

ACT PUBLIC SERVICE



Preventing Work Bullying Guidelines

*Guide to prevention and management of work
bullying*

Commissioner for Public Administration

2010

This document provides whole of government Guidelines on the prevention and management of work bullying issues, risks and complaints. The Guidelines complement the whole-of-government Respect at Work Policy.

Contents

Section 1: Introduction	3
Section 2: Legislation Relevant to Work Bullying.....	5
Section 3: Defining Work Bullying.....	9
Section 4: Impact of Work Bullying.....	15
Section 5: Preventing Work Bullying.....	17
Section 6: Recognising and Reducing Risks.....	20
Section 7: Features of a Good Process to Resolve Work Bullying	24
Section 8: Resolving Work Bullying.....	28
Section 9: General Information.....	41
Appendix A: ACTPS Whole of Government Respect at Work Policy.....	43
Appendix B: General Obligations of Employees	48
Appendix C: Work Bullying Examples	49
Appendix D: Tips for Encouraging a Culture of Respect and Courteous Work Behaviour.....	52
Appendix E: Bullying Risk Indicator	53
Appendix F: Agency Risk Checklist	55
Appendix G: Correspondence Checklist.....	56
Appendix H: Informal Resolution Advice for Workers.....	57
Appendix I: Example of an Informal Reports Process	60
Appendix J: Formal Complaints Form	61
Appendix K: Open Door Protocol Guidelines.....	64

Section 1: Introduction

The ACT Public Service (ACTPS) aims to create a positive work environment that is free from work bullying, harassment and all forms of discrimination. Respectful and courteous behaviour is essential to creating great ACTPS workplaces which are productive and effective.

Every ACTPS worker has the right to work in an environment that is free from work bullying, discrimination and harassment and to be treated with dignity and respect. Organisations that value and promote dignity and respect are likely to have reduced occurrences of inappropriate behavior.

Chief Executives, executives, managers, employees and all workers of the ACTPS have a responsibility to ensure that the working environment is safe and equitable by preventing conduct that constitutes work bullying, discrimination or harassment.

The *Public Sector Management Act 1994* (PSM Act) establishes the core values and behaviours expected of all workers. Work bullying is not tolerated and is a breach of the code of ethics set out in the PSM Act.

Work bullying may happen in any organisation and it is best dealt with by taking steps to prevent it long before it occurs. These Guidelines deal with the issue of work bullying: what it is; how to prevent it; and how to respond to a complaint.

Objectives and Purpose

Through the implementation of the whole-of-government Respect at Work Policy ([Appendix A](#)) and these Guidelines the ACTPS aims to:

- ensure that all ACTPS workers value and consider others at work;
- uphold a culture where diversity is respected and the contribution that people with diverse backgrounds, experience and skills make to the workplace is valued;
- create and maintain a positive and safe working environment free from all forms of work bullying, discrimination and harassment;
- educate all ACTPS executives, managers and workers that conduct of a bullying, discriminatory or harassing nature will not be tolerated and appropriate action will be taken against individuals engaging in such conduct;
- ensure fair and accessible mechanisms are available for workers to raise issues and make formal complaints;
- treat seriously, promptly and fairly all informal reports and formal complaints of work bullying, discrimination or harassment with due regard to the principles of procedural fairness, natural

justice and confidentiality and with no victimisation of complainants, those accused and witnesses;

- with due regard to privacy concerns, the nature of the complaint and the proportionality of information applicable to each party¹, inform parties to a formal complaint of the outcome; and
- provide an 'open door' protocol across the service to ensure every individual has a genuine avenue to bring informal reports or formal complaints to an executive, manager or contact officer.

The purpose of this document is to provide ACTPS agencies with Guidelines to assist them to:

- ensure that ACTPS workers know that work bullying will not be tolerated either within or across agencies;
- develop systems to prevent, as far as practicable, work bullying;
- effectively manage work bullying, issues, risks and complaints; and
- meet their obligations under the Enterprise Agreement, PSM Act and *Work Safety Act 2008*.

¹ This may include providing an appropriate level of information to people who were interviewed.

Section 2: Legislation Relevant to Work Bullying

All Chief Executives, agencies and workers have obligations under the various Federal and Territory legislation to support a positive, respectful, fair and safe ACTPS. Legislation that is relevant to Work bullying is outlined below.

Statement of ACTPS values

Section 6 of the PSM Act clearly sets out the core values and standards expected of all ACTPS workers when interacting with one another, providing services to the community and achieving business outcomes. Some agencies have expanded on these core values with further values that are considered important to their specific agency. Agencies must ensure that all employees are made aware of and become familiar with the core values and code of ethics as outlined in the PSM Act. As defined in the PSM Act the values and principles of the ACTPS are:

ACTPS Values and Principles

- (a) Service to the public;
- (b) Responsiveness to-
 - (i) the requirements of the government; and
 - (ii) the needs of the public;
- (c) Accountability to the government for the ways in which functions are performed;
- (d) Fairness and integrity;
- (e) Efficiency and effectiveness.

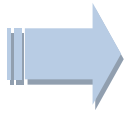
Enterprise Agreements 2010-11

The 2010-11 Enterprise Agreement (the Agreement) states that:

- Each agency is committed to promoting, achieving and maintaining the highest levels of health and safety for all ACTPS workers;
- Each agency will take all reasonable steps and precautions to provide a healthy, safe and secure workplace for the worker; and
- Each agency and all workers will act in a manner that is consistent with the *Work Safety Act 2008* (Work Safety Act).

The Agreement further states that ACTPS workplaces should be free of bullying and harassment. The workplace should be fair, flexible, safe and rewarding, characterised by respect, courtesy, inclusion and equity. It is recognised that bullying and harassment in the workplace has both

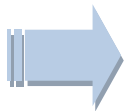
emotional and financial costs and that both systemic and individual instances of bullying and harassment are not acceptable.



Work bullying may be considered as misconduct under an agency's Enterprise Agreement. Procedures under the relevant Agreement must be used for alleged misconduct.

Public Sector Management Act 1994 - Misconduct

The PSM Act sets out the standards that the government and the community have about the professionalism and probity of the ACTPS. Section 9 of the PSM Act establishes a detailed code of ethics ([Appendix B](#)) that sets out the obligations that apply to everyone employed under that Act. Specifically Section 9(d) of the PSM Act states *"a public employee shall, in performing his or her duties treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations."*



Work bullying, harassment, discrimination and violence are all breaches of the ACT Government's code of ethics under section 9 of the PSM Act. Breaches may be dealt with as misconduct and may lead to disciplinary action in accordance with the procedures outlined in an agency's enterprise agreement or, if an executive procedures under executive contracts and the PSM Act.

Work Safety Act 2008 - Bullying

Under the Work Safety Act ACTPS agencies (as employers) have a legal duty to take all reasonably practicable steps to eliminate or minimise harm from risks to the health and safety of their workers. These risks include all psychosocial hazards, such as work bullying.

These Guidelines will assist agencies to comply with this duty by providing guidance on how to identify, assess, control and evaluate risks of work bullying, in a proactive, fair and transparent way.

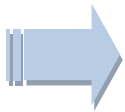
A key requirement of preventing risks to work safety is consultation (between workers, their representatives and management) to identify risks and agree on solutions to prevent and address work bullying and to evaluate the effectiveness of the solutions.

Workers have legal duties under the Work Safety Act. It is the duty of each person who performs work for the ACTPS not to expose themselves, or other people who may be affected by their work,

to work safety risks because of the way they do their work. Workers also have a duty to cooperate with the employer in adopting measures that prohibit bullying and violence at work.

These duties exist in addition to the standards of conduct and ethical obligations imposed under the PSM Act.

Under the Work Safety Act enforcement and compliance tools, such as prohibition notices and improvement notices, may be used. The Work Safety Act's compliance focus is on rectifying the situation quickly, then to 'name and shame' those agencies who fail to comply.



Work bullying is a risk to work safety. If an employer has not taken all reasonably practicable steps to manage the risk to work safety arising from the inappropriate behaviour then this could constitute a breach of the Work Safety Act. This may have serious repercussions, not only for those perpetuating the bullying or those being bullied, but also for the ACTPS as a whole.

The agreement of all governments to implement a harmonized Occupational, Health and Safety Bill for Australia will, for the first time, enable prosecution of ACTPS Public Servants to occur under OHS legislation.

ACT Discrimination Act 1991 - Discrimination

Discrimination is the 'unfavourable treatment' of an individual or a group of people because they have a particular characteristic or attribute protected under law, or associate with a person or persons who has a particular characteristic or attribute protected under law.

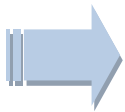
Workplace discrimination is any policy, procedure, rule, regulation, decision or practice at work that leads to an individual or group not being treated equally in relation to the rest of the workforce because of that particular characteristic or attribute.

Legal provisions relating to discrimination which apply to ACTPS workers are outlined in the *Discrimination Act 1991*. Consideration should also be given to Federal legislation including the *Racial Discrimination Act 1975*, *Disability Discrimination Act 1992*, the *Human Rights and Equal Opportunity Act 1986*, and the *Fair Work Act 2009*.

Discrimination is viewed as behaviour that causes humiliation, offence or intimidation on the basis of another person's race, gender, sexuality, ethno-religious background, disability/disease, marital status, age or other characteristic endemic to that individual, or their association with someone with any of these characteristics.

Sexual harassment is also a form of discrimination and is dealt with specifically under Section 58 of the *ACT Discrimination Act 1991*.

A person subjects another person to sexual harassment if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person or engages in other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated.



A single incident of bullying behavior may be discrimination if it is based on the particular characteristic or attribute that is protected by law. Discrimination is prohibited in all aspects of employment. This includes recruitment (other than in specified circumstances) and selection processes, terms and conditions of employment, advertising of positions, and in opportunities for promotion.

For further information contact the ACT Human Rights Commission: <http://www.hrc.act.gov.au>

Public Interest Disclosure Act 1994

The *Public Interest Disclosure Act 1994* (PID Act) encourages the disclosure of improper conduct or wrongdoing in the ACT Public Service. The PID Act:

- Requires all agencies to establish procedures to receive and investigate public interest disclosures and to act on substantiated disclosures; and
- Provides informants with protections in the event of reprisal because of their disclosure.

When an agency receives information from an identified informant that falls within the ambit of the PID Act, they must consider the matter and take proper action. The PID Act also provides remedies for, and protections against, unlawful reprisals and imposes a duty on parties to maintain confidentiality.



Where bullying may amount to disclosable conduct, including conduct that may constitute a breach of public trust or adversely affect the honest and impartial performance of official functions, then the matter may be addressed under the PID Act.

Section 3: Defining Work Bullying

For the purpose of these Guidelines definitions or terminology relating to work bullying has been described below.

What is work bullying?

Work bullying can cover a broad range of overt or subtle behaviours. For the purpose of the policy and guidelines work bullying is unreasonable, undesirable behaviour at work that generally meets each of the following criteria:

- It is repeated;
- It is unwelcome and unsolicited;
- It occurs between workers of an organisation (i.e. it is internal as opposed to being client initiated or initiated by a person outside the organisation);
- A reasonable person would consider the behaviour to be offensive, intimidating, humiliating or threatening; and
- It has the potential to cause harm to those experiencing the behaviour.

Workplace bullying can be:

Intended:

Where actions were intended to humiliate, offend, intimidate or distress, whether or not the behaviour did in fact have that effect; or

Unintended:

Although not intended to humiliate, offend, intimidate or distress, did cause and should reasonably have been expected to cause that effect.

In applying the criteria above, common sense should be used as cases of work bullying can vary greatly in complexity and expression.²

What is work bullying behaviour?

Work bullying behaviour can take many different forms. It can range from aggressive violent behaviour such as shouting and physical confrontations to more subtle behaviours such as repeated, unreasonable and inappropriate behaviour.

² The definition was informed by the following documents: Preventing and responding to bullying at work, Differentiating bullying, harassment and violence and Bullying and Prevention and Management of Workplace Bullying: Guidelines for NSW Health .

Bullying behaviour is not limited to a particular position and can be carried out by anyone at the workplace. Executives, managers and staff are capable of bullying. Likewise anyone can be the target of work bullying.

Bullying behaviours may be carried out verbally, physically or in writing and may be divided into two categories: direct and indirect. Some examples of direct and indirect bullying behaviours are listed below.

Direct work bullying:

- Verbal abuse;
- Putting someone down and humiliating a person through gestures, sarcasm, criticism, teasing and insults, often in front of others; or
- Spreading rumours or innuendo about someone.

Indirect work bullying:

- Unjustified criticism or complaints;
- Deliberately excluding someone from workplace activities; or
- Deliberately denying access to information or other resources.

Further examples of Work bullying behaviour can be found at [Appendix C](#).

Single incident

A single incident of bullying behaviour, while not falling within the definition of repeated work bullying, must be responded to appropriately. The procedures outlined in these guidelines may be used as a guide to managing such incidents.

An incident of unreasonable or inappropriate behaviour may escalate into bullying and should not be ignored. It is important to use common sense when dealing with a single incident. All workers who are affected by inappropriate work behaviour are encouraged, where appropriate to talk

Performance counselling or bullying?

Hill v. Minister for Local Government, Territories and Roads, PR946017, 26 April 2004, was a case about a middle manager engaged to work in a hospital on Christmas Island. Under his contract, he was eligible for an increment on performance grounds after three months.

At a performance management meeting with the General Manager, she asked him to come back the next day with a strategy to improve in an area she was concerned about. When they met again, she persistently yelled at him when discussing strategies to improve his performance. He expressed his frustration by saying that he and other staff were sick of her harassment and bullying. She then demanded his resignation.

The applicant did not resign, but did not return to work. His doctor certified him unfit to work because of stress related illness. However, he was later terminated for poor performance. The Australian Industrial Relations Commission found there was no valid reason for termination and ordered his reinstatement.

directly to the person engaging in the inappropriate work behaviour, to try to resolve the matter informally.

Any behaviour that has a criminal element such as assault, threats, property damage, or sexual assault must be reported to the police.

Repeated

Repeated refers to the nature of the behaviour, not to the specific form of the behaviour. Repeated, unreasonable behaviour may be a pattern of diverse incidents that often escalates over time. For example: verbal abuse on one occasion, personal property intentionally damaged on another occasion, and subsequently being unreasonably threatened with termination. Repeated behaviour may also be the sum of single incidents directed at several workers.

Mobbing

More than one staff member may be involved in a case of work bullying. Mobbing is the term used to refer to bullying behaviour perpetrated by a group of co-workers in a deliberate attempt to force a person (e.g. peer or manager) out of the workplace through bullying, harassment and humiliation.

What is not work bullying behaviour?

It is important to differentiate between a person's legitimate work authority and work bullying. All employers have a legal right to reasonably direct and control how work is done, and managers have a responsibility to monitor workflows and give feedback on performance. There will be differences of opinion, conflicts and problems in the workplace – these are part of working life.

Respect: 'to value and consider others at work'

ACTPS Respect, Equity and Diversity Framework

The manner, tone and motivation of managerial actions will be perceived by staff. While an action may be reasonable, it also needs to be carried out in a respectful manner that does not humiliate or intimidate staff members. Executives and managers need to be aware of how their words and actions are perceived by their staff.

Effective leaders model their organisations' values and set the tone for 'how things are done around here'³. Unless organisational values and behaviours are modelled and practiced by leaders they are

³ Australian Public Service Commission, *Respect: Promoting a Culture Free from Harassment and Bullying in the APS*, 2009, p1.

rendered impotent. “Those in leadership positions are behaving in ways that their senior executives lead them to behave. It starts at the top and filters its way down the organisation.”⁴

All workers must be aware of how they communicate and adapt their behaviour and communication so that it is appropriate for any given situation.

It is accepted that anyone can have a bad day.

However, it is not acceptable to use adverse circumstances as an excuse to treat staff or work colleagues badly. Likewise, everyone won't get it right all the time. Offence will happen. However the

timeliness of an apology and the exercise of graciousness will help maintain a positive work culture and avert a negative cultural spiral that may lead to claims of work bullying.

Effective leaders model their organisations' values and set the tone for 'how things are done around here'.

Work bullying versus discrimination

Work bullying is different to, but can intersect with, discrimination and violence. Discrimination is viewed as behaviour that causes humiliation, offence or intimidation on the basis of another person's race, gender, sexuality, ethno-religious background, disability/disease, marital status, age or other characteristic endemic to that individual, or their relationship to someone with any of these characteristics.

The key feature of discrimination that distinguishes it from harassment is the “unfavourable treatment” of a person based on particular characteristics such as those listed above.

Work bullying and discrimination may co-occur, however discrimination may be a single event whereas a single instance of offensive or humiliating behaviour would not be considered work bullying.

Discrimination based on any of the attributes covered by the *ACT Discrimination Act 1992* is dealt with as unlawful discrimination. (For further information see: <http://www.hrc.act.gov.au/>)

Work bullying, discrimination and violence are all breaches of the ACT Government's Code of Ethics under section 9 of the PSM Act. Breaches may be dealt with as misconduct and may lead to disciplinary action in accordance with the procedures outlined in the relevant agency enterprise agreement.

⁴ Human Synergistics, *The Leadership Culture Performance Connection*, The Research Results Book 2009, p17.

Reasonable management action

Reasonable management action carried out in a fair way is not work bullying. Legitimate managerial actions to direct and control how work is done do not constitute work bullying. Section 9(i) of the PSM Act states that *'a public employee shall, in performing his or her duties comply with any lawful and reasonable direction given by a person having authority to give direction'*.

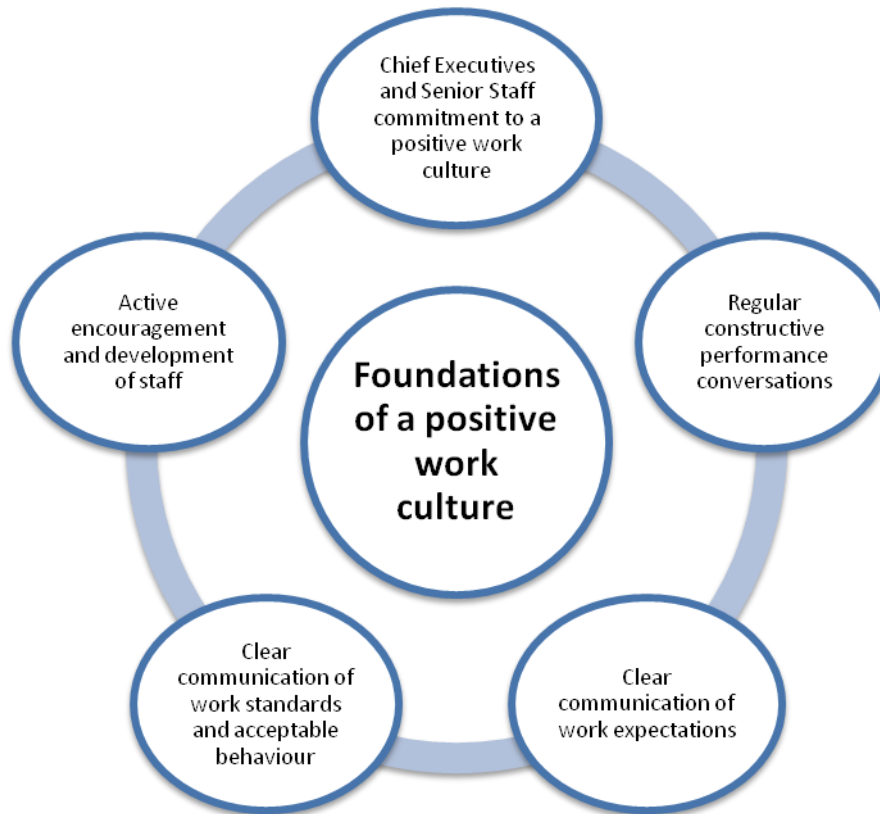
Some examples of reasonable management action are outlined below:

- Providing constructive feedback on a staff member's work performance – sometimes staff may find feedback upsetting but this does not constitute work bullying;
- Transferring, terminating or taking action to make a staff member redundant where the process is conducted fairly and equitably and in accordance with relevant legislation;
- Managing performance or under performance issues;
- Making justifiable and reasonable decisions related to recruitment, selection and other development opportunities;
- Setting reasonable performance standards and achievable deadlines;
- Ensuring workplace policies are implemented;
- Allocating work and rostering and allocating work hours;
- Undertaking disciplinary procedures for misconduct;
- Implementing reasonable organisational changes in accordance with the relevant enterprise agreement;
- Talking to a worker about inappropriate behaviour;
- Leaving a worker out of meetings that are not relevant to a worker's duties; or
- Taking action in line with enterprise agreement requirements.

Reasonable management action taken in a reasonable manner and based on reasonable grounds is NOT work bullying.

Work culture

Work bullying is likely to occur when people are working in a negative environment. In a positive work environment bullying is less likely to occur. The culture and tone of an organisation will either encourage a positive work environment or inhibit it. The foundations of a positive work culture include:



Section 4: Impact of Work Bullying

Work bullying causes damage to people and organisations. It can lead to psychological and physical injury, loss of productivity, high staff turnover, increased absenteeism, reduced performance, low morale, work disruption and costly workers' compensation claims or legal action.

Impact on the individual:

Being bullied or working in a climate of bullying can lead to:

- Psychological injuries including depression and anxiety;
- Tension;
- Reduced quality of home and family life;
- Reduced confidence;
- Physical injuries;
- Illness;
- Reduced participation in the community; and
- Reduced performance.

Individuals who are bullied may lose confidence and may have reduced performance in their jobs. They then may choose to leave their job.

Impact on the organisation:

Work bullying can have a detrimental effect on an agency/organisation's performance. Bullying in a workplace can lead to:

- High staff turnover;
- Increased absenteeism;
- Low morale;
- Fragmentation between groups;
- Breakdown in communication;
- Reduced participation by affected workers;
- A bad reputation for the agency/organisation; and
- Increase in workers compensation claims and premiums.

Financial Impact:

Workplace bullying has serious economic effects on Australian organisations. A recent impact and cost assessment calculated that workplace bullying costs Australian employers between \$6 - \$36 billion dollars every year when hidden and lost opportunity costs are considered. Financial costs can include legal and workers' compensation and management time in addressing cases of workplace bullying⁵ and can include legal costs and the cost of management time diverted to address cases of work bullying.

The ACTPS spends millions of dollars annually on workers' compensation premium costs and injury prevention. Many of the active worker's compensation claims are from workers experiencing mental stress or being exposed to mentally stressing situations such as: exposure to traumatic events; exposure to workplace or occupational violence; work pressure; racial or sexual harassment; and work-related harassment or work bullying.

Work-related harassment and work bullying are a subset of mental stress. There are numerous ACTPS workers who have been the victims of repetitive assault or threatened assault, repetitive verbal harassment, threats and abuse from work colleagues. On average, these workers are off work more than 1.5 years at a cost of over \$380,000 per worker.

Many workers are reluctant to report work bullying and as a result the statistics do not reflect its true prevalence. Other indications of work bullying include: high rates of sick leave and absenteeism; evidence of staff turnover including early retirement and resignation; poor performance; and low productivity.

The exit rate for victims of bullying is 25 per cent and for witnesses around 20 per cent. These are direct costs associated with work bullying and undermine the investment in attraction and retention strategies⁶.

⁵ Australian Human Rights Commission: Fact Sheet on Workplace Bullying

⁶ Victorian State Services Authority

Section 5: Preventing Work Bullying

The goal of prevention initiatives should be to create a culture where bullying is not tolerated. If it does occur, it needs to be recognised and appropriately responded to. There are four⁷ key elements that each agency needs to consider to successfully prevent and manage work bullying including:



Getting the organisation involved

Commitment from all levels within the agency is critical. What the Chief Executive and senior staff do and say will influence the atmosphere and culture of the agency. “A leader has a significant impact on the thinking, behaviour, and the performance of the people around him or her. Whether intentionally or unintentionally, or directly or indirectly, leaders motivate or drive people to behave in certain ways.”⁸ Senior staff can demonstrate their commitment to work bullying prevention by:

- Modelling positive behaviours of respect and courtesy (see [Appendix D: Tips for encouraging a culture of respect and courteous workplace behavior](#));
- Making it clear that work bullying will not be tolerated;
- Actively endorsing a preventing work bullying policy;
- Promoting the ACTPS values and code of ethics and conduct;
- Consulting and communicating with staff about prevention initiatives; and
- Ensuring that incidents of work bullying are taken seriously and responded to appropriately.

⁷ Comcare, *Bullying in the workplace*, Australian Government.

⁸ Human Synergistics, 2009 p24.

Under the Work Safety Act employers have a duty to consult workers about work safety issues. Consultation with workers will help employers identify the extent of work bullying and determine the most useful prevention measures. Genuine consultation will help create a positive work culture ([Workplace Arrangements Guide](#)) and engender commitment from the whole agency. Consultation can be undertaken using various mechanisms:

- Using existing work safety committees and representatives;
- Directly consulting with workers through discussions and surveys;
- Specific focus groups;
- Seeking feedback on proposed policies and procedures; and
- Incorporating consultation into ongoing risk management.

Utilising the whole-of-government Respect at Work Policy and Guidelines

The development of a whole-of-government Respect at Work Policy (the Policy) ([Appendix A](#)) and these Guidelines have been developed to assist agencies to prevent work bullying. Agencies must operationalise the Policy and undertake their own prevention strategies in accordance with these Guidelines.

Agencies must ensure that workers have access to the Policy and are aware of its content particularly in relation to what work bullying is and isn't and how to report incidents.

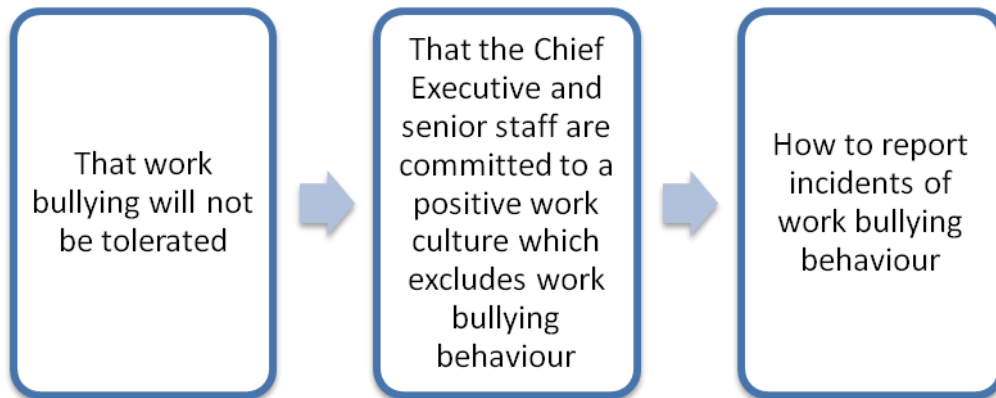
Raising awareness and training

Raising awareness of work bullying as unacceptable social behaviour is an important step in preventing it. Work bullying can be part of the workplace culture and unacceptable behaviours can go unchallenged and therefore become the "norm." Work bullying is often not as obvious as other inappropriate behaviour. There are many ways agencies can raise awareness of work bullying such as emails, posters and staff discussions. Some training and development strategies to assist in preventing work bullying from occurring include:

- Running organisation-wide awareness programs;
- Communication skills training;
- Diversity awareness training;
- Interpersonal skills training;
- Workgroup training on preventing work bullying; and

- Providing coaching and mentoring programs.

To assist in raising awareness, it is important that workers are aware of the following key issues relating to work bullying:



Further instruction and training for senior executives, managers and staff should be tailored according to their role and function within the agency. For example, training on preventing work bullying should be provided to ensure:

- All staff understand what bullying is and isn't, how to comply with agency policy and procedures; how to report an incident; the process for complaint handling; and how to access support or advice;
- Managers have the skills to appropriately handle difficult work behaviours; are able to recognise work bullying; and know how to respond to complaints and deal with misconduct at work;
- Senior executives and managers have performance management skills and communication skills to appropriately manage a work bullying occurrence or complaint in accordance with the relevant enterprise agreement; and
- Respect, Equity and Diversity contact officers can carry out their role.

Undertaking ongoing risk management

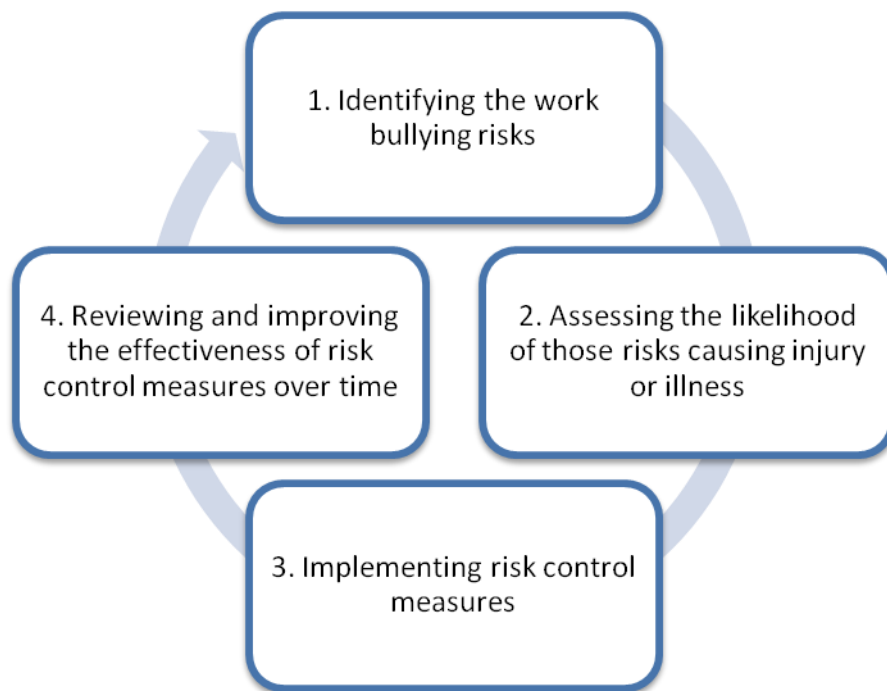
See [Section 6](#) for comprehensive information on how to recognise and reduce the risks of work bullying.

Section 6: Recognising and Reducing Risks

Work bullying is a risk to work safety. The Work Safety Act places a duty on people conducting a business or undertaking to ensure work safety by managing risk. This means that Chief Executives have a duty to provide workers with a safe work environment by using risk management procedures to identify, assess, control and review work safety risks.

Risk Management Steps

Risk management involves the following steps:



The Work Safety Act Code of Practice on [Preventing and Responding to bullying](#) at work (the Code) provides in depth detail on how to apply risk management procedures to prevent and manage work bullying. The Code sets out the main risk factors that can contribute to a work culture where work bullying is likely to occur including:

- Organisational change;
- Negative leadership styles;
- Lack of appropriate work systems;
- Poor workplace relationships; and
- Workforce characteristics where bullying is likely to occur.

The Code provides advice on how to identify and assess bullying risks using a bullying risk indicator and information such as:

- Complaints or harassment data;
- Worker opinion surveys;
- Exit interviews;
- Reports from work safety representatives;
- Workers compensation claims; and
- Examining workforce data such as sick leave, transfers and separation data.

The Code provides advice on eliminating and controlling work bullying risk factors by using measures to address the risk factors described above. These measures may include:

- Planning organisational changes and consulting workers in the process;
- Making management accountable for positive leadership;
- Clearly defining job roles;
- Training on difficult behaviours;
- Training workers in diversity; and
- Supporting vulnerable staff.

The Code of Practice categorises the risk factors that can contribute to bullying as: organisational change; negative leadership styles; lack of appropriate work systems; poor workplace relationships; and workforce characteristics.

The specific work environment risk factors have been defined in the code as:

Negative Leadership Styles	Poor Workplace Relationships	Lack of appropriate work systems	Organisational Change	Workforce Characteristics
<p><u>Autocratic leadership style characterized by:</u></p> <ul style="list-style-type: none"> • Styles that are strict and directive; • workers not involved in decision making; • Not allowing flexibility. <p><u>Laissez-faire leadership characterized by:</u></p> <ul style="list-style-type: none"> • Inadequate or absent supervision; • Responsibilities inappropriately and informally delegated to subordinates; • Little or no guidance provided to subordinates. 	<ul style="list-style-type: none"> • Criticism and other negative interactions; • Negative relationships between supervisors and workers; • Interpersonal conflict; • Workers excluded. 	<ul style="list-style-type: none"> • Lack of training; • Lack of role definition; • Uncertainty about job roles and the way work should be done; • Lack of resources; • Poorly designed rostering; • Unreasonable performance measures or timeframes; • Lack of support systems. 	<ul style="list-style-type: none"> • Significant technological change; • Restructuring; • Downsizing; • Change in work method/s; • Outsourcing; • Change in supervisor or manager 	<p>Vulnerable workers including:</p> <ul style="list-style-type: none"> • Young workers; • New workers; • Apprentices/trainees; • Injured workers and workers on return to work plans; <p>Workers in a minority because of:</p> <ul style="list-style-type: none"> • Ethnicity; • Religion; • Disability; • Political views; • Gender; and/or • Sexual preference.

These risk factors have been further defined in [Appendix E: Bullying risk indicator](#), developed by the ACT Work Safety Commissioner and provides guidance on risk assessment and risk control measures.

[Appendix F](#) is an example agency checklist to assist in identifying signs of a risk of work bullying.

Risk Management Consultation

Consultation is an essential part of risk management under the Work Safety Act. During each step of the risk management process an employer must consult with Work Safety Representatives, Work Safety Committees and Workers. Each agency should already have a consultation strategy under the Work Safety Act that has been agreed to by workers which can also be used to facilitate consultation about preventing work bullying. [Workplace Arrangements Guide](#).

It is recommended that before commencing a risk management strategy to prevent work bullying, staff should be made aware of management’s commitment in relation to preventing work bullying and guidelines on reporting incidents should be available.

Once implemented control measures must be regularly reviewed and evaluated. For example, the following questions should be asked:

- Have control measures been implemented as planned;
- Are they working; and
- Are there any new problems?

Reviews and evaluation should be undertaken regularly and when data indicates that the control measures are not working.

Comcare's guide on preventing [Bullying in the Workplace](#) also provides further information on control measures and early intervention strategies.

Section 7: Features of a Good Process to Resolve Work Bullying

There are a number of principles and procedural issues that must be considered when addressing minor inappropriate behavior through to suspected misconduct. Applying these principles and procedures will assist in the effective resolution of work bullying. This section has been divided into three sections:

- elements to guide the work bullying resolution process;
- features of a good process; and
- other important factors to consider when resolving work bullying.

Elements to guide the work bullying resolution process

To appropriately deal with reports of bullying, the following table outlines the elements that should guide any process for dealing with work bullying:

Treat all matters seriously	Take all incidents seriously. Assess all reports based on the evidence.
Act Promptly	Act quickly before the incident escalates. Reports should be dealt with quickly, courteously, fairly and within established timelines. All relevant parties should be advised of the process and how it is progressing.
Non-victimisation	It is important that anyone who raises an incident of bullying or the person complained about is not victimised.
Support for all parties	Once an informal report or formal complaint has been made, all parties involved should be told what support is available (e.g. counselling, EAP, support from the union, health and safety representatives, contact officer or support from colleagues). All parties should be allowed to have a support person present at interviews or meetings and be treated with sensitivity, respect and courtesy.
Neutrality	Impartiality is critical. The person managing the issue should not have been directly involved in the incident that is being addressed. Their approach should be free from any personal or professional bias.
Communication about process and outcomes	All relevant parties need to be informed of the process, how long it will take and what they can expect to happen during the process and at the end. Provide all parties with clear reasons for the actions that are taken or not taken.
Confidentiality	Confidentiality should be ensured for the complainant and other relevant parties involved. Details of the matters should only be known by those directly involved.
Documentation	Documentation is important even if the issue does not proceed to formal investigation. Make a factual record of what happen and all interviews detailing who was present and the agreed outcomes and expectations.

Features of a good process include

Keeping records

Appropriate records of informal reports or formal complaints and actions taken are vital, especially because any decisions might lead to further processes or misconduct action.

Keeping a diary note and record of an event is important. When busy, sending an email to yourself outlining the facts, what was said or alleged and what action was taken, is a quick way to ensure that a record is kept of any occurrence.

Records may also be helpful in establishing grounds for a frivolous or vexatious case if a number of unsubstantiated cases are raised in a period of time. Alternatively, records may highlight there may be a more systemic issue with either the work area, individual(s) or a manager, if several incidents of a similar type are raised over a period of time.

All records must be kept in line with information contained in the:

- *Privacy Act 1988 (Commonwealth)*
- *Territory Records Act 2002 (ACT); and*
- *Fair Work Act 2009 (Commonwealth).*

Natural Justice

Ensuring that fairness is provided to all parties.

Principles include:

- Allegations should be investigated promptly;
- The person who is alleged to have committed the bullying has the right to be heard and to respond;
- All allegations need to be put to the person they are made against at an appropriate time;
- All parties must be given the opportunity to: respond; explain their version of events; and provide all information to ensure their response is complete;
- Any disciplinary action needs to be commensurate with the seriousness of the incident.

Confidentiality and Privacy

Maintaining confidentiality is a vital component of any process/investigation. The matter should be treated as staff-in-confidence and the disclosure of information in relation to an issue should be limited to those people who are legitimately involved in the process.

It may be necessary to remind workers that complaints are staff-in-confidence matters and should not be gossiped about.

When collecting personal information people involved should be informed of the following:

- what information is being gathered;
- how it is to be used;
- who will have access to it; and
- how it will be stored.

Procedural Fairness

Following a process that is neutral, unbiased and respectful to the rights of all parties involved in the investigation is critical. The principles of procedural fairness include the:

- Right to be heard;
- Right to be treated without prejudice;
- Right to be informed of allegations being made;
- Opportunity to respond; and
- Right to enquire about the status of the complaint.

Other important factors to consider when resolving work bullying

Responsible Reporting

To enable agencies to appropriately and effectively respond to issues of work bullying, it is critical that incidents are reported. This will assist in developing an accurate picture of the issues facing agencies in this regard. Reporting assists the agencies to:

- Understand the size of the problem;
- Take action to address the issues being reported;
- Assess whether bullying prevention measures are working;
- Intervene as early as possible; and
- Provide prompt assistance and support to workers.

Reporting can be encouraged by:

- Leaders (Executives, managers and supervisors) promoting reporting;
- Consistent and effective responses to reports;
- Regularly providing information (e.g. quarterly) to work safety committees on the number of reports made, how they were resolved and what control measures were put in place to address underlying risk factors; and
- Making this information available to work safety representatives and workers.

Support and Advice

Whether it is formal or informal both the complainant and the respondent have rights and responsibilities during the resolution process.

In the first instance the respondent must be provided with the substance of the complaint and given a reasonable opportunity to respond to it. Consideration should be given to how this is done. A face to face meeting of the respondent and a manager is the recommended means of initially advising of the complaint. [Appendix G](#) provides a checklist for correspondence confirming the information relayed during the meeting.

Open Door Protocol

Chief executives will establish an 'open door' protocol for the ACTPS. The 'open door' protocol enables any worker to approach any executive or manager to discuss a work bullying issue or make a work bullying complaint. [Appendix K](#) provides guidelines for the operation of the Open Door Protocol.

When approached about a work bullying issue chief executives, executives and managers should respond to according to the principles outlined in [Sections 7 and 8](#) and must ensure that they know how to acquire the necessary information to handle a complaint appropriately.

Role of the Respect, Equity and Diversity Contact Officer

Each agency must appoint a non Human Resources Executive to be a Respect, Equity and Diversity (RED) Sponsor and at least one RED Contact Officer for work bullying and discrimination. The role of the executive sponsor and contact officers is to:

✓ Promote activities associated with respect, equity and diversity in the workplace (or at work)
✓ Undertake respect, equity and diversity training
✓ Participate in relevant networks
✓ Raise issues while respecting confidentiality
✓ Advocate the inclusion of respect, equity and diversity issues in planning/meetings
✓ Provide information e.g. handouts

It is **not** the role of RED contact officers to resolve work bullying or discrimination issues. Their role is to provide information and guidance to workers who may be the subject of work bullying or discrimination at work. RED contact officers should be aware that individuals who approach them about work bullying and discrimination may feel a range of emotions. RED Contact officers may be required to listen, be sensitive and be non-judgmental. In situations where the RED Contact Officer feels uncomfortable about responding to an enquiry or complaint, they should refer the individual to their agency human resources area or their executive sponsor.

Enquiries to RED contact officers should remain anonymous, to give workers confidence that they can progress issues as they feel comfortable. However, RED contact officers may not be able to guarantee confidentiality if there is a risk to work safety or criminal activity is alleged. RED contact officers should have specific training, support and assistance in understanding work bullying, discrimination and harassment and in responding to the needs of diverse people. A thorough understanding of complaints processes and legal requirements is necessary.

For further information on the role of RED contact officers refer to the Respect, Equity and Diversity Framework www.cmd.act.gov.au/governance/public/RED and the Respect at Work Policy (Appendix A).

For Human Rights Commission Contact Officer training contact ACT Human Rights Commission <http://www.hrc.act.gov.au/>

Section 8: Resolving Work Bullying

Overview

Individual Action

- A person who has concerns about inappropriate workplace behaviour has options available to assist in resolving the matter quickly and effectively including:
 - Speaking to the person concerned;
 - Seeking advice and perspective from a trusted person;
 - Seeking advice and support from the Employee Assistance Provider; or
 - Deciding on strategies and appropriate responses if the situation occurs again.

Informal Report

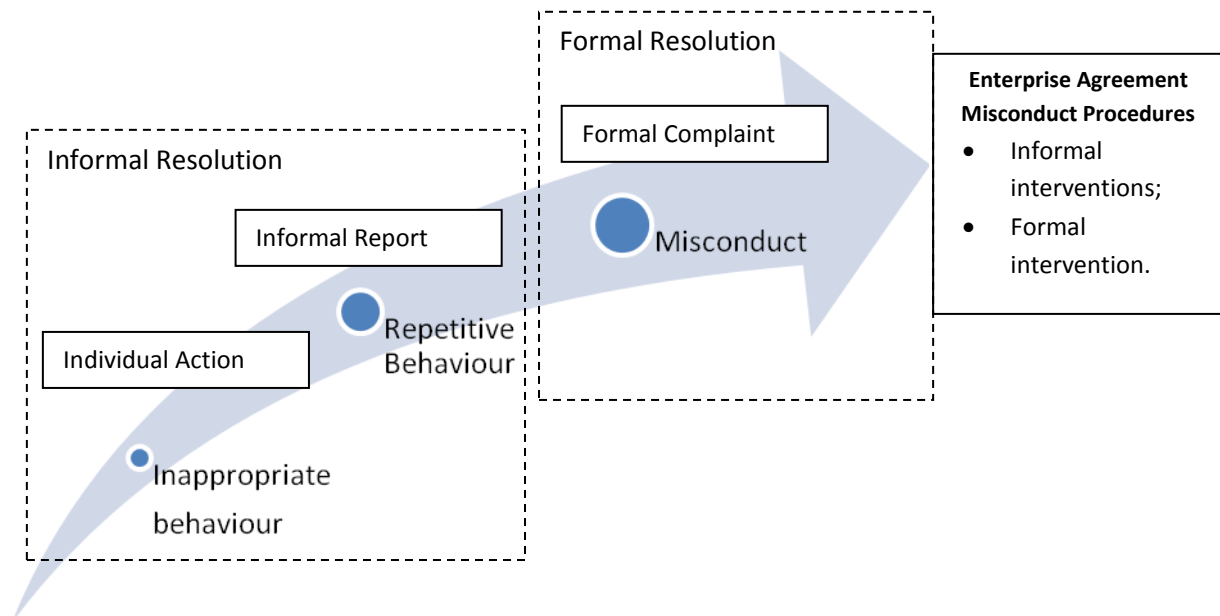
- If the matter cannot be resolved by taking individual action the person may report the matter to an appropriate manager and work with them to resolve the issue by discussing options such as:
 - The manager speaking to the person concerned constructively and privately;
 - Using a mediator to work through the issue with all parties;
 - Considering changing rosters or work locations;
 - Speaking to a RED Contact Officer, Executive Sponsor or agency HR area;
 - Engaging a specialist to undertake a workplace cultural audit; or
 - Providing awareness training.

Formal Complaint

- If informal processes have failed, if the behaviour is serious or longstanding or there is significant disagreement about what has occurred; then misconduct procedures under the relevant *Enterprise Agreement* must be followed.
- If there is evidence to suggest that the employer has not taken all reasonably practical steps to manage the risk to work safety arising from the behaviour, then the issue could be reported to *Work Safe ACT*.

Introduction

Inappropriate workplace behavior and misconduct cover a broad range of events and incidents and varying levels of seriousness. Consequently there is an escalating hierarchy of responses as illustrated below⁹.



Individual Action

A person who has concerns about inappropriate workplace behaviour has options available to assist in resolving the matter quickly and effectively including:

- Speaking to the person concerned;
- Seeking advice and perspective from a trusted person;
- Seeking advice and support from the Employee Assistance Provider; or
- Deciding on strategies and appropriate responses if the situation occurs again.

This process may not be sequential. While in some cases this may be desirable, it will not always be possible or appropriate, for a range of reasons, not least of which may be the seriousness of the situation in question.

⁹ Diagram adapted from *Dealing with Misconduct and Inappropriate Behaviour in the Workplace* Shared Services.

Informal Report

If the matter cannot be resolved by taking individual action the person may report the matter to an appropriate manager and work with them to resolve the issue by discussing options such as:

- The manager speaking to the person concerned constructively and privately;
- Using a mediator to work through the issue with all parties;
- Speaking to a RED Contact Officer or an agency HR area;
- Engaging a specialist to undertake a workplace cultural audit; or
- Providing awareness training.

Treat all matters seriously

Take all incidents seriously and act promptly. Assess all reports based on the evidence.

Formal Complaint

If informal processes have failed, or the behaviour is serious or longstanding, or involves senior workers or there is significant disagreement about what has occurred; then misconduct procedures under the relevant **Enterprise Agreement** must be followed.

If there is evidence to suggest that the employer knows about the bullying behaviour and has not taken all reasonably practical steps to manage the risk to work safety, then the issue could be reported to **Work Safe ACT**.

If the issue involves discrimination appropriate action may be taken under the ACT

Discrimination Act 1991.

Where the bullying may amount to disclosable conduct, including conduct that may constitute a breach of public trust or adversely affect the honest and impartial performance of official functions, then the matter may be addressed under the **Public Interest Disclosure Act 1994**.

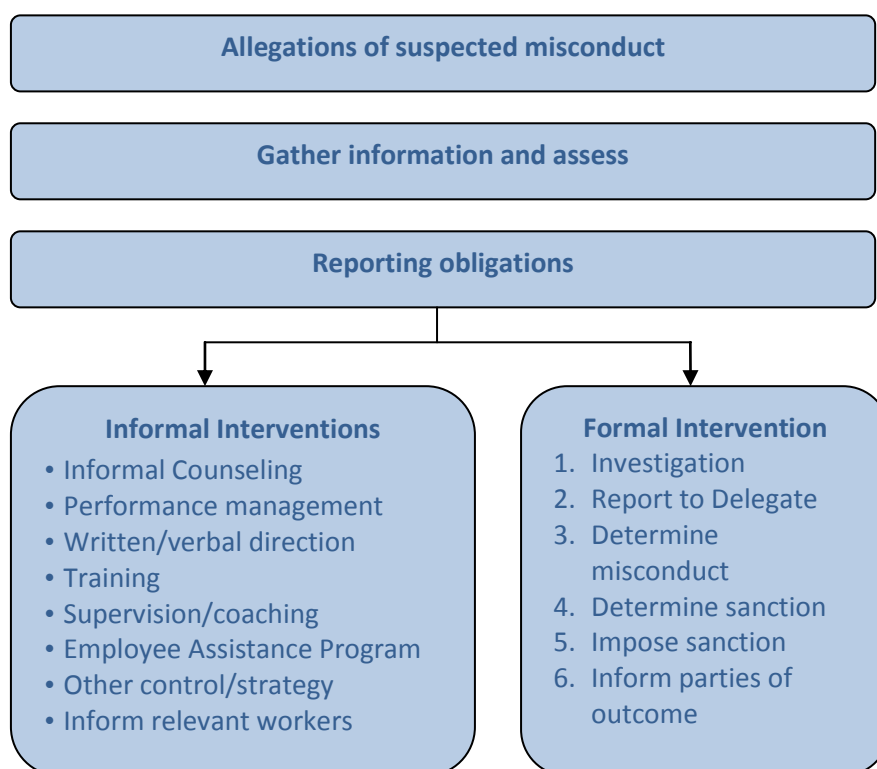
In all processes, all parties should be mindful of, and utilise the 'Features of a good process to resolve work bullying' as outlined in [Section 7](#) of this Guide.

Enterprise Agreement Procedures

In cases where an allegation of misconduct is made, the Chief Executive or delegate will initiate a process (the evidence gathering process) to determine whether there is sufficient evidence to support the allegation. Following this process the Chief Executive (or delegate) may determine that:

- No disciplinary action is required;
- The matter can be resolved through informal counseling or other remedial action, or assistance to the employee;
- The matter is better resolved through Internal Review procedures set out in the Enterprise Agreement or appropriate external mechanisms; or
- The matter warrants action in relation to underperformance processes or investigation under disciplinary processes.

The diagram¹⁰ below outlines the formal and informal processes under the Enterprise Agreements.



For further information and training on implementing the Enterprise Agreement misconduct provision in the workplace contact the Shared Services Employee Relations team at <http://sharedservices/actgov/>.

¹⁰ Diagram adapted from *Dealing with Misconduct and Inappropriate Behaviour in the Workplace* Shared Services.

Individual Action and Informal Report

There is a greater chance of successfully resolving a work bullying incident when action is taken quickly to deal with the situation. In any instance of work bullying, the parties concerned should not ignore the situation thinking it will go away.

An individual experiencing work bullying has options available to assist them to resolve the matter quickly and effectively including:

- Telling someone they trust to ensure perspective;
- Speaking to the perpetrator directly, being mindful of personal safety and the likelihood of reprisals;
- Reporting the matter to their supervisor and working with them to resolve the incident by discussing options available (note: the supervisor is responsible for identifying and minimising any risk without implicating the complainant); and/or
- Speaking to a contact officer, union representative, supervisor and/or human resources for advice and support.

Further advice for individual workers is included at [Appendix H](#) which provides informal resolution advice for workers.

In the first instance, both the person alleging work bullying, and management are encouraged to resolve the matter in the immediate work

Once an agency becomes aware of the matter there is a duty of care under the *Work Safety Act 2008* to take all reasonably practicable steps to manage the risk to work safety arising from the alleged inappropriate behaviour. This is the case even if the worker does not wish to proceed with a formal complaint.

area through discussion, which may include mediation utilising the Employee Assistance Program (EAP) service. This step is particularly important if the behaviour was unintentional and can often allow resolution of the situation

without the labeling of individuals involved as troublemakers or harassers, and without attributing blame to the parties involved.

Some tips about when to use informal or formal processes

Informal report:

- If it is a single incident;
- If it appears the behaviour is unintentional;
- If it appears that it can be resolved within the work area; or
- If the person who raised the issue agrees to an informal process.

Formal Complaint:

- If informal processes have failed and it is unlikely that individual action and informal reporting processes will resolve the issue;
- If the behaviour is serious or longstanding; or
- If there is significant disagreement about what has occurred and what should happen.

Informal action may be appropriate where:

- the allegations are of a less serious nature, and the individual subjected to the behaviour wants it to be resolved immediately;
- the individual subjected to the behaviour wishes to pursue an informal resolution; and/or
- the parties involved are likely to have ongoing work contact with one another and the complainant wishes to pursue an informal solution so that the working relationship can be maintained.

‘Every individual has the right to bring informal reports or formal complaints to an executive, manager or contact officer’.

ACTPS Respect at Work Policy for dealing with work bullying, discrimination or harassment.

Executives and managers should also take care that the resolution of the behaviour does not leave workers with no other alternative but to accept continuing bullying behaviour.

Appendix I provides further details on the Informal Reports process.

Formal complaint

Workers may choose to follow through with a formal complaint by:

- using formal mechanisms included in the agency enterprise agreement;
- using a formal complaints form (see Appendix J)
- reporting the behaviour to their Manager/Supervisor;
- reporting the behaviour to a workplace diversity or harassment contact officers;
- reporting the behaviour to the human resources area;
- reporting the work bullying to Work Safe ACT;
- approaching the Human Rights Commission.

Formal Complaint under the Enterprise Agreement

If informal processes have failed, if the behaviour is serious or longstanding, involves senior employees or there is significant disagreement about what has occurred; then misconduct procedures under the relevant **Enterprise Agreement** must be followed.

Evidence Gathering

Evidence needs to be gathered to make an assessment of the credibility of the complaint or allegations before determining the appropriate process to implement.

When gathering information a determination needs to be made whether to implement an informal or formal process under the enterprise agreement. The decision maker must be satisfied that the allegations or complaints are sufficiently substantial as to warrant further formal investigation.

When assessing the information provided, a decision needs to be made as to whether further information is required before making a decision on what process to undertake. It is important that in gathering evidence, a misconduct investigation is not undertaken. Generally speaking, the preliminary phase should be kept as short as possible without compromising the quality of the work undertaken¹¹.

After considering the evidence gathered, the Chief Executive or delegate will decide whether to use the informal interventions under the enterprise agreement or to commence a formal investigation according to the discipline/misconduct section of the relevant enterprise agreement (see Useful links in [Section 9](#) of this guide to refer to your agency's enterprise agreement).

For Chief Executives and Executives allegations of misconduct are dealt with according to provisions in their contracts and in accordance with employment law. A process similar to that under the enterprise agreements that includes the features of a good process under [Section 7](#) of this guide is recommended.

Informal Interventions

After conducting the evidence gathering process, if the Chief Executive is of the opinion that the alleged misconduct has occurred but the matter is likely to be resolved informally, and then the manager/supervisor will discuss the particular behaviour with the employee as soon as possible. The discussion will set out clear expectations of future behaviour and that a recurrence could lead to discipline action. A record of this discussion will be retained. The Chief Executive or delegate may also choose to organise mediation between the relevant persons.

Formal Intervention - Investigation

If after conducting the evidence gathering process the Chief Executive or delegate is of the opinion that the alleged misconduct cannot be resolved informally then the alleged misconduct will be investigated. The investigating officer will:

¹¹ Adapted from *Dealing with Misconduct and Inappropriate Behaviour in the Workplace* Shared Services.

- a) inform the employee in writing of the nature of the alleged misconduct, the nature of the proposed investigation, and the possible implications of the misconduct including disciplinary actions available; and
- b) give the employee a reasonable opportunity to respond to the allegations, in writing and/or at a scheduled interview, before forming a conclusion; and
- c) provide the employee with at least twenty-four hours written notice prior to conducting an interview, advise them if the interview is to be recorded electronically, and provide the employee with a copy of the record; and
- d) advise the employee that they may have a union or other employee representative present during the interview to support the employee and will allow reasonable opportunity for this to be arranged; and
- e) provide a record of the interview to the employee to correct any inaccuracies and provide comments before signing the record. If the employee elects not to sign the record, then details of the offer will be noted.

Investigations should focus on establishing whether or not a report of work bullying is substantiated or there is not enough information to decide either way. The principles of natural justice and the elements outlined in [Section 7](#) for addressing bullying should be followed throughout the investigation process.

An investigation should be undertaken for:

- allegations involving senior staff/management;
- allegations covering a long period of time;
- allegations involving threats; or
- allegations involving multiple employees.

Planning an investigation should always include:

- deciding who will conduct the investigation (establishing the neutrality of the investigator);
- setting out what might be achieved by undertaking an investigation;
- setting out the investigation process; and
- communicating potential outcomes (including consequences) of an investigation to those involved.

At the end of an investigation, findings must be made about the measures that should be undertaken to finalise the matter. In some circumstances, an investigation may find that a report of

bullying is not substantiated and no further action should be taken. Where bullying is not substantiated parties should be notified of the outcome. Where bullying is substantiated, strategies to assist complaint resolution should be assessed.

Outcomes of investigations should be communicated to relevant parties in a fair and consistent way that avoids bias. Communicate:

- investigation findings;
- actions recommended; and
- information on how to seek review of decisions.

Steps in a formal complaints process

The following steps outline the general process that a formal complaint will follow. At all times consideration should be given to the misconduct and discipline procedures in the relevant enterprise agreement. For further information and detailed training on using the processes under your agency's enterprise agreement please contact your agency's Human Resources team or the Shared Services Employee Relations team.

1. Verbally advising the supervisor or manager

The first step in lodging a formal complaint is for the complainant to advise their supervisor or manager that they wish to lodge a formal complaint. If the complainant's manager or supervisor is the alleged bully, then the incident should be received by the next person of seniority.

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

- Protect the complainant from reprisals;
- Ensure confidentiality is maintained;
- Ensure adequate support is provided to both the complainant and the alleged perpetrator;
- Involve human resources, as appropriate, to organise the investigation process; and
- Provide assistance to the complainant to submit the written complaint.

2. Lodging the complaint

The complainant should know how and to whom they should lodge their complaint. For example, the complaint should be in writing with specific allegations including dates, times and names of any witnesses. An agency template should exist for this purpose to make the

reporting process easier for the complainant (see [Appendix J](#) for a complaint's lodgment template).

3. **Initial Meeting**

Arrange for an appropriate senior officer to meet separately with both parties as soon as possible and explain their rights and responsibilities and the formal process. This should include:

- The expected timetable for investigation and resolution of the incident;
- How the incident will be investigated (e.g. interviews with the complainant, alleged bully and any witnesses; viewing documentary evidence etc);
- Who will receive copies of any statements and records of interview;
- Who can be present during interviews;
- Whether parties can refuse to participate;
- What support mechanisms will be in place for each party; and
- What interim measures will be taken to ensure the safety and welfare of the complainant during the investigation (interim measures may include suspension of the alleged bully pending the outcome of the investigation, or assignment to other duties until the investigation is complete).

4. **Appointment of an investigator**

With the help of the Shared Services or your agencies human resources section, arrange for an independent investigator to investigate the incident. Ensure the investigator at the commencement of the process understands their role, the rights of the alleged bully and what the expected outcomes may be. Either party should have the right to challenge the independence and impartiality of the investigator, providing they present reasonable grounds for doing so.

5. **The investigation**

The chief executive or delegate should contact the alleged bully in writing and notify them about:

- The details of the complaint/incident;
- Interview time;
- Processes and their rights (including the rights to have a representative);

- Time frame for the investigation;
- Requirement for confidentiality; and
- The possible consequences under the enterprise agreement or executive contract.

If the alleged bully admits to the behaviour

If the alleged bully admits to the behaviour, the matter can refer back to the Chief Executive or Delegate for appropriate action. This may include disciplinary action as specified in the relevant enterprise agreement and/or referral to counselling and training support services. The admission of the behaviour and any remorse expressed should be viewed positively and should be taken into account when determining the recommendations.

If the alleged bully denies the behaviour

If the alleged bully disputes the allegations, further investigations should be carried out in an attempt to determine the facts. This will involve speaking to the complainant, the alleged bully, any witnesses and may also involve considering relevant documentation. The determination is made on the balance of probabilities when taking all the relevant facts into consideration.

6. Findings

The investigator should provide the employer with a written report that includes the findings and the facts upon which the findings are made. The Chief Executive, or delegate should then meet individually with both parties to explain to them the findings of the investigation. The findings should also be communicated to the parties in writing.

If the allegation cannot be substantiated, this does not mean the bullying did not occur. Employers need to identify what can be done to assist the individuals to return to a working relationship. This may involve mediation, counselling, changed working arrangements and/or addressing other organisational issues that may have contributed to the circumstances of the incident. It may include counseling or other appropriate sanction for the complainant if the complaint is found to be vexatious.

If the allegation is found to be substantiated, the Chief Executive or delegate must determine the appropriate action under the enterprise agreement to:

1. Address the bullying behaviour;

2. Make the bully accountable for his/her conduct (e.g. an apology, a formal warning, disciplinary action, etc); and
3. Protect the complainant from any further bullying and/or reprisals (e.g. moving the bully into a different work unit).

7. **Appeal**

Appeal mechanisms (as per the relevant agency's enterprise agreement) are available to enable both parties to appeal against the decision if they consider this warranted.

8. **Access to counselling**

Access to counseling, training and other modes of support and rehabilitation should be provided for:

- The complainant to assist him/her to find coping strategies to deal with the alleged bully whilst the matter is being resolved;
- The alleged bully to enable him/her to receive support through the rehabilitation process;
- The alleged bully to recognise and change their behaviour; and
- Any other affected team member(s).

9. **Review**

Reviews of the work area should be in place for a specified period of time to ensure that the resolutions and continued wellbeing of the complainant and the respondent are reviewed. Regularly reviewing the situation following resolution will assist in ensuring the actions to stop the bullying have been effective.

Alternative arrangements during an investigation

Where a formal complaint is made and investigation is necessary, consideration should be given to the potential ongoing risks to both parties (the complainant and the respondent) associated with the current work arrangements until the complaint is resolved. This is to ensure as far as practicable the wellbeing of those involved. The following factors should be considered:

- relevant information from the initial assessment;
- the physical/psychological state of the complainant, and the respondent;
- how long the alleged behaviour may have been going on;
- how serious the initial allegation appears to be;

- the degree of disruption the issue appears to be causing in the working environment;
- any evident complicating factors e.g. previous history of conflict between the parties etc;
- any relevant previous history of bullying allegations against the respondent and their outcomes;
- the views of both parties on whether an informal or formal process is required to resolve the issue and the length of time this might take;
- if necessary the views of the complainant about possible management options during a formal investigation process; and
- the potential need to protect the complainant from reprisals.¹²

Discussions should take place with both parties and depending on the complaint and circumstances any action taken at this stage should not unduly disadvantage either party. Action should not be based on presumed guilt and should be practical and proportionate to the circumstances. A timeframe should be set for the arrangements and a review date identified. Examples of potential temporary action include:

- alternative employment arrangements;
- alternative work locations, reporting lines or shift arrangements; and/or
- making appropriate arrangements to manage any necessary work interactions between the parties.

¹² NSW Health: *Guideline; Bullying Prevention and Management of Workplace Bullying*, 2007 pg18.

Section 9: General Information

Useful Links

Document	Link
ACTPS Work/Life Balance Policy	http://www.cmd.act.gov.au/_data/assets/pdf_file/0004/116824/wlbpolicy.pdf
<i>Public Sector Management Act 1994</i>	http://www.legislation.act.gov.au/a/1994-37/default.asp
Public Sector Management Standards	http://www.legislation.act.gov.au/di/2006-187/default.asp
ACTPS Collective Agreements	http://www.sharedservices.act.gov.au/docs/agreements/
ACT Human Rights Commission	http://www.hrc.act.gov.au/
Australian Human Rights Commission – Complaint Handling	http://www.humanrights.gov.au/info%5Ffor%5Femployers/complaints_proc/index.html
ACT Work Safety Commissioner – Code of Practice on Preventing and Responding to bullying at work (the Code)	http://www.worksafety.act.gov.au
Australian Public Service Commission	http://www.apsc.gov.au/
ACTPS Respect, Equity and Diversity Framework	http://www.cmd.act.gov.au/governance/public/publications

Abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACTPS	ACT Public Service
APS	Australian Public Service
APSC	Australian Public Service Commission
CALD	Culturally and Linguistically Diverse
CMD	Chief Minister’s Department
EEO	Equal Employment Opportunity
OH&S	Occupational Health and Safety
PSM Act	<i>Public Sector Management Act 1994</i>
REDCON	Respect, Equity and Diversity Contact Officers Network

Glossary

EAP	Employee Assistance Program
HR Council	Whole-of Government Human Resources Council comprised of representatives from each ACTPS agency
Management Council	Whole-of-Government Management Council. Management Council is comprised of each ACTPS agency Chief Executive
OH&S	Occupational Health and Safety
Reasonable Adjustments	Making changes to ensure equal opportunity for people with a disability is commonly referred to as 'reasonable adjustment' or 'reasonable accommodation'. For many people with a disability, a major barrier to equal opportunity, equal participation or equal performance at work is some feature of the work situation which could readily be altered. Removal or discrimination as required by the <i>Disability Discrimination Act 1992</i> and the <i>ACT Discrimination Act 1991</i> , requires removing this kind of barrier, not just more obvious or direct discrimination based on disability ¹³ .

References and Bibliography

1. ACT Government, Department of Education and Training: Respectful Workplaces: Reducing the Risk of Workplace Bullying and Harassment.
2. ACT Government, Department of Territory and Municipal Services: Workplace Discrimination, Harassment and Bullying Prevention Policy.
3. ACT Government, Shared Services: Dealing with Misconduct and Inappropriate Behaviour in the Workplace Presentation.
4. ACT Health: Anti Discrimination, Harassment and Bullying Policy.
5. ACT Health: Creating a Great Workplace Presentation.
6. ACT Health: Managing and Preventing Bullying and Harassment Presentation.
7. ACT Legislative Assembly Secretariat: Policy and Procedures for dealing with Workplace Discrimination, Harassment and Bullying.
8. ACT Occupational Health & Safety Commissioner: Stresswise- Preventing Work-related stress.
9. ACT Work Safety Commissioner: Checklist for Employers addressing Workplace Bullying.
10. ACT Work Safety Commissioner: Developing a complete Complaint Resolution Process to address Workplace Bullying.
11. ACT Work Safety Commissioner: I think I am being bullied...What should I do?
12. ACT Work Safety Commissioner: Preventing and responding to bullying at work.
13. ACT Work Safety Commissioner: Recognising and Removing the Risks of Workplace Bullying.
14. Australian Public Service Commission: Respect: Promoting a culture free from harassment and bullying in the APS.
15. Comcare: Bullying in the Workplace, A guide to prevention for managers and supervisors.
16. Government of South Australia: Preventing Workplace Bullying, A Practical Guide for Employers.
17. New South Wales Government, Workcover: Preventing and Dealing with Workplace Bullying.
18. New South Wales Health: Bullying – Prevention and Management of Workplace Bullying: Guidelines for NSW Health.
19. State Services Authority, Victoria, Public Sector Standards Commissioner: Managing poor behavior in the workplace.
20. Work Safe Victoria: Workplace Bullying Prevention Team Report and information folder.
21. WorkCover Tasmania: Bullying, A guide for employers and workers.

¹³ Adapted from the Department of Immigration and Citizenship: *Workplace Diversity Plan 2008-2010*.

Appendix A: ACTPS Whole of Government Respect at Work Policy

People Management Policy Statement No. 2

ISSUED: December 2010

/// Chief Minister's Department - Governance Division

Respect at Work – Policy for dealing with work bullying, discrimination and harassment

- Agency Heads
- HR Directors/Managers
- Shared Services Centre
- All staff

Purpose

1. To provide agencies with a whole of government Respect at Work Policy which asserts that:
 - work bullying, discriminatory or harassing conduct will not be tolerated in the ACTPS either within or across agencies;
 - appropriate action will be taken against individuals engaging in work bullying, discriminatory or harassing conduct; and
 - all informal reports and formal complaints of work bullying, discrimination or harassment will be treated seriously, promptly and fairly with due regard to the principles of procedural fairness, natural justice and confidentiality.

Application

2. This policy applies to all staff appointed and engaged under the *Public Sector Management Act 1994* and people working in the ACT Public Service.

Background

3. The ACT Public Service (ACTPS) Management Council has recognised the need for a whole of government human resources policy on maintaining a positive working environment that is free from all forms of work bullying, discrimination and harassment. This policy forms an integral part of the employment framework along with the *Public Sector Management Act 1994*, the *Work Safety Act 2008*, the Public Sector Management Standards 2006 and Agency Enterprise Agreements.

Principles

4. The following principles apply for the purpose of creating a positive work environment of respect and courtesy where work bullying, discrimination and harassment are not tolerated:
 - the ACTPS upholds a culture where diversity is respected and the contribution that people with diverse backgrounds, experience and skills make to the workplace is valued;
 - each individual is unique and has the right to be treated with dignity, respect and courtesy and to work in a fair, safe and productive environment;

- the ACTPS is committed to providing safe and healthy workplaces which are free from work bullying, discrimination and harassment;
- reasonable management action taken in a reasonable way is not considered work bullying;
- fair and accessible mechanisms are available for staff to raise issues and make formal complaints;
- informal reports and formal complaints are to be treated seriously, promptly, confidentially and with adherence to the principles of natural justice and procedural fairness. Natural justice and procedural fairness must be afforded to all parties to avoid unfair or disproportionate treatment to either complainants, respondents or witnesses;
- complaints should be resolved informally where practicable and appropriate;
- in some situations, due to the seriousness of the situation in question it is more appropriate to resolve the complaint using a formal process;
- all parties to a formal complaint should be informed of the outcome taking into consideration privacy concerns, the nature of the complaint and the proportionality of information applicable to each party;
- every individual has the right to bring informal reports or formal complaints to an executive or manager; and
- agencies must work together in good faith to apply this policy in workplaces employing staff from different ACTPS agencies or external organisations. This includes the investigation and resolution of formal complaints.

Specific Responsibilities:

5. The following responsibilities apply to agencies, executives, managers and staff as follows:

Chief Executives / Agencies:

Agencies have a duty of care to provide a safe work place by taking all reasonably practicable steps to eliminate and minimise the risk of inappropriate behaviour by implementing a planned and systematic approach to the management of inappropriate behavior as a workplace hazard. Agencies:

- must promote to staff the ACTPS values and code of conduct;
- must actively prevent work bullying, discrimination and harassment by adopting the whole of government policy, providing supervision, awareness raising and training for staff, and undertaking ongoing risk management;
- must ensure that executives, managers and staff are educated and made aware that conduct of a work bullying, discriminatory or harassing nature will not be tolerated;
- must ensure guidelines and procedures are in accordance with Agency Enterprise Agreements and consistent with WHoG guidelines to enable staff to raise issues about and make formal complaints of work bullying, discrimination or harassment;
- must ensure that executives, managers and staff are aware of what to do if work bullying, discrimination or harassment occurs;
- must investigate formal complaints of work bullying, discrimination or harassment as soon as possible in accordance with Agency Enterprise Agreements and consistent with the WHoG guidelines or other applicable procedures;
- inform parties at the beginning of the investigation that they will be informed of the outcome with due regard being given to privacy concerns, the nature of the complaint and the proportionality of information applicable to each party;
- must identify, assess, and eliminate or control the risk factors that contribute to a work culture where work bullying is likely to occur;

- must keep accurate records of formal complaints of work bullying, discrimination and harassment; and
- must provide formal complaints data on work bullying, discrimination and harassment to the Commissioner for Public Administration as part of the Agency Survey process.

Executives and Managers:

- must uphold the values and code of conduct of the ACTPS and treat all staff with respect;
- must ensure that their own conduct is above reproach and examine their own preconceptions, biases and stereotypes concerning work bullying, discrimination or harassment;
- must communicate this policy and related procedures to staff to ensure that they are aware of their rights and responsibilities;
- must actively prevent work bullying, discrimination and harassment by addressing conduct that is inappropriate and taking necessary corrective and preventative action, irrespective of whether the behaviour leads to a formal complaint being raised;
- must treat informal reports or formal complaints of work bullying, discrimination or harassment seriously and respond promptly and confidentially in accordance with Agency Enterprise Agreements and consistent with the WHOG guidelines; and
- must take all reasonably practicable steps to prevent complainants and witnesses being victimised.

Staff and other people working in the ACTPS:

- must uphold the values and code of conduct of the ACTPS and treat all staff with respect;
- comply with any lawful and reasonable direction given by a person having authority to give the direction;
- understand their own behaviour and how it may be perceived and impact on others at work;
- must actively prevent work bullying, discrimination and harassment by requesting, if observed, the offending behaviour cease, either by directly discussing this with the individuals involved or by talking with a supervisor about the situation;
- should familiarise themselves with their agency guidelines and procedures relating to work bullying, discrimination and harassment;
- offer support to anyone who is being bullied, discriminated against or harassed and if possible let them know where they can obtain help and advice;
- who are affected by inappropriate work behaviour are encouraged, where appropriate, to talk directly to the person engaging in the inappropriate work behaviour, to try to resolve the matter informally in the first instance;
- should raise concerns as early as possible about potential work bullying, discrimination or harassment issues;
- may raise their concerns with their supervisor or any other senior manager or executive or raise their concern with their Contact officer, Work Safety Representative or agency human resources area;
- must not raise complaints that are frivolous or malicious; and
- must participate in the complaint resolution process in good faith and with confidentiality.

Cost Benefit

6. Work bullying, discrimination and harassment cause harm to people and organisations and can lead to psychological and physical injury resulting in both emotional and financial costs (direct and indirect) such as: loss of productivity; high staff turnover; increased absenteeism; reduced performance; low morale; work disruption and costly workers' compensation claims or legal action and the cost of management time diverted to address cases of work bullying, discrimination and harassment.

Legislative Reference

7. Legislative References include:
 - Agency Enterprise Agreements;
 - *Public Sector Management Act 1994 and Standards*;
 - *Work Safety Act 2008*;
 - *Fair Work Act 2009 (Cwlth) and Regulations*
 - *Human Rights Act 2004*;
 - *Discrimination Act 1991*; and
 - *Territory Records Act 2002*.

Enterprise Agreements 2010:

The 2010 – 2011 Enterprise Agreement clearly states that bullying, harassment and discrimination of any kind will not be tolerated in ACT Government workplaces and that bullying and harassment in the workplace has both emotional and financial costs and that both systemic and individual instances of bullying and harassment are not acceptable. Accordingly:

- if the Agency is made aware of instances, or reported instances, of bullying and harassment or discrimination, the Agency will investigate the concerns as soon as possible in accordance with the Workplace Behaviours provisions in the Agreement; or
- if the Agency independently considers that inappropriate behaviour may be occurring, then the Agency will respond, as soon as possible, in a manner commensurate with the seriousness of this issue.

Public Sector Management Act 1994:

The *Public Sector Management Act 1994* (PSM Act) sets out the expectations that the government and the community have about the professionalism and probity of the ACTPS. Section 9 of the PSM Act establishes a detailed code of ethics that details the obligations that apply to everyone employed under that Act. Specifically section 9(d) of the PSM Act states:

“a public employee shall, in performing his or her duties treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations.”

Work bullying; harassment, discrimination and violence are all breaches of the ACT Government's Code of Ethics under section 9 of the *Public Sector Management Act 1994*. Breaches will be dealt with as misconduct and may lead to disciplinary action in accordance with the procedures outlined in the Enterprise Agreement.

Work Safety Act 2008

Under the *Work Safety Act 2008* (Work Safety Act) ACTPS agencies (as employers) and staff who have control of the workplace have a legal duty to take all reasonably practicable steps to eliminate or minimise harm from risks to the health and safety of their workers. These risks include all psychosocial hazards, such as work bullying. Failure to do so could constitute a breach of the Work Safety Act and could have serious repercussions, not only for those perpetuating the bullying or those being bullied, but also for the ACTPS as a whole.

Dictionary

8. The following definitions are used in this policy:

Work Bullying: means repeated unreasonable behaviour directed towards one or more staff members by one or more staff members. Work bullying does not include reasonable management action taken in a reasonable way (see Prevention Guidelines for further detail).

Discrimination: means the unfair treatment of an individual or group of people because they belong to a particular group of people or because they are associated with a particular characteristic or attribute as defined in discrimination legislation.

Harassment: is a form of discrimination that is offensive, abusive, belittling or threatening behaviour directed at a person or persons because of a particular characteristic of that person. It can include sexual, disability or racial harassment.

Staff: means an officer or employee appointed or engaged under the *Public Sector Management Act 1994*.

Related Policy

9. Related policy includes:

- The whole of government Preventing Work Bullying Guidelines which provides a details on work bullying, prevention strategies and how to respond to a complaint;
- Relevant agency Bullying and Harassment, Guidelines, Procedures and Fact Sheets;
- ACTPS Respect Equity and Diversity Framework; and
- ACTPS Ethics in the ACT Public Service Framework.

Policy Owner

10. Senior Manager
Strategic Human Resources
Public Sector Management Group
Chief Minister's Department

Review Date

11. This policy statement is due for review in December 2012.



Catherine Hudson

Commissioner for Public Administration

Appendix B: General Obligations of Employees

[Section 9](#) of the *ACT Public Sector Manager Act 1994 (PSM Act)* provides a detailed Code of Ethics that sets out the general obligations that apply to everyone employed under the PSM Act. A copy of Section 9 is outlined below:

ACTPS Code of Ethics – general obligations of public employees

A public employee shall, in performing his or her duties:

- (a) Exercise reasonable care and skills;
- (b) Act impartially;
- (c) Act with probity;
- (d) Treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;
- (e) In dealing with members of the public, make all reasonable efforts to assist them to understand their entitlements under the territory laws and to understand any requirements that they are obliged to satisfy under those laws;
- (f) Not harass a member of the public or another public employee, whether sexually or otherwise;
- (g) Not unlawfully coerce a member of the public or another public employees;
- (h) Comply with this Act, the management standards and all other Territory laws;
- (i) Comply with any lawful and reasonable direction given by a person having authority to give direction;
- (j) If the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties-
 - (i) disclose the interest to his or her supervisor; and
 - (ii) take reasonable action to avoid the conflict;as soon as possible after the relevant facts come to the employee's notice;
- (k) Not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person;
- (l) Not take, or seek to take improper advantage, for the benefit of the employee or any other person, of any information acquired, or any document to which the employee has access, as a consequence of his or her employment;
- (m) Not disclose, without lawful authority-
 - (i) any information acquired by him or her as a consequence of his or her employment; or
 - (ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment;
- (n) Not make a comment that he or she is not authorised to make where the comment may be expected to be taken to be an official comment;
- (o) Not make improper use of the property of the Territory;
- (p) Avoid waste and extravagance in the use of the property of the Territory;
- (q) Report to an appropriate authority-
 - (i) Any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or
 - (ii) Any possible maladministration in the public sector that he or she has reason to suspect.

Appendix C: Work Bullying Examples

Examples of Work Bullying Behaviours

Examples of Work bullying behaviours are outlined below that aim to demonstrate the various behaviours compounding the nature of work bullying.

Example 1 – Worker bullied by Supervisor

Shortly after David started a new job in the public service, his supervisor retired and was replaced by a new starter, Benjamin. Within a short amount of time, Benjamin began to frequently use abusive language and be sarcastic when dealing with his staff. David overheard Benjamin telling the senior manager of their team fabricated stories about David's employment history that made him look incompetent. For no apparent reason, Benjamin belittled David and other staff members in group meetings. After three weeks he told David that he was considering extending his probation. When David repeatedly asked him for the reason, he would not respond. Six weeks later David's father died in a sudden accident and Benjamin would not approve his application for compassionate leave to support his mother and organise the funeral. One week before his probation ended, David arrived at work to find a probation review report in his in-tray. The report described his performance as poor and said that Benjamin would recommend that his employment be discontinued.

Example 2 – Worker bullied by Supervisor

After working for a department for seven years Graham developed an injury that required surgery, which restricted his ability to perform certain tasks. He was placed on a return to work program after recovering from surgery. His team leader, Kristy, deliberately ignored the advice of Graham's doctor and did not follow Graham's rehabilitation plan. Graham was placed at a new work station away from the rest of his team, was excluded from team meetings and never allocated any new work. Over the next few weeks, Graham received several emails from Kristy suggesting that he could not do his job to the same standard anymore and that he should think about resigning soon. When his rehabilitation case manager visited, Kristy told him that Graham was not a 'team player' and that Graham's attitude problem had made it difficult to follow the rehabilitation plan.

Example 3 – Supervisor bullied by worker

Carmel was appointed to a new role as a branch manager at a government agency. This was a significant promotion for Carmel and she was nervous about starting work. After a few days, she learnt that one of the senior officers in the branch, Harry, had also applied for the job, and had been acting in it prior to her appointment. After a few weeks, it became clear that Harry was keeping important information from her about work that was underway before she started. Harry then told Carmel during his yearly performance review that no one in the branch took her seriously and that they would never respect a female manager there. He told her that he had no intention of “making her look good” and would do everything in his power to make her life difficult. After that meeting, Harry’s team never submitted work on time and would pointedly not take part in any activities that she organised. At every manager’s meeting he would speak over her or roll his eyes when she was speaking. When Carmel took leave at Christmas, she returned to find that Harry had re-written the branch work plan and submitted two budget requests in her name without her permission.

Example 4 – Worker bullied by Colleague

Veronica is a new graduate working in the IT services part of a government department. During her first rotation, she was supervised by a senior officer called Tom. Tom was highly regarded in the department because of the quality of his work and had recently been promoted to encourage him to stay within the department. Until Veronica arrived, Tom was the youngest, most highly qualified staff member in the team.

Initially, Tom and Veronica worked well together and were asked to work on a specific, short term project. Trying to prove herself, Veronica worked late every night and ended up doing most of the project work. At the next branch meeting, their director singled out the project and praised Veronica for the quality of her work. After that meeting, the relationship between Tom and Veronica deteriorated. When work was allocated to their team, Tom always took the most high profile, interesting work and left Veronica with filing and routine, administrative tasks. When Veronica did get to do IT related work, Tom frequently added his name to the related brief and sometimes even removed her name as well. Two weeks before her rotation ended, Tom went on holiday for two weeks, leaving Veronica to finish an important task that he had barely started. On his return, he discovered that it was not finished on time and wrote Veronica a negative performance report. This report implied that she was unreliable and should not be offered a permanent job in their branch after she finished the program.

Example 5 – Mobbing

Brian had worked at a small government agency for many years and was looking forward to retiring in three years time. He had always been shy and tended to be quiet at work, keeping to himself and not attending many social functions with his colleagues outside of work. One day their agency director received an anonymous letter of complaint which alleged that several of Brian's colleagues had been using their work cars to run personal errands during work time. It also named two of these workers as fraudulently claiming overtime from the agency over a period of several years.

The director launched an internal review into the allegations and began interviewing all workers. In the week leading up to his interview, Brian found a copy of the letter on his desk with the words 'we know it was you' written across the bottom. One day as he arrived at work, one of the workers being investigated blocked his path on the stairs and threatened to get revenge if he did not support them at his interview. The same worker started spreading rumours that Brian was 'a traitor' and each time he walked into the office, several colleagues stared at him and started humming a popular song called 'the mole'. Each time he had to work with someone from that group they did not reply his emails or phone messages and did not attend any of the group's meetings.

Appendix D: Tips for Encouraging a Culture of Respect and Courteous Work Behaviour

In their Guide to Respect: Promoting a Culture Free from Harassment and Bullying in the APS, the Australian Public Service Commission has outlined the following tips to encourage a culture of respect and courteous workplace behaviour.

Ensuring open communication

- Make sure communication within the team is open, clear and friendly
- Implement an 'Open Door' protocol
- Monitor potential bullying, harassment or low morale
- Provide constructive performance guidance, including positive feedback

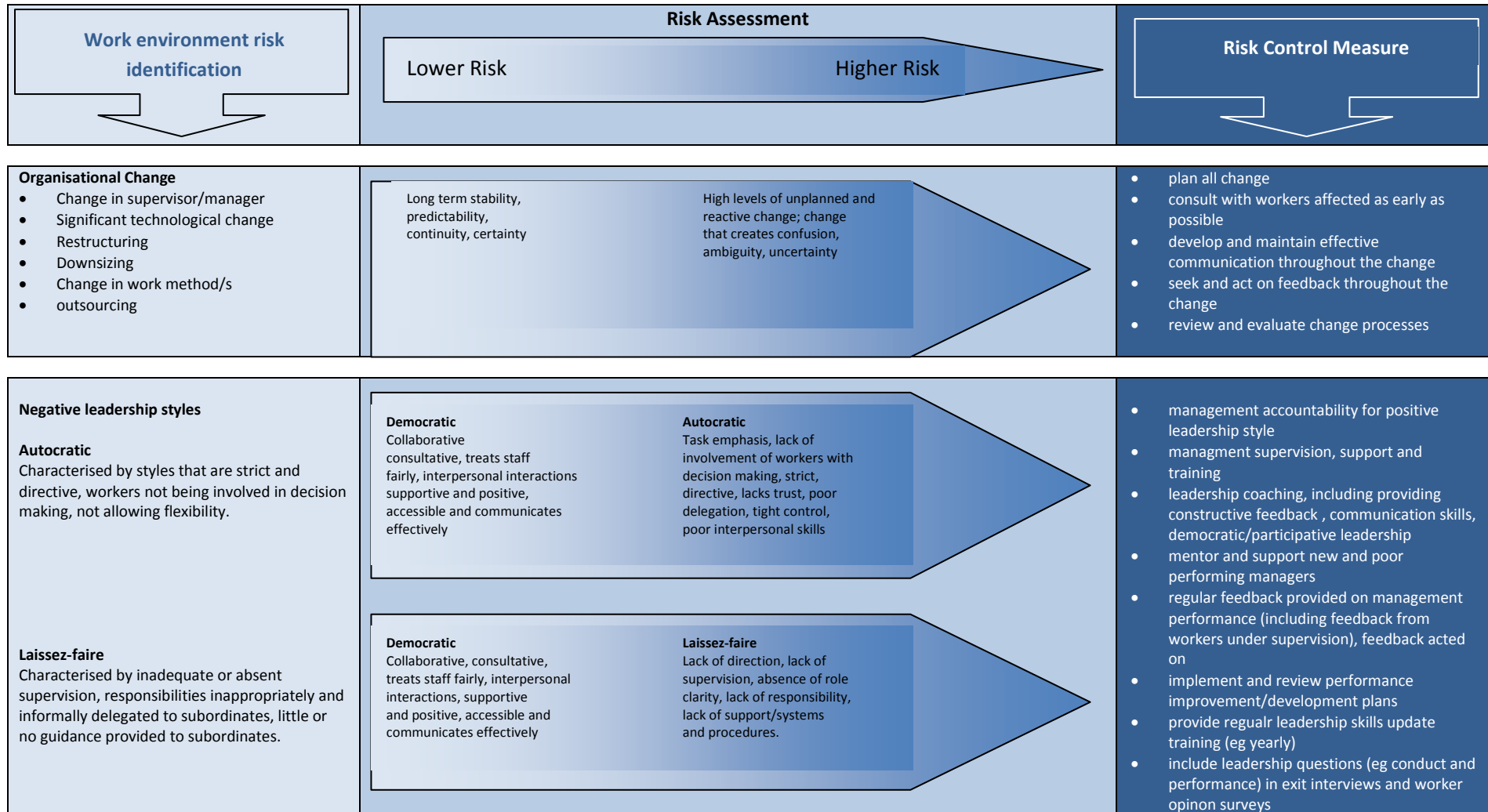
Strategies to promote respect and courtesy

- Develop a set of agreed team behaviours that embed the ACTPS Values and Code of Conduct (General Obligations of employees, Section 9 of the PSM Act)
- Incorporate the ACTPS values into performance planning and feedback cycles for all staff
- Agree on a process for team members to provide feedback
- Include a team building session at planning days or team meetings
- Ensure support for a culturally inclusive workplace
- Check that all staff have read, understood and apply the agency's policy on harassment and bullying
- Discuss staff survey results with teams and identify any areas for improvement

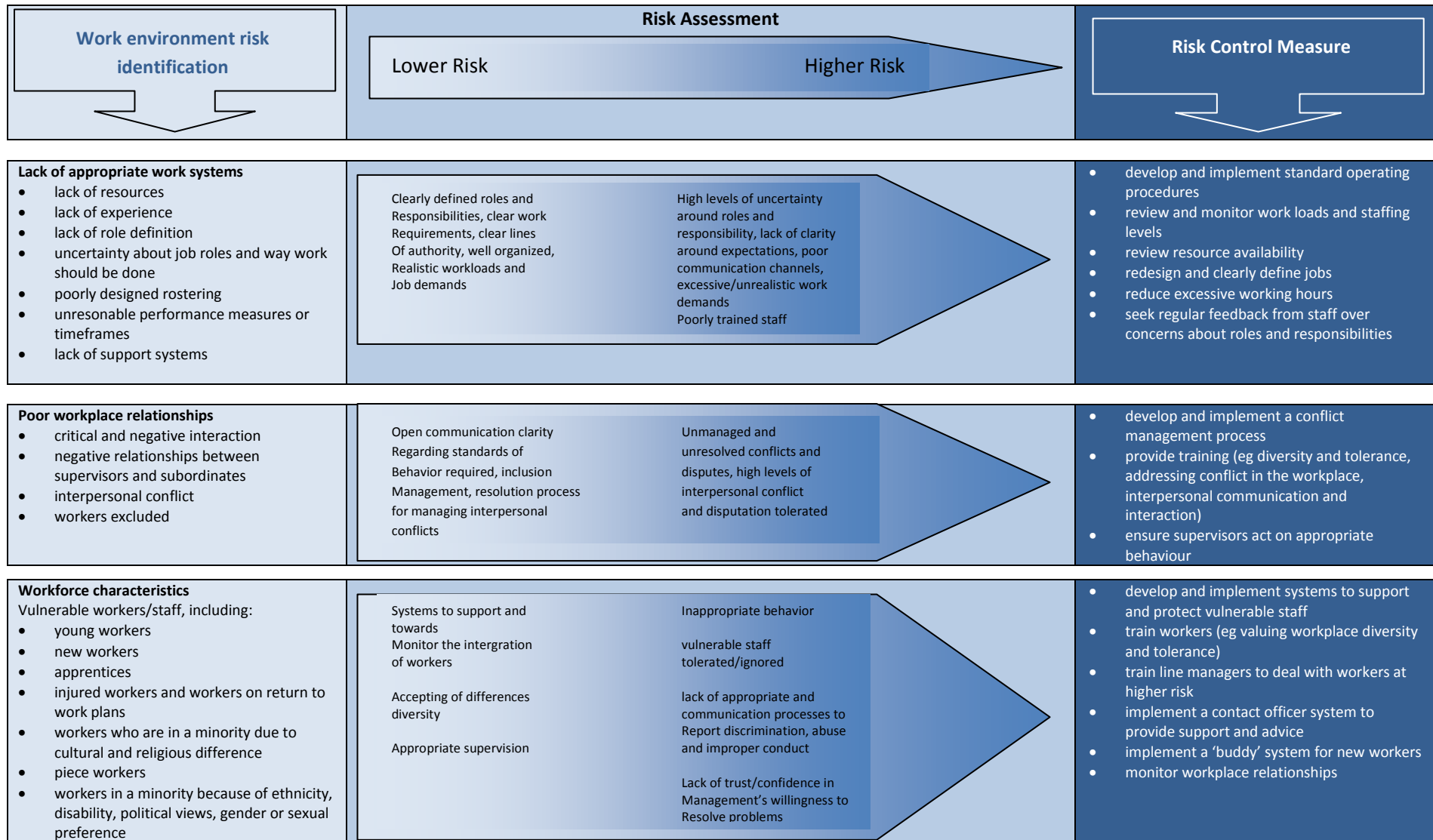
Managing workloads and priorities

- Prioritise tasks and set clear and realistic deadlines
- Manage the allocation of urgent work and help staff to re-prioritise workloads where necessary
- Ensure staff have all the information they need to do their work
- Confirm that all workers understand their role and have the skills, capabilities and training they need to perform to their full potential
- Design jobs to ensure workloads are fairly distributed
- Consider job rotation to give workers opportunities to broaden their experience and skills
- Encourage workers to find a good work-life balance.

Appendix E: Bullying Risk Indicator



Bullying Risk Indicator (Cont'd)



Appendix F: Agency Risk Checklist

All agencies* should carry out a regular check of the workplace in consultation with health and safety representatives and workers to identify if there are signs that bullying is happening or could happen (risk identification), and take steps to deal with any problem area (risk control). This checklist and the suggested control measures are not exhaustive. You may need to consider other factors that are unique to your workplace.

*Note: In this Checklist, the term 'Agency' covers the definition of a person conducting a business or undertaking and/or person in control of premises in the *ACT Work Safety Act 2008*.

Organisational Change	YES	NO	Comments
Has there been recent significant organisational change or is change pending?	<input type="checkbox"/>	<input type="checkbox"/>	If YES to any of the above, implement risk control measures, such as: <ul style="list-style-type: none"> • Consult with workers about proposed changes and provide them with an opportunity to influence proposals • Provide workers with information to help them understand the proposed or actual changes, and the impact of the changes • Consult with workers about any support or retraining needed as a result of the changes • Seek and act on feedback during change process • Review and evaluate change process
Has a takeover occurred or is it pending?	<input type="checkbox"/>	<input type="checkbox"/>	
Has there been a major internal restructure or is it pending?	<input type="checkbox"/>	<input type="checkbox"/>	
Has there been a change in management or is it pending?	<input type="checkbox"/>	<input type="checkbox"/>	
Are there any other changes that might lead to high job instability and uncertainty about ongoing employment?	<input type="checkbox"/>	<input type="checkbox"/>	
Negative leadership styles	YES	NO	Comments
Does the workplace have authoritarian management styles?	<input type="checkbox"/>	<input type="checkbox"/>	If YES to any of the above, implement risk control measures, such as: <ul style="list-style-type: none"> • Provide managers and supervisors with leadership training • Provide managers and supervisors with communication skills training • Use mentoring and coaching to improve leaders' interpersonal skills • Train managers and supervisors to adopt participative management styles as part of a culture that emphasizes open communication, support and mutual respect
Does the workplace have laissez-faire management styles?	<input type="checkbox"/>	<input type="checkbox"/>	
Do managers and supervisors lack appropriate leadership training?	<input type="checkbox"/>	<input type="checkbox"/>	
Do managers and supervisors have poor interpersonal skills?	<input type="checkbox"/>	<input type="checkbox"/>	

Appendix G: Correspondence Checklist

After a meeting, it may be appropriate to send correspondence confirming the information relayed during the meeting and detailing the following information, advice and support as appropriate to the situation:

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

Providing this information and affording opportunities to respond ensure that the requirements of procedural fairness and natural justice are met. The way the information is provided will need to be tailored to the nature and seriousness of each complaint.

Appendix H: Informal Resolution Advice for Workers

Further to the individual actions provided in this guide, the following information expands on the options available for workers to assist in the informal resolution of issues:

Ask for the behaviour to stop

Confronting the person engaging in inappropriate behaviour may be possible early in the process however it is very difficult when the problem has been going on for some time. If the person has never been challenged about their behaviour they may not be amenable to this type of approach, preferring instead to make it the recipient's problem.

There are also instances, however, where the person engaging in inappropriate behaviour is unaware of the effect their behaviour may have and may respond quickly to alter it if they are made aware that it is an issue for the recipient. A diary note should be kept of any attempts to raise the issue. The issue should be raised constructively and privately with the person concerned. The Employee Assistance Program may be able to assist workers to prepare to ask the behaviour to stop.

Speaking to the person directly

A worker may choose to speak to the person engaging in inappropriate behavior directly. A record should be kept of that conversation. The following people could provide information and advice on how to speak to the person engaging in inappropriate behavior:

- Manager or supervisor;
- The agency's RED contact officer;
- Health and Safety representative;
- Human Resources;
- Union representative;
- A professional counsellor from your agency's Employee Assistance Program.

Keep a record of any instances

The recipient should be encouraged to at least take diary notes stating clearly the date and time, what was said or done, in what tone, in response to what, and in front of whom (if anyone) and the behaviour that occurred. The notes should also include how they felt when the incident(s) occurred.

Seek support from their manager/supervisor

The recipient could approach their manager/supervisor to seek support and ask them to talk informally to the offender(s) about the recipient's concerns.

Approach Human Resources

Workers can approach the Human Resources Branch of their agency for advice on harassment, bullying or discrimination issues. The Human Resources Branch may be able to provide day-to-day advice and assistance to managers/supervisors and staff in relation to managing workplace diversity issues in line with legislative requirements. They will assist the parties, if possible, to reach an acceptable outcome for all parties.

Seek advice and support from the Employee Assistance Program (EAP)

Advice and counseling can be important steps to take before a person makes a decision on any action they may be contemplating in relation to work bullying. Through counselling, workers can check whether what they have been experiencing is in fact work bullying and provide advice on what are the best options for resolution. Work bullying can impact adversely on a person's confidence and health: counseling can provide them with the ability to rebuild their self-esteem. Counselling may also provide a person with the tools to better manage the offender(s), although this will not necessarily change the offender's behaviour. It is critical for staff to be aware of the EAP as a resource to help them through bullying/harassment difficulties.

Seek support from existing personal networks

One of the most insidious aspects of work bullying, is its isolating effect. For this reason, staff that feel, that they are in that situation should be encouraged to talk about their experiences with, and gain support from, their family, friends and/or other support people that they can draw on. A wide range of support people should be sought, as it is possible to overburden just one or two close people. It is important that support people are selected with regard to confidentiality as well.

Seek support from the Union

Workers that are being bullied can also access support from their relevant union.

Seek Mediation

Mediation is a way of bringing parties together to seek a resolution they can all accept. In a case where a person who has been bullied has lost confidence, self-esteem and power, the idea of participating in mediation can, however, be too frightening. Mediation is usually more appropriate when there is early intervention.

Mediation should take place only with a skilled mediator and only when both parties have agreed that there is a problem. Both parties need to understand the process and its consequences and both need to agree to participate in mediation. A skilled mediator will check on participants' sense of safety and be able to read the signs of people not feeling able to continue. Mediation should be discussed and arranged in conjunction with your agency's Human Resources Branch.

Change of environment

Removing the affected person from the workplace may sound as if it is avoiding the problem or punishing them. However, for some people, the chance to change shifts or to work in a different area on a temporary basis might be a valid choice when the bullying behaviour is eroding their health and wellbeing, even if only for a short period of time. It might give a person immediate relief and the space they need to regain their self-esteem, confidence and health. This option may not be feasible and/or appropriate in each individual situation and must be discussed in conjunction with the person, the manager or supervisor and with Human Resources.

The person chooses to take no action

While this must be respected and doing nothing is a legitimate choice, it is important to point out that the behaviour the person is concerned about is not likely to stop if they do nothing. Note that the person involved is the only one who can choose not to take any action – any others involved who are aware the issues have a responsibility to ensure that they act on the complaint/offer of support and assistance (particularly if a manager or supervisor).

Appendix I: Example of an Informal Reports Process

The majority of complaints can be resolve quickly and effectively at the local level using the Informal Complaints process as detailed below keeping in mind 'features of a good process' outlined in [Sections 7 and 8](#) of these Guidelines. This process is an example of an informal resolution process for work bullying.

Process	Complainant	Line Manager	Respondent
Lodging Complaint	Complaints can be Written or Verbal Should normally be lodged with next senior line manager or equivalent	Manager <u>must accept complaint either verbally or in writing</u> Record Keeping	
Initial assessment and meeting with Complainant	Talk about complaint(s) Try to identify most significant aspect(s) of complaint Try to detail desired outcome(s) <u>Can have a support person present</u>	<u>Manager must meet with complainant ASAP</u> Ask about issue(s) Listen to complainant Seek to identify satisfactory outcome(s) for complainant Advise of need to talk to Respondent <u>Arrange a report back meeting to Complainant</u>	
Meet with Respondent		<u>Manager must arrange to meet with respondent ASAP</u> Verbally advise respondent of the complaint(s) Verbally advise of outcomes sought Advise Respondent that they <u>can have a support person</u> <u>Set short timeframe for Response</u>	Can choose to <u>respond immediately or later</u> to issues raised by complainant Can choose to <u>respond immediately or later</u> to outcomes sought by complainant
Acceptance of complaint(s) Response by Respondent	Meet with manager to discuss outcome of meeting with Respondent May seek/need a meeting with the Respondent and/or Mediation	Advise Complainant of outcome May require a meeting between Complainant and Respondent to achieve outcomes May require some additional support and/or mediation	Meet with Manager and advise of acceptance of complaint and outcomes
Rejection of Complaint(s) Response by Respondent	Meet with manager for feedback and discussion of further options such as mediation or EAP Consider other resolution strategies Consider whether lodging a formal complaint will resolve the matter	Consider further options to resolve the situation, training coaching, counseling, other strategies Advise Complainant and Respondent that the complaint may escalate to a Formal Complaint Write up a factual account of issues and outcomes e.g. email to self	Meet with Manager to advise rejection of the complaint and discuss further resolution options Reflect on complaint and response Consider the possibility that a formal complaint maybe lodged

Appendix J: Formal Complaints Form

PART A: APPLICANT INFORMATION

Name:		Date:	
Position:			
Agency:			
Division:			
Section:			
Contact Number:		Alternate Contact Number:	

PART B: INFORMATION ABOUT YOUR COMPLAINT

What is your complaint about?

<input type="checkbox"/>	Bullying	<input type="checkbox"/>	Harassment
<input type="checkbox"/>	Discrimination	<input type="checkbox"/>	Interpersonal conflict & difficulties
<input type="checkbox"/>	Upholding ACTPS values	<input type="checkbox"/>	Health and Safety
<input type="checkbox"/>	Requests for flexible work arrangements	<input type="checkbox"/>	Rostering/working hours
<input type="checkbox"/>	Other – please specify:		
Is your complaint about another person or people at work?		Yes <input type="checkbox"/>	No <input type="checkbox"/>

If so, please identify the person, their position and how they relate to you.

(For example: my complaint is about Joe Bloggs, Administrative Assistant. We work in the same team)

--

Please briefly describe the nature of your complaint:

--

Please provide specific details of your complaint. If your complaint relates to a specific incident (or incidents it is useful to provide approximate dates, times and records of what was said (as far as you can recall) in the chronology below.

Date:	What happened:	Comments:

Have there been any witnesses to any of the events? If so, please list their name and contact number:

Name:	Contact Number:
Name:	Contact Number:
Name:	Contact Number:
Name:	Contact Number:

How do you feel about what happened?

What do you think would resolve your complaint? (For example, an apology or a meeting to discuss the issues)

Has this happened before?

Yes

No

If so, please provide details of the previous incidents:

Have you told anyone in your Agency about your complaint either informally or formally?

Yes

No

If so, who have you told about your complaint and what action (if any) have they taken?

Is there any other information you would like to include?

Note: If you do not have sufficient space on this form, please attach additional pages.

Appendix K: Open Door Protocol Guidelines

Open Door Protocol Guidelines

Overview

The ACT Public Service (ACTPS) values open and honest communication. If, as a worker, you have a respect, equity or diversity issue that concerns you, your matter will receive fair and objective consideration. This is the right of every worker and the Open Door Protocol has been established to support the implementation of the Respect, Equity and Diversity Framework and the Respect at Work Policy across the ACTPS.

The Open Door Protocol

The ACTPS Open Door Protocol is a work practice in which a supervisor, manager, executive or chief executive leaves their door "open" (figuratively speaking) in order to encourage productive communication among workers of the department, agency and at times between agencies.

Purpose

The purpose of the Open Door Protocol across the ACTPS is to ensure that every individual has a genuine impartial avenue to bring forward informal reports or formal complaints in relation to respect, equity and diversity issues by being able to approach a supervisor, manager, executive or chief executive to discuss the issue and how to resolve it.

Background

The Open Door Protocol has been established as part of, and should be read in conjunction with, the Respect, Equity and Diversity Framework, the Respect at Work Policy and supporting Preventing Work Bullying Guidelines found at www.cmd.act.gov.au/governance/public/RED.

Reasons to implement an Open Door Protocol

The ACTPS has introduced the open door protocol for several reasons.

- An 'open door' is designed to encourage concerns to be raised sooner rather than waiting until an issue becomes more difficult to resolve.
- If a supervisor or manager is perceived to be intimidating, bullying, or otherwise unapproachable, the open door protocol gives workers an alternative avenue to seek advice and support to resolve a situation. Left unresolved, these issues often become much more serious.
- To provide an avenue for an impartial person to consider or provide advice in relation to an informal report or formal complaint of inappropriate behaviour.

How the Open Door Protocol works

- Under the Respect at Work Policy, workers who are of the opinion that they have been affected by inappropriate work behaviour are encouraged, where appropriate¹⁴, to talk directly to the person engaging in the inappropriate work behaviour, to try to resolve the issue informally in the first instance and within the local work group.
- At anytime a worker may seek advice from their Agency's RED contact officer. The role of the RED contact officer does not include resolving issues.
- If the direct approach outlined above has not resolved the issue, workers are able to approach their immediate supervisor or manager in the first instance with any informal report or formal complaint that they may have. Many issues can be resolved at this point if dealt with promptly.
- If the matter cannot be resolved with the immediate supervisor, the worker may approach, their department/agency executive sponsor or their internal human resources area or any other supervisor, manager or executive for advice or to make an informal report or formal complaint.
- If :
 - it is inappropriate¹⁵ for the worker to raise the matter with their immediate supervisor or internal support people in place in the agency; or
 - the worker has attempted to utilise the internal options outlined above but the matter is still unresolved.

then the worker may need to approach an executive sponsor from another department/agency for assistance in addressing the matter.

The executive sponsors will most likely contact the Chief Executive of the worker's agency and in some instances the Commissioner for Public Administration as it is important that the worker's agency has an opportunity to respond to the issue.

¹⁴It may be appropriate to talk directly to the person if: it is a non-serious single incident; the inappropriate behaviour appears unintentional; or it appears that the situation can be resolved within the work area.

¹⁵ It may be inappropriate to raise the issue with an immediate supervisor or others within the agency if: the supervisor is involved in the incident or those resolving the issue are perceived to be biased.

At anytime a worker may seek advice from their agency's RED contact officer.

Talk directly to the person engaging in inappropriate work behaviour, to try to resolve the issue informally within the work group.

If talking directly to the person does not resolve the matter workers should approach their immediate supervisor. Many issues can be resolved at this point if dealt with promptly.

If the matter cannot be resolved with the immediate supervisor workers should approach their agency HR area, executive sponsor or any other manager or executive in their organisation.

If internal options are inappropriate workers can approach an executive sponsor from another ACTPS agency.

This process may not be sequential. While in some cases this may be desirable, it will not always be possible or appropriate, for a range of reasons including the seriousness of the

Issues to consider

- All workers, supervisors, managers, executives and chief executives must work together with other ACTPS agencies in good faith to apply this protocol.
- Under the Open Door Protocol, workers are encouraged to try to resolve the matter with their immediate supervisor before discussing with someone senior to their supervisor or external to their agency.
- Workers should not raise matters that are already under formal investigation or where a process is being undertaken, with executive officers or RED contact officers.
- All ACTPS workers must uphold the values and code of conduct of the ACTPS and treat all staff with respect.
- Workers must not raise complaints that are frivolous or malicious.
- Every individual has the right to bring informal reports or formal complaints to a manager or executive.
- RED contact officers and executive sponsors should receive training to undertake their role.
- All workers must participate in the complaint resolution process in good faith and with confidentiality.
- All informal reports and formal complaints will be treated seriously.
- Once an agency becomes aware of the issue there is a duty of care under the *Work Safety Act 2008* to take all reasonably practicable steps to manage the risk to work safety arising from the alleged inappropriate behaviour. This is the case even if the worker does not wish to proceed with a formal complaint.
- Supervisors, managers, executives and chief executives must follow the principles of a “Good Process” outlined in Section 7 of the Preventing Work Bullying Guidelines. This requires the principles of natural justice, procedural fairness, and confidentiality and privacy to be applied and the keeping of records.
- The requirement of keeping accurate records.
- In recognising natural justice and privacy principles, workers must be advised and be involved in the process if a complaint needs to be taken further or in such instances where their own agency needs to be informed to resolve the matter.

Legislative References

Legislative References include:

- *Fair Work Act 2009*;
- *Fair Work Regulations 2009*;
- Agency Collective or Enterprise Agreements;
- *The ACT Public Sector Management Act 1994*;
- *Human Rights Act 2004*;
- *ACT Disability Discrimination Act 1992*;
- *Discrimination Act 1991*;
- *Privacy Act 1988 (Commonwealth)*;
- *ACT Public Sector Management Standards (subordinate Law)*; and
- *Territory Records Act 2002*.

Related Policy

Related policy includes:

- the whole of government Respect at Work Policy;
- the whole of government Preventing Work Bullying Guidelines which provides a details on work bullying, prevention strategies and how to respond to a complaint;
- relevant agency Bullying and Harassment, Guidelines, Procedures and Fact Sheets;
- ACTPS Respect Equity and Diversity Framework; and
- ACTPS Ethics in the ACT Public Service Framework.

Guidelines Owner

Senior Manager
Public Sector Management, Strategic Human Resources
Public Sector Management Group Chief Minister's Department

Review Date

The Open Door Protocol is due for review in December 2012.