

Workplace bullying

A guide to assist members

Create change in your workplace.

www.nswnma.asn.au



About this guide

The aim of this guide is to provide information that will assist members to clearly understand:

- what does and does not constitute workplace bullying
- what you can do if you experience bullying or if allegations of bullying are made against you
- the legal obligations of employers to prevent and manage the risks of workplace bullying like any other hazard at the workplace
- the obligations of workers.



References

1. *Work Health and Safety Act 2011*
2. *Work Health and Safety Regulations 2017*
3. *Safe Work Australia – Guide for Preventing and Responding to Workplace Bullying* (November 2013)
4. *Safe Work Australia – dealing with Workplace Bullying – A Workers' Guide* (November 2013)
5. The Fair Work Ombudsman website fairwork.gov.au
6. The Fair Work Commission website fwc.gov.au

What is workplace bullying?

Workplace bullying is a psychological hazard and a risk to health and safety.

It is characterised by repeated and unreasonable behaviour directed at an employee or employees that creates a risk to health and safety.

Bullying is a significant issue within the nursing and midwifery professions. Bullying behaviour should not be tolerated in any workplace.

Everyone has a responsibility to ensure that bullying does not occur. Efforts should be made to create a work environment where there are good management practices, effective communication and where everyone is expected to work and behave professionally and treat each other with tolerance, dignity and respect.

Bullying behaviour is not always downwards from senior staff or managers to less senior staff; it can be sideways bullying between workers and sometimes is upwards from workers to their supervisors or managers.

Bullying can also be carried out by other people at a workplace including staff from other organisations and patients or customers.

Bullying may be directed at a single worker or group of workers. It may occur face to face, by phone or be 'cyber-bullying' through emails, text messages or social media.

There are a broad range of direct and indirect behaviours that may be considered as workplace bullying.

Examples of direct forms of bullying include:

- abusive, insulting comments or offensive language (includes face to face, phone, email, text messages and social media)
- humiliating or putting someone down in front of others
- spreading malicious rumours or misinformation about someone.

Examples of indirect bullying include:

- changing work rosters and leave, to deliberately inconvenience a particular employee(s)
- deliberately excluding someone from workplace activities
- excessive scrutiny at work, unjustified criticism or vexatious complaints
- setting unreasonable timelines or constantly changing deadlines
- setting tasks that are unreasonably above or beyond a person's skill level
- withholding information that is vital for effective work performance.

Workplace bullying can be extremely harmful to an individual's health and may seriously affect their ability to do their job. The physiological and psychological effects of bullying can include:

- high levels of stress, anxiety, panic attacks, sleep disturbances, loss of self-esteem, self-confidence and feelings of isolation
- physical illness such as muscular tension, headaches and digestive problems, impaired ability to make decisions
- frequent crying, depression, possible thoughts of suicide
- deteriorating relationships with colleagues, family and friends.

Bullying can also have a negative impact on the workplace environment. In organisations where there is an embedded culture of bullying, workers may experience low morale, job dissatisfaction and burnout resulting in increased absenteeism, decreased productivity, increased staff turnover and costly workers' compensation claims. Within the nursing and midwifery professions, bullying may also impact on the quality of patient care.

What is not considered to be workplace bullying?

1. A single incident of negative or unreasonable behaviour is not considered to be workplace bullying, however it may have the potential to escalate and should not be ignored.
2. Low level workplace conflict is not considered to be workplace bullying, because not all conflicts or disagreements have negative health effects or pose a risk to health and safety.

However, if low level conflict is not managed properly, it may escalate to the point where it can be characterised as workplace bullying. Reasonable management action carried out in fair manner is not bullying.

Sometimes, managers and supervisors are required to undertake management actions to effectively direct and control the way that work is carried out and to provide feedback on an employee's performance. However, these actions should be conducted in a fair and reasonable manner.

Examples of reasonable management actions may include:

- setting reasonable performance goals, standards and deadlines
- rostering and allocating working hours, where the requirements are reasonable
- transferring a worker for operational reasons
- informing a worker about unsatisfactory work performance when undertaken in accordance with workplace policies or agreements, such as performance management guidelines
- informing a worker about inappropriate behaviour in an objective and confidential way
- deciding not to select a worker for promotion where a reasonable process is followed and documented
- implementing organisational changes or restructuring (with consultation)
- termination of employment.

Bullying prevention

Under the *WHS Act 2011*, employers must ensure, so far as is reasonably practicable, the health and safety of all workers.

As with all foreseeable workplace risks, the potential for workplace bullying must be identified, assessed and eliminated or minimised as far as practicable, and consultation with workers and their representatives must take place at all stages of the process.

Workers have the responsibility to:

- Take reasonable care for their own health and safety
- Take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- Comply with reasonable instruction and policy or procedure.

Risk management for workplace bullying

1 Identify and assess the risks

To manage the risks of workplace bullying, your employer should (in consultation with workers) implement systems to identify and assess the risks of workplace bullying occurring. Factors contributing to risk include:

- **presence of work stressors** such as high job demands and limited job control. Organisational change, such as restructuring or significant technological change; role conflict and ambiguity; job insecurity; an acceptance of unreasonable workplace behaviours or lack of behavioural standards; and unreasonable expectations of patients, residents and visitors.
- **leadership styles** including autocratic behaviour that is strict and directive and does not allow workers to be involved in decision making; behaviour where little or no guidance is provided or responsibilities are inappropriately delegated, and abusive and demeaning behaviour that may include inappropriate or derogatory language, or malicious criticism and feedback.
- **system of work**, including a lack of resources; lack of training; inappropriate work scheduling, shift work and poorly designed rostering; and unreasonable performance measures or timeframes.
- **poor workplace relationships** such as poor communications; isolation; low level of support; or work group hostility.

2 Controlling the bullying risks

The risk of workplace bullying can be minimised by creating and promoting a positive work environment where everyone is treated fairly and with respect.

Risk controls for bullying include things like:

Implementing sound management practices and effective communication to create a workplace environment that discourages bullying and ensures there is a genuine commitment to not tolerating bullying behaviours.

This includes developing a code of conduct for expected standards of behaviour, bullying policies and procedures, recruitment and performance management procedures, and empowering managers and supervisors to respond to bullying incidents.

Designing safe systems of work

This includes clearly defining roles and responsibilities and seeking feedback from workers, reviewing and monitoring workloads and staffing levels, reducing excessive working hours, consulting with staff, communicating changes, enabling staff to be involved in decision making and developing and implementing standard operating procedures.

Developing productive and respectful workplace relationships

This includes promoting positive leadership styles by recruiting competent people managers, providing training for managers and supervisors (effective communication, engaging workers in decision making, providing constructive feedback, managing workloads, people and performance management and issue resolution processes), mentoring and supporting new and poor performing staff, facilitating teamwork and cooperation and ensuring that negative behaviours are addressed.

Policies and procedures

Workplace bullying policies and clear procedures for responding to bullying allegations ensure that there is a consistent approach to addressing these issues. The policy and procedures should be developed in consultation with employees and health and safety representatives (HSRs).

When employees report bullying incidents they should feel confident that management will respond to their allegations without the threat of reprisal or victimisation, in a confidential, reasonable, impartial and timely manner.

Employees should familiarise themselves with their employer's bullying policy and procedure. If there is no such policy or procedure, employees should request that these be developed in consultation with HSRs and staff.

Providing information and training on workplace bullying to all workers

Employers should provide information and training on the workplace bullying policy and procedures at inductions with new employees and at regular intervals to all staff, and emphasise that bullying behaviours will not be tolerated. Training should be tailored to meet the needs of the workers and suit the nature of the workplace.

Managers and supervisors should be provided with specific training in preventing and managing workplace bullying. They need to be informed of the bullying policy and procedures, how to enforce it in their work area, how to recognise what is happening, how to respond to allegations with early intervention and how to prevent further bullying incidents.

It is also essential that managers and supervisors have appropriate training so that they have the skills to effectively perform their people management roles.

They need to understand the importance of reasonable management actions, such as directing their staff or providing feedback on an employee's performance or behaviour and ensuring that these are conducted in a fair, constructive and reasonable manner.

3 Monitoring and reviewing

In consultation with HSRs and staff, employers should periodically monitor and review control measures to ensure they are effective in managing workplace bullying risks. This is particularly important if there has been a substantiated bullying complaint.

The following aspects may be useful to consider in the review:

- Have managers and supervisors been effectively trained to recognise and address bullying?
- Is there adequate awareness among staff about workplace bullying?
- Are workers empowered to speak up about negative behaviours?
- Have there been changes to the work environment – workloads, staffing levels, changes in staff morale? Have reports of bullying been responded to quickly and effectively?
- Are the bullying policy and procedures for responding to bullying issues relevant and effective?

Individual responses if you are experiencing workplace bullying

Workplace bullying is best managed with early intervention. If you believe that you are being bullied at your workplace, take action as soon as possible. Don't ignore the bullying behaviour because it can escalate and become more difficult to resolve.

1 Obtain a copy of the relevant policy and procedure

These may be located in WHS policy and procedures manual, or on an internal intranet page or available from the human resources department.

There may be an agreed bullying procedure which requires you to inform your immediate manager and attempt to resolve the issue with them. However, if your manager is part of the problem or your attempt is unsuccessful, you may need to approach the next level of management, or request assistance from human resources department staff.

2 If safe to do so, tell the person that their bullying behaviour is negative or inappropriate

Depending on the situation, and if you are confident to do so, try to self-manage the issue by approaching the other party. Tell them directly and politely in a calm and professional way about the impact of their behaviour and that you want it to stop.

This early intervention approach is best used when the behaviour has just occurred. This approach is only appropriate if it is safe to approach the person.

If the behaviour continues or gets worse, you should consider making a formal complaint.

3 Keep diary notes of workplace bullying incidents

Bullying behaviours are often difficult to define and substantiate so it is very important to diarise and keep notes of all incidents.

Include the date, time and description of each bullying incident, the names of people involved, location and details of any witnesses who may be willing to support your claims.

These diary notes can be used to assist you to substantiate your bullying allegations if you lodge a formal workplace complaint with your organisation. Even though it may be difficult, it is extremely important that you write your diary notes objectively and constructively.

Try to keep to the facts of the actual bullying incidents rather than using emotional language and descriptions. This will allow a third party to assess and investigate the allegations.

4 Speak to someone you trust for advice and support

You may need to speak to someone you trust, such as friends, family and trusted colleagues, for their support during this time. You may also wish to speak to a supervisor, manager, HSR, NSWNMA representative or someone from your human resources department for their advice or information.

Sometimes it is difficult to be objective about what is happening when going through a stressful situation and it may be useful to have the perspective of another person to help determine whether the issues you are experiencing are bullying or general workplace conflict. They may also be able to provide assistance or support to you if management has not responded to your bullying complaint, taken action promptly or addressed your concerns in an appropriate manner.

5 Call the NSWNMA for assistance

Call the NSWNMA if you need information on workplace bullying. You can also contact the NSWNMA if you are not satisfied with how your employer has addressed your complaint. For example, you may have concerns that the process was not conducted in accordance with the relevant policy or procedures, that management took inappropriate actions, the investigation process has taken too long, or there has not been a satisfactory outcome.

The NSWNMA can review the processes undertaken and assist and provide advice about options for pursuing the matter further if appropriate. This may include submission of a further written grievance.

In some instances referral to SafeWork NSW or an application to the Fair Work Commission may be appropriate. The NSWNMA can provide advice and assist with this process if recommended.

6 Reporting workplace bullying

It is recommended that you contact the NSWNMA for advice and information to assist you with preparing and lodging a bullying complaint.

If a formal complaint is recommended, it is important that you follow the steps outlined in your relevant workplace policies.

You should provide copies of any relevant details from your diary notes as evidence to substantiate your bullying allegations. Ensure that you keep a copy of the completed report that you submit to the employer, as your own personal record.

7 Seek counselling or medical advice/treatment

If you are suffering from psychological or physiological ill health as a result of the behaviours that you have been experiencing at work, seek assistance from professional counselling services or see your doctor.

A counsellor or medical professional will be able to offer support with maintaining your health and wellbeing. Some workplaces offer confidential counselling services through their employee assistance programs or you may wish to self-refer to the Nurse and Midwife Support (see the 'Contacts' section at end of this document).

What can I do if I think bullying is an issue in my workplace but I don't want to raise an individual dispute?

As a union member, there are a range of options that may be available to address broader workplace issues of bullying collectively rather than raising an individual grievance. This could include:

- a request for an additional workplace training about bullying (from your employer or the NSWNMA)
- a request that a WHS risk assessment is conducted to identify risks related to workplace bullying
- a workplace wide survey to provide evidence of the problem
- other actions as determine by your branch.

Please contact your branch or call the NSWNMA for further information.

What if someone has made allegations of workplace bullying against you?

It can come as a shock and be stressful and upsetting if someone makes a complaint of bullying against you. However, it is important that you are open and receptive to feedback from others and it may be necessary for you to review your behaviour.

If you have received formal allegations of bullying from your workplace and are asked to attend a meeting you have the right to have a support person present at meetings with management regarding the allegations. This may include a union representative.

You should be provided with details of the allegations in writing to enable you to provide an appropriate response.

1 Obtain a copy of your workplace's bullying policy and procedure and/ or grievance procedure

2 Speak to someone you trust for advice and support

You may need to speak to someone you trust, such as friends, family and trusted colleagues for their support during this time.

You may also wish to speak to a supervisor, manager, health and safety representative (HSR), NSWNMA representative or human resources staff member. Be aware that your colleagues may be involved in the process, and ensure that you maintain confidentiality.

Sometimes it is difficult to be objective about what is happening when going through a stressful situation and it may be useful to have the perspective of another person.

3 Call the NSWNMA for assistance

Call the NSWNMA if you need information on workplace bullying. You can contact the NSWNMA if you need advice or assistance with responding to the allegations.

Sometimes an employee is stood down with full pay during an investigation. This may be appropriate in some circumstances. You can also contact the NSWNMA if you are not satisfied with how your employer has investigated the allegations or if you are unhappy with the outcome. For instance, you may be concerned that an investigation was not conducted in accordance with the relevant bullying policy or

procedure, management took inappropriate actions, the investigation process has taken too long, or there has not been a satisfactory outcome.

The NSWNMA will also consider whether or not you have been afforded procedural fairness. If you receive a notice from the Fair Work Commission advising you of a bullying complaint against you, contact the NSWNMA for advice and assistance immediately.

4 Responding to allegations and procedural fairness

It is important when going through this process that the principles of procedural fairness or natural justice are applied. You should be able to seek independent advice and representation and have the opportunity to respond to allegations.

You should also ensure that the allegations contain specific details and are in a format that enables you to respond to them appropriately and comprehensively.

If allegations are of a general nature and do not include specific details, such as dates, times, circumstances and witnesses, request further information from your employer to enable you to respond.

You should be provided sufficient time to respond to allegations. The time provided for a response may vary depending on the extent and seriousness of the allegations.

When responding to allegations, you should respond only to the facts in the complaint, stating your own facts in an objective and constructive way, even if you disagree with what has been stated. It is recommended that you contact the NSWNMA for assistance with your response.

5 Seek counselling or medical advice and treatment

If you are suffering from psychological or physiological ill health as a result of the allegations against you, we advise seeking assistance from professional counselling services or seeing your doctor.

Some workplaces offer confidential counselling services through their employee assistance programs (EAP) or you may wish to self-refer to the Nurse and Midwife Support (see the 'Contacts' section at end of this document).

What should your employer do in response to reported workplace bullying?

Employers have a legal duty of care to provide and maintain, so far as is practicable, a working environment that is safe and without risks to the physical and psychological health of employees.

Management has a responsibility to proactively prevent, manage and resolve any bullying allegations as soon as they are aware of those issues.

Responding promptly and effectively to issues in a way that is procedurally fair can stop the situation and reinforce for employees that their employer takes workplace bullying seriously. This involves selecting an approach to deal with the issue, such as early intervention or a formal investigation.

The approach taken will depend on the seriousness of the allegation, and it should be agreed to by the person reporting the bullying behaviour.

To achieve a successful resolution of the reported bullying allegations, the employer will also need to ensure that their process is flexible enough to allow a choice of actions to suit the particular situation.

There are some key principles that should guide your employer's response:

- treating all reports seriously and showing commitment to the organisation's bullying policy and procedure
- acting promptly – meeting to discuss with both parties
- considering if work can be continued while a complaint is being investigated, and any issues of contact and proximity of the parties
- ensuring non-victimisation of any party
- providing support to all parties – advice on counselling options (such as employee assistance programs)
- ensuring neutrality – the management person responsible for the investigation or resolution must never be directly involved in the bullying incident and must be impartial to both parties (sometimes this requires an external party to ensure this)
- communicating the resolution process to both parties – including how long it will take, what can be expected and outcomes ensuring confidentiality and keeping records.

The following approaches should be considered by management, in response to allegations of workplace bullying:

1 Early intervention by supervisors/line managers

This approach is not suitable for serious bullying allegations.

- Early intervention by supervisors/line managers to meet with both parties and try to resolve the alleged bullying issues can sometimes be useful and may avoid the matter progressing to a formal complaint, investigation or disciplinary action being taken against an individual.
- Supervisors and line managers should intervene if they directly observe inappropriate or bullying behaviour or if they are requested to intervene by a member of their workgroup, including the person who may be experiencing bullying. They should not ignore bullying issues as the situation may get worse. Anyone asked to act on behalf of another individual should use this direct approach only if they feel comfortable to do so and have been provided with appropriate training.
- A confidential and non-confrontational approach should be used by the supervisor/line manager to discuss the issue with the alleged perpetrator and they should politely request that the perpetrator stop the behaviour immediately. The supervisor should make a record of any action taken.
- Supervisors/line managers should know how and when it is appropriate for the bullying issues to be escalated.

2 Discussion or mediation involving an independent third party

- All parties must agree to this voluntary process and recognise the independence of the third party involved. The mediator should be appropriately qualified and preferably external to the organisation.
- The discussion should focus on resolving the issue and agreeing upon actions to assist resolution.
- This approach may be chosen when the direct approach has not been successful or where an investigation has been conducted and discussion/mediation is recommended.

- The third party may recommend that an investigation be conducted to assist resolution of the issues.
- This approach is not suitable where occupational violence is involved or there is significant power difference between the parties involved in the discussion/mediation.

3 Formal investigation

This should be the first step taken when serious allegations are reported, including reports covering a long period of time, where threats have been made, or where there are reports against a number of employees.

It can be used where early intervention (informal) or facilitated third party discussions/mediations have failed to resolve issues or are inappropriate for the allegations.

The investigation should always be conducted by an impartial and suitably qualified person who is experienced with workplace bullying matters, preferably an external consultant.

The position of this person will vary depending on the allegations made, but they must not be directly involved in the incidents and must be impartial to both parties.

The investigation process

The investigation process should be conducted in a timely manner.

All parties affected should be kept informed of the investigation process and outcomes. The investigation process must be fair and follow the principles of 'natural justice', i.e. allegations need to be put to the respondent and they should be given an opportunity to seek independent advice/representation and to respond to the allegations.

Relevant witnesses should be identified and interviewed by the nominated person conducting the investigation.

The investigation report

The investigation report should be objective and include details of the allegations, the investigation process and witnesses and whether the bullying is substantiated or not. This decision should be communicated in a sensitive way to the parties involved.

The report should also include recommendations as to the measures that should be undertaken to finalise the matter, particularly if the investigation has substantiated the workplace bullying.

If the allegations are not substantiated, all parties involved should be told of the outcome and management should consider whether any further action is appropriate (e.g. apology to the person against whom the allegations were made, run a session to raise awareness in bullying policy/procedures and review these to ensure their effectiveness, or other action as appropriate).

If the allegations are substantiated, include appropriate recommended actions to assist resolution, in accordance with the policy and procedures. For example, you may invite an apology from the alleged perpetrator to the affected person and gain their commitment to cease bullying behaviour.

The report may recommend that management commits to providing ongoing monitoring, individual training, and sessions to raise staff awareness.

Management may be asked to review the organisation's bullying policy or procedures, provide mediation between parties, offer mentoring/relevant skills training to the alleged perpetrator, and offer support and counselling to affected person(s).

Management may also need to transfer either the alleged perpetrator or the affected person to another work area depending on the situation, and take disciplinary action against the alleged perpetrator (which may or may not include dismissal).

The report and recommendations should be formed on a reasonable view of the facts once all the information has been obtained.

There should always be a clear avenue for appeal of the outcome, available to both parties.

Post-investigation

After a report of workplace bullying has been resolved, the following supports should be considered:

- checking in with both parties
- consider organising work in another work area for either party
- offering professional counselling
- providing ongoing training and education for professional or skills development
- offering a mentor and/or support from senior management
- monitoring behaviours of the affected work group.

When should I lodge a workers compensation claim?

If you are suffering from psychological or physical ill health as a result of workplace bullying behaviour, you may submit a workers' compensation claim.

First, you will need to visit your treating doctor to discuss your symptoms and work situation. Your GP will need to provide you with a *Certificate of Capacity*, which clearly states the nature of your injury/ illness, whether you are fit or unfit to perform normal work duties, or whether you require alternate/suitable duties.

Assistance from external agencies

SafeWork NSW

SafeWork NSW can provide information on bullying and how to prevent it, advice on how to raise the issue of bullying in your workplace, or refer the matter to an inspector (where appropriate).

A SafeWork NSW inspector may make enquiries at your workplace and determine if your employer has contravened their obligations to provide a safe work environment. Depending on the seriousness of the allegations and, if appropriate, the inspector may take enforcement action against the employer.

Fair Work Commission

Some members may be eligible to make an application to the Fair Work Commission (FWC) for an order to stop bullying at work. Such orders are directed at preventing a worker from being bullied at work and restoring working relationships.

The FWC cannot award financial compensation to a person who has been bullied, or penalise an alleged bully or an employer by issuing fines or penalties.

Prior to making an application to the FWC we recommend that you contact the NSWNMA for advice and assistance.

The NSWNMA may not provide support or representation to a member who has made an application to the FWC without first seeking NSWNMA advice.

Other relevant laws

It is possible for a person to be bullied, harassed and discriminated against simultaneously. However, unlike bullying, which is characterised (within legislation) by repeated episodes of negative behaviour, discrimination and harassment only need to occur as single incidents for a claim to be made.

Discrimination and harassment are based on a personal characteristic of the affected person, such as age, race or gender.

Discrimination occurs when someone is treated less favourably than others because of a particular characteristic, such as gender. For example, it would be discriminatory not to hire or promote a woman because she is pregnant or may become pregnant.

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

Sexual harassment is associated with unwelcome sexual advances, requests for sexual favours or other unwelcome conduct of a sexual nature. If you are being bullied because of a personal characteristic such as age, race, gender or sexuality, this is covered by equal opportunity legislation.

There are several relevant laws and agencies, both NSW and federal, such as antidiscrimination, equal opportunity, workplace relations and human rights laws, that make it illegal to discriminate or harass a person in the workplace. We recommend that you contact the NSWNMA for advice and assistance

Some types of workplace bullying are criminal offences. Physical or sexual assault, threats to harm someone and damage to property are crimes under the *Crimes Act 1900 (NSW)*.

If you have experienced violence, assault, threats of assault or stalking, you should report these to your local police. You can also contact the NSWNMA for advice in relation to occupational violence and aggression in the workplace.

How does the NSWNMA deal with bullying allegations that involve multiple members?

Where a bullying allegation involves disputes between multiple members, the NSWNMA will make a determination about the representation requirements for the members involved, depending on the particular situation and the seriousness of the issues.

It is not the NSWNMA's role to take sides in inter-member issues such as bullying.

The role of NSWNMA staff in these cases is to ensure that the rights of each member are protected and appropriately represented and that a fair, appropriate and timely process is undertaken by management to respond to and manage the bullying complaint.



Legal advice/referral

Nurse and Midwife Support

1800 667 877 • www.nmsupport.org.au

SafeWork NSW

131 050 • safework.nsw.gov.au



NSW Nurses and Midwives' Association

PHONE 8595 1234 (metro) • 1300 367 962 (non-metro)

EMAIL gensec@nswnma.asn.au

www.nswnma.asn.au