PREVENTING AND RESPONDING TO WORKPLACE BULLYING

Draft
Code of Practice
Draft for Public Comment

This draft model Code of Practice for Preventing and Responding to Workplace Bullying supports the model Work Health and Safety (WHS) Act and Regulations developed by Safe Work Australia under the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety.

The model WHS laws have been adopted in all jurisdictions other than Western Australia and Victoria.

This draft model Code of Practice aims to provide practical guidance to persons conducting a business or undertaking on how to prevent and manage workplace bullying. A separate Guide for Workers has been developed and is also available for public comment.

Comment sought

Feedback is sought on whether the scope and application of this Code and the associated guide are appropriate, including whether they:

- are helpful and easy to understand
- reflect current state of knowledge and developments in relation to preventing and responding to workplace bullying
- have an appropriate level of information, or
- require additional examples to provide clarification. If so, please provide relevant examples that you think should be included.

Code of Practice or Guide?

Both codes of practice and guides offer practical advice on achieving the standard of health and safety required under the WHS Act and Regulations. However, a code of practice approved under the WHS Act in a jurisdiction has a special status because it is automatically admissible in court proceedings as evidence of what is known about a hazard, risk or control. Courts may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Other types of guidance documents also help duty holders comply with the law, but they allow duty holders wider discretion to choose the options that best suit their circumstances. Guidance material contributes to the overall state of knowledge regarding hazards, risks and controls and may be tendered as evidence in court proceedings but they are not automatically admissible.

Safe Work Australia may determine that a document is suitable as a code of practice if the majority of the following criteria are met:

- Guidance is a necessary part of enabling compliance with the duties contained in the WHS Act or Regulations, particularly to support legislative provisions that are outcome focussed or do not provide much detail.
- There is clear evidence of a significant risk or widespread work health and safety problem where evidentiary status of a code will elevate the importance of the issue.
- There are certain preferred or recommended methods to be used (or standards to be met) to achieve compliance.
- The information on the hazard, risks and control measures is well-established, reflects the state of knowledge and therefore will not require frequent updating.

Specific comment is sought on whether the measures proposed to prevent and respond to workplace bullying should be addressed in a Code of Practice or in guidance material.
Consultation Regulation Impact Statement (RIS)

The Council of Australian Governments requires Ministerial Councils and national standard setting bodies to assess the impacts of codes of practice where there is a reasonable expectation that their promotion and dissemination could be interpreted as requiring compliance.

A consultation RIS has been prepared by Safe Work Australia to estimate the potential costs, benefits and impacts associated with implementation of this model Code. The consultation RIS will be released for public comment separately, once it has been approved by the Office of Best Practice Regulation.

How do you make a submission?

You can provide your comments as an individual or you may wish to contribute to a joint submission through your employer or union organisation, professional association or community forum. Where possible, you should include evidence and examples to support your views on the Code.

A Public Comment Submission Cover Sheet and the Public Comment Response Form are provided for making written submissions. These are available on the Safe Work Australia website at www.safeworkaustralia.gov.au.

It is preferred that submissions are typed and submitted electronically to the following email address: codes@swa.gov.au. If you are unable to email your submission, you can post it to:

Safe Work Australia
Attn: Codes Public Comment
GPO Box 641
Canberra ACT 2601

When a submission is received by Safe Work Australia via email, an automatic response will be sent to confirm receipt. We do not send individual responses to submissions received by mail.

All submissions will be made accessible to the public on the Safe Work Australia website, unless marked ‘IN CONFIDENCE’. However, legal requirements such as those imposed by the Freedom of Information Act 1982 may affect the confidentiality of public submissions.

The closing date for making a submission is Monday, 15 July 2013.

What happens after the public comment period closes?

Safe Work Australia will analyse all written submissions that are received during the public comment period. Safe Work Australia will review and as necessary revise the Code.

The revised Code will then be considered by the Ministerial Council for adoption as a model Code of Practice.
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FOREWORD

This Code of Practice on 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 that 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.

SCOPE AND APPLICATION

Workplace bullying is a psychological hazard, the risks of which need to be managed like any other hazard at the workplace. All businesses, regardless of size, have a duty under section 19 of the Work Health and Safety (WHS) Act to provide a safe and healthy workplace.

This Code provides guidance for persons conducting a business or undertaking and managers on how to prevent workplace bullying and how to respond if it does occur. It includes information on what workplace bullying is, how to identify the risks that give rise to it and how those risks can be eliminated or minimised.

The control measures outlined in this Code to prevent and respond to workplace bullying can be tailored to fit the size and structure of a business. While some control measures will have a direct effect on a particular situation, they should be designed to create long-term change in the workplace.

Practical guidance for workers on how to deal with workplace bullying is available in Workplace Bullying – A Worker’s Guide.

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

Workplace bullying is a risk to health and safety and is therefore best dealt with by taking steps to prevent it from occurring and responding quickly if it does occur. The longer the bullying behaviour continues, the more difficult it is to address and the harder it becomes to repair working relationships.

Persons conducting a business or undertaking should have systems in place to prevent bullying as well as having clear procedures to respond to any allegations that may arise, as part of meeting their duties under the WHS Act to provide a safe and healthy workplace.

1.1 What is workplace bullying?

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

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

Unreasonable behaviour means behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Examples of behaviour, whether intentional or unintentional, that may be considered to be workplace bullying if they are repeated, unreasonable and create a risk to health and safety include:

- abusive, insulting or offensive language or comments
- unjustified criticism or complaints
- continuously and deliberately excluding someone from workplace activities
- withholding information that is vital for effective work performance
- setting unreasonable timelines or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person's skill level
- denying access to information, supervision, consultation or resources such that it has a detriment to the worker
- spreading misinformation or malicious rumours
- changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular worker or workers
- excessive scrutiny at work.

A single incident of unreasonable behaviour is not considered to be workplace bullying however it may have the potential to escalate and should not be ignored.

How does workplace bullying occur?

Workplace bullying can occur wherever people work together in all types of workplaces. Bullying can be carried out in a variety of ways, including through email or text messaging, internet chat rooms, instant messaging or other social media channels.

Workplace bullying can be directed at a single worker or group of workers and be carried out by one or more workers. It can occur:

- downwards from managers to workers
- sideways between workers
- upwards from workers to supervisors or managers.
Impact of workplace bullying

Workplace bullying can be harmful to the person experiencing it and to those who witness it. Reactions will vary depending on individual characteristics as well as the specific situation, for example, the effects may include one or more 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
- thoughts of suicide.

Workplace bullying can damage the reputation of a business and 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
- costly workers’ compensation claims or legal action.

Bullying and workplace violence

Workplace violence is any action, incident or behaviour in which a person is assaulted, threatened, harmed or injured in circumstances relating to their work. The risk of workplace violence must be eliminated or minimised so far as is reasonably practicable.

Incidents of workplace violence (i.e. physical assault or the threat of physical assault) should be reported to the police because these are criminal matters.

1.2 What is not considered to be workplace bullying?

Reasonable management action taken in a reasonable way

There are times where persons conducting a business or undertaking may take reasonable management action to effectively direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work and to give fair and reasonable feedback on a worker’s performance. These actions are usually not considered to be bullying if they are carried out in a reasonable manner, taking the particular circumstances into account. Examples of reasonable management action include:

- setting reasonable performance goals, standards and deadlines
- rostering and allocating working hours where the requirements are reasonable
- transferring a worker for operational reasons
- deciding not to select a worker for promotion where a reasonable process is followed and documented
- informing a worker about unsatisfactory work performance when undertaken in accordance with any workplace policies or agreements such as performance management guidelines
- informing a worker about inappropriate behaviour in an objective and confidential way
- implementing organisational changes or restructuring
- termination of employment.

Discrimination and harassment

Discrimination generally occurs when someone is treated less favourably than others because they have a particular characteristic or belong to a particular group of people, such as age, race or gender. For example, it would be discriminatory not to hire or promote a woman because she is pregnant or may become pregnant.
Harassment generally involves unwelcome behaviour that intimidates, offends or humiliates a person because of a particular personal characteristic such as race, age, gender, disability, religion or sexuality.

It is possible for a person to be bullied, harassed and discriminated against at the same time. However unlike bullying, discrimination and harassment may be single incidents and are based on some characteristic of the affected person.

There are various laws, for example anti-discrimination, equal employment opportunity, workplace relations and human rights laws, that make it illegal to discriminate or harass a person in the workplace. The WHS Act includes specific protections against discriminatory conduct for persons raising health and safety concerns or performing legitimate safety-related functions.

**Workplace conflict**

Low level workplace conflict is generally not considered to be workplace bullying. This is because not all conflicts or disagreements have negative health effects. When conflict is at a low level and is task based, it can benefit an organisation by generating debate leading to new ideas and innovative solutions. It does not always pose a risk to health and safety. However, in some cases, conflict that is not managed may escalate to the point where it meets the definition of workplace bullying.

### 1.3 Who has duties in relation to workplace bullying?

Everyone at the workplace has a duty and can help to ensure that workplace bullying does not occur.

**A person conducting a business or undertaking** has the primary duty of care 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.

‘Health’ is defined in the WHS Act as both physical and psychological health. This means the primary duty of a person conducting a business or undertaking includes ensuring, so far as is reasonably practicable, that risks to the physical and psychological health of workers arising from the work are managed.

A person conducting a business or undertaking must also, so far as is reasonably practicable:

- provide and maintain a work environment that is without risks to health and safety
- provide and maintain safe systems of work
- monitor the health and safety of workers and the conditions at the workplace to ensure that work related illnesses and injuries are prevented
- provide appropriate information, instruction, training or supervision to the worker and other people at the workplace to allow work to be carried out safely.

**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 workplace bullying.

**Workers** also have a duty to:

- take reasonable care for their own health and safety
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as is reasonably practicable, with any reasonable instruction given by the person conducting a business or undertaking, and
- co-operate with any reasonable policies and procedures of the person conducting the business or undertaking, such as a workplace bullying policy.
A similar duty to that of a worker is placed on other people at the workplace, for example, visitors and clients.

1.4 What is required to manage the risk of workplace bullying?

Health and safety risks in a workplace must be eliminated so far as is reasonably practicable, and if this is not possible, the risks must be minimised so far as is reasonably practicable. The risk of workplace bullying can be eliminated or minimised by creating a work environment where everyone treats each other with dignity and respect. It is best dealt with by taking a preventative approach described in Chapter 2 that involves:

- early identification of unreasonable behaviour and situations likely to increase the risk of bullying
- implementing control measures to prevent the risks and respond to workplace bullying, and
- monitoring and reviewing the effectiveness of the control measures.

Guidance on the general risk management process is available in the Code of Practice: How to Manage Work Health and Safety Risks.

Consulting workers

**Section 47:** The person conducting the business or undertaking must consult, so far as is reasonably practicable, with workers who carry out work for the business or undertaking who are (or are likely to be) directly affected by a work health and safety matter.

**Section 48:** If the workers are represented by a health and safety representative, the consultation must involve that representative.

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

Effective consultation can assist in implementing control measures and raising awareness in the workplace. Consultation with workers must occur when:

- identifying the risk of workplace bullying
- making decisions about control measures to deal with workplace bullying
- making decisions about procedures including those that explain how to resolve work health and safety issues or monitor the conditions at the workplace, for example, developing hazard reporting and investigation procedures relating to workplace bullying
- making decisions about information and training on workplace bullying, and
- proposing changes to the way work is performed as this may give rise to the risk of workplace bullying.

For an owner of a small business, consultation may involve having regular discussions with workers about health and safety including telling them that workplace bullying is not tolerated, reminding them about expected behaviour in the workplace, who to report any concerns to and encouraging workers to speak up about bullying.

For a larger business, workplace bullying policies and procedures can be developed in consultation with health and safety committees or health and safety representatives (HSRs).

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

**Section 46:** If more than one person has a duty in relation to the same matter, each person with the duty must, so far as is reasonably practicable, 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.

In some situations there may be a risk of a worker being bullied by a worker of another business. Each person conducting a business or undertaking must consult, cooperate and coordinate activities with other persons who have a health or safety duty relating to the same matter, so far as
is reasonably practicable. This means ensuring policies and procedures on workplace bullying are consistent and there is an agreed approach to dealing with reports of bullying.

Further guidance on consultation is available in the Code of Practice: Work Health and Safety Consultation, Cooperation and Coordination.
2 PREVENTING WORKPLACE BULLYING

2.1 Identifying the hazard

There is a risk of workplace bullying wherever people work together. There may not be obvious signs of bullying at the workplace but this does not mean it is not occurring.

Processes that may assist in identifying workplace bullying or the potential for it to occur include:

- talking to workers to find out if bullying is occurring or if there are unreasonable behaviours or situations likely to increase the risk of bullying (for some businesses, conducting an anonymous survey may be useful)
- monitoring patterns of absenteeism, sick leave, staff turnover, grievances, injury reports and other such records to establish any regular patterns or sudden unexplained changes
- recognising any changes in workplace relationships between workers, customers and/or managers
- seeking feedback when workers leave the business by holding exit interviews
- seeking feedback about workplace behaviours from managers/supervisors or any other internal and external parties
- monitoring hazard reports, workers compensation claims and issues raised by health and safety representatives and health and safety committees.

2.2 Controlling the risks

The health and safety risks associated with workplace bullying can be eliminated or minimised so far as is reasonably practicable by implementing:

- general workplace management control measures
- specific workplace bullying control measures.

A combination of control measures may be necessary depending on the situation. If these measures already exist and it is identified that bullying is occurring or likely to occur, a review of the control measures should be undertaken.

General workplace management control measures

a) Create a workplace where everyone is treated with dignity and respect

Sound management practices and effective communication can assist in creating a workplace environment that discourages bullying. Control measures that may be implemented to ensure managers and others have a genuine commitment to not tolerate unreasonable behaviours in the workplace include:

- developing a code of conduct or bullying policy in consultation with workers so everyone is aware of the behaviours that are expected in the workplace
- developing procedures to respond to reports of bullying in a confidential, reasonable and timely manner
- developing recruitment and performance management procedures and ensuring they are implemented in a reasonable manner
- empowering supervisors and managers to respond effectively to health and safety incidents including those involving workplace bullying.

b) Design safe systems of work

Control measures to ensure systems of work are designed to eliminate or minimise the risk of bullying include:

- clearly defining jobs and seeking regular feedback from workers about their role and responsibilities
- reviewing and monitoring workloads and staffing levels
- where practicable, allowing workers to have some say in how they manage their workloads and be involved in decision making
• planning all change and consult with workers affected as early as possible
• developing and maintaining effective communication throughout workplace change such as restructuring or downsizing.

c) Develop productive and respectful workplace relationships
Control measures to ensure workplace relationships are productive and respectful include:
• promoting positive leadership styles by recruiting managers who are competent in people management
• providing training for managers and supervisors on:
  o communicating effectively and engaging workers in decision-making
  o providing constructive feedback both formally and informally
  o effectively managing workloads
  o people and performance management.
• mentoring and supporting new and poor performing managers and workers
• facilitating teamwork and cooperation
• ensuring supervisors act in a timely manner on any unreasonable behaviour they see or become aware of
• providing access to employee assistance programs
• developing and implementing an issue resolution process in accordance with the requirements under the WHS Act.

Specific workplace bullying control measures
A clear message should be promoted in all workplaces stating that bullying is not tolerated. Persons conducting a business or undertaking should ensure that all workers are aware of any workplace bullying policies and procedures so that any bullying behaviour can be reported, responded to and resolved as soon as possible.

a) Implement a workplace bullying policy
A workplace bullying policy should be developed in consultation with workers that clearly states the organisation’s commitment to preventing and responding to workplace bullying. It can be a stand-alone policy or incorporated into an existing workplace policy or handbook. For a small business this may be a clear statement to workers telling them that bullying behaviour is not tolerated in the workplace. Whatever form the policy takes, it should set out the standards of expected behaviour and include a statement that unreasonable behaviour must not occur and will not be tolerated. It should also contain:
• a definition of workplace bullying with supporting examples
• the process for reporting workplace bullying and encouragement that workers use the process
• the process for responding to reports of workplace bullying
• accountability and responsibilities of various staff, i.e. who makes the decisions
• contact points within the organisation if a person has questions
• the consequences for not complying with the policy
• the process for managing vexatious reports.

An example of a workplace bullying policy is at Appendix A.

b) Implement hazard reporting and response procedures
If a worker considers they are being bullied, they will be more likely to report it if they know there is a hazard reporting procedure in place and that it will be followed as soon as a report is received.

It is important for workers to know how they can report allegations of bullying including knowing who they can talk to in the business and that the report will be given serious consideration.

Hazard reporting can be encouraged by:
implementing a hazard reporting procedure and ensuring it is available to all workers
making it clear that victimisation of those who make reports will not occur
providing consistent, effective and timely responses to hazard reports
regularly providing information (e.g. quarterly) to HSRs and/or committees on numbers of hazard reports made, how they were resolved and what control measures and strategies were put in place to address underlying risks.

Implementing effective hazard reporting and response procedures will help identify and respond to reports of bullying in a consistent and reasonable way. They should be used each time a report of bullying is made and be flexible enough to fit the different circumstances of each report. Procedures should be designed to suit the size and structure of the business. A procedure should:

- be in plain English and, if necessary, available in other languages
- outline how issues will be dealt with when a report of bullying is made and/or received
- clearly state the roles of responsible individuals such as managers and supervisors
- identify external avenues available to workers where allegations of bullying have been unable to be resolved internally.

A procedure must be developed in consultation with workers and health and safety representatives (if any) and should set out broad principles to ensure the process is objective, fair and transparent.

c) Provide training to workers, including supervisors and managers

Workers, including managers and supervisors, should understand their roles in relation to preventing and responding to workplace bullying and have the appropriate skills to take action where necessary.

The following information on workplace bullying should be incorporated in induction training:

- any relevant policies and procedures
- how workplace bullying should be reported
- how workplace bullying hazard reports are managed.

Training

All workers should be trained to recognise workplace bullying as it occurs. A training program should cover:

- the workplace bullying policy and procedures
- measures used to prevent bullying from occurring
- how individuals can respond to workplace bullying (workers, bystanders and managers)
- how to report workplace bullying
- how bullying reports will be responded to
- where to go for more information and assistance.

Managers and supervisors should be also be trained in how to respond to workplace bullying hazard reports and in skills that will help develop productive and respectful workplace relationships.

Training should be tailored to meet the needs of workers and suit the characteristics of your workforce (e.g. levels of literacy).

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

Workers who deal with hazard reports about workplace bullying should undertake specific training so they are equipped to respond to the report effectively.

Providing workers with information

There are a number of ways information can be given to workers including:
• talking directly with workers by holding team meetings, tool box talks or speaking one-on-one with them at the beginning of the working day
• running more formalised information and training sessions
• handing out company newsletters or pamphlets
• including information sheets in payslips
• putting up posters around the workplace such as in kitchens, lunchrooms or an office that workers have access to
• posting intranet announcements
• providing information through email messages.

2.3 Monitoring and reviewing

Once control measures have been implemented, these should be monitored and reviewed to ensure they are effective in managing the risk of workplace bullying. If the control measures do not work, it is important to analyse the situation further to determine how to fix the problem.

A review must be carried out in consultation with workers and their health and safety representatives (if any). A review can be conducted at any time but it is recommended that it is conducted:
• when workplace bullying has been substantiated
• at the request of a health and safety representative or a health and safety committee
• when new or additional information or research about bullying becomes available
• according to a scheduled review date.

Information for a review can be obtained from the same sources used when identifying hazards, for example:
• confidential surveys
• exit interviews
• records of sick leave.

Gathering evidence to answer the following questions may assist in a 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 workplace bullying?
• Are workers empowered to speak up about unreasonable behaviour?
• Has there been a measured change in workplace morale and behaviour over time?
• Are reports of bullying being responded to quickly and effectively?

Results of reviews should be reported to managers, health and safety representatives (if any) and health and safety committees (if any).
3 RESPONDING TO WORKPLACE BULLYING

Note: For ease of reading, references to ‘reports of bullying’ in this Chapter are intended to encompass all of the ways in which bullying might be identified, raised or reported including verbally and in writing.

Like other workplace hazards, workplace bullying is best managed by responding as early as possible, when a supervisor, manager or business owner becomes aware there is a problem.

A person can raise or report workplace bullying hazards verbally or in writing by:
- informing a supervisor, manager or business owner
- informing their health and safety representative
- using established hazard reporting procedures.

Workplace bullying may also be identified by witnesses. Even if it is not reported or raised by the person allegedly being bullied, the issue should be dealt with promptly.

3.1 Early intervention

Early intervention is a way of resolving an issue before it becomes severe and without an investigation or disciplinary action being taken against an individual.

Early intervention can be achieved through the individual self-managing the situation by telling the other person that the unreasonable behaviour is not welcome and asking that it stop. If an individual does not feel safe or confident enough to self-manage a situation, they can seek the assistance of another person to raise the issue, such as a supervisor or manager, their health and safety representative or a human resources officer. Anyone asked to act on behalf of an individual should use a confidential and non-confrontational approach when discussing an issue. Providing training to workers about workplace bullying may assist all workers in understanding how to deal with issues such as conflict, confidentiality and related issues.

Workers who are expected to intervene in a situation where bullying may be occurring should be trained to ensure they understand how to address the situation appropriately.

Supervisors and line managers

Supervisors and line managers may intervene in issues they directly observe in their work teams or if they are requested to intervene by a member of their team. If a supervisor or manager approaches an individual directly about their behaviour they should record the action/s taken. Supervisors should know how and when it is appropriate to escalate an issue.

Health and safety representatives

Health and safety representatives can raise issues on behalf of workers in their work group. They can also give advice to workers in their work group on how to approach an issue. The health and safety representative is not responsible for trying to resolve the matter.

3.2 Principles when handling reports of bullying

Effectively responding to issues when they are raised can stop the situation happening again and reinforce to workers that bullying is treated seriously and consistently by the organisation.

The following principles should be applied when handling reports of workplace bullying:

| Act promptly | Reports should be responded to quickly, courteously, reasonably and within established timelines. All relevant parties should be advised of how long it will likely take to respond to the report and should be kept informed of the progress to provide reassurance that the report has not been forgotten or ignored. If additional time is required to address the issues, all relevant parties should be |

<table>
<thead>
<tr>
<th><strong>Treat all matters seriously</strong></th>
<th>All reports should be taken seriously and assessed on their merits and facts.</th>
</tr>
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<tbody>
<tr>
<td><strong>Maintain confidentiality</strong></td>
<td>The confidentiality of all parties involved should be maintained. Details of the matter should only be known by those directly concerned.</td>
</tr>
<tr>
<td><strong>Ensure procedural fairness</strong></td>
<td>The person who is alleged to have engaged in the bullying behaviour should be treated as innocent unless the allegations are proven to be true. All allegations need to be put to the person they are made against who must be given a chance to explain his or her version of events. The opportunity to have decisions reviewed should be explained to all parties.</td>
</tr>
<tr>
<td><strong>Be neutral</strong></td>
<td>Impartiality towards everyone involved is critical. This includes the way people are treated throughout the process. The person responding to the hazard report should not have been directly involved and they should also avoid any personal or professional bias.</td>
</tr>
<tr>
<td><strong>Support all parties</strong></td>
<td>Once a report has been made, the parties involved should be told what support is available (e.g. employee assistance programs) and allowed to have a support person present at interviews or meetings (e.g. health and safety representative, union representative or work colleague).</td>
</tr>
<tr>
<td><strong>Do not victimise</strong></td>
<td>It is important to ensure anyone who reports bullying is not victimised for doing so. The person accused of bullying and any witnesses should also be protected from victimisation.</td>
</tr>
<tr>
<td><strong>Communicate process and outcomes</strong></td>
<td>All parties should be informed of the process, how long it will take and what they can expect will happen during and at the end of the process. Reasons for any actions that have been taken and, in some circumstances, not taken should be explained to the parties.</td>
</tr>
</tbody>
</table>
| **Keep records**               | The following should be recorded:  
  - the person who made the report  
  - when the report was made  
  - to whom the report was made  
  - the nature of the issue  
  - action taken to respond to the issue  
  - any further action that’s required – what, when and by whom  
  Records should also be made of any conversations, meetings and interviews detailing who was present and the agreed outcomes. |

### 3.3 Issue resolution procedure

The WHS Act encourages persons conducting a business or undertaking to agree on an issue resolution process with their workers so that when an issue arises all parties understand what process must be followed to resolve the matter. The issue resolution process must be used to resolve any bullying issues reported that cannot be resolved through discussions between the parties.
What if there is no agreed issues resolution procedure?

If there is no agreed issues resolution procedure in place, the default procedure under the WHS Regulations must be followed. The default procedure requires the parties to have regard to relevant matters including:

- the degree and immediacy of the risk to workers or other persons
- the number and location of workers and other persons affected by the issue
- the measures, both temporary and permanent, that must be implemented to resolve the issue
- who will be responsible for implementing the resolution measures.

Resolution may be set out in writing

Under all issue resolution procedures, if the issue is resolved, details of the issue and resolution must be set out in a written agreement if requested by any party to the issue.

If a written agreement is prepared:

- all parties to the issue must be satisfied that it accurately reflects the resolution
- the agreement must be provided to all people involved with the issue and (if requested) to the health and safety committee at the workplace.

At any stage in the issue resolution process, a worker can still bring a work health and safety issue to the attention of their health and safety representative; however the health and safety representative does not have responsibility for resolving the issue.

3.4 Actions after reports of bullying are resolved

After a report of bullying is resolved, there should be a follow-up review to ensure the wellbeing of the parties involved and provide support.

Keeping records on reports of bullying or actions taken (as recommended in section 3.2) can play an important role in identifying unreasonable behaviour and analyse trends which can help prevent bullying from recurring in the future.

Records should remain confidential; however they may be used as a management tool to continually improve workplace behaviours and should be reviewed as part of the process to improve prevention strategies. Records may show trends that identify underlying behavioural issues within a workplace.

Any findings should be discussed with workers and their health and safety representatives.

Consultation about reasonable workplace behaviours and the prevention of workplace bullying should be ongoing.

3.5 What if the report of bullying is not resolved at the workplace?

If reasonable efforts have been made to resolve a report of bullying and it remains unresolved, any party involved in the incident may ask for the matter to be investigated. Chapter 4 provides further information on investigations.

Any party involved in the incident can also ask the WHS Regulator to appoint an inspector to determine whether health and safety duties have been contravened. There does not have to be agreement about whether reasonable efforts have been made to resolve the issue in order for an inspector to be requested. As long as one party considers that reasonable efforts have been made, an inspector can be requested. An inspector may exercise any of their compliance powers under the WHS Act, including providing advice, investigating contraventions or issuing an improvement notice.
4 INVESTIGATIONS

Note: There may also be obligations under other workplace laws that are relevant and should be considered prior to proceeding to investigation, for example, obligations under the Fair Work Act 2009.

Where an allegation indicates a serious risk to health and safety, an investigation may be the most appropriate way to manage it.

The aim of an investigation is to look into the circumstances of the matter, work out what has occurred and what the appropriate course of action is. The investigator should be impartial, objective and focus on whether or not an allegation of workplace bullying is substantiated or not, or if there is insufficient information to decide either way.

An investigation should be undertaken for bullying allegations of a serious nature, such as those:
- covering a long period of time
- involving multiple workers
- where the allegations or alleged behaviours are in dispute
- where other issue resolution processes have not been able to resolve the issue.

Once it has been determined that an investigation will be undertaken, the person conducting a business or undertaking should decide on the scope and process including:
- who will conduct the investigation
- how the investigation will be conducted
- what the investigation aims to achieve
- what support needs to be provided to the parties involved
- how outcomes of the investigation are to be communicated to those involved.

The principles outlined in section 3.2 should be applied when a report of bullying is being investigated.

4.1 Who should conduct the investigation?

Investigations should always be carried out by an unbiased person who has experience and knowledge in the resolution of workplace bullying matters.

If being led internally, it is important to ensure all parties have confidence in the neutrality of the investigator and they are suitably qualified to lead the investigation. If this is not possible, an external investigator is recommended.

For small businesses consideration should be given to the advantages of engaging an external person to carry out the investigation.

4.2 Informing the parties of the investigation

To ensure the investigation process is conducted in a fair, objective and timely way it is important to ensure the parties are informed about:
- who is conducting the investigation
- how the parties will be kept informed throughout the investigation and of what they will be informed
- that they have an opportunity to seek independent advice and representation
- the expected timeframes of the investigation
- how the issue will be investigated (e.g. interviews with the parties and any witnesses, viewing documentary evidence)
- if obtained, who will receive copies of any statements and records of interviews
- who can be present at interviews
- whether parties can refuse to participate
• what support mechanisms will be in place for each party
• what interim measures will be taken to ensure the health and safety of the parties during the investigation review processes.

4.3 Outcomes of an investigation

At the end of an investigation, the investigator should submit an objective report to the person conducting a business or undertaking who will then use the findings of the investigation to make a decision. This decision must be communicated in a reasonable way to the parties involved.

An investigation may find that a report of bullying is not substantiated and no further action can be taken. If the allegation cannot be substantiated, this does not mean the bullying did not occur and assistance may need to be provided to resolve any outstanding issues. This may involve mediation, counselling, changing working arrangements or addressing other organisational issues that may have contributed to the behaviour occurring. 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.

If the allegation is found to be vexatious or malicious, disciplinary action or counselling may be considered. Any action taken should be consistent with the organisation’s policies on misconduct and/or disciplinary action.

If an allegation is found to be substantiated, appropriate actions should be taken consistent with any relevant policies and procedures. The actions may be different in each situation and depend on the severity and frequency of the bullying, the size and structure of the business. Such actions may include:
• gaining a commitment that the behaviour will not be repeated and monitoring this over time
• providing information to all workers to raise the awareness of bullying
• providing training (e.g. leadership or communication skills)
• providing coaching, counselling support and/or mentoring
• reviewing the workplace bullying policy
• requesting an apology
• requiring a verbal or written warning
• regular monitoring of behaviours
• transferring a worker or workers to another work area
• demotion, dismissal or other actions subject to workplace relations laws.

It is likely that a combination of strategies will be appropriate to prevent bullying behaviour from reoccurring.

These options may also be useful in early intervention.

4.4 Actions after an investigation

After an investigation, there should be a follow-up review to check the health and safety of the parties involved and that actions taken to stop the bullying have been effective.

Parties involved in the investigation may require support following the investigation, for example:
• offering professional counselling
• redressing any inequality resulting from the bullying behaviour
• re-instating any lost entitlements resulting from the bullying behaviour (e.g. re-crediting leave)
• mentoring and support from a senior manager
• providing training and relevant professional/skills development
• ongoing monitoring of the affected work group
• organising an opportunity to work in a new area if appropriate

**Reviewing the systems of work**

After addressing a specific bullying issue, a person conducting a business or undertaking should also examine the work situation to identify and address any underlying factors present that may increase the risk of bullying, for example, reviewing the systems of work including workloads and staffing levels and reviewing the effectiveness of procedures and training. Monitoring and review should also be undertaken to check whether new or additional risk control measures need to be implemented.
ABC Car Repairs

ABC Car Repairs believes all workers should work in an environment free from bullying.

Workplace bullying is defined as 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 unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Examples of behaviour that may be considered to be workplace bullying if the above three criteria are met include:

- abusive, insulting or offensive language or comments
- unjustified criticism or complaints
- deliberately excluding someone from workplace activities
- withholding information that is vital for effective work performance
- setting unreasonable timelines or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person’s skill level
- denying access to information, supervision, consultation or resources such that it has a detriment to the worker
- spreading misinformation or malicious rumours
- changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular worker or workers
- excessive scrutiny at work.

Single incidents can also present a risk to health and safety and will not be tolerated. ABC Car Repairs and its workers have a responsibility to ensure workers are not exposed to bullying and must not engage in this behaviour.

ABC Car Repairs have procedures to deal with workplace bullying. All reports will be treated seriously and dealt with promptly, confidentially and impartially. ABC Car Repairs encourages all workers to take action to manage workplace bullying and to report workplace bullying in line with the procedure.

ABC Car Repairs will ensure that workers who make reports and anyone else who may be involved are not victimised. The contact person for reporting any alleged bullying in this workplace is <insert name>.

Consequences of breaches

If this policy is not adhered to, it may result in disciplinary action, including a warning, transfer, counselling, demotion or dismissal, depending on the circumstances.

Signed: ______________________________________________

Date: ________________________________________________