

**Creating a Positive and Safe Workplace:  
Preventing and Responding to Bullying, Harassment, Discrimination and Victimization**

<b>Creating a Positive and Safe Workplace: Preventing and Responding to Bullying, Harassment, Discrimination and Victimization</b>	
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<b>Issued by:</b> ELT HVDHB and CCDHB	<b>Version:</b> 2
<b>Applicable to:</b> Organisation wide HVDHB and CCDHB	<b>Contact person:</b> People & Capability Executive Lead

**Purpose:**

- Sets out the DHBs’ commitment to creating a positive and safe place to work
- Sets out the DHBs’ commitment to preventing, managing and responding to unacceptable behaviour that does not align with the organisations’ values and safety culture
- Ensure that all employees know their role and contribution to the provision of a positive and safe workplace including where to support if they are experiencing unacceptable behaviour.

**Statement of Commitment from Chief Executive Officers and Executive Leadership Teams**

The DHBs are committed to working proactively to ensure employees enjoy a workplace that is healthy, safe, respectful, enjoyable and professional and will act to address bullying, harassment, discrimination, or victimisation of any kind. We encourage all employees to speak up for themselves or others when they experience or observe unacceptable behaviour. We are committed to patient and staff safety and developing, maintaining and providing high quality public health services.

**Scope:**

The policy applies to:

- All employees of Hutt Valley and Capital & Coast DHBs
- Volunteers, agency workers, contractors, students, other individuals covered by special staff status and others where a DHB has advised them this policy will apply

The policy refers to ‘employees’ and applies equally to the other people in scope.

The policy covers behaviours that may occur in the workplace, between work associates, during work events, face to face, in the third person or by electronic means. Depending on the circumstances it may also apply to events that occur outside of the workplace.

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**Guiding Principles**

In line with the DHBs’ commitment to a safety culture, the following principles will guide our workplace and our responses to incidents or complaints of bullying, harassment, victimisation and discrimination:

- **Prevention** – we are all responsible for collectively creating a values-led culture to ensure that we have a safe and positive place to work.
- **Te Tiriti o Waitangi** - provides a foundation for decision making and work-place practice.
- **Early intervention** – all incidents and situations should be addressed as soon as feasible, preferably by speaking up in the moment if this is possible
- **Good Faith** – employers and employees must at all times deal with each other in ‘good faith’. This is a legal requirement for the application of the Policy. Good faith obligations are mutual and mean that the DHBs and their employees must (among other things):
  - engage openly, honestly, respectfully, fairly and equitably
  - be responsive and communicative
  - be active and constructive in maintaining a productive employment relationship.
- **Natural justice** – is a legal requirement comprises two rules, the rule against bias and the right to a fair process.
- **Just culture** – avoids defaulting to a punitive or retributive approach. It recognises the context in which behaviour occurs and therefore supports flexibility of a range of possible responses, from support, low key intervention or coaching and training, through to a more formal approach that may result in disciplinary action being taken.
- **Restorative approach** - assumes everyone involved needs support and aims to minimise secondary harm from the process and where possible restore relationships.

**Definitions:**

**Bullying**

*What is bullying?*

Bullying is repeated and unreasonable behaviour directed towards a person or group of people that can lead to physical or psychological harm. It can be physical, verbal, non-verbal (including by electronic means) or emotional. Bullying may be overt or covert and often includes behaviours that are intended to target, victimise, undermine or humiliate the recipient/s. When bullying is directed towards an employee, or group of employees, it creates a risk to health and safety, including for both employees and patients.

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In some instances where the behaviour towards the recipient is particularly serious, a one-off incident can amount to bullying.

The DHBs will apply a 'reasonable person' test to identify bullying (that is, would an objective and reasonable third party observing the situation consider the behaviour bullying?).

*Examples of bullying (this list is not exhaustive) include:*

- behaviour directed at a person which is offensive, malicious, insulting, or intimidating
- using verbal abuse, swearing or shouting inappropriately
- excessive or unjustified criticism over minor things or undermining status and credibility by criticising someone
- undervaluing, belittling, humiliation or ridiculing an individual including through gossip or malicious teasing
- deliberately setting unreasonable objectives, tasks, or timescales
- deliberate exclusion or isolation
- banter or jokes that are, for example, sexist, racist or use dehumanising language
- unjustified threats of dismissal or other disciplinary procedures.

*What is not bullying?*

*For the sake of clarity, the following behaviours would not generally constitute bullying (this list is not exhaustive):*

- differences of opinion or disputes in interpersonal relationships
- a manager allocating work, setting reasonable instructions, goals and deadlines, and giving legitimate feedback
- managing and addressing performance, competence, or disciplinary issues
- friendships, sexual or otherwise, where both parties consent to the relationship
- free and frank discussion about issues, concerns in the workplace, or directed at the advancement of knowledge which are not personal or targeted at individuals
- instructing staff to ensure safe work practices
- constructive feedback and legitimate advice from peers or colleagues.

**Harassment** - is behaviour much like bullying. It is generally a pattern of behaviour repeated over time but may be a one-off occurrence. Harassment may be in respect of gender, ethnic origin, colour, religion, marital status, age, sexual orientation, disability, health status, and could include abuse of authority, unfair or inequitable treatment of an employee by their manager or similar behaviour.

The Harassment Act 1997 deals with serious types of harassment as criminal offences (and allows the person being harassed to obtain trespass or restraining orders and provides sanctions if the orders are breached).

Sexual and racial harassment are dealt with under the Employment Relations Act 2000.

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Racial harassment in employment is where a person uses behaviour, language or visual material that expresses hostility against an employee on the grounds of their colour, race, or ethnic or national origins, which is hurtful or offensive to the employee and has a detrimental effect on the employee’s employment, performance, or job satisfaction.

Sexual harassment in employment is where any person covered by this policy:

- makes a request for sexual intercourse, contact or activity that is unwelcome or offensive
- uses behaviour, language or visual material of a sexual nature that is unwelcome or offensive.

*Examples of harassment (this list is not exhaustive) include:*

- offensive teasing or abuse
- unwelcome or inappropriate physical conduct
- rude gestures and comments or offensive jokes
- offensive pin-ups or posters
- unwanted attention of a sexual nature
- unwelcome or inappropriate letters emails, phone calls or comments
- repeated teasing or comments about the differences between cultures.

Harassment that is not a criminal offence under the relevant Acts, for example, related to disability, will still be dealt with by the DHBs as bullying or unacceptable conduct in terms of this policy.

**Discrimination** – can be part of bullying. Generally speaking discrimination is treating someone less favourably than others in the same or similar circumstances, for example, excluding or restricting an employee or group of employees from opportunities that are available to others. Discrimination on the basis of a person’s sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status or sexual orientation is prohibited.

In employment, discrimination is unlawful, however, the Human Rights Act 1993 and the Employment Relations Act 2000 permit discrimination in certain circumstances (e.g. where gender is a genuine occupational requirement of a role in order to preserve reasonable standards of privacy or where the duties of a role are such that a person with a particular disability could not perform those duties without a risk of harm to themselves or others).

**Victimisation** – is treating a person (or threatening to treat a person) less favourably than they otherwise would have been as part of, or as a result of, an allegation of bullying, harassment, or discrimination.

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The Human Rights Act 1993 deals with victimisation where a person who made, or intends to make, use of their rights or sought to promote the rights of another person under the Human Rights Act 1993 or the Protected Disclosures Act 2000, or who has refused to do something that would contravene the Human Rights Act 1993.

**Safety culture** – an organisational culture that fosters shared responsibility for safety and creates an environment where everybody can:

- be their best
- behave in accordance with the organisation’s values and
- speak up for safety or support when needed without fear of recrimination.

**Complainant** – person who has made a complaint of unacceptable behaviour.

**Respondent** – person whose conduct has been complained about.

**Policy Content**

The DHBs will:

- Treat all complaints of bullying, harassment, discrimination and victimisation sensitively and seriously
- Ensure employees have access to effective procedures for the investigation and management of complaints of bullying, harassment, discrimination and victimisation
- Consider whether substantiated complaints of bullying, harassment, discrimination and victimisation should result in disciplinary action
- Support all employees (including complainants and respondents) affected by or involved in an investigation into any complaint and ensure that they are protected from victimisation
- Provide access to an external confidential support system (eg. Employee Assistance Programme) for employees to seek support in relation to bullying, harassment, discrimination and victimisation
- Take into account the confidentiality of all parties as appropriate.

Employees who are involved in a complaint process can expect to:

- Have reasonable representation and support of their own choosing;
- Have any issues they raise addressed promptly and appropriately in the circumstances;
- See documentation relevant to them, unless exceptional circumstances exist, be given information about the process and outcomes as appropriate.

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*See Appendix 1 for guidelines and procedures for responding to incidents and complaints of unacceptable behaviour in the workplace*

**Roles and Responsibilities**

Everyone has a part to play in creating a positive workplace with a strong safety culture and in preventing bullying, harassment, victimisation and discrimination. The DHB will ensure that everyone has access to training and resources to allow everyone to play their part.

*Chief Executive, Executive Leadership Team Members, Managers, Leaders are expected to:*

- Role model values based leadership and commitment to the provision of a positive, safe and caring workplace culture;
- Provide leadership and model the expected standards of conduct, making it clear that the DHB does not accept bullying, harassing, discriminatory or victimising behaviour;
- Be responsible for the DHB meeting its obligations under this policy;
- Speak up and challenge inappropriate and unacceptable behaviour;
- Take steps to identify, manage and address bullying, harassment, discrimination and victimisation in a timely, sensitive and discreet way;
- Ensure that they have the confidence and competencies to respond appropriately to staff when complaints of unacceptable behaviour are raised;
- Ensure that any complaint brought to them by an employee is followed through even if it is referred to others; and
- Seek support and advice from human resource services where appropriate.

*Everyone covered by this policy is expected to:*

- Adhere to the organisational values and expected standards of conduct;
- Take responsibility and be accountable for their behaviour and actions towards others;
- Raise issues or concerns in a timely, sensitive and discreet way;
- Take appropriate steps to speak up and stop unacceptable behaviour;
- Engage openly in restorative processes to repair harm and restore relationships; and
- Cooperate with any complaint investigation.

*<sup>1</sup>Human resource services are expected, in a timely manner, to:*

- Advise employees on DHB processes and avenues for support;
- Provide advice, support and training to managers on creating a positive and safe workplace and on possible options for preventing and responding to bullying, harassment, discrimination and victimisation;
- Provide advice around best options for facilitation or mediation processes where it is requested;

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<sup>1</sup> Human resource services are part of people and capability directorates and while this policy uses the term ‘human resource services’ in line with custom and practice, it may refer to the wider people and capability services

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- Ensure complaints are recorded and reported;
- Ensure complaint and investigation processes are consistent, equitable, free from bias and comply with the necessary legislation, policy and guidelines; and
- Ensure that the executive lead of people and capability is advised of complaints made to the DHB;
- Ensure that processes are balanced to be as open and transparent as possible for all parties while maintaining appropriate confidentiality, particularly where there is a risk of harm to either party.

**Related Documents & Links:**

- DHB Code of Conduct
- Protected Disclosures Policy
- 3DHB Disciplinary Policy & Guidance
- [BUILD model – Giving structured feedback](#) (HVDHB)
- [Speaking up for safety \(SUFS\) \(CCDHB\)](#)
- [Worksafe Tools and Resources](#)
- [Worksafe Guidelines: Preventing and responding to bullying at work – Good Practice Guidelines](#)
- [Worksafe Bullying at work: advice for workers](#)

**Related Legislation**

- Health and Safety at Work Act 2015
- Harmful Digital Communications Act 2015
- New Zealand Bill of Rights Act 1990
- Human Rights Act 1993
- Employment Relations Act 2000
- Harassment Act 1997
- Protected Disclosures Act 2000
- Crimes Act 1961
- Privacy Act 1993

**Appendices:**

**Appendix 1** – Guidelines for responding to incidents and complaints of unacceptable behaviour in the workplace

**Keywords for searching:** positive workplace, speaking up, bullying, harassment, discrimination, victimisation

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**Appendix 1 – Guidelines for responding to incidents and complaints of unacceptable behaviour in the workplace**

There is no 'one size fits all' approach to responding to an incident or complaint of unacceptable behaviour. In every case the manager will need to consider how best to address the matter in the particular circumstances and be guided by the principles described in the policy.

Employees are responsible for reporting a situation where they believe bullying, harassment, discrimination or victimisation may have occurred, as soon as possible.

Employees can seek support from a trusted colleague such as:

- Their manager;
- Senior management;
- Human resource services;
- Their union representative;
- Occupational Health and Safety;
- Kaumatua/Kuia;
- Employee Assistance Programme.

Who an employee trusts for support will vary between individuals and will depend on the situation. It is important to remember that the confidentiality of everyone involved must be respected throughout the process.

Employees are able to access the DHBs' Employee Assistance Programme at any stage.

While ideally inappropriate behaviour would be dealt with at the time by speaking up, when this is not possible and a complaint is made, it can be addressed informally or formally. A high level description of these is set out below:

<i>Informal</i>	<i>Formal</i>
Best handled by the complainant and their manager	Complainant makes a written statement of complaint
Restorative or no blame approach	May result in disciplinary action
Solution focussed	Investigation focussed
Forward looking	Past looking – what happened
Establishes agreements	Establishes what can be substantiated
Can achieve a quick resolution	Can take time to resolve
Generally not recorded on personnel file; may be registered in an anonymised log	Will be held on personnel file of both complainant and respondent

When raising a concern about what they think is unreasonable behaviour, an employee should describe the behaviour involved rather than using labels such as 'bullying' and also

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think about what they want to happen as a result of raising the concern. This has been found to enable more constructive resolution of situations.

Managers should seek advice from human resources services as early as possible where a complaint is made. This is to provide assistance throughout the complaint process as necessary, and to ensure the DHB takes a consistent approach to handling complaints.

Human resources services should always be involved where the complaint may give rise to disciplinary concerns action under the DHB’s Code of Conduct.

A summary of the options available for dealing with workplace bullying, harassment, discrimination and victimisation is set out below.

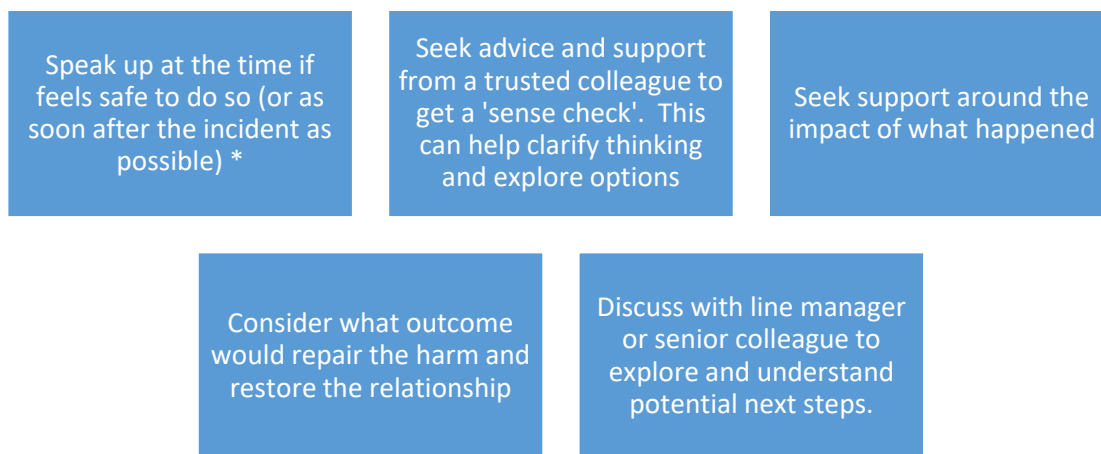
**1 Self Help**

**1.1 Definition**

Where the employee wishes to manage the matter themselves by talking with the respondent in private, with or without support, or writing to the respondent.

**1.2 Guidance**

Table 1: Options for an employee who has a concern about what they think is unreasonable behaviour.



\*Frameworks such as [BUILD](#) or [Safety CODE](#) provide guidance around how to speak up.

**1.3 Process**

Employees who choose to self-manage should:

- clearly explain how and why they find the respondent's behaviour unacceptable;
- focus on and describe the actual conduct itself (rather than giving it a general label, such as 'bullying' or 'harassment');
- describe the effect it has on them and/or others;

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- request that it stop, and
- if they think it appropriate, advise the respondent that a formal complaint may be raised if the unacceptable behaviour continues.

Discussions or communications of this sort can be difficult for one or both parties. Face to face discussions are recommended where possible. It is often advisable to talk to someone independent first, such as a colleague, manager, union representative or someone else who is removed from the situation.

Parties should keep copies of any written correspondence for their own records as they can be requested during investigations. Ensure all correspondence and interactions are conducted respectfully and professionally.

## 2 Raising & responding to a concern

### 2.1 Definitions

#### Informal approach

- Where the employee makes a complaint about the respondent's conduct but wants a third party, perhaps the employee's manager, to intervene to help resolve the situation in an informal way.
- If the respondent is willing, an attempt can be made to resolve the matter informally.
- If resolution is not possible, the employee may choose to make a formal complaint.

#### Formal approach/intervention

- If self-help or an informal approach has not resolved the matter, or if the employee believes the allegation is serious enough, they may make a formal complaint about the respondent's conduct.
- There may still be attempts at resolution via a facilitated process, such as mediation.
- Alternatively, or if resolution is not achieved, a full investigation into the employee's complaint may be undertaken so that the DHB can make findings about the respondent's conduct and, if the complaint is substantiated, consider whether a disciplinary process is appropriate.

### 2.2 Guidance

#### What to do if you are raising a concern of unacceptable behaviour

- Describe what was said or done (the behaviour(s) of concern) including dates and times as applicable
- Outline why you feel it was unacceptable, how it made you feel and how it has affected your work
- Describe any actions that you have taken

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- Outline what you want to happen.

**What to do when a concern of unacceptable behaviour is raised with you**

- Listen and be curious
- Empathise
- Respond respectfully
- Seek to understand what outcome is wanted
- Assess safety of all involved
- Support the person to explore informal or formal options
- Act promptly
- Seek advice from Human Resources.

Creating a positive workplace for staff where it is safe to speak up is an important foundation.

**2.3 Process**

The DHBs follow the principles outlined in this policy and the principles, steps and approaches outlined in section 5 of the [Worksafe New Zealand Good Practice Guidelines: Preventing and responding to bullying at work](#) around investigating concerns.

**2.4 Providing information to the people involved**

In line with the overarching principles, complainants and respondents will be given reasonable and timely feedback about the way the manager is addressing the complaint, any investigation process and whether the complaint is ultimately upheld. The process should, at all times, be as open and transparent as possible, with the intent to share information, while balancing people’s privacy rights. This may include communicating periodically, even where there has not been progression of the process. If you are unsure, please discuss with human resources services.

Where the complaint leads to the DHB initiating a disciplinary process with the respondent, information about disciplinary outcomes will be confidential to the DHB and the respondent.

The manager will need to consider whether it is appropriate to provide the investigation report to the complainant (if there is one). In some instances this will be appropriate. However, because the respondent and other employees or individuals involved have privacy rights and interests, there may be aspects of the report that are not necessary or appropriate to be disclosed to the complainant. The manager should work in consultation with human resources services to consider whether it may be necessary to redact parts of the report and make the remainder available. Another alternative may be to provide the complainant with a summary of the report’s findings.

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If the complaint or investigation leads to the DHB initiating a disciplinary process with the respondent, information about that process and any disciplinary outcome should usually be confidential to the DHB and the respondent.

### **2.5 Disciplinary concerns**

If the investigation uncovers information that suggests the complaint should be dealt with by the DHB in a disciplinary way, managers must seek advice from human resource services and refer to the Disciplinary Policy. If information comes to light that suggests suspension should be considered, this should be addressed without delay.

Where the DHB considers the complaint by an individual or group was false, vexatious or malicious, this may be a breach of the Code of Conduct by the complainant/s and may therefore result in a disciplinary process.

### **2.6 Possible outcomes**

The complaint process may result in the DHB taking steps to address the complaint, including:

- Considering appropriate interim measures to address the situation in the short term (such as temporary redeployment of the complainant or respondent, or change in reporting lines)
- A recommendation that the respondent accepts responsibility for the conduct and apologises to the complainant
- Counselling or training for the complainant or respondent
- Taking steps to restore the working relationship between the complainant and respondent, for example with a restorative process, mediation, coaching or additional training
- Making changes to work practices or the environment
- Providing education and training on positive workplace behaviours and prevention of bullying, harassment, discrimination and victimisation
- Addressing the respondent's conduct in a formal way in accordance with the DHB's Disciplinary Policy where the DHB is concerned that conduct has breached the Code of Conduct or another DHB policy or procedure (including this Policy)
- A combination of some of the above.

Where all possible outcomes have been explored and either party is dissatisfied with the outcome then they can seek advice from their human resources manager about further options.

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### 2.7 Keeping records

The outcome of any formal complaint process will be kept on the complainant's and respondent's personnel files, along with any correspondence between the DHB and the employee during the process.

Records of any investigation, including interview notes and relevant information, will be retained on the relevant employee's personnel file in a sealed envelope.

Access will be in accordance with the DHB's procedures for information held on an employees' personnel file.

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