humiliate or threaten workers

- processes create an environment where workplace bullying is more likely to occur.

2.2. Good natured interactions between co-workers

Most interactions between co-workers are good natured and are not intended to be offensive or to cause harm. Sometimes good natured interactions can unintentionally cause distress but the behaviour concerned does not necessarily fall into the realm of bullying.. The following are types of behaviours that occur between co-workers that are not generally considered to be workplace bullying:

- joking, laughing and telling stories between colleagues when it is not directed at anyone else and does not contain offensive content

- being asked by a work colleague for a date and they accept and respect any refusal

- being respectfully told by a colleague you are bothering them or holding up their work

- occasionally being left out of social gatherings, such as a group of workers going off to lunch together

- someone disagreeing with an opinion in a respectful way

- accidentally being overlooked in a social invitation (so long as this is not a consistent and repeated occurrence).

However, these behaviours between co-workers may still be relevant to the code of practice where:

- the actions of co-workers are primarily used to offend, intimidate, humiliate, isolate, discredit or threaten other workers.

2.3. Single incidents

A single incident of bullying type behaviour is not considered to be workplace bullying. Nevertheless, single incidents of bullying type behaviour should not be ignored or allowed. Well-managed intervention in response to single incidents will help prevent the situation from escalating.

3. Who may experience workplace bullying?

Workplace bullying can occur between people in any direction within a workplace, for example:

- laterally (a co-worker harassing another co-worker)

- upwards (a worker harassing a manager/ supervisor; a nurse harassing a doctor)

- downwards (a supervisor/manager harassing a worker; a doctor harassing a nurse).

3.1 Common targets of workplace bullying

Contrary to popular belief, the targets of bullying in the workplace are not usually the nerdy, socially inept individuals but individuals who through their integrity, strong work ethic and high performance may pose a threat to the aspirations of individuals who are less ethical and capable. A growing body of literature suggests that the targets of workplace bullying tend to share the following characteristics:

- ethical

- just and fair

- strong work ethic

- well liked and personable

- intelligent

- independent

- self assured

- competent

- having a strong conscience

- productive.

3.2 Being different

Being different can cause some people to be targeted for bullying in the workplace, especially in workplaces that do not value diversity. Situations involving workplace bullying that is due to perceived or real differences may also be covered by ant-discrimination and harassment laws. They include (but are not limited to) gender, race, age, marital status, religion, qualifications, appearance, disability, personal or professional associations, hobbies or interests.

4. Impact of workplace bullying

Workplace bullying can have a significant negative impact on both people and businesses, as outlined in the following sections.

4.1. How workplace bullying can affect a person

There are a range of psychological and physical illnesses and injuries that an individual who continues to be exposed to workplace bullying may experience. The effects of workplace bullying on a person may include:

- high levels of distress, impaired ability to make decisions and poor concentration

- loss of self-confidence and self-esteem and feelings of social isolation at work

- panic attacks, anxiety disorders, depression, social phobia (withdrawal from usual social interaction) and deteriorating relationships with family and friends

- reduced output and performance, incapacity to work, loss of employment

- sleep disturbances, such as, insomnia or severe tiredness.

4.2. How workplace bullying can affect an organisation

It makes good business sense to ensure workplace bullying is prevented or controlled. Workplace bullying can have significant human and financial costs for an organisation and can lead to:

- the breakdown of teams and individual relationships

- poor worker health

- reduced efficiency, productivity and profitability

- bad publicity, poor public image – becoming 'known' as a negative workplace environment

- increased absenteeism and staff turnover

- poor morale and erosion of worker loyalty and commitment

- increased costs associated with: counselling, employee assistance, mediation, recruitment and training of new workers

- increased legal costs and workers' compensation claims.

5. Legislation covering workplace bullying

The *Work Health and Safety Act 2011* (the Act) and the Work Health and Safety Regulation 2011 impose legal obligations on people at workplaces to ensure workplace health and safety.

Under the Act, the following sections define and outline the obligations of relevant persons, including Officers, Persons in Control of a Business or Undertaking, Workers and others.

Section 19 md i undertsalin(employers) or persons in control of workplaces or workers and other persons, under the *Work Safety Act*. It also provides an explanation of the obligations of labour hire organisations and host employers.

5.1. Work Health and Safety Act 2011

5.1.1 Objectives of the *Work Health and Safety Act 2011*

The *Work Health and Safety Act 2011* is the most important piece of legislation that needs to be considered in relation to workplace bullying. Section 6 (1) and (2) of the *Work Safety Act*, refer to the objects of the Act. It states:

   (1) The objects of this Act are to -

   (a)   secure and promote work safety of people at work; and

   (b)   eliminate, at their source, risks to work safety resulting from the activities of people at work or others; and

   (c)   protect people from the risks to work safety resulting from the activities of people at work; and

   (d)   promote a safe and healthy work environment for people at work that –

   (e)   protects them from injury and illness; and

   (f)   is adapted to provide for their physical and psychological needs; and

   (g)   foster cooperation and consultation between employers and workers, and organisations representing employers and workers; and

   (h)   provide a framework for continuous improvement and progressively higher standards of work safety, taking into account changes in technology and work practices.

   (2) The objects of the Act are to be implemented in a way that is consistent with the aspirations of the people in the ACT for the maintenance of, and improvement in, the protection of people from risks to work safety.

Strict penalties apply for anyone in charge of a workplace who ignores their duty of care to work safety and someone is injured as a result.

5.1.2 Person in control of a workplace

Section 21 of the Act is concerned with the duties and obligations of a person or persons conducting a business or undertaking.

21 (1) This section applies to a person conducting a business or undertaking.

> **Examples-person conducting business or undertaking**
> 1. employer
> 2. self-employed person
> 3. municipal corporation
> 4. subcontractor
> 5. franchisor

(2) The person has a duty to ensure work safety by managing risk.

(3) Without limiting subsection (2), the person's duty includes-

(a) providing and maintaining a safe workplace and safe systems of work …

5.1.3 Duty to 'manage risk'

Section 14 of the Act provides that a person 'manages risk' by taking 'reasonably practicable steps:

I. To identify any risk that may be associated with their duty

II. To eliminate those risks

III. If it is not reasonably practicable to eliminate the risk, to minimise each risk.

5.1.4 Duty to take 'reasonably practicable steps'

Section 15 of the Act states that each of the following must be considered in working out what are reasonably practicable steps to either eliminate or minimise risks:

a) The seriousness of the risk

b) The availability and suitability of ways to eliminate or minimise the risk

c) What the duty holder knows or ought reasonably know about the hazard giving rise to the risk and ways of eliminating or minimising the risk

d) The cost of eliminating or minimising the risk

e) Anything else prescribed by regulation.

5.1.5 Failure to comply with safety duty—reckless exposure to substantial risk of serious harm

Section 32 of the Act is concerned with the failure to comply with work safety duty.

32 (1) A person commits an offence if—

(a) the person has a safety duty; and

(b) the person fails to comply with the duty; and

     (c) the failure exposes someone to a substantial risk of serious harm; and

     (d) the person is reckless about whether the failure exposes anyone to a substantial risk of serious harm.

       Maximum penalty: 1 500 penalty units, imprisonment for 5 years or both.

(2) Absolute liability applies to subsection (1) (a).

(3) Strict liability applies to subsection (1) (b).

Note For public sector workplace compliance measures, see div 6.8.

The *Work Health and Safety Act 2011* is clear in its' intent. There is an obligation on employers to secure and promote a safe working environment that includes removing risks to the <u>physical</u> and <u>psychological</u> health of workers. Not only should these risks be eliminated, they should be eliminated at the *source*. Penalties can apply to people with a duty of care to act to eliminate or manage work safety risks in the workplace who do not do so.

5.1.6 Obligations of persons conducting a business or undertaking (employers)

An 'employer' is a person who conducts a business or undertaking and in the conduct of the business or undertaking, engages someone else to do work. A person is considered to have 'engaged someone else' to do work even when the person works on a voluntary basis.

Under the Act, a relevant person who is an employer has an obligation to ensure the workplace health and safety of the person, each of the person's workers and any other person who is affected by the conduct of the relevant person's business or undertaking.

5.1.7 Applicability to workplace bullying

In relation to workplace bullying, there is a clear legal duty on employers and persons in charge of a workplace to not only consider the physical needs of workers in regard to work safety, but to also consider the psychological needs of workers.

5.1.8 Obligations of workers

Workers also have a responsibility in regard to workplace bullying. Section 27 (1) of the Act states that a worker has a duty not to expose themselves, or other people who may be affected by their work, to work safety risks.

Workers who bully other workers could also be considered to be in breach of their duty under the Act and could be liable to penalties.

6. Risk management process

Workplace bullying can occur in any workplace, given certain circumstances. It is important that relevant persons who are employers apply the risk management process to prevent or control exposure to the risk of workplace bullying.

The risk management process involves:

1. **identifying** the **hazard(s)**

2. **identifying** the associated **risk(s)**

3. **assessing** the risks that may result because of the hazards

4. **deciding** on control measures to prevent or control the level of the risks

5. **implementing** control measures

6. **monitoring** and **reviewing** the effectiveness of the control measures.

This process, which is illustrated in **Figure 1**, should always be performed in consultation with workers and other persons.

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┌─────────────────────────────────────────────────────────────┐
│                     IDENTIFY THE HAZARD                       │
│      Examine each work area, task and practices to identify   │
│                         all hazards.                          │
└─────────────────────────────────────────────────────────────┘
                              ⇩
┌─────────────────────────────────────────────────────────────┐
│                      IDENTIFY THE RISK                        │
│  Risk is the potential consequence of a hazard which correlates│
│   to the likelihood of a hazard to cause injury.              │
└─────────────────────────────────────────────────────────────┘
                              ⇩
┌─────────────────────────────────────────────────────────────┐
│                      ASSESS THE RISK                         │
│  Identify the likely severity of an injury and the probability│
│              of an injury occurring.                          │
└─────────────────────────────────────────────────────────────┘
                              ⇩
┌─────────────────────────────────────────────────────────────┐
│                     CONTROL THE RISK                         │
│  Use the risk control hierarchy and adopt a risk control      │
│  measure that is appropriate, starting with the top and       │
│                    working down.                              │
│                  Eliminate the hazard                         │
│                Substitution of the hazard                     │
│                  Engineering controls                         │
│                 Administrative controls                       │
│               Personal protective equipment                   │
└─────────────────────────────────────────────────────────────┘
                              ⇩
┌─────────────────────────────────────────────────────────────┐
│                  DOCUMENT THE PROCESS                        │
└─────────────────────────────────────────────────────────────┘
                              ⇩
┌─────────────────────────────────────────────────────────────┐
│                  MONITOR AND REVIEW                          │
└─────────────────────────────────────────────────────────────┘
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Figure 1 The workplace health and safety risk management process.

7. Consultation

7.1. Who to consult

Under the Act, a relevant person who is an employer has an obligation to consult with their workers, either through Work Safety Representative and Work Safety Committee, where they are appointed, or in some other agreed way, on any issue that affects or may affect the workplace health and safety of persons at the workplace.

Regardless of this obligation, when responding to or in seeking to prevent workplace bullying, it is important that consultation occur with workers, including managers and supervisors.

7.2. Why consult

As stated above, workplace consultation on health and safety matters is a legislated obligation. Consulting with workers and other persons will also help relevant persons who are employers to:

- increase awareness about workplace bullying and promote open communication about the issue

- identify the hazards and assess if workplace bullying is a problem

- determine the most appropriate control measures

- gain support, acceptance and commitment to the control measures implemented at the workplace

- determine the effectiveness of the control measures.

7.3. How to consult

Consultation can take the form of informal on-the-job discussions with a work unit, Work Safety Committee meetings, staff meetings, special working parties or anonymous surveys.

The form of consultation adopted should be one that has been agreed to between management and the organisation's workers.

7.4. What to consult about

Consultation should occur at all stages of the risk management process, particularly when:

- identifying hazards and risk factors

- identifying suitable measures to prevent or control the risks

- determining the best way to raise awareness of the issue

- developing the workplace bullying prevention policy

- developing complaint handling procedures, including reporting, investigation, resolution and appeal processes.

8. Identify the hazards

This step involves finding out if there is a problem with bullying in the workplace, or the potential for a problem. It should not be assumed the workplace is free of bullying just because there are no obvious signs of bullying.

Workplace bullying is often subtle or hidden, making it difficult to detect in the workplace. Workers may also be reluctant to report bullying because they fear 'payback' from the bully, or because they believe they will be labelled as 'weak' or that no one will act on the problem.

Hazards that may cause or contribute to workplace bullying can be identified through:

- • personal observations (for example, assessment of workplace behaviours)

- • discussions with workers, including managers and supervisors, work safety representatives and committees and employee counsellors

- • anonymous organisational climate/worker opinion surveys

- • interviews with workers who leave (exit interviews)

- • an analysis of human resource statistics, for example:

    o   increases in workplace bullying grievances or complaints

    o   increases in workers' compensation claims relating to workplace bullying.

8.1. Indirect signs of workplace bullying

Signs of workplace bullying may appear indirectly. These signs may not always be linked with workplace bullying and need to be considered within the overall workplace environment.

Indirect signs of workplace bullying may include:

- • changes in human resource management trends, for example:

    a)   increases in levels of absenteeism and staff turnover

    b)   increases in the use of employee counselling services

- • workers leaving the organisation reporting dissatisfaction with working relationships

- • negative results from organisational climate/worker opinion surveys

- • the breakdown of relationships between workers, customers or management

- • workers becoming withdrawn and isolated

- • poor worker morale and erosion of loyalty and commitment.

9. Assess the risks

Relevant persons who are employers who identify hazards in the workplace will need to assess the risk (**likelihood** and **consequences**) of these hazards causing death, injury or illness to a person at the workplace. Some of the factors that can affect the risk of workplace bullying occurring are outlined in Table 1.

Table 1 Factors to consider when determining the risk of workplace bullying

Factor	Issues
1. Likelihood of workplace bullying occurring in the workplace	For example, to what extent do (a) organisational climate/worker opinion surveys, (b) discussions with workers or (c) personal observations suggest that workplace bullying is a problem? Are there factors that may increase the risk of workplace bullying occurring, present in your workplace? Refer to the checklist below. Does the workplace have any control measures currently in place to prevent or control exposure to the risk of workplace bullying, for example, a prevention policy and complaint handling system? How effective are these measures at preventing or controlling exposure to the risk of workplace bullying?
2. Consequences of exposure to workplace bullying	Some of the possible consequences from exposure to workplace bullying are outlined in Section 4.

Risk assessment checklist

Highly competitive work environment ☐

Low tolerance for diversity ☐

High turnover of staff (i.e. low retention rate) ☐

High level of absenteeism ☐

Low morale of staff ☐

Increase in reports of bullying ☐

High level of fear among staff ☐

No workplace bullying policy ☐

No complaint handling process for workplace bullying ☐

10. Decide on and implement control measures to prevent or control exposure to the risks

Once the hazard has been identified and the risk assessed, it is essential that measures are taken to prevent or control exposure to the risks. Preventative measures should be aimed at the source of the risk, and may include a broad organisational response, as well as more targeted initiatives that address symptoms in a specific area.

A strategy aimed at preventing or controlling exposure to the risk of workplace bullying should include:

- a workplace bullying prevention policy

- a complaint handling system

- a review of human resource systems

- training and education.

No single control measure will effectively prevent or control workplace bullying from occurring. It is important these control measures are used together, as part of a broader strategy to prevent or control exposure to the risk of workplace bullying.

10.1. Workplace bullying prevention policy

Having a workplace bullying prevention policy in place is the first step to preventing and controlling the risk of workplace bullying. Relevant persons who are employers should ensure a workplace bullying prevention policy is developed and implemented in the workplace. The policy should contain a clear statement that workplace bullying is not acceptable. The policy should also outline the workplace's commitment to address bullying and expectations regarding appropriate workplace behaviours. The policy may be a stand-alone policy or form part of an existing health and safety policy, or code of conduct for all workers.

The prevention policy should be:

- easy to understand

- provided in languages other than English, if required

- displayed where all workers can read it

- consistent with the workplace's other health and safety policies and objectives.

An effective workplace bullying prevention policy should include elements outlined in Table 2.

10.1.1. Gain commitment to the policy

The workplace bullying prevention policy is more likely to be effective if you gain workers' support and commitment to the policy. You can facilitate this commitment by:

- developing a policy that is relevant to your workplace, its needs, people and conditions

- developing the policy in consultation with workers, including managers, supervisors, work safety representatives and committees.

- securing the support of the employer/ chief executive/management

- ensuring the policy is followed, and consistently and is fairly applied.

Table 2 Elements of a workplace bullying prevention policy

Elements	Description
1. Value statement	State the workplace's commitment to providing workers and others with a healthy and safe work environment, free from workplace bullying.
2. Define workplace bullying	Reference this code's definition of workplace bullying and provide examples of bullying behaviours. Clearly outline what is not considered to be workplace bullying.
3. Impact of workplace bullying	Outline the health and safety risks to persons and the business from workplace bullying.
4. Encourage reporting of workplace bullying	Encourage workers who experience workplace bullying to report it.
5. Obligations of relevant persons, workers and other persons	Detail the obligations of relevant persons, workers and other persons under the WHS Act.
6. Workplace strategies to prevent or control workplace bullying	Outline the control measures that the workplace will implement to prevent or control exposure to the risk of workplace bullying.
7. Commitment to investigate allegations promptly	State that any allegations of workplace bullying will be treated seriously, and investigated promptly and impartially.
8. Consequences of breach of policy	Outline the remedial/disciplinary action7 that will be taken against a person who: - bullies a worker - victimises someone who has made a complaint - makes malicious, frivolous or vexatious complaints. **
9. Support services	Provide details of the assistance or support available to workers to manage and resolve workplace bullying complaints.

10. Management commitment	Have the employer/chief executive/management to sign and date the policy to demonstrate their commitment.
11. Policy review	Include details of when the policy will be reviewed.

* In taking action, employers must ensure they comply with the *Fair Work Act 2009*.
  ** Malicious, frivolous or vexatious complaints include complaints that are deliberately harmful, spiteful, trivial or unworthy of serious attention or resources.

Refer to **Appendix 1** for an example of a workplace bullying prevention policy.

10.2. Complaint handling system

An important part of managing incidents of workplace bullying is to develop and implement a complaint handling system to manage informal and formal workplace bullying complaints. Having agreed procedures in place will help ensure consistency in your approach to these complaints. When developing and implementing your complaint handling system, ensure the principles of **natural justice** are maintained.

10.2.1. Natural Justice

The principles of natural justice are:
- the person alleged to have committed workplace bullying is presumed innocent until allegations are proved to be true

- all allegations of workplace bullying are investigated promptly

- the person who has allegedly committed the workplace bullying is informed of all the allegations and given an opportunity to explain his or her version of events

- should the complaint be proven to be true, then remedial action must be taken

- reprisals should not be directed toward persons lodging a complaint.

10.2.2   Informal complaint handling procedure

An informal complaint handling procedure may simply encourage workers to raise their workplace bullying complaint with an appropriate contact person at the workplace (for example, immediate supervisor, manager, work safety representative, contact officer) so that it may be managed and resolved in an informal and fair manner.
Having an informal resolution process in place is good for health and safety and business. Resolving complaints informally is generally more effective, requires fewer resources, is more expedient and often prevents further escalation of the issue. Interpersonal conflicts are often effectively resolved through open discussion between parties. This should be encouraged as the first step in every complaint, unless otherwise requested by the complainant.

10.2.3. Formal complaint handling procedures

Some workplace bullying grievances may warrant the lodgement of a formal workplace bullying complaint. It is important that relevant persons who are employers establish procedures to manage these complaints. A formal complaint handling system should include:

- a formal reporting procedure

- an investigation procedure

- a complaint resolution procedure

- an appeals process.

An appeals process provides an avenue for workers to communicate, where possible, to a higher level of management their dissatisfaction with any decision or process considered to be unjust or unfair (for example, inadequate or ineffective managerial action taken in response to a workplace bullying complaint).
Workplaces that already have a complaint handling system in place will need to check the effectiveness and suitability of the system for handling workplace bullying grievances.

10.2.4. Encourage reporting of workplace bullying allegations

Relevant persons who are employers should encourage workers to report allegations of workplace bullying once a complaint handling system has been established. This benefits employers, workers and others as it allows employers to:

- take immediate action to address the complaint

- provide prompt assistance or counsel to the complainant and respondent

- obtain a more accurate picture of the nature and extent of workplace bullying.

Workers will be encouraged to report allegations of workplace bullying if they believe the complaint handling system can be trusted and offers fair treatment to those involved. Employers should consult with the individuals and groups identified in Section 7.1 to ensure the complaint handling system is effective and meets the needs of all persons who work at the workplace.

10.3. Human resource systems

Effective human resource systems can help prevent or control workplace bullying from occurring. Ensuring the workplace has effective and reasonable performance management processes and open communication systems are two ways you can achieve this.

10.3.1. Performance management processes

Performance management processes are generally used to:
- provide timely and accurate feedback about job performance in a reasonable way

- identify a person's strengths, and training and development needs for current and future positions

- set mutually agreed goals and competencies.

Because of the often sensitive nature of the feedback, performance management should only be conducted by persons who have the knowledge, skills and abilities to conduct them in a reasonable way. Issues to consider when providing feedback include:
- encouraging open communication, allowing the receiver to also voice their opinions and concerns

- ensuring the person conducting the performance management process is supportive, delivers constructive feedback, and provides justification of observations and decisions made.

10.3.2. Establish open communication systems

Workplace bullying is more likely to occur in conditions of secrecy and poor communication. Many forms of workplace bullying, such as spreading false, malicious rumours, or withholding important information from a worker to their disadvantage, prosper in poorly communicating workplaces. You can prevent or control exposure to these forms of workplace bullying by:
- encouraging good channels of communication, for example, through regular staff meetings

- consulting and discussing with workers issues that may affect them, particularly during periods of organisational change or restructure

- encouraging 'open door' management styles

- implementing transparent decision making processes.

10.4. Training and education

Under the Act, relevant persons who are employers have an obligation to ensure workplace health and safety. This may include making sure that workers are provided with the appropriate information, instruction, training and supervision to ensure health and safety. Training and educating workers on issues of workplace bullying is important for the following reasons:
- workers including supervisors, managers, work safety representatives, contact officers and work safety committees become more aware of their roles and responsibilities

- offenders will become more conscious of their behaviour, how it may be perceived and the possible consequences of their actions. This may deter workplace bullying behaviours

- workers will have a more accurate knowledge of what does and does not constitute workplace bullying

- workers will become aware of the consequences of making malicious, frivolous or vexatious workplace bullying complaints

- it can promote cultural change and a healthy and safe workplace

- people who work at the workplace are informed and encouraged to take action against bullying behaviours.

10.4.1. Raise awareness of workplace bullying

Through raising the awareness of workplace bullying helps to reinforce management's commitment to ensuring a healthy and safe working environment. This is true even in workplaces with good practices and no record of problems.

To create awareness of workplace bullying, relevant persons who are employers should provide training to all workers on general workplace bullying issues, including the prevention policy and procedures for making complaints. The most appropriate combination of information, instruction, training and supervision will depend on the needs of workers and the workplace. Appendix 2 suggests topics for training according to the target group being trained. Appendix 3 proposes ways to inform workers about policies and procedures.

Employers will also need to tailor training to meet the special needs of workers with respect to gender, age, disability, work experience, and language and literacy levels.

10.4.2. Effective people management training for supervisors

Workers will generally work more efficiently and productively if they are treated fairly and respectfully, and given an opportunity to use their initiative and judgement. People with supervisory responsibilities need to demonstrate their understanding and acceptance of this through their management behaviours. It is important that relevant persons who are employers identify any workers with ineffective managerial styles as these behaviours may contribute to workplace bullying. Employers should address any concerns they have with particular management behaviours, in a reasonable manner, through the performance management process.

Workers with supervisory responsibilities should also be provided with training that focuses on developing a greater understanding of human behaviour, communication and people management. Assessment should also be conducted to ensure that supervisory staff are able to apply their newly acquired knowledge, skills and abilities in the workplace.

10.4.3. Keep training records

Keep records of any training conducted on workplace bullying. Training records should include:

- the date of the training session/s

- the topics addressed at the training

- whether knowledge, skills and abilities were attained

- the name/s of the person/s who conducted the training

- the name/s of the worker/s who attended the training.

Training should be updated following any significant changes to a workplace bullying prevention policy, complaint handling system, or amendments to relevant legislation.

11. Monitor and review

Regularly checking the effectiveness of the control measures implemented and monitoring for signs of workplace bullying, is an important part of preventing and controlling exposure to the risk of workplace bullying.

Relevant persons who are employers can achieve this by checking if performance indicators are being met, for example:

- increases in reported levels of work satisfaction

- increases in percentage of workers who have completed training and assessed to be competent

- increases in percentage of complaints resolved internally

- decreases in percentage of workplace bullying complaints.

11.1. Review risk assessment

It is also important to check that the initial hazards identified and assessed are still valid. Significant changes to work and work systems could affect the risk profile of the workplace. Hazards may have changed and control measures may need to be updated.

Evaluate the appropriateness and currency of the risk assessment, for example, by:

- Reviewing the workplace's complaint and investigation records as well as exit interviews for signs of common workplace problems. Do the risk assessment again if the hazards and risks are different to those originally identified.

- Consulting with workers including managers, supervisors, work safety representatives, contact officers and work safety committees to determine changes in people's experiences of workplace bullying.

If results indicate the control measures are not working, then they will need to be adjusted or look for different ways to prevent or control exposure to the risk of workplace bullying.

11.2. Keep records of the monitor and review process

It is important to document all monitoring and reviews of the risk assessment, and any measures used to prevent or control exposure to the risk of workplace bullying. A record of any decisions and the reasons for those decisions should also be kept. Failure to review the risk assessment and control measures could increase the vicarious liability of relevant persons who are employers, should workplace bullying occur.

Appendix 1 - Workplace Bullying Prevention Policy Example

Ethical statement

[Name of workplace] is committed to ensuring a healthy and safe workplace that is free from workplace bullying. Workplace bullying is unacceptable and will not be tolerated under any circumstances.

Definition of workplace bullying

A person is subjected to 'workplace bullying' if the person is subjected to repeated behaviour, by a person, including the person's employer or a co-worker or group of co-workers of the person that:

(a)   the person considers to be offensive, intimidating, humiliating or threatening

(b)   a reasonable person would consider to be offensive, humiliating, intimidating or threatening.

Workplace bullying' does not include reasonable management action taken in a reasonable way by the person's employer in connection with the person's employment.

Outlined below are examples of behaviours that may be regarded as workplace bullying, <u>if</u> the behaviour is repeated or occurs as part of a pattern of behaviour. This is not an exhaustive list. However, it does outline some of the more common types of bullying behaviours. Examples include:

- abusing a person loudly, usually when others are present

- repeated threats of dismissal or other severe punishment for no reason

- constant ridicule and being put down

- leaving offensive messages on email or the telephone

- sending group emails to deliberately embarrass or humiliate a person

- sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages and getting a person into trouble in other ways

- maliciously excluding and isolating a person from workplace activities

- persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters

- humiliating a person through gestures, sarcasm, criticism and insults, often in front of customers, management or other workers

- spreading gossip or false, malicious rumours about a person with an intent to cause the person harm.

Actions that are not workplace bullying

Legitimate and reasonable management actions and business processes, such as, actions taken to transfer, demote, discipline, redeploy, retrench or dismiss a worker are not considered to be workplace bullying, provided these actions are conducted in a reasonable way and in line with relevant workplace agreements and work safety legislation.

Effects of workplace bullying on people and the business

Workplace bullying has detrimental effects on people and the business. It can create an unsafe working environment, result in a loss of trained and talented workers, the breakdown of teams and individual relationships, and reduced efficiency. People who are bullied can become distressed, anxious, withdrawn, depressed, and can lose self-esteem and self-confidence.

Workplace strategies to eliminate workplace bullying

[Name of workplace] will take the following actions to prevent and control exposure to the risk of workplace bullying:

- provide all workers with workplace bullying awareness training

- develop a code of conduct for workers to follow

- introduce a complaint handling system and inform all workers on how to make a complaint, the support systems available, options for resolving grievances and the appeals process

- regularly review the workplace bullying prevention policy, complaint handling system and training.

Responsibilities of workers

[Name of workplace] requires all workers to behave responsibly by complying with this policy, to not tolerate unacceptable behaviour, to maintain privacy during investigations and to immediately report incidents of workplace bullying to [insert details of appropriate contact person, for example, immediate supervisor, manager, work safety representative or contact officer].

Managers and supervisors must also ensure that workers are not exposed to workplace bullying. Management are required to personally demonstrate appropriate behaviour, promote the workplace bullying prevention policy, treat complaints seriously and ensure where a person lodges or is witness to a complaint, that this person is not victimised.

Take reasonable care to avoid making malicious, vexatious or frivolous complaints of workplace bullying. Malicious, frivolous or vexatious complaints include complaints that are deliberately harmful, spiteful, trivial or unworthy of serious attention or resources.

Where workers can go for assistance

A worker, who is being bullied, can contact [insert details of appropriate contact person, for example, immediate supervisor, manager, work safety representative, contact officer, work safety committee] for information and assistance in the management and resolution of a workplace bullying complaint. Workers can also approach their union or their Employee Assistance Program for advice and support.

In they are concerned about the way they believe such behaviour is affecting their health, they may decide to contact their treating medical practitioner.

Commitment to promptly investigate complaints

[Name of workplace] has a complaint handling system which includes procedures for reporting, investigating, resolving and appealing workplace bullying complaints. Any reports of workplace bullying will be treated seriously and investigated promptly, fairly and impartially. A person making a complaint and/or who is a witness to workplace bullying will not be victimised.

Consequences of breach of policy

Disciplinary action will be taken against a person who bullies a worker or who victimises a person who has made or is a witness to a complaint. Complaints of alleged workplace bullying found to be malicious, frivolous or vexatious may make the complainant liable for disciplinary action.

Review of policy

This policy and the actions outlined above will be reviewed by [insert date], unless required earlier because of changes to the risk profile of the workplace or relevant legislation. If necessary, further changes and actions may be introduced to ensure that workplace bullying is prevented and controlled.

Endorsement

I/We have committed to this policy and its implementation, and to ensuring a healthy and safe work environment that is free from workplace bullying.
[Chief Executive/Senior
Management/Employer signatures]
[date]

Appendix 2 - Suggested topics for training according to target group

Type of training/ target group	Topics to cover
Awareness For everyone	What workplace bullying is and is not – participants' views, the effects and risk factors. Workplace bullying prevention policy and how to comply with the policy. Control measures to prevent and control exposure to the risk of workplace bullying. Information on the complaint handling system, including how to make informal and formal workplace bullying complaints and options for resolving and appealing such complaints.
Induction For all new workers	Topics covered in awareness training. Workers' roles and responsibilities with respect to preventing workplace bullying. Legal obligations of relevant persons who are employers, workers and other persons.
Responding to workplace bullying For all supervisors and managers	Topics covered in induction training. Supervisor/manager's role in the implementation of the workplace bullying prevention policy, including identifying warning signs, actions to be taken when workplace bullying is reported, and knowledge, skill and ability to apply the complaint handling procedures. Training and assessment in topics, including people management, communication, mediation and conflict resolution, leadership, managing diverse workforces, stress management, team building and performance management processes.