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**Commissioner for Public Administration**

# **Colleagues, Not Cases - Managing People and Resolving Workplace Issues**

**Report of the Review of Allegations of  
Workplace Bullying and Other Misconduct  
at the Canberra Institute of Technology**

September 2013

# Contents

<b>Foreword .....</b>	<b>4</b>
<b>Executive Summary .....</b>	<b>6</b>
Introduction .....	6
Complaints of Bullying and Harassment.....	7
CIT’s Response and Shared Learnings.....	8
Powers of the Commissioner and Terms of Reference .....	9
Investigation Stage 1.....	9
Investigation Stage 2.....	11
Overview of this Report .....	12
Conclusions .....	12
Recommendation 1 – Apology.....	13
Recommendations .....	14
Recommendation 1 – Apology.....	14
Recommendation 2 – Workplace Bullying Guidance Material.....	14
Recommendation 3 – Tackling Workplace Bullying.....	14
Recommendation 4 – RED Contact Officers .....	14
Recommendation 5 – Managing People.....	14
Recommendation 6 – Training for Managers .....	15
Recommendation 7 – Valuing Managers.....	15
Recommendation 8 – Transparency .....	15
Recommendation 9 – Complaints Handling .....	15
<b>Chapter One – The Canberra Institute of Technology .....</b>	<b>16</b>
A Snapshot .....	16
Governance.....	16
Reform in the Vocational Education and Training Sector .....	17
Industrial Context.....	18
CIT’s Comcare Premium.....	18
Fair Work Act Reform .....	19
Conclusion.....	19
<b>Chapter Two – Previous Reviews .....</b>	<b>20</b>
WorkSafe ACT’s Report and Improvement Notice – April 2012.....	20
CIT’s Response .....	20
CIT’s Draft Code of Practice .....	21
Conclusion.....	21
<b>Chapter Three: Workplace Bullying.....</b>	<b>22</b>
Recommendation 2 – Workplace Bullying Guidance Material.....	22
Recommendation 3 – Tackling Workplace Bullying.....	23
Definitions.....	23
ACT Public Sector Documents.....	23

Recommendation 4 – RED Contact Officers .....	24
National Reform.....	24
Impact of Workplace Bullying.....	25
Work Health and Safety Obligations.....	26
Compulsion or Cooperation.....	27
Healthy Workplaces.....	27
Early and Effective Intervention - Acting Quickly and Locally .....	28
Training and Supporting Managers and Staff.....	29
Recommendation 5 – Managing People.....	30
Recommendation 6 – Training for Managers.....	30
Recommendation 7 – Valuing Managers.....	31
(Re)building Bridges and Relationships .....	31
Privacy versus transparency .....	32
Recommendation 8 – Transparency.....	33
Making it Real and Making it Relevant .....	33
Conclusion.....	33
<b>Chapter Four – Themes from the Complaints .....</b>	<b>34</b>
CIT Code of Practice .....	34
Industrial Issues .....	35
Short term contracts.....	35
Workload.....	36
Workers’ Compensation Claims and Return to Work.....	36
Conflict of Interest – Relationships with Students and Staff.....	38
Recruitment and Promotion Decision Making .....	39
Conflict of Interest .....	39
Mandatory Qualifications .....	39
Police Matters.....	40
Formal versus Informal Complaints.....	40
Independent Investigations .....	41
Managing Change .....	42
Driving Cultural Change .....	43
Tell Your Story Once – Resolving Complaints .....	43
Recommendation 9 – Complaints Handling .....	44
Supporting the Conversation – Managers Toolkits .....	44
Monitoring Progress – Surveys and Data Collection .....	44
<b>Conclusion.....</b>	<b>45</b>
<b>Appendix 1 – Terms of Reference .....</b>	<b>46</b>
<b>Appendix 2 – CIT’s Procedure for Workplace Issues Resolution Flowchart .....</b>	<b>50</b>
<b>Bibliography.....</b>	<b>51</b>
<b>Endnotes.....</b>	<b>53</b>

## Foreword

The contemporary public service environment can be characterised by overlapping and sometimes competing pressures: to be strategic and responsive; to be accountable and innovative; to meet rising expectations and live within tightening budgets; to balance our work and family lives; and to do more with less (or even just the same with less). It is one in which there is a proper focus on efficiency and effectiveness in service design and program delivery, on innovation, and on thinking our way out of problems.

Given the prevailing fiscal climate, public services around Australia are grappling with significant challenges in pursuing economic, social and environmental sustainability. We are, of necessity, intently focussed on improving what we do and how we do it.

The ACT Public Service (ACTPS) is a diverse organisation comprised of twenty-two thousand people providing a range of services to our community and region spanning Namadgi National Park to green and brown-field development fronts, buses to fire engines, municipal services to the health, education and justice systems, and supporting the most vulnerable people in our community to fostering business development and innovation. We serve a Government and community that rightly have high expectations of us. The Canberra citizenry wants to be engaged and involved, and remains properly focussed on high standards of accountability and performance.

As we approach the end of 2013, the ACTPS is two years down the path of fostering and embedding workplace cultures that reflect the single enterprise structure established under the Head of Service in mid 2011, and the ACTPS Values and Signature Behaviours that underpin the *ACTPS Code of Conduct* promulgated in October 2012.

Perhaps more than ever, then, the ACTPS needs its managers of people to provide decent, thoughtful, and supportive leadership to their teams. That is not to say we should not make hard decisions, but that we should make them fairly, and make them properly. If the ACTPS is to succeed in the future, the values and behaviours enshrined in the *ACTPS Code of Conduct* need to become even more clearly a statement of who we are and how we do things around here.

If there is one lesson that can be drawn from this report, it is that we need to manage our people as people first and resources second. We need to engage with and support our colleagues, not just handle their cases. We need to be a service that values and recognises outstanding managers of people as well as technical expertise. We should start all our interactions from a perspective of “how would I feel if this was happening to me?”

It is naïve to expect that in an organisation of twenty-two thousand individuals, each of whom has their own personality, perspective, history and capacity, there will never be issues, conflict, and or bullying in our workplaces. In this we reflect the society from which we are drawn and which we serve. What should set us apart as an organisation, though, is the way in which we set expectations of behaviour in our workplaces, hold each other to account, and resolve properly and effectively any issues that do arise.

Dealing with workplace issues and responding comprehensively to workplace bullying takes courage, skill, and a commitment to decency and fairness. Standing up for what is right and calling colleagues to account when they fail to meet the standards we have set ourselves is hard the first time, but becomes easier each time we do it. Our focus should be on quick and local resolution of workplace issues as soon as possible whenever possible.

Healthy workplaces with positive cultures are dynamic, engaging and rewarding places to be. They are also more forgiving of, and resilient to, occasional lapses by individuals. It is my hope that with continued and focussed effort this will be the experience of all ACTPS employees wherever they work.

I acknowledge with gratitude the courage and candour shown by the current and former Canberra Institute of Technology (CIT) staff members who have brought their concerns forward for consideration in this process. I am sorry that they needed to come to see me, but I am glad that they did. It is my hope that CIT's response, and the response of the wider ACTPS to the issues raised here does justice to their stories, and to their suffering.

Through the anger, distress and frustration expressed to me, the generosity of spirit embodied in the often repeated observation that "Andrew, I just want to know that this will not happen to anyone else" stands as a challenge to us as a service. We cannot undo that which is done, but we must, in my view, rise to that challenge.

I am sorry that the experience of some of our current and former CIT colleagues has not been as one would wish it to be. It is unfortunate that the way in which a small number of workplace issues have been managed has made things worse, not better. In concentrating on managing cases, the focus has sometimes been lost on the individual whose life is embodied in those papers and is caught up in those processes. I also acknowledge the impact this process has had on current staff at CIT who have engaged genuinely and with good will even though it has been a source of some distress. In some cases, this review has seen the reopening of historical matters and the revisiting of issues and decisions made more than a decade ago. While that has been necessary, it is my hope that this review and the parallel individual investigations will at least draw a line under the revisiting of the past and allow a focus on the present and the future.

If nothing else CIT, and indeed the whole ACTPS, needs to recommit to living out the values of respect, integrity, collaboration and innovation enshrined in the *ACTPS Code of Conduct*. To do so is to display respect for colleagues and the fundamental human decency that should underpin all of our daily interactions with them. That is certainly our highest responsibility as managers of people.

Our success in achieving the outcomes for which we are striving depends on it.



Andrew Kefford  
Commissioner for Public Administration  
September 2013

## Executive Summary

### *Introduction*

In 2011 and 2012, complaints of bullying and harassment and other misconduct were made to the Commissioner for Public Administration by current and former staff of the Canberra Institute of Technology (CIT). Some of these complaints raised concerns going back as far as the 1990's, but the majority were drawn from the period since 2007-08. Some complainants also raised their concerns (sometimes concurrently) with other offices including the ACT Ombudsman, Comcare, and the ACT Work Safety Commissioner.

In April 2012, WorkSafe ACT (WorkSafe) published a report of its investigations of a number of allegations of workplace bullying at CIT<sup>i</sup>. WorkSafe also issued an improvement notice under the *Work Health and Safety Act 2011*<sup>ii</sup> requiring improvements to CIT processes and policies for dealing with complaints including about bullying, and a range of other matters. The publishing of that report saw a number of current and former CIT staff bring forward further complaints.

Following the WorkSafe report and consultation with the Chief Minister, Minister for Education and Training and Commissioner for Public Administration, the Chief Executive of CIT invited the Commissioner for Public Administration to conduct this review. A progress report was appended to the 2011-12 *State of the Service Report*<sup>iii</sup>.

This review has proceeded in two stages and has been conducted on two levels:

- investigation of individual allegations of misconduct – which have been progressed in isolation based on proper evidence and due process in a two stage framework; and
- an analysis of the picture that emerges from the combination of those individual cases including systemic issues and broader cultural and environmental considerations.

This report provides the systemic review of concerns raised about CIT's management of:

- workplace issues;
- allegations of bullying or other misconduct; and
- its employees.

It seeks to draw lessons for CIT and the wider ACT Public Service (ACTPS) that might inform and improve the ongoing management practices relating to staff engaged under the *Public Sector Management Act 1994* (PSM Act).

The picture that has emerged from this review is not as bleak as some public commentary about CIT would suggest. CIT is not characterised by a culture of entrenched and systemic bullying. There have been a number of areas of concern in relation to a small number of individuals and areas within CIT. A smaller number of such matters remain under investigation. Those concerns, however, should not be allowed to taint the whole organisation. CIT staff members, almost without exception, are professional, behave properly, and are dedicated to the advancement of their students and to the success of the Institute.

CIT has a staff of around one thousand, and an enrolment of more than 20,000 students. The matters reviewed here, when the timeframe for complaints is taken into account, are not large in number. That is not to deny the effect they have had on the individuals involved, nor is it to argue that any level of workplace bullying is acceptable. It is important, however, to place those complaints in perspective in drawing conclusions about CIT and its workplace culture.

This process has resulted in the referral of eight individuals for investigation for misconduct under the PSM Act, not all in relation to alleged workplace bullying. The significant majority of complaints made have on closer examination fallen into the category of failings in management of workplace issues. Such issues can arise for reasons including personality, extrinsic work and environmental pressures, misunderstandings, or changes in personnel and patterns and styles of working. They are often best managed in the context of a performance management conversation focussed on behaviour, rather than through an investigation as misconduct.

To characterise them in this way is not to downplay the significance of the distress they can cause, nor the impact on lives and careers of inconclusive or clumsy attempts to resolve them. It is simply to draw the distinction between shortcomings in the management of people and processes, and actual instances of workplace bullying.

While this report addresses elements of the ongoing national discussion about workplace bullying, it is not intended to be a treatise on that issue. There have been significant conversations and reforms relating to workplace bullying discussed and implemented during the course of this review process including:

- the inquiry by the House of Representatives Standing Committee on Education and Employment into workplace bullying<sup>iv</sup>;
- ongoing public debate and interjurisdictional effort in relation to harmonisation of work health and safety laws;
- establishment of a sub-committee to the ACT Work Safety Council to provide advice on bullying and other psychosocial issues<sup>v</sup>; and
- creation of the power for the Fair Work Commission to hear directly from people claiming to have been bullied at work and to make orders in relation to that conduct<sup>vi</sup>.

The recently published report of the inquiry into workplace conduct at the Commonwealth Scientific and Industrial Research Organisation also provides a useful and contemporary overview of the state of discussions around workplace bullying<sup>vii</sup>.

### ***Complaints of Bullying and Harassment***

In 2011 and 2012, the Commissioner for Public Administration received complaints about the workplace experiences of forty-two current and former CIT employees. Those complaints, taken together raised questions about:

- the conduct of certain individuals;
- the approach taken by CIT to investigating and making decisions in relation to allegations of misconduct;
- approaches to managing change within CIT;

- CIT's management of workers' compensation claims and the rehabilitation of injured workers;
- the capacity and capability of CIT managers and staff in dealing with workplace issues; and
- frameworks and guidance material addressing expected standards of behaviour, and approaches to dealing with misconduct and other complaints.

An important feature of the complaints reviewed in this process was the extent to which a large number raised historical issues and in some cases, the actions of individuals no longer employed in the ACT public sector. This has meant that this review process has of necessity involved a consideration of what systemic responses have already been put in place by CIT. It has also considered other relevant material including the WorkSafe report, and reports by the Auditor-General into employment related matters<sup>viii</sup> and the responses made by CIT to those reports.

### ***CIT's Response and Shared Learnings***

It is important to acknowledge the very significant efforts made by the CIT Executive through the course of 2012, in collaboration with staff and unions, to address the issues identified by WorkSafe and to improve CIT's policy and procedural framework for dealing with workplace issues. That framework now demonstrates leading practice in the ACTPS, and should form the basis of a template to be consistently applied across all directorates and agencies.

Furthermore, the new framework is of such a standard that it can reasonably be concluded that had it been in place at the time the conduct complained of allegedly occurred – and crucially had it been applied properly by trained managers supported by strategic personnel and industrial relations advice – individual stories which have in fact dragged out for years would in many cases have been capable of being resolved properly and much more quickly. The corollary of that position is that CIT's consistent and genuine application of that framework in the future – supported by ongoing efforts to build the capacity and capability of its managers and strategic advisers – should ensure similar issues, should they arise, are dealt with much more effectively.

The challenge which sits in front of CIT, and indeed the ACTPS, is making quality frameworks that set standards of workplace behaviour and lay out processes and guidelines for managing workplace issues and managing performance an intrinsic part of day to day interactions between colleagues, and not just a "pretty folder on the shelf". Part of the answer to this challenge is personal commitment from all employees. Part of it lies in training and support for managers of people and for staff in undertaking relevant processes. The performance of managers in this regard relies on the provision of high quality and nuanced advice from strategic personnel and industrial relations advisers in directorates and agencies – and the service as a whole – and enhancing their capability and capacity will also be critical. Rising to this challenge will also be supported by a commitment from unions to support employees' genuine engagement in the process of resolving workplace issues.

Engaging with and supporting colleagues, and not just managing their cases, would be a start.

While this review process has been underway, there have been a number of ACTPS-wide initiatives undertaken in which the emerging learnings from this review have already played a role in shaping the agenda. Changes in this category include:

- progress made in negotiation of new procedures for managing allegations of misconduct or poor behaviour in new ACTPS enterprise agreements;
- progress beginning to be made in developing consistent approaches to investigating misconduct and providing training and professional guidance to ACTPS investigators;
- ongoing refinement of the ACTPS workers' compensation and rehabilitation processes;
- CIT participating from 5 August 2013 in the ACTPS Workers' Compensation and Work Safety Improvement Plan; and
- development and implementation of the new ACTPS Performance Framework.

### ***Powers of the Commissioner and Terms of Reference***

Under the PSM Act and relevant industrial agreements, the Commissioner for Public Administration has very limited direct decision making powers in relation to individual allegations of misconduct by staff of ACT public sector directorates and agencies. Instead, responsibility for the handling and determination of misconduct proceedings and employee grievances rests with the relevant director-general (under delegation from the Head of Service) or agency head. The Commissioner for Public Administration's direct decision making powers on appeal are similarly limited.

None of those direct powers have been relevant to this review. Rather, it has proceeded at the invitation of the CIT Chief Executive, and with the endorsement of the Chief Minister and Minister for Education and Training, bringing the independence of the Office of Commissioner for Public Administration to the investigation of complaints made.

The provision of advice to the ACT Government and the ACTPS is one of the functions of the Commissioner for Public Administration established in the PSM Act<sup>ix</sup>. The Chief Minister has also agreed that one of the priorities for the Commissioner for Public Administration should be investigating individual employment related grievances with a view to distilling systemic learnings that might be applied across the ACTPS and assisting individuals to attain improved process outcomes. It is from that perspective that this report has been written.

These parallel processes are outlined in the terms of reference which were published in the *2011-12 State of the Service Report* and are reproduced at Appendix 1 to this report.

### **Investigation Stage 1**

This review has been a significant undertaking for the Office of the Commissioner for Public Administration and for CIT. Recognising the workload involved, a dedicated team of investigators was established in the Office of the Commissioner for Public Administration to conduct the process. It was drawn from across the ACTPS, the ACT Government Solicitor's Office, and from outside the ACTPS. The size of the team has increased and decreased over time depending on the size of the task at hand. At its largest, during the taking of initial statements, the team numbered seven made up of five investigators, an analyst and

administrative support. At the time of writing, four investigators are pursuing the processes agreed to by the CIT Chief Executive.

The total cost of the investigation team, borne by CIT, is \$668,000 , principally for salaries. The remainder relates to normal administrative expenses. This figure relates only to the direct additional costs of that team.

In the first stage of the investigation, following an initial conversation with the Commissioner for Public Administration (in most cases), complainants worked with the investigation team established for the purposes of this process to provide a written statement.

Once complaints had been received, they were analysed, assessed for relationships with other complainants' stories, and a report was provided to the Chief Executive of CIT in December 2012. That report contained recommendations about suggested next steps including that:

- misconduct proceedings be commenced;
- further evidence gathering occur;
- audits of computer records and/or processes be undertaken;
- no further action be taken on the basis that it is unreasonable to expect proper evidence to be available given the passage of time; and/or
- no further action be taken on the basis that the respondents no longer are employed under the PSM Act.

These conclusions reflect the fact that the passage of time between the conduct complained of and this process has raised two significant issues:

- whether or not proper investigation and evidence-based decision making could occur in relation to individual misconduct allegations; and
- a number of alleged perpetrators no longer work in the ACT public sector and so are beyond the reach of any misconduct process.

It is also worth noting in passing that the passage of time has also meant issues raised in relation to historical administrative practices or matters have, on examination, in some cases been found to have already been corrected or addressed by CIT, either of its own volition, or in response to external scrutiny including by the Auditor-General.

It is important to note that in circumstances where the decision has been made that no further specific action can be taken for these reasons, the experiences complained of, and the responses made by CIT, have been reviewed and taken into consideration in this systemic review. In cases where no specific action was recommended given the passage of time, but relevant officers remain employed by CIT, conversations have been conducted in the context of the ACTPS Performance Framework to ensure individual opportunities for reflection and lesson drawing are not lost.

CIT provided its response to the recommendations in the Commissioner for Public Administration's report on phase one of the investigation process in June 2013, and commenced the various processes giving effect to those decisions. The length of time taken to provide that response, even if the Christmas holiday period is discounted, is of concern.

That said, the departure of the CIT Chief Executive Mr Adrian Marron on extended sick leave necessitated the material being reconsidered by the Acting Chief Executive Ms Jenny Dodd. Furthermore, a careful process including consultation with the Government Solicitor's Office was necessary to ensure the response to those recommendations was appropriately framed and took account of any potential or real conflicts of interest.

The Commissioner for Public Administration wrote to all complainants in September 2013, outlining the response to the recommendations in their case, and endorsing the handling decisions made by CIT.

## **Investigation Stage 2**

The process of implementing the decisions made by the CIT Acting Chief Executive continues at the time of writing.

Nineteen misconduct investigations are being pursued in relation to eight individuals. Of these, fifteen contain allegations of workplace bullying. In keeping with the published terms of reference, these investigations are being conducted by investigators attached to the Office of the Commissioner for Public Administration (and who were responsible for the conduct of the first stage of this process). In some cases decision makers from outside CIT have been appointed, following the consultation outlined above, to avoid real or perceived conflict of interest.

Fifteen evidence gathering processes are being continued, along with four reviews, and seven audit processes.

No further action was recommended for twelve matters based on the passage of time and unavailability of evidence to support or contradict the allegations made. In eleven matters, no further action was possible given the respondents were no longer employed at CIT, and in some cases no longer employed under the PSM Act.

One matter was referred to the Head of Service for action given it related to a former CIT staff member now engaged elsewhere in the ACTPS.

Five complaints were received in this process from CIT students, three of which related to one teacher and one had recommendations relating to policy review only.

This report is based on the learnings from the matters that are already closed to the extent that systemic lessons could be drawn from them. A number of individual matters remain under active consideration are not taken into consideration in this report. In any event, it would be improper for a public report such as this to canvass the specific details of individual complaints and if applicable disciplinary proceedings. That said, an appropriate vehicle will be employed to publicise the factual conclusions of these investigations to the extent that is proper as soon as possible.

## ***Overview of this Report***

Chapters One and Two of this report provide a snapshot of CIT and a brief overview of the WorkSafe report and response process.

Chapter Three examines contextual issues around workplace bullying and healthy workplaces. It is not intended to provide a conclusive review of relevant material or the national and international debate on those issues – a task that would occupy a report many times the length of this one. It is intended to serve as the foundation for the discussion that follows, and the ongoing efforts across the ACT public sector to foster healthy workplaces.

Chapter Four provides a thematic analysis of the complaints reviewed in this process and seeks to provide a consolidation of lessons learned.

## ***Conclusions***

The most important single systemic conclusion to be drawn from this investigation process is that there is no evidence to suggest a culture of entrenched and systematic workplace bullying across the CIT. It would be a significant and damaging overstatement to describe the overall culture of CIT as toxic.

CIT is not overrepresented in contemporary complaints to the Commissioner for Public Administration. Furthermore, a number of complainants in this process have withdrawn their complaints based on their positive experiences of change following implementation of CIT's response to the WorkSafe report. It is also pleasing to note that the hairdressing and beauty team from the Tourism and Hotel Management School at CIT was a finalist for the ACTPS Award for Excellence in Respect in 2013. This team's presence as a finalist in those awards stands in stark contrast to the multiple historical complaints from that school.

There are nevertheless a number of areas within CIT where the workplace culture has historically not been as good as it should be, and the management of workplace issues has been demonstrably deficient. The fact that complaints were received about the workplace experiences of forty-two current and former CIT employees covering more than ten years is clearly evidence of problems in the Institute's management of people. The fact that some of these matters are still contested is evidence in itself that the processes used to deal with those issues could perhaps have been done better. It might also reflect the extent to which perspectives of individuals can become fixed and perceptions of failings in processes for dealing with issues raised might serve to reinforce a conviction that the complainant is right.

It is interesting to note in passing that the situation at CIT would in this regard seem to mirror the conclusions drawn in the review of similar allegations at the Commonwealth Scientific and Industrial Research Organisation recently: "the mere fact that the Investigation received 110 complaints of workplace bullying or other unreasonable behaviour is indicative of an issue that cannot be ignored" (Pearce 2013, p.110).

### **Recommendation 1 – Apology**

That CIT acknowledge and apologise for past failures in the management of a small number of areas within CIT when dealing with workplace issues and when dealing with allegations of workplace bullying, and recommit itself to fostering positive workplaces with healthy workforce cultures. In so doing, CIT should continue to resource and consistently apply the initiatives set out in its response to the WorkSafe report of April 2012.

CIT has certainly not ignored the concerns that have been raised in this process, or by WorkSafe. It has responded genuinely and with good will to the changes required of it. While there is more to do, CIT is on the right track.

There remains a significant task in front of CIT to restore faith and trust in its systems for managing people and resolving workplace issues. In this task, the powerful vocational calling of CIT teachers that was evident in the conversations forming the basis of this process, the desire to assist students to reach their potential, and the still present good will towards the Institute will be crucial supports. In many cases, complainants, especially from the Tourism and Hotel Management School spoke with as much sadness about their perception of lost opportunities and reputation for CIT, as they did about the impact of their experiences on their own lives.

While continued focussed effort will be required, the commitment shown by CIT in the response to the WorkSafe report, and its actions to develop, implement and resource frameworks to guide behaviour and management of workplace issues stands it in good stead.

The rebuilding of trust in individuals, processes and the Institute itself will be critical to achieving success. It is acknowledged that asking colleagues to trust systems and processes that have failed in the past, is asking a lot. Unfortunately, there is no other way to proceed but to reinforce guidance materials and try again with good will on all sides.

The process of rebuilding trust will be smoother if reengagement with colleagues is founded in a mutually respectful interaction in which past wrongs are acknowledged and apologised for, current tensions are addressed frankly and constructively, and a shared hope for a better future is jointly articulated. It will be aided by genuine commitment to supporting resolution of workplace issues through open and respectful collaboration among the CIT Executive, staff and unions.

There will always be cases where individuals remain unhappy at the end of an investigation or review process. Decisions must be made based on the evidence available, and inevitably turn on a decision maker's assessment of what might ultimately be a fine balance of probabilities. Perhaps all that can be hoped for in this context is that while left unhappy with the result, they can find nothing to complain about in the process.

## **Recommendations**

While this report focuses on CIT, the fact CIT staff are engaged under the PSM Act, and are subject to the *ACTPS Code of Conduct* means these recommendations are, apart from the first and fourth, relevant to all agencies in the ACT public sector that engage staff under that Act.

### **Recommendation 1 – Apology**

That CIT acknowledge and apologise for past failures in the management of a small number of areas within CIT when dealing with workplace issues and when dealing with allegations of workplace bullying, and recommit itself to fostering positive workplaces with healthy workforce cultures. In so doing, CIT should continue to resource and consistently apply the initiatives set out in its response to the WorkSafe report of April 2012.

### **Recommendation 2 – Workplace Bullying Guidance Material**

That a single and definitive document be prepared for the ACT public sector that, having regard to relevant national reforms, defines what workplace bullying is and is not, provides advice on how to respond to workplace bullying, and provides support to managers and staff seeking to deal with instances of workplace bullying.

### **Recommendation 3 – Tackling Workplace Bullying**

That ACT public sector directorates and agencies encourage a workplace culture where workplace bullying is dealt with as the organisation's problem and not an individual problem.

### **Recommendation 4 – RED Contact Officers**

That CIT appoint additional Respect, Equity and Diversity Contact Officers in accordance with the RED Framework to support implementation of the framework and assist in the resolution of workplace issues.

### **Recommendation 5 – Managing People**

That the Head of Service and agency heads continue efforts already underway to standardise processes and enhance guidance material relating to the management of people engaged under the PSM Act, and that that work be finalised as soon as possible.

### **Recommendation 6 – Training for Managers**

That the Head of Service and agency heads finalise as a matter of priority induction training for new managers, and an ongoing program of training and support to managers of people in line with the HR master classes initiative.

### **Recommendation 7 – Valuing Managers**

That in the implementation of the ACTPS Performance Framework explicit and focused emphasis and effort be placed in setting expectations and measuring performance in relation to the additional expectations placed on managers of people. Specially tailored guidance and training should be provided to Executives and to the middle management layer.

### **Recommendation 8 – Transparency**

That approaches be developed for providing greater transparency of outcome in procedures for managing workplace issues and dealing with workplace bullying in the ACT public sector.

### **Recommendation 9 – Complaints Handling**

That the statutory office holders to whom complaints can be made about workplace experiences engage in dialogue with a view to developing clearer pathways for complainants and guidance in relation to the most appropriate recipient of different types of complaints. Where relevant, advice should be provided to the ACT Government on overcoming any obstacles that might exist to the appropriate sharing of information in this context.

## Chapter One – The Canberra Institute of Technology

### ***A Snapshot***

The Canberra Institute of Technology (CIT) is established under the *Canberra Institute of Technology Act 1987* (CIT Act). It is the region's largest vocational education and training provider and offers qualifications ranging from certificates to advanced diplomas. CIT also partners with local universities to deliver two bachelor degrees. CIT has been active in the field of technical and further education in the ACT and surrounding area for eighty-five years. Four out of five CIT students come from the ACT and around 85% study part-time.

The ACT Government provides around sixty-five per cent of CIT's funding and agreed outcomes are described in CIT's annual *Statement of Intent* which forms part of the annual budget process. CIT also receives revenue from contestable sources, international students, commercial activities and national projects. Further revenue is generated through CIT Solutions, a wholly-owned subsidiary.

CIT has a strong record of high achievement in providing vocational education and training. For example in 2012:

- CIT was announced as the ACT Large Registered Training Organisation of the Year for the sixth year in a row at the ACT Training Excellence Awards;
- CIT Tourism and Hotel Management won the Education and Training Provider category at the Canberra and Regional Tourism Awards;
- CIT Tourism and Hotel Management won the Bronze Award in the Tourism Education and Training category in the 2012 Qantas Australian Tourism Awards; and
- CIT-trained hairdresser Ms Sara Burke was named as the Australian Apprentice of the Year, and Diploma of Nursing student Ms Gloria Davison was announced as Australian Vocational Student of the Year.

### ***Governance***

The CIT Act provides that the Director (Chief Executive) is responsible to the Minister for Education and Training for the operations of the Institute. High level strategic advice is provided to the Chief Executive and the Minister by the CIT Council.

The CIT Act provides that CIT's teaching and non-teaching staff must be engaged under the *Public Sector Management Act 1994* (PSM Act), and in this regard, the Chief Executive exercises all of the employment related powers and responsibilities of the Head of Service.

While technically not part of the ACT Public Service proper (i.e. directorates that report to the Head of Service) CIT is a significant employer of staff under the PSM Act and is represented on the ACTPS People and Performance Council (PPC). PPC provides strategic advice and leadership in relation to workforce capability, people management and corporate policies and practice for directorates and agencies subject to the PSM Act.

## ***Reform in the Vocational Education and Training Sector***

The vocational education and training (VET) and tertiary education systems have seen significant reform in recent years. In April 2012, the Council of Australian Governments signed up to significant reforms to the national training system. This agreement included a revised National Agreement for Skills and Workforce Development and a new National Partnership Agreement on Skills Reform.

These reforms emphasise:

- a flexible and demand-driven training system;
- greater contestability of funding for public training and greater competition between providers;
- recognition and support for the role of public providers of technical and further education in a competitive market;
- increased take-up of higher-level qualifications and strengthened pathways between sectors;
- greater transparency to support informed choices by employers and students; and
- improved quality through regulatory arrangements, a renewed focus on VET teacher development and the introduction of stronger quality measures for VET providers.

CIT is also responsible for delivering programs in conjunction with the Education and Training Directorate in support of the ACT Government's commitments under:

- the National Partnership for Youth Transition and Attainment, particularly the mandatory requirement for young people to continue in education, training, or employment until age seventeen;
- the Smarter Schools National Partnership that aims to transform schooling in disadvantaged communities and targets four ACT primary schools; and
- the National Partnership Agreement on Training for Single and Teenage Parents.

To better position CIT to compete in the new environment, a structural adjustment is currently underway to form four teaching colleges and four divisions. This matrix management design has as one of the divisions People and Organisational Governance. The formation of this Division is a direct response to, and aimed at maintaining the momentum gained from, the response to the WorkSafe report into the future. Each Division is now led by an Executive. In terms of the Teaching Colleges the Centre for Tourism and Hotel Management does not continue and nor does the Centre for Creative Industries. Both of these Centres have been broken up and various components are now found in different Teaching Colleges.

Inevitably some staff find structural change processes of this sort difficult. CIT has actively sought to make staff aware of employee assistance support, to communicate regularly and to consult throughout the implementation of the revised structure. CIT will continue to monitor staff wellbeing and has committed to a review period which will end in April 2014.

It is worth noting in passing that during the period of this review, discussions also occurred regarding the relationship between CIT and the University of Canberra. The conduct and content of those discussions, while significant, is relevant to this process only to the extent that it gave rise to further issues of potential change and the need to carefully manage change in a sector and organisation already subject to significant pressure.

### ***Industrial Context***

CIT employs around one thousand staff (seven hundred and seventy full time equivalents (FTE)). Of those, around six hundred are VET teachers and fifty are VET teacher managers. Of the thousand staff, around three hundred are employed on a casual basis, four hundred and fifty on a permanent full time basis, one hundred on a permanent part time basis and the remainder on a temporary basis.

CIT staff fall under two enterprise agreements covering teaching and non-teaching staff. The Chief Executive is appointed directly under the CIT Act. The remainder of the CIT Executive is engaged under the relevant provisions of the PSM Act.

For the purposes of this review, it is noted the provisions in relation to consideration of allegations of misconduct are in alignment with provisions in place across the ACTPS.

### ***CIT's Comcare Premium***

CIT's performance in relation to workers' compensation would suggest that it has no greater range of issues than other ACTPS agencies. Historically CIT's premium rate has been low in comparison to the ACTPS rate and this was the same for the 2012-13 financial year in which CIT paid a rate of 1.6 per cent of wages and salaries in comparison to the ACTPS workers' compensation premium rate which was set at 4.1 per cent of wages and salaries.

CIT continued to experience a low number of accepted claims per 1000 FTE, however the average cost of CIT claims has been higher than that experienced across the ACTPS. This is largely driven by high costs on a small number of individual claims.

The impact and prevalence of psychosocial injuries in the ACTPS Comcare caseload is a matter constantly under review. The ACTPS is not alone in having these conversations, and these issues are discussed at length in the recent reviews of the Comcare scheme: the *Safety, Rehabilitation and Compensation Act Review Report—February 2013* by Peter Hanks QC and *Safety, Rehabilitation and Compensation Act Review—Report of the Comcare Scheme's Performance, Governance and Financial Framework—December 2012* by Dr Allan Hawke AC. That analysis is relevant to broader discussions about workplace culture and dealing with bullying in the ACTPS but need not be repeated here.

## ***Fair Work Act Reform***

From 1 January 2014, the new part 6-4B of the *Fair Work Act 2009* comes into force. That Part establishes a process for individual employees to directly approach the Fair Work Commission for anti-bullying orders. These provisions create a new right of direct action by employees who believe they are experiencing workplace bullying.

The debates around the establishment of this new jurisdiction canvassed the difference between smaller employers and large institutions like public services which already have in place systems for reporting and dealing with allegations of workplace bullying. It will be important that ACTPS guidance on dealing with workplace bullying address the new provisions, but it is suggested that those arrangements might best be seen as an option of last, rather than first, resort for public sector employees: if the ACTPS's frameworks are robust and properly applied they should support the settling of workplace issues and complaints of bullying behaviour quickly and locally and hopefully more effectively.

It is interesting to note in passing in the context of this new jurisdiction, the recent decision of the Fair Work Commission in the matter of *Harris v WorkPac Pty Ltd*<sup>x</sup>. Commissioner Cloghan of the Fair Work Commission remarked:

"In my view, the Commission has to be watchful that particular incidents (especially where the protagonists disagree) are deemed as causing such feelings as being "humiliated", "dismissive" and "embarrassing"... While the Commission does not and should not endorse the view that "anything goes" at the workplace, it is also important not to confirm as bullying and gross misconduct behaviour, as in this case, which is not pursued with any vigour and relates to incidents which occurred some time ago. In my view, the Commission should guard against creating a workplace environment of excessive sensitivity to every misplaced word or conduct. The workplace comprises of persons of different ages, workplace experience and personalities – not divine angels. Employers are required to pursue inappropriate behaviour but need to be mindful that every employee who claims to have been hurt, embarrassed or humiliated does not automatically mean the offending employee is "guilty of bullying" and "gross misconduct"."

These comments might suggest a focus on resilience and personal characteristics of individual complainants, and the need for allegations of bullying to be tested and decisions made on proper and contemporaneous evidence, will become increasingly important.

## ***Conclusion***

The public portrayal of CIT has sometimes been of an agency characterised by entrenched and systematic workplace bullying. That is not, and has not, been the case. While there are issues to address, CIT has accepted and recognised the need for improvement, and continued to provide quality education and training to its students and produce success on the national stage. There will always be scope and a desire to improve, and the dedication of CIT staff to their students will assist in that process. The desire to continue to meet historical high performance standards should remain a strong motivator.

CIT has recently demonstrated a genuine commitment to improve when issues have been identified, and the next chapter turns to a brief overview of CIT's response to WorkSafe's April 2012 report.

## Chapter Two – Previous Reviews

### ***WorkSafe ACT's Report and Improvement Notice – April 2012***

Following complaints of workplace bullying to the Work Safety Commissioner, some of which were also raised with the Commissioner for Public Administration, in April 2012 WorkSafe issued an improvement notice on the Canberra Institute of Technology (CIT) under the *Work Health and Safety Act 2011* (the WHS Act). That notice was accompanied by a public report.

The key contravention of work health and safety legislation identified in that report was that CIT did not have an adequate system for preventing or responding to allegations of bullying and harassment. The improvement notice comprised ten directions addressing that concern and related issues. That notice was subsequently reinforced by a ministerial direction under the CIT Act by the then Minister for Education and Training, Dr Chris Bourke MLA.

In its report, WorkSafe found that the then *CIT Anti-Bullying and Harassment Policy* as well as the *CIT Complaints Policy – Staff* were “flawed and need to be reviewed and amended as soon as possible, in consultation with the CIT’s workers” (WorkSafe 2012, p.4). In particular, WorkSafe found the complaints policy (2012, p.5):

- did not adequately allow for an informal complaint to progress to the status of a formal complaint without a separate formal complaint being lodged;
- did not allow for allegations raised in accident incident report forms or in workers’ compensation claims to be treated as complaints;
- placed strong emphasis on the complainant’s responsibilities, as well as consequences for them should their complaint proves to be vexatious, but placed little or no similar emphasis on respondents; and
- was largely silent on consequences for respondents whose misconduct has been revealed and confirmed as a consequence of a complaint having been investigated.

WorkSafe went so far as to say “in the worst case scenario, the policy’s emphasis on the complainant and relative silence regarding consequences for the respondent could protect bullies by deterring workers from making complaints” (2012, p.5).

### ***CIT's Response***

In response to the Improvement Notice, CIT:

- assigned a senior executive to oversee its response;
- implemented an agreed action plan within the Tourism and Hotel Management Centre;
- implemented mandatory training for all staff in bullying awareness training, including the requirement for annual refresher training;
- developed new policies for responding to workplace issues and discrimination, harassment and anti-bullying;
- surveyed staff to gain a baseline assessment of staff perceptions of CIT culture;
- implemented a variety of programs to build capability in CIT human resources; and

- developed mechanisms to monitor the three centres named in the WorkSafe report, and to monitor more widely across CIT, including reaching agreement with relevant unions to establish campus-based workers consultation forums.

CIT provided a report of its actions to the Work Safety Commissioner on 14 September 2012. On 28 November 2012, the CIT Chief Executive received notification in writing that WorkSafe was satisfied that compliance with the Improvement Notice had been achieved.

### ***CIT's Draft Code of Practice***

At the time of writing CIT is undertaking consultation with staff and unions in relation to a new Code of Practice. That code is founded on the ACTPS Values and Signature behaviours enshrined in the *ACTPS Code of Conduct* and the CIT Code seeks to articulate those expected behaviours in the context and in a language that makes sense to CIT staff. That process is endorsed and supported. The draft document (as at September 2013) is well on the right track.

### ***Conclusion***

The process of responding to the WorkSafe report has provided CIT with the opportunity to review its relevant frameworks and guidance material, and the end result of that process is documents demonstrating leading practice in the ACT public sector. Because of this work, many of the issues that might otherwise have been the subject of specific recommendations in this report have already been properly addressed.

The challenge for CIT, then, becomes one of sustaining implementation effort and achievement, rather than completing more development work. There are already encouraging signs of structural, cultural and behavioural change, and the commitment to ongoing monitoring is recognised and supported.

CIT leads the ACT public sector in terms of staff accessing training on behavioural expectations and managing workplace bullying. Close attention should continue to be paid to survey results that will provide evidence beyond anecdotes of whether desired change is actually occurring and taking root. The whole of ACTPS staff census that will be conducted before the end of 2013 will provide an interesting comparator in this regard.

Part of the process of embedding the desired change has been to engage properly and constructively with staff and unions across CIT. This engagement should be continued in pursuit of the shared and genuine desire of all parties to improve the workplace experiences of CIT staff. It is also the case that, as occurred in the development of the *ACTPS Code of Conduct*, the shared conversation leading to the revised frameworks at CIT leaves staff better placed to have the necessary ongoing discussions about expectations and actual performance. It is to those threshold issues that the next chapter turns.

## Chapter Three: Workplace Bullying

The ACT Government provides for the proactive management of risks to health and safety including workplace bullying in ACT workplaces through the *Work Health and Safety Act 2011* (WHS Act) which, following a lengthy process of interjurisdictional and intersectoral consultation, reflects a harmonised approach across the ACT, the Commonwealth, New South Wales, Queensland, South Australia, Tasmania, and the Northern Territory.

The position of the ACT Government in relation to workplace bullying is clear: “bullying is not acceptable under any circumstance and should be treated like any other significant workplace hazard” (ACT Government 2012c, p.1).

The definitional and contextual space around national discussions on workplace bullying is occupied in relation to the ACT public sector by a number of guidelines and other documents including:

- the ACTPS *Respect, Equity and Diversity Framework*<sup>xi</sup>;
- ACTPS Preventing Work Bullying Guidelines<sup>xii</sup>;
- WorkSafe’s ACT Code of Practice *Preventing and Responding to Bullying at Work*<sup>xiii</sup> (the ACT Code);
- the draft Safe Work Australia Code of Practice<sup>xiv</sup>; and
- individual agency level guidelines.

It would assist managers and staff in the ACTPS to have constructive conversations about workplace bullying if a single, comprehensive and accessible guide was developed. Such a document should have regard to national guidance material, but be adapted to the local context. A proliferation of different documents covering the same ground in slightly different ways is arguably unhelpful to managers and staff.

### **Recommendation 2 – Workplace Bullying Guidance Material**

That a single and definitive document be prepared for the ACT public sector that, having regard to relevant national reforms, defines what workplace bullying is and is not, provides advice on how to respond to workplace bullying, and provides support to managers and staff seeking to deal with instances of workplace bullying.

In framing that document, it is suggested that two key threshold issues to be recognised are:

- workplace bullying is a health and safety risk and should be dealt with as such; and
- workplace bullying is an organisational and cultural problem, not an individual problem.

### **Recommendation 3 – Tackling Workplace Bullying**

That ACT public sector directorates and agencies encourage a workplace culture where workplace bullying is dealt with as the organisation’s problem and not an individual problem.

#### ***Definitions***

Given the current proliferation of variations on a theme, a key issue to be clarified is the definition of what constitutes workplace bullying. The ACT Code, made under the WHS Act sets the current minimum standard for ACT workplaces. Bullying is described as *“repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety”*. The code identifies a broad range of inappropriate behaviours including verbal abuse, put downs, spreading rumours or interfering with property or work equipment, unjustified criticism, deliberate exclusion, withholding vital information or excessive scrutiny.

While the definition of bullying does not capture single incidents of poor behaviour, it is clear from that ACT Code that such occurrences should not be ignored. Emphasis is placed on early intervention in such issues so that they do not escalate to bullying.

It is also important to recognise and identify conduct that is not bullying. The ACT Code canvasses reasonable management action which is not bullying when carried out in a fair way. While each matter will be determined on its own facts, examples of reasonable management actions – which are not bullying providing they are also engaged in reasonably – might include:

- setting performance goals, standards and deadlines;
- allocating work to a worker;
- rostering and allocating working hours;
- deciding not to select a worker for promotion;
- informing a worker about unsatisfactory work performance;
- informing a worker about inappropriate behaviour;
- implementing organisational changes;
- performance management processes;
- constructive feedback;
- downsizing; and/or
- transferring a worker (ACT Government 2012b, p.5).

#### **ACT Public Sector Documents**

The ACTPS has developed and implemented a robust framework supported by whole of government policies, programs and systems of work so that, to the extent possible, it is able to protect its employees from workplace bullying.

In addition to duties established under the WHS Act, section 8(d) of the PSM Act provides that all ACT public sector directorates and agencies must be administered to provide safe and healthy working conditions.

In 2010, the then Chief Minister and Commissioner for Public Administration promulgated the *ACTPS Respect, Equity and Diversity Framework* (RED Framework). This framework is due for review in 2013-14, but has been successful in providing policy guidance, procedures and training to reinforce expected standards of behaviour, and approaches to dealing with issues when they arise.

In implementing the RED Framework, guidance on preventing workplace bullying and an 'open-door' protocol have been implemented. A RED Framework executive sponsor and trained contact officers have been appointed in directorates and agencies. The RED Framework is designed to empower staff to speak up in support of both themselves and others and provides a system that supports early resolution of interpersonal issues at work. One strength of that system, and one on which CIT should take further action, is locating contact officers and the Executive Sponsor outside the central corporate support areas to ensure coverage across agencies, and demonstrate a commitment to the RED Framework across the entire organisation.

#### **Recommendation 4 – RED Contact Officers**

That CIT appoint additional Respect, Equity and Diversity Contact Officers in accordance with the RED Framework to support implementation of the framework and assist in the resolution of workplace issues.

On 18 May 2012 the Head of Service, Mr Andrew Cappie-Wood, launched a new set of ACTPS values and signature behaviours following consultation with staff across directorates and agencies. These are enshrined in the *Public Sector Management Standards 2006* and the *ACTPS Code of Conduct* promulgated by the Commissioner for Public Administration in October 2012.

In July 2013, the Head of Service launched the new ACTPS Performance Framework, which provides a consistent framework for managing performance of staff at all levels across the ACTPS.

### **National Reform**

Safe Work Australia's (SWA) *Preventing and Responding to Workplace Bullying Draft Code of Practice Draft for Public Consultation May 2013* adopts the following approach (2013, p.6):

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

**Repeated behaviour** refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

**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.

This definition, like that in the ACT Code, locates workplace bullying, properly, as a health and safety issue. As such, it can be seen as more serious than a simple workplace issue (to which a response located within the frame of performance management might be more appropriate in the ACTPS context). This approach locates workplace bullying as an issue to which a response involving the consideration of misconduct is appropriate.

SWA also notes that while similarly unacceptable, harassment and discrimination are not necessarily the same as bullying (2013, pp.7-8):

unlike bullying, discrimination and harassment may be single incidents and are based on some 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 or harass a person in the workplace.

## **Impact of Workplace Bullying**

The impacts of workplace bullying are significant and can affect observers of bullying conduct as well as the victims. Each individual will respond differently but reactions to workplace bullying can comprise one or more of the following elements (SWA 2013, p.7):

- distress, anxiety, panic attacks or sleep disturbance;
- physical illness, such as muscular tension, headaches and digestive problems;
- reduced work performance;
- loss of self-esteem and feelings of isolation;
- deteriorating relationships with colleagues, family and friends;
- depression; and
- at the most extreme, thoughts of suicide.

The Report of the recent House of Representatives Standing Committee on Education and Employment's (HORSCEE) Inquiry into workplace bullying noted in this context that bullying can (2012, p.2.)

“disturb both the individual and social conceptions of self and value ... It can have a profound effect on all aspects of a person's health as well as their work and family life, undermining self-esteem, productivity and morale. For some it can result in a permanent departure from the labour market and in extreme cases, suicide”.

It identified a cost to the national economy, based on analysis prepared by the Productivity Commission, of between \$6 billion and \$36 billion annually (HORSCEE 2012, p.ix)

An interesting note of caution was sounded, however, in the recently released report relating to allegations of workplace bullying in the Commonwealth Scientific and Industrial Research Organisation:

The difficulty of dealing with workplace bullying is made harder by the use of the word 'bully' and its connotations. The word 'bully' in common language brings with it the negative experiences of the schoolyard and memories of painful experiences at a time of emotional immaturity (for both the victim and the bully). The word 'bully' is usually used to describe someone who deliberately sets out to overpower and harm another. It is quite significant for one person to call another 'a bully' and the reluctance many people have to use this expression is perhaps part of the reason that unacceptable behaviour can continue for so long before it is 'named' and checked (Pearce 2013, p.39)

The process of settling the proposed consolidated guidance for ACT public sector directorates and agencies would do well to consider this issue. The label of “workplace bullying” has a currency which will be hard to displace, but it is arguably beneficial to lasting resolution of such issues that we are consistent and clear what we mean when we use it. There needs to be a common language within which conversations about misconduct in the workplace can occur. If employees are to be encouraged and empowered to speak up and speak out, they need to feel comfortable in using a common language, and able to trust the system to respond appropriately. It is also important in addressing concerns about conduct of this sort that the focus is on bullying as the organisation’s problem, not the individual’s. Those individuals who speak out to properly uphold the organisation’s stated values should be thanked and their doing so welcomed and supported.

### ***Work Health and Safety Obligations***

The location of workplace bullying as a health and safety issue ensures it receives appropriate attention, and that sanctions can be applied if necessary for failures to provide a safe workplace. This approach assists in framing and contextualising proper responses – including preventative measures:

“the organisational and management response to witnessing poor treatment of a co-worker is no different to walking past a power cord lying across a hall way floor or a box placed awkwardly on a shelf. It is a risk to health and safety, and senior managers have a duty to respond to these matters. Senior managers must lead the way on this (Pearce 2013, p.112).

That said, our workplaces are a microcosm of the society of which they are part. In this vein, the ACT Government’s Submission HORSCEE argued that:

What is occurring in our workplaces reflects broader social standards of behaviour that are experienced in our schools, community groups, sporting teams and homes. In this context, the task facing regulators, employers and workers is made more difficult. Similarly, strategies must target the actions of individuals but also broader cultural and systemic issues that are known to increase the incidence of bullying and other inappropriate behaviour at work.

Strategies to prevent bullying should focus on improving awareness, supporting workers to report issues and effectively handling complaints. Poor behaviour must have unambiguous consequences that deter both the bully and others from continuing the same behaviour (2012, p.12).

Every person in a workplace has a duty and can help to ensure that workplace bullying preferably does not occur, or is handled properly in the event that it does. In the language of the WHS Act, a person conducting a business or undertaking and people in control of premises have a duty to provide, so far as is reasonably practicable, a working environment that is safe and without risks to the health of workers.

WHS laws also require consultation with workers about work health and safety issues, and it is important to note in this context that individual workers have a duty under the WHS Act to take reasonable care not only for their own health and safety but that of others in the

workplace. They similarly have a duty to cooperate with the efforts of the people responsible for the organisation to comply with WHS laws.

In this context, the increasing propensity for individuals to take to the internet and social media to raise their concerns about the conduct of the others in their workplaces is noted with concern. This is a troubling development on two fronts:

- firstly, it might be seen as evidence of a lack of confidence in established systems and processes to deal with such issues; and
- secondly, it perpetuates conduct which is disrespectful to others in contravention of established frameworks, and can in itself constitute a WHS threat.

Neither of these interpretations presents an acceptable state of affairs, and both have been present to varying degrees in relation to CIT. Indeed on more than one occasion, there has been cause to caution individuals that their conduct in this regard left them at least potentially open to either or both civil proceedings by individuals named in their publications, or to misconduct proceedings in circumstances where they remained employed by the ACTPS.

## **Compulsion or Cooperation**

While the definition of workplace bullying as a health and safety issue is entirely appropriate, it is hoped that the responses that occur take place for reasons complementary to the compulsion contained in the WHS Act. It is hoped – not just in relation to workplace bullying – that individuals and organisations manage work health and safety risks for higher reasons than because the law says they have to. Certainly, the ACTPS is committed to safeguarding and enhancing the health and safety of its employees for reasons that go beyond the removal of the shield of crown immunity on 1 January 2012 under the WHS Act.

It is hoped that officials at all levels will contribute enthusiastically and genuinely to ongoing efforts to embed the values and signature behaviours contained in the *ACTPS Code of Conduct* as “how we do things around here”, and cooperate in fostering positive and healthy workplace cultures because that is the right thing to do and will bring benefits for all.

## **Healthy Workplaces**

Indeed, a much stronger and undeniably preferable argument in favour of managing workplace issues and workplace bullying properly is that there is strong evidence that healthy work and workplaces are generally good for physical and mental health and wellbeing (Waddell & Burton, 2006). In the reverse, long term compensation claims or worklessness are significant risks to health (Aylward, 2010)

Healthy workplaces are not only creative, dynamic and rewarding places to work, they are productive and resilient, and they are good for health and wellbeing of staff. The Australasian Faculty of Occupational & Environmental Medicine of the Royal Australasian College of Physicians Australian Consensus Statement on the Health Benefits of Work 2011<sup>xv</sup> provides *inter alia* that:

- work practices, workplace culture, work-life balance, injury management programs and relationships within workplaces are key determinates, not only of whether people feel

valued and supported in their work roles, but also of individual health, wellbeing and productivity.

- good outcomes are more likely when individuals understand the health benefits of work, and are empowered to take responsibility for their own situation.

It is nevertheless of assistance that, at the end of the day, the WHS Act does impose duties on all ACT public sector employees. Certainly in the ACTPS context, agency heads and managers have a key role to play in both setting proper frameworks for behaviour and in modelling the sort of conduct the organisation values. Leaders and managers

“contribute to the culture of the workplace, not only by what they say, but also by what they do. The point is strongly made that the role of middle managers is ultimately a key to the management of the workplace culture. It is this group with whom staff have most contact and it is, therefore, their behaviour that contributes to the establishment of the standards in the organisation (Pearce 2013, p.40)”.

The draft SWA Code provides that (2013, p.9):

Health and safety risks in a workplace must be eliminated so far as is reasonably practicable, and if this is not possible, the risks must be minimised so far as is reasonably practicable. The risk of workplace bullying can be eliminated or minimised by creating a work environment where everyone treats each other with dignity and respect. It is best dealt with by taking a preventative approach

... that involves:

- early identification of unreasonable behaviour and situations likely to increase the risk of bullying
- implementing control measures to prevent the risks and respond to workplace bullying, and
- monitoring and reviewing the effectiveness of the control measures.

This would seem to be a sensible benchmark against which the recommended guidance should be tested.

### ***Early and Effective Intervention - Acting Quickly and Locally***

The work health and safety risk management and mitigation approach also recognises that there is benefit in acting quickly and resolving issues locally:

Early intervention is a way of resolving an issue before it becomes severe and without an investigation or disciplinary action being taken against an individual. Early intervention can be achieved through the individual self-managing the situation by telling the other person that the unreasonable behaviour is not welcome and asking that it stop ... Providing training to workers about workplace bullying may assist all workers in understanding how to deal with issues such as conflict, confidentiality and related issues. Workers who are expected to intervene in a situation where bullying may be occurring should be trained to ensure they understand how to address the situation appropriately (SWA 2013, p.15).

This approach has been the stated desire of the ACT Government for some time and is one of the foundations of the ACTPS Workers' Compensation and Work Safety Improvement

Plan. It is fair to say, however, that in that context the conversation tends to focus on early (pre compensation claim) interventions to aid rehabilitation. An element of that conversation now worthy of amplification involves an even earlier engagement in resolving workplace issues before they cause injury.

The benefits involved in changing behaviour are worth the effort associated with pursuing an approach founded in prevention rather than cure: “an often overlooked preventative strategy is to better empower the targets of bullying behaviour to voice their concerns early. Early intervention focuses on a worker self-managing a bullying situation where they believe they have the capacity to respond” (HORSCEE 2012, p.75).

Perhaps navigating the line between workplace issues and workplace bullying, HORSCEE identified that the benefit to the aggrieved employee from early intervention rests in the fact that “frequently, the offending party will not be aware of the effect of the behaviour on others. The mere raising of the issue may be sufficient for the behaviour to be corrected. Equally, these discussions can be empowering for aggrieved workers” (2012, p.75).

### ***Training and Supporting Managers and Staff***

The necessary corollary of an approach to better managing workplace issues and dealing with workplace bullying is that all employees need to be properly trained in the general frameworks for responding to issues, as well as in their role in discharging them. The ACTPS is not alone as a bureaucracy where individuals often find themselves in positions where they are responsible for managing a team based largely on their technical knowledge and experience rather than proven capabilities in leadership and management. While it is inevitable that every manager will have to be a first time manager at some point in their career, a recruitment system that values management expertise where that is a necessary element of the role, and a performance framework that explicitly values proper standards of behaviour and expertise in managing people will aid the embedding of the values and behaviours contained in the *ACTPS Code of Conduct*.

In this regard, the role played by central personnel and industrial relations advisers at the agency, and whole of service level, should not be underestimated. Beyond simply supporting managers in their role, providing a sounding board and advice, the perspective offered by trained, experienced and properly resourced advisers in this regard can have a material impact on the course of negotiations, and the resolution of workplace issues. The sharing of knowledge, precedent, and what works across organisations and the service as a whole is supported by a strong network of professionals engaged in the ongoing and day to day interactions that comprise the management of people in our organisations. Just as the ACTPS performance framework should explicitly emphasise and value and recognise skills and capacities in the management of people, it should recognise, support and value proficiency and capability in the advisers on whom we rely.

There is certainly scope for first time managers to be given more and better focussed guidance in that role, and in managing workplace issues and dealing with workplace bullying specifically. There would also be significant benefits from a more comprehensive rollout of the HR master classes program for more experienced managers of people that have been

trialled during 2013 under the ACTPS Workers' Compensation and Work Safety Improvement Plan.

Furthermore, under work health and safety law there is an obligation on organisations to ensure their managers of people are properly trained: "managers and supervisors should be also be trained in how to respond to workplace bullying hazard reports and in skills that will help develop productive and respectful workplace relationships" (SWA 2013, p.13). It is similarly important that all employees "receive information and training about how to respond to, be aware of, and meet their responsibilities relation to workplace bullying. Strategies and information about bullying at work will not only empower those individuals directly involved in the conduct, but also better enable bystanders to speak out" (HORSCEE 2012, p.115).

Training all staff and a focus on early intervention will assist in "providing a new vocabulary and improving the communication skills of the whole workplace ... improved communication skills and using different language within the workplace can lead to healthier workplace cultures" (HORSCEE 2012, p.75). This impact of sound policies in supporting the desired change in relation to prevention and management of misconduct is reflected in CIT's statement in its dealing with workplace issues policy that "the purpose of this policy is to provide staff with guidance on how to manage issues that arise in the workplace between members of staff and to ensure that all workplace issues raised are managed in a fair, equitable and timely manner. This policy also identifies relevant legislation and related documents that must be adhered to in the management of all workplace issues".

The workflow chart from that policy is set out at Appendix 2 and is endorsed. It demonstrates simply what the usual and preferred channel for raising concerns should be, and the available alternatives. The policy itself provides guidance for decision makers, including in relation to escalation points and criteria to support sound decision making.

### **Recommendation 5 – Managing People**

That the Head of Service and agency heads continue efforts already underway to standardise processes and enhance guidance material relating to the management of people engaged under the PSM Act, and that that work be finalised as soon as possible.

### **Recommendation 6 – Training for Managers**

That the Head of Service and agency heads finalise as a matter of priority induction training for new managers, and an ongoing program of training and support to managers of people in line with the HR master classes initiative.

## **Recommendation 7 – Valuing Managers**

That in the implementation of the ACTPS Performance Framework explicit and focused emphasis and effort be placed in setting expectations and measuring performance in relation to the additional expectations placed on managers of people. Specially tailored guidance and training should be provided to Executives and to the middle management layer.

### ***(Re)building Bridges and Relationships***

It is an unfortunate, but inevitable, element of our society and the organisations within it that individuals will do the wrong thing from time to time regardless of how sound guiding frameworks are or how harsh the prescribed penalties for transgressions might be.

In this context it is perhaps fairer to judge an organisation by how it responds to misconduct, rather than by the mere fact of its occurrence.

Either way, a critical but sometimes overlooked element of the response is the reintegration and rehabilitation that must follow a complaint regardless of its outcome. Whether or not the conduct complained of can be sufficiently proven to have occurred, the fact of the complaint can strain relationships within the team or social group. As conscious an effort as is directed to the investigation should be focussed on rebuilding positive working relationships.

This effort must extend to supporting those complained about, as much as it does to those who have spoken up. Having a complaint made by one's staff can be a confronting experience for an individual manager. Especially in circumstances where the complaint is not substantiated, managers need to ensure they work with their team to rebuild damaged relationships.

This approach can be seen as an extension of the response contemplated in the SWA Draft Code: "after a report of bullying is resolved, there should be a follow-up review to ensure the wellbeing of the parties involved and provide support" (2013, p.17). Regardless of the outcome, relations within teams suffering significant workplace issues do become fractured. Insufficient effort to foster a positive workplace culture and re-establish more normal working relationships risks matters being left to fester, or perhaps being re-enlivened in reciprocating complaints.

It is also worth noting in passing that as the SWA Draft Code observes:

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 assistance may need to be provided to resolve any outstanding issues. This may involve mediation, counselling, changing working arrangements or addressing other organisational issues that may have contributed to the behaviour occurring (2013, p.19).

## Privacy versus transparency

An important part of the process of reintegration and rebuilding relationships and trust must be dealing as openly as possible with the outcomes of disciplinary processes. If we are to ask people to trust systems then they need to be able to see those systems work. While individuals are entitled to a reasonable level of privacy around the fact a complaint has been made about them – especially if that fact alone might have negative repercussions for them – once properly investigated and decided, there is a genuine organisational interest in making the findings known. A balance needs to be struck with the reasonable limits of personal privacy, but it is suggested this balance weighs too heavily in favour of privacy in its current formulation. In this context WorkSafe observed (2012, p.17):

those CIT staff who lodged complaints with WorkSafe ACT advised that they did so either because they considered nothing seemed to be happening about resolving their claims within the CIT or because, in their view, the response process within the CIT was not transparent and they were not therefore satisfied that the response was either thorough or fair to all parties involved.

The approach taken in the *Public Interest Disclosure Act 2012* is instructive. That Act imposes positive obligations on decision makers to keep complainants informed of progress in handling the complaint. This approach is founded in the principle that if a disclosure genuinely goes to the public interest, then it is in the public interest that we are able to talk about it.

There are similar public interest grounds for promoting greater transparency and consistency in the conduct of ACT public sector disciplinary processes. It is important for building and sustaining confidence in the disciplinary system that individuals can see how it operates. Clearly there is balance to be struck, but the public good associated with trust and confidence in that system should arguably receive greater weight than the private one served by a focus on privacy. Similar arguments apply in relation to the operation of the justice system. In the review of the Commonwealth Scientific and Industrial Research Organisation, it was argued:

where some action is taken, it is preferable that the person who made the report receives as much information as possible about how their report was considered and what action has or will be taken as a result. There are necessarily some limits on what people can be told—privacy restrictions apply and in some cases operational reasons or the complainant’s mental wellbeing may affect what they are told (or how they are told) (Pearce 2013, p.126).

HORSCEE usefully draws out the balancing act that must be performed, however, when it argues that (2012, p.83):

transparency and confidentiality are core principles of natural justice. The draft Code advises that an employer’s response to an allegation of bullying should follow the principles of natural justice which are designed to protect all parties. Reflecting this objective, ‘confidentiality’ is designed to guard against damage to a worker’s reputation and other forms of detriment that may result from unsubstantiated claims of bullying.

## **Recommendation 8 – Transparency**

That approaches be developed for providing greater transparency of outcome in procedures for managing workplace issues and dealing with workplace bullying in the ACT public sector.

### ***Making it Real and Making it Relevant***

It is worth pausing for a moment to reinforce the observation – having reached the assessment that CIT’s policy and procedural frameworks constitute leading practice – that a beautiful folder of finely crafted documents that never leaves a manager’s bookshelf is useless.

Unless these documents become inherently part of how we do things around here, their impact is lost. There is no doubt that “sound workplace policies can serve as a preventative tool to tackle bullying” (HORSCEE 2012, p.70), but such documents are a necessary but not sufficient precondition to fostering positive workplace cultures.

Indeed, the HORSCEE argues development of policy documents is only the first step and that implementation is a long and difficult task: “implementation in this sense is not only about demonstrating positive communication and appropriate standards of behaviour, but should also be supported by appropriate procedures to respond to instances of bullying” (2012, p.74).

The newly announced ACTPS Performance Framework will play a critical role in supporting the next stages of embedding the ACTPS values and signature behaviours and will underpin efforts to increase the capability and capacity of ACTPS managers of people to resolve workplace issues and deal with workplace bullying when it occurs.

### ***Conclusion***

All of the ACTPS’ efforts to foster positive workplace cultures supported by proper standards of behaviour rest on a foundation of clear statements of expectation, and policy and procedural frameworks for dealing with issues as and when they arise. In this context a single simple, comprehensive and practical guide for managers and staff, supported by comprehensive training and support to all staff (and managers of people in particular), and continuing investment in the capability and capacity of our strategic advisers, will play a crucial role.

In the next chapter, attention turns to themes emerging in this review. It is anticipated that addressing these themes will form a significant element of the recommended training and support mechanisms.

## Chapter Four – Themes from the Complaints

This chapter provides an overview of complaints reviewed in this process against a number of themes which have emerged. Of necessity, it is circumspect in relation to identifying individuals and individual experiences.

Given the passage of time it also seeks to identify where action might already have been taken, including in relation to the WorkSafe report of April 2012.

### ***CIT Code of Practice***

After the formal response to the WorkSafe report, perhaps the next most important document affecting how the Canberra Institute of Technology (CIT) will manage workplace issues and deal with workplace bullying in the future is the draft CIT Code of Practice (the CIT Code) on which CIT is conducting consultation at the time of writing this report.

It was always envisaged in the development of the *ACT Public Service (ACTPS) Code of Conduct* that agencies separate from the ACTPS proper (i.e. directorates reporting to the Head of Service) might decide to develop their own supplementary document articulating what the values and signature behaviours look like in their context. This properly reflects both the fact that staff are engaged in these agencies under the PSM Act, and that the relevant agency head exercises the employment powers of the Head of the Service in that regard.

The *Public Sector Management Standards 2006* contemplate an approval role for the Commissioner for Public Administration with a view to ensuring consistency across those staff engaged under the PSM Act, and facilitating continued application of section 9 of the PSM Act in relation to misconduct<sup>xvi</sup>.

The draft CIT Code sets clear and consistent expectations of behaviour:

CIT is committed to a workplace that treats people with respect, courtesy and sensitivity. In dealing with other people, you should be able to accommodate and tolerate different opinions and perspectives, and sort out your disagreements by rational discussion ... For example, you may criticise a person's ideas but you should not criticise the person; and you should not verbally abuse, vilify or belittle students or colleagues (including your supervisors) personally or to others (CIT 2013, p.12).

In addressing bullying and harassment specifically, the Code provides:

You must not discriminate against, bully or harass your colleagues, students or members of the public on a number of grounds including; sex, marital status, pregnancy, age, cultural, race, ethnic or national origin, physical or intellectual impairment or sexual preference. Such harassment or discrimination may constitute an offence under anti-discrimination laws. In addition, you must not discriminate on the grounds of religious beliefs or political conviction (CIT 2013, p.12).

It also specifically and entirely properly reflects the *ACTPS Code of Conduct* in imposing additional responsibilities on managers of people:

Managers must lead by example and must take all necessary steps to ensure that workplaces and classrooms are free from all forms of harassment, bullying and unlawful discrimination, and that staff are informed of the principles of equal opportunity and anti-discrimination (CIT 2013, p.12).

In a clear statement of intent and expectation, the CIT Code establishes the requirement that all staff complete CIT's Bullying Prevention and Awareness Learning Program annually (CIT 2013, p.22). Training in prevention of bullying behaviour is a mandatory requirement that is articulated in the *Discrimination, Harassment and Anti-bullying Policy* and is included in the CIT staff induction process. The mandatory requirement to undertake refresher training annually is included in the performance management template, and must be included in individual performance management plans. In this regard, CIT has set higher standards for itself than any other ACT public sector organisation. It has also met that significant target in 2013.

The draft Code of Practice also provides guidance on dealing with workplace issues, and gives life to the obligations set out in the WHS Act:

if you believe you or anyone else in your workplace is being treated in a discriminatory, bullying or harassing manner, in the first instance it is your obligation to report the behaviour to your Supervisor or Director. Alternatively you could raise the issue with another person as listed in 5.1 of this document. CIT takes reports of discrimination, bullying and harassment seriously and will take steps to prevent and correct them (CIT 2013, p.12).

The draft Code also stresses the desirability of fixing issues quickly and locally, long before they become entrenched or cause workplace injuries:

as far as practicable workplace issues should be managed within the local area with the relevant people. If this is not possible the matter should be referred to your Supervisor and/or Director and reported to the WHS team in Human Resources. If you have concerns regarding bias the matter may be referred to the Executive Director, People and Organisational Governance (CIT 2013, p.25).

## ***Industrial Issues***

### **Short term contracts**

One contextual issue of significance in a number of complaints was the constitution of the CIT workforce. A number of complaints raised the prevalence and circumstances of teachers on short term contracts – some of whom may have been engaged under a number of such instruments over a period of time. The industrial issues underpinning discussions about the merits of permanent versus flexible employment practices are beyond the scope of this report and turn on issues of demand, funding of training priorities and enrolments from one semester to another. There are proper reasons, especially in a period of

significant reform and greater contestability, for CIT to make use of temporary employment contracts.

Nevertheless, in an environment where there is a number of staff on short term contracts, the impact on power relationships in people management conversations must be recognised. Whether an individual has tenure, or is on a nearly completed short term contract, will have a significant impact on the way an identical message might be received, and on the power relationship underpinning that conversation. While a decision not to renew a short term contract in accordance with its terms is entirely proper, how that decision is communicated and the reasons for which it is made are susceptible to other interpretations.

Whether or not the intention is there, the at least implied threat that a contract might not be on offer in the next semester injects a level of intensity into the relationship between managers and some staff at CIT. To not offer another temporary contract is not of itself bullying and is a decision capable of being conveyed respectfully and supportively. Such arrangements are an important and necessary part of the employment relationships in a number of ACT public sector agencies, including CIT, but do create additional obligations for managers in relation to their decision making and conduct.

## **Workload**

A common theme running through a number of complaints related to workload and overtime. Complaints focussing around agreement for paid overtime and reasonable expectations of workload can easily become viewed through a bullying lens. Without expressing a view either way on matters still being investigated, managers at all levels whose teams are under significant time and workload pressure need to be sensitive to those pressures and ensure interactions are consistently respectful, reasonable, timely and properly conducted. The fact that a decision is in accordance with stated rules on approval for overtime will not save the manager from criticism if that decision is not made fairly with appropriate notice, and conveyed respectfully and decently.

In a similar vein, a decision to change approval processes for overtime to be in keeping with formal instruments of financial delegation is not bullying, but the impact of that decision can create significant workplace issues if it is not communicated clearly and applied fairly.

## ***Workers' Compensation Claims and Return to Work***

ACTPS wide data in relation to workers' compensation shows that an individual who spends more than one week off work has a thirty-six per cent chance of being off work for more than twelve weeks. This circumstance is unacceptable, and all ACTPS agencies should continue to emphasise early intervention and rapid decision making in relation to claims, especially for psychosocial injuries. Significant effort is being dedicated in this regard across all workplace injuries, and efforts continue in refining the operation of the ACTPS return to work and rehabilitation function.

Returning injured workers to work remains an area of challenge. A study of similar issues for the Victorian workers' compensation system showed if a worker is off work for:

- 20 days the chance of ever getting back to work is 70%;
- 45 days the chance of ever getting back to work is 50%; and
- 70 days the chance of ever getting back to work is 35% (Johnson & Fry, 2002).

For a number of complainants, both historical and contemporary, their perception of the way in which their workers' compensation claims has been administered was of itself a cause of concern and distress to them. Some of these expressed concerns included:

- relatively senior staff being given menial and isolating tasks as part of a graduated return to work (e.g. conducting an inventory of crockery in store rooms);
- role confusion in relation to the responsibilities of the person managing their rehabilitation and return to work program having a role in contesting CIT's liability for the claim;
- the tone of correspondence suggesting injured workers were being obstructionist and not cooperating with their rehabilitation programs;
- ongoing requirements for paperwork to be re-signed and returned refreshing distress and hostility towards CIT for individuals who had left CIT altogether or were on long term leave;
- attempts to impose fitness for duties assessments when, as part of rehabilitation programs, individuals sought to engage in sharing their professional expertise on a voluntary basis with community groups;
- narrow construction of opportunities for return to work; and
- perhaps most importantly, a perceived focus on following processes through escalating interventions and obligations in an almost mechanical fashion which on review complies completely with black letter law, but perhaps lost sight of the colleague at the centre of the matter.

These issues have been discussed and addressed in the context of the implementation of the ACTPS Workers' Compensation and Work Safety Improvement Plan. Direct intervention has occurred on behalf of a number of complainants with Comcare. This has assisted in overcoming particular issues of concern in some cases.

As a result of these experiences and following discussions with CIT around approaches to rehabilitation and workers' compensation issues:

- CIT has, from 5 August 2013, joined the ACTPS Workers' Compensation and Work Safety Improvement Plan, including in relation to the collocation of case management staff with the rest of the ACTPS case management and injury prevention teams in the Chief Minister and Treasury Directorate; and
- individual complainants have agreed depersonalised case studies be developed to assist in the training of new managers of people, but also of case management staff.

There is a risk in relation to workers' compensation case management that a technically right, but process-focussed decision may significantly damage the prospects of continuing a viable and ongoing employment relationship. Perhaps a colleague-focussed response, respectful of the individual involved, might achieve a different outcome.

The following observation from the review of the Commonwealth Scientific and Industrial Research Organisation is worth noting in this context (Pearce 2013, p.118):

In many of the cases that we have seen where some common sense and empathy are lacking, there is a performance management process underway. Very often those managing the performance issues are also managing the grievance. They are usually focused, process driven and objective in relation to the performance management, but this makes them unsympathetic to the grievance. The complainant feels (more) bullied and the problems escalate. We suggest there needs to be greater recognition of the fact that, if a person feels they have been bullied—regardless of whether or not they have actually been bullied—the Organisation has a problem. Persisting with the actions (such as underperformance processes) carried out by the same people, while denying that there has been any bullying, will not solve the problem and is very likely to make it worse.

The new policy and procedures CIT have in place clearly identify the need for those involved in managing the grievance to be perceived to be impartial.

Another example of a technically right, but arguably excessive application of decision making power that focussed on process and not individuals was a decision in relation to an aspect of the employment of a particular individual which when questioned, was explained in terms of application under delegation of section 19 of the CIT Act which states “in exercising the director’s functions, the director has power to make administrative arrangements or give directions to a member of staff or a student in relation to the following: (a) the management, good government and discipline of the institute”. Application of this general and enabling power to an individual set of circumstances, when the employment relationship is comprehensively governed by the *Public Sector Management Act 1994* (PSM Act) and the relevant industrial agreement looks and feels heavy handed.

### ***Conflict of Interest – Relationships with Students and Staff***

In a number of matters raised, the issue of conflict of interest in relation to personal relationships was central. For example, while the view was advanced from some quarters that a personal relationship between a CIT staff member and an adult student is a matter for those individuals, to adopt that view overlooks the existence of power imbalances or opportunities for conflict in relation to students in a staff member’s class or sphere of influence. That is not a perspective that bears much consideration.

The new CIT Code of Practice usefully establishes unambiguous and helpful guidance in this regard:

You must not enter into a romantic or sexual relationship with any student that you are responsible for teaching, tutoring, advising, assessing, or for whom you provide pastoral or

welfare support. To do so would raise serious questions of power balance, conflict of interest, trust, confidence, dependency, and equality of treatment. Such relationships may also have a negative impact on the teaching and learning environment for other students and colleagues, and may carry a serious reputational risk to CIT.

Where a personal relationship, such as family relationship or close friendship exists between you and a colleague or student, or where there is a pre-existing sexual relationship with an adult student, you must report the relationship and any conflict of interest, potential conflict of interest and/or perceived conflict or interest, to your Supervisor or Director.

You should not teach or be involved in educational decisions (e.g. assessment, grade, extension) involving family members or close friends. Notify your supervisor regarding the relationship and have another staff member, authorised by your supervisor, to teach, assess and enter grades for the student concerned (CIT 2013, p.21).

This initiative and approach are welcomed and endorsed.

## ***Recruitment and Promotion Decision Making***

### **Conflict of Interest**

The Draft CIT Code also deals with the issue raised in some complaints of real or perceived conflict of interest in recruitment and promotion processes:

Selection panel members need to declare to the panel any prior personal knowledge or interest in any of the applicants. This is to ensure any conflict of interest, potential conflict of interest and/or perceived conflict of interest is carefully managed. Prior knowledge of an applicant does not necessarily amount to a conflict of interest or exclude participation in the selection process.

It is inevitable in a relatively small employment market that individuals will from time to time sit on an interview panel in judgement of individuals known to them in other contexts. It is inescapable in relation to positions for which internal candidates are competing. That of itself does not constitute a conflict of interest, but the potential for such circumstances to give rise to accusations of bias or improper process needs to be proactively managed.

The approach outlined in the Draft CIT Code is welcomed and endorsed.

### **Mandatory Qualifications**

Similarly, the draft CIT Code addresses issues raised at the heart of one complaint in relation to qualifications of staff selected for certain positions:

Managers must be satisfied that the applicant is eligible to apply for the position and that he/she holds qualifications that are mandatory for the position. Positions with mandatory qualifications require evidence to be placed on an official file (CIT 2013, p.44).

As part of this review, an investigation has been conducted (by an third party reviewer given the demands of the task) of a large number of historical appointments to senior teaching positions, in relation to which it was alleged there had been breaches of the relevant

legislative requirements in the appointment of candidates who did not hold mandatory requirements.

The conclusions drawn from that review are that:

- the majority of allegedly improper appointments were found to have been properly made;
- in the two cases where there was some support for the allegations, one staff member has resigned and the other has subsequently gained the proper qualification; and
- given the passage of time, and considering developments that have taken place within the system (including in response to internal and Auditor-General performance audit reports) action beyond continuation of checking processes now in place is not necessary.

CIT has agreed to the recommendations made in that investigation as they relate to ongoing audit processes.

This response is endorsed. Given the passage of time, CIT had already acted to resolve the concerns complained of and no further action – other than ongoing compliance - is required.

### ***Police Matters***

In some isolated cases, complainants raised allegations of conduct that may, if proven, involve breaches of the criminal law. The process followed in such cases has been, and will continue to be for those that remain on foot, to provide such evidence as has been collected in this review process to the Australian Federal Police for action as they think fit. The decisions as to whether such matters should be further pursued rests with the police and the Director of Public Prosecutions.

ACTPS enterprise agreements already make provision for the circumstance where the same conduct might give rise to both criminal and employment-related sanctions. It is important, however, to observe that the way in which such processes play out needs to be the subject of careful and specific guidance in framework documents, as well as circumstance-specific advice from the Government Solicitor's Office in the event such matters arise.

### ***Formal versus Informal Complaints***

A central issue raised in WorkSafe's report was the existence of clear distinctions in outcome and handling processes between informal complaints about workplace issues, accident and incident reports filed under health and safety processes, and formal complaints of bullying.

It is true that approaches to managing workplace issues and dealing with workplace bullying vary in their formality and complexity, but such distinctions should not produce differences in substance in the response.

A complaint is a complaint and should be dealt with regardless of how it is received. Just because it comes in through an unusual channel, or on the wrong form, does not mean we

should not count it and act on it in accordance with its substance. Furthermore, a complaint once made should not be expunged from the record if in the end it is not borne out.

In this regard, the WorkSafe report noted “CIT seems to apply a very restricted definition to the term ‘informal complaint’. In its response to WorkSafe ACT dated 28 October 2011, with regard to one worker, while acknowledging that the worker had lodged an Accident Incident Report alleging that they were a victim of bullying and harassment the CIT nonetheless stated that it had received no formal or informal complaints from the worker in relation to bullying and harassment (2012, p.19)”. WorkSafe argued in relation to CIT’s bullying policy that it “should allow for the CIT to initiate a formal investigation in certain circumstances regardless of whether a formal (written) complaint has been lodged. These circumstances would include, for example, when the seriousness of the complaint warrants such an approach” (2012, p.18).

The current policies have moved on from this point, and during 2013 some matters have been addressed that were raised through alternative approaches such as the lodging of an accident/incident report.

Nevertheless, to some extent the formal/informal distinction endures – almost certainly unhelpfully. This sort of language has been removed from what is anticipated to be the agreed text subject to negotiations for the new ACTPS enterprise agreements.

### ***Independent Investigations***

WorkSafe in its report stressed the need for “the complaints process to be, and be seen to be, conducted by individuals who are independent from the situation being complained about. While using external investigators is not the only way of achieving such independence it is, arguably, one of the most effective” (WorkSafe 2012, p.18). The way in which this process has been conducted might be seen as an example of this. In the ACTPS context more broadly, Shared Services Human Resources provides a central investigatory capacity.

The House of Representatives Standing Committee (HORSCEE) similarly argued that:

“independence and impartiality is important to ensure a genuine process which is not only fair, but is seen to be fair. Impartiality in this way can engender confidence and reasonable morale amongst employees by the way that it is managed. Furthermore, neutrality in an investigation can mean that the findings are more readily accepted by the parties concerned (2012, p.85).

A decision to use independent investigators does not, however, absolve managers from their responsibility to manage their staff and the issues that have arisen, nor should it be the automatic response as soon as a concern is raised. Indeed, it is anticipated the wording in new ACTPS enterprise agreements will place strong emphasis on what has been termed a “quick assessment” process under which managers must form a view about workplace issues in their teams, and take action themselves to resolve it.

Furthermore, independence does not necessarily require referral outside an organisation. Similarly, the independence of a delegate making a discipline decision does not imply one external to the organisation.

Work is currently being undertaken in preparation for implementation of the new ACTPS enterprise agreements involving clarification and enhancement of Shared Service's investigation capacity and role. As a necessary implication of the proposed structure of occupational specific agreement applying to the ACTPS as whole, there is work being done on ensuring greater consistency in decision making in relation to managing workplace issues and investigating misconduct across directorates and agencies. Notwithstanding the two CIT industrial agreements apply only to CIT, in relation to managing misconduct in all its forms it is anticipated the relevant provisions will be identical to those applying across the ACTPS.

It is also critical to ensure there is a shared understanding that the making of a decision to investigate, and engagement of an investigator, does not and cannot relieve managers of their responsibilities for their people and for managing workplace issues while those other processes play out. During the investigation process, the manager remains responsible for their team, and for ensuring the work of that team continues to be delivered.

Again, this creates management challenges for which managers of people should receive proper training. This issue should form part of the induction training for new managers and HR Master class programs.

### ***Managing Change***

A google search on "change management" produces close to one billion hits. Certainly it is beyond the scope of this report to canvass best practice approaches to managing (continuous) change in public sector organisations. It is sufficient to identify this as a significant contributing factor to a number of complaints in this process. Beyond simple change in personnel and managers, changes to curriculum, teaching methods, application of delegations, and course offerings and content, (sometimes accompanied by perceptions of age discrimination) all emerged as issues underpinning long running workplace issues and allegations of workplace bullying.

It is almost certain that change and adaptation will remain an enduring feature of the ACTPS and CIT in the future. Certainly, ACTPS managers need to lead change effectively, appropriately and respectfully. They need to engage their teams in open dialogue and explain what is proposed to occur and why. They also need to recognise that in addition to giving rise to change fatigue, a climate of ongoing reform and change can serve to heighten anxiety levels particularly in those inclined to be threatened or made uncomfortable by change and loss of their perceived competitive or professional advantages.

In this environment of constant reform, managers of people have additional responsibilities to consider how their behaviour and words will be received and to be respectful of the individual circumstances and aspirations of their staff.

## **Driving Cultural Change**

It is often said in public services – and indeed elsewhere – that changing structures is easy, but changing culture is a long and hard road to follow. HORSCEE argues (2012, p.106):

The nature of the culture is identified by observable practices. Workplace characteristics, leadership styles and group dynamics all contribute to the culture of a workplace. The demonstrated values of the organisation are fundamental in preventing and managing workplace bullying. Maintaining a culture where reports of unacceptable behaviour are taken seriously, dealt with confidentially, fairly and in a timely manner is intrinsic to eradicating workplace bullying and its negative consequences.

Critically, leaders and managers contribute most significantly to the success of their change agenda by having a clear narrative and justification for change, and by “being the change”: “leaders need to model appropriate behaviours in how they conduct themselves and have the courage to call and to deal with inappropriate behaviour when they become aware of it” (HORSCEE 2012, p.108). As HORSCEE had cause to observe, “the policies and procedures organisations have for responding to bullying are of little use if there is an absent corresponding culture and role-modelling of their objectives” (HORSCEE 2012, p.106).

## ***Tell Your Story Once – Resolving Complaints***

The ACT is one of two jurisdictions in the country with a Human Rights Act<sup>xvii</sup>, and there are a number of statutory office holders to whom complaints can be made. This is an important feature of the ACT’s system of government and supports an ongoing and robust debate about standards of public administration, decision making and performance.

A feature of a number of complaints in this process was that some or all aspects of them had been referred previously (or concurrently) to the:

- Work Safety Commissioner;
- ACT Ombudsman;
- Human Rights Commission; and/or
- relevant ministers.

As part of the implementation of the ACT Government’s Integrity Package, and its focus on improving complaints handling, there is arguably scope for better guidance to be prepared as to how and to whom certain classes of complaints might be made.

This suggestion does not, of course, seek to limit the jurisdiction granted to various institutions and officers, rather to assist individuals to raise their concerns in the most appropriate place. A complaint about work health and safety issues is arguably best made to the Work Safety Commissioner for example, while one about application of an industrial agreement is perhaps better made to the Commissioner for Public Administration, if not the Fair Work Commission. The Auditor-General has significant powers, but they are arguably less well suited to the settling of workplace issues than they are to other categories. A complaint about racial discrimination may well best be made to the Human Rights Commission. The ACT Ombudsman has a general supervisory role over public sector decision making, but more limited powers in relation to workplace issues and workplace

bullying. Criminal matters can quite properly be referred straight to the Australian Federal Police. The Public Interest Disclosure Act 2012<sup>xviii</sup> creates another formal mechanism through which concerns can be raised.

It is hoped that cooperation and collaboration of the nature proposed here might assist in addressing the extent to which complaints subject to this review have been raised with more than one of these oversight institutions without necessarily reaching a satisfactory outcome, as well as to facilitate greater sharing of lessons across the public sector.

### **Recommendation 9 – Complaints Handling**

That the statutory office holders to whom complaints can be made about workplace experiences engage in dialogue with a view to developing clearer pathways for complainants and guidance in relation to the most appropriate recipient of different types of complaints. Where relevant, advice should be provided to the ACT Government on overcoming any obstacles that might exist to the appropriate sharing of information in this context.

### ***Supporting the Conversation – Managers Toolkits***

An important element of the training and support to managers is the provision of a practical tool kit to help them have the conversations that need to be had. A leading example of this sort of package is the manager’s toolkit in use in the Education and Training Directorate. It has been designed to provide practical guidance and strategies to assist employees including managers to “understand the circumstances of the conflict situation and to effectively manage complaints, disputes and other workplace issues that may impact their wellbeing. It provides guidance for managers to identify early, the risk factors that contribute to the development of complaints and disputes” (ETD n.d. p.3).

There is clear scope for this toolkit to form the basis of an ACTPS-wide offering. It sits comfortably alongside the CIT Frameworks.

It is instructive that a number of stories from complainants would seem to be punctuated by missed opportunities for resolution, particularly though better communication between managers and their staff. Toolkits and training are not the entirety of the answer to these issues, but they will go a long way to assist in resolving workplace issues quickly and locally. These efforts will be supported by ongoing investment in the capability and capacity of strategic personnel and industrial relations advisers.

### ***Monitoring Progress – Surveys and Data Collection***

No assessment of progress down a reform path can be made without reference to performance data over time. CIT’s commitment to ongoing monitoring of staff attitudes and experiences in response to the WorkSafe report is a worthwhile initiative and is endorsed. The upcoming whole of ACTPS staff survey will both establish a baseline for monitoring progress and change at a whole of service level, as well as facilitating comparisons between directorates and agencies.

In a similar vein, complaints systems themselves are valuable sources of information on how an agency is performing: “an effective and comprehensive complaints system is vital because of its role in providing an early warning mechanism for management about possible areas of the organisation where bullying or harassment is occurring” (WorkSafe 2012, p.17).

## Conclusion

The most important systemic conclusion to be drawn from this process is that there is no evidence to suggest a culture of entrenched and systematic workplace bullying across the CIT. There are nevertheless a number of areas within CIT where the workplace culture has historically not been as good as it should be, and the management of workplace issues has been demonstrably deficient.

The fact that complaints were received about the workplace experiences of forty-two current and former CIT employees covering more than ten years is clearly evidence of problems in the Institute’s management of people. The fact that some of these matters are still contested is evidence in itself that the processes used to deal with those issues could perhaps have been done better.

CIT has demonstrated genuine commitment and good will in its response to the WorkSafe report of April 2012. Following that process, CIT’s frameworks for managing workplace issues demonstrate leading practice in the ACT public sector. CIT has certainly not ignored the concerns that have been raised in this process. It has responded genuinely and with good will to the changes required of it. While there is more to do CIT is on the right track. The rebuilding of trust in individuals, processes and the Institute itself will be critical to achieving success. In part, this must focus on actual and lived current experience, not perception and hearsay. Transparency and fairness in decision making, and so far as is appropriate, of approaches to resolving workplace issues will assist in this regard.

The challenge facing CIT, and the rest of the ACTPS is to ensure that the *ACTPS Code of Conduct*, and frameworks for managing workplace issues leave managers bookshelves and are applied consistently and properly. There is a key role to be played by strategic personnel and industrial relations advisers in supporting managers in discharging their critical roles. All employees need to be properly trained in the general frameworks for responding to issues, as well as in their role in discharging them.

If there is one lesson that can be drawn from this report, it is that we need to manage our people as people first and resources second. We need to engage with and support our colleagues, not just handle their cases. We need to be a service that values and recognises outstanding managers of people and not just technical expertise.

The process of building and rebuilding trust will be smoother if our engagements with colleagues are founded in a mutually respectful interaction in which past wrongs are acknowledged and apologised for, current tensions are addressed frankly and constructively, and a shared hope for a better future is jointly articulated. It will be aided by genuine commitment to supporting resolution of workplace issues through open and respectful collaboration among the CIT Executive, staff and unions.

## Appendix 1 – Terms of Reference

### Investigation into the management of complaints of bullying and harassment and related issues at the Canberra Institute of Technology, and review of related internal processes at the Canberra Institute of Technology

#### Terms of Reference

##### A. Purpose Statement

The Commissioner for Public Administration (**Commissioner**) will:

1. on behalf of CIT, conduct a preliminary fact finding investigation of concerns received by the Commissioner in 2011 and 2012 about the management of individual bullying and harassment complaints and related issues at the Canberra Institute of Technology (**CIT**)
2. assist CIT to identify issues regarding concerns received by the Commissioner in 2011 and 2012 about CIT's management of individual complaints
3. assist CIT to identify procedural or systemic issues regarding its internal processes and make recommendations for the improvement of the internal processes
4. assist complainants to resolve ongoing concerns about the management of their complaints.

##### B. Background

As part of the Commissioner's responsibilities under the *Public Sector Management Act 1994 (ACT)*, the Commissioner received in 2011 and 2012 complaints about management practices at CIT.

These complaints were received prior to, during and after an investigation by WorkSafe ACT into bullying and harassment at CIT. WorkSafe ACT produced a report dated 11 April 2012, 'Investigation into compliance by the Canberra Institute of Technology (CIT) with its duties under the *Work Safety Act 2008* and the *Work Health and Safety Act 2011* in response to allegations of bullying and harassment at the CIT', which identified problems with CIT's processes.

In light of the WorkSafe ACT report, the Chief Executive of CIT has asked the Commissioner to investigate the complaints and review CIT's relevant internal processes (**investigation and review**).

## C. Process

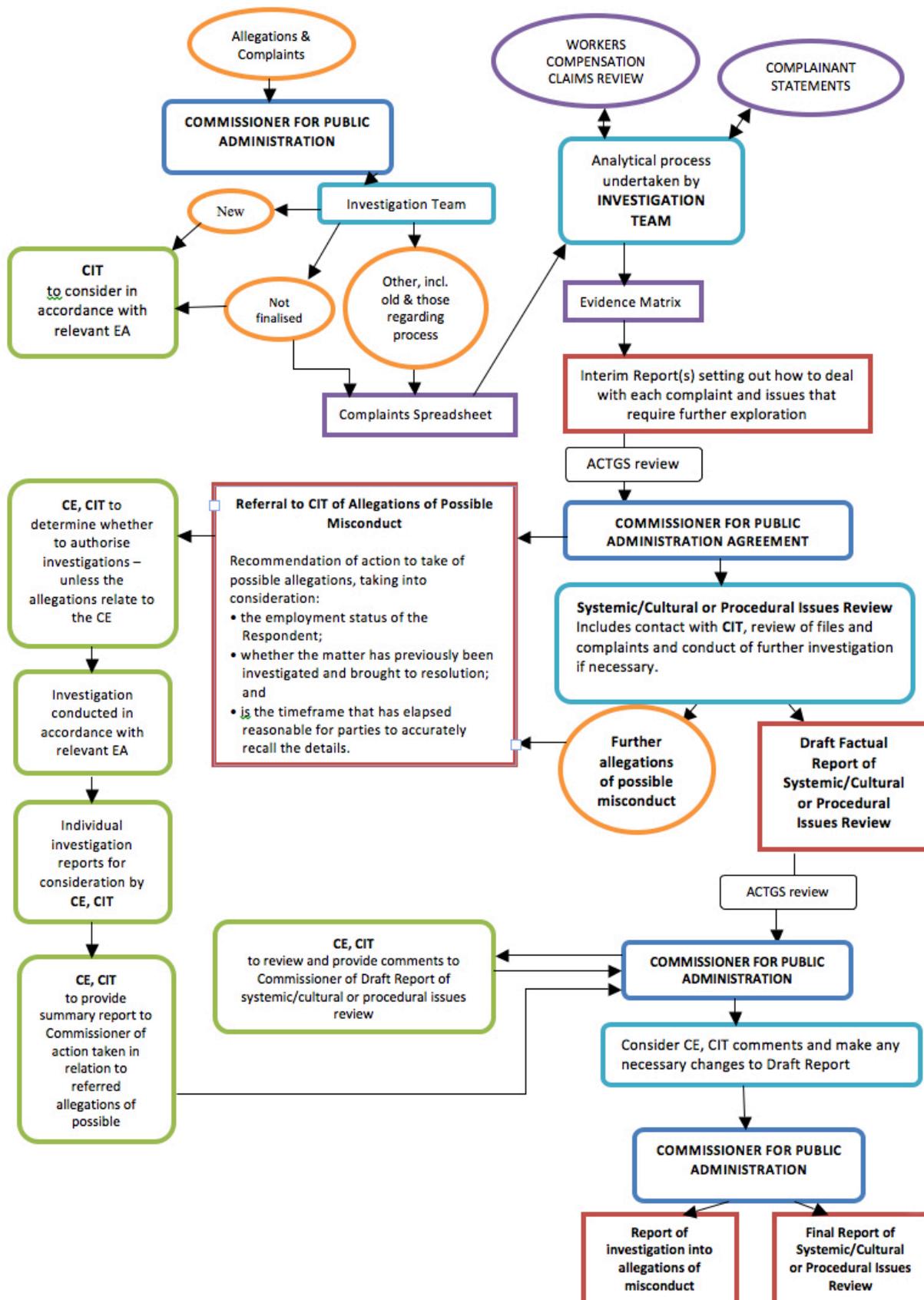
1. The Commissioner has appointed a team of independent investigators (**Investigation Team**) to undertake the fact finding investigation and review. The Principal Investigator will manage the Investigation Team by coordinating the overall strategy, investigative standards and subsequent reporting.
2. Investigators from the Investigation Team will conduct a fact finding investigation about CIT's management of complaints of bullying and harassment and related issues.
3. Where necessary to assist with the work of the Investigation Team, the Commissioner will engage further investigators to identify specific issues, including an expert to identify issues in relation to the management of workers compensation claims (terms of reference **attached**).
4. At the completion of the fact finding investigation, the Investigation Team will provide a report of identified issues to the Commissioner, who will provide it to the Chief Executive of CIT. The report should:
  - (1) identify allegations of potential misconduct
  - (2) identify systemic and procedural issues regarding CIT's internal processes, including complaints management processes
  - (3) identify any other potential deficiencies in CIT's internal processes.
5. Where potential misconduct is identified, the Investigation Team will refer the allegations to the Commissioner, who will provide it to the Chief Executive of CIT for consideration, in consultation with the Commissioner's office, as to whether the allegations should be investigated under the relevant enterprise agreement and how that investigation will be conducted.
6. Where matters are referred back to the CIT, CIT will work with the Commissioner to investigate those matters.
7. Where issues of process or procedure are raised, these will be considered by the Commissioner as part of the review of systemic or procedural issues of the internal processes at CIT.
8. Where other particular issues arise, the Commissioner and CIT will consult on the appropriate mechanisms of the review of those matters.
9. Reports will be produced containing issues identified and recommendations for the improvement of processes at the CIT.

A flowchart of the process is **attached**

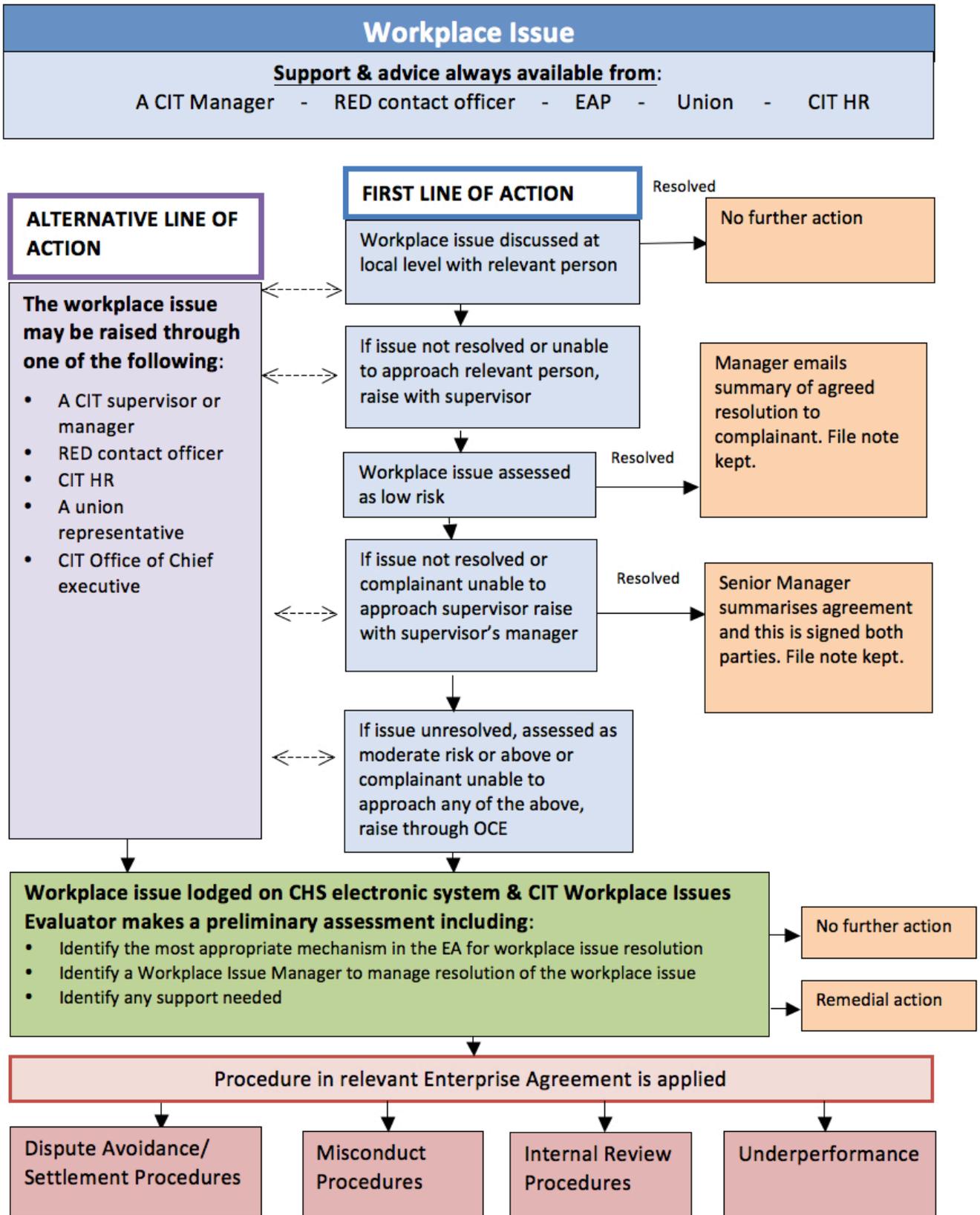
Adrian Marron  
Chief Executive, Canberra Institute of Technology  
July 2012

Andrew Kefford  
Commissioner for Public  
Administration  
July 2012

**Commissioner for Public Administration’s Investigation into the management of complaints of bullying and harassment and related issues at the Canberra Institute of Technology, and Review of internal processes – Flowchart**



## Appendix 2 – CIT’s Procedure for Workplace Issues Resolution Flowchart



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## Endnotes

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- <sup>i</sup> See [http://cdn.justice.act.gov.au/resources/uploads/Worksafe/Publications/Investigation\\_Reports/CIT\\_Report\\_Final\\_-\\_11\\_April\\_2012.pdf](http://cdn.justice.act.gov.au/resources/uploads/Worksafe/Publications/Investigation_Reports/CIT_Report_Final_-_11_April_2012.pdf)
- <sup>ii</sup> See <http://www.legislation.act.gov.au/a/2011-35/default.asp>
- <sup>iii</sup> See [http://www.cmd.act.gov.au/\\_data/assets/pdf\\_file/0009/353727/stateofservice2012.pdf](http://www.cmd.act.gov.au/_data/assets/pdf_file/0009/353727/stateofservice2012.pdf)
- <sup>iv</sup> See [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=ee/bullying/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ee/bullying/report.htm)
- <sup>v</sup> See Part 2.1 of the *Work Health and Safety Act 2011 (ACT)* at <http://www.legislation.act.gov.au/a/2011-35/default.asp>
- <sup>vi</sup> See *Fair Work Amendment Act 2013(Cwlth)* (Schedule 3 – new part Part 6-4B of the *Fair Work Act 2009 (Cwlth)*) to commence 1 January 2014.
- <sup>vii</sup> See [http://www.hwlebsworth.com.au/images/general\\_findings\\_report.pdf](http://www.hwlebsworth.com.au/images/general_findings_report.pdf)
- <sup>viii</sup> See Report on ACT Public Service Recruitment Practices at <http://www.audit.act.gov.au/auditreports/reports2012/Report%20No.%208%20ACT%20Public%20Service%20Recruitment%20Practices.pdf>
- <sup>ix</sup> See Part 3 of the *Public Sector Management Act 1994* <http://www.legislation.act.gov.au/a/1994-37/current/pdf/1994-37.pdf>
- <sup>x</sup> See *Harris v WorkPac Pty Ltd* [2013] FWC 4111
- <sup>xi</sup> See <http://www.cmd.act.gov.au/governance/public/RED>
- <sup>xii</sup> See [http://www.cmd.act.gov.au/\\_data/assets/pdf\\_file/0007/171871/preventworkbully.pdf](http://www.cmd.act.gov.au/_data/assets/pdf_file/0007/171871/preventworkbully.pdf)
- <sup>xiii</sup> See <http://www.legislation.act.gov.au/ni/2012-219/current/pdf/2012-219.pdf>
- <sup>xiv</sup> See <http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/public-comment/pages/whs-cop-bullying-comment>
- <sup>xv</sup> See <http://www.racp.edu.au/page/afoem-health-benefits-of-work>
- <sup>xvi</sup> See Chapter 2 of the *Public Sector Management Standards 2006* at <http://www.legislation.act.gov.au/di/2006-187/current/pdf/2006-187.pdf>
- <sup>xvii</sup> See <http://www.legislation.act.gov.au/a/2004-5/default.asp>
- <sup>xviii</sup> See <http://www.legislation.act.gov.au/a/2012-43/default.asp>