

SESLHD PROCEDURE COVER SHEET



Health
South Eastern Sydney
Local Health District

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EXECUTIVE SPONSOR or EXECUTIVE CLINICAL SPONSOR	Director Workforce Services Joy.Hiley@health.nsw.gov.au
AUTHOR	Sen. Advisor Positive Workplace & Psychological Wellbeing Anita.Alexander.health.nsw.gov.au
POSITION RESPONSIBLE FOR THE DOCUMENT	Director Workforce Services Joy.Hiley@.health.nsw.gov.au
KEY TERMS	Promoting a positive and respectful workplace, workplace bullying, harassment, prevention of bullying, management of bullying, inappropriate behaviour
SUMMARY	This document: <ul style="list-style-type: none"> • Defines the procedures for promoting a positive and respectful workplace and preventing and managing workplace bullying and harassment within South Eastern Sydney Local Health District (SESLHD) • Outlines the rights and responsibilities of managers, supervisors and workers in relation to bullying and harassment in the workplace.

COMPLIANCE WITH THIS DOCUMENT IS MANDATORY

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Promoting a positive and respectful workplace – Preventing and managing workplace bullying and harassment

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1. PROCEDURE STATEMENT

At South Eastern Sydney Local Health District (SESLHD) workplace bullying and harassment is unacceptable. It is committed to providing and promoting a safe, positive, respectful and equitable workplace for all workers.

SESLHD seeks to eliminate bullying and harassment from all SESLHD workplaces. The objective of this procedure is to ensure all managers and workers:

- understand what constitutes bullying and harassment in the workplace
- are aware of their rights and responsibilities
- have clear procedures to follow to ensure incidents SESLHD are managed effectively.

This procedure should be read in conjunction with the NSW Health Policies:

- [PD2018_016 - Prevention and Management of Workplace Bullying in NSW Health](#)
- [PD2016_044 - Prevention and Management of Unacceptable Workplace Behaviours in NSW Health – JMO Module](#)

2. BACKGROUND

SESLHD expects all workers, at all times, by their behaviours and interactions with patients, clients and colleagues, to promote and contribute to a culture that reflects the:

- NSW Health core values of **Collaboration, Openness, Respect, and Empowerment**
- SESLHD organisational values of **Teamwork, Honesty, Respect, Excellence, Equity, Caring, Commitment and Courage**, through demonstrated behaviours and interactions with patients, clients and colleagues in keeping with these values.

Prompt support will be provided to workers who are subject to bullying or harassment. The following contacts are available: Supervisors and other Line Managers, the Human Resources Advisory Service, the Organisational Development & Learning Unit (OD&L), the Employee Assistance Program (EAP), and Employee Associations.

All bullying and harassment complaints will be:

- Treated seriously, sympathetically, promptly and confidentially
- Investigated fairly and impartially and resolved informally within the workplace wherever possible.

People making complaints and those providing witness statements will not be victimised in any way.

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In accordance with [PD2015_049 - NSW Health Code of Conduct](#) workers of SESLHD must promote a positive workplace by:

- Treating all other members of staff (irrespective of whether they are at the same level of seniority, or more senior or junior) in a way that promotes harmonious and productive working relationships, and a collaborative teamwork approach;
- Not bullying or harassing other staff, patients or members of the public, or discriminating against them on the basis of their sex, race, ethnic or ethno-religious background, marital status, pregnancy, disability, age, homosexuality, transgender or carers' responsibilities;
- Not encouraging or supporting other staff in harassing or bullying, or in acting in a way that is contrary to harmonious working relationships between staff members;
- Where appropriate, attempting to settle any complaints, disagreements or grievances involving other staff themselves in the first instance; or pursue such matters through their manager or a more senior member of staff in a way which is proportionate to the issues raised, utilises applicable NSW Health policies, and recognises that in any process to resolve such matters other staff also have perspectives and rights.

Any worker who is found to be in breach of these policies and procedures may be subject to disciplinary action.

3. DEFINITIONS

Definition of worker: A person is a **worker** if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

- an employee, or
- a contractor or subcontractor, or
- an employee of a contractor or subcontractor, or
- an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or
- an outworker, or
- an apprentice or trainee, or
- a student gaining work experience, or
- a volunteer, or
- a person of a prescribed class.

What is workplace bullying?

Bullying is defined by Safe Work Australia as:

“Repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.”

Repeated behaviour refers to the *“persistent nature of the behaviour and can involve a range of behaviours over time”*. This includes repeated behaviour directed towards one individual and single incidents of behaviour involving separate individuals and can involve a range of behaviours over time.

Unreasonable behaviour means “*behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening*”.

Workplace bullying will generally meet one or more of the following criteria:

1. It is repeated and systematic (although a serious single incident can also constitute bullying)
2. It is unwelcome and unsolicited
3. The recipient/s consider/s the behaviour to be offensive, intimidating, intended to humiliate or threatening
4. A reasonable person would consider the behaviour to be offensive, intimidating, intended to humiliate or threatening.

In the context of the above definition, bullying behaviour can take many different forms. It can range from overtly aggressive behaviour such as shouting and physical confrontations, to using an abusive or aggressive tone in speaking, to more subtle behaviours, such as passive-aggressive actions or tacitly supporting bullying by allowing it to continue.

Managers and staff at any level can either be responsible for carrying out bullying or be the recipient of bullying.

In considering what is workplace bullying it is necessary to apply common sense and the ‘reasonable person’ test, and to not apply criteria rigidly, out of context or without regard to all relevant factors.

What is NOT workplace bullying?

Workplace conflict such differences of opinion and disagreements are not generally considered to be workplace bullying, unless they are repeated, unreasonable behaviours that create a risk to health and safety.

Legitimate and reasonable managerial actions to direct and control how work is done in the workplace do not constitute workplace bullying.

Legitimate managerial actions may include:

- Providing appropriate feedback on a worker’s work performance (the fact that a worker may find the feedback upsetting, does not of itself constitute bullying)
- Managing performance or underperformance issues, dealing with possible misconduct, or dealing with excessive leave
- Issuing reasonable directions about work allocation and performance, and about attendance at the workplace
- Transferring a worker or taking action to make a worker redundant where the process is conducted fairly and equitably

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- Making justifiable decisions related to recruitment, selection and other development opportunities
- Ensuring that workplace policies are implemented
- Managing allegations of misconduct and utilising disciplinary actions where appropriate
- Overseeing injury and illness processes in accordance with WHS, injury management and workers compensation legislation and policies.

What is harassment?

In NSW it is unlawful under the Anti-Discrimination Act 1977 for employees to be discriminated or harassed at work because of their:

- Race (including colour, descent, nationality, ethnic origin, or cultural background)
- Religion
- Gender (including transgender, pregnancy or potential pregnancy, breastfeeding)
- Sexual orientation
- Marital or domestic status
- Disability (including physical, intellectual, psychiatric, neurological, illnesses such as HIV / AIDS)
- Carer responsibilities
- Age.

It is also against the law for a person to be harassed because of their relationship to, or association with a person of a particular sex, race, marital status etc. Sexual harassment is also against the law.

Other forms of behaviour, such as ‘targeting’ of employees, and victimisation directed towards a particular worker by another, may also constitute harassment, even though it does not fit within the strict definition of the Anti-Discrimination Act.

Refer to Attachment 1 for *Examples of typical workplace bullying and harassment behaviours.*

4. RESPONSIBILITIES AND RIGHTS**4.1 Chief Executive**

Key responsibilities include:

- To uphold the highest standards of professionalism at all times by performing the functions of the role efficiently, economically, impartially and with integrity and by actively advocating the NSW Health core values and the SESLHD values to ensure that Local Health District and Government expectations are met.
- To take all reasonable steps to ensure a positive workplace, and prevent bullying and harassment. The CE will achieve this by ensuring that:
 - The CE themselves at all times models the expected positive and respectful behaviours

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- The CE holds their own team accountable for modelling and insisting on positive and respectful behaviours in their own teams, and so on down the line in a cascading effect of modelling and accountability.
- Managers and Supervisors have access to training courses that deal with preventing bullying and harassment in the workplace, and handling bullying and harassment complaints.
- Senior Managers and Workforce Services staff provide procedural support and guidance to Supervisors.
- All Managers have the delegated authority and accountability to manage allegations of bullying and / or harassment impartially.
- All workers have access to an education program to inform them of their rights and responsibilities concerning bullying and harassment.
- All workers have access to appropriately trained Workforce Services Staff, and the EAP in order to receive coaching, counselling and support.
- Incidents and trends of bullying and harassment are recorded across SESLHD

Key rights include:

- To be treated appropriately by all SESLHD staff in line with the NSW Health core values and the SESLHD organisational values.
- To be supported by the managers of SESLHD to promote a positive workplace culture
- To be supported by the managers of SESLHD in preventing bullying and harassment, and handling bullying and harassment complaints.

4.2 Workers

Key responsibilities include:

- To act as an appropriate and effective role model and promote a culture and supporting practices that reflect the NSW Health core values and the SESLHD organisational values through demonstrated behaviours and interactions with patients, clients and colleagues.
- To report instances of bullying or harassment behaviour if witnessed, to an appropriate Supervisor or Manager.
- To maintain appropriate confidentiality throughout the complaint, investigation and resolution process.
- To be aware of and abide by the policy directive [PD2018_016 - Prevention and Management of Workplace Bullying in NSW Health](#)
- To refrain from making vexatious complaints. Disciplinary action, as outlined in [PD2018_031 – Managing Misconduct](#) will be taken against:
 - A complainant where there is evidence that they have knowingly alleged bullying and / or harassment that is untrue, malicious or in bad faith, and has done so deliberately to cause harm or hardship to the other worker(s).
 - Any worker who knowingly and / or maliciously provides false evidence during an investigation.
 - Any worker who makes allegations of bullying and harassment against a manager who is undertaking their role in a fair and equitable manner in line with NSW Health, and SESLHD policy to:
 - Set performance goals, standards and deadlines;
 - Allocate tasks to a worker;

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- Roster and allocate working hours;
- Determine that a worker is not to be given a promotion;
- Transferring a worker to another area or role for operational reasons;
- Implement organisational change or restructure;
- Apply performance management processes;
- Apply performance development processes;
- Inform a worker about unsatisfactory work performance or inappropriate behaviour in an honest, fair and constructive way;
- Manage excessive leave;
- Take disciplinary action, including suspension or terminating employment where appropriate or justified in the circumstances.

Key rights include:

- To have any informal or formal complaints of bullying and harassment taken seriously and investigated appropriately and impartially and in a fair, confidential and timely manner;
- To work in an environment free of bullying and harassment. The NSW Work Health and Safety Act 2011 No. 10, and Work Health Safety Regulation 2011 require all workers to “take reasonable care for the health and safety of people who are at the worker’s place of work and who may be affected by the worker’s acts or omission at work.”

4.3 Managers and Supervisors*Key responsibilities include:*

- Modelling behaviour and assisting staff to identify and model, specific behaviours and actions that reflect the NSW Health core values and SESLHD organisational values
- Implementing the ‘Managing for Performance’ Cycle including ongoing positive and corrective feedback, to ensure a positive workplace culture;
- Conclusively and immediately addressing poor, inappropriate and hazardous behaviour that may be a precursor to bullying, and may signal tacit acceptance if left unattended.
- Seeking organisational and line manager support, such as coaching and facilitated conversations, if their own attempts to improve a hazardous situation are ineffective;
- Ensuring their workplace is free of bullying and harassment by adopting a preventative risk management approach in accordance with the Work Health and Safety Act 2011, No 10 and the [Safe Work Guide - Prevention and Management of Workplace Bullying](#) through:
 - consulting with affected workers
 - identifying, assessing and controlling bullying risk factors
 - ensuring workplace procedures support a work environment free of bullying
 - providing training to workers at induction and at other times when necessary
 - monitoring and reviewing the workplace environment
- Being aware of the effects of bullying and / or harassment on individuals, groups and the organisation. In order to stop inappropriate and hazardous behaviour they must intervene sensitively and promptly and in accordance with these procedures, and [NSW Health PD2016_046 - Resolving Workplace Grievances](#).
- Acting impartially in investigating all informal and formal complaints of bullying and harassment. Failure to take action when advised of a formal or informal complaint could

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be deemed as aiding and abetting the alleged actions, an act of negligence of the primary duty of care imposed on a line manager under the Work Health and Safety Act 2011, No 10. It should be noted that failing to act also impacts to organisational efficiency, reputation, culture and productivity. Inaction will be therefore be perceived by the organisation as a performance issue for the manager concerned.

- Documenting any action taken to rectify or control the matter, including where assistance such as EAP has been offered to a staff member and has been declined.
- Treating all workplace bullying and harassment complaints fairly, confidentially, impartially, and in a timely manner.
- Where a conflict of interest exists, or where they are unable, or could reasonably be perceived to be unable to be impartial, referring a complaint to the next manager in line or another appropriate impartial person.
- Monitoring and reviewing the workplace environment to ensure as far as possible, that people making complaints and those providing witness statements will not be victimised in any way.
- Attending appropriate training courses in preventing and managing bullying and harassment.
- Providing appropriate information to the Human Resources unit to allow completion of the Bullying Case Management form (Appendix 3 of the [PD2018_016 - Prevention and Management of Workplace Bullying in NSW Health](#))

Key rights include:

- To have access to coaching and training in management skills that create a positive and respectful workplace and team
- To have access to information and coaching on managing bullying and harassment complaints
- To issue reasonable directions about work allocation and performance, and about attendance at the workplace
- To be able to refer any complaint of bullying to the next line manager or another appropriate officer if necessary, and to have it dealt with appropriately.

4.4 Human Resources Advisory Services

Key responsibilities include:

- Promoting a positive and respectful culture where bullying and harassment in the workplace is not tolerated.
- Developing a strategic plan for implementing bullying risk management processes and preventative strategies as per the Work Health and Safety Act 2011, No 10 and the [Safe Work Guide - Prevention and Management of Workplace Bullying](#). This should be done in consultation with both management and workers.
- Informing and advising workers who are subject to bullying and / or harassment.
- Providing advice to Managers who are investigating complaints. Human Resources Advisors may also be responsible for investigating, monitoring, documenting and assisting with the resolution of formal complaints of bullying and / or harassment either in partnership with Managers or independently. Where a conflict of interest exists, or where they are unable, or could reasonably be perceived to be unable to be impartial, to refer a complaint to another appropriate impartial person.
- In the case of complaints by Junior Medical Officers (JMOs) about unacceptable workplace behaviour, ensure that the additional considerations and processes that acknowledge their unique situation are incorporated in addressing any complaints.
- Involvement in any disciplinary process to ensure that this policy is adhered to and the procedure followed correctly.
- Identifying and assessing the level of inappropriate behaviour through staff feedback such as culture and exit surveys, focus groups, one-on-one interviews, and consultative committees.
- Recording bullying and harassment complaints on the Bullying complaint case management form (Appendix 3 of the [PD2018_016 - Prevention and Management of Workplace Bullying in NSW Health](#))
- Collecting and providing de-identified data to the Ministry of Health on a quarterly basis.

Key rights include:

- To be treated appropriately by all SESLHD staff in line with the NSW Health core values and the SESLHD organisational values.
- To be supported by the senior managers of SESLHD in promoting and taking actions that ensure a positive workplace culture, and in complaint handling action concerning bullying and harassment complaints.

4.5 Employee Assistance Program (EAP) Counsellors and Contract Manager

Key responsibilities include:

- Facilitating support to all workers involved in a complaint of bullying and / or harassment (e.g. complainant, alleged respondent, witnesses, manager / supervisor responsible for investigating the complaint). They can assist both workers and managers in coping with the emotional impact of bullying and / or harassment, and in thinking clearly about their next steps and options. Counsellors do not have a formal role in the resolution process or provide legal or HR related advice, but assist the parties for the duration of the complaint handling action.

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- To report any bullying related trends in a de-identified manner to the Human Resources unit.

Key rights include:

- To be treated appropriately by all SESLHD staff in line with the NSW Health core values and the SESLHD organisational values.
- To be supported by SESLHD managers in promoting the EAP service as a resource in preventing and managing bullying.

4.6 Senior Advisor Positive Workplace and Psychological Wellbeing

Key responsibilities include:

- Contribute to the development, implementation, review and evaluation of business and strategic plans, policies, procedures, standards and practices relating to improving workplace behaviour and reducing and managing bullying complaints.
- In collaboration with Workforce Directorate colleagues, developing and maintain systems and processes to case manage bullying complaints.
- In the case of complaints by Junior Medical Officers (JMOs) about unacceptable workplace behaviour, ensure that the additional considerations and processes that acknowledge their unique situation are incorporated in addressing any complaints.
- Collecting and analysing bullying and other relevant data to identify local risks, measure performance against the key state-wide indicators and report to senior management regarding bullying complaint management.
- Developing clear measures to evaluate success. *Key rights include:*
- To be treated appropriately by all SESLHD staff in line with the NSW Health core values and the SESLHD organisational values.
- To be supported by SESLHD managers in planning and delivery of strategies that minimise the hazards and risks associated with bullying.

4.7 Health Safety and Wellbeing Consultants (HS&W) Consultants

Key responsibilities include:

- Advising Managers and Health and Safety Representatives (HSRs) of WorkCover educational resources available regarding issues of bullying and harassment
- Receiving reports of bullying and harassment from workers
- Consulting with the workgroup on identified issues or concerns and referring to organisational resources for support and assistance
- Undertaking bullying and harassment cultural risk assessments.

Key rights include:

- To be treated appropriately by all SESLHD staff in line with the NSW Health core values and the SESLHD organisational values.
- To be supported by SESLHD managers in promoting a positive workplace culture and in complaint handling action concerning bullying and harassment.

4.8 Those making Complaints (Complainants)

Key responsibilities include:

- Recognising their individual role in:
 - contributing to harmonious and civil workplace relationships
 - promoting a positive and cooperative workplace culture
- Taking responsibility for their own actions in the workplace, and where the actions of others are disagreeable to them, in the first instance, attempting to resolve matters, where appropriate, with that other person/s.
- Raising matters of concern at an early stage and actively participating in the bullying or harassment complaint resolution process
- Providing management with specific information regarding the perceived bullying or harassment
- Being prepared to have their complaint made known to the person they are making the complaint about, to allow for complaint handling to proceed
- Maintaining confidentiality and not giving information relating to a bullying or harassment complaint to any persons who have no legitimate involvement
- Ensuring that any allegations relating to bullying or harassment are made honestly, and not vexatiously or maliciously
- Cooperating with any complaint handling procedure including investigations in a timely manner
- Recognising and respecting management's legitimate role in issuing reasonable directions about work allocation and performance, and about attendance at the workplace.
- Seeking support such as EAP to alleviate any distress and to enable clear thinking about involvement in any organisational processes that have been triggered by the complaint.

Key rights include:

- To be provided with information regarding their rights and responsibilities
- To raise issues of concern with management
- To withdraw from a bullying or harassment complaint at any stage, although the complainant may be advised that management will continue to pursue the complaint if the matter is considered serious or impacts on the organisation's duty of care
- To identify desired outcomes
- To have the issues raised treated in a fair, and appropriately confidential manner
- To be informed of all decisions and progress made which may affect them, with consideration given to the privacy of other parties
- To be given protection against any victimisation or adverse action because they have raised a complaint
- To have access to any records of meetings which they attended to enable them to comment on those records
- To have a support person present at any meetings they attend relating to the complaint

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- To seek advice from management and to seek professional and confidential support through EAP and other support services.

4.9 Those who are subject to allegations of bullying and harassment

Key responsibilities include:

- Providing as much information as necessary to assist in the complaint handling process
- Maintaining confidentiality and not giving information relating to a bullying or harassment complaint to any persons who have no legitimate involvement
- Being willing to recognise, apologise for and change inappropriate behaviour when a complaint is substantiated
- Not victimising or adversely affecting complainants or others involved in complaint handling.

Key rights include:

- To be provided with information regarding their rights and responsibilities
- To have action appropriate to the circumstances taken if a complaint proves to be vexatious or malicious
- To be informed promptly of the substance of the bullying or harassment complaint
- To be provided with sufficiently detailed information to allow them to respond to the complaint, including where necessary, the identity of the complainant
- To have an opportunity and sufficient time to respond to the complaint
- To seek advice from management and professional and confidential support offered through the EAP or other support services.
- To have the issues raised treated in a fair and appropriately confidential manner
- To be informed of all decisions and progress made which may affect them, including with respect to any substantiated complaints, with consideration given to the privacy of other parties
- To have a support person present at any meetings they attend relating to the complaint
- To have access to any records of meetings which they attended to enable them to comment on those records.

4.10 Support persons

Key responsibilities include:

- Providing support to a person they are present with at a meeting, but not advocating or speaking on behalf of that person
- Attending meetings with the person they are supporting, related to the complaint, unless the party no longer requires their involvement.
- To maintain appropriate confidentiality.

Key rights include being provided with a copy of the policy directive [PD2018_016 - Prevention and Management of Workplace Bullying in NSW Health](#)

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5. PROCEDURE

5.1 Prevent workplace bullying and harassment - A risk management approach – identification, assessment and prevention

SESLHD is committed to promoting a positive and respectful workplace that is safe and healthy for all workers, and also takes a risk management approach. The aim of a risk management approach is to reduce the incidence of bullying and harassment in SESLHD workplaces through preventative strategies.

A risk management approach to bullying and harassment consists of the following basic steps as per the [Safe Work Guide - Prevention and Management of Workplace Bullying](#):

5.1.1 Consultation with workers and their representatives - this should take place at all stages of the process and their input considered when determining and implementing bullying and harassment risk controls.

5.1.2 Identifying and Assessing - risk at the local facility level can be conducted by:

Observing or analysing whether:

- Workers and Managers are aware of expected behavioural standards
- Workers and managers are communicating in a manner that aligns with NSW Health and SESLHD values
- Workers are taking responsibility for their own actions in the workplace and attempting to resolve any issues in a respectful manner directly with the other person in the first instance
- Workers know how to raise a concern and are aware of staff support mechanisms such as EAP Conflict Coaching
- Managers know how to respond to allegations of bullying or harassment

Additionally ongoing conflict, excessive staff turnover, grievances, allegations of bullying and psychological injury should be viewed as signs of support being needed with performance management, culture improvement, conflict resolution or other methods of controlling these workplace psychological hazards.

5.1.3 Controlling the risk of bullying or harassment involves taking preventative measures to avoid or minimise the risk of harm. These include:

- Clearly stating a policy of intolerance to bullying or harassment
- Ensuring workers:
 - are aware of the process for raising a complaint of bullying or harassment
 - understand what behaviours do and do not constitute bullying and harassment
 - have a clear understanding of their roles and responsibilities
 - are aware of staff support mechanisms
- Requiring all workers via their behaviour to demonstrate a commitment to NSW Health and SESLHD values and expected standards of conduct

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- Ensuring Managers:
 - Are trained to and feel supported in responding promptly and effectively to complaints related to bullying or harassment
 - Understand the link between unaddressed inappropriate behaviour and conflict, and allegations of bullying
 - Encourage and support staff in the self-resolution of low-level conflict and workplace grievances by providing appropriate information and training e.g. conflict resolution
 - Promote a positive workplace culture and safe working environment by modelling appropriate conduct and behaviour

5.1.4 Developing procedures for the management of a complaint or grievance about bullying or harassment

5.1.5 Providing training of workers in the prevention of bullying and harassment at orientation throughout their employment which includes addressing conflict in the workplace, insisting on civil interpersonal communications, and requiring workers to responsibility for their role in exhibiting behaviours that are solution-focused and respectful when faced with interpersonal differences

5.1.6 Line manger monitoring and reviewing of their manager direct reports' teams to make sure that controls are effective. Monitoring is also important to ensure early identification of unacceptable behaviour and other psychological hazards.

5.2 Resolving complaints of workplace bullying and harassment

SESLHD encourages all workers to report workplace bullying and / or harassment. Managers and supervisors must ensure workers who make complaints, or workers who provide witness statements are not victimised in any way.

Disciplinary action will be taken against any person who victimises a worker who:

- Lodges a complaint of bullying and / or harassment;
- Intervenes on behalf of another person in an attempt to prevent an occurrence of bullying or harassment;
- Is required to provide witness statements during an investigation.

The person who is the subject of the bullying or harassment complaint is not to be deemed guilty of the allegation until proven. The person/s a complaint is made against and any witnesses should also be protected from victimisation.

Once a complaint is made, the workers involved must be advised of the support options available (e.g. EAP, HR Consultants, WHS consultants and union representatives). The person the allegations have been made against must also be advised of the same support available to them. All workers must be treated with sensitivity, respect and courtesy. The matter is to be treated confidentially at all times.

All workers involved should be advised they are able to have a support person (e.g. union representative, colleague or friend) present at interviews or meetings.

There are both internal (SESLHD and NSW Health Service), and external processes available for dealing with workplace bullying and harassment complaints. External procedures fall under the jurisdiction of external organisations such as Safe Work, the Anti-Discrimination Board, or the Industrial Relations Commission.

5.2.1 Procedure for Managing Bullying and Harassment complaints

Refer to Attachment 2: *Managing Bullying and Harassment Complaints Process Flowchart* to follow the informal and formal procedures.

Internal Workplace Procedures

A) Informal Resolution

Workers are encouraged to try to resolve issues of workplace bullying and harassment at the local level, either directly with the person/s they believe is responsible for the bullying or harassment or with the support and guidance of their Manager or Supervisor.

Following are some steps that can be taken to assist with this process.

Step 1: Keep a diary

Bullying can sometimes be difficult to prove if it is subtle or covert. In these circumstances, it may be helpful to keep a diary detailing each bullying incident. Make detailed notes of what is happening – be sure to include places, dates, times, persons involved (both those involved and witnesses), what was said or done, what attempts were made to resolve the matter and the outcome of the resolution process. Ensure that your records are accurate and factual. This information may be useful later, particularly if the matter is unresolved or escalates.

Step 2: Resolve any issues in a respectful manner directly with the other person

- You can seek resolution of the issue directly and in a respectful manner with the person/s involved. This is done through a verbal or written request for the person/s to stop the unacceptable behaviour.
- You may invite a support person (this can be a work colleague or union representative) to be present when you make your request of the person/s to stop the unacceptable behaviour.
- When communicating directly with the other person, do so respectfully by:
 - Stating the purpose of the conversation;
 - Describing the behaviour specifically;
 - Describing the effect of the behaviour on you;
 - Giving the other person an opportunity to respond;
 - Stating what you would like them to do differently; and
 - Asking the other person to take responsibility for not engaging in the behaviour and stating your support for positive workplace behaviour

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Refer to **Attachment 3: *How to have Difficult Conversations*** for further tips and suggestions.

Step 3: If the issue remains unresolved, or you feel unable to resolve the issue directly, you can refer to your Supervisor/Manager

Your manager or supervisor, should be the first point of contact to:

- Provide access to confidential advice and support;
- Determine the seriousness of the allegation. All managers are required to undertake an objective and impartial assessment of a bullying concern that is brought to their attention (refer to **Attachment 4: *Manager/Supervisor Assessment Checklist***);
- Attempt to impartially resolve issues at the local level by the agreed procedure (this may include utilising any of the support services outlined in step 5 below);
- Act promptly and ensure investigation of the complaint begins immediately;
- Obtain further organisational support such as manager coaching to help in dealing with the situation, and facilitated conversations to help with clear, two-way communication.

After investigation, subsequent steps may involve:

- Laying the ground rules for acceptable behaviour; or
- Specifying particular changes required in behaviour or work practices; or
- Providing refresher training on Code of Conduct and/or Promoting a positive workplace for the work team
- Manager training in:
 - the managerial actions that create positive team cultures;
 - conclusively addressing inappropriate behaviour;
- Facilitated conversations;
- Disciplinary action.

Step 4: If you are unable to refer the issue to your work Supervisor or Manager, or you believe that your Manager may not act impartially, then you need to escalate the matter to the next level of management

Step 5: Alternatively you may seek support and advice from:

- Your local Workforce Services Consultant
- Your Health and Safety Representative
- Local Sector Work Health Safety Consultants
- Your EAP service for emotional support

Human Resources Consultants, Health and Safety representatives, and local sector Health Safety & Wellbeing Consultants will consider and advise you on the complaint handling action that will occur.

(Refer to Attachment 5: *Support People Contact Information*)

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B) Formal resolution

When informal resolution procedures do not adequately resolve the matter, or the worker decides not to use the informal procedures they may follow the formal bullying and harassment complaint resolution procedure. **(Refer to Attachment 2: *Managing Bullying and Harassment Complaints Process Flowchart*)**

If findings are made that a Worker or Manager has behaved in a bullying, harassing or discriminatory manner towards another person, appropriate action will be taken. This may include disciplinary action.

Indicative timeframes for addressing bullying and harassment allegations are found in the Appendix 3 of the [PD2018 016 - Prevention and Management of Workplace Bullying in NSW Health](#).

5.2.2 External Processes - Legislation

External legal processes may be pursued by the worker.

(Refer to Attachment 6 - *Further Information – Legislation Dealing with Bullying & Harassment*).

Who may be legally liable?

Any one or more of the following may be found to be individually or jointly legally liable for any proven occurrences of bullying or harassment:

- South Eastern Sydney Local Health District;
- The worker who committed the acts of bullying or harassment;
- The Manager or Supervisor – if they ignore or encourage inappropriate behaviour, discrimination, harassment or bullying in their team, or if they neglect to resolve a problem fairly, if they do not seek support if they feel they do not have the skills to resolve the problem, or if they take part in bullying or harassment;
- The Union – if they ignore or encourage harassment or bullying that a member asks them to deal with, or in which union office-holders take part.

6. DOCUMENTATION

All documents relating to the management of the complaint, regardless of the outcome, should be kept on a confidential file. A separate, confidential file should be kept for each complaint. The findings from the investigation will dictate what, if any, information regarding the matter is to be placed on the personnel file of a person against whom a complaint was made out, or the complainant's personnel file where vexatious or malicious claims have been made.

7. AUDIT

Not required

8. REFERENCES

8.1 Legislation

- NSW Anti-Discrimination Act 1977
- NSW Work Health and Safety Act 2011, No 10
- NSW Work Health and Safety Regulation 2011
- SafeWork Code of practice – How to manage work health and safety risks
- Industrial Relations Act 1996
- Defamation Act 1974
- Protected Disclosures Act 2012
- Common Law & Criminal Law

8.2 External References

- [NSW Health PD2018_016 - Prevention and Management of Workplace Bullying in NSW Health](#)
- [NSW Health PD2018_031 – Managing Misconduct](#)

8.3 Internal References

- [SESLHDPD/266 - Reporting Policy \(Internal and External Channels\)](#)

9. REVISION AND APPROVAL HISTORY

Date	Revision No.	Author and Approval
August 2013	1	Minor Changes made by Louise Johnson, Senior Consultant, Workforce Policy & Systems
August 2013	2	Revised and re-formatted by Scarlett Acevedo, District Policy Officer
October 2013	3	Minor changes made by Louise Johnson, Senior Consultant Workforce Policy and Systems
May 2014	3	EAP details updated by Author
September 2018	4	Minor changes made by Workforce
September 2018	4	Formatted by Executive Services prior to publishing

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Attachment 1

Examples of typical bullying and harassment behaviour

Typical Bullying behaviours	Typical Harassment behaviours
<ul style="list-style-type: none"> ▪ Belittling opinions or unconstructive criticism ▪ Undermining work performance, deliberately withholding work-related information or resources, sabotaging the workers work, usually by hiding or changing documents or equipment, not passing on messages, and withholding information with the intent of deliberately affecting a workers performance ▪ Isolating a worker from normal work interactions, training and development, or career opportunities ▪ Overwork, unnecessary pressure or impossible deadlines ▪ Unexplained job changes, meaningless tasks, underwork, tasks beyond a person’s skills and failure to give credit where due ▪ Unreasonable administrative sanctions ▪ Not assisting the worker with work difficulties, but pointedly helping other workers in similar situations ▪ Unreasonable excluding workers from workplace social events and / or not speaking to them at all ▪ Unjustified over-monitoring a worker’s performance, or whereabouts in comparison with other workers ▪ Threats of dismissal or other severe punishment for no justified reason ▪ Yelling, screaming, abuse, offensive language, insults, inappropriate comments about a person’s appearance, lifestyle, slandering an employee or his/her family ▪ Threatening gestures such as finger pointing, fist shaking, arm waving, and hostile facial expressions ▪ Spreading gossip, malicious rumours or making malicious allegations ▪ Teasing or regularly being made the brunt of pranks or practical jokes ▪ Displaying written or pictorial material or sending e-mails which degrades or offends ▪ Sexual or other unwanted advances ▪ Physical assault (this is also a criminal offence) ▪ Excluding team members by speaking in another language 	<p><u>Verbal harassment</u> includes:</p> <ul style="list-style-type: none"> ▪ Sexual or suggestive remarks ▪ Making fun of someone ▪ Imitating someone’s accent ▪ Propositions (sexual invitations) ▪ Spreading rumours ▪ Obscene telephone calls / unsolicited letters, faxes or email messages ▪ Repeated unwelcome invitations ▪ Offensive jokes ▪ Repeated questions about personal life ▪ Threats or insults ▪ The use of language that is not suitable in the workplace i.e. Swearing ▪ Name calling ▪ Calling someone who is transgender transsexual “it” or refusing to refer to them by their preferred gender or name <p><u>Non-verbal harassment</u> includes:</p> <ul style="list-style-type: none"> ▪ Putting sexually suggestive, offensive or degrading / insulting material on walls, computer screen savers, email and so on ▪ Suggestive looks or leers ▪ Unwelcome practical jokes ▪ Displaying or circulating racist, and/or sexist cartoons or literature ▪ Mimicking someone with a disability ▪ Following home from work ▪ Not sharing information ▪ Offensive hand or body gestures ▪ Unnecessarily leaning over someone ▪ Sending offensive material through computer, fax or e-mail ▪ Wolf whistling ▪ Continually ignoring or dismissing someone’s contribution in a meeting / discussion <p>Some forms of <u>physical harassment</u>:</p> <ul style="list-style-type: none"> ▪ Unnecessary physical contact (pinching, patting, brushing up against a person, touching, kissing, hugging against a person’s will) ▪ Indecent or sexual assault or attempted assault ▪ Pushing, shoving or jostling ▪ Putting your hand or an object (like a payslip) into someone’s pocket (especially breast, hip or back pocket)

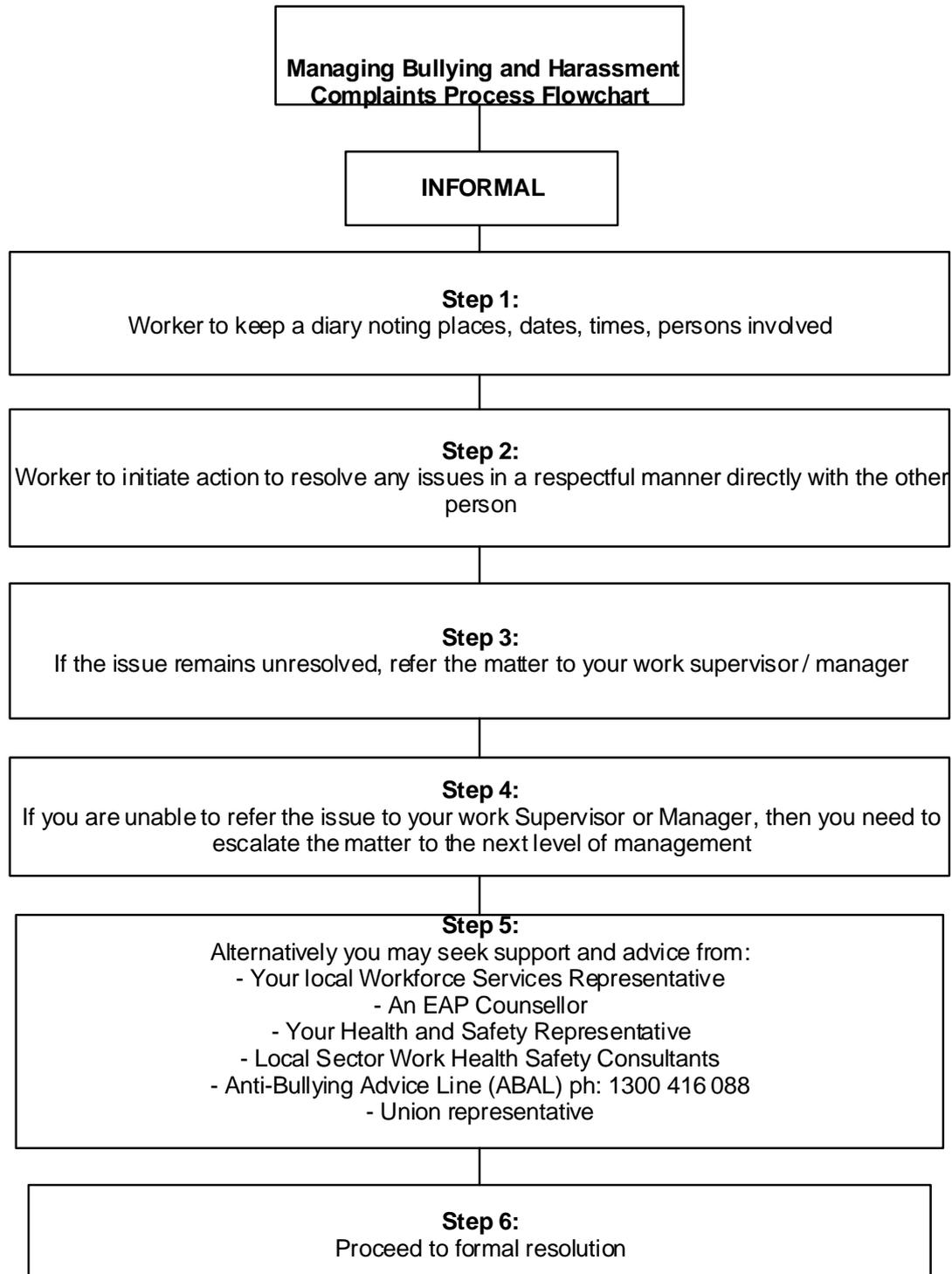
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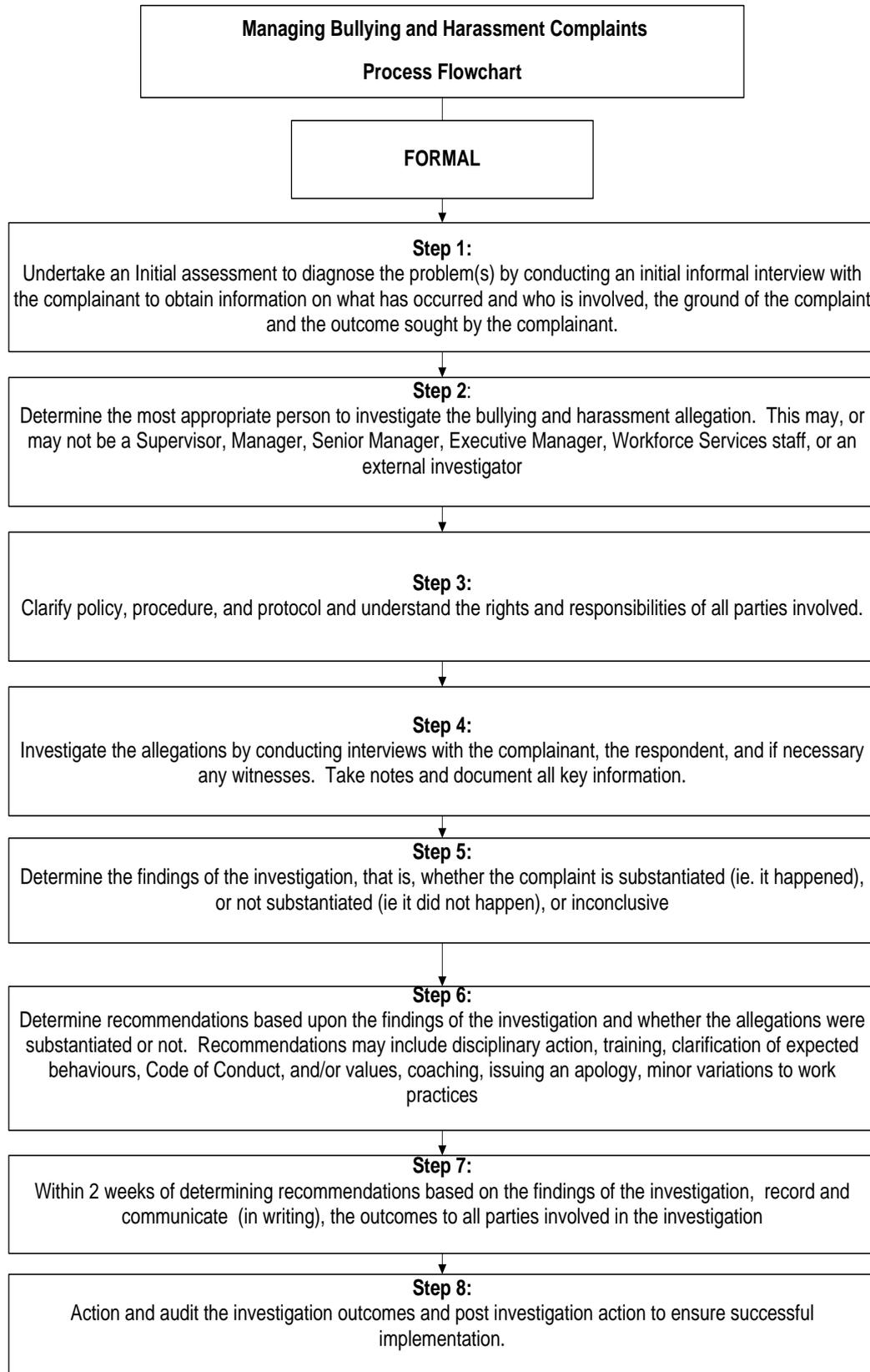
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Attachment 2

Managing Bullying and Harassment Process Flowchart





Attachment 3**HOW TO HAVE DIFFICULT CONVERSATIONS**

Below are some tips and suggestions to think about before going into the conversation with other workers and discussing your concerns regarding bullying and harassment.

How to prepare for the conversation:

1. Understand what constitutes bullying and harassment behaviours (refer to *Appendix 1 – Typical bullying and harassment behaviours*)
2. Understand the SESLHD values and the NSW Code of Conduct and how these apply to workers
3. Ask yourself some questions:
 - What is your purpose for having the conversation?
 - What do you hope to accomplish?
 - What would be an ideal outcome?
 - What assumptions are you making about this person's intentions?
 - What 'buttons' of yours are being pushed?
 - Are you more emotional than the situation warrants?
 - What personal history is being triggered?
 - How is your attitude toward the conversation influencing your perception of it?
 - What might the worker be thinking about this situation?
 - Are they aware of the problem?
 - What are their needs and fears?
 - What are your needs and fears?
 - Are there any common concerns?
 - How have you contributed to the problem?
 - How have they contributed to the problem?

Tips and suggestions:

1. As soon as you notice the unacceptable behaviour, plan to have the conversation. Most problems don't go away by themselves.
2. Write down the points that you wish to make to ensure that you stay on target.
3. Even if you are 'right' about the situation, ask the other party of their views and opinions.
4. A successful outcome will depend on two things: how you manage your own feelings, and what you say. How you manage your own feelings (focused, supportive, curious, problem-solving) will greatly influence what you say.
5. Acknowledge emotional energy – yours and theirs – and direct it towards a useful purpose.
6. Know and return to your purpose at difficult moments.
7. Don't assume that they can see things from your point of view.
8. Practice the conversation with yourself or a suitable confidential advisor before holding the real one.
9. Envisage the outcome you're hoping for.
10. Really listen. During tough conversations most of us tend to be forming our own responses rather than letting the other party's words and meaning sink in.

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11. Be clear about the cost of not having this conversation.

How to begin - Opening the conversation:

Here are a few conversation openers:

- “I have something I’d like to discuss with you that I think will help us work together more effectively.”
- “I’d like to talk about..... with you, but first I’d like to get your point of view.”
- “I need your help with what just happened. Do you have a few minutes to talk?”
- “I need your help with something. Can we talk about it soon?”
- “I think we have difference perceptions about I’d like to hear your thinking on this.”
- “I’d like to talk about I think we have different ideas on how to.....”
- “I’d like to see if we might reach a better understanding about..... I really want to hear you feelings about this and share my perspective as well”

Attachment 4**MANAGER/SUPERVISOR ASSESSMENT CHECKLIST**

In order to conduct an objective assessment of the concern raised a manager will seek as much information as possible from the complainant in order to determine the next course of action. The following is a checklist against which to conduct an *objective* assessment of a workplace bullying complaint. This list is intended to be a guide in assisting managers to not only find out as much information as needed from the complainant but to enable you to evaluate what next step needs to be taken.

1. Frequency and severity

- What is the alleged behaviour?
- For how long has the alleged behaviour been occurring?
- How frequently has it been occurring?
- How long has it been since the last alleged behaviour occurred?
- How serious does the initial allegation appear?
- What are the views of the complainant about possible management options during the assessment?

2. Impact

- How has the alleged behaviour impacted on the person reporting it?
- How has the alleged behaviour impacted on others and what is the degree of disruption?
- How many people are involved?
- Has the same matter occurred or been raised before through other staff reporting?
- Has the complainant previously attempted to resolve the issue direct particularly if the matter appears relatively minor?
- What will happen if you do nothing?

3. History of actions taken

- What action, if any, has already been taken in relation to the matter?
- What are the expectations of the complainant?
- Are there any relevant previous history of allegations against the respondent and these outcomes?

4. Navigating the policies

- Is there a health and safety risk?
- Keep assumptions of guilt or innocence in check
- Have any policies been breached?

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- Does the alleged behaviour reported involve fraud, corruption, criminal, child protection or a protected disclosure? If so, refer to the following policies:
 - [PD2016_029 - Corrupt Conduct - Reporting to the Independent Commission Against Corruption \(ICAC\)](#)
 - [PD2016_047 - Employment Checks – Criminal Record Checks Working with Children Checks](#)
- Does the alleged behaviour reported involve bullying or harassment (see definition in section 3)? If so, refer senior manager.

5. Outcome of assessment

- Is the alleged behaviour less serious but contrary to PD2015_049 NSW Health Code of Conduct? If so, deal with it locally as a performance management issue.
- Not bullying but causing conflict – may require conflict management/training or a facilitated meeting conducted by local manager.
- Determine whether immediate action needs to be taken to reduce risk of escalation?
- Determine if there are immediate welfare needs for the individual, regardless of guilt or innocence of any party.
- Is there a potential need to protect the complainant from reprisals?
- Can prevention strategies be implemented? Do you need to consult or seek advice?

6. Initiate complaint handling action

Following the assessment action outlined above decide on appropriate complaint handling action and commence that action, under formal or informal processes (See attachment 3)

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Attachment 5

SUPPORT PEOPLE CONTACT INFORMATION

Contact	Phone Number / Intranet Information
Human Resources Advisors	Go to: Human Resources Contact Details
EAP Counsellors	<p>EAP Counsellors This is a confidential and free external counselling and manager coaching service offered to all employees of SESLHD and their families. Their 24 hour contact details are :</p> <p>Converge International Ph: 1300 687 327</p>
Anti-Bullying Advice Line	<p>Ph: 1300 416 088</p> <p>Advisors are available to take your call between 7am and 6pm, Monday to Friday. Outside of these hours, leave a message and your call will be returned</p>

Attachment 6

FURTHER INFORMATION – LEGISLATION DEALING WITH BULLYING & HARASSMENT

NSW Anti-Discrimination Act 1977

- The NSW Anti-Discrimination Act 1977 states that it is unlawful to treat any employee less favourably on the grounds of his or her gender, race, or ethnic background, marital status, carers' responsibility, disability, age, homosexuality and pregnancy
- If workplace bullying takes the form of discrimination or sexual harassment, a complaint may be lodged under the Anti-Discrimination Act. The NSW Anti-Discrimination Board has the legal power to investigate your complaint and, if it's against the law, to conciliate it. Most complaints are conciliated, however if conciliation is not successful, then the matter may be referred to the Administrative Appeals Tribunal – a court that provides legal judgement that must be followed
- In general, an employer is liable for any harassment committed in the workplace as well as any harassment by another employee unless the employer can show that "reasonable steps" were taken to prevent harassment.

NSW Work Health and Safety Act 2011, No. 10

- The **Work Health and Safety Act 2011, No. 10** (The Act) prescribes general duties and legal obligations on work health and safety matters
- Bullying and harassment may cause injury in the form of distress and, in extreme cases, psychological injury. So, a workplace that exposes workers to a bully or harasser is just as unsafe, in a legal sense, as one that exposes workers to other physical risks
- The Act also requires workers to co-operate with the Person Conducting a Business or Undertaking (PCBU) in maintaining health and safety at work by taking reasonable care for their own safety and that of other persons who may be affected by their actions or omissions. This includes complying with health and safety instructions and procedures and reporting to their supervisor any situation which could present a hazard to the health, safety or welfare of other workers.

Industrial Relations Act 1996

This Act deals with:

- Harassment or bullying-related unfair / constructive dismissals - For example, where an employee is dismissed or forced to resign following a campaign of harassment and workplace bullying, the employee may be able to claim that his or her dismissal was unfair; and
- Harassment or bullying that breaches the employer's duty of care towards their employees.

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Criminal Law

- Where workplace bullying or harassment involves for example, assault, property damage, stalking or harassing phone calls, the incident becomes a police matter and may be dealt with under criminal law.

Defamation Act 2005

http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/da200599/ This Act may cover bullying or harassment that defames someone.

Protected Disclosures Act 2012

The objective of the Protected Disclosures Act (2012) is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector by:

- Enhancing procedures for making disclosures;
- Providing disclosures to be properly investigated and dealt with; and
- Protecting persons from reprisals for making disclosures

Maladministration is defined as “conduct that involves action or inaction of a serious nature that is:

- Contrary to law;
- Unreasonable, unjust, oppressive or improperly discriminatory;
- Based wholly or partly on improper motives”.

Oppressive conduct may include abuse of power, intimidation or harassment.

Disciplinary action will be taken against any person who targets an employee who:

- Lodges a complaint of bullying and / or harassment
- Intervenes on behalf of another person in an attempt to prevent an occurrence of bullying or harassment
- Is required to provide evidence during an investigation.

Common Law

In addition to the cause of action arising from the statutory duty to provide a safe workplace, under common law an employer also has a duty of care to provide a safe system of work. An employee who has been subject to bullying or harassment that the employer has contributed to by neglecting to take reasonable preventative action, may be able to argue that the employer has breached this duty and is therefore liable to him or her in breach of contract.