

MANAGING BULLYING AND NEGATIVE WORKPLACE BEHAVIOUR

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Authority and Application

Clause 24, clause 25 and clause 74.5 of the *Victorian Public Service Enterprise Agreement 2020* (the VPS Agreement), apply to Victorian Public Service (VPS) Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Employers are committed to providing, as far as reasonably practicable, a working environment that is safe and without risks to health, safety and wellbeing. This common policy has been developed to assist Employers identify, manage and reduce bullying and other negative workplace behaviours. It provides guidance to support Employees and managers on how to identify harmful behaviours at work, respond to workplace issues and promote safe, positive working environments.

Bullying is a workplace behaviour that can cause significant harm. Employers have a zero-tolerance approach to bullying and other negative workplace behaviour. Employees who have been found to have either committed or condoned bullying or other serious negative workplace behaviour will be subject to disciplinary action which may ultimately lead to the termination of their employment (see Part 2 of this policy).

This policy recognises that while not all negative workplace behaviours will meet the threshold for a formal discipline process, they remain unacceptable, can be a risk to Employee health and wellbeing, and if unaddressed may escalate to bullying or other serious negative workplace behaviour. Employers have an obligation to identify, address and reduce these behaviours (see Part 3 of this policy).

Conduct that may constitute sexual harassment must be managed in accordance with the Employer's stand-alone sexual harassment policy, rather than under this policy.

Relevant provisions of the VPS Agreement

Clause 74.5 – Bullying and Violence at Work

Clause 24 – Management of Unsatisfactory Work Performance

Clause 25 – Management of Misconduct

Supplementary Guidance Information

Part 1 - General

1. Definitions

Bullying	<p>WorkSafe Victoria defines workplace bullying as repeated, unreasonable behaviour directed at an Employee or group of Employees that creates a risk to health and safety. These repeated behaviours may be overt or subtle.</p> <p>Repeated refers to persistent or ongoing nature of the behaviour and can involve a range of behaviours over time.</p> <p>Unreasonable behaviour refers to behaviour that a reasonable person, having regard to all the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.</p> <p>Risk to health and safety refers to the possibility that harm may come as a result of a potential hazard.</p> <p>Behaviours which are repeated or part of a pattern of behaviour in circumstances</p>
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	<p>where the Employee knows or should know that such behaviour is likely to cause physical or mental harm (including self-harm) to the other Employee or arouse fear of such harm, may constitute bullying and include:</p> <ul style="list-style-type: none"> • making threats towards or directing abusive or offensive acts towards another Employee • using abusive or offensive words or performing abusive or offensive acts in the presence of another Employee • acting in any other way that could reasonably be expected to cause physical or mental harm to another Employee (including self-harm), or arouse fear of such harm • physical or verbal intimidation • demeaning language or verbal abuse • outbursts of anger or aggression • excluding or isolating Employees • psychological harassment or intimidation • assigning meaningless tasks unrelated to the job • giving Employees impossible assignments • changing work rosters to deliberately inconvenience particular Employees, and • deliberately withholding information that is vital for effective work performance. <p>These behaviours may be direct or indirect, and can occur face-to-face, or via email, SMS messages or social networking sites. This list of behaviours is not exhaustive.</p> <p>Bullying may also give rise to criminal conduct. Matters involving potential Employee criminal conduct must be promptly reported to external agencies/authorities and dealt with in accordance with an employer's obligations under relevant laws.</p> <p>While a single incident of bullying-type behaviour will not meet the WorkSafe Victoria definition of workplace bullying, it remains unacceptable and negative workplace behaviour that may, if substantiated, constitute misconduct. Single-instances of bullying-type behaviour, while not meeting the definition of bullying described above, will nonetheless be managed under Part 2 of this policy.</p>
Discrimination	<p>Discrimination occurs when an individual is treated unfairly at work on the basis of an attribute or characteristic that is protected by law.</p> <p>Discrimination in employment may occur in a number of ways including:</p> <ul style="list-style-type: none"> • job advertisements • interview questions • refusing to employ someone • setting unfair terms of employment • assigning work • denying access to training programs • refusing or limiting access to opportunities for promotion or higher duties, transfers or other employee benefits • refusing or limiting access to reasonable adjustment • termination of employment if the action is based on an attribute.

	<p>Direct discrimination occurs if a person treats, or proposes to treat, someone with a protected attribute (personal characteristic) unfavourably at work because of that attribute.</p> <p>Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging a person or group with a protected attribute, and where that requirement, condition or practice is not reasonable.</p> <p>Attributes that are protected under anti-discrimination laws include: age; breastfeeding; carer status; disability; employment activity; gender identity; industrial activity; lawful sexual activity; marital status; parental status; physical features; political belief or activity; pregnancy or potential pregnancy; race; religious belief or activity; sex; sex characteristics; sexual orientation; spent conviction; and personal association with someone who has, or is assumed to have, one of these attributes.</p> <p>Discrimination on the basis of defence reserve service is also a prohibited ground.</p> <p>It is unlawful to directly or indirectly discriminate against someone in employment (some exceptions apply at law). In addition, the Employer has a positive duty to eliminate discrimination.</p>
<p>Disrespectful workplace behaviour</p>	<p>An umbrella term covering any disrespectful behaviour at work that is unacceptable, unprofessional or offensive that has negative consequences for individuals, teams and for organisations. Disrespectful behaviour includes, but is not limited to, rudeness and discourteous conduct, and behaviour that is inconsistent with the public sector values under the <i>Public Administration Act 2004</i> (Vic) (PA Act) or the <i>Code of Conduct for Victorian Public Sector Employees</i> (VPS Code of Conduct).</p> <p>Part 3 of this Policy addresses disrespectful workplace behaviour that does not typically meet the threshold for commencing a misconduct process under clause 25 of the VPS Agreement, though remains unacceptable in the workplace.</p>
<p>Harassment</p>	<p>Harassment is a single or sequence of unwelcome offensive comment(s) or actions and can include behaviour such as telling insulting jokes about particular racial groups, displaying racially offensive or pornographic posters or screen savers, making derogatory comments about someone's race or disability, or asking intrusive questions about someone's personal life.</p> <p>Harassment can be against the law when it is discriminatory (discrimination), when it includes conduct of a sexual nature (sexual harassment) or when it causes a risk to someone's health or safety (occupational health and safety). If the behaviour is <i>not</i> on the basis of a protected personal characteristic or attribute it may, instead, be workplace bullying.</p>
<p>Interpersonal conflict</p>	<p>Interpersonal conflict is a clash between people arising from the actual or perceived opposition of individuals' needs, values and interests. Where Employees engage with each other regarding a difference of opinion or disagreement in a disrespectful way, this could be considered a conflict. It may arise from personality or style differences, personal issues or organisational factors.</p>

Misconduct	<p>Clause 25.3 of the VPS Agreement defines misconduct as including:</p> <ul style="list-style-type: none"> • a contravention of a provision of the <i>Public Administration Act 2004</i> (Vic) (PA Act), the regulations to the PA Act, or <i>Code of Conduct for Victorian Public Sector Employees</i> (VPS Code of Conduct) or a provision of any statute or regulation that applies to the Employee in their employment • improper conduct in an official capacity • a contravention, without reasonable excuse, of a lawful direction by a person authorised to give that direction • making improper use of a position for personal gain; or • making improper use of information acquired by virtue of his or her position to gain personally, or for anyone else, financial or other benefits or to cause detriment to the VPS or the public sector. <p>Bullying (and single-instances of bullying-type behaviour), discrimination and harassment, if substantiated, are likely to constitute misconduct under this definition.</p>
Negative Workplace Behaviour	<p>Bullying, single-instances of bullying-type behaviour, discrimination and harassment or other types of behaviour of a serious nature which would, if substantiated, constitute a breach of the Code of Conduct.</p>
Unsatisfactory Work Performance	<p>Clause 24.4 of the VPS Agreement defines an Employee's work performance as unsatisfactory if the Employee fails to perform in the ways described in the Code of Conduct for Victorian Public Sector Employees or perform to the required standards or expectations of their role.</p>
Victimisation	<p>Treating someone less favourably or threatening to treat someone less favourably because they have:</p> <ul style="list-style-type: none"> • asserted their rights under equal opportunity law • made a report (such as a bullying, harassment or discrimination report) • assisted/supported someone else in making a report (such as a bullying, harassment or discrimination report) • participated in a reports process (such as an enquiry, fact-finding or formal investigation in relation to a bullying, harassment or discrimination report) • refused a direction because carrying out that direction would be discrimination, harassment or victimisation <p>Examples of victimisation include, but are not limited to:</p> <ul style="list-style-type: none"> • bullying and intimidation by co-workers • being denied a promotion or moved to a role in another location or with less pay/responsibility • dismissal from employment.
Workplace	<p>This policy relates to negative behaviours occurring at work (whether working at an office location or remotely), covering behaviours which occur across a range of workplace settings including:</p> <ul style="list-style-type: none"> • at an office location – including on the work premises, as well as in common areas such as the carpark, lifts, reception area and bathrooms • field-based work settings • at work-related events, including meetings or when carrying out work-related functions outside the usual physical work premises, such as

	<p>attending a conference</p> <ul style="list-style-type: none"> • in online spaces through technologies and social media platforms, where the interaction is connected to employment, including when working remotely • between people sharing the same workplace, such as contractors or people sharing a co-working space. <p>While this policy deals with conduct occurring in the course of work (whether at a physical or remote workplace), in certain circumstances, an Employee's conduct out of hours, which has a sufficient connection to the employment relationship, may also be investigated under clause 25 of the VPS Agreement (see the Management of Misconduct Policy).</p>
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2. Principles

- 2.1. Bullying and negative workplace behaviours are a serious occupational health and safety concern in that they pose a significant risk to the health, safety and wellbeing of Employees. Harm caused by bullying and other negative workplace behaviour can have an impact on many aspects of an Employee's life. Witnesses to bullying and negative workplace behaviours may also be negatively impacted by the conduct.
- 2.2. Employers have an obligation under the *Occupational Health and Safety Act 2004* (Vic) (OHS Act) to provide and maintain, as far as is reasonably practicable, a safe work environment for their Employees, including by addressing and appropriately responding to bullying and other negative workplace behaviours. Employers may be held liable if reasonable steps are not taken to prevent and respond to negative workplace behaviours.
- 2.3. Bullying and other negative workplace behaviours may also constitute a breach of the VPS Code of Conduct and the PA Act and may be the subject of misconduct processes under clause 25 of the VPS Agreement.
- 2.4. Employers are required to take proactive steps to prevent, address and reduce the incidence of bullying and other negative workplace behaviours in the workplace, including by:
 - (a) messaging a zero tolerance of bullying and negative workplace behaviours and reiterating the commitment to providing a safe workplace for Employees
 - (b) monitoring the work environment and promoting awareness of this policy
 - (c) modelling respectful workplace behaviours, positive and inclusive leadership styles, and acting in accordance with the VPS Code of Conduct and values
 - (d) increasing awareness of what constitutes bullying and other negative workplace behaviours, as well as outlining expected standards of behaviours and ways to prevent and manage these behaviours
 - (e) encouraging early intervention through local resolution where possible and reasonable in the circumstances
 - (f) addressing concerns, issues and reports regarding bullying and other negative workplace behaviours in a timely and sensitive manner
 - (g) encouraging and supporting Employees to raise, discuss and report bullying and other negative workplace behaviours and messaging that all reports are to be taken seriously.
- 2.5. This policy recognises that bullying and other negative workplace behaviour may occur in-person or online, when an Employee is working from their usual workplace(s), or when working outside their usual place of work.

3. Employee health and wellbeing

- 3.1. Employees' health and wellbeing is highly valued. Employers will ensure that health and wellbeing supports are offered to an Employee who reports that they have experienced bullying and/or other negative workplace behaviour.

- 3.2. It is recognised that participating in processes described under this policy may have an impact on Employee health and wellbeing, including Employees who experience the behaviour, Employees who report the behaviour, Employees who are witnesses to the behaviour and the Employees whose behaviour is the subject of reports. Employers will ensure that health and wellbeing supports are offered to Employees who participate in processes described under this policy.
- 3.3. The Employer will inform an Employee who is subject to processes described under this policy that they have access to the Employee Assistance Program (EAP) or equivalent and provide the relevant details.

4. Confidentiality and privacy

- 4.1. It is important that appropriate confidentiality is maintained by all parties engaged in matters managed under this policy. If disclosure of matters is required from time to time, this must be restricted to include only those on a need-to-know basis. This will include matters involving potential Employee criminal conduct, which must be promptly reported to appropriate external agencies/authorities by the Employer. Advice may be sought from the Department/Agency's local privacy contacts prior to the release of material that may contain personal details.
- 4.2. Notwithstanding the above, Employees are not precluded from making disclosures to: a representative (including a union representative) or support person for the purposes of obtaining advice; where required by law; to an immediate family member; or in the course of seeking assistance from EAP, a counsellor, psychologist or other medical practitioner.
- 4.3. Where a matter is classified as 'public interest disclosure' (previously known as a 'protected disclosure'), parties must also comply with their obligations under the *Public Interest Disclosure Act 2012* (Vic). Further information can be located at <https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>.

5. Victimisation

- 5.1. Fear of victimisation can act as a deterrent to reporting negative workplace behaviours. There is zero-tolerance approach towards victimisation and Employers will take reasonable steps to proactively prevent victimisation from occurring.
- 5.2. Victimisation is unlawful and prohibited under state legislation. No person shall victimise an Employee or person who has made, or may make or support, a claim or report in accordance with this policy. Nor shall any person victimise an Employee or other person who is identified as a witness or provides information (or is otherwise involved) in support of a process that is undertaken to address a report or claim under this policy. Conduct of this kind may be subject to clause 25 of the VPS Agreement.

6. Sexual Harassment

- 6.1. Sexual harassment is unwelcome conduct of a sexual nature that makes a person feel offended, humiliated or intimidated, and where a reasonable person, having regard to all the circumstances, would anticipate that the other person would be offended, humiliated or intimidated by such conduct.
- 6.2. Conduct of a sexual nature may occur in person, in writing, or online, and includes:
 - (a) subjecting a person to any act of physical intimacy
 - (b) making a verbal or written remark or statement with sexual connotations to a person or about a person in their presence
 - (c) making any gesture, action or comment of a sexual nature in a person's presenceSexual harassment is unlawful and prohibited by both state and federal legislation.
- 6.3. A single incident may constitute sexual harassment.

- 6.4. Conduct that may constitute sexual harassment must be managed in accordance with the Employer's stand-alone sexual harassment policy, rather than under this Policy.

7. Information or reports without substance

- 7.1. This policy must not be used to pursue personal grievances against Employees that cannot reasonably be considered bullying or other negative workplace behaviours.
- 7.2. A report that is vexatious, malicious or made in bad faith may be considered misconduct and referred for management in accordance with clause 25 of the VPS Agreement.

8. Record keeping and documentation

- 8.1. The Employer should ensure complete and accurate records of concerns raised, and actions taken under this policy, are kept. Documents should record the steps taken in the process, the relevant decisions made, the supports provided, and the action(s) taken. Records should be accurate, complete and protected against unauthorised access or alteration.

Part 2 – Bullying and other negative workplace behaviour that may warrant misconduct investigation and disciplinary action

9. Identifying bullying and other negative workplace behaviours

Workplace behaviours likely to be considered bullying that warrant formal misconduct investigation and disciplinary action

- 9.1. Bullying is repeated behaviour which is a risk to health and safety, including both physical and psychological safety. Bullying can include subtle, less overt behaviours as well as direct or openly hostile behaviours, it may be task-oriented or related to workload and may constitute a combination of behaviours rather than a pattern of the same specific behaviour.
- 9.2. The following types of behaviour, where experienced by an individual or group, and repeated, or occurring as part of a pattern of behaviour, are likely to be considered to be bullying:
- (a) making threats or directing abusive or offensive acts towards another Employee
 - (b) using abusive or offensive words performing abusive or offensive acts in the presence of another Employee
 - (c) acting in any other way that could reasonably be expected to cause physical or mental harm to another Employee (including self-harm), or arouse fear of such harm
 - (d) demeaning language or verbal abuse
 - (e) physical or verbal intimidation or psychological harassment
 - (f) excluding or isolating Employees
 - (g) “ganging up” on an Employee
 - (h) giving Employees impossible assignments
 - (i) deliberately changing work rosters to inconvenience particular Employees
 - (j) deliberately withholding information that is vital for effective work performance

The above list is not exhaustive. Other types of behaviour may also constitute Bullying and warrant a formal misconduct investigation.

- 9.3. While a single-instance of any above-listed behaviour will not meet WorkSafe Victoria's definition of bullying, it is still unacceptable behaviour that, if substantiated, may constitute misconduct and warrant a formal misconduct investigation. If interpersonal conflict or disrespectful workplace behaviour does not warrant formal disciplinary action, it will be dealt with in accordance with Part 3 of this policy.

Behaviours likely to be considered discrimination or harassment which warrant formal misconduct investigation and possible disciplinary action

9.4. The following types of behaviour, where directed towards an individual, are likely to be considered discrimination or harassment:

- (a) dismissing or not employing or promoting a person due to a personal attribute (see definitions at Part 1 of this policy), for example, the person's pregnancy status or potential to fall pregnant, race or sexual orientation
- (b) threats or verbal intimidation
- (c) providing feedback in a demeaning or humiliating manner
- (d) offensive comments, emails or jokes
- (e) displaying offensive material

The above list is not exhaustive and other types of behaviour may also constitute behaviour which may warrant commencing a misconduct process in accordance with clause 25 of the VPS Agreement.

10. What is not bullying or other negative workplace behaviour

10.1. Reasonable management action carried out in a reasonable manner does not constitute bullying or any other negative workplace behaviour. Managers have a legitimate authority to direct and control how work is performed.

10.2. Generally, the following behaviours are examples of what may constitute reasonable management action and will not constitute bullying or any other form of negative workplace behaviour when carried out in a respectful and reasonable manner:

- (a) legitimate, constructive and fair management feedback on an Employee's performance or behaviour from managers, including raising concerns in relation to unsatisfactory performance
- (b) legitimate and courteous comment and feedback on working arrangements, whether originating from managers to Employees or from Employees to managers
- (c) managers allocating work and setting reasonable expectations in relation to delivery of work, including in relation to quality and timeframes
- (d) discussion with management in relation to career development and planning during performance feedback, whether formal or informal
- (e) isolated incidents of behaviour such as abruptness, sharpness or rudeness.

11. Reporting bullying and other negative workplace behaviours

11.1. Employees are encouraged to report bullying (and single instances of bullying-type behaviour), discrimination or harassment to their line manager in the first instance. If the Employee feels that it is not appropriate in the circumstances or they do not feel comfortable or safe reporting matters to their line manager, they can report the behaviour through other appropriate channels, including to their next line up manager, to the Department/Agency's People and Culture Unit (or equivalent unit) and/or Health and Safety Representative.

11.2. Should matters reported by an Employee be assessed by the Department/Agency as not warranting a misconduct investigation under clause 25 of the VPS Agreement, the matters may be referred for management under Part 3 of this policy. Employees who experience behaviour that they consider to be less serious than bullying (or a single instance of bullying-type behaviour), discrimination or harassment should respond to these matters in accordance with Part 3 of this policy.

11.3. Employers should consider whether a report of bullying or other negative workplace behaviour may indicate a broader problem in the workplace and in the workplace culture and take appropriate steps to monitor and address any cultural issues.

12. Witnessing bullying and other negative workplace behaviours

- 12.1. Where another Employee observes behaviour that they consider to be bullying (or a single instance of bullying-type behaviour), discrimination or harassment towards another Employee they may wish to check their interpretation of the behaviour with the person who experienced it and establish if the Employee is of the view that the behaviour is not appropriate.
- 12.2. Where possible and reasonable in the circumstances, the witness should establish whether the Employee who experienced the behaviour feels safe and able to report their concerns. If the witness is concerned about the nature of the conduct observed or that the matter will otherwise remain unaddressed, the witness should raise the matter with their own line manager or via other appropriate channels, including to the People and Culture Unit (or equivalent).

13. Misconduct or unsatisfactory performance

- 13.1. If the reported or observed behaviour is assessed as conduct that may constitute misconduct (for example, bullying, discrimination or harassment, a single instance of bullying-type behaviour or other negative workplace behaviour), further action may be taken in accordance with the Management of Misconduct Policy and clause 25 of the VPS Agreement.
- 13.2. If the reported or observed behaviour is assessed as conduct or behaviour that may constitute unsatisfactory work performance, further action may be taken in accordance with the Management of Unsatisfactory Work Performance Policy and clause 24 of the VPS Agreement.

14. Potential criminal matters

- 14.1. If the reported or observed behaviour is assessed as being a matter of potential criminal conduct it must be promptly reported to Victoria Police.

Part 3 – Disrespectful workplace behaviour and interpersonal conflict that may not warrant referral to the management of misconduct process

15. Identifying disrespectful workplace behaviour

Workplace behaviour which is not likely to be considered bullying or other negative workplace behaviour

- 15.1. A safe, healthy workplace culture can be undermined over time by persistent incidences of disrespectful workplace behaviour, even if the behaviour is unintentional.
- 15.2. Disrespectful workplace behaviour is not acceptable in the workplace; however, in practice some types of these behaviours will generally fall below the threshold of the misconduct process because they:
 - (a) involve an error of judgment or innocent mistake
 - (b) are not intentional or wilful; and/or
 - (c) are behaviours which are generally less serious than misconduct.
- 15.3. Some Employees may perceive certain disrespectful workplace behaviours as bullying, even though it does not meet the definition of bullying (or does not present as a single-instance of bullying-type behaviour). Such disrespectful workplace behaviour can still have a range of negative impacts on Employees and must be addressed when it is observed or reported.

- 15.4. Employees may experience work or personal pressures or stresses from time to time, however, this will never be an acceptable explanation for disrespectful workplace behaviour.
- 15.5. If repeated, disrespectful workplace behaviours that have not previously risen to the level of being subject to Part 2 of this policy may escalate and subsequently require management under Part 2.
- 15.6. Further information on managing disrespectful workplace behaviours which, if substantiated, would not constitute misconduct can be found at section 18 of this policy.

Isolated incidents of disrespectful behaviour

- 15.7. Isolated incidents of disrespectful behaviour such as abruptness, sharpness or rudeness, while unacceptable, generally do not meet the WorkSafe definition of bullying. However, if the behaviour does continue over a period of time, it may be deemed to be bullying or otherwise characterised as behaviour that warrants formal misconduct investigation (see Part 2 of this policy).

Interpersonal conflict

- 15.8. While it is inevitable that interpersonal conflict will arise in most workplaces, differences of opinion or disagreements will generally not constitute bullying (or a single instance of bullying-type behaviour), discrimination or harassment. Where interpersonal conflict arises in the workplace, Employees are expected to engage respectfully and professionally with each other and, where possible, focus on strengthening working relationships by reflecting on the situation and determining the most effective course of action to resolve the conflict.
- 15.9. Interpersonal conflict may be addressed in accordance with the strategies and approach described below at section 18 of this policy. Given the nature of interpersonal conflict, it is suggested that Employees and Employers give consideration to participating in an agreed facilitated discussion where appropriate in the circumstances. It is suggested that the facilitated discussion may be conducted by either a manager or appropriate trained professional to address the concerns raised in the first instance.
- 15.10. Where interpersonal conflict is not appropriately managed, it has the potential to escalate into bullying or other negative workplace behaviour. This policy recognises that interpersonal conflict will often be able to be dealt with at a local level, however, depending on the nature of the conduct that accompanies interpersonal conflict, it may give rise to an investigation and disciplinary action. This is particularly when it involves instances of frequent disrespectful behaviour between parties.

16. Unsatisfactory work performance

- 16.1. If the reported or observed behaviour is assessed as likely to constitute unsatisfactory work performance further action may be taken in accordance with the Management of Unsatisfactory Work Performance Policy and clause 24 of the VPS Agreement. This may include informal performance management in the first instance.

17. Witnessing disrespectful workplace behaviour

- 17.1. Where an Employee observes behaviour that they consider to be disrespectful workplace behaviour towards another Employee, they may wish to first check their interpretation of the behaviour with the person who experienced it and establish if the Employee agrees that the behaviour is not appropriate.
- 17.2. Where possible and reasonable in the circumstances, the witness should establish whether the Employee who experienced the behaviour feels safe and is able to deal with the issue themselves or by discussing the matter with their manager. If the witness remains concerned about the nature of the incident or that the matter will otherwise remain unaddressed, the witness should raise the matter with their own line manager or through another appropriate channel (including to the People and Culture Unit or equivalent unit).

18. Responding to reports or observations of disrespectful workplace behaviour

18.1. Employee-led resolution

- Issues may be prevented from escalating to more serious conduct or bullying behaviours if they are addressed locally. Sometimes, people may see their behaviour as innocent or unintentional, however, they need to be able to consider its effect on others. When feedback is shared, an Employee may then have the opportunity to reflect, consider alternative approaches and, ideally, cease the disrespectful workplace behaviour.
- An Employee with a concern is encouraged to deal with the issue themselves as a first step if they feel safe and otherwise able to do so. This may include raising concerns with the other person in a constructive way and seeking clarification of the other person's perspective – as the other Employee may not be aware of the consequences of their actions or that their behaviour is inappropriate. Alternatively, the Employee may consider speaking to the person about the concern in the company of a support person or representative.
- If an Employee is not comfortable or does not feel safe raising the concern with the other person/s directly, including in circumstances where the other person has more authority or due to the nature of the behaviour, the Employee may consider using the support of someone to facilitate their communication with the other person.

18.2. Manager-led resolution

- Where employee-led or facilitative support is not the most appropriate strategy, the matter can be escalated to a senior manager with line management responsibility. Employers are accountable for identifying and managing a response to inappropriate behaviour, whether it is directly observed by them or reported to them either verbally or in writing. Managers must act as soon as possible in response to any inappropriate behaviours that may potentially cause harm to other Employees. Even if a stand-alone event may not warrant action under Part 2 of this policy, the behaviour may still negatively impact the individual involved and may be a pre-cursor to bullying.
- Making a report can be challenging for the impacted Employee, and managers will need to support the Employee's wellbeing following the disclosure or report of disrespectful behaviour, including by ensuring Employees have access to the Employer's EAP details.
- The action taken in response to the identified behaviours will be based on the Employer's initial assessment of the concerns, including the nature and severity of the conduct. In assessing reports or observed inappropriate behaviours, managers need to remain objective and obtain a clear understanding of the situation. Managers should listen to the Employee and demonstrate respect and concern while remaining impartial and avoid judging or blaming the Employee who has reported the disrespectful workplace behaviour.
- Where the manager believes the relationship between parties may further deteriorate and present a risk to the health and wellbeing of Employees involved or others, the manager may temporarily assign alternative duties, change reporting lines or re-locate Employees while the matter is being resolved.
- Depending on the nature of the behaviour, the manager may choose to talk to all Employees involved, either individually or together to: discuss the behaviours and their impact; discuss any different interpretations of the incident(s); discuss expectations of appropriate behaviour in the workplace; and explore practical ways forward that are, ideally, acceptable to all parties.
- If concerns regarding disrespectful workplace behaviours are not successfully addressed through local approaches, or these approaches are not deemed appropriate by management due to the nature of the concerns, the matter may proceed to more formal resolution strategies. The manager may also wish to consider impacts to the broader workplace culture, and review training options and workspace configuration.

- If unsure of the appropriate action to take, management should seek advice from an appropriate representative of the Employer, such as the People and Culture Unit as early as possible or request an independent assessment of the concerns raised.

18.3. Independent assessment of the concerns

- Where appropriate in the circumstances, management may refer concerns raised to the local People and Culture Unit contacts or other nominated areas to assess the concerns and provide advice and guidance on the options for addressing the reported behaviour. Assessments should be undertaken by an impartial person who is independent of the parties involved in the concerns and has had limited previous direct involvement in the management of the matters or concerns. This may include a contact within the People and Culture Unit (or equivalent unit), the management line or a person external to the Department/Agency.
- The independent person may speak to the specific people concerned and may choose to speak to others involved in the matter if necessary. The independent person should provide a safe environment for expressing concerns, identify ways to address the behaviour and provide opportunities to rebuild damaged interpersonal relationships and strengthen teams.
- An independent assessment of concerns is not an investigation or misconduct process. Local processes should be forward-looking and focus on resolving the conflict and supporting working relationships, in consultation with the Employee, rather than proving that something inappropriate happened or establishing the facts of what did or did not happen.
- The role of the independent person is to examine, identify and recommend a way forward, bearing in mind that:
 - interpersonal issues should be dealt with quickly. The longer they are ignored, the more difficult it will be to resolve them
 - if not resolved, such issues may have an impact on the health and wellbeing of those involved
 - unresolved issues may contribute to a negative impact on the work of performance of those involved (which may also be due to the impacts on an Employee's health and wellbeing arising from the issues raised)
 - parties should be treated with respect and with acknowledgement of the distress they feel rather than making a judgment as to who is right or wrong.
- As part of this process, the independent person will objectively consider and recommend a way forward that is appropriate in the circumstances. This may include, but is not limited to, the following options:
 - awareness raising session/s on appropriate behaviour
 - suggesting resolution strategies such as mediation or facilitated discussion (see sections 18.4 and 18.5 below)
 - reassignment or a change to working hours or locations
 - an agreement on protocols to manage the relationship moving forward
 - referring the matter to a performance management process, including informal performance management options
 - referring the matter to a misconduct process
 - any other actions deemed appropriate
 - no further action
- There may be occasions where the Employee raising the concerns does not wish the concerns to be referred to a formal misconduct process and would prefer to engage in

other resolution strategies. However, where the matters have been referred for an independent assessment, it is not appropriate to commence other processes to address the Employee's concerns until this assessment has been concluded and an appropriate way forward recommended (which may include referral to a misconduct process).

18.4. Resolution strategies

There are numerous strategies that can be used to address disrespectful workplace behaviour and interpersonal conflict that may fall short of bullying and other negative workplace behaviour. Such strategies may include:

- **Facilitated discussion** may occur where mediation is not feasible and involves parties either electing or being directed to participate in an unstructured discussion facilitated by an independent person. The aim of a facilitated discussion is to prompt the parties to focus on the key issues with a view to achieving a mutually acceptable resolution.
- **Conflict coaching** may be appropriate where one of the parties may want to develop their capacity to appropriately respond to the situation themselves. A conflict coach will work with the Employee to clarify key issues and explore options for resolution. After the session/s, the Employee may choose to deal with the concerns directly or otherwise elect to progress the matter to mediation or other resolution option.
- **Workplace training** is facilitated by an independent person, usually external to the Department/Agency, and can be utilised where inappropriate behaviours may be indicative of broader cultural issues. Workplace training involves participation of all parties who have been directly involved or affected by inappropriate behaviours, including management, and enables all parties to participate in a discussion regarding the issues and contribute to the development of resolution.

Where appropriate in the circumstances, workplace training or coaching may also be offered to an individual who is engaging in identified disrespectful behaviour where the behaviour is considered to be in part or wholly due to issues with the individual's particular management, leadership or communication style.

- **Mediation** is most effective as an early intervention strategy and can only occur if parties agree and are willing to participate in the process. The mediator creates a non-confrontational, cooperative forum for the parties to identify key issues and develop agreed outcomes. Any outcomes will be documented, and the mediator will provide a copy of the agreement to each party.

18.5. Other management action

- As part of, or following, the above resolution strategies, the Employer may adopt other practical changes to resolve or mitigate the concerns between the parties including but not limited to changing working arrangements or changing reporting lines. Any changes need to be discussed with the parties concerned and implemented as part of a supportive – not punitive – process.
- Where Employees do not agree to engage in reasonable opportunities provided by the Employer to resolve the concerns, they must suggest reasonable alternative strategies. Where resolution strategies cannot be agreed to, Employees will be expected to raise any further concerns in a reasonable and respectful manner and engage professionally with each other on a day-to-day basis.
- It is important that in making such arrangements (e.g., changes to working arrangements) there is no attribution of blame. Such arrangements may not always lead to a resolution, as they may leave the underlying problem unaddressed and are more likely to be successful where used in conjunction with other strategies to address any underlying issues.
- Where in undertaking steps to address interpersonal conflict or other disrespectful workplace behaviour under this Part it becomes apparent the behaviour may constitute bullying (or a single instance of bullying-type behaviour), discrimination or harassment,

the matter should be dealt with in accordance with clause 25 of the VPS Agreement (see Part 2 of this policy).

19. Timeframes

- 19.1.** Employees are encouraged to raise any concerns as soon as possible. However, this policy recognises that Employees may need more time to make a report under this policy or may not feel secure in raising a report due to a variety of reasons. The timeliness of a report will not, therefore, in itself be a valid reason for the Employer not to investigate or address a matter raised under this policy.
- 19.2.** Reports of disrespectful behaviour will be addressed in a timely manner. Any process or actions taken under Part 3 of this policy to address disrespectful behaviour should be commenced as soon as possible, and ideally within 28 days of the behaviour being reported.
- 19.3.** If actions under Part 3 of this policy do not commence within 28 days of the behaviour being reported, the reasons for the delay must be communicated to the Employees involved, and, where possible, new timeframes should be communicated.
- 19.4.** If an instance of disrespectful behaviour has previously been raised and addressed, it should not be raised again. However, if further instances of disrespectful behaviour arise, previously addressed examples may be raised again to demonstrate a pattern of harmful workplace behaviour (seen further at paragraph 20.2 of this policy).

20. Monitoring and review

- 20.1.** Behavioural change can be a gradual process and it is important for management to monitor workplace behaviour and culture to ensure that inappropriate conduct does not return. This may involve follow-up discussions with one or both parties as well as observing the workgroup more broadly.
- 20.2.** If disrespectful workplace behaviour recurs, Employees are encouraged to notify their manager or local People and Culture contact. Recurrence of disrespectful workplace behaviour may result in referral to management of these concerns under a performance or misconduct process.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 74.5 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Related policies or documents

VPS Enterprise Agreement Common Policies

- Occupational Health and Safety and Rehabilitation
- Management of Misconduct
- Management of Unsatisfactory Work Performance
- Review of Action

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Occupational Health and Safety Act 2004 (Vic)

<https://content.legislation.vic.gov.au/sites/default/files/2021-09/04-107aa037%20authorised.pdf>

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