

# Workplace Bullying and Unreasonable Behaviour Policy and Procedures

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# POLICY

## 1. Objective

The objective of this policy and procedures is to ensure that all NSW Crime Commission (Commission) staff:

- are aware of the Commission's strong commitment to creating and maintaining a work environment that is free from bullying and other 'unreasonable behaviour'<sup>1</sup> including online abuse, harassment, sexual harassment, discrimination and victimisation
- are aware of their rights and responsibilities in relation to creating a safe workplace that is free from bullying and other 'unreasonable behaviour'
- feel secure in their ability to report any form of unreasonable behaviour without fear of reprisal
- are aware of the steps the Commission will take when unreasonable behaviour is brought to its attention
- understand legal obligations in relation to work health and safety.

## 2. Scope/Application

This policy and procedures is binding to all Commission officers including a person engaged by the Commission as a consultant or contractor under the *Crime Commission Act 2012*.

## 3. Definitions

### 3.1 Bullying

Bullying is the repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety.<sup>2</sup>

### 3.2 Harassment

Harassment is any form of behaviour (that you do not want, offends, humiliates or intimidates you or creates a hostile environment.<sup>3</sup> Harassment may be an ongoing pattern of behaviour, or a single act.

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<sup>1</sup> The definition of 'unreasonable behavior' is taken from Safe Work Australia and refers to any behavior that a reasonable person, having considered the circumstances, would see as unreasonable, including behavior that is harassing, victimising, humiliating, intimidating or threatening. Taken from *Guide for Preventing and Responding to Workplace Bullying*, page 5, May 2016.

<sup>2</sup> The definition of 'Bullying' is taken from SafeWork NSW, 'Workplace Bullying' ([www.safework.nsw.gov.au/hazards-a-z/bullying/workplace-bullying](http://www.safework.nsw.gov.au/hazards-a-z/bullying/workplace-bullying)).

<sup>3</sup> The definition of 'Harassment' is taken from Safe Work NSW, 'Harassment' ([www.safework.nsw.gov.au/safety-starts-here/our-aboriginal-program/culturally-safe-workplaces/harassment](http://www.safework.nsw.gov.au/safety-starts-here/our-aboriginal-program/culturally-safe-workplaces/harassment))

Bullying and harassment in the workplace may include, but is not limited to, the following behaviours:

- abusive, insulting or offensive language and/or comments
- vilification based on a person's actual or perceived ethnicity, religion, sexual orientation, pregnancy, disability or other protected status
- unjustified criticisms or complaints
- language and/or behaviour which offends or embarrasses the person at whom it is directed, or anyone who witnesses it
- failing to notify a person of performance issues and/or mistakes
- setting tasks that are unreasonably below or above a person's skill level
- favouritism including, but not limited to, providing preferential access to resources or opportunities regardless of operational priorities, experience and/or ability
- spreading misinformation or rumours
- deliberately doing things to inconvenience a person
- excessive workplace scrutiny, particularly when focused at a single individual
- intimidation, threats of physical violence or behaviour which induces a reasonable fear of actual harm and physical violence.

### **3.3 Sexual Harassment**

Sexual Harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.<sup>4</sup>

The *Sex Discrimination Act 1984* (Cth) defines the nature and circumstances in which sexual harassment is unlawful. It is also unlawful for a person to be victimised for making, or proposing to make, a complaint of sexual harassment to the Human Rights and Equal Opportunity Commission.

Examples of sexually harassing behaviour include, but are not limited to:

- unwelcome touching
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures or posters
- unwanted invitations to go out on dates
- unwanted sexual advances and/or requests for sex
- intrusive questions about a person's private life or body
- unnecessary familiarity, such as deliberately brushing up against a person
- insults or taunts based on sex
- sexually explicit physical contact
- sexually explicit emails or SMS text messages

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<sup>4</sup> The definition of 'Sexual Harassment' is taken from the [Sex Discrimination Act 1984 \(Cth\)](#).

### 3.4 Online Abuse

Online abuse is behaviour that uses technology to threaten, intimidate, bully, harass or humiliate someone.<sup>5</sup> Online abuse can take many forms, including, but not limited to:

- Offensive or sexually explicit messages or phone calls
- Abusive comments on social media
- Sharing or threatening to share an intimate image or video without a person's consent
- Publicising personal details online (known as 'doxing')
- Hacking into a person's social media account
- Stalking a person online or tracking them through a phone or device.

### 3.5 Discrimination

Discrimination is treating a person less favourably than others in the same or similar circumstances because of the group (e.g. age, race or disability) they belong to, or because of characteristics generally ascribed to people in that group.<sup>6</sup> Inappropriate discrimination can be based on different things including, but not limited to:

- ethnicity
- religious conviction
- political conviction
- sexual orientation
- gender
- trans-gender status
- pregnancy
- family responsibilities
- disability
- geographical origin.

### 3.6 Victimisation

Victimisation<sup>7</sup> is subjecting or threatening a person with some form of detriment because:

- a person suspects they may report bullying, harassment or discrimination either through Commission channels or through an external body
- a person has reported bullying, harassment or discrimination either through Commission channels or through an external body
- a person is supporting a person who has made a complaint of bullying, harassment or discrimination.

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<sup>5</sup> The definition of 'online abuse' is taken from Safe Work Australia, 'Online abuse in the workplace', ([www.safeworkaustralia.gov.au/safety-topic/hazards/workplace-violence-and-aggression/online-abuse-workplace](http://www.safeworkaustralia.gov.au/safety-topic/hazards/workplace-violence-and-aggression/online-abuse-workplace))

<sup>6</sup> The definition of 'discrimination' is taken from Safe Work Australia, 'Guide for Preventing and Responding to Workplace Bullying', page 7, May 2016.

<sup>7</sup> The definition of 'victimisation' is taken from Anti-Discrimination New South Wales, ([antidiscrimination.nsw.gov.au/anti-discrimination-nsw/discrimination/victimisation.html](http://antidiscrimination.nsw.gov.au/anti-discrimination-nsw/discrimination/victimisation.html))

The Commission considers victimisation and associated reprisals to be serious misconduct.

## 4. Policy Statements

### 4.1 Unreasonable Behaviour

The Commission is responsible, as far as is reasonably practical, for the health and safety of its staff. The Commission adopts a zero-tolerance approach to any form of unreasonable behaviour including bullying, online abuse, harassment, sexual harassment, discrimination and victimisation. All persons working for the Commission must adhere to the Commission's Code of Conduct and ensure they do not engage in or condone behaviours that amount to unreasonable behaviour:

- between staff members
- from Management to staff
- from staff to Management
- by or against persons attending the Commission building, including witnesses, prisoners, police officers, corrective services officers, consultants and contractors
- by or against people with whom the Commission works (e.g. financial institutions and telecommunications service providers).

The Commission will investigate all allegations of unreasonable behaviour that could be detrimental to a person's health or safety, and attempt to resolve them in a respectful, considerate and confidential manner. Individual employees of the Commission may be held legally liable for any behaviour, which they know is unacceptable in the workplace. Actions that are intimidating or physically violent (including the threat of violence) may be reported to the NSW Police Force for criminal investigation. Under s 33 of the *Law Enforcement Conduct Commission Act 2016*, the Commissioner is also required to report to the Law Enforcement Conduct Commission (the LECC) any matter on reasonable grounds that concerns or may concern officer misconduct.

Victimisation or reprisals against a person who makes a complaint, may result in disciplinary action up to and including dismissal. Such behaviour may also breach State and Commonwealth legislation. Refer to Policy Section 5 of this document and the Commission's *Internal Reporting Policy and Procedures* for details.

### 4.2 Behaviour not Considered Unreasonable

The following behaviours may **NOT** amount to unreasonable behaviour:

- a single incident of unreasonable behaviour
- providing constructive criticism of a person's work
- setting reasonable performance goals, standards and deadlines
- setting appropriate rosters and working hours
- transferring workers for operational reasons
- passing a person over for a position or advancement when the appropriate procedures are followed and documented
- talking to a person about their inappropriate behaviour objectively and confidentially
- implementing organisational change

- reasonable conflict which is conducive to debate and the generation of new ideas and solutions
- terminating employment when the appropriate policies and procedures have been followed and documented
- behaviour in a person's personal life, unless it affects the Commission, the Commission's reputation, or a person's capacity to discharge their duties at the Commission fairly and impartially.

### **4.3 Responsibility and Accountability**

All persons who work at or attend the Commission have an obligation to ensure that their acts or omissions do not adversely affect the health and safety of other persons. The following Commission staff have specific responsibilities in relation to this policy:

#### **4.3.1 The Commissioner**

In relation to allegations of bullying and other forms of unreasonable behaviour, the Commissioner has the following functions:

- receiving advice from the Chief Operating Officer that a complaint has been received
- reviewing the Chief Operating Officer's recommendations on the outcome of an investigation and making a determination
- nominating the Assistant Commissioner (Legal) to oversee the conduct of an appeal investigation, if necessary
- treating all parties involved in the matter impartially, fairly and with respect
- reporting potential officer misconduct to the LECC.

#### **4.3.2 The Assistant Commissioner (Legal)**

The Assistant Commissioner (Legal) may be nominated by the Commissioner to respond to an appeal in situations where any of the parties involved may be dissatisfied with the outcome of an initial investigation into bullying and other forms of unreasonable behaviour.

#### **4.3.3 The Executive Team**

In relation to this policy the Executive Team is responsible for:

- implementing this policy and procedures
- ensuring that the Commission meets its legal obligations in relation to preventing unreasonable behaviour
- keeping allegations and their outcomes confidential
- allocating or obtaining access to resources to assist persons who have been the victim of unreasonable behaviour
- where involved in a complaint, deciding on the appropriate action to take in relation to an allegation
- where a performance management plan is entered into, monitoring compliance with the plan and reporting to the Chief Operating Officer.

#### **4.3.4 The Chief Operating Officer**

The Chief Operating Officer has the following functions under this policy:

- appointing a staff member to investigate allegations of bullying and unreasonable behaviour
- where appropriate, working with the head of the relevant Division to ensure an equitable and appropriate outcome
- involving the complainant (if they wish) in resolving allegations against them
- deciding on appropriate disciplinary action if the allegation is substantiated
- providing the Commissioner with a report on the findings of the inquiry and recommendations for any action/s to be taken
- in cases where a decision is made to move a staff member or change their role due to allegations of bullying or unreasonable behaviour, documenting this and taking disciplinary action against the perpetrator
- liaising with the People & Culture Manager to ensure compliance with any disciplinary action taken.

#### **4.3.5 The People & Culture Manager**

In relation to this policy the People & Culture Manager is responsible for:

- providing impartial advice and assistance to persons reporting, or who have been reported for, unreasonable behaviour in relation to their rights and responsibilities
- maintaining the Bullying and Unreasonable Behaviour Register
- reporting to the Chief Operating Officer and Chief Audit, Risk & People Officer quarterly, or more frequently if appropriate, on the information contained in the Register
- providing assistance in the case of any internal or external audit of the Commission's implementation of the policy and procedures
- making recommendations for changes to the policy and procedures based on the efficacy of its implementation.

The People & Culture Manager will refer any matter under this policy to the Chief Audit, Risk & People Officer and the Chief Operating Officer who will oversee the process from investigation to finalisation. The People & Culture Manager is also responsible for facilitating training on bullying and other forms of unreasonable behaviour.

#### **4.3.6 Investigating Staff**

The Chief Operating Officer may nominate a Commission officer to investigate the initial allegations of unreasonable behaviour. The staff member investigating the allegations is to provide the following to the Chief Operating Officer:

- a conflict of interest declaration
- a written account of any discussions with the person against whom an allegation has been made
- other relevant information resulting from their investigations.

If any party involved in the allegations is dissatisfied with the findings and/or actions resulting from the initial inquiry, and launches an appeal, the Commissioner may appoint the Assistant Commissioner (Legal) to oversee the appeal process.

#### **4.3.7 Managers and Supervisors**

All those in managerial and/or supervisory roles are responsible for:

- implementing this policy and procedures in their teams
- modelling Commission values, ethical behaviour and maintaining a professional work environment
- taking all reasonable steps to ensure the workplace is free of inappropriate behaviour in accordance with the Commission's Code of Conduct and related policies
- intervening when they see or suspect unreasonable behaviour is occurring
- helping resolve any complaints of unreasonable behaviour that come to their attention
- reporting incidents of unreasonable behaviour to the People & Culture Manager.

The Commission considers any report of unreasonable behaviour to a Manager or Supervisor as official notification that will be referred to the People & Culture Manager.

#### **4.3.8 All Other Commission Staff**

All Commission staff are expected to take a role in making the Commission a safe place to work. This includes a role in creating an environment in which any form of unreasonable behaviour is not accepted. All Commission staff are responsible for:

- ensuring they do not engage in such behaviour
- encouraging people who talk to them about their experiences with such behaviour to report it to their Manager or to the People & Culture Manager
- if they witness or experience such behaviour and feel safe and confident enough to do so, calmly and clearly state that they do not like the behaviour and requesting it stop
- if the behaviour doesn't stop or they feel unable to address the matter directly with the perpetrator, reporting such behaviour to the relevant Manager or to the People & Culture Manager.

#### **4.4 Disciplinary and Other Action**

Any form of unreasonable behaviour such as bullying, online abuse, harassment, sexual harassment, discrimination and/or victimisation or deliberately providing false or frivolous allegations may amount to serious misconduct and potential criminal charges. This may include failure to notify the Commission if you witness such behaviour occurring. The Commission will address misconduct and failure to comply with this policy and procedures according to the *Misconduct and Unsatisfactory Performance Policy and Procedures*.

Staff should refer to Procedure 5 for more information on misconduct and disciplinary action.

## **5. Relevant Legislation and Documents**

The following legislation and documents relate to this policy:

- *Anti-Discrimination Act 1977* (NSW)
- *Sex Discrimination Act 1984* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Disability Discrimination Act 1992* (Cth)



- *Industrial Relations Act 1996 (NSW)*
- *Work Health and Safety Act 2011 (NSW)*
- *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*
- *Crimes Act 1900 (NSW)*
- NSWCC Code of Conduct
- NSWCC Grievance Handling (Work Related) Policy and Procedures
- NSWCC Misconduct and Unsatisfactory Performance Policy and Procedures
- NSWCC Internal Reporting Policy and Procedures
- NSWCC Complaints Handling Policy and Procedures
- NSWCC Investigation Conflict of Interests Declaration
- Anti-discrimination NSW definition of 'victimisation'
- Safe Work Australia definition of 'online abuse' and 'discrimination' and 'unreasonable behaviour'
- Safe Work NSW definition of 'harassment' and 'bullying'

## **6. Feedback**

Any feedback regarding this policy can be sent to the Audit, Risk & People Team.

# **PROCEDURES**

## **1. Making a Complaint**

If able to do so, Commission staff targeted by bullying and/or unreasonable behaviour should address this with the perpetrator in a calm and professional manner.

If, unable to do so, or if this approach does not stop the behaviour, Commission staff are to report this to their direct Manager for advice and resolution. Failing a resolution at this level, staff must escalate the matter to the People & Culture Manager. If the matter is resolved at a managerial level, it should still be reported to the People & Culture Manager as the Commission cannot address any reoccurring behaviour unless it becomes aware of it.

If the complaint relates to a direct Manager or an Executive Team member, the complaint must be reported to either the People & Culture Manager and/or, the Chief Audit, Risk & People Officer and/or the Chief Operating Officer.

In order to facilitate the complaint handling process, staff should keep a written record of the behaviour they are experiencing. All records are to be factual and include as much detail as possible such as time, date, location, witnesses, what happened, what attempts were made to address the matter and the outcome. Staff are to make notes following any conversations had with the perpetrator in an effort to stop the behaviour.

## **2. How to Respond to a Complaint**

Commission staff are to take allegations of bullying, online abuse, harassment, sexual harassment, discrimination or victimisation seriously and consider the matter in detail.

Staff should respond calmly and professionally to such allegations, and if agreed that their behaviour is unreasonable, apologise and not repeat the behaviour.

If a staff member is informed of allegations or a complaint of unreasonable behaviour against them by the People & Culture Manager, they must not confront the complainant unless the complainant has agreed to speak directly with the person about what has happened.

### **3. Commission Response**

The Commission has a legal obligation to address behaviour that amounts to bullying, online abuse, harassment, sexual harassment, discrimination and/or victimisation.

#### **3.1 Persons Involved**

Once a person in a managerial or supervisory role at the Commission becomes aware of unreasonable behaviour, they must report it to the People & Culture Manager and/or, the Chief Audit, Risk & People Officer and/or the Chief Operating Officer.

Alternatively, a person witnessing or experiencing behaviour may decide to report it directly to the People & Culture Manager. The People & Culture Manager will:

- liaise with the person making the allegation
- maintain detailed case notes about the complaint, the person/s against whom complaints are made, witness statements and any outcome or resolution of the matter. These notes should also include the identity of the complainant
- maintain confidentiality about the allegations and outcomes, except for the parties involved and any other person who may need to be consulted in order to effect a resolution of the complaint
- inform the Chief Audit, Risk & People Officer and the Chief Operating Officer of any similar complaints against a person and notify them that this might be an ongoing pattern of behaviour that has not been resolved
- arrange if required or requested and as appropriate, external assistance for persons who have been the victim of such behaviour, or for persons alleged to have been involved in such behaviours
- involve the complainant in resolving the issue, if the complainant wishes
- along with the Executive Directors and Directors, monitor any disciplinary action or other actions which are agreed upon by the Commissioner and/or Assistant Commissioner (Legal) to ensure compliance
- finalise case notes in relation to resolved complaints
- provide assistance to the LECC in cases where the LECC oversees the investigation.

#### **3.2 Investigation**

The Commission may conduct an investigation into allegations of unreasonable behaviour and such an investigation will be carried out by a staff member delegated by the Chief Operating Officer. The type of investigation will be dependent on the nature of the

allegation. An investigation may be undertaken with or without the consent of the complainant.

The investigation will generally involve speaking to all the parties involved independently and may involve other enquiries. Both the complainant and the person against whom the allegation has been made may have nominated support persons present at any scheduled meetings.

The findings of the investigation will be reported to the Commissioner along with recommendations for any action/s to be taken.

#### **4. Seeking a Nominated Support Person**

Both complainant and alleged perpetrator of the unreasonable behaviour are entitled to have a nominated support person at meetings or interviews in relation to the complaint. In addition to a nominated support person, staff may consider seeking professional support and counselling through the Employee Assistance Program (EAP), their GP or counsellor. The Commission's EAP is provided by [LifeWorks](#). Information and advice may also be sought from an external agency such as the Anti-Discrimination Board of NSW.

The nomination of a support person is the responsibility of both parties and must be internal to the Commission. However, the nominated support person cannot be someone who is a witness in the matter, a member of the Executive Team or the People & Culture Manager. An external nomination is permitted if that person is a representative from a relevant union. Details of the complaint are to be kept confidential. A breach of confidentiality could amount to misconduct.

The role of the support person is voluntary and the requested support person has a right to decline the nomination. The form of support and assistance varies according to the circumstances, but generally includes:

- providing moral or emotional support
- taking of notes
- providing advice about rights and entitlements, seeking further advice about options
- clarifying the process
- suggesting a pause during resolution meetings to assist the person being interviewed
- having a private conversation with the interviewee during the meeting
- providing clarification or explanation to the interviewee when necessary
- referring any concerns about how the meeting was conducted to a more senior Commission staff member.

During a resolution meeting, the facilitator (usually the People & Culture Manager) will inform the support person of his/her role and responsibilities. The support person must comply with reasonable meeting dates and times. If the support person is unable to attend a meeting, this should be relayed to the facilitator as soon as possible before the meeting commences. Any deliberate tactics at delaying scheduled meetings are not permitted. Throughout meetings, the support person is to remain calm, professional and respectful to all parties. The notes taken by the support person may be called upon if disciplinary proceedings are required at a later stage.

## 5. Disciplinary Action

In the event that the allegations are substantiated, the Commissioner, upon the advice of the Chief Operating Officer, will make a determination as to whether the behaviour amounted to serious misconduct, or a lesser finding of unsatisfactory conduct, and decide on a course of action.

### 5.1 Consequences of a Finding of Serious Misconduct

A finding of serious misconduct constitutes grounds for disciplinary action. The Commission has a range of options available to it in relation to disciplinary action of unreasonable behaviour. The action taken will be dependent on a number of factors, but not limited to:

- the type of behaviour
- whether the behaviour has been ongoing
- whether there has been prior intervention
- whether the behaviour represents an escalation
- whether the behaviour amounts to victimisation of the complainant or the other parties involved in the complaint.

The action available under section 69 of the *Government Sector Employment Act 2013* at the discretion of the Commissioner, but may include:

- a) terminate the employment of the employee (without giving the employee an opportunity to resign),
- (b) terminate the employment of the employee (after giving the employee an opportunity to resign),
- (c) impose a fine on the employee (which may be deducted from the remuneration payable to the employee),
- (d) reduce the remuneration payable to the employee,
- (e) reduce the classification or grade of the employee,
- (f) assign the employee to a different role,
- (g) caution or reprimand the employee.

Matters of potential officer misconduct are required to be reported to LECC under s33 of the *Law Enforcement Conduct Commission Act 2016*. Following an enquiry into the allegation, the Chief Audit, Risk & People Officer or Chief Operating Officer will make a report to the Commissioner and a recommendation on any further action to be taken. This decision may be made in conjunction with input from the affected parties and the Executive Director of the relevant Division. This can include a recommendation for mediation between the parties, a Performance Management Plan, counselling, or for disciplinary action to be taken. The Chief Operating Officer and People & Culture Manager are responsible for implementing and monitoring any disciplinary action. In some circumstances, this responsibility may be delegated to the relevant Executive Director of a Division.

In the event that a person:

- does not follow an agreed performance management plan
- does not improve the behaviour that caused the issue(s)
- does not engage in the resolution process in good faith
- continues to engage in the offending behaviour
- engages in victimisation or reprisals against the person or persons who reported the behaviour,

the Commission will regard this as an escalation will take further and more serious disciplinary action.

## **5.2 Consequences of a Finding of Unsatisfactory Conduct**

A finding of unsatisfactory conduct will lead to remedial action under the *Misconduct and Unsatisfactory Performance Policy and Procedures*. The nature of the action will be determined on a case by case basis taking into account all of the available information.

If there is a lesser finding of unsatisfactory conduct, the options available to the Commission include, but are not limited to:

- counselling by the Commissioner or an internal or external person nominated by the Commissioner
- the development of a Performance Management Plan to correct the behaviour.

In the event that the Commissioner determines that the behaviour amounts to the lesser issue of unsatisfactory conduct, failure to remedy the behaviour in accordance with an agreed plan may constitute misconduct. This is particularly the case if the offending behaviour continues.

## **5.3 Possible Legal Action**

Bullying, online abuse, harassment, sexual harassment and/or discrimination can amount to breaches of some State and Commonwealth legislation and breaches of the common law. Victimisation is contrary to both State and Commonwealth legislation.

A Court or Tribunal may hold the Commission, the perpetrator, the Executive Team and others with managerial responsibility in the matter, jointly or separately liable for the behaviour. This can result in the award of damages, the imposition of a fine, or a person being sentenced to imprisonment in extreme cases. Other remedies such as an apology, a change in policy or practice, or attendance at a relevant training course may also be imposed.

## **5.4 Treatment of the Victim**

The Commission may elect to remove the complainant from the same work environment as the alleged perpetrator and provide them with suitable alternate duties. The goal of this action is to reduce the impact of the alleged behaviour on the complainant and is not considered a form of disciplinary action. This action will not be taken without consulting the complainant.

In the event that the complainant is transferred to another area, the behaviour of the person(s) responsible for the bullying, online abuse, harassment, sexual harassment, discrimination and/or victimisation will be addressed in accordance with this policy and the *Misconduct and Unsatisfactory Performance Policy and Procedures*.

The Commission will work with the complainant to minimise any long term impacts of the behaviour upon them.

## **5.5 Appeals**

Any person who is the subject of an adverse finding in respect of bullying, online abuse, harassment, sexual harassment, discrimination and/or victimisation has the right to appeal any disciplinary action ordered.

In the first instance, the Commissioner will nominate the Assistant Commissioner (Legal) to oversee the appeal. The Assistant Commissioner (Legal) will select a person not involved in the original investigation to reassess the matter. In the event that the appeals process supports the conclusion that the person was involved in the alleged behaviour, the disciplinary action will stand. In the event that an alternate finding is made, the Commissioner and/or Assistant Commissioner (Legal) will consider whether the behaviour amounted to unsatisfactory performance.

If there is a finding of unsatisfactory performance, the disciplinary action may be altered. If the finding of serious misconduct or unsatisfactory performance is sustained and the person is still not satisfied with the outcome, they may appeal the decision in respect of the disciplinary action to the Public Sector Appeals Board of the NSW Industrial Relations Commission.

Any person who remains dissatisfied with the outcome of internal action in relation to the matter may consider a complaint to an external agency such as the Anti-Discrimination Board of NSW or Safework NSW.

## **5.6 Finalisation and Ongoing Management**

The People & Culture Manager should contact the complainant periodically to review the matter and assess whether the solution that was found continues to work. If the initial steps taken to resolve the issue, whether taken formally by the Commission or informally by the complainant, fail, the complainant should notify the People & Culture Manager immediately. Until the Commission is made aware that the first course of action did not work, no further action can be taken.

The Commission will also provide the complainant with ongoing support and advise of the support services available. This includes advice on how to make a claim for worker's compensation.

In the event that the Commission undertakes disciplinary action, develops a Performance Management Plan or counsels the perpetrator in respect of their behaviour, the behaviour will be monitored on an ongoing basis. If the behaviour does not change, or if the person begins targeting other people, the Commission will take further action.

## **6. Unreasonable Behaviour Register**

The People & Culture Manager is required to maintain a register of issues raised in relation to bullying, online abuse, harassment, sexual harassment, discrimination and victimisation. This register records:

- the identity of the person alleged to be committing the behaviour
- the nature of the complaint
- any steps that have been taken to address the behaviour prior to a notification being made to the People & Culture Manager

- the identity of the complainant
- whether the Commission has conducted an investigation
- the outcome of any investigation
- where an allegation is substantiated, any disciplinary action to be taken against the perpetrator.

The register, and any other records relating to a complaint of discrimination, harassment, sexual harassment, online abuse and/or bullying, are kept securely and separately from the parties' personnel files. Only information relating to disciplinary action should be included in a personnel file.

The register can be accessed by the Commissioner and persons delegated by the Commissioner.

## 7. Training and Awareness Program

The People & Culture Manager will provide ongoing training to staff in bullying, sexual harassment, online abuse and harassment prevention. The aim of the training and awareness programme is to:

- reinforce the Commission's zero-tolerance stance on such behaviour
- provide staff with information about the policy and procedures, their rights and responsibilities in respect of bullying and other forms of unreasonable behaviour
- create an environment in which all members of staff feel confident raising or dealing with such issues.

## Version History

| Version | Effective date | Update comments   | Author          |
|---------|----------------|---|-----------------|
| 1.0     | 21Feb14        | Initial version   | Governance Team |
| 1.1     | 17March17      | Minor amendments: Director to Executive Director; Management Team to Executive Team; and Inspector to LECC  | Governance Team |
| 1.2     | 14March19      | Updates to and addition of hyperlinks to resources; addition of information on a nominated support person and meetings; removal of the Inspector and PIC, and the addition of the LECC, Governance removed from training and awareness responsibilities – addition of | Governance Team |

|     |           |  |                      |
|-----|-----------|--|----------------------|
|     |           | HR, references to ss 14 and 33 of the LECC Act added.  |                      |
| 1.3 | 16June21  | Major rewrite.<br><br>Update policy to include references to Online Abuse.<br>Update titles.<br><br>Included definition of Online Abuse by Safework Australia in conjunction with the Office of the eSafety Commissioner.<br><br>Update Policy Statement regarding those with managerial or supervisory roles. | Governance Team      |
| 2.1 | 27Oct22   | Separation of bullying and harassment definitions  | Audit, Risk & People |
| 2.2 | 31March23 | General Review & Inclusion of stand-alone category of sexual harassment  | Audit, Risk & People |

## Publication Information

|                   |   |
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