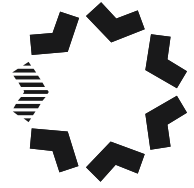


NATIONAL
COMPETITION
COUNCIL



Preventing Bullying in the Workplace

National Competition Council
Policy document



October 2009

Table of Contents

What is bullying?	3
Employer and employee responsibilities in the workplace	4
Action to prevent bullying	4
Handling complaints	5
Development and review	6

What is bullying?

Bullying is defined as “repeated, unreasonable behaviour directed towards a person or group of persons at a workplace, which creates a risk to health and safety”¹. In other words, bullying is behaviour that is persistent or ongoing (rather than a single incident) that would make a reasonable person, having regard to the circumstances, feel victimised, humiliated, undermined or threatened. The risk to health and safety could be a risk to the emotional, mental or physical health of a person or persons.

Bullying can take many forms. It may be either overt such as verbal or physical abuse, or more subtle like exclusion. Bullying can also be either intentional or unintentional, and can be directed at colleagues and supervisors and managers as well as subordinates.

Examples of unreasonable behaviour in the workplace include, but are not limited to:

- assault
- frightening, intimidation or aggressive body language
- the use of abusive, insulting or offensive language
- excluding, isolating or marginalising others
- teasing or humiliating
- practical jokes
- impinging on another’s personal space or tampering with other people’s property
- spreading misinformation and rumours
- sabotaging or undermining
- setting impossible tasks or deadlines
- assigning meaningless tasks or unfairly assigning unpleasant tasks
- unfair treatment in relation to entitlements such as leave, and
- displaying offensive material.

A single incident of workplace harassment does not constitute bullying, although it may be distressing or harmful to the targeted individual. Such incidents may however breach the Australian Public Service (APS) Code of Conduct and Commonwealth anti-discrimination legislation. Some types of harassment, such as those involving physical or indecent assault, may amount to a criminal offence, and may therefore involve a report to the police.

A person legitimately exercising their authority at work does not constitute bullying or harassment. Managers are required to direct and control work flow and provide feedback

¹ Comcare 2006, *Bullying in the workplace, a guide to prevention for managers and supervisors*, Canberra

on how work is performed and on staff work performance. Feedback provided with the intention of assisting staff to improve their performance does **not** constitute bullying, although performance issues must be dealt with objectively, constructively and with respect.

Employer and employee responsibilities in the workplace

Bullying is a breach of anti-discrimination and equal employment legislation, occupational health and safety legislation and the Australian Public Service Values and Code of Conduct under the *Public Service Act 1999*.

The *Public Service Act 1999* states that the APS provides a workplace that must be free from discrimination and utilise the diversity of the Australian community it serves (s.10(c)). Accordingly, the Council's managers must uphold and promote the APS Values and Code of Conduct (s. 12 & s. 35(2)). Council staff must treat everyone with respect and courtesy, and without harassment (s. 13(3)). Staff must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the Council and the APS (s. 13(11)).

Under the *Occupational Health and Safety Act 1991*, the Council's managers have a duty to take all reasonable practical action to protect the health and safety at work of Council staff (s. 16(1)). This duty extends to psychosocial hazards including bullying behaviours. Council staff have a responsibility to take all reasonable practical steps to avoid actions or omissions that create a risk or increase an existing risk to their health or safety, or to that of other persons at or near the workplace (s. 21).

Employers and employees can also be held liable for discrimination under the Commonwealth Human Rights and Equal Opportunity Act.

Comcare can investigate incidents of bullying and pursue enforcement action against employers and employees.

Action to prevent bullying

Bullying is unacceptable and will not be tolerated. Bullying can cause harm to both individuals and to the Council. It could lead to health and safety issues for the individual(s) and loss of morale and productivity for the Council.

The Council adopts a friendly and open working environment in which staff are encouraged to contribute to the organisation's output, including commenting on policies and procedures as these are developed. All staff attend regular staff meetings where they can discuss any issues and concerns, including organisational change and occupational health and safety (OH&S) issues. Staff may also raise issues through the OH&S committee and are encouraged to approach management directly if they have any concerns.

All staff members also have access to an Employee Assistance Program which is a confidential service funded by the Council.

Handling complaints

All complaints about workplace bullying will be considered seriously and investigated promptly and impartially. Confidentiality will be maintained. Support and advice will be provided for all persons involved as necessary.

Both formal and informal procedures are available for handling complaints about bullying.

- Informal procedures use mediation between the parties, and do not require record keeping or disciplinary action.
- Formal procedures involve record keeping and may result in disciplinary action.

If a staff member feels that he or she is being bullied, and the matter cannot be resolved between the parties concerned, then the staff member may seek assistance from the Council's Executive Director, Director, Corporate Services or the Council's harassment officer. The harassment officer is a member of the Council's staff who is chosen by other staff members.

The matter may be pursued **informally**, in which case an appropriate person will be appointed to act as a mediator in an effort to resolve the situation.

If the situation cannot be resolved by mediation, or if the matter is more serious, then a staff member can make a **formal** complaint to the Council's Executive Director. If the complainant considers the Executive Director is not the appropriate person to investigate the complaint, then he or she may refer the complaint to the Director, Corporate Services or the harassment officer.

The Executive Director (or Director, Corporate Services or harassment officer) will investigate and document the matter promptly. Documentation of complaints must include a summary of the complaint, the findings of any investigations and the actions taken as a result of the findings as well as any other pertinent facts. These documents will be treated confidentially and will only be accessed on a 'need to know' basis. The investigator will then determine the action considered necessary to resolve the complaint. The action so determined will be implemented only with the prior consent of the staff member(s) making the complaint. The views of the staff member(s) making the complaint will be very important in determining the course of action.

The Council's management will at all times be supportive of the complainant and adhere to the *Privacy Act 1988*. In order to maintain fairness, the accused will also be given every opportunity to present their case. Any investigations undertaken will be impartial and fully documented. All reasonable steps will be taken to remove the officer and/or the accused from the situation while investigations are undertaken and while any action considered necessary to resolve the situation is determined and implemented.

The complainant may seek the support and assistance of another staff member at any time.

If a staff member is dissatisfied with the outcome of investigations, or the matter remains unresolved, then the staff member may report the matter to the Executive Director (or to the Director, Corporate Services if the Executive Director conducted the original investigation). Having regard to any investigations that have already been conducted, the

Executive Director or Director, Corporate Services may appoint an authorised officer, either from the Council or from another agency, to consider further the allegations of bullying.

Where there is a substantiated case of bullying then the available courses of action include counselling of the perpetrator and/or probation, reduction in classification and possible termination of employment for the perpetrator. The Council's management has a responsibility to report any suspected breaches of the criminal code to the police.

Development and review

This policy was developed in consultation with all Council staff, and endorsed by senior management. The policy will be reviewed every two years, or sooner as required.

All new staff members are made aware of this policy, the APS Values and Code of Conduct and all other Council policies and procedures during their induction. Staff have been advised that all policies are available on the NCC intranet in the NCC Policies library under the Administration menu tab. Staff are also advised of the availability of external counselling services through the Employee Assistance Program.