**Resolving Workplace Issues**

Work Bullying, Harassment and Discrimination

2019

***Note:*** *This resource provides information to employees, managers and supervisors regarding their role in preventing and resolving work bullying, harassment and discrimination. More information is available in:*

* *Resolving Workplace Issues: Resources for Employees*
* *Resolving Workplace Issues: Resources for Managers and Supervisors*
* *Guidelines to the Misconduct Process*

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

Contents

[**INTRODUCTION** 3](#_Toc433896204)

[**RELEVANT LEGISLATION** 3](#_Toc433896205)

[**DEFINITIONS** 6](#_Toc433896206)

[**PREVENTING WORK BULLYING** 11](#_Toc433896207)

[**RESOLVING WORK BULLYING** 14](#_Toc433896208)

[**SUPPORT AND ADVICE** 14](#_Toc433896209)

[**APPENDIX A: Section 9 of the PSM Act – Public Sector Conduct** 16](#_Toc433896210)

[**APPENDIX B: Examples of Work Bullying** 17](#_Toc433896211)

[**APPENDIX C: Additional Resources** 19](#_Toc433896212)

# **INTRODUCTION**

Every ACT Public Service (ACTPS) employee has the right to work in an environment free from work bullying, discrimination and harassment and to be treated with dignity and respect. The ACTPS is committed to building positive work environments and inappropriate behaviour or misconduct, such as work bullying, harassment and discrimination, will not be tolerated. This resource aims to:

* ensure that all employees meet their obligations under section 9 of the *Public Sector Management Act 1994* (the PSM Act) and uphold the ACTPS Values and Signature Behaviours;
* raise awareness regarding work bullying, discrimination and harassment and ensure employees are aware that such conduct will not be tolerated;
* assist employees to create and maintain positive and safe working environments free from all forms of work bullying, discrimination and harassment;
* ensure that employees are aware of the mechanisms available to them in managing and resolving work bullying, discrimination and harassment; and
* support directorates to meet their obligations under ACTPS Enterprise Agreements, the PSM Act and the *Work Health and Safety Act 2011* (the WHS Act).

# **RELEVANT LEGISLATION**

**The PSM Act**

The PSM Act sets out clear expectations for employees regarding upholding the professionalism and probity of the ACTPS, including standards of behaviour and the values expected of all employees when interacting with one another, providing services to the community and achieving business outcomes. All directorates must ensure that their employees are aware of, and familiar with, the values and expectations as outlined in the PSM Act.

Section 9 of the PSM Act sets out the conduct that is expected of every individual employed under the Act (these obligations are set out at Appendix A). Work bullying, harassment and discrimination are all breaches of the PSM Act, which may be dealt with as misconduct in accordance with the procedures outlined in Section H (Workplace Values and Behaviours) of ACTPS Enterprise Agreements (or in the case of Executives, the procedures outlined in executive contracts). If proven, work bullying, harassing or discriminatory conduct may result in disciplinary action being taken against the individual who conducted the behaviour.

**ACTPS Enterprise Agreements**

ACTPS Enterprise Agreements specify that work bullying, harassment and discrimination will not be tolerated and any instances, or alleged instances, of such conduct will be investigated and resolved in a manner commensurate with the seriousness of the issue at hand. Work bullying, harassment and discrimination will be managed and resolved in accordance with the procedures outlined in Section H (Workplace Values and Behaviours) of ACTPS Enterprise Agreements.

**The WHS Act**

****

**Legal responsibilities under the WHS Act**

Once a directorate becomes aware of a work bullying issue, there is a duty of care to take all reasonably practicable steps to manage the risk to work safety arising from the alleged work bullying.

Employers have a legal duty to take all reasonable steps to eliminate or minimise harm from risks to the health and safety of their workers, including psychosocial hazards such as work bullying. Workers are legally obliged not to expose themselves, or other people who may be affected by their work, to work safety risks because of the way they do their work, and are also required to cooperate with their employer in adopting measures that prohibit bullying and violence at work.

**The Discrimination Act 1991**

Under the *Discrimination Act 1991* a person discriminates against another person if they treat, or propose to treat, someone unfavourably, or imposes a condition or requirement upon a person that has, or is likely to have, the effect of disadvantaging a person on the basis of that person’s: sex; sexuality; gender identity; relationship status; status as a parent or carer; pregnancy; breastfeeding; race; religious or political conviction; physical or mental disability; industrial activity; age; profession, trade, occupation or calling; association (whether as a relative or otherwise) with a person identified by reference to one of the aforementioned attributes; or spent conviction within the meaning of the *Spent Convictions Act 2000*.

**Example of discrimination on the basis of age:** Dimitri is an experienced barista with excellent references. He applies for a vacancy at a local coffee shop. During the job interview the manager asks him how old he is. Dimitri tells the manager he is 57 years old. The next day the manager calls Dimitri to tell him that he didn’t get the job because the coffee shop wanted a ‘younger, fresher look’ for their baristas and they decided to hire a 17 year old instead. This is discrimination because Dimitri was treated differently to other applicants due to his age.

Workplace discrimination can include any policy, procedure, rule, regulation, decision or practice at work that leads to an individual or group not being treated equally in relation to the rest of the workforce because of a particular characteristic or attribute.

**The Sex Discrimination Act 1984**

**Example of sexual harassment:** Tina has been working in a new team for three months. Zac, her colleague, keeps leaving presents on her desk and repeatedly askingher out for a ‘friendly drink’, even though she always tells him she is busy and has asked him not to give her presents. Last week, Tina overheard a group in the team room laughing about how Zac has a crush on her. Tina feels embarrassed to come to work, feels anxious, and spends her time trying to avoid Zac.

Sexual harassment is a type of sex discrimination and is where a person makes an unwelcome sexual advance or request for sexual favours to another person, or engages in other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated. The *Sex Discrimination Act* makes it unlawful for a person to sexually harass another person in a number of areas including employment, education, the provision of goods and services and accommodation.

Sexual harassment may include:

* staring or leering that made you feel intimidated;
* unnecessary familiarity, such as deliberately brushing up against you or unwelcome touching, hugging, cornering or kissing;
* being followed, watched or loitering nearby;
* sexual gestures, indecent exposure or inappropriate display of the body;
* sexually explicit pictures, posters or gifts that made you feel offended;
* suggestive comments or jokes that make you feel offended;
* insults or taunts of a sexual nature;
* sharing or threatening to share intimate images or film of you without your consent;
* intrusive questions or statements about your private life or physical appearance that made you feel offended;
* displaying posters, magazines or screen savers of a sexual nature;
* sending sexually explicit emails or text messages;
* inappropriate advances on email, social networking sites or internet chat rooms;
* any other unwelcome conduct of a sexual nature that occurred online or via some form of technology;
* indecent phone calls, including someone leaving a sexually explicit message on voicemail or an answering machine;
* accessing sexually explicit internet sites;
* requests for sex or repeated unwanted requests to go out on dates; and
* behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

The *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* also make it unlawful to discriminate against a person on the basis of their sexual orientation, gender identity or intersex status. Same sex couples are also protected from discrimination under the definition of ‘marital or relationship status’ in the Act.

**The Public Interest Disclosure Act 2012 (the PID Act)**

The PID Act encourages the disclosure of improper conduct or wrongdoing in the ACTPS. The PID Act:

* requires that all directorates establish procedures to receive and investigate PIDs and act on substantiated disclosures; and
* provides informants with protections in the event of reprisal because of their disclosure.

Where bullying may amount to disclosable conduct, including conduct that may constitute a breach of public trust or adversely affect the honest and impartial performance of official functions, the matter may be addressed under the PID Act.

More information on PIDs is available at: <http://www.legislation.act.gov.au/ni/2014-357/default.asp>

****

**The ACTPS has a zero tolerance approach to work bullying**

*Individuals found to have engaged in work bullying, harassing or discriminatory behaviour will have appropriate action taken against them that is commensurate with the seriousness of the behaviour conducted.*

# **DEFINITIONS**

**Work Bullying**

In the ACTPS, work bullying is defined as unreasonable, undesirable behaviour that:

* is repeated;
* is unwelcome and unsolicited;
* creates, or could create, a risk to health and safety (including physical or psychological harm);
* occurs between workers of an organisation (i.e. it is internal rather than being initiated by a client or a person outside of the organisation); and
* a reasonable person would consider to be offensive, intimidating, humiliating or threatening.

Work bullying can happen in any organisation and can be carried out by anyone in the workplace in any position. Similarly, anyone in the workplace may be the target of work bullying. Work bullying includes a range of behaviours that may be overt or subtle and intended or unintended and could occur verbally, physically or in writing. The behaviours may be aggressive and violent, such as shouting and physical confrontations, or more subtle behaviours such as repeated, unreasonable and inappropriate behaviour.

|  |
| --- |
| Understanding bullying |
| Single incident | **Repeated** | **Mobbing** | **Intended** | **Unintended** |
| A single incident of bullying does not fall within the definition of work bullying but must be responded to appropriately because it may escalate into work bullying if ignored.The procedures discussed in the *Resolving Workplace Issues: Information for Employees* resource can be used to effectively and efficiently respond to single incidents of work bullying behaviour.  | ‘Repeated’ refers to the nature of the behaviour, not the specific behaviour that has occurred. Repeated, unreasonable behaviour towards one person may form a pattern of diverse incidents that can escalate over time. Repeated may also be the sum of single incidents directed at several workers over time. For example, verbal abuse on one occasion, intentional damage to personal property on another, and later being threatened with employment termination. These events form a series of repeated behaviours that may constitute work bullying. | Mobbing refers to work bullying behaviour perpetrated by a group of coworkers and targeted towards another worker. Sometimes they may mob numerous other workers.  | Work bullying can be intended to humiliate, offend, intimidate or distress – regardless of whether or not the behaviour had the desired effect. | Work bullying can be unintended, where the behaviour/s cause humiliation, offense, intimidation or distress or could reasonably have been expected to have that effect – even if the person conducting the behaviour/s did not intend to have that effect. |

**Direct bullying includes:** verbal abuse; putting someone down and humiliating them through gestures, sarcasm, criticism, teasing and insults (often in front of others); aggressive or intimidating conduct; practical jokes and ‘initiation ceremonies; or spreading rumours and innuendo about someone. For example:

*Brian, a project officer, was subjected to bullying by Mark, a co-worker, over a number of months. The behaviour Brian was subjected to included: Mark consistently telling him his work was not up to scratch (Mark had no role supervising Brian and they were employed in different work areas); offensive verbal abuse; threats to get him sacked; telling him that he and his family would end up in the gutter; making insulting comments about his relationship with his wife in front of others. The behaviour Brian was subjected to humiliated and intimidated him. He became severely stressed and anxious and was unable to continue working for the organisation.* **[[1]](#footnote-1)**

**Indirect bullying includes:** unjustified criticism or complaints; unreasonable work expectations (including too much or too little work or work below or above a worker’s skill level); deliberately excluding someone from workplace activities or deliberately denying access to information or other resources. For example:

***A bad day at the office***

Anyone can have a bad day, but it is not acceptable to use adverse circumstances as an excuse to treat others in the workplace badly. All employees must be aware of how they communicate and adapt their behaviour so that it is appropriate for any given situation.

That said, *not everyone will get it right all the time!* Sometimes people will cause offence.

This is where the importance of resolving workplace issues effectively and promptly at the local level becomes critical; the timeliness of an apology, and the exercise of graciousness, will help to maintain a positive work culture and avert a negative cultural impact that can lead to escalated cases of work bullying.

*Rae worked for four years as a casual shop assistant in a supermarket with 30 workers. For the last six months, Sue had been her new shift supervisor. Sue changed the time of the staff meetings to 8.30am, which Rae couldn’t attend because she had to drop her kids off at school. Sue told Rae she didn’t have the time to update her on what happened at team meetings, so Rae would only find out about the introduction of new products or changes to work procedures by trial and error. Rae used to mentor and train new workers on the job, but she found other workers were given that role. Newer casual workers were given set shifts, while Rae had to ring Sue every week to find out if and when she would be working. Rae felt humiliated and distressed by the treatment she received and ended up leaving the company once she found another job.***[[2]](#footnote-2)**

See Appendix B for more examples of work bullying.

**Harassment**

Harassment is a form of work bullying, involving unreasonable and repeated behaviour directed at an individual or group of people on the basis of their particular characteristics (e.g. sex, religion, ethnicity, disability, age, etc). It can be written or verbal and includes humiliation, abuse, spreading rumours or gossip.

**Discrimination**

Work bullying is different to, but can intersect with, discrimination. As earlier defined, discrimination is viewed as behaviour that causes humiliation, offence or intimidation to a person based upon a particular characteristic or attribute that they possess. The key feature of discrimination that distinguishes it from bullying is the “unfavourable treatment” of a person based on a particular characteristic or attribute.

Work bullying and discrimination may co-occur; however, while discrimination only needs to occur in a single incident for it to be considered unlawful, a single incident of bullying behaviour would not be considering work bullying.

An example of *direct discrimination* is where an employer refuses a promotion to an employee after learning that the employee is bisexual (discrimination based upon sexual identity).

An example of *indirect discrimination* is where a policy which deems that certain medical treatment, such as for ovarian cancer, is only appropriate for women, might disadvantage an intersex man who has both male and female sex characteristics (discrimination based upon intersex status).

**WHAT IS NOT WORK BULLYING?**

**Personality clashes, robust discussion, team dynamics**

Disagreement or differences of opinion between employees do not always equate to work bullying. 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 others’ opinions, and may sometimes be frustrating for those involved. Ensuring these interactions occur respectfully can help minimise the likelihood of the interactions being perceived as bullying in nature.

**Reasonable Management Action**

*“A public servant must, when acting in connection with the public servant’s job, comply with any lawful and reasonable direction given by a person with the authority to give the direction” (section 9 of the PSM Act)*

It is important to differentiate between a person’s legitimate work authority and work bullying. All employers have a legal right to reasonably direct and control how work is done, and managers have a responsibility to monitor workflows and give feedback on performance.

Reasonable management action is action to direct and control how work is done that is carried out in a fair way. Legitimate managerial actions do not constitute work bullying. Examples of reasonable management action include:

* providing constructive feedback on an employee’s work performance (although an employee may find this process confronting or upsetting, this does not constitute work bullying);
* transferring, terminating or taking action to make an employee redundant where the process is conducted fairly and equitably and in accordance with relevant legislation and ACTPS Enterprise Agreements;
* counselling employees in relation to underperformance;
* making justifiable and reasonable decisions related to recruitment, selection, promotion and development opportunities;
* setting reasonable performance standards and achievable deadlines;
* allocating particular hours of work to meet operational requirements (e.g. 8.30am commencement, having regard to the employment framework);
* ensuring workplace policies are implemented and adhered to;
* allocating work and rostering/allocating work hours;
* taking action to manage and resolve workplace issues in accordance with whole-of-government guidelines and ACTPS Enterprise Agreements, including implementing disciplinary action;
* talking to an employee about workplace issues such as inappropriate behaviour or misconduct, including work bullying, harassment and discrimination;
* leaving an employee out of meetings that are not relevant to their duties; and
* taking other action in line with ACTPS Enterprise Agreements.

While an action may be reasonable, the manner, tone and motivation of managerial actions will be also perceived by employees. Executives, managers and supervisors need to be aware of how their words and actions may be perceived by staff. They should model and practice the ACTPS Values and Signature Behaviours since they set the tone for how things get done in the workplace and provide a consistent point of reference across the ACTPS regarding what is, and what is not, acceptable behaviour.

**Case Study – reasonable management action:** Mira works in the purchasing department of a large organisation. She has been there for six months and works with six other staff. The department is busy and the work required is routine and shared evenly among the seven workers. On a regular basis, Mira falls behind schedule with her tasks. To help develop her admin skills and improve her work performance, the purchasing manager asked Mira to attend a two-day training course. This is a reasonable and justifiable action intended to improve Mira’s performance. Mira feels humiliated and singled out, even though her manager assures her that her job is not under threat. (Adapted from the *Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012*).

# **PREVENTING WORK BULLYING**

Because of the negative impact of work bullying, it is essential that all employees work towards preventing work bullying and other forms of inappropriate workplace behaviour and misconduct. Some ways in which this can be achieved are discussed below.

**Creating positive work cultures**

In a positive environment built upon respect for others and professional, courteous behaviour, work bullying is less likely to occur. Maintaining a positive work culture is therefore essential in helping to reduce and eliminate the harm that work bullying, harassment and discrimination may cause to the organisation and the individual. All ACTPS Executives, managers, supervisors and employees therefore have a responsibility to work towards creating and maintaining positive workplace cultures. In the ACTPS under the Respect, Equity and Diversity (RED) Framework, the foundations of a positive work culture are:

|  |  |  |
| --- | --- | --- |
| Respect | Equity | Diversity |
| Valuing and considering others at work | Ensuring that everyone is treated in a fair manner in accordance with their needs and circumstances | Recognising the value of individual differences and integrating these into the workplace  |

Other characteristics of a positive work culture include:

* leadership commitment to a positive work culture;
* clear communication of work standards and acceptable behaviour;
* clear communication of work expectations;
* regular constructive performance conversations; and
* active encouragement and development of staff.

Additional mechanisms within the ACTPS that promote positive work cultures and a no tolerance approach to work bullying include:

* the ACTPS Code of Conduct;
* the ACTPS Manager’s Toolkit;
* the ACTPS Resolving Workplace Issues resources;
* training offered under the HR Shared Services training calendar; and
* the Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012.

See Appendix C for details on these resources.

**Raising awareness and training**

Raising awareness that work bullying is unacceptable is an important step in preventing it. Work bullying, if left unchallenged, can become the “norm”. Directorates can raise awareness in many ways, including training and development strategies, communications campaigns, top-down modeling of acceptable workplace behaviour from leaders and so on.

Work bullying training should be tailored in content depending upon its audience, as per the below table:

**Consultation and Reporting**

Under the WHS Act, employers have a duty to consult employees regarding work safety issues. Consultation can help employers identify the extent of work bullying and determine the most useful preventative measures. Genuine consultation will also help create a positive work environment and engender commitment from the whole organisation. Various consultation mechanisms include:

* using existing WHS Committees and their representatives;
* directly consulting with employees through discussions and surveys (e.g. the People Matter Survey);
* specific focus groups;
* seeking feedback from stakeholders on proposed policies and procedures; and
* incorporating consultation into the ongoing risk management process.

It is critical that work bullying is appropriately reported in order to develop an accurate picture of the issues faced in particular areas of the ACTPS and develop appropriate risk mitigation strategies. Reporting will assist directorates and the ACTPS as a whole to:

****

**REPORTING**

*In the ACTPS, work bullying, harassment and discrimination can be reported through:*

1. *Supervisors and managers*
2. *Executives through the Open Door Protocol*
3. *Local HR teams*

*Other external reporting options are available – see page 15 for more information.*

* understand the size of the problem;
* take action to address the issues being reported;
* assess the success of work bullying prevention measures;
* intervene as early as possible in work bullying issues to resolve efficiently and effectively and prevent further occurrences; and
* provide prompt assistance and support to affected employees.

**Risk Management of Work Bullying**

Work bullying is a risk to work safety. The WHS Act places a duty of care on people conducting a business or undertaking to ensure work safety by completing ongoing risk management. This means that Executives have a duty to provide ACTPS employees with a safe work environment by using risk management procedures to identify, assess, control and review work safety risks, including work bullying. Risk management involves:

****

**Conducting risk assessments of work bullying**

Risks can be identified and mitigated by using the risk assessment tools and resources provided in the *Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012* (the COP). Find the COP here: <https://www.cmtedd.act.gov.au/employment-framework/managers-And-supervisors/managers-toolkit/useful-links>

# **RESOLVING WORK BULLYING**

The first step in resolving matters relating to work bullying, harassment and discrimination is to understand the seriousness of the issue at hand. Once this is determined, appropriate options for resolution can be identified.

Allegations of work bullying, harassment or discrimination require managers or supervisors to conduct a Preliminary Assessment to determine the appropriate method of resolution. While in some instances the workplace issue may be resolved remedially (i.e. in a non-disciplinary way), remember that such behaviour is treated very seriously in the ACTPS and further investigation of the issue may be required. The approach to individual cases may vary dependent upon the information available, the complexity and severity of the issues at hand.

For more information regarding the preliminary assessment process, please refer to the preliminary assessment guide in the managers toolkit.

# **SUPPORT AND ADVICE**

**Managers, supervisors and HR teams**

Employees can approach their local supervisor or manager for advice and support regarding workplace issues of any kind. If the issue they are experiencing is with their own supervisor or manager, employees can approach the next level of management, or seek support from another Executive through the Open Door Protocol (see below). Directorate HR teams also have staff equipped to provide advice and assistance to employees on workplace issues, including those of work bullying, harassment and discrimination.

**Employee Assistance Program**

People often need help in dealing with difficult workplace issues and their impact. Employees can seek assistance through the Employee Assistance Program (EAP). EAP can help you determine coping and management strategies, stress management, conflict management skills and build your resilience. Refer to your local HR team for the relevant details of your EAP provider.

**RED Contact Officers**

Each directorate has a number of RED Contact Officers (REDCOs) who undergo training and are appointed to provide advice and support to employees who may be experiencing work bullying, harassment and discrimination. While it is not the role of REDCOs to directly resolve workplace issues on behalf of the employee who has approached them, they can provide information and guidance on the mechanisms available to manage and resolve the issue/s.

Enquiries are confidential, unless the REDCO considers that there is a serious threat to the health and safety of the enquirer or another person, or suspects a criminal activity may have taken, or will take, place.

**Open Door Protocol**

Open Door is a work practice in which managers and Executives leave their door "open" (figuratively speaking) to encourage productive communication among employees. It aims to ensure that every individual has a genuine impartial avenue to bring forward concerns in relation to respect, equity and diversity issues by being able to approach their direct supervisor or senior leader to discuss their concerns and possible means of resolution.

Under Open Door, employees may approach their RED Executive Sponsor, their directorate’s HR area, or any other supervisor, manager or executive for advice or to lodge a complaint.

**Other options**

* **WorkSafe ACT**: If an employee is unhappy with the way in which their complaint is handled or with the conduct of the ACTPS in relation to their complaint (including that they think the ACTPS is not meeting its obligation to take all reasonable steps to protect employees from harm at work), they can contact WorkSafe ACT to discuss their concerns. More information is available here: <http://www.worksafe.act.gov.au/health_safety>
* **Fair Work Commission (FWC):** TheFWC may be able to help individuals resolve issues in the workplace if they cannot be resolved internally. This can include issues such as: discrimination; workplace rights; dismissal; bullying; or disputes arising during the course of negotiating enterprise agreements. More information is available here: <https://www.fwc.gov.au/>
* **Fair Work Ombudsman (FWO):** The FWO can provide individuals with information about resolving an issue or dispute in the workplace and has a range of online resources that may be of assistance. More information is available here: <http://www.fairwork.gov.au/>
* **ACT Human Rights Commission:** If an employee believes they are being discriminated against for a particular reason such as their sex, disability, race or another attribute that is protected under the *Discrimination Act 1991*, or the bullying is of a sexual nature, they can contact the ACT Human Rights Commission to discuss the matter or lodge a complaint. More information is available here: <http://hrc.act.gov.au/>

# **APPENDIX A: Section 9 of the PSM Act – Public Sector Conduct**

(1) A public servant must—

 (a) take all reasonable steps to avoid a conflict of interest; and

 (b) declare or manage a conflict of interest that cannot reasonably be avoided; and

 (c) when acting in connection with the public servant’s job—

 (i) comply with laws applying in the Territory; and

(ii) comply with any lawful and reasonable direction given by a person with the authority to give the direction; and

(iii) if dealing with a member of the public—make all reasonable efforts to help the person to understand the person’s entitlements, and any requirement the person is obliged to meet, under a territory law; and

(iv) treat all people with courtesy and sensitivity to their rights and aspirations; and

(d) do the public servant’s job with reasonable care and diligence, impartiality and honesty.

(2) A public servant must not—

 (a) behave in a way that—

 (i) is inconsistent with the public sector values; or

 (ii) undermines the integrity and reputation of the service; or

(b) take improper advantage of the public servant’s job or information gained through the public servant’s job; or

(c) improperly use a Territory resource, including information, accessed through the public servant’s job; or

 (d) without lawful authority—

 (i) disclose confidential information gained through the public servant’s job; or

 (ii) make a comment that reasonably appears to be an official comment; or

(e) when acting in connection with the public servant’s job—bully, harass or intimidate anyone; or

(f) when doing the public servant’s job—apply improper influence, favouritism or patronage.

(3) For a misconduct procedure, failing to act in a way that is consistent with subsection (1) or (2) may be misconduct.

# **APPENDIX B: Examples of Work Bullying**

***Remember:*** *This is not an exhaustive list of every type of bullying that an employee could experience and is intended as a guide only to give some practical examples of what bullying may look like.*

**Employee bullied by supervisor**

Shortly after David started a new job in the public service, his supervisor retired and was replaced by a new starter, Benjamin. Within a short amount of time, Benjamin began to frequently use abusive language and be sarcastic when dealing with his staff. David overheard Benjamin telling the senior manager of their team fabricated stories about David’s employment history that made him look incompetent. For no apparent reason, Benjamin belittled David and other staff members in group meetings. After three weeks he told David that he was considering extending his probation. When David repeatedly asked him for the reason, he would not respond. Six weeks later David’s father died in a sudden accident and Benjamin would not approve his application for compassionate leave to support his mother and organise the funeral. One week before his probation ended, David arrived at work to find a probation review report in his in-tray. The report described his performance as poor and said that Benjamin would recommend that his employment be discontinued.

**Employee bullied by supervisor**

After working for a department for seven years Graham developed an injury that required surgery, which restricted his ability to perform certain tasks. He was placed on a return to work program after recovering from surgery. His team leader, Kristy, deliberately ignored the advice of Graham’s doctor and did not follow Graham’s rehabilitation plan. Graham was placed at a new work station away from the rest of his team, was excluded from team meetings and never allocated any new work. Over the next few weeks, Graham received several emails from Kristy suggesting that he could not do his job to the same standard anymore and that he should think about resigning soon. When his rehabilitation case manager visited, Kristy told him that Graham was not a ‘team player’ and that Graham’s attitude problem had made it difficult to follow the rehabilitation plan.

**Employee bullied by colleague**

Veronica is a new graduate working in the IT services part of a government department. During her first rotation, she was supervised by a senior officer called Tom. Tom was highly regarded in the department because of the quality of his work and had recently been promoted to encourage him to stay within the department. Until Veronica arrived, Tom was the youngest, most highly qualified staff member in the team.

Initially, Tom and Veronica worked well together and were asked to work on a specific, short term project. Trying to prove herself, Veronica worked late every night and ended up doing most of the project work. At the next branch meeting, their director singled out the project and praised Veronica for the quality of her work. After that meeting, the relationship between Tom and Veronica deteriorated. When work was allocated to their team, Tom always took the most high profile, interesting work and left Veronica with filing and routine, administrative tasks. When Veronica did get to do IT related work, Tom frequently added his name to the related brief and sometimes even removed her name as well. Two weeks before her rotation ended, Tom went on holiday for two weeks, leaving Veronica to finish an important task that he had barely started. On his return, he discovered that it was not finished on time and wrote Veronica a negative performance report. This report implied that she was unreliable and should not be offered a permanent job in their branch after she finished the program.

**Supervisor bullied by employee**

Carmel was appointed to a new role as a branch manager at a government agency. This was a significant promotion for Carmel and she was nervous about starting work. After a few days, she learnt that one of the senior officers in the branch, Harry, had also applied for the job, and had been acting in it prior to her appointment. After a few weeks, it became clear that Harry was keeping important information from her about work that was underway before she started. Harry then told Carmel during his yearly performance review that no one in the branch took her seriously and that they would never respect a female manager there. He told her that he had no intention of “making her look good” and would do everything in his power to make her life difficult. After that meeting, Harry’s team never submitted work on time and would pointedly not take part in any activities that she organised. At every manager’s meeting he would speak over her or roll his eyes when she was speaking. When Carmel took leave at Christmas, she returned to find that Harry had re-written the branch work plan and submitted two budget requests in her name without her permission.

**Mobbing**

Brian had worked at a small government agency for many years and was looking forward to retiring in three years time. He had always been shy and tended to be quiet at work, keeping to himself and not attending many social functions with his colleagues outside of work. One day their agency director received an anonymous letter of complaint which alleged that several of Brian’s colleagues had been using their work cars to run personal errands during work time. It also named two of these workers as fraudulently claiming overtime from the agency over a period of several years. The director launched an internal review into the allegations and began interviewing all workers. In the week leading up to his interview, Brian found a copy of the letter on his desk with the words ‘we know it was you’ written across the bottom. One day as he arrived at work, one of the workers being investigated blocked his path on the stairs and threatened to get revenge if he did not support them at his interview. The same worker started spreading rumours that Brian was ‘a traitor’ and each time he walked into the office, several colleagues stared at him and started humming a popular song called ‘the mole’. Each time he had to work with someone from that group they did not reply his emails or phone messages and did not attend any of the group’s meetings.

# **APPENDIX C: Additional Resources**

* Resolving Workplace Issues resources (<https://www.cmtedd.act.gov.au/employment-framework/workplace-behaviours/resolving-workplace-issues>)
* The ACTPS Respect, Equity and Diversity Framework ([http://www.cmd.act.gov.au/governance/public/publications](https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0007/205576/redframework2.pdf))
* The ACTPS Code of Conduct (<http://www.cmd.act.gov.au/__data/assets/pdf_file/0017/363230/codeofcond2012_2013edit_wtables.pdf>)
* Current ACTPS Enterprise Agreements (<https://www.cmtedd.act.gov.au/employment-framework/for-employees/agreements>)
* The ACTPS Performance Framework (<https://www.cmtedd.act.gov.au/employment-framework/performance-framework/actps-performance-development>)
* Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012 (<http://www.legislation.act.gov.au/ni/2012-219/current/pdf/2012-219.pdf> )
* The ACTPS Manager’s Toolkit ([www.act.gov.au/managerstoolkit](http://www.act.gov.au/managerstoolkit))
* Employee Assistance Programs (details available through HR teams)
* The Human Rights Commission ACT (<http://hrc.act.gov.au/>)
* *Fair Work Act 2009 (Cwlth)* (<https://www.legislation.gov.au/Details/C2019C00270> )
* *The Public Sector Management Act 1994 (ACT)* (<https://legislation.act.gov.au/a/1994-37/> )
* *Discrimination Act 1991 (ACT)* (<https://legislation.act.gov.au/a/1991-81/> )
* *Sex Discrimination Act 1984 (Cwlth)* (<https://www.legislation.gov.au/Details/C2014C00002> )
* Public Interest Disclosure Guidelines 2014 (<http://www.legislation.act.gov.au/ni/2014-357/default.asp>)
* Directorate-specific resources (details available through RED Contact Officers and HR teams)
1. Case study taken from the *Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012*. [↑](#footnote-ref-1)
2. As above. [↑](#footnote-ref-2)