



catholic education commission of victoria ltd
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Anti-Bullying Guide for Principals and School Leaders

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Catholic Education Commission of Victoria Ltd
James Gould House, 228 Victoria Parade
East Melbourne VIC 3002

www.cecv.catholic.edu.au

Correspondence to:

The Company Secretary
Catholic Education Commission of Victoria Ltd
PO Box 3, East Melbourne VIC 8002
Email: secretary@cecv.catholic.edu.au

ACN 119 459 853
ABN 92 119 459 853

1 SCOPE

1.1 WHO IS THIS GUIDE FOR?

This Guide has been developed for:

- Employers (e.g. Parish Priests of primary schools)
- School principals
- School leaders (for example, deputy principals and business managers) who are responsible for human resources, occupational health and safety (OHS) issues, return to work (RTW) coordination, and staffing matters.

Generally, principals and school leaders will deal with bullying complaints made by staff at schools. However, if a complaint is made against a principal of a school, then the employer will be required to deal with the complaint.

1.2 WHAT IS THE PURPOSE OF THIS GUIDE?

In recent years, the number of complaints about bullying made by staff in workplaces across all sectors has risen dramatically. This corresponds with a greater awareness of workplace bullying in society in general, as well as new laws to deal with bullying in the workplace. It is now more likely than ever that school principals and leaders responsible for staffing will have to manage complaints of bullying within the workplace.

This Guide aims to provide:

- a clear understanding of what constitutes workplace bullying
- an overview of the relevant legal framework and potential implications of legal action for schools
- advice on preventing workplace bullying in schools, including implementation of the necessary policies and training
- advice on what to do if a complaint of bullying is received, or an employer otherwise becomes aware of a bullying situation amongst staff
- a list of resources relating to workplace bullying.

This Guide should be read in conjunction with the template [Anti-Bullying Policy](#) developed by the CECV Industrial Relations (IR) Unit ([Template Policy](#)).

Do not wait until you receive a bullying complaint to use this Guide

When it comes to workplace bullying, prevention is better than any cure. Enacting the prevention steps in this Guide may enable your school to avoid some situations of bullying altogether. Familiarising yourself with the content of this Guide will mean that you are better prepared if a bullying situation arises.

If you have received a bullying complaint and are looking at this Guide for the first time, do not despair. Chapter 5 – ‘Responding to Bullying’ – will be particularly important for you. We recommend that you contact the CECV IR Unit on 9267 0431 for specific case management advice. Once you have dealt with the immediate concerns, make sure you thoroughly review the other sections of the Guide, particularly Chapter 4 – ‘Prevention’.

1.3 WHAT IS THE SCOPE OF THIS GUIDE?

While much of the information in this Guide is relevant to bullying in general, it deals specifically with bullying in the workplace, i.e. complaints of bullying by staff against other staff.

Who should be covered by this policy?

Unless otherwise specified, the term 'staff' or 'staff member' throughout this Guide should be taken to mean not only employees of the school but also contractors and volunteers as they are covered by many of the same legislative protections regarding bullying.

Occasionally, complaints arise about staff members being bullied by a student or a parent. In such a situation, certain aspects of this Guide will be relevant because a school has obligations in relation to staff members' health and safety and much of the same legal framework relating to bullying applies. However, the response to the complaint will necessarily be different. For example, a parent cannot be compelled to participate in a formal investigation process in the same way that an employee can. If this situation occurs, the IR Unit can provide advice. They can be contacted on 9267 0431.

This Guide is not intended to cover situations of bullying between students.

2 BULLYING DEFINED

2.1 WHAT IS WORKPLACE BULLYING?

It is generally accepted that workplace bullying is defined as **'repeated unreasonable behaviour directed at a worker or a group of workers that creates a risk to health and safety'**. Since the anti-bullying legislation and related guides do not use a single consistent definition of workplace bullying, the one quoted above is recommended (see also the [Template Policy](#).)

For a situation to amount to workplace bullying it needs to satisfy all parts of the definition of bullying:

- **Repeated:** the alleged bullying behaviour must be persistent, not merely a one-off incident. (Do not, however, ignore single incidents as they have the potential to escalate.) It is not necessary for the same specific behaviour to be repeated as bullying may consist of a range of incidents over time. For example, for a situation to constitute bullying it is not necessary that there be multiple incidents of name-calling; bullying could be made up of one incident of name-calling, one incident of vandalising property and one inappropriate email.
- **Unreasonable behaviour:** the alleged behaviour must be such that a reasonable person in the circumstances would see it as unreasonable. For example, the behaviour may be victimising, humiliating, intimidating or threatening. This is an objective test.
- **Directed at a worker or a group of workers:** the alleged bullying may be carried out by one or more staff members and directed at one individual staff member or a group of individuals.
- **Creates a risk to health and safety:** the alleged bullying behaviour must be a substantial cause of the risk of harm. It is not necessary to have proof of actual harm to health and safety, only that there is a risk of such. 'Health' includes both psychological and physical health; for example, depression, anxiety, sleep disturbance, nausea or muscle tension.

Direct v indirect Bullying

Bullying can be either direct or indirect. Direct bullying is the more obvious form and is characterised by face-to-face contact. Examples of direct bullying include physical actions such as punching, and direct verbal actions such as insulting a person. Indirect bullying is covert but no less serious. It is generally conducted out of sight and may be less obvious to others. An example of indirect bullying is excluding a staff member from staff social functions. The key message from this distinction is that workplace bullying takes many forms and may not be obvious to outsiders.

Examples of bullying

Some examples of behaviour that may amount to bullying (provided all the elements of the bullying definition are met) include:

- Verbal abuse
- Putting someone down
- Teasing or making practical jokes
- Interfering with a person's property

- Spreading rumours or innuendo
- Sending inappropriate emails or communications
- Making unjustified criticism or complaints
- Scrutinising work excessively
- Deliberately excluding someone from meetings/workplace activities
- Setting unreasonable timelines or constantly changing deadlines
- Deliberately changing work arrangements (for example, rosters or leave) to inconvenience a staff member
- Setting tasks that are unreasonably below/beyond the staff member's skill.

2.2 WHAT DOES NOT QUALIFY AS WORKPLACE BULLYING?

It is important to understand that when a staff member has a disagreement with a colleague or is not happy with actions taken by school leadership, this does not mean that the staff member is being bullied at work. Low-level workplace conflict and reasonable management action taken in a reasonable (transparent) way is not workplace bullying.

Workplace conflict

Low-level workplace conflict, such as differences of opinion and task-based disagreements, are generally not considered to be workplace bullying. Indeed, staff are often encouraged to put forward different ideas and many people agree that even robust debate within a respectful, supportive environment can be beneficial at times. It does not necessarily follow that such low-level conflict will amount to repeated, unreasonable behaviour that creates a risk to health and safety. Employers should monitor any conflict to ensure it does not escalate to the point where it meets the definition of workplace bullying.

Reasonable management action taken in a reasonable way

The various laws on workplace bullying makes it clear that 'reasonable management action carried out in a reasonable way' is not classed as workplace bullying. It is accepted that people conducting a business, or similar undertaking, must be permitted to take appropriate management action and make appropriate management decisions. For example, they need to be able to effectively direct and control the way work is carried out and, if necessary, to respond to poor performance or take disciplinary action.

This does not mean that all actions taken by school leadership are automatically exempt from bullying laws. Rather, those actions must be reasonable and they must be carried out in a reasonable way. This is an objective test and is taken to mean that the actions must be carried out in a lawful and fair manner, taking into account the particular circumstances of the situation. Management actions do not need to be perfect or ideal in order to be considered reasonable. Consideration is likely to be given to whether the management action involved a significant departure from established policies and procedures and, if so, whether that departure was reasonable.

Examples that do not constitute bullying

Some examples of management action that are not considered to be bullying (provided the actions are reasonable in the circumstances and carried out in a reasonable way) include:

- Setting reasonable performance goals, standards and deadlines
- Allocating work to a staff member in a transparent and appropriate way
- Rostering and allocating working hours in a fair manner

- Deciding not to select a staff member for promotion following a reasonable selection process
- Informing a staff member about unsatisfactory work performance or inappropriate work behaviour
- Taking disciplinary action for misconduct
- Conducting annual review meetings
- Directing a staff member to perform duties in keeping with their job
- Implementing organisational changes or restructuring.

Performance management and bullying

‘Just because performance management is stressful does not make it inappropriate or unfair’: Fair Work Commission (FWC) in *Choi v Country Fire Authority* [2013].

Ms Choi was employed by the Country Fire Authority (CFA). Ms Choi’s performance was assessed as unsatisfactory for a number of sound reasons and she was repeatedly asked to address poor performance issues. Eventually Ms Choi was placed on a performance management plan. Ms Choi complained that the ongoing raising of performance issues amounted to bullying. The CFA conducted an internal investigation and found that the claims of bullying were unsubstantiated and there was no evidence that management’s actions were inappropriate or unreasonable. After further unacceptable behaviour, the CFA terminated Ms Choi’s employment. Ms Choi claimed unfair dismissal. The FWC found there was a valid reason for dismissal and that although Ms Choi would have found performance management to be distressing and stressful, this was not enough to make the process unfair.

‘... Some degree of humiliation may often be a consequence of a manager exercising his or her legitimate authority of work’: Federal Court of Australia in *Comcare v Martinez* [2013].

After a period of underperformance, management commenced performance discussions with Ms Martinez. Initially these discussions were conducted at Ms Martinez’s desk and later in a separate room. Eventually Ms Martinez lodged a worker’s compensation claim for psychological injury, alleging that bullying by her manager had caused depression. The Tribunal that originally heard the matter was critical of the way in which the performance management was conducted (for example, initial discussions should have been in private) and found in favour of Ms Martinez. However, the Federal Court disagreed and considered that the actions of management were reasonable in all the circumstances. The Court noted that the question is not whether the thing could have been done more reasonably.

2.3 WHAT ABOUT BULLYING OUTSIDE WORK?

Employers should not ignore a matter simply because it occurred outside of work hours or at a location other than the school. There are numerous examples of cases in which employers have been held liable for the out-of-work conduct of employees towards other employees. ‘Workplace bullying’ should be viewed not simply as conduct **at** the workplace but more broadly, conduct **in connection with** work. A classic example is an incident occurring at a staff function; for example, at a Christmas party or social club event. Recently, there have been a number of cases involving the use of social media. It is well recognised that workplace bullying can occur via social media, email, text messages, instant messaging and so on. (Refer to the social media template policy for schools on the CECV IR Unit website). These forms of bullying often occur outside work hours although they may have sufficient connection with work to qualify as workplace bullying.

If a bullying complaint is received that relates to out-of-work conduct (or if an employer otherwise becomes aware of out of work conduct that may constitute bullying), the following questions will assist in determining whether action should be taken:

- Is the conduct likely to damage the relationship between the school employer and the staff member?
- Is the conduct likely to damage the school’s interests?
- Is the conduct incompatible with the staff member’s duties as an employee of the school?
- Is there a clear connection between the out-of-work conduct and the staff member’s employment at the school?

The IR Unit can provide advice on whether or not the school should take action in relation to a particular out-of-work situation.

Bullying via social media

O’Keefe v The Good Guys [2011]

In the context of an ongoing dispute about his pay, Mr O’Keefe posted insulting comments about a colleague on Facebook, using obscene language. Mr O’Keefe did not specifically name his employer – The Good Guys – or his colleague but it was apparent that he was referring to them. The post was made on his home computer and he had Facebook set on private settings; however, other colleagues were ‘friends’ and could see the post. The Good Guys terminated Mr O’Keefe’s employment for threats against his colleague. Mr O’Keefe claimed unfair dismissal. The Fair Work Commission found the dismissal was fair. In this case, there was a sufficient connection to the workplace despite the conduct having taken place at home and outside working hours.

3 THE LEGAL FRAMEWORK

3.1 WHAT ARE THE POTENTIAL LEGAL IMPLICATIONS OF BULLYING?

New anti-bullying laws mean that there are now several external avenues for complaints about workplace bullying. The primary avenues are workers compensation claims, Fair Work claims, proceedings under the *Occupational Health and Safety Act 2004 (Vic)* (OHS Act) and criminal proceedings (Brodie's Law). Each of these avenues is explained in more detail below. Bullying is also commonly raised in complaints of unfair dismissal, discrimination and adverse action.

It is important to note that these avenues are not mutually exclusive and more than one claim may run at the same time.

3.2 FAIR WORK CLAIMS

Claims can be made in the Fair Work Commission under the new anti-bullying laws that commenced in 01/2014 as part of the *Fair Work Act 2009* (Cth). The legislation allows a worker who has been bullied at work (by an individual or a group of individuals) to apply to the Fair Work Commission (FWC) for an order to stop the bullying.

Who is covered by this jurisdiction?

It is important to note that these new laws cover only workers who are employed by a 'constitutionally covered business' (in the case of schools this means one that is a proprietary limited company or an incorporated association conducting trading or financial operations). Most of our schools are not 'constitutionally covered businesses' and staff cannot make claims under these new anti-bullying laws. However, they may apply to our schools in one of two situations:

- **The employer at a school is incorporated:** this covers individual schools that are incorporated as well as schools that are part of a group of schools where the employer is incorporated (for example, some religious orders). When a school fits this category, any 'worker' is potentially covered by the Fair Work anti-bullying laws. This includes employees, contractors, volunteers and work experience students.
- **The worker making the complaint against a school (or against individual staff members at a school) is employed by a 'constitutional corporation' company:** in this situation, the worker with the complaint is not one of the school's employees but is employed by a company. This situation may arise where a school engages someone through a company and that person makes a bullying complaint against the school and/or staff. Examples of people within the school who may be employed by a company include contract cleaners, tradespeople, instrumental music instructors and external consultants. Only those workers who are employed at a school by a company will be covered by the Fair Work anti-bullying laws.

The FWC can make orders only where there is a risk that the worker will continue to be bullied at work. This means that orders cannot be made if the worker is no longer engaged at the school or for some other reason is no longer exposed to the bullying. In this way, the anti-bullying laws are only useful to current employees or contractors with a current engagement.

The IR Unit can provide advice on whether or not the Fair Work anti-bullying laws apply to a given situation.

Process

Fair Work claims proceed in a similar manner to any case in the FWC or the courts. First, the staff member with the bullying complaint ('the complainant') lodges an application with the FWC. There is no time frame for the making of a complaint; however, for the application to have any point, it is expected that the alleged bullying is continuing. The FWC provides the employer, and any individuals alleged to have bullied the complainant, with a copy of the application. The FWC will request a response from the employer and individuals within seven days.

If the FWC considers it appropriate, it will hold a mediation to try and resolve matters between the parties. If the mediation is unsuccessful (or there is no mediation), the matter generally proceeds to a hearing. The FWC is a tribunal and is required to hear from all relevant parties before making orders. It does not conduct its own investigations. A hearing usually involves the FWC hearing evidence from numerous witnesses. At the end of the hearing, the FWC will decide either to dismiss the application (if the bullying is not substantiated) or to issue orders to prevent bullying (if the bullying is substantiated).

Potential outcomes

If the FWC is satisfied that the worker has been bullied and that there is a risk the worker will continue to be bullied, then it may make any order it considers appropriate to prevent the worker from being bullied. Before making an order, the FWC must take into account the outcomes of any investigations into the workplace bullying; for example, internal or WorkSafe investigations.

The FWC can make orders against any person, including the employer, the school principal or other school leaders, staff members and third parties. Potential orders by the FWC could stipulate that:

- employers conduct an investigation
- employers regularly monitor particular behaviours
- individuals cease particular behaviour
- individuals comply with the school's anti-bullying policy
- school leaders review (or implement) an anti-bullying policy
- school leaders provide information, support and training to staff members
- school leaders make alternative management arrangements within the school.

Importantly, the FWC cannot issue fines or penalties and cannot award financial compensation. This means that complainants do not stand to gain financially from a Fair Work claim. Generally, the parties bear their own legal costs in such a proceeding. Only in extreme situations will a party be required to pay the legal costs (or a portion of the legal costs) of the other party.

3.3 WORKERS COMPENSATION CLAIMS

Workers compensation claims are the avenue most commonly utilised by staff in our schools in situations of workplace bullying. Such claims are not strictly a complaint of bullying but, rather, a claim that the staff member has suffered a work-related injury, illness or condition as a result of perceived bullying behaviours. In most bullying-related cases the claim will be for a psychosocial condition, commonly referred to as a 'stress or anxiety claim'. The staff member will generally be absent from work as a result of their medical condition (documented on a 'Certificate of Capacity' by a medical practitioner) and will claim for compensation in the form of weekly payments, and possibly also medical and like expenses, by completing a WorkCover claim form.

As with any workers compensation claim, it must be forwarded to a WorkCover agent within ten days. They will then assess the claim and make a decision on liability (based on eligibility criteria contained within the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic.) (WIRC Act) by accepting or rejecting the claim. If the claim is rejected and the staff member disagrees, there is a clear dispute resolution process to be followed. This may mean the matter proceeds to a conciliation conference between the parties (the WorkCover agent will represent the school/employer) at the Accident Compensation Conciliation Service (ACCS). If no resolution is reached at this stage, the staff member can seek legal opinion and apply for a hearing at the Magistrates Court.

If the claim is accepted, the staff member may be entitled to compensation in the form of weekly payments and medical and like expenses. Acceptance of a workers compensation claim does not necessarily mean that the bullying is substantiated. What it does mean is that the staff member has suffered from a work-related injury, illness, or condition that results in incapacity. To be entitled to weekly payments, the worker's incapacity for work must result from, or be materially contributed to, the work-related injury, illness, or condition. In most cases a worker will have an entitlement to weekly payments for up to 130 weeks. In some cases weekly payments can continue until retirement age if there is ongoing incapacity due to a serious injury, illness or condition, which has stabilised and the opportunity for rehabilitation is limited or restricted as a result.

The workers compensation system has a strong emphasis on rehabilitation and return to work, ideally to pre-injury work duties. However, this is difficult in cases of bullying where the situation often remains unresolved during the staff member's absence. In this circumstance, an employer may wish to liaise with the WorkCover agent and the IR Unit.

3.4 PROCEEDINGS UNDER THE OHS ACT

The OHS Act imposes several duties on employers that are relevant to claims of bullying. Employers must, so far as is reasonably practicable:

- Provide and maintain for employees a working environment that is safe and without risks to health.
- Monitor the health of employees.
- Ensure that persons other than their employees (for example, contractors, volunteers) are not exposed to risks to their health or safety arising from the employer's undertaking.

Workplace bullying can be a breach of the OHS Act where the bullying has created a risk to the employee's health and safety and the employer has failed to take all reasonably practicable steps to address it. In serious cases, a prosecution will be initiated after a comprehensive investigation to deal with the alleged breach.

The Victorian WorkCover Authority (VWA) is responsible for prosecuting breaches of the OHS Act. Unlike Fair Work claims and claims for workers compensation, proceedings under the OHS Act are not initiated by the aggrieved staff member.

The VWA may become aware of a bullying situation from a number of sources including a complaint from a worker, referral from another agency (for example, the FWC) or workplace inspections. The VWA will undertake its own inquiries into the matter. Where investigation reveals evidence of a breach of the OHS Act, the VWA will consider whether to commence a prosecution or take some other form of enforcement action (such as an enforceable undertaking or a letter of caution).

If a matter proceeds to court and a prosecution results in a finding of guilt, there are a range of sentencing options available to the court. These may include fines, adverse publicity orders, orders to undertake improvement projects, and health and safety undertakings. Breaches of the OHS Act attract very heavy fines. Depending on the circumstances, an individual may face a fine of up to \$266,000 and a company up to \$1.33 million.

Brodie's case

The most infamous case prosecuted under the OHS Act followed the suicide of 19-year-old Brodie Panlock. Ms Panlock was employed as a waitress at Café Vamp in Hawthorn. Throughout her employment, Ms Panlock was severely bullied by her work colleagues, leading to her death. WorkSafe prosecuted the employer and co-workers for breach of the OHS Act. The company employer pleaded guilty and was fined \$220,000. The company's owner and three co-workers also pleaded guilty and were fined between \$10,000 and \$45,000 each.

3.5 CRIMINAL PROCEEDINGS (BRODIE'S LAW)

In 2011, the Victorian Parliament passed legislation that made serious bullying a criminal offence. This legislation, commonly known as Brodie's Law, was introduced in response to the suicide of Brodie Panlock, who was relentlessly bullied at work (see text box).

The legislation amended the Crimes Act 1958 (Vic.) to alter the crime of stalking to include behaviour that is generally characterised as bullying including:

- Making threats to the victim
- Using abusive or offensive words to, or in the presence of, the victim
- Performing abusive or offensive acts in the presence of the victim
- Directing abusive or offensive acts towards the victim
- Acting in any other way that could reasonably be expected
 - to cause physical or mental harm to the victim, including self-harm
 - to arouse apprehension or fear in the victim for his or her own safety or that of any other person.

Under the legislation, the definition of 'mental harm' includes psychological harm and suicidal thoughts.

Brodie's Law is not specifically aimed at employers or bullying within the workplace. Rather, it is directed at the individuals engaged in bullying, whether they are in the workplace or elsewhere in the community. Schools could become involved in such a proceeding if individual staff members (including the principal or other school leaders) are charged. It is possible that school leadership could be found to have aided or been complicit in bullying by other staff members.

Although Brodie's Law is very broad and could potentially cover behaviour in the workplace, criminal proceedings are generally issued only in the most extreme cases of bullying. Criminal proceedings are brought by the State of Victoria. A staff member who alleges an act of bullying cannot make a claim under this legislation of their own accord.

If proven, the offence of stalking carries a jail term of up to 10 years. Another potential outcome related to the stalking provisions is that a victim of stalking (which may be deemed as serious bullying) can obtain an intervention order under the *Stalking Intervention Orders Act 2008* (Vic). It is not necessary for criminal proceedings to be issued or for the alleged stalker to have been convicted of a criminal offence. However, the court must be satisfied on the balance of probabilities that the individual has stalked another person and is likely to do so again. Intervention orders can be problematic for a school; for example, where the stalker (one staff member) is ordered not to contact or approach the workplace of the victim (another staff member).

4 PREVENTION

Prevention of workplace bullying is not only about avoiding legal claims; it is about creating a better workplace for staff. Bullying can impact severely on a staff member's psychological and physical health, and ability to work effectively. Workplace bullying contributes to loss of productivity, increased staff turnover, absenteeism and low morale. A complaint of bullying (internal or external) incurs financial and legal costs as well as disruption to work while claims are being investigated.

4.1 HOW CAN BULLYING IN THE WORKPLACE BE PREVENTED?

There are a number of steps that can be taken to minimise the potential for a bullying complaint in the workplace, and to effectively manage a situation before it escalates into a formal bullying complaint.

However, employers should also keep in mind that there is no single thing that can be done to completely eliminate the possibility of workplace bullying occurring. Sometimes, despite the best preparation and intentions, a combination of situations and peoples' personalities will result in actual or perceived complaints of bullying.

To prevent/minimise bullying in schools, it is recommended that schools:

- Identify the potential for bullying in the workplace
- Develop and implement the necessary workplace policies and procedures
- Make policies easily accessible for staff (such as via the school server/intranet)
- Have a clear procedure for dealing with bullying (flow charts are useful here)
- Set up training for all school staff on a regular basis (recommended annually)
- Appoint and support contact officers
- Develop the performance management skills of school leaders
- Create a positive work environment
- Regularly review bullying policies and procedures
- Include bullying prevention guidance and policy training in inductions for new employees
- Consider the introduction of a confidential employee assistance programme (EAP)
- Empower and encourage staff to raise perceived bullying issues.

These steps are discussed in more detail below.

4.2 HOW CAN THE POTENTIAL FOR WORKPLACE BULLYING BE IDENTIFIED?

There are a number of ways to identify the potential for bullying in a school, including:

- **Consultation:** meet with staff and health and safety representatives to discuss workplace bullying. Consider factors that are likely to increase the risk of bullying. Share information and give staff an opportunity to express their views. Take these views into account when making decisions regarding health and safety, including in relation to bullying.
- **Feedback:** take note of feedback from staff in annual review meetings, feedback from departing staff members (for example, through exit interviews), staff grievances and results of workplace engagement surveys.

- **Observation:** observe any changes in relationships between staff members, or minor conflicts. Consider how such conflicts may escalate.
- **Monitoring:** monitor staff absences, incident reports, workers compensation claims, staff turnover and staff grievances. Look for patterns or sudden changes that could indicate the potential for workplace bullying.

Identifying the potential for workplace bullying is an important and ongoing stage in its prevention. It means that employers are likely to become aware of a potential bullying situation early, which can give employers the opportunity to resolve matters before they escalate. It also means that preventative steps can be better targeted. For example, if through feedback and observation, a potential bullying situation is identified, employers can take targeted steps to improve the work environment. This might include monitoring workloads, clarifying job descriptions or doing refresher workplace bullying training.

4.3 WHAT POLICIES SHOULD BE IN PLACE?

It is essential for schools to have an anti-bullying policy that clearly outlines the expectations for staff about standards of behaviour and workplace bullying. The policy should explain to staff what is and what is not bullying, and outline procedures to be followed if bullying does occur. Having a policy allows for a consistent approach to deal with workplace bullying, and also provides the grounds for action if behavioural expectations are not met by employees. Research suggests that having a bullying policy actually reduces claims of workplace bullying. Furthermore, if an external bullying complaint is made, courts and tribunals will take into account the existence of the policy, its content, whether or not staff have been trained according to the policy, and whether or not the employer has adhered to the policy.

WorkSafe Victoria recommends that the following matters be included in a workplace bullying policy:

- A commitment to providing employees with a safe working environment
- A standard of behaviour that all employees are expected to comply with
- A statement that bullying includes communication through SMS, email and social media
- A statement about what can happen if the policy is not complied with
- An indication of how and where to report issues
- A reference to further information.

In addition, it is strongly recommended that the policy clearly outline a school's bullying procedures, including how to make a complaint and how complaints will be dealt with. (See 4.4 – 'What procedures should be in place?') The [Template Policy](#) covers all necessary matters. If a school uses or develops an alternative policy, then it is recommended that the school reviews the [Template Policy](#) to ensure that the school's policy contains the essential elements from the [Template Policy](#). The IR Unit is available to review policies if required.

In the past, bullying policies were often combined with those for OHS, issue resolution, discrimination, equal opportunity and/or harassment. Given the greater emphasis on bullying in recent years, a stand-alone anti-bullying policy is now recommended.

A school's anti-bullying policy must be communicated and promoted. It should be provided to all new staff during induction. Any contractors or volunteers who work at the school should also be made aware of the policy. Copies should be readily available to staff (including

contractors and volunteers); for example, on notice boards in the staff room or via the school intranet. The policy should be reinforced through staff training (see 4.5 – ‘What training should staff receive?’) and discussed at staff meetings.

As with all good policies, the anti-bullying policy should have a review date to ensure it is regularly updated.

Schools should also have the following relevant policies regarding:

- Social media
- OHS
- Equal opportunity, discrimination and harassment.

4.4 WHAT PROCEDURES SHOULD BE IN PLACE?

As already stated, an anti-bullying policy should outline a school's procedures for dealing with complaints of workplace bullying. Ideally, staff should be informed about options for dealing with bullying and how to go about making an internal complaint. The policy should explain how the school handles complaints of bullying, including both informal and formal responses.

The [Template Policy](#) contains an example procedure. If a school intends to depart significantly from this, it is recommended that the IR unit be contacted to ensure appropriate procedures are included in the policy.

Procedures for dealing with bullying are explained more fully in Chapter 5 – ‘Responding to Bullying’.

Prosecution for lack of bullying procedures

WorkSafe v LA HQ Pty Ltd (Victoria) [2012]

The company LA HQ Pty Ltd ran a café in Melton. Several employees were subjected to workplace bullying by the owners of the café. The bullying took the form of swearing, shouting and derogatory comments. The employees made a complaint to WorkSafe who sent an Inspector to the café. The WorkSafe Inspector noted the lack of any policies or procedures to deal with workplace bullying. The Inspector issued an improvement notice, requiring the company to adopt policies and procedures for dealing with bullying and for the owners to cease any bullying behaviour.

When the Inspector returned, the company had adopted a bullying policy. However, it had failed to implement any procedures to respond to complaints of bullying, had failed to provide any training to employees regarding bullying and had failed to address the bullying behaviour of one of the owners. The company was prosecuted and convicted under the OHS Act for failure to provide and maintain for its employees a working environment that is safe and without risks to health. The company was fined \$6,000 and management was required to complete an anti-bullying course approved by WorkSafe.

4.5 WHAT TRAINING SHOULD STAFF RECEIVE?

It is important that staff receive training on workplace bullying, specifically on each school's individual anti-bullying policy and procedures. The case law suggests that it is not enough for employers to have policies and procedures in place; employees need to be informed about them and to understand them. So far as possible, training should extend to contractors and volunteers as well as employees.

It is recommended that workplace bullying training be conducted as follows:

- All staff should receive training when the anti-bullying policy is first introduced or when there are any significant changes/reviews to the policy.
- New staff should receive training as part of their induction.
- All staff should receive regular refresher training. Ideally, this should be done annually but every two years is recommended as a minimum.

Records of all training should be kept and staff should sign off to indicate that they have attended.

Ideally, training for staff in workplace bullying should cover the following areas:

- The school's anti-bullying policy
- The school's anti-bullying procedures
- Standards of behaviour expected in the workplace
- Standards of acceptable use of social media and technology
- How to deal with workplace bullying
- How to report workplace bullying
- How the school deals with reports of workplace bullying
- Where to go for additional information and assistance.

When informing employees about workplace bullying there is a fine line between informing employees about workplace bullying, and encouraging petty or vexatious complaints. It is therefore important in training, to emphasise what does and does not amount to bullying. Training should also strongly emphasise reporting procedures and strategies for dealing with bullying at the early stages. Early reporting means that action can be taken to resolve matters as swiftly as possible. Early reporting of valid bullying complaints is necessary, while spurious complaints should be discouraged.

The IR Unit can provide further information on training.

4.6 WHAT TRAINING SHOULD SCHOOL LEADERS RECEIVE?

All school leaders with responsibility for staffing, HR or performance matters need to receive the same basic training as other staff in relation to workplace bullying. However, because the school leaders need to have the appropriate skills to take action in relation to bullying it may be necessary to seek additional training for them.

Other areas of training that may assist school leaders in preventing and responding to bullying include:

- People management
- Effective communication
- Providing feedback

- Performance management
- Managing workloads
- General skills to develop productive and respectful working relationships.

Both new and experienced school leaders can benefit through such training.

4.7 WHY APPOINT CONTACT OFFICERS?

A Contact Officer is a staff member who has been appointed specifically as a contact point for other staff to turn to if they have concerns about whether they may have been bullied. The [Template Policy](#) envisages the appointment of Contact Officers (though it can be modified where this is not done), who receive specific training in order to provide information on bullying, clarify questions or concerns from staff members, and provide advice on options for dealing with bullying. The IR Unit can provide information about training options for Contact Officers.

Where practical, the appointment and training of a Contact Officer (or more than one in larger schools) is recommended. The key benefit of Contact Officers is in the early intervention stage. Often staff will feel more comfortable talking about bullying issues with a colleague on their level rather than with the school principal or a member of the leadership team. In some circumstances, a colleague may be more accessible. Either way, having a Contact Officer means that bullying issues are potentially raised at an earlier stage than otherwise. Through providing information and advice to staff with concerns about bullying, Contact Officers can assist in resolving matters before they escalate.

Having one or more Contact Officers does not absolve schools from responsibility regarding bullying but it means there are other people within the school who have received specific training in bullying and can assist in dealing with the issues, particularly in the early stages.

4.8 HOW DOES PERFORMANCE MANAGEMENT RELATE TO BULLYING?

Unfortunately it is extremely common for a staff member who is being managed for poor performance (or concerns about their conduct or capacity) to make a bullying claim against either the school principal, school leader managing the performance, conduct or capacity issue, or against other colleagues. Sometimes there is a sound basis for these claims but often they are vexatious. They can cause unnecessary stress for those involved and stymie the management process.

As discussed in 2.2 ('What does not qualify as workplace bullying?'), reasonable management action, including performance management, that is carried out in a reasonable way does not qualify as bullying. The first step in preventing claims relating to performance management is to ensure that staff members are made aware of this distinction through the school's anti-bullying policy and training. This can reduce misconceptions about what is and what is not bullying.

While there is no simple solution to this issue, steps that can be taken to minimise bullying claims related to performance management include:

- Providing ongoing feedback to staff members. In this way, performance issues can be raised and managed early, rather than waiting for formal meetings when negative feedback may come as a shock.

- Establishing a culture of performance improvement and coaching, rather than one where there is a negative perception of dealing with performance.
- When managing employment concerns, adhering to the process outlined in Clause 13 of the *Victorian Catholic Education Multi Enterprise Agreement 2013* (VCEMEA). This process has been designed to manage concerns about performance, conduct and capacity in a way that is reasonable, transparent, well communicated and well documented. It applies the principles of procedural and substantive fairness and allows the staff member to have a support person at all stages.
- Ensuring that, as a matter of practice, there are two school leaders at formal discussions or meetings with a staff member regarding performance matters; for example, the deputy principal or another member of the leadership team as appropriate. This serves the dual purpose of having one person take detailed notes while the other focuses on the discussion. They both act as witnesses if the staff member later makes a claim of bullying relating to the discussion or meeting.
- Keeping records of any discussion or meeting (informal and formal) with a staff member regarding performance matters. A note-taker at formal meetings (to enable detailed notes to be taken) is recommended.

For advice on responding to a bullying claim that arises in conjunction with performance management see 5.11 – ‘How should a complaint made in the middle of the performance management process be handled?’

4.9 HOW CAN THE WORK ENVIRONMENT BE IMPROVED?

Creating a work environment of dignity and respect is crucial in the prevention of bullying. Good management practices and effective communication can help create a work environment that discourages bullying.

The following advice (adapted from Safe Work Australia, ‘*Guide for Preventing and Responding to Workplace Bullying*’, November 2013) is recommended:

- Clearly define positions and seek regular feedback from staff about their role and responsibilities.
- Provide staff with the resources, information and training they need to carry out their role safely and effectively.
- Review and monitor workloads and staffing levels.
- Develop and maintain effective communication throughout any workplace change.
- Promote positive leadership styles by providing training for school leaders on:
 - communicating effectively and engaging staff in decision-making
 - providing constructive feedback both formally and informally
 - managing workloads effectively
 - managing people and performance.
- Mentor and support new and poor performing staff (including school leaders).
- Facilitate teamwork and co-operation.
- Ensure school leaders respond quickly to any unreasonable behaviour of which they become aware.

Research has found that the following factors may increase the risk of workplace bullying (Safe Work Australia, *'Guide for Preventing and Responding to Workplace Bullying'*, November 2013):

- **The presence of work stressors:** high job demands, limited job control, organisational change, role conflict and ambiguity, job insecurity, an acceptance of unreasonable workplace behaviours or lack of behavioural standards, unreasonable expectations of clients or customers (for example, parents).
- **Certain leadership styles:**
 - autocratic behaviour that is strict and directive and does not allow staff to be involved in decision making
 - behaviour where little or no guidance is provided to staff or where responsibilities are inappropriately and informally delegated to subordinates.
- **Poor systems of work:** lack of resources, lack of training, poorly designed rostering, unreasonable performance measures or timeframes.
- **Poor work relationships:** poor communication, low levels of support or work group hostility.

If any of these factors occur in the workplace, steps should be taken to redress them.

4.10 WHAT IS INVOLVED IN REGULARLY REVIEWING AN APPROACH TO BULLYING?

It is not enough to set up anti-bullying systems and leave it at that. As with any occupational health and safety matter, regular review is required to ensure the prevention measures are still working and to implement new measures if needed. It is recommended that a review of a school's approach to bullying be carried out:

- At regularly scheduled intervals; for example, through scheduled discussions at leadership meetings, staff meetings, health and safety committee meetings.
- Whenever a bullying matter is raised in the workplace.

When reviewing a school's approach to bullying, the following questions should be considered:

- Has awareness been raised amongst staff about workplace bullying?
- Do staff members speak up about unreasonable behaviour?
- When an incident occurs, do people follow the anti-bullying policy and procedures?
- Do staff need further training (for example, on what is/is not bullying)?
- Do school leaders need further training (for example, in performance management)?
- Has there been a change in workplace morale and behaviour over time?

Where there is room for improvement, steps should be taken to redress these matters.

5 RESPONDING TO BULLYING

In this chapter, for ease of reference, the person alleged to have been bullied (whether or not they have lodged a formal complaint) is referred to as 'the complainant'. The person/s alleged to have done the bullying are referred to as 'the respondent/s'.

5.1 WHEN SHOULD ACTION BE TAKEN ABOUT WORKPLACE BULLYING?

An employer should respond to potential workplace bullying in the following circumstances:

When a complaint of bullying is made

This may be a formal written complaint or a verbal one. It may be made directly to the school principal or someone in the leadership team or the employer if the complaint is about the principal. It may be part of a claim for workers compensation. Whatever the nature of the complaint, it must be dealt with.

When there is otherwise awareness of a bullying situation

An employer may observe a potential bullying situation amongst staff or another staff member may bring it to an employer's attention without there being a formal complaint. Regardless of how an employer becomes aware of a situation, if it is considered that it has the potential to amount to bullying, it should be dealt with.

When a situation that does not yet amount to bullying has the potential to escalate

Such situations do not necessarily need to be dealt with within the bullying framework, but the warning signs should not be ignored. Issues need to be addressed as they arise. Many bullying situations can be avoided with early intervention; for example, when two staff members are not getting along or a particular staff member generates a lot of ill will in their dealings with other staff. It could be that an informal chat or some team building exercises are sufficient to prevent a full-scale bullying situation. The key point is: the sooner the issue is dealt with, the better the chance of resolution. Action can be taken before a situation amounts to bullying or a formal complaint is lodged.

5.2 WHAT SHOULD HAPPEN WHEN A COMPLAINT IS RECEIVED OR WHEN IT BECOMES EVIDENT THAT THERE IS A BULLYING SITUATION?

Regardless of how school leaders become aware of a bullying situation, they need to act promptly. It is particularly important to do so when a formal complaint of bullying is received. School leaders are advised to review their school's anti-bullying policy as well as this Guide to familiarise themselves with the processes and key issues. The IR Unit can be contacted for advice on the best approach to take in each case.

5.3 HOW SHOULD SCHOOL LEADERS DECIDE ON THE BEST APPROACH TO TAKE?

A school needs to determine the best approach to fit the circumstances. The IR Unit can provide advice, including whether to respond to bullying in an informal or formal manner. Employers should keep in mind that no two cases of bullying are exactly the same. Some principles apply to all cases but the precise approach (for example whether it's an informal or formal approach, or whether mediation is appropriate from the outset) will depend on the particular circumstances. The particular circumstances may include the seriousness of the alleged bullying, the nature of the incidents, the personalities of those involved and the positions held by those involved.

The approach that is decided upon must fit within the procedures outlined in a school's anti-bullying policy. This Guide assumes that a school's procedures accord with those in the [Template Policy](#). Schools should review their procedures to ensure they are aware of any differences (for example specific stipulations on timelines or what schools are required to do) so that these are taken into account when a school is determining its precise approach.

As a starting point, an employer needs to consider whether to undertake a formal investigation or adopt one of the more informal responses. Factors that weigh in favour of a formal investigation include:

- **Whether it is required under the school's anti-bullying policy:** if the policy mandates an investigation in certain circumstances this procedure should be followed.
- **The seriousness of the allegations:** if the allegations of bullying are serious, they should be investigated. The degree of seriousness can be judged by considering the nature of the alleged incidents, the period of time, number of staff involved and whether threats have been made.
- **The expectations of the person alleging bullying:** It is recommended that a complainant is spoken to about how they wish the matter to proceed. It is important that a complainant is provided with a copy of the school's anti-bullying policy so they can consider the options. From speaking to the complainant, an employer may get a better sense about whether or not it is possible to resolve matters by informal means such as mediation. The complainant's preferences need not be determinative but their input may be useful;
- **Whether there is potential to resolve the matter informally:** informal means may be more suitable where the situation has not escalated (for example, through mediation or facilitated discussion between the parties).
- **Where informal processes have been unsuccessful:** if there have been previous unsuccessful attempts to resolve the issues informally, a formal investigation may be warranted.
- **Whether, if proven, the allegations are likely to lead to disciplinary action:** if this situation occurs, it is wise to conduct a thorough investigation to ensure the facts are straight before disciplinary action is taken (for example, warning, termination of employment).

If the matter can be resolved informally or if a formal investigation is unwarranted, the most appropriate informal approach should be considered (see 5.6 – 'What are the options for informal resolution?').

If there is insufficient information about the complaint to determine the best approach going forward, then a complainant will need to provide more information.

5.4 WHAT IF THE SITUATION WARRANTS IMMEDIATE STEPS TO AVOID HARM?

In some cases (such as those where the complainant is at risk of psychological harm if they continue working closely with the respondent), immediate steps may need to prevent this happening. In such situations, the staff members could be separated, duties could be temporarily reassigned or leave granted. However, it is important that the actions taken do not amount to victimisation of the complainant (that is, treating the staff member detrimentally because they have made a complaint). If there is uncertainty as to which steps are appropriate, including whether to apply Clause 13 of the VCMEA, Managing Employment Concerns, the IR Unit can provide advice.

5.5 WHAT GUIDING PRINCIPLES SHOULD BE KEPT IN MIND WHEN DEALING WITH BULLYING?

It is recommended that school leaders abide by the following principles when responding to bullying complaints and, so far as relevant, to any situation of bullying (adapted from Safe Work Australia, *‘Guide for Preventing and Responding to Workplace Bullying’*, November 2013):

- **Act promptly:** respond to complaints quickly and within established timelines. For example, the [Template Policy](#) states that the employer will commence investigations into the complaint within two working days of receipt of the complaint, whether informal or formal processes are to be followed. Advise the relevant parties about the expected timelines and keep them updated as to the progress of the matter.
- **Treat all matters seriously:** treat all bullying complaints seriously and address them on their merits and the facts. (See also 5.10 – ‘How should ‘vexatious’ complaints be handled?’).
- **Maintain confidentiality:** ensure that confidentiality is maintained throughout the process. Anyone involved in a complaint of bullying, or its investigation, must ensure that the circumstances and facts of the complaint are disclosed only to those people who are directly involved in progressing its investigation and resolution. In particular, ensure that staff who make a complaint, or who may be witnesses to the circumstances giving rise to the complaint, do not discuss the matter outside the investigation and resolution processes. Failure to maintain confidentiality can lead to staff mistrusting the reporting process. The following precautions to maintain confidentiality are recommended:
 - Conduct discussions in private locations and at appropriate times (smaller schools may wish to choose an offsite location; for example, church hall or presbytery).
 - Make sure files and documents are stored securely (both physical and soft copies).
 - Choose appropriate times and locations for printing and copying relevant documents.
- **Ensure procedural fairness:** the respondent/s must be advised of the allegations and given the opportunity to respond.
- **Be neutral:** when handling a complaint of bullying or a bullying situation, be impartial towards all staff members involved. A school leader should not be responsible for dealing with a bullying situation if they are directly involved in the matter or biased in any way. For example, a school principal or leader should not handle a complaint about themselves or about a colleague who is also a close friend. The IR Unit can provide advice and discuss the particular circumstances.

- **Support all parties:** all parties involved (complainant, respondent, witnesses) should be advised as to what support is available. As a starting point, staff should be given the opportunity to have a support person present during all interviews and meetings. It is recommended that counselling support be made available to those involved. A school may have an ongoing arrangement with a counselling service (for example, employee assistance programs). If not, a one-off arrangement with a service provider can be made. Catholic Education Offices can provide further advice.
- **Do not victimise:** the complainant should not be victimised; that is, treated detrimentally for having made the complaint. Sometimes victimisation can occur unwittingly.
- **Communicate process and outcomes:** ensure that all parties are informed about the process, how long it will take and what they can expect will happen both during, and at the end of it. Parties should be advised of any delays (for example, if the investigation takes longer than anticipated due to external circumstances).
- **Keep records:** in addition to records of conversations, meetings and interviews, record the following information about any complaint:
 - name of the person who made the report
 - when the report was made
 - to whom the report was made
 - the details of the issue reported
 - action taken to respond to the issue
 - any further action required – what, when and by whom.

As well as being good practice for an internal investigation, accurate records will put school leaders in good stead if the complaint proceeds externally (for example, to a workers compensation claim or a claim in the Fair Work Commission).

5.6 WHAT ARE THE OPTIONS FOR INFORMAL RESOLUTION?

Informal resolution processes do not involve an investigation or making findings based on an investigation, but generally do involve the parties coming to an understanding or agreement as to how the issues can be resolved. It may be that by the time a matter comes to the attention of school leaders, the complainant has already attempted one of the more informal measures. As outlined in the [Template Policy](#), the informal resolution options open to the complainant include:

- **Speaking directly with the respondent about their behaviour or actions:** if the complainant feels comfortable doing so, this may be the quickest and easiest way of resolving the matter. The complainant should address the issue with the respondent in unambiguous terms and in plain language. The complainant should tell the respondent that the behaviour is not welcome and should not happen again.
- **Consulting with a Contact Officer for advice, support and assistance:** if the complainant does not feel comfortable about approaching the respondent directly they may prefer to seek the assistance of a Contact Officer. A Contact Officer can provide information and support to the complainant, including options for resolving the matter. Contact Officers do not take any action on behalf of the staff member, such as approaching the respondent or conducting mediation.

- **Reporting the matter to a member of the leadership team for assistance:** This is where school leaders may play a role in resolving matters informally. The complainant may report the matter to the school principal or another member of the leadership team who may assist the complainant to explore resolution strategies. For example, the complainant may choose to speak directly with the respondent or enter into mediation and/or facilitated discussion. Where appropriate, and in consultation with the complainant, a member of the leadership team may approach the respondent and talk to them informally about the matter.

In the event that mediation or other similar processes are being contemplated, they would involve:

- **Mediation (or facilitated discussion):** this approach involves having an impartial third party – a mediator – who assists the parties in their discussion. Mediation aims to help staff members examine the issues, identify options and consider possible resolutions. The mediator does not decide who is right and cannot force the parties to take any particular action. If mediation is the preferred approach, the IR Unit can suggest providers who offer this service.
- **Mutual agreements on workplace practices:** this is an agreement between the complainant and respondent about how they will work together going forward. Such an agreement may be the outcome of mediation or it may come about through separate discussions between the complainant and respondent.

5.7 HOW DOES A FORMAL INVESTIGATION WORK?

If a formal investigation is the most appropriate in the circumstances, the employer, the school principal or member of the leadership team will need to appoint an investigating officer. This person must be independent and able to conduct the investigation impartially. They may be an internal or external person, bearing in mind that the person conducting the investigation needs to have the appropriate skills to conduct the investigation and have the requisite impartiality. The IR Unit can suggest providers who offer this service.

The role of the employer, the school principal, or other school leader is to determine the terms of reference of the investigation and to thoroughly brief the investigating officer. In general, the aim of an investigation is to work out what happened and to provide recommended factual findings.

The Investigating Officer will:

- Interview the parties involved, and any witnesses.
- Review relevant evidence, such as emails and other documentary evidence.
- Report to the school principal on whether or not the complaint is substantiated.

The report from the investigating officer should be reviewed in order to determine whether or not to accept it and its recommended findings. In most cases, the investigating officer's report will be complete and satisfactory. If, however, something relevant has been overlooked (for example, if the investigating officer did not speak with a key witness) these concerns may be discussed with the investigating officer. The employer, school principal or leader may be happy with the investigating officer's reasons for dealing with a certain aspect in a particular way, but if not, a supplementary report may be requested to deal with that aspect.

If the workplace bullying complaint is substantiated, the appropriate action to be taken will depend on the precise circumstances of the case and may involve a combination of several actions. Some actions are aimed at individuals and others are aimed more generally at the school's approach to bullying. Potential actions include:

- An apology.
- Changes to work practices.
- Disciplinary action, including warnings or termination of employment (note 5.13 – 'How does Clause 13 of the VCMEA fit with these processes?').
- An undertaking that the behaviour will not be repeated.
- Reversal of an action or decision or substitution of a different action or decision (for example, decisions about leave, disciplinary action, performance management, promotions).
- Training (for example, on the school's anti-bullying policy, communication skills, conflict management or interpersonal skills.) Training may be for one person, a team, a department or all staff.
- Counselling (for complainant, respondent or others involved).
- Redressing any inequality to the complainant resulting from any action taken or decision made (for example, reinstating sick leave taken during the period).
- Mentoring and support.
- Ongoing monitoring of the staff or team.
- Mediation.
- Review of the school's anti-bullying policy (and any other relevant policies).
- Review of the school's bullying prevention measures.
- Review of the school's anti-bullying procedures.
- Addressing any organisational issues within the school that may have contributed to the bullying situation.

If the workplace bullying complaint is not substantiated or an investigation is inconclusive (that is, a complaint cannot be proved due to a lack of evidence) further action may nevertheless be appropriate; for example, counselling, mediation, changed working arrangements and/or conducting training for staff on relevant policies.

5.8 WHAT IF THE COMPLAINANT DOES NOT WANT THE MATTER PURSUED?

A school leader may have to deal with an alleged bullying situation in which a complainant does not wish the matter to be pursued. Sometimes a staff member will make a formal bullying complaint and then wish to retract that complaint, or other times, a bullying situation is observed or reported by another person, but the person being bullied does not want any action taken (for example, they may not wish to cause trouble).

It is important to discuss with the complainant why they do not wish the matter to be pursued. However, their wishes should not determine whether and how to proceed with the matter. As with any risk to health and safety, a bullying situation cannot be ignored. All the circumstances need to be taken into account (they may include reasons why the complainant does not wish to proceed) and an assessment made as to the best way to deal with the situation.

In some cases, the matter need not be pursued; for example, if the staff member made the complaint in the heat of the moment after a one-off incident that would not be considered bullying and has since been resolved. If the staff member does not wish for allegations of

serious bullying to be pursued for fear of retribution, it is likely that a formal investigation should be conducted. In such situations, school leaders should discuss with the complainant how they intend to proceed, explaining the reasons, reassuring them of confidentiality and assuring them that they will not be victimised. Even if a complainant refuses to take part in an investigation or any further action, they need to know that everything has been done to satisfy health and safety obligations.

5.9 HOW SHOULD ANONYMOUS COMPLAINTS BE HANDLED?

On occasion, there may be an anonymous complaint of bullying. Whether any further action is taken will depend on the circumstances. If the complaint is so vague that the school leaders cannot possibly decipher who is involved and what has happened, it is likely that no further action will be taken. However, it does raise the possibility of a potential bullying situation taking place, and of there being a legitimate basis for the complaint. Increased monitoring may therefore be appropriate.

If the complaint is sufficiently detailed, despite its anonymity, there may be enough information to make a fair assessment as to whether the matter warrants further investigation. The mere fact that a complaint is anonymous does not mean that health and safety obligations can be abrogated. If there is a potential bullying situation, school leaders should proceed as they see fit, taking into account all the circumstances. The IR Unit should be contacted for advice in these circumstances.

5.10 HOW SHOULD 'VEXATIOUS' COMPLAINTS BE HANDLED?

It is not unusual to receive a complaint of bullying that appears vexatious. However, before a complaint is dismissed out of hand, school leaders should note that it is a high standard for something to be considered vexatious. What one person may consider as a petty complaint could still have an impact on the health and wellbeing of a staff member. The section on vexatious claims in the [Template Policy](#) provides advice:

The School will not deal with complaints under this policy that

- *are made without sufficient detail being provided so as to allow investigation or resolution of the matter*
- *taken at their highest, do not constitute bullying as defined by this policy.*

Where a Complainant makes frivolous, vexatious or malicious claims against a Respondent; for example, where false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to resolution, then depending on the circumstances, disciplinary action may be taken against a Complainant.

Where there is uncertainty about whether a complaint is sufficiently vexatious to warrant not dealing with it, the IR Unit should be contacted for advice.

5.11 HOW SHOULD A COMPLAINT MADE IN THE MIDDLE OF THE PERFORMANCE MANAGEMENT PROCESS BE HANDLED?

As discussed earlier, bullying complaints are a common occurrence during performance management. The key to dealing with such a circumstance is to keep the processes separate. In general, it is recommended that the performance management process be 'paused' and the bullying complaint dealt with before recommencing the performance management process. If, for example, a staff member makes a bullying allegation in the middle of the formal meeting under Clause 13.3 of the VCEMEA, the meeting should be paused and records made of all the necessary details of the bullying complaint.

Discretion then needs to be used as to whether the formal meeting continues or reconvenes at a later date. Either way, the bullying complaint must be dealt with before taking performance management further (including proceeding through the steps in Clause 13 of the VCEMEA). School leaders should assess the most appropriate way to proceed with the complaint as they would with any other bullying complaint, deciding whether an informal approach or formal investigation is more suitable.

Once the matter is resolved (which may include a finding that the bullying complaint is unsubstantiated), the performance management process can recommence (this generally means continuing the steps in Clause 13 of the VCEMEA). The only circumstance under which the performance management process would not recommence is if the resolution of the complaint or outcome of any investigation dictates otherwise. For example, if an investigation finds that the staff member was bullied by a department head in the form of excessive scrutiny of work and requests to perform tasks beyond their skill level, it is likely that performance management was not warranted in the first place and should be ceased.

5.12 WHAT IF AN EXTERNAL COMPLAINT HAS ALREADY BEEN MADE?

Occasionally, a staff member will make an external complaint (for example, a workers compensation claim or a claim in the Fair Work Commission) before the internal process has commenced or been completed. In this situation, school leaders must decide whether to start, continue or stop those internal processes. The decision depends on the particular circumstances, including the nature of the alleged bullying, the personalities involved, the type of internal processes and stage that they are at, and the type of external claim. For example, if mediation between the complainant and respondent is being organised. If the complainant is then absent from work and lodges a workers compensation claim stating that their mental health is at risk from being in the same room as the respondent, mediation should not be pursued.

In a different situation, an investigator may have conducted all interviews and be close to concluding an internal bullying investigation when the complainant lodges a Fair Work claim. In this situation, it would be appropriate to continue with the internal bullying investigation as it may inform the approach to the Fair Work claim (for example, whether to defend or accept). It is recommended that the IR Unit be contacted to discuss each specific situation.

5.13 HOW DOES CLAUSE 13 OF THE VCEMEA FIT WITH THESE PROCESSES?

In some situations, the outcome of a formal investigation will recommend disciplinary action against the respondent (or more than one respondent). Clause 13 of the VCEMEA covers 'Managing Employment Concerns' and includes concerns regarding a staff member's conduct. The procedures in Clause 13 of the VCEMEA must be followed prior to terminating employment (other than for redundancy), issuing a warning or taking any other disciplinary step. This means that if there are concerns about a staff member's conduct or if disciplinary action is envisaged, the school principal must apply Clause 13 of the VCEMEA in conjunction with the school's bullying procedures. The IR Unit should be contacted for advice on managing a bullying claim and applying Clause 13 of the VCEMEA 2013 concurrently.

5.14 WHAT HAPPENS AFTER A COMPLAINT OR SITUATION HAS BEEN DEALT WITH?

It is important that a matter is not forgotten once it appears to be resolved, whether after an informal or formal process. A follow-up review is recommended after an appropriate interval to make sure that the alleged bullying is no longer an issue, to offer support to the parties and to ensure that they are able to resume a working relationship. It may be that the bullying claim itself is resolved but that the staff would benefit from mentoring or relevant professional development. Or it may be that certain personalities will never get along and reconsidering class allocations for the following year will help to minimise the need for particular staff to work together. The key point is that, by way of a follow-up review and continued observations, school leaders can make sure the bullying situation really has been dealt with and is not simmering under the surface until the next claim.

In addition, as stated in 4.10 – 'What is involved in regularly reviewing an approach to bullying?' – school leaders should take the opportunity after a bullying complaint to review the school's prevention measures and ensure they are working.

6 FURTHER INFORMATION

6.1 WHO CAN BE CONTACTED FOR FURTHER ASSISTANCE OR INFORMATION?

Industrial Relations (IR) Unit
 Catholic Education Commission of Victoria (CECV) Ltd
 228 Victoria Parade
 East Melbourne VIC 3002
 Phone: (03) 9267 0228
 Website: www.cecv.catholic.edu.au

6.2 WHAT ARE SOME OTHER USEFUL RESOURCES?

CECV IR Unit template – Anti-Bullying Policy

www.cecv.catholic.edu.au/vcsa/guidelines/Anti_Bullying_Policy.doc

CECV IR Unit template – Social Media Policy

www.cecv.catholic.edu.au/vcsa/guidelines/Template_Social_Media_Policy.doc

CECV IR Unit template – Workplace Equal Opportunity Policy

web.cecv.catholic.edu.au/vcsa/guidelines/guideindex.htm

Victorian Catholic Education Multi Enterprise Agreement 2013

web.cecv.catholic.edu.au/vcsa/Agreement_2013/VCEMEA_2013.pdf

Worksafe Victoria, *'Your Guide to Workplace Bullying – prevention and response'*, October 2013

This useful document provides practical information and guidance to employers (including handy checklists) on preventing and responding to bullying, with a focus on complying with their duties under the OH&S Act.

www.vwa.vic.gov.au/_data/assets/pdf_file/0008/42893/WS_Bullying_Guide_Web2.pdf

Fair Work Commission, *'Guide: Anti-bullying'*, 8 July 2014

This guide explains the process for making and responding to a claim of workplace bullying at the FWC.

www.fwc.gov.au/documents/documents/factsheets/Guide_antibullying.pdf

Fair Work Ombudsman, *'Best Practice Guide: Managing underperformance'*

This practical guide provides useful advice about dealing with underperformance. Many of the suggestions can be used in conjunction with the process outlined in Clause 13 of the VCEMEA.

www.fairwork.gov.au/ArticleDocuments/711/Managing-underperformance-best-practice-guide.pdf.aspx

Safe Work Australia, *'Guide for Preventing and Responding to Workplace Bullying'*, November 2013

Safe Work Australia is a national agency that develops policies for those states (other than Victoria and Western Australia) that have agreed to harmonise their occupational health and safety laws. Since Victoria is not covered by the harmonised occupational health and safety laws, this guide has no formal status. However, the guide remains a useful source of information for employers on how to manage the risks of workplace bullying.

www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/827/Guide-preventing-responding-workplace-bullying.pdf

Safe Work Australia, *'Dealing with Workplace Bullying – A Worker's Guide'*, November 2013

As stated above, Victoria is not covered by the harmonised occupational health and safety laws. However, this guide is useful in providing an insight into the type of information provided to employees in relation to workplace bullying.

www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/828/Workers-Guide-workplace-bullying.pdf