



Workplace Bullying and Harassment Policy and Procedure

Aim

Under the WHS Act, Senators and Members, MOP(S) Act employees and Finance share the responsibility for eliminating or minimising the risks connected with bullying and harassment. All workers, including Senators and Members and MOP(S) Act employees, have a duty to take reasonable care that their behaviour does not affect their own health and safety, or that of other persons.

This policy has been developed to provide Senators, Members and MOP(S) Act employees with up-to-date information to assist them to fulfil their responsibilities to address workplace bullying and harassment by:

- clarifying what workplace bullying is and isn't (Section A)
- clarifying who has responsibilities for preventing and addressing workplace bullying and harassment within MOP(S) Act employment (Section B)
- providing advice to Senators and Members and MOP(S) Act employees on the processes and principles for the handling of formal complaints, investigations and appeals that involve allegations of workplace bullying and/or harassment (Section C)
- noting additional information, including some consequences of the unique characteristics of MOP(S) Act employment (Section D).

This policy has been developed having regard to Safe Work Australia's *Guide for Preventing and Responding to Workplace Bullying*; and to relevant Comcare guidance. Links to these documents, and further information, are provided at Section E.



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Section A - What is Workplace Bullying?

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

- **Repeated behaviour:** refers to the persistent nature of the behaviour and can involve a range of behaviours over time.
- **Unreasonable behaviour:** means behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Examples of workplace bullying

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

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

These behaviours may be considered to be workplace bullying however they are communicated, including face to face, in writing, or via electronic media, including:

- emails
- text messages
- instant messages
- blogging, or
- social media, such as facebook, twitter, or instagram.



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What is not considered to be workplace bullying?

Single incidents

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

Workplace conflict

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

Reasonable management action taken in a reasonable way

There are times when a Senator or Member, or a MOP(S) Act employee authorised by the Senator or Member to manage another person's work, may take reasonable management action to effectively direct and control the way work is carried out. It is reasonable for Senators and Members, and managers and supervisors who are authorised, to allocate work and to give fair and reasonable feedback on a worker's performance. These actions are usually not considered to be bullying if they are carried out in a reasonable manner, taking the particular circumstances into account.

Examples of reasonable management action include:

- setting reasonable performance goals, standards and deadlines
- rostering and allocating working hours where the requirements are reasonable
- transferring a position for operational reasons (for example: requiring a worker to attend (or not attend) Parliament House, locating an employee in a second electorate office)
- deciding not to select a worker for promotion where a reasonable process is followed and documented
- informing a worker about unsatisfactory work performance when undertaken in accordance with any workplace policies or agreements that have been communicated to the worker, such as performance management guidelines used within the Senator or Member's office
- informing a worker about inappropriate behaviour in an objective and confidential way
- implementing organisational changes, such as restructuring the office, or changing ESA allocations
- termination of employment.



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Discrimination and harassment

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

Harassment generally involves unwelcome behaviour that intimidates, offends or humiliates a person because of a particular personal characteristic such as age, race, gender, disability, religion or sexuality.

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

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

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

Within the context of MOP(S) Act employment, workplace violence may originate outside the Senator or Member's office, ie from members of the public, or from within. Ministerial and Parliamentary Services can assist with office design features, including physical barriers and duress alarms, to minimise the risk of violence. Within the office, every attempt should be made to address interpersonal conflict quickly, to reduce the risk of escalation.

It is possible for workplace violence to occur within the context of a pattern of bullying. However unlike workplace bullying, workplace violence may occur as a single incident.

Every incident of workplace violence (i.e. physical assault or the threat of physical assault) should be reported to the police by the Senator or Member, or employee immediately, no matter who it involves, because workplace violence is a criminal matter.



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Section B - Sharing Responsibility for Preventing and Responding to Workplace Bullying

Finance Responsibilities

Finance:

- assists Senators and Members to minimise and manage workplace bullying
- consults with Senators and Members and MOP(S) Act employees;
- provides information and training
- facilitates hazard identification and assists with risk management
- facilitates the provision of external assistance.

Finance will:

a. Assist Senators and Members to:

- design work systems and practices within their workplaces to minimise the risk of workplace bullying
- promote a workplace culture free from bullying and harassment
- respond to allegations of bullying and harassment within their workplace(s)
- comply with any recommendations or orders made by Comcare or the Fair Work Commission following an allegation of workplace bullying within the Senator or Member's office.

b. In relation to information, training and consultation:

- provide general advice on bullying and harassment and related issues to Senators and Members and MOP(S) Act employees, through the Ministerial and Parliamentary Services website and departmental circulars
- provide specific information, advice and assistance in relation to bullying and harassment and related issues to:
 - Senators and Members through the Advice and Support Director
 - MOP(S) Act employees through the Director, MOP(S) Pay and Conditions
- administer a Staff Assistance Officer network for MOP(S) Act employees, to provide an optional initial point of contact for MOP(S) Act employees who are affected by workplace bullying and harassment



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- provide online training in preventing and managing bullying, harassment and discrimination, tailored to Senators and Members and accessible through the Ministerial and Parliamentary Services website
- provide training in preventing and managing bullying and harassment, tailored to MOP(S) Act employees, in the form of:
 - online training accessible through the Ministerial and Parliamentary Services website
 - face to face training delivered under the Professional Development Program for MOP(S) Act employees
 - specialist training for Staff Assistance Officers;
- consult with MOP(S) Act employees through the Work Health and Safety Committee and the Staff Help Desk on general matters relating to bullying and harassment
- maintain this policy, in consultation with the Work Health and Safety Committee for MOP(S) Act employees; and Senators and Members
- ensure that Finance employees whose responsibilities include the provision of information to Senators and Members and MOP(S) Act employees are provided with up-to-date information regarding:
 - the legislative framework for responding to bullying and harassment
 - information issued by Comcare, Safe Work Australia or the Fair Work Commission that is relevant to bullying and harassment within MOP(S) Act employment.

c. In relation to hazard identification and risk management:

- maintain systems for MOP(S) Act employees to report workplace bullying, harassment and related issues to Finance, through:
 - the WHS Site Officer for their workplace
 - the contracted provider of WHS services (currently Konekt Australia)
 - the Staff Help Desk, or
 - a Health & Safety Representative for their work group
- treat all reports of bullying, harassment and related issues seriously, by:
 - initiating a response promptly
 - managing all allegations of bullying and harassment in accordance with this policy and any legislative requirements that may apply
 - observing natural justice in all dealings with all people involved in an allegation of workplace bullying
 - ensuring that where required, rehabilitation services are provided by the Commonwealth as soon as practicable; to minimise further risks to health and safety



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- evaluating each report systematically and designing a tailored response that is:
 - proportionate to the allegation
 - fair and equitable to all parties, noting that ultimately, Finance must act in accordance with the law and in the best interests of the Commonwealth
- maintain a system for MOP(S) Act employees and their immediate family to discuss workplace bullying, harassment and related issues confidentially, with qualified counsellors, through provision of an Employee Assistance Program
- maintain a system for MOP(S) Act employees to access peer support from within their workgroup, through a network of trained Staff Assistance Officers
- maintain systems for Senators and Members and MOP(S) Act employees to discuss workplace bullying, harassment and related issues with Finance, through their Advice and Support Director
- consult with the employing Senator or Member regarding direct allegations of bullying within the Senator or Member's workplace
- review information relevant to the identification and management of workplace bullying risks in Senators and Members' offices routinely, at Senior Executive Service level
- consult with the employing Senator or Member, and where appropriate Comcare, in situations where Finance has evaluated the risk of bullying in a Senator or Member's workplace and has concerns that, without intervention, it may be, or continue to be, an unsafe workplace.

d. Facilitate the provision of external assistance, where necessary

- Where a complaint about workplace bullying cannot be resolved within a Senator or Member's office without external assistance:
 - consult with the employing Senator or Member and the complainant(s) regarding options to attempt to resolve the situation
 - facilitate the provision of mediation, investigation or regulatory services where appropriate to the circumstances.



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Senators and Members Responsibilities

Senators and Members:

- discharge duties under WHS legislation
- adopt good workplace practices
- manage hazards and risks
- manage reports of workplace bullying.

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Senators and Members must:

discharge their duties under WHS legislation

Under WHS legislation, each Senator and Member **must**:

- to discharge the Commonwealth's primary duty:
 - ensure, so far as is reasonably practicable, the health and safety of workers who carry out work for the Senator or Member, including MOP(S) Act employees
- to discharge his or her own duties as an officer:
 - acquire, and keep up-to-date, knowledge of work health and safety matters, including:
 - the hazards and risks associated with workplace bullying
 - strategies to prevent and respond to workplace bullying
 - ensure that appropriate resources (within the limits of the Senator or Member's current Commonwealth resources and capacity to control the allocation of resources within his or her workplaces), are dedicated to eliminating or minimising the risks to health and safety from workplace bullying and harassment
 - ensure that appropriate processes are in place for the Senator or Member to receive information regarding bullying and harassment within his or her workplaces and respond to that information in an appropriate and timely way
 - verify that the systems and processes within each of his or her workplaces to prevent and respond to bullying and harassment, whether put in place by the



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Senator or Member or by Finance, are operating towards that end. This may include verifying that:

- all persons within the workplace understand the Senator or Member's expectations regarding workplace behaviour
 - all MOP(S) Act employees within the workplace are familiar with and comply with this policy
 - all workers know how to report bullying and harassment risks, and all WHS hazards and incidents are reported
 - all workers are consulted on matters that may affect their health or safety, including their psychological health and safety
 - all workers receive WHS induction information, undertake bullying and harassment awareness training provided by Finance, and know how to access the WHS resources on the Ministerial and Parliamentary Services website
 - all MOP(S) Act employees are aware of the Health and Safety Representatives for their work group.
- to discharge his or her own duties as a worker, while at work:
 - take reasonable care for his or her own health and safety
 - take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons.

Senators and Members should:

a. adopt good workplace practices

Sound management practices and effective communication can assist in creating a workplace environment that discourages bullying. To minimise and respond to risks of workplace bullying, a Senator or Member **should**:

- promote a workplace culture free from bullying or harassment:
 - adopt and promote this policy within his or her workplace(s)
 - clarify, and model, the standards of behaviour that he or she expects within the workplace
 - undertake online training and attend information sessions on preventing bullying and harassment offered to Senators and Members by Finance and/or Comcare
 - clearly indicate that workplace bullying and harassment by a worker will not be tolerated and may result in disciplinary action
 - clearly state his or her commitment to positive working relationships
 - ensure that any person with management responsibilities within the workplace is accountable, to the Senator or Member, for creating a workplace culture in which bullying and harassment are unacceptable



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- encourage workers to take action if they believe they have been bullied or harassed, or observed workplace bullying or harassment
- respond to disharmony, conflict or unacceptable behaviour within the workplace promptly, to minimise the risk of escalation
- adopt a risk management approach within the workplace, to identify and address risks that may contribute to the occurrence of workplace bullying, harassment or violence.
- adopt transparent and fair performance management practices:
 - recruit workers whose skills, experience and temperament are suitable for the work they are required to do
 - ensure that the roles and responsibilities of each worker are understood, by providing:
 - duty statements
 - clear expectations about the quality and quantity of work required
 - routine feedback on performance
 - transparent reporting lines and decision-making responsibilities, especially when the Senator or Member is absent
 - provide opportunities for discussion with workers about mutual expectations, goals, how they manage their duties, and career development
 - ensure that staff who are not performing well have problem areas clearly identified and are given the opportunity to improve. Finance Advice and Support Directors can provide advice on managing underperformance
 - ensure that management measures that address performance and behavioural issues within the office are transparent and fair. Finance Advice and Support Directors can provide advice on managing difficult employment situations in accordance with the *Fair Work Act 2009* (Fair Work Act).
- consult with workers regularly regarding:
- matters that affect their health and safety in the workplace, with regard to the consultation duties in the WHS Act
- major workplace changes, with regard to the consultation framework set out in the *Commonwealth Members of Parliament Staff Enterprise Agreement 2012-2015*
- other issues that relate to their work or workplace, to prevent those issues escalating.

b. identify hazards

Senators and Members should adopt systems within their workplaces that will assist them to identify hazards by considering factors that may indicate, or contribute to, employees being exposed to workplace bullying or harassing behaviour. These factors may include:

- direct information:



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- specific complaints
- feedback about the effect of their own, or another person's behaviour
- workers' compensation claims
- indirect information:
 - absence patterns, particularly unexpected or unexplained absences
 - withdrawn employees
 - a tense working environment that persists
 - a culture of complaint within the workplace, or
 - regular resignations
- organisational issues:
 - nature of the work
 - restructuring, or unexpected change
 - staff shortages, or
 - job uncertainty – for example, during an election campaign
- operational issues, for example, an employee:
 - adopting regular patterns of working alone, or out of hours, or
 - arranging, or seeking to arrange, their work patterns to avoid a particular person
- environmental factors:
 - physical layout of the office
 - location of the office, or
 - maintenance of the workplace, for example, cluttered work areas, or shared areas such as kitchens, may indicate, or contribute to, interpersonal conflict.

c. assess risks

Once a workplace bullying hazard is identified, the risk of potential harm needs to be assessed in terms of its likelihood and impact on employees and the office environment. There are potentially significant consequences of workplace bullying, harassment and violence that include:

- individual psychological health;
- employment costs;
- legal action
- reputational damage.

d. mitigate risks



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Senators and Members are responsible for managing employment arrangements within their office to reduce the likelihood of incidents, or the risk of further incidents. This may include:

- counselling staff
- directing staff to undertake training
- issuing cautions or taking other disciplinary action
- changing working arrangements, either permanently or temporarily, in consultation with the affected employee, to minimise the risk of conflict between employees, for example:
 - varying the location where work is undertaken
 - varying an employee's agreed hours of work
 - varying collaborative working arrangements within the office, or
 - varying the reporting lines within the office.

e. manage reports of bullying:

When a specific complaint of bullying and harassment is made against a Senator or Member, or a MOP(S) Act employee, the employing Senator or Member **should**:

- assure the complainant that the matter will be dealt with seriously, promptly and impartially
- where appropriate to the specific circumstances, encourage the complainant to attempt to resolve the situation themselves using an early intervention approach, and facilitate their efforts if requested
- discuss the matter with their Advice and Support Director as soon as practicable, so that a proportionate response to the situation, consistent with this policy, can be initiated
- ensure procedural fairness for everyone involved:
 - share information only on a 'need to know' basis
 - the person making the report must not be victimised
 - the person who is alleged to have engaged in the bullying behaviour:
 - should be treated as innocent unless the allegations are proven
 - should be given a chance to explain his or her version of events
 - must not be victimised
 - witnesses should be encouraged to speak up and must not be victimised for doing so
 - all persons in the workplace should be supported to access information and services that could assist them to:
 - resolve the matter quickly, or



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- manage the resolution process
- keep accurate records of:
 - all actions taken in response to the complaint
 - any events that may become relevant if the matter proceeds to a formal complaint.

Historical - November 2016



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MOP(S) Act Employees Responsibilities

MOP(S) Act employees:

- discharge duties under WHS legislation
- take reasonable care for health and safety within the workplace
- undertake induction and training offered by Finance
- act early to prevent situations escalating
- report bullying hazards and incidents.

MOP(S) Act employees must:

discharge their duties under WHS legislation

To discharge his or her own duties as a worker, each MOP(S) Act employee **must**, while at work:

- take reasonable care for his or her own health and safety
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as is reasonably practicable, with any reasonable instruction given by their employing Senator or Member or authorised officer
- be familiar with, and comply, so far as is reasonably practicable, with this policy.

MOP(S) Act employees should:

a. to take reasonable care for his or her own health and safety:

- know how to report bullying and harassment risks, and report them promptly if identified
- comply, so far as is reasonably practicable, with their Senator or Member's reasonable expectations regarding workplace behaviour and performance
- as soon as is practicable, to minimise the risk of the situation escalating:
 - attempt to resolve any conflict between themselves and another person within the workplace using an early intervention approach
 - clarify any ambiguity about duties or workplace performance, with the employee's immediate supervisor or the Senator or Member;
 - discuss any expectations within the workplace that appear unreasonable
 - challenge unacceptable behaviour by another person within the workplace



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- engage in consultation on matters that may affect his or her health or safety, including psychological health or safety
- know who the Health and Safety Representatives are for their work group
- know who the Staff Assistance Officers are for their work group
- ensure that he or she:
 - undertakes induction into the workplace, including WHS induction;
 - undertakes bullying and harassment awareness training offered by Finance and/or Comcare
 - knows how to access the WHS resources on the Ministerial and Parliamentary Services website
 - is aware of services available under the Employee Assistance Program (EAP):
 - The EAP can be accessed by MOP(S) Act employees affected by personal or job related problems. These may be work-related, health, family, financial or emotional concerns. All individual contact between MOP(S) Act employees and the EAP provider, Davidson Trahaire Corpsych (DTC), is confidential. DTC is available 24 hours per day, seven days per week and can be contacted on: 1300 360 364 (Australia wide) or eap@davcorp.com.au.

b. to take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons:

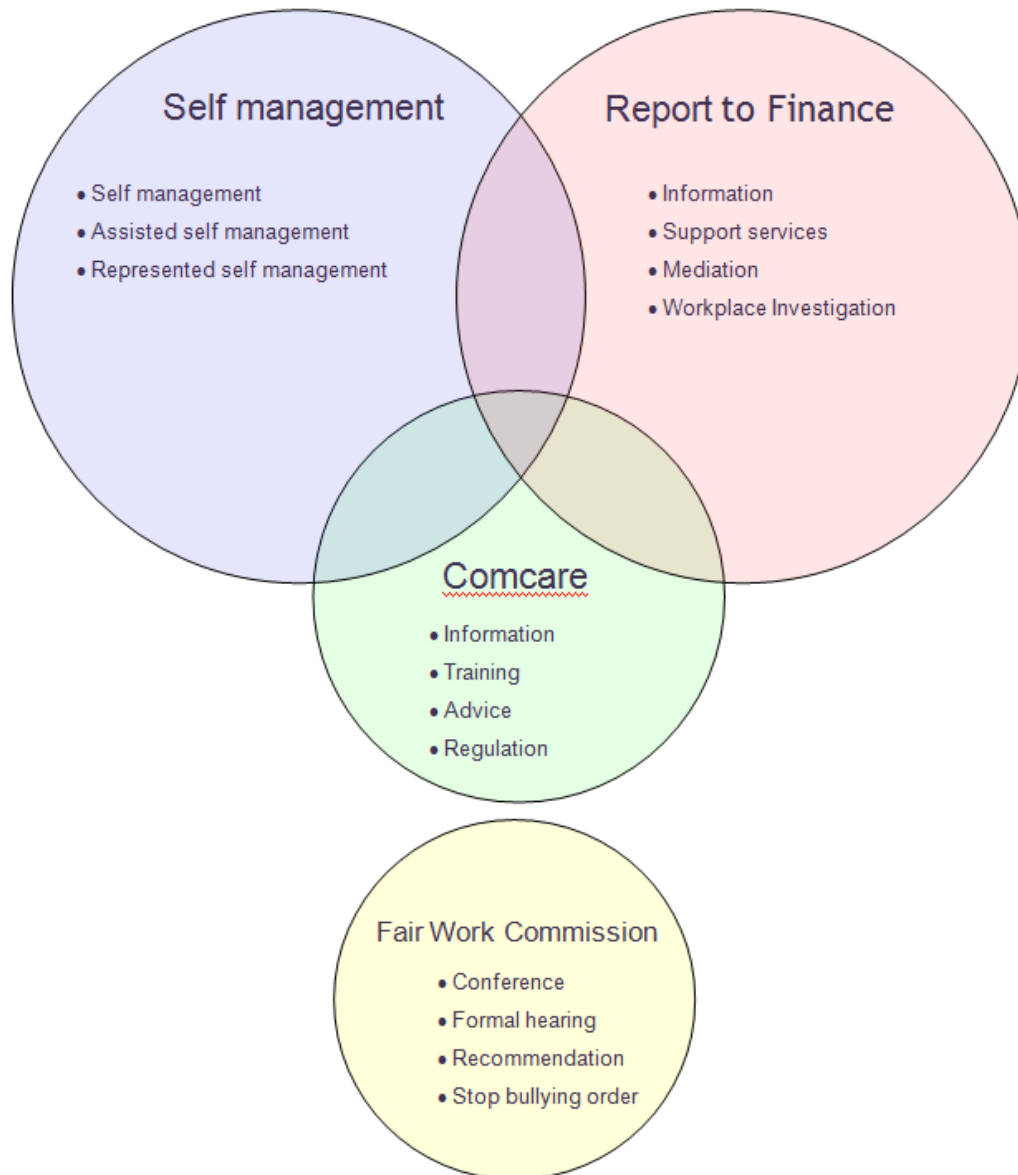
- ensure that he or she understands the information on bullying, harassment, discrimination and workplace violence set out in this policy
- ensure that he or she **does not** bully, harass, discriminate against or act violently towards any person in the workplace
- make it clear, where it is safe to do so, that he or she does not support behaviour involving workplace bullying, harassment, discrimination or violence;
- take responsibility for their own behaviour, including assessing any risks that their behaviour may adversely affect the health and safety of other persons
- report any incident involving workplace bullying, harassment, discrimination or violence, in accordance with this policy, as soon as practicable.



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Section C - Issues Resolution Procedure

Where it is safe and practicable to do so, a self management approach should be attempted by the complainant at the earliest opportunity. The following options are available to attempt to resolve workplace bullying issues. Depending on the particular circumstances, these options may be used separately, or in combination, to attempt to resolve the situation:





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Self management

a. Self management by the complainant

A person experiencing workplace bullying should first attempt to self-manage the situation, aiming to resolve it before it escalates, by:

- telling the person behaving unreasonably that the unreasonable behaviour is not welcome or acceptable
- asking that it stop.

Self-management may not be appropriate if it puts the MOP(S) Act employee making a complaint at risk, or if the problem is with a group, rather than one individual.

The Employee Assistance Program is available to assist with information about self-management solutions. The following techniques may assist when raising the matter with the person who is alleged to have engaged in bullying behaviour:

- remain calm and communicate professionally
- describe the unreasonable behaviour rather than the person exhibiting it
- describe the effects of the unreasonable behaviour
- request:
 - an agreement that the unreasonable behaviour will not happen again, or
 - an acknowledgement of the request for the unreasonable behaviour to stop.
- agreements and acknowledgements reached through self-management measures should be put in writing and signed and kept by each involved party. Signed agreements and acknowledgements can then be used as evidence of an attempt to resolve the matter, should there be a breach of the agreement, or a similar matter arises between the involved parties.

b. Assisted self management

If the person experiencing workplace bullying does not feel safe or confident enough to self-manage a situation, they should seek the assistance of another person within the workplace to raise the issue with the person whose behaviour is unreasonable, for example:

- their Senator or Member
- a MOP(S) Act employee who supervises their work, or
- the WHS Site officer for their workplace.

Anyone asked to assist or act on behalf of an individual should use a confidential and non-confrontational approach and act in accordance with this policy when discussing an issue. Undertaking training available to MOP(S) Act employees about workplace bullying may assist in understanding how to deal with issues such as conflict, confidentiality and related issues when providing support.



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A person should not attempt to assist, or continue to assist, another to self-manage workplace bullying if they don't feel comfortable or competent with the role, or there is a risk that their involvement could exacerbate the matter.

c. Represented self management

If assistance within the workplace is unavailable, or not appropriate in the particular circumstances, the person experiencing workplace bullying can seek the assistance of another person outside the workplace with relevant knowledge of managing workplace bullying, such as:

- a Staff Assistance Officer for their work group
- a health and safety representative for their work group
- a representative of their union or professional association, or
- a person with relevant professional training in mediation or counselling skills.

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

As the MOP(S) Act employment framework is complex and unique, MOP(S) Act employees should confirm any information or advice given to them regarding their employment conditions with the Staff Help Desk.



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Report workplace bullying to Finance

Making a report

A MOP(S) Act employee can report workplace bullying hazards to Finance at any time, verbally or in writing, by:

- making a hazard or incident report through Konekt Response, or
- reporting the matter to Finance directly, through the Staff Help Desk or the Director, MOP(S) Employee Support Team.

Reports by witnesses

Workplace bullying may be reported by witnesses. Even if it is not reported by the person allegedly being bullied, all workplace bullying hazards that are identified, but are not being actively self-managed, should be reported so that they can be dealt with promptly.

Anonymous reports

Anonymous reports are discouraged. Where a complainant wishes to make an anonymous report, they must state that preference at the beginning of their report. Finance will accept and record anonymous reports, noting that:

- anonymous reports are likely to be ineffective in changing a pattern of unreasonable behaviour
- Finance's capacity to act on an anonymous report is likely to be limited to providing general information
- Finance cannot guarantee that anonymity will be preserved if the complainant's identity becomes known to it
- Finance may have duties to disclose the identity or suspected identity of a complainant in certain circumstances, for example, where there is an immediate risk to the health and safety of any person, including the complainant.

What happens when a report is made to Finance?

- Finance will evaluate the report, and co-ordinate a response that:
 - aims to eliminate or minimise any risks to the health and safety of the complainant and other persons in the workplace
 - is proportionate to the immediate risks identified by the complainant and Finance
 - takes into account other relevant information Finance may be aware of
 - considers, but cannot guarantee, the outcome preferred by the complainant.
- Finance's response may include any or several of the following steps, depending on its evaluation of the severity of the situation.

a. Information



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In all cases, Finance will:

- provide the complainant with information about:
 - workplace bullying
 - how options that may be available to attempt to resolve the situation are likely to work within the MOP(S) Act employment framework
 - available support services
 - access to workers' compensation for sick or injured MOP(S) Act employees
- encourage the complainant to access the Employee Assistance Program
- consult with:
 - the complainant
 - the person(s) alleged to have engaged in the bullying behaviour
 - the employing Senator or Member
 regarding options to attempt to resolve the situation
- encourage all parties to:
 - access available training
 - adopt workplace practices and procedures to minimise the risks associated with the situation.

b. Mediation

Where appropriate to the circumstances, and subject to the complainant's consent, Finance will facilitate the provision of professional mediation services to facilitate discussions between:

- the complainant
- the person who is alleged to have engaged in the bullying behaviour
- the Senator or Member, where appropriate
- other persons in the workplace, where appropriate.

Mediation is a voluntary process where a trained mediator assists the parties to put their respective cases before each other. The role of a mediator is to assist all parties to understand the perspective of the others and to find an agreement the parties are willing to abide by.

The form that mediation will take may vary according to the particular circumstances of an allegation and the mediator's preferred mode of operation. The following scenario is therefore indicative of the general process.

A meeting is arranged, where possible, with relevant parties to the complaint present, in order to establish the basis of the complaint and attempt to resolve the issue. Complaints must be fully described by the complainant, and each person who is alleged to have engaged in the bullying behaviour is given the full details of the complaint(s) against them.



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In addition, the person who is alleged to have engaged in the bullying behaviour will have the opportunity to prepare and present their side of the story before resolution is attempted. The aim of this meeting is to discuss and agree to options for resolution. The meeting will be documented by the mediator and a record of the discussion and agreed outcomes provided to each party.

If the complainant feels uncomfortable with the other party or parties being present then, as soon as practicable, separate meetings will be held between each party and the mediator, as appropriate to the circumstances, to explain the formal process and each party's rights and responsibilities. Subject to the consent of each party to the complaint, information provided by one party may be shared with the other parties, and follow-up separate meetings held, in an attempt to discuss and agree to options for resolution. All meetings will be documented and a record of the discussion and agreed outcomes provided to each party to the complaint.

c. Investigation

Where less intrusive approaches have not resolved the situation, or the situation indicates a serious risk to health and safety if it continues, Finance may arrange a workplace investigation by an independent contracted provider who specialises in the field.

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

All parties to an investigation are able to seek independent advice and representation, and to have a representative present at interviews. It is recommended that a party who is considering refusing to participate should seek independent advice on this course of action.

To ensure the investigation process is conducted in a fair, objective and timely way, all parties are kept informed, by either Finance or the investigator, as relevant, about:

- who is conducting the investigation
- how the parties will be kept informed throughout the investigation and of what they will be informed
- the expected timeframes of the investigation
- how the issue will be investigated (e.g. interviews with the parties and any witnesses, viewing documentary evidence)
- what interim measures are available to ensure the health and safety of the parties during the investigation processes
- who will receive copies of any statements and records of interviews.

Likely outcomes of an investigation

At the end of an investigation, the investigator will provide a report to Finance, who will then use the findings of the investigation to discuss options for further action with the



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Senator or Member. Any actions arising from this discussion will be communicated to the parties involved by Finance, or the Senator or Member, depending on who will be responsible for the action.

An investigation may find that a report of bullying is not substantiated and no further action can be taken. If the allegation cannot be substantiated, this does not mean the bullying did not occur and regardless of whether or not a complaint is substantiated, measures may need to be taken to resolve any outstanding issues. Measures may involve mediation, individual or group counselling, training, changing working arrangements or addressing other issues within the office that may have contributed to the behaviour occurring.

Where a complaint is substantiated, Finance has no capacity to take disciplinary action against either a Senator or Member or a MOP(S) Act employee.

Where a complaint against an employee is substantiated, the Senator or Member may decide to take appropriate management action. The actions taken by a Senator or Member are likely to be different in each situation and depend on the severity and frequency of the bullying, and the size and structure of the Senator or Member's office. Such actions may include:

- gaining a commitment that the behaviour will not be repeated and monitoring this over time
- providing information to all workers to raise awareness of bullying within the workplace
- directing employees to undertake relevant training
- gaining a commitment that employees will undertake counselling support and/or mentoring
- requesting an apology
- regular monitoring of behaviours, or
- issuing a verbal or written warning.

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

In more significant cases, the Senator or Member may wish to consider whether it is appropriate for the employment to continue, and if so, whether the employee's role should change. Senators and Members are encouraged to consult with their Advice and Support Director to ensure consistency with the MOP(S) Act employment framework and the Fair Work Act, if they are contemplating:

- changing task assignments, roles, or the allocation of positions within their office, or
- terminating a staff member's employment.

If the allegation is found to be vexatious or malicious, disciplinary action or counselling may be considered. Any action taken by the Senator or Member should be consistent with the MOP(S) Act employment framework and the Fair Work Act.

Advice and Support Directors are available to discuss whether a proposed course of action contemplated by a Senator or Member is consistent with the MOP(S) Act employment framework and the Fair Work Act. ,



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Where a complaint against a Senator or Member is substantiated, any follow up action is a matter for judgment by the employee(s) concerned, taking into account the particular circumstances and consequences of the complaint. Follow up action could include raising the matter with Comcare or the Fair Work Commission, depending on the particular circumstances. An employee considering other action should seek independent legal advice.

d. Comcare intervention

Where evidence available to Finance indicates that a workplace may be unsafe, and a workplace investigation:

- is not suitable in the particular circumstances, or
- has been conducted with no subsequent improvement in the situation.

Finance may raise the issue with Comcare.



Workplace Bullying and Harassment

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What does Comcare intervention involve?

Under the WHS Act an inspector may enter a workplace at any time to undertake inspections. Usually, however, Comcare inspection activities will be undertaken collaboratively with Finance, the Senator or Member, workers and worker representatives to try to improve work health and safety outcomes. Usually, the inspector will make contact with Finance and the Senator or Member to arrange a time to visit the Senator or Member's office.

The aim of inspections is to assess the extent of compliance with WHS legislation by duty holders and to provide support and information to enable compliance. The range of inspection options available to Comcare are scaled, and commence with liaison and/or education inspections.

Where an inspection is initiated following a request by Finance, it will usually follow an incident or a pattern of incidents. In such cases, a preliminary investigation may be conducted to:

- determine the causes of the incidents
- assess compliance with the WHS Act and regulations
- determine appropriate remedial action.

If a Comcare inspection reveals a contravention of the WHS Act or regulations, the following action may be taken, usually in the following order:

- seek immediate voluntary compliance with WHS legislation and issue an inspection report containing recommendations to improve the situation. Recommendations may be directed at Finance and/or the Senator or Member and/or workers within a workplace
- commence an investigation and issue an improvement notice (which requires the contravention to be remedied by the duty holder by a certain date)
- commence an investigation and issue a prohibition notice (where there is an immediate risk and an activity must stop until the risk is removed), or
- initiate a serious investigation in accordance with Comcare's escalating model and pursue enforcement action. The range of tools Comcare can use to enforce compliance with WHS legislation are set out in Schedule 6 to the Comcare Regulation Policy.

- ▶ [Comcare Compliance and Enforcement policy](#)



Workplace Bullying and Harassment Policy and Procedure

Reporting workplace bullying to Comcare

It is open to a MOP(S) Act employee to report workplace bullying to Comcare at any time, noting that Comcare may seek further information through consultation with Finance, and, depending on the particular circumstances of the case, may:

- proceed to an inspection, as discussed above, or
- require the employee to first attempt to resolve the matter through self-management or reporting through Finance.

Comcare can provide information and advice on managing workplace bullying and is available to provide workplace liaison and education visits.



Workplace Bullying and Harassment Policy and Procedure

Making an application to the Fair Work Commission (FWC)

A MOP(S) Act employee who reasonably believes that he or she has been bullied at work can apply to the FWC under the Fair Work Act for an order to stop the bullying. Remedies available under the Fair Work Act do not apply to reasonable management action carried out in a reasonable manner.

The FWC must start to deal with an application within 14 days after it is made. In doing so, it may inform itself in any way, including through inquiries or by requiring the provision of information from other parties

If the FWC is satisfied that a valid application has been made, that bullying conduct has occurred and there is risk of further bullying, the FWC is empowered to make any order it considers appropriate (other than an order requiring the payment of monies) to prevent the worker from being bullied at work. An order cannot be made where the worker is no longer exposed to bullying (for example, if the worker has resigned or their employment has been terminated).

If the FWC does not have jurisdiction to make an order, or where an application has no reasonable prospects of success, the application may be dealt with, and dismissed, early in the process.

The FWC has noted that the prevention and resolution of alleged bullying matters within the workplace should be encouraged where appropriate. For this reason, MOP(S) Act employees are encouraged to work through the other options referred to in this policy before making an application to the FWC.



Workplace Bullying and Harassment Policy and Procedure

Section D - Unique Characteristics of MOP(S) Act Employment

No opportunities for redeployment

The MOP(S) Act employment framework does not make provision for the redeployment of an employee to another Senator or Member. Senators and Members and MOP(S) Act employees should note that where a working relationship has broken down irretrievably, and depending on the particular circumstances:

- it may not be practicable for a MOP(S) Act employee to be transferred or relocated to another workplace
- it may contravene the General Protections provisions of the Fair Work Act for a Senator or Member to terminate the employment of a MOP(S) Act employee who has made a complaint about workplace bullying.

For these reasons, all Senators and Members and MOP(S) Act employees should attempt to maintain productive working relationships and address emerging workplace issues at the earliest opportunity.

Divergence of the Commonwealth's interests

Finance will generally be able to provide Senators and Members with information and advice to assist them to manage allegations of workplace bullying. In some limited circumstances, the interests of the Senator or Member and Finance may diverge, to the extent that Finance is required to discharge the Commonwealth's legal obligations as an employer and/or a person conducting a business or undertaking. Should this scenario appear likely, Finance will discuss the matter with the Senator or Member as it arises.



Workplace Bullying and Harassment Policy and Procedure

Section E - Links to Further Information

Comcare

- ▶ [Comcare Compliance and Enforcement Policy](#)
- ▶ [Workplace bullying](#)
- ▶ [Managing Difficult Conversations and Providing Feedback](#)
- ▶ [Bullying Risk Management Tool](#)
- ▶ [Pocket Guide: Responding to Workplace Bullying](#)
- ▶ [Bullying case study](#)

Fair Work Commission

- ▶ [Fair Work Australia](#)
- ▶ [Anti-bullying information](#)

Legislation

- ▶ [Fair Work Act 2009](#)
- ▶ [Work Health and Safety Act 2011 \(Cwth\)](#)

MOP(S) Act employment framework

- ▶ [Ministerial and Parliamentary Services](#)

Safe Work Australia

- ▶ [Guide for preventing and responding to workplace bullying](#)
- ▶ [Dealing with workplace bullying - a worker's guide](#)