

STAFF ADMINISTRATION – MANAGING WORK-RELATED BULLYING AND HARASSMENT (September 2004)

1.0 Summary Page

Scope:	All employees of the Department and those working within correctional centres employed by other agencies, such as the Corrections Health Service, the Chaplaincy, teachers and contractors.
Strategic Focus:	Provide the necessary support systems so that staff are able to meet the demands of the workplace. Promote staff well-being.
Legislation:	NSW Anti-Discrimination Act 1977, Occupational Health and Safety Act 2000, Public Sector Employment and Management Act 2002.
Related Policies:	Equal Employment Opportunity Policy (2003), Code of Conduct and Ethics (2002), Management of Professional Conduct in the Department of Corrective Services (2002), Grievance Management Policy and Guidelines (2004).
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Policy Overview:	<p>Employees have a right to work in an environment free from bullying and harassment and have a responsibility to treat each other in a way that will not cause distress. Supervisors and managers are responsible for providing a workplace that is free from bullying and harassment.</p> <p>Harassment includes behaviour that is not wanted nor asked for and that humiliates, intimidates or offends someone. It is mostly repetitive, but one incident may be classified as harassment if it is serious enough.</p> <p>Bullying is aggressive behaviour intended to physically or psychologically hurt another person. It is an abuse of power, may be covert, and is almost always repetitive.</p> <p>Attachments 1 and 2 provide a more detailed definition of what constitutes bullying and harassment. Such behaviour breaches proper standards of conduct and occupational health and safety legislation and may also breach anti-discrimination legislation. Attachment 3 explains the right of Managers and Supervisors to give lawful instructions and to counsel staff for poor performance.</p> <p>Staff are encouraged to report instances of harassment and bullying behaviour to a general manager/governor, principal correctional officer/deputy governor, program or administration manager, branch, division or district manager. If you wish, you may seek the support of a union representative or trusted manager to advocate on your behalf.</p> <p>Managers must include the effects of bullying in the Hazard Identification Reporting process.</p> <p>When harassment or bullying is identified, the senior manager must deal with it immediately in an impartial, fair and confidential manner.</p> <p>Where serious misconduct or criminal action is identified, the Executive Director Probity and Performance Management or the Director, Employee and Administrative Law Branch must immediately be notified.</p>
Purpose:	Provision of a mechanism for identifying and addressing work-related bullying and harassment.

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4.0 Policy

This policy supersedes the *Managing Work-related Bullying and Harassment Policy* (July 2004).

All employees of the NSW Department of Corrective Services and those working for other agencies within the Department's facilities, such as Justice Health, the Chaplaincy, teachers and contractors, have a right to work in an environment that is free from bullying and harassment. This also applies to conduct outside the Department's premises when representing the Department.

Bullying and harassment will not be tolerated. Such behaviour breaches proper standards of conduct and professionalism and is intimidating and disruptive to the well being of individuals (see Attachment 1 and 2 for a detailed definition of bullying and harassment).

It also imposes substantial costs on the Department, including:

- breakdown in communication, trust and morale
- lost productivity
- less loyalty to the Department
- greater staff turnover
- increased sick leave and absenteeism, and
- loss of reputation as an employer and service provider.

To protect the propriety of this policy, any person who lodges a complaint of bullying or harassment that is motivated by ill-will or malice risks disciplinary action. Staff are advised that supervisors and managers have a right to give lawful instructions and provide counselling for poor performance. This, of itself, is not bullying or harassment. (See Attachment 3 for a more detailed description).

Bullying requires an imbalance of positional or personal power. A manager or supervisor may abuse their positional power with junior officers. Or someone with personal power may abuse this power with junior officers, peers and/or supervisors. The Department is committed to eliminating all forms of bullying behaviour amongst its staff. Managers are expected to inform employees of their rights and responsibilities in this area and, should a case be identified it must be dealt with immediately by the general manager/governor, principal correctional officer/deputy governor, program or administration manager, branch, division or district manager.

All staff seeking promotion will be expected to have undertaken training in the Department's professional conduct and grievance management policies and processes. Present and future managers must also undertake training in change management, dealing with conflict and people management skills.

5.0 Procedures

Although there are other causes of stress in the workplace, bullying may become evident through the effects of stress exhibited by staff being bullied. Therefore managers should include stress in the Hazard Identification Reporting process to assist in its identification and not wait for a complaint of bullying to be made.

If you are being bullied or harassed, you are encouraged to report it, verbally or in writing, to a general manager/governor, principal correctional officer/deputy governor, program or administration manager, branch, division or district manager. If you wish, you may seek the support of a union representative or trusted manager to advocate on your behalf. If you

witness bullying or harassing behaviour, you also have a responsibility to report it to one of the senior managers listed above.

Immediate action must be taken by the senior manager to verify that bullying has occurred and assist the employee(s) who have experiencing bullying. This may include referring them to an Employee Assistance Program Coordinator, the Employee Assistance Program and/or temporarily preventing contact with the alleged bully.

If the alleged bullying or harassment is at a level that can be dealt with locally, the **Grievance Management Policy must be followed**. Should the allegation be considered to be serious misconduct the Management of Professional Conduct Policy will be followed.

Employees who have bullied or harassed must receive counselling on appropriate workplace behaviour. They must also be monitored for changes to their behaviour. The publication *Positive and Productive Working Relationships: A Toolkit for Managers* is available to assist.

The senior manager must record all instances of harassing or bullying behaviour and any actions taken. All records must be stored in a secured location and not included on the employee's personnel file. Where the senior manager perceives that a criminal offence or serious professional misconduct has occurred, he or she must contact the Executive Director Probity and Performance Management or Director Employee and Administrative Law Branch for advice on how to proceed.

6.0 Employees working for other agencies

People working within the Department's facilities employed by other agencies who experience bullying or harassment are advised to contact an appropriate senior manager within their own organisation. The senior manager is advised to immediately contact the general manager/governor/branch head/district manager and they will jointly address the issue.

If a person working for another agency is found to be bullying departmental employees, the general manager/governor/branch head/district manager should immediately contact the employee's senior manager to jointly address the issue.

7.0 Advice and Support

Managers may contact the Staff Health Services Unit on 9289 1791 for advice on identifying stress using the Hazard Identification Reporting process.

The following departmental employees can provide further information and advice on this policy:

- \$ Executive Director Human Resources
- \$ Manager Career Development and Equity
- \$ Learning and Development Facilitator, Career Development & Equity
- \$ staff officers
- \$ human resources managers.

For information on the disciplinary process and discrimination matters, you should contact the Director, Employment and Administrative Law Branch.

The relevant employee association may be contacted for support and advice.

The following organisations can help with interpreting:

- Community Relations Commission for a multicultural NSW – 9716 2222
- Interpreter Service – 13 14 50
- Deaf Sign Interpreter Service – 9716 2248

If the harassing behaviour is covered by anti-discrimination legislation, the Anti-Discrimination Board may be contacted for advice:

Sydney Level 17, 201 Elizabeth Street Sydney 2000 2 9268 5544	Wollongong 84 Crown Street Wollongong 2500 4224 9960	Newcastle Level 1, 414 Hunter Street Newcastle West 2302 4926 4300
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Employees who are experiencing bullying in the workplace may contact an Employee Assistance Program Coordinator or the Department's Employee Assistance Program by telephone on 1300 363 202.

8.0 Reporting/Record Keeping

Senior managers will immediately report serious or repetitive instances of bullying or harassment to the Executive Director Human Resources.

The Senior Manager will keep any documentation related to bullying or harassment in a locked filing system, accessible only by themselves and executive staff. It will be made available to investigators on request.

Unless a serious accusation of bullying or harassment is upheld through the investigation process, no information will be kept on a personnel file.

9.0 Monitoring and Evaluation

The Executive Director Human Resources will monitor and evaluate all reported cases of bullying and harassment to identify systemic causes.

10.0 References

- X Adams, Andrea, speech at a conference sponsored by the British Trade Union MSF, 1994, <http://www.bullybusters.org>.
- X Anti-Discrimination Board of NSW, 1998, *Harassment in the Workplace: Guidelines for managers*, 2nd edition
- § Anti-Discrimination Board of NSW, 1998, *Grievance Procedure Guidelines*
- X *Crimes Act 1900 (NSW)*
- X *Anti-Discrimination Act 1977(NSW)*
- X Employment and Administrative Law Branch, Changes in Dealing with Staff Discipline Matters, Training Procedures, IRC, undated
- X England, Mark, Corruption Prevention Officer, ICAC, *Corruption Matters No 15*, June/July 2000
- X Impact Information Office, 2000, <http://www.impact.ie/rights/bullying.htm>
- X *Occupational Health and Safety Act 1983 (NSW)*
- X Public Service Association of NSW, March 2000, PSA Policy and Guidelines on Occupational Violence and Occupational Stress
- X UK Fire Service, 2000, Bullying in the Fire Service: How to Tackle it, <http://www.fairness.freesevice.co.uk/bullying.html>
- X Violence in the Workplace, Guide 2002, , www.workcover.nsw.gov.au/NR/rdonlyres/8B1151F3-44F8-40DC-962A-1AC985176019/0/guide_violenceinthew_701.pdf
- X Workplace Violence: Prevention, www.workcover.nsw.gov.au/NR/rdonlyres/FE5528F6-7583-44D5-9D1A-DDFF2841F04F/0/gen_violence_preven_4121.pdf
- X Workplace Violence: Awareness, www.workcover.nsw.gov.au/NR/rdonlyres/A43A54C3-1EEE-4230-8CC0-EF8E7052B5DB/0/gen_violence_aware_4118.pdf

Effects of bullying on employees

The power of a bully lies in making people remain silent through fear. Those who are bullied may think that complaining about a supervisor who bullies implies criticism of those who placed him or her in a position of trust and responsibility over others. With family responsibilities, keeping quiet may also appear to be the best option in preference to making a formal complaint. Sometimes it can be difficult to prove. However, if the problem is not dealt with it will not go away and is most likely to result in adverse affects such as stress on the individual being bullied.

Although there are other causes of stress exhibited in the workplace, managers are expected to include stress in the Hazard Identification Reporting process *to assist in* identifying workplace harassment and bullying. Managers should also encourage staff to report it.

Examples of the behaviour of employees who are victims of bullying or harassment may involve (but not exclusively):

- increased sick leave
- changes to normal behaviour
- social withdrawal
- changes to eating habits
- alcohol or drug misuse or abuse
- deterioration in normal work performance
- fear of working in some situations, or returning to work after injury/illness resulting from bullying

It may also result in:

- the employee terminating employment
- the need for medical retirement

In the most serious of cases, physical intimidation and trauma may result. Staff should therefore be encouraged to report all instances of aggressive behaviour, threats of violence and violent acts. Once reported, such instances must immediately be investigated.

All staff must be informed that bullying is unacceptable and be confident that instances will be appropriately dealt with.

Refs:

- Adams, Andrea, speech at a conference sponsored by the British Trade Union MSF, 1994, <http://www.bullybusters.org>.
- Public Service Association of NSW, PSA Policy and Guidelines on Occupational Violence, March 2000

Identifying harassment and bullying behaviour

The bully

Wherever there is positional or personal power, it may be abused. Wherever there is vulnerability, it may be exploited.

Even if not reported, those who bully are well known. They may bully because they are insecure about their work and fear that others who are skilled and good at their jobs may show up their weaknesses. Sometimes the bully is trying to gain more power or is hiding his or her own wrongdoings.

Bullies often believe what they are doing is legitimate. *Some* may believe that this particular type of behaviour is a part of their role and is what the organisation expects of them. Sometimes managers may unwittingly support them because they appear to 'get things done'.

However, even if they are 'getting things done', the benefits are only short term. Bullying occurs at considerable cost to the individual(s) being bullied and to the organisation, including workers' compensation, sick leave and additional training resulting from excessive turnover of staff.

The behaviour

Bullying is aggressive behaviour intended to physically or psychologically hurt another person. It is an abuse of power and is almost always repetitive. Harassment is usually repetitive, but not always. A person who harasses may not be aware that what they are doing is upsetting another person. It becomes harassment if they repeat the behaviour once informed. Bullying and harassment are often one and the same thing.

To be able to bully, the person must have positional or personal power over the victim, and must be willing to abuse this power. Positional power means that it is usually managers and supervisors who bully their staff. Personal power is when a staff member's influence or physical presence allows them to bully others who are either junior, equal or senior to them. Groups of people may also pick on and bully an individual.

Bullying constitutes a range of behaviours from overt to subtle and can include:

- Physical assault or threat of physical assault
- Swearing, using offensive language, or consistently speaking angrily or rudely to a person
- Unfairly criticising or degrading another person's work
- Setting unreasonable workloads, tasks or deadlines and then criticising the staff member when they do not complete them
- Undermining work performance, including deliberately withholding information or resources or constantly overruling the person's authority
- Making unexplained or unreasonable changes to work, or allocating meaningless tasks – the special projects approach
- Applying administrative sanctions such as delaying leave approval or blocking access to training
- Taking credit for other people's ideas
- Ostracising and marginalising a person by ignoring or excluding them from conversations
- Spreading malicious rumours
- Constantly undervaluing effort
- Persistent criticism.

Bullying is more often than not a gradual wearing down process that makes the recipient feel demeaned and inadequate. When a person is told often enough that they are 'hopeless', they may begin to believe it.

The bully may ridicule or shout at a person in public. They may scorn them at meetings for not putting forward ideas. But even if the person being bullied puts ideas forward they would be dismissed or ignored. The person being bullied can never win because the bully is someone who thinks they are always right. They are often very bad at delegating as they see it as losing control.

Harassment

Harassment includes behaviour that is not wanted or asked for and that humiliates, intimidates or offends someone. It is mostly repetitive, but one incident may be classified as harassment if it is serious enough.

Examples of illegal harassment

Under the *Anti-Discrimination Act 1977 (NSW)* it is unlawful to harass someone on the grounds of sex, pregnancy, race, disability, marital status, age, homosexuality or transgender identification.

Sexual harassment is when a person is subjected to unwanted sexual behaviour, such as:

- requests for sexual favours or inferences of sexual impropriety
- sexually humiliating, threatening or insulting someone, telling sexually offensive jokes or spreading sexual rumours
- unwanted physical contact such as pinching, patting, brushing up against a person, touching, kissing or hugging

Gender-based harassment is behaviour based on sex-role stereotyping, such as:

- belittling comments based on sex role stereotyping
- unfair treatment due to pregnancy, marital status or commitment to family responsibilities
- sexist language, remarks, jokes or practical jokes

Harassment on the basis of homosexuality may occur because a person is, or is assumed to be, lesbian, gay or bisexual, and may include:

- homosexually-based humiliation or offensive remarks, including inferences of homosexual impropriety or persistent questions about a person's private life
- homosexual jokes, practical jokes, slurs or obscene gestures
- distributing homosexually suggestive, offensive or degrading/insulting materials

Racial harassment consists of negative references to a person's race, colour, nationality, accent, ethnic or ethno-religious background, and includes:

- racially oriented ridicule, eg derogatory reference to physical features, skin colour or cultural and religious observances or imitating someone's accent
- displaying or circulating racist cartoons or literature or writing racist graffiti
- isolation or segregation on the basis of race or ethnicity
- wearing racist symbols (such as badges) or clothing with racist slogans in public.

Harassment on the basis of disability can occur whether the victim has a real or presumed disability. The disability may be in the past, the present or the future. Examples include:

- patronising or humiliating someone with a disability or making derogatory remarks about the disability
- offensive comments or behaviour towards a person with a disease such as AIDS/HIV or hepatitis
- putting disability-based suggestive, offensive or degrading/insulting material on walls, computer screen savers etc

Age-based harassment consists of negative references resulting from stereotypes of what a person can do at a particular age, including:

- derogatory remarks about a person's age, mental and physical capacities and appearance
- patronising or humiliating someone because of their age
- isolation or segregation on the basis of age
- putting age-based suggestive, offensive or degrading/insulting material on walls, computer screen savers etc or circulating ageist cartoons or literature

The inclusion of **transgender identification (transsexuality)** in the Anti-Discrimination Act protects people who live, or seek to live, as members of the opposite sex to their birth sex. Examples include:

- persistent questions about a person's private life or inferences of sexual impropriety
- humiliating someone because they are transgender, spreading sexual rumours or telling sexually offensive jokes
- putting suggestive, offensive or degrading/insulting material on walls, computer screen savers etc or sending offensive material through unsolicited letters, computer, fax or E-mail

From the Department's perspective

People have described the experience of being bullied as everything from psychological terrorisation to entering a war zone. When people are afraid they do not work well and the result is individual, organisational and economic ill-health.

Demeaning and devaluing men and women when they go about their work is not an effective way of managing human beings and no organisation would condone such an atmosphere of infectious fear. The Department has therefore prepared this policy to inform employees that such conduct is not to be tolerated. It is outside the Department's Code of Conduct and Ethics and is morally and ethically unacceptable.

All staff are encouraged to undertake communication, conflict resolution and/or management development training programs offered by Brush Farm Academy. It is compulsory for existing and prospective managers to also undertake training in change management, dealing with conflict and people management skills.

Senior managers are being asked to identify such behaviour amongst those they supervise and provide them with the opportunity to change their ways through performance counselling.

Ref:

Adams, A, 1994, Speech at Conference sponsored by the British Trade Union MSF.

Randall, P, 1997, Adult Bullying: Perpetrators and Victims, Routledge, London

Violence in the Workplace, Guide 2002, WorkCover, www.workcover.nsw.gov.au/NR/rdonlyres/8B1151F3-44F8-40DC-962A-1AC985176019/0/guide_violenceinthew_701.pdf

Identifying lawful directions from bullying behaviour

Lawful directions require compliance from staff.

Sometimes managers are concerned that staff may claim they have been bullied or harassed when they have been directed to undertake a task or duty that they didn't want to do.

It is not uncommon for staff to make this claim when they are directed to undertake a task or duty that they are unhappy with, or when affronted by the manner in which that direction was given. This relates more to management style and personal perceptions than to bullying or harassment.

Managers and supervisors have been given the authority to lead and direct, and have the right and the duty to do just that. In directing staff, the issue of whether the recipient of the direction wants or does not want to undertake the action is irrelevant.

If you are a manager and you know your own job and that of the staff member you supervise, you can be confident that any lawful direction given in the appropriate manner is not considered to be bullying or harassment.

If you consider that the actions of a staff member require correcting, you are obliged to arrange for counselling to take place in private and in an appropriate manner. The publication *Positive & Productive Working Relationships: A Toolkit for Managers* is available to assist you. If you legitimately counsel someone, then there is no need to fear being accused of bullying or harassment.

However, this raises a closely related issue of how directions are delivered and how sometimes this can be translated as a misuse and abuse of authority and power.

Misuse of authority and abuse of power can take the form of offensive, abusive, belittling, threatening or bullying words and/or behaviour. The effect on those who are subject to such behaviour is extremely negative and it does nothing for workplace cohesion. If counselling or directing of staff incorporates the misuse of authority, then there may be a case of bullying or harassment to answer.

There is no clear-cut answer to the question of whether the giving of a direction, or counselling of an officer in what may be interpreted as an aggressive manner was or was not bullying or harassment. It depends on the situation. The direction or counselling must have been lawful and related to the duties of the employee (ie be intended to effect some workplace object or purpose). It must have been given in a manner that is respectful of the employee and be one that the manager had the authority to give.

Ref:

Australian Defence Force, A guide to Fair Leadership and Discipline in the Australian Defence Force