



**MINISTRY OF SOCIAL
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

05 NOV 2020

James Scott

fyi-request-13932-7fce559f@requests.fyi.org.nz

Dear James Scott

On 8 October 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982, the following information:

- 1. Does the Ministry of Social Development conduct full and fair investigations into allegations of bullying within your organisation? Please provide any manuals/procedures/guidelines available to investigators/decision makers.*
- 2. Is it Ministry of Social Development policy to form (under any circumstances) an opinion about a diagnosis inferred by a medical certificate? If yes, please provide a copy of the policy or policies.*
- 3. Is it Ministry of Social Development policy (under any circumstances) to write to Medical Practitioners who have provided medical certificates covering a period of absence by your employees offering to meet and discuss? If yes, please provide a copy of the policy or policies.*

The Ministry takes its obligations as an employer to provide a safe and healthy work environment very seriously. As such, the Ministry does not tolerate any form of workplace bullying or harassment. All Ministry staff, including managers, are required to read and sign the Code of Conduct, which sets out the Ministry's expectations of all staff to act in a way that is professional and respectful.

Workplace bullying is defined by the Ministry as unwanted and unprovoked behaviour that is offensive, intimidating or humiliating and is repeated, or significant enough as a single incident, and which has a detrimental effect upon a person's dignity, safety, or sense of wellbeing. This could include:

- Repeated criticism in front of colleagues
- The use of offensive language
- Isolating an employee
- Spreading malicious rumours, or insulting an employee by word or behaviour

This list is not exhaustive. The Ministry recognises that workplace bullying can take many forms and does not tolerate it in any situation.

The Ministry has recently undertaken extensive work to build positive workplaces across all areas of the Ministry. Please find more information about this work in the link below which provides you with a copy of the report titled '*Phase One: Positive Workplace*':

www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/research/positive-workplace-programme/report-on-phase-one-of-msd-positive-workplace-programme.pdf

In regard to question one of your request, all formal complaints of bullying or harassment received by the Ministry are treated seriously and confidentially and are followed by an investigation to determine the appropriate course of action, including possible disciplinary action.

Please find the following documents enclosed, which outline how the Ministry responds to such situations:

- A guide for formally investigating a complaint of workplace harassment/bullying
- Positive Workplace Behaviour Guide
- Positive Workplace Behaviours Policy – Addressing Harassment and Bullying

You will note that the contact details of some individuals are withheld under section 9(2)(a) of the Act in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the Act may end up in the public domain, for example, on websites including the Ministry's own website.

In regard to question two of your request, if a medical certificate is not clear then the Ministry will not 'infer' a diagnosis, and may instead, in some instances, albeit infrequently, ask the employee to provide a medical certificate which does provide the clarity needed to inform an appropriate decision.

In regard to ~~question three of your request, the Ministry may write to a medical practitioner to seek clarity or additional information in relation to a staff member.~~ Any information being released is conditional on the employee providing their written consent. There is no specific policy or guidance on this as such contact is infrequent and is done on a case by case basis.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding bullying policies at the Ministry, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely



Penny Rounthwaite
Group General Manager, People

Positive Workplace Behaviours Policy – Addressing Harassment and Bullying

On this Page:

Purpose

MSD's aim is for our people to work in a positive environment free from bullying, discrimination and all forms of harassment. This policy outlines the workplace behaviours, expectations and responsibilities for our people, as well as the support and options available for dealing with inappropriate behaviour.

Scope

This policy applies to all employees who work in the business of MSD, whether they experience inappropriate behaviour by another employee, contractor, visitor, volunteer or member of the public.

This policy applies to workplace behaviours at work and all work-related events, including social activities and those not held on MSD premises. It also applies to inappropriate behaviour towards a colleague or client on social media channels (Facebook, Twitter, text, etc).

Inappropriate workplace behaviour includes any form of harassment, bullying, or discrimination. It includes racial or sexual harassment, intimidation, offensive behaviour or aggression from people in our work environment.

Building a safe and supportive work environment

We expect all people working at MSD to treat each other with respect and courtesy, and behave consistently with MSD values and our Code of Conduct.

All of our people should feel safe and supported at work, and everyone should feel comfortable being themselves.

We encourage all our people to:

Show mana manaaki and look after the dignity of people

Speak up if you notice inappropriate behaviour, bullying, harassment or discrimination

Speak out if someone does something that makes you feel uncomfortable, or that is inconsistent with our Code of Conduct

Be open and honest with each other

Look out for and take care of each other

Check in if something doesn't seem right.

Our psychological wellbeing is as important as our physical safety. We have resources available through the [Wellbeing page](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html) (<http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html>).

Supporting positive workplace behaviours

The following examples show some of the behaviours which contribute to (or inhibit) a positive work environment.

	Contribute (appropriate)	Inhibit (inappropriate)
Diversity	Embracing and valuing differences in each other; people sharing their cultures, being comfortable in doing this	Making fun/telling jokes relating to different cultures, beliefs, gender, physical abilities or perspectives
Value opinions	Listening; reflecting; providing constructive feedback	Ignoring; not acknowledging; belittling ideas; taking credit for others ideas
Respect	Being polite and considerate; treating others as you want to be treated	Ridiculing; talking over someone; condescending; breaking promises
Individuals	Valuing diversity; encouraging individualism of thought; listening to ideas	Excluding individuals from group discussions/activities; ridiculing ideas; not allowing individual opinion; misuse of power; not acknowledging others; favouritism
Teams	Celebrating joint work achievements; acknowledging contributions across business groups; supporting ministry goals	Being disrespectful about other work groups; undermining others; blaming other work groups
Organisational initiatives	Engaging constructively and with an open mind to change	Making derogatory or undermining remarks; refusing to engage in implementing approved plans

Code of conduct	Setting expected behaviours, practices and responsibilities; reinforcing standards through role modelling	Not addressing behaviours that are contradictory (or breach) the Code of Conduct
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Key Principles: Acceptable Behaviour

We need to be considerate in all of our dealings with colleagues and clients to ensure our behaviour is acceptable and appropriate. What is perceived acceptable behaviour to one person may not be viewed the same way to someone else. What is acceptable behaviour can be different for people due to our different backgrounds, experiences, or beliefs.

Additional details on appropriate behaviour can be found in MSD's [Code of Conduct \[http://doogle/working-here/working-for-us/standards-of-behaviour/codes-of-conduct/msd-code-of-conduct.pdf\]](http://doogle/working-here/working-for-us/standards-of-behaviour/codes-of-conduct/msd-code-of-conduct.pdf), which reflects the State Services Standards of Integrity and Conduct: fair, impartial, responsible and trustworthy.

Key Principles: Inappropriate Behaviour

What people consider inappropriate behaviour may also differ from one person to another. Unreasonable behaviour is defined by WorkSafe as actions that a reasonable person in the same circumstances would see as unreasonable.

MSD values provide guidance on how we should behave with our clients and colleagues. We are expected to be considerate and caring, to work with integrity and show respect for all people in our work environment.

How to raise concerns about inappropriate workplace behaviour

If you feel you have experienced or observed inappropriate workplace behaviour there are a number of ways for you to raise your concerns. How you do this will depend on how you feel, the circumstances and how serious the behaviour is.

If you have observed general inappropriate behaviour (e.g. behaviour that is not as serious as harassment, bullying or discrimination but still impacts people in a negative way) you can raise this directly with the person, through a peer or support person, your manager or another manager (see Resolving issues - General inappropriate behaviour below)

If you feel harassed, bullied or discriminated against, speak with your immediate manager.

If you feel unable to raise your concerns with your immediate manager, talk to another manager.

If these options aren't suitable, contact AskHR. They will listen to your concerns and refer you to appropriate support and a manager for follow up. AskHR can be reached via extension **s9(2)(a) OIA**

You can use STAR (Health & Safety reporting tool) which contains a module for sensitive events to report harassment, bullying or discrimination. A HR Advisor will then contact you, discuss your concerns and refer you to appropriate support and a manager for follow up.

You can seek support from a peer, support person or a union delegate.

Resolving issues

General inappropriate behaviour

People may not be aware that their behaviour is considered inappropriate by others, or the impact it has. This can include individual or team behaviour. Providing feedback on how you perceive the behaviour, how it impacts you or others, listening and clarifying understanding can lead to finding constructive ways to resolve issues. It is better to address issues early in a constructive way than for things to escalate and become more significant.

If you feel safe doing so, you can raise the issue in an appropriate way directly with the other person (e.g. a private conversation)

You can seek support from a peer, support person or a union delegate to help raise the issue

You can talk to your manager

Harassment, bullying or discrimination

MSD encourages people who experience harassment, bullying or discrimination to take action to try to stop the behaviour and prevent it happening again.

There are a number of ways to resolve an issue or instance of inappropriate behaviour. Informal approaches are generally preferable because they help maintain a positive working relationship.

Ways to resolve issues include:

Resolve it yourself – for example, where you speak directly to the person involved and request they stop the behaviour that is viewed as inappropriate

Informal intervention – for example, if you ask a colleague, union delegate or manager to raise the matter with the person involved

Facilitated discussion (e.g. mediation) - having an independent third party act as facilitator in either an informal or formal setting to discuss and resolve the issue

Formal complaint and investigation – an HR Consultant or external investigator works with the manager to investigate the complaint

External processes (such as lodging a complaint with the Human Rights Commission, seeking resolution through an external mediator, or lodging a personal grievance).

Additional information on what to do about inappropriate behaviour at work can be found in [MSD's Positive Workplace Behaviour Guide \[http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviour-guide.html\]](http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviour-guide.html).

The Outcome(s)

The outcome(s) depends on the seriousness, circumstances and impact of the behaviour. Potential outcomes may include:

An apology (in person or written) to the person who was subjected to the inappropriate behaviour or wider team

Coaching or training to address certain behaviour

Counselling

Agreement to work or behave in a different manner

An investigation that could result in formal disciplinary action such as a warning or dismissal in the case of serious misconduct.

Other outcomes that are appropriate in the circumstances.

Where allegations are not substantiated, it may still be appropriate to undertake some action, for example communications training.

Malicious or vexatious complaints

If an employee makes a complaint, it will be assumed that they genuinely believe they have witnessed or been subject to inappropriate behaviour.

MSD cares about the wellbeing of all our people which means we will support all employees involved in an allegation of inappropriate behaviour. Where, through an investigation, it is found that a complaint has been made with a malicious or vexatious intent, this will be treated seriously and could lead to disciplinary action. However, just because a complaint is not upheld does not mean that it is vexatious or malicious.

Responsibilities

Person/Party	Responsibilities
MSD	<p>MSD is committed to being a good employer and providing a safe working environment where all staff are treated fairly and with respect.</p> <p>MSD will:</p> <ul style="list-style-type: none"> • monitor workplace behaviour as outlined in the Monitoring and Reporting section of this policy • provide our people with guidance to comply with the policy • promote the policy including posting it on Doogle • not tolerate any form of workplace harassment, bullying or discrimination • treat all concerns raised seriously and sensitively • take all reasonable steps to prevent workplace harassment, bullying or discrimination • provide a range of methods to resolve issues raised • promote informal solutions before formal actions, where appropriate • ensure any real or perceived risk of retaliation or harm is assessed and steps taken to prevent or reduce the risk • manage concerns raised promptly and fairly, taking into account the nature of the concern and all relevant circumstances • provide information and support to all employees involved in a formal complaint investigation.
Managers	<p>It is the responsibility of all our people to promote and maintain a work environment free of inappropriate behaviour and to behave in a manner that is respectful of others.</p> <p>Managers will:</p> <ul style="list-style-type: none"> • ensure they are familiar with the policies and guidelines and guide their people on their use • ensure the wider organisational responsibilities as outlined above are met

- take time to listen to their people and understand the impact language and behaviour has on people
- listen and empower people to support engagement and improve team dynamics
- be responsible for intervening early to call out and address inappropriate behaviour before it escalates
- seek support from HR Consultants on how to record, process and investigate concerns and complaints
- make sure issues raised are managed sensitively, promptly, fairly and without discrimination
- support the wellbeing of their team
- meet our good employer and health and safety responsibilities
- make appropriate decisions within their delegations or recommendations to the appropriate delegated person
- consult their 'one up' manager for more serious issues.

Mental Health Condition:

It is important that where a mental health condition may be a factor, managers reference to [MSD's guidance \[http://doogle/documents/resources/helping-staff/forms-templates/hr/mental-health-guidance-gmhr.pdf\]](http://doogle/documents/resources/helping-staff/forms-templates/hr/mental-health-guidance-gmhr.pdf) on managing performance issues that may result from the mental health condition.

Prior to any action being taken, such as talking to, meeting with or writing to an employee, managers must seek advice from the HR Consultancy team.

All employees are responsible for ensuring that they become familiar with the terms of this policy and expectations for behaviour.

All employees

Employees are also responsible for ensuring that they behave appropriately and do not breach this policy.

Speak out – speaking out is about having courage to raise an issue but also about seeking help.

Employee raising concerns that they have been subject to inappropriate behaviour

Employees are responsible for:

- telling their manager (or another manager) if you experience or see inappropriate behaviour
- documenting the details of any incidents, detailing when, where, what occurred, and witnesses (if any)
- being prepared to try informal solutions and follow MSD's informal and formal processes.

Employee/s who witness inappropriate behaviour

Speak up, look out for and take care of each other. All employees play a part in ensuring MSD maintains a safe work environment for all its people. If you see a colleague behaving inappropriately or undermining positive workplace behaviours, take action by either saying something to that person or promptly raising it with a manager.

Employee subject to allegation of inappropriate behaviour

Listen to what is being said. Reflect and consider how another person may have interpreted your action or words. Try not to be defensive. Seek support. This can help address any behaviour that needs to change, or help get past an allegation that isn't substantiated.

Take responsibility for any behaviour that is seen as inappropriate. Make genuine efforts to change that behaviour.

The type of behaviour considered inappropriate will determine which part of MSD provides support to help managers address concerns. This may fall into the responsibility of the Health Safety and Security team and/or HR. The relevant group will:

Health and Safety / HR

- provide advice on process
- help resolve the issue
- work with agencies such as Worksafe, Mediation Services, Employment Relations Authority

The support will be professional, fair and courteous to all involved.

Human Resources (HR)

If people feel unable to raise their concerns with their immediate manager or 'one up' manager, they can contact AskHR who will listen to the concern and refer to:

- appropriate support
- an appropriate manager and/or HR Consultant for follow-up.

HR Consultants are available to support and provide advice to managers to work through concerns.

Definitions

Inappropriate Behaviour	Definition and Examples
Workplace Harassment	<p>Workplace harassment is unwanted and unprovoked behaviour that is offensive, intimidating or humiliating to another person. It is either repetitive or of such a significant nature that it has a detrimental effect on a person's dignity, safety or sense of wellbeing.</p> <p>Workplace harassment may be unwelcome and offensive behaviour towards an employee by:</p> <ul style="list-style-type: none"> • another employee(s), • a contractor or consultant with MSD, • a client or volunteer of MSD. <p>Examples of workplace harassment or bullying could include:</p> <ul style="list-style-type: none"> • repeated, unfounded criticism in front of colleagues • the use of offensive language • isolating an employee (e.g. not including someone in workplace activities that all employees in a similar position can expect to be involved in) • withholding information to ensure an employee fails to achieve a given task • making derogatory and frequent inappropriate comments about an employee's appearance or dress • spreading malicious rumours or insulting an employee by word or action • overbearing supervision • misuse of power or position. <p>Note: the above list is not complete. Workplace harassment and bullying can take many forms.</p>
Bullying	<p>Bullying is characterised by repeated and persistent, offensive, abusive, intimidating, malicious or insulting behaviour. It is repeated, intentional and unreasonable behaviour towards an employee or a group of employees that can lead to physical or psychological harm.</p> <ul style="list-style-type: none"> • Repeated behaviour is persistent (occurs more than once and can involve a range of actions over time) • Unreasonable behaviour as defined by WorkSafe means actions that a reasonable person in the same circumstances would see as unreasonable. It includes victimising, humiliating, intimidating and threatening a person <p>Bullying may also include harassment, discrimination or violence.</p> <p>Bullying can be physical, verbal or social (e.g. excluding someone from a peer group or spreading rumours)</p> <p>Common bullying behaviours fit in two main categories:</p> <ul style="list-style-type: none"> • direct and personal or • indirect and task-related
Discrimination	<p>When a person is disadvantaged on the grounds of gender, marital status, religious or ethical beliefs, ethnic or national origins, disability, age, political opinion, employment status, family status or sexual orientation.</p>
Sexual Harassment	<p>Sexual harassment is unwelcome or offensive verbal or physical behaviour of a sexual nature that is repeated or is significant enough to have a harmful effect on an individual's employment, job performance or job satisfaction.</p> <p>Unwelcome means behaviours that are unwanted, and are regarded by a person on the receiving end as undesirable or offensive at the time.</p> <p>Behaviour includes the use of language (written or spoken), visual material, or physical behaviour, and includes requests of a sexual nature to an employee (directly or indirectly) that contain an implied or overt promise of preferential treatment or threat of detrimental treatment</p> <p>Examples of sexual harassment may include:</p> <ul style="list-style-type: none"> • offensive gestures or verbal comments • unwanted and deliberate physical contact • unwelcome comments, questions about an employee's sexual activities, orientation or private life • sexual propositions or requests for dates, especially after prior refusal

- continued unwelcome social invitations, phone calls or texts from a work colleague or a client
- display of pictures, screensavers or other material of a sexual nature
- sexual behaviour such as leering or staring at an employee's body
- unwelcome sexual or smutty jokes
- offensive email messages or texts
- suggestions for preferential treatment at work in return for sexual favours
- threats or suggestions of a negative impact on an employee's position if favours are not granted.

Note: the above list is not complete. Sexual harassment can take many forms.

Racial harassment includes the use of language (written or spoken), visual material, or physical behaviour that directly or indirectly:

- expresses hostility against, or ridicules any employee on the grounds of their colour, race, ethnic or national origins
- either by its nature or through repetition is hurtful, humiliating, intimidating or offensive to an employee
- has a negative impact on an employee.

Racial
Harassment

Examples of racial harassment include:

- making offensive remarks or jokes about a person's race
- mimicking the way a person speaks
- calling people racist names
- deliberately pronouncing people's names incorrectly.

Note: the above list is not complete. Racial harassment can take many forms.

What is NOT harassment/bullying/discrimination?

The following examples are not considered to be workplace harassment or bullying:

one-off instances of forgetfulness, rudeness or tactlessness

a single incident of unreasonable behaviour (unless of such significant nature to have a detrimental effect on dignity, safety or wellbeing)

mutually acceptable friendly banter, light-hearted exchanges, jokes and compliments

friendships, sexual or otherwise, where both people consent to the relationship

requiring lawful and reasonable work instructions to be carried out

warning or disciplining someone in line with MSD policy

setting reasonable and fair standards of performance in terms of quality, safety and team cooperation

giving legitimate constructive feedback, including in a performance appraisal, and requiring justified performance improvement

differences in opinion or personality clashes that do not escalate into bullying or harassment

assertively expressing opinions different from others.

Just because an incident or behaviour would not be classified as bullying, harassment or discrimination doesn't mean that it shouldn't be addressed. It may still be appropriate to raise and have something which is considered a one-off inappropriate behaviour/event addressed.

Monitoring and Reporting

MSD will monitor and review indicators of positive working environments and inappropriate behaviours such as workplace harassment and bullying complaints, exit interviews, staff engagement and culture surveys.

Confidentiality

Information will be kept confidential where possible. Respecting privacy and confidentiality helps resolve matters effectively and ensures we are demonstrating mana manaaki.

If you want to make a complaint, then the person who is accused of inappropriate behaviour has the right to know what the concerns are and to respond to them.

Information may need to be disclosed to other parties if there is a risk of harm to a person or to uphold the maintenance of the law.

Related policies / additional information

Further guidance is available for employees who believe they have been harassed or bullied and for managers involved in carrying out a formal investigation of a complaint of harassment or bullying.

Positive Workplace Behaviour Guide - [What to do about inappropriate behaviour at work](http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviour-guide.html) [http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviour-guide.html]

Positive Workplace Behaviour - [a guide for formally investigating a complaint of workplace harassment or bullying](http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/a-guide-for-formally-investigating-a-complaint-of-workplace-harassment-bullying.html) [http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/a-guide-for-formally-investigating-a-complaint-of-workplace-harassment-bullying.html]

Other information that may be useful:

[MSD Code of Conduct](http://doogle/working-here/working-for-us/standards-of-behaviour/codes-of-conduct/msd-code-of-conduct.pdf) [http://doogle/working-here/working-for-us/standards-of-behaviour/codes-of-conduct/msd-code-of-conduct.pdf]

Work and Income – [Professional supervision services](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/professional-supervision-services.html) [http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/professional-supervision-services.html]

[Wellbeing page](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html) [http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html] on Doogle

[Safe to Talk helpline](http://doogle/whats-on/news/2018/new-safe-to-talk-helpline.html) [http://doogle/whats-on/news/2018/new-safe-to-talk-helpline.html]

[Managers Toolkit: Leading after Traumatic or Critical Incidents](http://doogle/documents/working-here/keeping-healthy-and-safe/wellbeing/traumatic-incident-management-guidelines.pdf) [http://doogle/documents/working-here/keeping-healthy-and-safe/wellbeing/traumatic-incident-management-guidelines.pdf]

[Preventing and Responding to Workplace Bullying guidance](https://worksafe.govt.nz/dmsdocument/782-preventing-and-responding-to-bullying-at-work) [https://worksafe.govt.nz/dmsdocument/782-preventing-and-responding-to-bullying-at-work] by WorkSafe NZ

[Bullying prevention toolbox](https://worksafe.govt.nz/topic-and-industry/bullying-prevention-toolbox) [https://worksafe.govt.nz/topic-and-industry/bullying-prevention-toolbox] by WorkSafe NZ

Acting in the Spirit of Service – [Positive and Safe Workplaces Model Standards](http://www.ssc.govt.nz/resources/positive-and-safe-workplaces/) [http://www.ssc.govt.nz/resources/positive-and-safe-workplaces/] – State Services Commission – August 2019

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A guide for formally investigating a complaint of workplace harassment / bullying

This page provides guidelines for formally investigating a complaint of workplace harassment / bullying.

On this Page:

Where a formal investigation is deemed to be appropriate or necessary, the following guidance is given for the conduct of that investigation. This approach may be used in all or part depending on the nature of the complaint.

Definitions

For the purposes of the workplace harassment / bullying policy and guides the following terms are used:

Complainant – the person who alleges that they have been harassed/bullied.

Respondent – the person(s) named by the complainant as having allegedly harassed/bullied them.

Manager – the manager that the complainant notifies of their complaint of harassment/bullying.

Investigator(s) – the person(s) tasked by the manager to investigate a complaint of harassment/bullying and prepare a report.

Delegated decision maker – the person with delegated authority to determine what action will be taken where harassment/bullying has occurred.

Receiving a formal complaint

Managers who receive a formal complaint of harassment/bullying should contact their HR Consultant to confidentially discuss how the investigation should proceed given the circumstances involved.

The complainant, respondent and any witnesses named by them should be advised that the Employee Assistance Programme (EAP) is available to them to provide confidential counseling and their families may be invited to these counseling sessions.

[Employee Assistance Programme \[http://teamsite/working-here/keeping-healthy-and-safe/wellbeing-at-msd/eap-benestar/index.html\]](http://teamsite/working-here/keeping-healthy-and-safe/wellbeing-at-msd/eap-benestar/index.html)

Human Resources will hold and manage all documentation for the investigation, including interview notes, reports, and decisions taken on a confidential file. A record of disciplinary action or any other decisions taken concerning an employee must be placed on that employee's personnel file at the conclusion of the process.

A formal harassment/bullying complaint should be made by the complainant or their appointed agent. It should also be:

made in writing
signed and dated; and
addressed to their manager.

If the complaint is about their manager, the complaint should be submitted to that manager's manager, or directly to the General Manager Human Resources.

A formal complaint should outline:

who the complaint is about
what happened and where possible details such as the time, date, place, and what was said and/or done
how they responded and what impact the behaviour had on them
what actions, if any, the complainant may have taken to stop the harassing/bullying behaviour
whether anyone else witnessed the behaviour
an indication of the outcome the complainant is seeking as a result of their complaint, including what would fix the situation for them.

The complainant should be advised of their right to involve a union representative or a support person.

The complainant should also be advised that they are entitled to:

seek independent legal advice if they believe they have been the victim of a criminal offence. Where an assault or serious intimidation is alleged to have taken place, it may be appropriate to report the alleged incident(s) to the police.

lodge a complaint with the [Human Rights Commission \[http://www.hrc.co.nz/\]](http://www.hrc.co.nz/) under the [Human Rights Act 1993 \[http://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html\]](http://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html), or raise a personal grievance under the [Employment Relations Act 2000 \[http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html\]](http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html), within 90 days of the incident occurring.

Acknowledging the complaint

The manager who receives a formal complaint should:

acknowledge that the complaint has been received and will be investigated

confirm the 'best time and place' to discuss the complaint (for example the complainant may prefer to be contacted outside of normal work hours and away from their immediate work area)

ensure that the complainant has familiarised themselves with the Workplace Harassment / Bullying Policy.

The manager should also ensure **the complainant** understands that:

MSD will conduct a formal investigation and interview the complainant, the respondent and any witnesses

the respondent will receive a copy of their written complaint

a final report of the investigation will be prepared and submitted to the delegated decision-maker who will decide what action will be taken

they may bring a support person with them to the interview/s if they wish – this may be a union representative, a lawyer, family member, whanau support or a friend/colleague of the complainant.

Preparing for an investigation

MSD is responsible for conducting the investigation of a formal complaint. The manager should contact their HR Consultant to assist them to coordinate the investigation.

A formal investigation will involve interviews with the complainant, the respondent, any witnesses and other relevant people as required.

Where English is the second language for the complainant or if they are from another culture and communication support requests may arise, an interpreter, or someone with knowledge of the culture, should be brought in to assist with the interviews, if required.

A suitable time and location should be arranged for the interviews. The location should be a quiet place where people will not be disturbed. It may not be appropriate to conduct the interviews in MSD offices as the participants may know other staff members who work there, or it may not be perceived as neutral territory.

Interviewing the complainant

The Investigator(s) should:

begin the interview by providing an overview of how the interview will be conducted. If the complainant is alone, confirm that he/she has been offered the opportunity to bring a support person with them.

advise the complainant that having made a formal complaint the responsibility for investigating the allegation and determining any action rests with MSD. At this stage the Investigator(s) should provide the complainant with an opportunity to ask any questions about the process.

discuss the potential outcomes of the investigation. The investigator may find that the respondent harassed or bullied the complainant, or may find that the respondent did not harass or bully the complainant, or there may be a finding of insufficient evidence to reach a conclusion.

explain that notes will be taken during each interview and each person will be asked to sign and confirm that an accurate record has been obtained.

ask the complainant for an account of the events in their own words, or clarification of anything that is not clear in the written complaint. Find out:

who was involved

what was said and/or done

how the complainant responded

when and where the incident or incidents took place

whether there were any witnesses

whether the complainant discussed it with anyone

whether this had happened before and if so, when and for how long

whether the complainant had previously taken any action to stop the alleged behaviour - make it clear to the complainant that having done so is not a requirement for a finding that harassment/ bullying behaviour took place.

what the complainant would like to have happen if the investigation finds that the respondent harassed or bullied the complainant - make it clear to the complainant that the final decision as to what action will be taken will be made by the delegated decision-maker.

run through the interview notes and confirm that an accurate record of what they have stated has been obtained. Have these signed by those present at the interview.

explain to the complainant that their name and account of the complaint will be provided to the respondent

Note: the above list is not exhaustive, but indicative of the information that may be needed.

At the end of the interview make certain that the complainant still wishes to proceed.

If they do not wish to proceed, the investigation is concluded and action is taken to close off the process. However, in some circumstances, even if the complainant does not wish to proceed MSD might continue with the investigation. The complainant is obliged to take part in and co-operate with the investigation if that is required.

If they do wish to proceed, inform the complainant what will happen next i.e. that the Investigator(s) will need to interview the respondent and any witnesses and that at the conclusion of the investigation a report will be prepared and the complainant will be provided with a copy.

Where the complainant wishes to proceed and a formal investigation is deemed by the manager to be appropriate or necessary, the manager should then advise the respondent that:

a complaint has been received and that MSD will conduct a formal investigation (a copy of the written complaint should be provided to the respondent)

as part of the investigation, the complainant, respondent and any witnesses for both complainant and respondent will be interviewed and that everyone interviewed is entitled to have a representative (e.g. a union representative, a lawyer, family member, whanau support or colleague) present to support them.

Allegations of harassment/bullying are serious and therefore it is essential that confidentiality be maintained. Allegations and details of the alleged harassment/bullying must only be disclosed to those who need to be involved and therefore must know.

All documentation will be held and managed by Human Resources in a secure and confidential place. All people present at the investigation interviews should be advised of the requirement for confidentiality.

Interviewing the witnesses

The Investigator(s) should:

clearly explain why they are being interviewed and ascertain whether they are prepared to assist. If they are, arrange to meet at a time and place suitable to them.

begin the interview by providing an overview of how the interview will be conducted. If the witness is alone, confirm that he/she has been offered the opportunity to bring a support person with them.

interview each witness separately. If there is more than one, obtain their account of events in their own words.

take notes and confirm with them that an accurate record of what they have stated has been obtained. Have these signed by those present at the interview.

advise them to treat the investigation as confidential and that they are not to discuss the allegation or interview with anyone.

Interviewing the respondent

The Investigator(s) should:

ensure that the respondent has a copy of all witness statements and information collected to date (subject to the Privacy Act 1993).

begin the interview by providing an overview of how the interview will be conducted. If the respondent is alone, confirm that he/she has been offered the opportunity to bring a support person with them.

inform the respondent of the implications, should the investigation find that the respondent harassed or bullied the complainant, and answer any questions they might have.

explain that notes will be taken during each interview and each person will be asked to sign and confirm that an accurate record has been obtained.

ask the respondent for an account of the events in their own words.

establish whether there are any witnesses who may be able to corroborate their version of events.

ask specific questions in relation to matters raised during the interview/s with the complainant and any witnesses already interviewed.

run through the interview notes and confirm that an accurate record of what they have stated has been obtained. Have these signed by those present at the interview.

inform the respondent at the end of the interview what will happen next i.e. that the Investigator(s) will interview any witnesses named by them and that at the conclusion of the investigation a report will be prepared and the respondent will be provided with a copy.

advise the respondent that confidentiality is essential and that the allegations and details will only be disclosed to those who need to be involved and therefore must know.

advise the respondent not to attempt to contact the complainant or witnesses.

Preparing the investigation report

Once the investigation has been completed, the Investigator(s) should prepare a report for the manager who has the relevant delegation to decide on this matter.

The report should set out the relevant issues of fact, the findings and should also include a copy of the original complaint. The report should summarise the complainant's and respondent's views fairly and dispassionately.

It is recommended that the report should cover the following:

nature of the complaint (including a description of the behaviour, date, time and place of occurrence)
respondent's and complainant's name, status and location
complainant's recommended resolution to the problem
any action/s taken prior to a formal complaint being lodged – what, when and by whom
detailed report on what the investigation entailed, interviews held and witnesses accounts
conclusion of investigations, including
observations from interviews
findings on credibility
findings on facts / events
reference to MSD's Code of Conduct and Positive Workplace Behaviour Policy

Advise the complainant and respondent that a copy of the report will be sent to them and that they are entitled to provide a written comment on the report prior to a decision being made. Indicate the time period that is available for providing a written response (e.g. 5 working days from the date the report is sent for comment).

Let the complainant and respondent know who will make the final decision and how this will be conveyed to them.

Outcomes

When a formal investigation is undertaken, it is the responsibility of MSD to determine what action will be taken and to advise both the complainant and the respondent of the final outcome i.e. whether the respondent harassed or bullied the complainant.

Where it is established that harassment/bullying has taken place, all reasonable steps must be taken to ensure that there are no further incidents.

Where dismissal is being considered, the decision must be made in accordance with the disciplinary action delegations and respective disciplinary policy.

If it is established that there has been no incident(s) of harassment/bullying and the complainant had deliberately made a false complaint, then the complainant may be subject to disciplinary action

[Positive Workplace Behaviour policy - Addressing Harassment and Bullying \[http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviours-policy.html\]](http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviours-policy.html)

[A guide on options to address inappropriate behaviour at work \(including harassment or bullying\) \[http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviour-guide.html\]](http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviour-guide.html)

[Contact your HR-Consultant \[http://doogle/business-groups/organisational-solutions/who-we-are/human-resources/index.html\]](http://doogle/business-groups/organisational-solutions/who-we-are/human-resources/index.html)

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Positive Workplace Behaviour Guide

What to do about inappropriate behaviour at work (including harassment or bullying)

On this Page:

Inappropriate behaviour at work (including harassment or bullying)

At MSD we want to work in a place free from bullying, discrimination and all forms of harassment. That's why we don't put up with inappropriate behaviour. We don't put up with it from each other. We don't put up with it from managers. We don't put up with it from clients. It's hard to show mana manaaki and look after the dignity of people with warmth, respect, compassion, openness and fairness if you don't feel looked after and respected yourself. Unfortunately, inappropriate behaviour does sometimes happen and when it does, we're there to support our people.

We'll work with our people to resolve issues and make sure they feel safe and supported at work. We want to be part of an organisation where people are open, honest and non-judgmental; where we treat each other with respect, consideration and civility; and where if an issue comes up, it's managed effectively and fairly.

To maintain a positive and supportive workplace environment, we'll make sure:

- our people are supported and able to raise issues
- our people are confident issues are taken seriously and will be managed in a sensitive and timely way
- we create a safe work environment where people can express themselves without judgement
- our people aren't at risk of retaliation or disadvantaged by raising a concern. We'll assess each situation and take steps to prevent or reduce any risks
- our people can get independent and confidential assistance through EAP or other employee support and a variety of internal wellbeing resources
- our managers lead by example as role models of positive workplace behaviour
- we encourage resolution that supports and maintains working relationships wherever possible.

What is inappropriate workplace behaviour?

Inappropriate workplace behaviour includes any form of harassment, bullying, or discrimination. It includes racial or sexual harassment, intimidation, offensive behaviour and aggression from people in our work environment.

For a full description of harassment and bullying, including examples, see MSD's Positive Workplace Behaviour Policy.

People have different ideas about what is and isn't appropriate behaviour at work. However, if someone or a group of people at work are acting in a way that is having a negative impact on your wellbeing, or work, it should be addressed.

What to do

Regardless of whether it is you directly involved, or if you have seen someone acting inappropriately to another person, tell your manager as soon as possible. If that is not appropriate, feel free to approach your manager's manager, colleague or a peer support person.

Write down your concerns, including details of what happened and when. Include times, dates, places and what was said or done. Keep any emails, voicemails or other examples that support the complaint.

At MSD, we'll work with our people to address inappropriate behaviour whenever it is reported. What action happens depends on the situation, what outcome you are wanting and the individual circumstances.

Options may include:

- resolving it yourself
- informal intervention
- facilitated discussion
- support for all parties^[1]
- referral to appropriate support services
- formal complaint and investigation
- external complaint process
- risk assessment of your workplace, with suggestions for improvement

Where possible, we'll work with you to resolve the issue informally. You can seek independent advice at any stage.

The [Employee Assistance Programme](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/eap-benestar/index.html) (EAP) is also available at any stage to provide confidential counseling and additional support – www.benestar.com [<http://www.benestar.com/>]. They can help you by livechat, on the phone, email or face to face.

[1] Both physical and psychosocial support

[Wellbeing at MSD](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html) [<http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html>]

Resolve it yourself

Sometimes people may not realise their behaviour is inappropriate. If you feel comfortable dealing with this yourself you can let the person know their behaviour is unwelcome or offensive and needs to stop. This allows the problem to be kept informal and for them to change their behaviour. You can:

Talk to the person to let them know their behaviour is inappropriate or how it makes you feel. Let them know you would like it to stop. You can have a support person with you.

Write a private letter or email asking the person to stop behaving in the way you find inappropriate.

You should not approach someone directly about their behaviour if by doing so you would feel unsafe or threatened in any way.

Principles of how to talk to a person whose behaviour has a negative impact on you

Ask to speak with them in private

Make sure you feel calm before the meeting

Avoid being judgemental, aggressive or critical

Talk about the behaviour that bothers you (not the person) and explain how this makes you feel

Ask if there is anything you can do to help this behaviour to stop and listen to their side of the story

If you feel you need some coaching prior to having this difficult conversation, feel free to phone a Benestar coach ([s9\(2\)\(a\)](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/eap-benestar/index.html)) – you can explain the situation in detail and they can guide you through the process as well as debriefing you afterwards.

Informal Intervention

You may prefer to ask someone else to intervene on your behalf informally, either through a manager or support person. A manager working to resolve an issue can seek support from an HR Consultant. They'll make sure your complaint is taken seriously, managed with impartiality and resolved in as timely a manner as possible. They'll listen to your needs and handle the matter in a sensitive way.

You will be given an opportunity to describe the events, the impact they have had and how you would like the issue resolved.

The other person/group involved will also have the opportunity to present their perspective.

If you and the other person/group agree about what will resolve the issue, you can arrange this between you and those involved, making sure the outcome is approved by the appropriate delegated person where necessary.

Informal intervention:

allows you to be heard

helps clarify what you would like to happen (including no further action if that's what you want)

provides advice and additional support, as well as different approaches that might be effective

is less intimidating for both the person raising the concern and the person the complaint is about

allows for informal and confidential discussions with those directly involved

can resolve issues faster and informally, reducing the pressure of more formal processes

gives more local input into the outcomes.

Facilitated Discussion

In some circumstances, a facilitated discussion may be an option. A facilitated discussion is where an independent person helps resolve an issue in a semi-formal and confidential environment. The aim is for both the person raising the concern and the person the complaint is about to reach an agreement to resolve the issue.

Facilitated discussions are appropriate if other forms of informal intervention have failed to resolve the issue. HR Consultants can give advice and assistance about the process. Both parties need to agree to attend a facilitated discussion.

Formal Complaint and Investigation

If things can't be resolved by talking to the other person directly, informally or through facilitated discussion, you can make a formal complaint. This may be because the allegations are very serious or the working relationship has broken down.

You'll need to make a written complaint that details:

Who the complaint is about
 What has happened
 When and where the inappropriate behaviour has happened
 Whether anyone else witnessed the behaviour; and
 What you would like to see happen as a result of the complaint.

You'll need to give enough detail so the person accused of inappropriate behaviour can respond to the complaint.

After making the formal complaint, the manager you went to with your concerns will decide if a formal investigation is needed after speaking to an HR Consultant. They'll consider all information and take all reasonable steps to address inappropriate behaviour and prevent harassment and bullying reoccurring.

In the event that a formal investigation is needed, the investigator will gather the facts and determine whether inappropriate behaviour has occurred. You can refer to the guide to formally investigate a complaint for an outline of that process.

For more information on the formal investigation process go to MSD's Positive Workplace Behaviour - guide for formally investigating a complaint of workplace harassment or bullying.

External complaint process

Your safety is our primary concern. If you believe you've been the victim of a criminal offence or it's an allegation of assault or serious intimidation, you should seek independent legal advice and also consider reporting this to the police.

You may be able to seek outside assistance by:

lodging a complaint with the Human Rights Commission under the Human Rights Act 1993; or
 raising a personal grievance under the Employment Relations Act 2000 within 90 days of the incident occurring.
 lodging a complaint through the protected disclosures regime (see MSD's Protected Disclosure policy for more information)
 referring the problem to WorkSafe New Zealand
 referring the problem to an external mediator for resolution.

Support

There's a variety of support for you and managers to assist throughout the process, within MSD and externally:

Internal resources:

Your manager, another manager or a colleague you trust

[EAP \[http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/eap-benestar/index.html\]](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/eap-benestar/index.html) (Benestar – www.benestar.com)
 – counselling, coaching, support

Peer support person

[Wellbeing Doogle page \[http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html\]](http://doogle/working-here/keeping-healthy-and-safe/wellbeing-at-msd/index.html)

Local union delegate

HR Consultant (support for managers).

External resources:

Need to talk (Free call or text 1737)

The Depression Helpline (0800 111 757)

Lifeline (0800 543 354)

www.depression.org.nz (free text 4202)

www.skylight.org.nz (grief, loss and trauma support)

www.griefcentre.org.nz (support, advice and counselling)

Alcohol and drug helpline (0800 787 797 or free text 8681)

OUTLine (sexuality and gender; 0800 688 5463)

www.mentalhealth.org.nz

Safe to Talk (Sexual harm/violence, 0800 044 334, text 4334)

Suicide Crisis Helpline (0508 828 865)

Healthline 0800 61 11 16

SHINE (Domestic abuse helpline 0508 74 46 33)

Netsafe – www.netsafe.org.nz (online bullying help)

Mensline (0800 63 67 54)

Parent Helpline 0800 56 88 56.

Other useful resources

[Positive Workplace Behaviour Policy](http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviours-policy.html) [<http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/positive-workplace-behaviours-policy.html>]

[Positive Workplace Behaviour – guide to formally investigate a complaint of workplace harassment or bullying](http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/a-guide-for-formally-investigating-a-complaint-of-workplace-harassment-bullying.html) [<http://doogle/resources/helping-staff/policies-standards/hr/hr-policies/positive-workplace-behaviours-policy/a-guide-for-formally-investigating-a-complaint-of-workplace-harassment-bullying.html>]

[Personal Grievance Policy](http://doogle/resources/helping-staff/policies-standards/hr/personal-grievances.html) [<http://doogle/resources/helping-staff/policies-standards/hr/personal-grievances.html>]

[Traumatic Incident Management Guidelines for Managers](http://doogle/documents/working-here/keeping-healthy-and-safe/wellbeing/traumatic-incident-management-guidelines.pdf) (PDF 625.18KB) [<http://doogle/documents/working-here/keeping-healthy-and-safe/wellbeing/traumatic-incident-management-guidelines.pdf>]

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