

# Resolving Workplace Issues

Resources for Managers and Supervisors

2019

**Note:** More information is available in:

- *Resolving Workplace Issues: Resources for Employees*
- *Resolving Workplace Issues: Work Bullying Harassment and Discrimination*
- *Guidelines to the Misconduct Process*

*Directorates may have additional resources and policies that apply. Refer to your local HR area for more information.*

# WHAT IS A WORKPLACE ISSUE?

Workplace issues are incidents that are seen as inappropriate by the person experiencing or observing the issue; they can arise every day and in many different situations. Workplace issues can vary in terms of seriousness; they may be low level or a one off incident that is inappropriate in nature, or they may be more serious incidents such as work bullying. Workplace issues include a wide range of behavioural, environmental, cultural, relationship and performance issues, such as:

- communication – staff attitudes, assumptions, rudeness, misunderstandings;
- information – inadequate or incorrect information;
- process – inadequate procedures, failure to provide sufficient information, or a failure to consult in decision-making; and
- professional conduct.

While everyone will react and respond differently to workplace issues, some examples of the negative impact that inappropriate behaviour or misconduct can have includes:

- an impact on the individuals involved, such as stress, anxiety, panic attacks, sleeping problems, loss of self-esteem and confidence, isolation, strain on relationships, absenteeism, reduced work performance and work dissatisfaction, impaired concentration or ability to make decisions and decreased productivity;
- an impact on the wider team, such as reduced team morale and increased tension at work; and
- an impact on the organisation, such as decreased productivity, increased turnover, reduced performance, absenteeism, decrease morale, damage to brand and reputation, work disruption and costly workers compensation claims and/or legal action.

Disagreement or differences of opinion between employees do not always result in inappropriate behaviour or misconduct. The ACTPS promotes respectful, robust discussion between employees to enhance productivity, which is a characteristic of a mature workplace culture. This can involve challenging each other's opinions and may sometimes be frustrating for those involved. Similarly, not everyone in the workplace will always get along easily.

In each case, your tone, body language and choice of language when engaging with others can significantly impact the outcome of any given situation. Remaining patient, courteous and respectful to each other will help minimise the likelihood of workplace issues arising.

## Reasonable Management Action

Managers and supervisors have a responsibility to direct and maintain work flow and ensure both service delivery and client outcomes are achieved. Reasonable managerial actions may include:

- addressing unacceptable workplace behaviour;
- being objective and confidential when informing an employee of unreasonable or inappropriate behaviour;
- providing reasonable directions about work and setting reasonable goals;
- providing appropriate and constructive feedback about an employee's work performance and managing their performance;
- allocating work in a fair and equitable way;
- ensuring workplace policies are implemented;
- allocating particular hours of work to meet operational requirements (e.g. 8.30am commencement, having regard to the employment framework);
- making justifiable decisions related to recruitment and selection for an employee's promotion and/or other opportunities;
- applying organisational change or restructuring;

- transferring or re-deploying an employee for operational reasons;
- following the principles of Respect at Work, Procedural Fairness and Confidentiality and Privacy; and
- acting in accordance with the ACTPS Values and policies.

Although some of the above actions may be challenging or confronting for some employees, this does not automatically make them inappropriate or unreasonable actions.

## MANAGING WORKPLACE ISSUES

Workplace issues tend to occur on a sliding scale of severity. At the lower end of the scale is behaviour that could be considered inappropriate and should cease without reoccurrence, while on the higher end of the scale is behaviour that may be considered highly inappropriate. It should be noted that regardless of whether the behaviour is deemed less serious or more serious, it can still have the potential to amount to misconduct – that is, behaviour that may justify disciplinary action if it is found to have occurred.

**Less serious behaviours** are generally one-off inappropriate behaviours, or a repetitive pattern of low level actions that disturb the work environment. A reasonable person, having regard to the circumstances, could find the behaviours to be unacceptable or unreasonable. Inappropriate behaviour can usually be resolved locally in a non-disciplinary way. Less serious behaviours can escalate to misconduct if the individual/s do not cease or adjust their actions to meet the expected standard.

**More serious behaviours** are considered wilfully or deliberately unsatisfactory, or intentionally failing to meet the requirements of one’s duties. In the ACTPS, an intentional or reckless breach of employee obligations/standards would likely amount to misconduct. Serious misconduct is misconduct of such a nature that it would be unreasonable or inconsistent for the employer to continue the employee’s employment and usually warrants termination of employment or the suspension of the employee without pay. Employees found to have engaged in misconduct or serious misconduct may have disciplinary action imposed against them.

Regardless of the scale of the workplace issue, it is important that a Preliminary Assessment be undertaken to accurately identify the issue and work towards an appropriate resolution.

### The Preliminary Assessment

The Preliminary Assessment is outlined in Clause H2 of the ACT Government Enterprise Agreements<sup>1</sup>. A Preliminary Assessment is an objective and impartial assessment that a manager or supervisor should undertake once alerted to a workplace issue. A Preliminary Assessment is **not** an investigation; it is an expedient means of determining the relevant facts to decide if, and how, to proceed with the matter. The assessment should be conducted as soon as possible, be as short as is practical and should cease as soon as it becomes evident how best to handle the issue.

There may be occasions, for instance where there is a high level of complexity or a conflict of interest, when it would not be appropriate or possible for the supervisor or manager to perform the Preliminary Assessment. However, in most instances the assessment should be undertaken by the manager or supervisor.

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<sup>1</sup> Note that there are some ACTPS Enterprise Agreements where the numbering convention differs to the core agreements, but the provisions relating to Preliminary Assessments are identical to those in clause H2.

A Preliminary Assessment should generally be limited to having discussions with the staff member/s involved and considering the most appropriate options for resolving the workplace issue. Where this is not sufficient, it may extend to obtaining additional documents or records, talking to the individual/s who lodged the complaint to clarify the issue/s, and perhaps briefly talking to anyone who witnessed the incident, to get further information. In rare circumstances it may be necessary to adopt a more detailed approach, particularly to identify all individuals who may be involved.

## **Managing Less Serious Workplace Issues**

Resolving less serious workplace issues at the local level is a key means by which all employees can contribute to creating positive work cultures. The features of less serious workplace issues may include:

- one-off or irregular occurrence;
- a series of low level, minor events;
- inappropriate in nature; or
- may not constitute misconduct as outlined in ACTPS Enterprise Agreements.

In the first instance, employees are encouraged (where possible) to promptly address and resolve issues early and directly with the individual/s they are experiencing the issue with, rather than ignoring it. This provides the best opportunity for a positive resolution as it focuses on maintaining and improving working relationships, minimises the likelihood that a minor issue will escalate into a serious one, and supports continuity of work. The employee may choose to notify their manager/supervisor about the issue to ensure that the matter has been resolved appropriately, and if relevant, a record of the matter is created.

Some options for resolving less serious workplace issues include:

- take no further action but monitor the situation;
- seek support and advice from a trusted and confidential source;
- seek counselling from an Employee Assistance Program (EAP) provider;
- seek personal development (e.g. training for resilience, having difficult discussions etc);
- have a direct conversation with the individual.

The desired outcome is that the issue is successfully resolved in a non-disciplinary way, with ongoing monitoring to determine that the resolution is effective. However, if the issue is not resolved, further options for resolution may need to be considered.

Less serious workplace issues may not always be able to be resolved by using non-disciplinary measures at the local level. Despite the issue being considered less serious, there may be other factors at play, which may require the matter to be best managed through another means; such as a misconduct investigation or an underperformance process.

## **Managing More Serious Workplace Issues**

Workplace issues of a more serious nature will usually require a higher level of intervention to resolve the issue. More serious workplace issues can include circumstances such as:

- repeated behavioural lapses;
- complex workplace issues where facts are not known or are contested; or
- the workplace issue appears to involve:
  - a breach of Section 9 of the PSM Act;
  - engaging in conduct that has or may bring the ACTPS into disrepute;
  - unauthorised absence/s where no satisfactory reason is provided;

- convictions of a criminal offence, an offence where no conviction is recorded or failure to notify the ACTPS of criminal charges; or
- making vexatious or knowingly false allegations against another employee.

As with a less serious matter, a Preliminary Assessment is undertaken to determine the best way to resolve the issue and correct the behaviour.

### **Misconduct Investigations**

At the conclusion of your Preliminary Assessment, you may determine that the workplace issue requires a recommendation to the relevant delegate that the matter be referred for investigation. The delegate may then refer the matter to the Public Sector Standards Commissioner in accordance with Clause H7 (Dealing with Allegations of Misconduct) of the ACTPS Enterprise Agreements. Following the investigation, which is conducted by the Professional Standards Unit, a misconduct delegate appointed by the Public Sector Standards Commissioner will determine whether or not misconduct has occurred. If misconduct is found to have occurred the matter will be referred to the appropriate delegate for a decision on an appropriate resolution. This may involve imposing disciplinary action against any employee/s found to have engaged in the alleged behaviour/s.

The types of disciplinary action that may be imposed by a delegate include:

- a written reprimand;
- a financial penalty which can:
  - reduce the employee's incremental level;
  - defer the employee's incremental advancement;
  - impose a fine on the employee;
  - fully or partially reimburse the employer for damage wilfully incurred to property or equipment; or
  - remove an SEA/ARIn benefit.
- transfer the employee temporarily or permanently to another position at level or to a lower classification level; or
- terminate the employee's employment.

## **RESOLUTION OF WORKPLACE ISSUES THROUGH RESTORATIVE PRACTICES**

Restorative practices are cooperative approaches that focus on repairing the negative impact caused by inappropriate behaviour through communication, openness to others' views, cooperation and reasonableness. The key advantage is that restorative practices are educative and positive in nature, encourage increased awareness of people's feelings and standards of behaviour in the workplace, as well as improving team dynamics. Restorative practices are based on the notions that:

- the best decision makers are usually the people directly involved;
- to effectively resolve an issue, people need to hear and understand each other; and
- workplace issues are best resolved on the basis of the employees' interests and needs.

Restorative practices can:

- address and resolve issues at the earliest possible time and lowest possible level;
- be non-blaming and non-disciplinary;
- focus on hearing and understanding others to effectively resolve an issue;
- encourage ownership of issues;

- encourage individual/s to learn from their mistake/s and shape their future behaviour to ensure it is appropriate; and
- focus on a resolution, a positive workplace and continuation of healthy working relationships.

Some advantages of restorative practices include:

- early, quick and effective resolution of workplace issues;
- maintenance of privacy and confidentiality;
- employees having an element of control of the process which can result in higher levels of satisfaction and empowerment;
- increased cooperation and productivity because employees see that issues are addressed seriously;
- openness of facts, identifying issues and exploring new options;
- supporting personal and professional relationships within the workplace due to the non-disciplinary nature of RPRT; and
- cost and time savings for the organisation and employees compared to conducting proceedings under ACTPS Enterprise Agreements.

Examples of restorative practices can include conducting facilitated discussions, mediation, workplace conferencing/coaching, mentoring and targeted development. Supervisors and managers can contact their local HR team for assistance regarding restorative practices.

## PREVENTING WORKPLACE ISSUES

All ACTPS employees have a responsibility to contribute to positive work cultures and not engage in behaviour that is inappropriate or constitutes misconduct.

The *Public Sector Management Act 1994* (the PSM Act) sets out the standards of behaviour expected of all ACTPS employees in order to uphold the professionalism and probity of the ACTPS. Stemming from the PSM Act, the ACTPS Code of Conduct specifies four key values which all employees must uphold; Integrity, Collaboration, Innovation and Respect. Upholding these values involves treating each other with sensitivity and courtesy, acting professionally and collegiately, being honest and dependable, not shirking responsibility, working together and seeking new and better ways of doing business.

In addition, the ACTPS Respect, Equity and Diversity (RED) Framework promotes positive work cultures through upholding the values of Respect, Equity and Diversity in the workplace. This means respecting individual difference, celebrating diversity and treating people equitably. Personal commitment to these values and behaviours will help minimise the likelihood of a negative culture where inappropriate behaviour or misconduct is likely to occur.

### Public Interest Disclosures (PIDs)

The *Public Interest Disclosure Act 2012* encourages and enables anyone witnessing serious wrongdoing that falls within the definition of 'disclosable conduct' to raise concerns and guarantees these concerns will be seriously considered and investigated where warranted. The PID process can be conducted outside of the procedures discussed in this resource.

Disclosable conduct is more serious than a technical breach of policy or procedures: it is action (or inaction) that has a significant or widespread negative impact, and the person disclosing information of this sort needs special protection. Examples of disclosable conduct include:

- corrupt conduct, e.g. accepting money or other benefits in exchange for helping someone to avoid prosecution, win a contract or gain Government approval;
- fraud or theft, e.g. falsifying documents or information, or stealing an employer's property or funds;
- official misconduct or maladministration, e.g. gaining personal benefit by not revealing a conflict of interest;
- harassment, intimidation or discrimination, e.g. assaulting a person during the course of carrying out their work functions, duties or responsibilities; or
- practices endangering the health or safety of staff, the community or the environment.

Refer to the PID Guidelines for more information: <http://www.legislation.act.gov.au/ni/2014-357/default.asp>

## RESPONSIBILITIES

ACTPS directorates, Executives, managers, supervisors and employees have various responsibilities associated with managing and resolving workplace issues, as outlined below:

### Directors-General/Directorates

- Must promote the ACTPS Values and Signature Behaviours as per the ACTPS Code of Conduct to create positive workplace cultures where workplace issues are resolved efficiently and effectively at the local level as they arise, where appropriate.
- Must actively prevent workplace issues of an inappropriate or misconduct nature, including work bullying, discrimination and harassment by adhering to whole-of-government procedures and guidelines, providing supervision and training for staff and undertaking ongoing risk management.
- Must identify, assess, and eliminate or control the risk factors that contribute to a work culture where work bullying is likely to occur.
- Must ensure that directorate specific guidelines and procedures are in accordance with ACTPS Enterprise Agreements and whole-of-government resources to support employees to raise workplace issues and access mechanisms to resolve inappropriate behaviour and misconduct.
- Must ensure that executives, managers, supervisors and employees know what to do if work bullying, discrimination or harassment occurs.
- Must investigate work bullying, discrimination or harassment as soon as possible in accordance with the procedures set out in ACTPS Enterprise Agreements and other applicable procedures.
- Must ensure that all parties of an investigation under Section H of ACTPS Enterprise Agreements are aware they will be informed of the outcome with due regard being given to privacy concerns, the nature of the complaint and the proportionality of information applicable to each party.
- Must keep accurate records of complaints of work bullying, discrimination and harassment.

### Executives, Managers and Supervisors

- Must model and promote the ACTPS Values and Signature Behaviours as per the ACTPS Code of Conduct to create positive workplace cultures where workplace issues are resolved efficiently and effectively at the local level as they arise, where appropriate.
- Must treat staff with respect and ensure that their own conduct is above reproach, examining their own preconceptions, biases and stereotypes concerning workplace issues that are of an inappropriate nature or may constitute misconduct.

- Must “call out” inappropriate behaviour as soon as they see it or become aware of it.
- Must communicate the whole-of-government resources and related procedures to staff to ensure that they are aware of their rights and responsibilities.
- Must actively prevent work bullying, discrimination and harassment by addressing workplace issues and taking necessary corrective and preventative action.
- Must treat all issues of work bullying, discrimination or harassment seriously and respond promptly and confidentially in accordance with ACTPS Enterprise Agreements and whole-of-government resources.
- Must take all reasonably practicable steps to prevent employees that are involved in the management and resolution of workplace issues from being victimised.

### **All employees**

- Must commit to and promote the ACTPS Values and Signature Behaviours as per the ACTPS Code of Conduct to create positive workplace cultures and treat others with respect.
- Must comply with lawful and reasonable directions given to them by any person having the authority to give the direction.
- Must understand their own behaviour and consider how it may be perceived by, and impact upon, others at work.
- Should actively prevent workplace issues from recurring by talking to the person/s conducting inappropriate behaviour, or raising concerns about workplace issues with their manager, supervisor or executive, a RED Contact Officer, Work Safety Representative or relevant HR team.
- Should familiarise themselves with their directorate’s relevant guidelines and procedures relating to management and resolution of workplace issues.
- Should offer support to anyone who is subject to inappropriate behaviour or misconduct, and if possible let them know where they can obtain help and advice.
- Must not raise workplace issues that are frivolous or malicious.
- Must participate in the management and resolution of workplace issues in good faith and with confidentiality.

## APPENDIX A: Receiving Complaints of Workplace Issues

If you are approached by an employee with concerns about a workplace issue of inappropriate behaviour or misconduct, you should:

1. Ensure the employee is familiar with the *Resolving Workplace Issues* resources (if not, give them copies of the relevant material, especially the *Resource for Employees*).
2. Listen and acknowledge the workplace issue raised and the concerns of the employee, remaining respectful and objective during the process and maintaining appropriate confidentiality.
3. Provide advice and support, including informing the employee about your directorate's EAP, and ensure that the health and safety of all involved staff is not at risk.
4. Discuss the issue in detail, including asking appropriate questions to collect all relevant information (and take notes to ensure you don't miss anything).
5. Find out what outcome the employee would like.
6. Conduct a Preliminary Assessment to determine the best way forward, and exploring whether the workplace issue can be resolved by the employee/s involved. In this case, you should be providing support and advice so that the employee can determine how to resolve the issue directly, or offer to assist the employee if they do not wish to resolve the issue directly themselves.
7. If you aren't sure about the correct process or need further assistance, remember to contact your local HR team for support and advice. It is important not to get this process wrong!

**Remain supportive and stay professional**

*Remember that an employee approaching you may be experiencing physical and psychological symptoms associated with the workplace issue*



### **Allegations of criminal activity**

*If an allegation of misconduct involves a criminal element, consideration should immediately be given to referring the matter to the Australian Federal Police (AFP). Directorate HR teams and/or the Shared Services Employee Relations team are available to assist with this process.*

## **APPENDIX B: Options for Resolving Less Serious Workplace Issues**

### **1      *Take no further action but continue to monitor the situation***

Employees can opt to monitor a situation rather than taking direct action immediately. This could include keeping records of the issue in a diary such as what happened and where it happened, the time and date the issue occurred, who was involved and how they were impacted. If the issue continues, they might want to complete the assessment again and look at other options. However, remember that it is important not to encourage employees to avoid issues in an ongoing manner; early intervention is key to effective resolution.

### **2      *EAP***

Be aware that each directorate offers support to employees through Employee Assistance Programs (EAP). EAP can help staff to determine coping and management strategies and assist with stress management, conflict management skills and resilience. If you don't already know who your directorate's EAP is, find out from your local HR team so that you can easily offer the details to employees if they approach you with concerns about a workplace issue.

### **3      *Personal development***

Personal development courses and training can also help staff in dealing with workplace issues. Personal development can help build resilience, self-confidence, conflict management skills, self-esteem, relationship skills and improve communication. As a manager, it is useful to be aware of the available resources and use your judgement to select training that you think may benefit the team and contribute to a positive workplace culture. You can identify these through performance discussions with your team. Training options can be found via the HR Shared Services Training Calendar.

### **4      *Back and forth communication***

Facilitated communication between employees to reach an understanding on how to manage and resolve the issue.

### **5      *Coaching***

Working with the employees involved in a one-on-one process to discuss and reflect on the issue and its impact and provide guidance, specific directions and feedback.

### **6      *Facilitated Discussion***

Facilitates face-to-face conversations between employees to communicate, resolve the issue and develop a shared understanding of how to work positively together in the future.

### **7      *Feedback***

As the relevant manager or supervisor, you observe the employees involved and offer feedback so they can reflect on their behaviour/s and interaction/s. This may also involve higher levels of supervision and more frequent feedback.

## **8      *Team Communication and Development***

As the relevant manager or supervisor, you discuss appropriate workplace expectations, roles, goals and expectations with the team. The team works together to identify underlying issues and discuss options to address potential issues.

## **9      *Instructed solutions***

As the relevant manager or supervisor, you instruct the employees involved on ways they can work together in future to resume required duties and prevent further inappropriate issues.

## **10     *Mediation***

A third party holds a structured negotiation between employees to communicate and reach an agreement on how to resolve the issue and set in place expectations about ways of working together and improving the relationship.

## **11     *Mentoring***

As the relevant manager or supervisor, you arrange for a more experienced colleague or a mentor to role model acceptable behaviour and encourage development.

## **12     *Personal Development***

Employees attend personal development workshops or training to raise awareness, improve skills or adjust behaviour.

## **13     *Self-management***

As the relevant manager or supervisor, you make an agreement with the individual experiencing the issue that they will attempt a direct conversation with the relevant person.

## **14     *Targeted communication***

As the relevant manager or supervisor, you inform the employee who has caused the workplace issue that such behaviour should be discontinued.

## **15     *Team Charters***

A team charter is developed that focuses on key workplace expectations and the potential consequences of breaching the expectations.

## **16     *Transfer to other duties***

As the relevant manager or supervisor, you transfer one of the employees to avoid further issues. Removing the affected person from the workplace may sound as if it is avoiding the problem or punishing them. However, for some people, the chance to change shifts or to work in a different area on a temporary basis might be a valid choice when the workplace issue is eroding their health and wellbeing, even if only for a short period of time. However, this option should not be used as a “quick fix” and a means of moving the problem to another team!

## **17     *Workplace conferencing***

The manager or supervisor and employees involved come together to manage their relationships when issues arise. The group goes through understanding what happened, what the impact was and what the resolution will be.

## **APPENDIX C: A Note on Counselling**

Under the ACTPS Enterprise Agreements, counselling in relation to an employee's performance or behaviour may happen at any time, without the need for an investigation.

Counselling can therefore be used as an alternative, non-disciplinary option for managing and resolving workplace issues, and may take the form of a conversation regarding general or minor performance or behavioural issues.

Counselling may also be undertaken more formally as part of the underperformance or misconduct processes. Regardless of the context in which it takes place, counselling is an action taken by a supervisor or manager in response to a workplace issue or complaint, and managers should therefore ensure that they create and retain a written record of all counselling undertaken.

When undertaking counselling as part of the underperformance or misconduct processes, the manager will:

- invite the employee to have a support person or union representative present at the counselling and will allow reasonable opportunity for this to be arranged;
- create a record of the counselling which will include details about the ways in which the employee's conduct needs to change or improve and the timeframes within which this must occur;
- provide the record of the counselling to the employee and give the employee an opportunity to provide comment before signing the record. If the employee elects not to sign the record any reasons given for refusal should be clearly noted; and
- advise the employee of any consequences of a failure to change or improve their performance or behaviour, such as the commencement of an underperformance or misconduct process.

**All parties have an obligation to participate in counselling in good faith.**

## APPENDIX D: Good Practice When Managing Workplace Issues

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**When managing and resolving workplace issues, managers and supervisors should:**

<b>Be a role model</b>	Always work towards building and maintain positive workplaces, particularly by modelling the ACTPS Values and the principles of Respect, Equity and Diversity.
<b>Treat all matters seriously</b>	Take all incidents seriously. Assess all allegations based upon the evidence.
<b>Act promptly</b>	Be alert to low level inappropriate behaviour and act quickly to resolve it before it escalates to more serious conduct.
<b>Don't victimise</b>	Ensure that anyone who raises workplace issues is not victimised.
<b>Support all parties and communicate about the process</b>	All parties involved in managing and resolving workplace issues like work bullying should be kept informed where appropriate and offered support (e.g. access to the Employee Assistance Programs, WHS officers, RED Contact Officers, HR teams, etc). All parties should be given clear reasons for any actions taken or not taken against them and be offered the opportunity to have a support person present at any meetings or interviews and should be treated with sensitivity, respect and courtesy.
<b>Stay neutral</b>	Impartiality in effective management and resolution of work bullying is essential. The supervisor, manager and delegate involved in resolving the incident should not have been directly involved in the issues at hand, and their approach should be free from any personal or professional bias. Their conduct must be in accordance with the principles of Respect at Work, Procedural Fairness and Natural Justice.
<b>Be open-minded</b>	Be open to new options for solution. Stay adaptable and flexible throughout the process.
<b>Be responsible</b>	Take the lead in reconciliation and resolution.
<b>Maintain confidentiality</b>	Confidentiality should be ensured for the person who raised the workplace issue and others involved in its resolution.
<b>Keep records</b>	Documentation is important, even if the workplace issue does not proceed to Level Three. Factual records should be kept of any discussions or meetings, detailing who was present and the agreed outcomes and expectations.

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