INTRODUCTION:
This Guidance Note provides general advice for a Person Conducting a Business or Undertaking (PCBU) and workers on the process involved once you submit a Bullying complaint to Access Canberra.

The Work Health and Safety Act 2011 (the Act) is designed to ensure the health and safety of everyone at work. Under this legislation, a PCBU has a duty to ensure work safety by managing risk. A PCBU manages risk by taking reasonably practicable steps to identify and eliminate any risk that might result if the duty is not exercised. If it is not reasonably practicable to eliminate each risk identified, the PCBU must minimise each risk.

One of the primary roles of Access Canberra is to investigate matters in order to determine whether a duty holder is complying with their obligations under the Act. If a worker is concerned with the way in which a health and safety complaint has been handled by or with the conduct of the PCBU, they can contact Access Canberra and ask that the matter be investigated to determine whether the PCBU is complying with their obligations under the Act.

WHAT IS BULLYING?
Workplace bullying is defined in the Work Health and Safety (Preventing and Responding to Bullying) Code of Practice 2012 as “repeated unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety”.

Examples of direct bullying include:
> Verbal abuse
> Putting someone down
> Spreading rumours or innuendo about someone
> Interfering with someone’s personal property or work equipment.

Examples of indirect bullying include:
> Unjustified criticism or complaints
> Deliberately excluding someone from workplace activities
> Deliberately denying access to information or other resources
> Withholding information that is vital for effective work performance
> Setting tasks that are unreasonably above or below a worker’s ability
> Deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker or workers
> Setting timelines that are very difficult to achieve
> Excessive scrutiny at work.

WHAT ISN’T BULLYING?

> Setting performance goal, standards and deadlines
> Allocating work to a worker
> Rostering and allocation working hours
> Deciding not to select a worker for promotion
> Informing a worker about unsatisfactory work performance
> Informing a worker about inappropriate behaviour
> Implementing organisational changes
> Performance management processes
> Constructive feedback
> Downsizing
> Transferring a worker in different work area.
BULLYING COMPLAINT TO ACCESS CANBERRA

WHAT CAN ACCESS CANBERRA DO?
Access Canberra’s role is to monitor and enforce compliance with the Work Health and Safety Act 2011. A PCBU’s failure to provide a safe working environment could constitute an offence under this Act.

Access Canberra expects that any allegations of bullying at work will be dealt with at the workplace as a health and safety issue through the PCBU’s health and safety issue resolution processes.

One of Access Canberra roles in relation to an allegation of bullying at work is to ensure that the PCBU is meeting their obligation to provide a work environment that is safe and that risks to health (including risks to psychological health) are prevented or managed.

Access Canberra is NOT responsible for determining whether compensation should be payable. Such redress may be possible under relevant workers’ compensation or human rights legislation.

WHAT IS THE INSPECTOR’S ROLE?
Access Canberra inspectors monitor and enforce compliance with the Work Health and Safety Act 2011. The inspector’s role in response to an allegation of bullying at work could include ensuring that:

- information is obtained from all relevant parties to assess whether or not the PCBU has processes in place for preventing, reporting and investigating allegation of bullying
- the PCBU has provided information to workers and Managers / Supervisors in relation to preventing and managing bullying at work
- the PCBU takes all reasonably practicable steps to stop bullying if it is occurring
- allegations of bullying have been appropriately investigated in accordance with any policies and procedures
- the PCBU complies with any directions or notices issued by the inspector.

WHAT WILL THE INSPECTOR DO?
Once Access Canberra receives a complaint, an inspector may contact the person making the complaint to obtain more information about the allegation of bullying at work and to explain the process that will be followed to investigate the complaint.

After an inspector reviews all information submitted by the person making the complaint, they may then speak to other workplace parties (PCBU / witnesses or other parties involved). This will help them to gather all relevant evidence so they can make a decision about any duty holder’s compliance with their duties under the Work Health and Safety Act 2011.

An Access Canberra inspector may visit the workplace to gather more information (though this may not always be necessary).

The inspector may assess compliance with the Work Health and Safety Act 2011 and this will include reviewing the following:

1. the steps taken by the PCBU to deal with the allegation of bullying at work (where the PCBU was previously aware of the specific allegation(s)
2. the measures the PCBU has implemented to ensure that risks to workers’ health and safety from bullying at work are eliminated or reduced so far as is reasonably practicable.
3. whether PCBU has conducted an investigation into the specific allegation(s). The inspector may request a copy of any investigation report.
4. the system implemented by the PCBU to prevent and manage bullying at work.

IS THERE A TIME FRAME TO FINISH INVESTIGATION?
Each workplace bullying complaint is different, so the time taken to complete a thorough investigation will vary depending on the circumstances. More complex complaints may take longer to investigate.
THE INSPECTOR’S DECISION

After investigating an allegation, the inspector will make an assessment of the evidence they have collected and make a decision about whether all duty holders have met their duties under the WHS Act 2011.

If the PCBU is found to have failed to meet its duties under the WHS Act 2011, the inspector may issue notices and make recommendation about action the PCBU must take to comply with the law.

At this point, an inspector may do any of the following:

> issue an Improvement Notice or Prohibition notice requiring specific action to be taken by the PCBU where the inspectors believes the PCBU has failed to meet its duties under the WHS Act 2011 (this action may include directions to develop and implement policies and procedures, directions to train staff in relation to acceptable workplace behaviours and/or directions to train supervisors in relation to their role in dealing with bullying at work)
> provide advice to the PCBU about how to comply with work health and safety law and regulations
> decide that the PCBU has taken reasonable steps to prevent bullying at work
> decide that the PCBU has taken reasonable steps to respond to and manage allegations of bullying at work
> recommend that the PCBU engage the services of a suitably qualified person to assist with managing health and safety issues
> recommend prosecution of a duty holder where the duty holders have been found to have breached the WHS Act 2011 or Regulation.

ADVICE ABOUT THE OUTCOME OF AN INVESTIGATION BY ACCESS CANBERRA

Feedback will be provided from time to time during the investigation. At the completion of Access Canberra’s investigation written confirmation of the inspector’s decision will be provided to the person who made the original complaint.

FURTHER INFORMATION

For all information about bullying complaint process, please contact Access Canberra on;

Telephone: (02) 6207 3000
Facsimile: (02) 6205 0336
Email: worksafe@act.gov.au

Further Information | Phone: Access Canberra on 02 6207 3000 | Email: worksafe@act.gov.au | Web: act.gov.au/accesscbr

Note: This guidance material has been prepared using the best information available to Access Canberra. Any information about legislative obligations or responsibilities included in this material is only applicable to the circumstances described in the material. You should always check the legislation referred to in this material and make your own judgement about what action you may need to take to ensure you have complied with the law. Accordingly, Access Canberra extends no warranties as to the suitability of the information for your specific situation.