

Wurru-Ki

(meaning 'To Speak')

Peer Resolution Manual

9 April 2018

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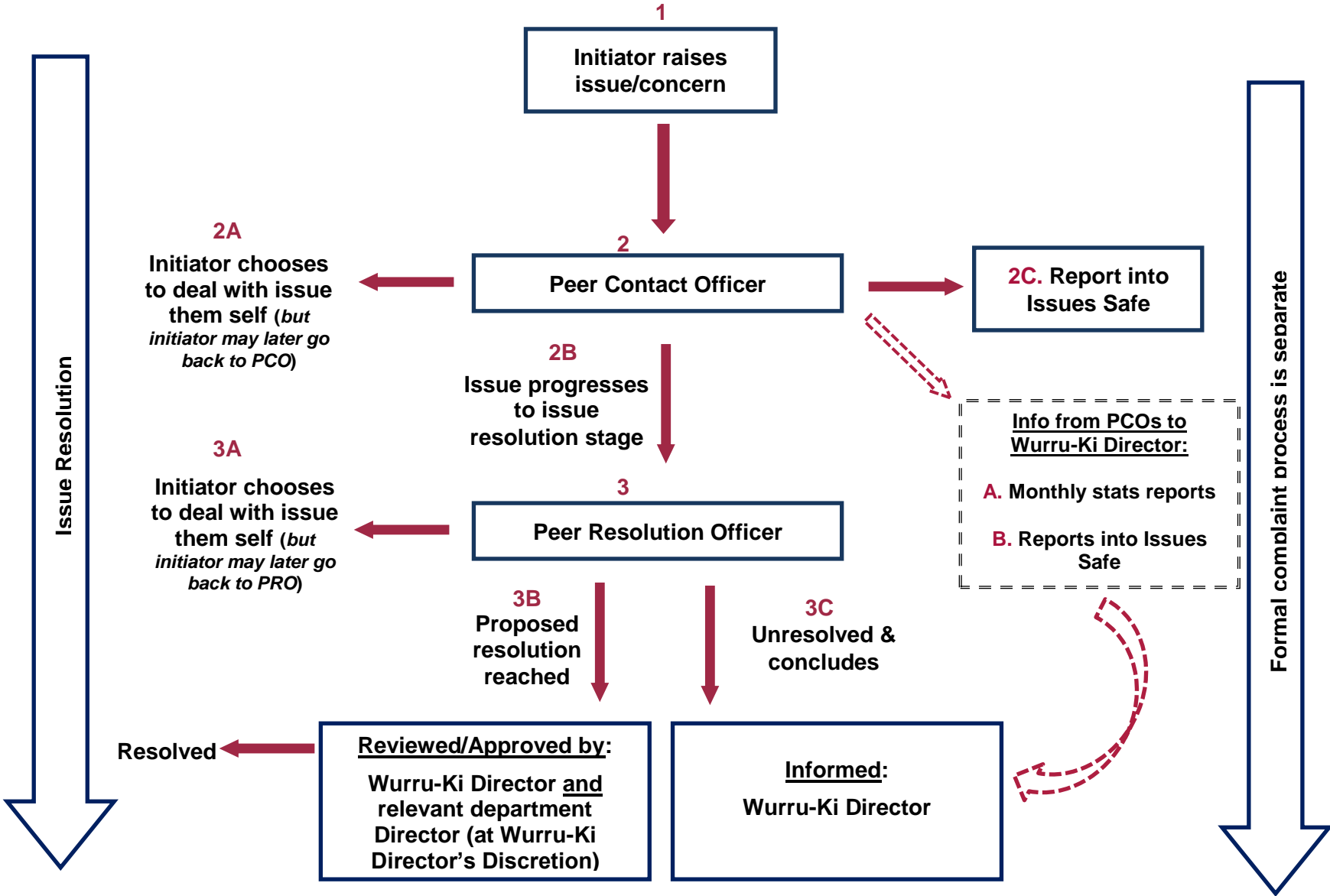
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- Who can raise an issue/concern:**
- (a) all workers engaged at Barwon Health sites (employees, contractors, trainees, students, volunteers)
- Issues that are included in this process involve:**
- (a) interpersonal interactions
 - (b) inappropriate workplace behaviour
- Issues that are not included in this process:**
- (a) EA negotiations
 - (b) issues of a collective nature (e.g. rostering)
 - (c) current proceedings in a Court/Tribunal (e.g. WorkCover or general protections claims)
 - (d) current performance management/management decisions/assessment
 - (e) interpretation of employment contracts/EAs
 - (f) alleged breaches of OH&S laws by Barwon Health excluding bullying and harassment
 - (g) issues concerning the Wurru-Ki Director
 - (h) issues concerning members of the Workforce Directorate in discharging their roles



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7 PAGE SUMMARY AND INTRODUCTION TO WURRU-KI

- (i) PURPOSE OF WURRU-KI
- (ii) HOW IS THIS DIFFERENT FROM THE BARWON HEALTH FORMAL COMPLAINT PROCESS?
- (iii) HOW TO USE WURRU-KI IF YOU ARE A BARWON HEALTH WORKER
- (iv) HOW DOES A PEER CONTACT OFFICER USE WURRU-KI
- (v) HOW DOES A PEER RESOLUTION OFFICER USE WURRU-KI
- (vi) USE ONE POINT FOR CURRENT VERSION OF THIS DOCUMENT

(i) PURPOSE OF WURRU-KI

Barwon Health has introduced a strategy for sustaining a healthy workplace.

We call it **Wurru-Ki**.

This document is written to explain the process by which workers can seek to deal with or resolve matters/issues/concerns/complaints regarding interpersonal interactions at work or inappropriate workplace behaviour (collectively “issues”) that any worker chooses to raise within this peer resolution process called Wurru-Ki. It is an alternative to raising the issue under Barwon Health’s formal complaint process.

While reading this document, please consider how you might choose to raise an issue you have, by using the options available to you.

This document provides for the establishment of Peer Contact Officers (**PCOs**) and Peer Resolution Officers (**PROs**) and provides guidance on how they can assist you to address or resolve your workplace issue. The PCOs and PROs come from a range of your peers and are trained in the roles. They are not members of the Workforce Directorate.

We understand that it’s not always easy to raise issues in the workplace. This document will give you an understanding of Wurru-Ki and the avenues available to you to assist you in resolving your issue.

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***"The standard you walk past is the standard you accept"* – Lieutenant General David Morrison AO**

(ii) HOW IS THIS DIFFERENT FROM THE BARWON HEALTH FORMAL COMPLAINT PROCESS?

Wurru-Ki runs parallel and is separate to the Barwon Health complaint process. This means that an issue raised under Wurru-Ki can be addressed and resolved at the workplace level:

- Without the direct involvement of management or the Workforce Directorate;
- Without a PRO needing to necessarily decide who is right and who is wrong - rather, the PRO seeks to assist the Initiator and the Respondent reach an agreement between on a resolution that works.

Even in the most serious of potential dismissal situations, Wurru-Ki can help workers resolve issues between them at the workplace.

Below is a table summarising the key benefits and differences of Wurru-Ki when compared to dealing with the issue through the Barwon Health formal complaint process.

Key Benefits and Differences

WURRU-KI	FORMAL COMPLAINT PROCESS
A structured process but not as a formal complaint	Formal complaint
Issue can be raised confidentially and anonymously in some circumstances	Complaint is not anonymous, but confidentially maintained as part of process
Disclosures / admissions are off the record	Disclosures / admissions are on the record and must be acted upon
Non disciplinary	Disciplinary
Peer led resolution	Management led decision
Aimed at resolution agreed between the two parties	Outcome imposed by management
No blame assigned to parties or finding of wrongdoing	Requires a finding of whether there was, more likely than not, wrongdoing
Encourages ongoing professional relationships by keeping it private	Management imposed resolution and can impact ongoing professional relationships

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WURRU-KI DOES NOT APPLY WHERE:

1. The issue is of a collective industrial nature (e.g. rostering)
2. The issue is about Enterprise Agreement negotiations
3. The issue is the subject of current proceedings in a Court or Tribunal (e.g. WorkCover or general protections claims)
4. The issue involves current performance management/management decisions/ assessment
5. The issue is the interpretation of employment contracts, Enterprise Agreements
6. The issue is an alleged breach of Occupational Health and Safety laws by Barwon Health (excluding bullying and harassment).
7. The issue concerns the Wurru-Ki Director
8. The issue concerns members of the Workforce Directorate in discharging their roles

IF A FORMAL COMPLAINT PROCESS IS ALSO RUNNING:

If a formal complaint process is underway then the two processes will operate separately. They are parallel, but they have very different objectives:

- Wurru-Ki is attempted resolution between two workers with a peer mediator without finding of fault.
- Formal complaint process is management making a decision regarding a worker's conduct and consequences.
- Things said within Wurru-Ki are an attempt to resolve issues without disputation and are off the record and not used in any formal complaint process.

(iii) HOW TO USE WURRU-KI IF YOU ARE A BARWON HEALTH WORKER

HOW DO I RAISE MY ISSUE/CONCERN?

If you are a Barwon Health worker who has:

- (a) experienced inappropriate workplace behaviour; and/or
- (b) has witnessed inappropriate workplace behaviour. Your first step in this process is to speak to a Peer Contact Officer who will explain your options under Wurru-Ki.

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For the purpose of Wurru-Ki, as the person raising the issue, you are known as the “**Initiator**”. The person about whom you have raised an issue will be known as the “**Respondent**”. For the purpose of Wurru-Ki, the “**Wurru-Ki Director**” will oversee the program.

CAN I RAISE THE ISSUE ANONYMOUSLY?

Yes. You may either:

- (a) raise an issue without identifying yourself to the PCO; or
- (b) identify yourself to the PCO, but ask the PCO for your identity not to be revealed.

NOTE: There are three exceptions to anonymity: If it is a very serious issue, the PCO or PRO may be required to refer an issue, even if raised anonymously, to the Wurru-Ki Director, and tell the Wurru-Ki Director your name. This is because there are three situations that arise where as an employer, our duty of care means we simply must take some action. This would involve reports of very serious conduct which:

- (a) may be criminal in nature (e.g. sexual assault); or
- (b) is so serious that it may justify dismissal; or
- (c) may trigger statutory reporting obligations, or similar.

All other issues can be pursued and managed anonymously.

TIP: “Anonymity” is about your name not being known or revealed. See Part 19. “**Confidentiality**” is about who sees your issue and what is done with the issue. For further information about raising your issue anonymously, see Part 20 of this document.

WILL THE ISSUE BE KEPT CONFIDENTIAL?

In all issues raised in discussions with a PCO or a PRO your name will be kept completely confidential if you wish to maintain confidentiality and not take the issue further.

There are three options available to you regarding the confidentiality of issues initiated. These three choices will be carefully explained to and discussed with you if you meet with a PCO or PRO:

1. You can request that your discussion with the PCO remain completely confidential and no further action will be taken by Barwon Health at all.

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2. Secondly, the issue raised by you can be recorded confidentially in the “Issues Safe” (which is an issues file that is maintained with strict confidentiality by the Wurru-Ki Director). Barwon Health will not take specific action against the Respondent but may use the information to take general educational or other preventive measures in the workplace.
3. Thirdly, you can choose for the issue raised by you to be noted and provided to a PRO in order that they may take further action to resolve it.

TIP: For further information regarding confidentiality, see part 20 of this document.

NOTE: There are three exceptions to confidentiality. That is where Barwon Health regards the issue raised as one involving conduct that:

- (a) may be criminal in nature; or
- (b) is so serious that it may justify dismissal; or
- (c) may trigger statutory reporting obligations, or similar.

In those situations, because of our duty of care obligations, confidentiality may not be appropriate.

In other situations your choice of option regarding confidentiality will be maintained.

WHAT HAPPENS AFTER AN ISSUE IS RAISED WITH A PCO?

- Once you have raised an issue with the PCO, the PCO will discuss with you the options available to deal with the issue. This may include not taking any further action or referral onto the PRO.
- If you agree for the issue to be referred to the PRO, the PRO will discuss the matter with you with a view to enabling potential resolution in the workplace.
- If the issue raised is considered to be very serious, it will be referred immediately to the Wurru-Ki Director. They may then have a separate, parallel process that they need to consider regarding potential discipline. It is important that very serious issues are immediately reported to the Wurru-Ki Director because Barwon Health has a duty of care to protect workers in certain circumstances.

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NOTE: Any potential formal complaint process is separate from Wurru-Ki and will not prevent you or the Respondent from continuing the process to try to find a resolution between you.

Where a formal complaint process is commenced against a Respondent, the Respondent can elect whether or not to participate in, or continue with, Wurru-Ki as participation in Wurru-Ki is entirely voluntary.

At times, it may be beneficial for the Respondent to participate in Wurru-Ki as the fact alone of reaching a resolution with the Initiator under Wurru-Ki may be taken into account in any formal complaint process taken against the Respondent (e.g. if it shows interest, care and participation).

Other than the outcome, any communications and choices made by any person in Wurru-Ki are not disclosed or used by management in the formal complaint process. Confidentiality is to encourage resolutions using Wurru-Ki.

Where the Respondent elects not to participate, Wurru-Ki comes to an end. Once an issue is with the PRO, it is the PRO's decision when Wurru-Ki ends.

ACCEPTABLE BEHAVIOURS POLICY INCLUDING WORKPLACE BULLYING, HARASSMENT AND DISCRIMINATION

At work, Barwon Health workers may encounter the following:

- all forms of discrimination;
- sexual harassment;
- victimisation;
- workplace bullying; and
- occupational violence.

Barwon Health has a policy to prevent discrimination, sexual harassment, bullying and other inappropriate behaviours happening in its workplaces.

If you encounter one of these situations, you might want to use Wurru-Ki to address one of these issues. You can refer to **Section B** to find out more about these issues and explanations of examples of the types issues you could use Wurru-Ki for.

Please speak to a PCO if:

- you think that you might have been discriminated against, harassed or bullied at work;
 - you have witnessed someone else being discriminated against, harassed or bullied at work;
- or

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- you want to ask more questions about such circumstances

Please refer to One Point or wurri-ki.org.au for the contact details of Peer Contact Officers.

(iv) HOW DOES A PEER CONTACT OFFICER USE WURRU-KI

Fellow workers can go to a PCO if they have questions to ask, issues to raise or matters relating to equal opportunity, discrimination, sexual or racial harassment, bullying or other inappropriate workplace behaviour.

All PCOs have received training regarding Wurru-Ki and their role.

An explanation of Wurru-Ki, and what the process involves, is set out in **Section C**.

The "Guide for PCOs" section gives PCOs an overview of what they have to do and a checklist which sets out the steps for them to follow.

In addition to specific training and education regarding Wurru-Ki, further information regarding understanding discrimination, sexual harassment, and workplace bullying, is set out in **Section B**. The information in that section should assist PCOs in providing appropriate support to workers who contact them with questions or issues.

There are a number of common issues which may arise in the course of a PCO's dealings with workers.

(v) HOW DOES A PEER RESOLUTION OFFICER USE WURRU-KI

The role of the PRO is also set out in **Section C** – "Guide for Peer Resolution Officers." PROs should look at the sections:

- "What Happens When an Issue is Raised in Wurru-Ki?" (**Part 13**); and
- "Guide for Peer Resolution Officers and Explanation of Their Role" (**Part 15**); to make sure you understand your role. There is an overview of the process and checklists which set out the steps for you to follow.

PROs should also make sure that they are familiar with Barwon Health's policies in **Section A**.

In addition to specific training and education regarding Wurru-Ki, further information regarding discrimination and sexual harassment, PROs should refer to **Section B** - "Definitions and explanations of examples of some issues that you could use Wurru-Ki for".

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SECTION A: YOU CAN USE WURRU-KI WITH BARWON HEALTH POLICIES

- 1 What are Barwon Health’s policies on Discrimination, Workplace Bullying and Harassment?
 - 1.1 What are Barwon Health policies on Workplace Bullying, Harassment, Discrimination and other inappropriate workplace behaviours?
 - 1.2 Why is Barwon Health intervening?
 - 1.3 Reinforcement of compliance with Barwon Health policies and guidelines
- 2 Acceptable Behaviours Policy including Workplace Bullying, Harassment and Discrimination
- 3 Managing Complaints of Unsatisfactory Performance and Misconduct
- 4 Code of Conduct
- 5 All other relevant policies
- 6 Relevant Enterprise Agreements

1 Wurru-Ki and Barwon Health policies

1.1 What are Barwon Health policies on Workplace Bullying, Harassment, Discrimination and other inappropriate workplace behaviours?

Barwon Health is committed to the health, safety and wellbeing of its workforce.

The Barwon Health *Acceptable Behaviours Policy including Workplace Bullying, Harassment and Discrimination* sets out Barwon Health’s commitment to a work environment free from all forms of behaviours that are unacceptable, including bullying, harassment and discrimination.

The Barwon Health *Anti-Bullying* policy sets out Barwon Health’s commitment to a work environment free from the threat of bullying or physical and emotional harm.

These policies apply to all employees, contractors, consultants, honorary appointees, volunteers and others (collectively known as “**worker**”) while they are on Barwon Health premises or undertaking work related activities on behalf of Barwon Health, irrespective of where those activities are performed.

1.2 The Alternative: The Barwon Health formal process

If a worker of Barwon Health believes they have been unlawfully discriminated against, sexually harassed or bullied, then it would be open to that person to lodge a formal complaint with an external authority against both the alleged perpetrator and Barwon Health. Those external authorities include, but are not limited to, the Fair Work Commission, the Victorian Civil and Administrative Tribunal and the Victorian Equal Opportunity and Human Rights Commission.

Any such formal complaint may lead to a Court or Tribunal hearing and if the Court or Tribunal subsequently finds that unlawful discrimination, sexual harassment or workplace bullying has taken place, the perpetrator will be liable. Barwon Health may also be found liable unless it can show that it has taken reasonable steps to prevent such behaviour from occurring, (i.e. vicarious liability). These decisions are public and can be reported in the media.

Workplace bullying would also in some serious situations be an occupational health and safety issue. Barwon Health may therefore be similarly liable unless it can show that it has maintained so far as reasonably practicable, a working environment that is safe and without risks to both mental and physical health.

Barwon Health aspires to a workplace where its workers are not subject to and do not subject others to discrimination, sexual harassment or workplace bullying, in any form,

1.3 Wurru-Ki: an alternative and informal option to deal with issues under Barwon Health policies

Wurru-Ki aims to reinforce Barwon Health's policies, procedures and guidelines, and assist in these policies and procedures being effectively applied throughout the work place.

This document also contains links to Barwon Health's *Managing Complaints of Unsatisfactory Performance and Misconduct Guidelines* which sets out Barwon Health's procedures for addressing any formal complaints that may be made outside Wurru-Ki.

Wurru-Ki may be undertaken at the same time as Barwon Health's formal complaint process.

2 Acceptable Behaviours Policy including Workplace Bullying, Harassment and Discrimination

Policy

<http://prompt.bh.local/Search/download.aspx?filename=1051289\1051908\34707157.pdf>

3 Code of Conduct

Policy

<http://prompt.bh.local/Search/download.aspx?filename=1051289\1051908\29294993.pdf>

Handbook

<https://system.prompt.org.au/Download/Document.aspx?id=27158594&code=2D807CA4827D8897AD75F20B24979FC7>

4 Managing Complaints of Unsatisfactory Performance and Misconduct

Guidelines

<http://prompt.bh.local/Search/download.aspx?filename=1051289\1051908\21993360.pdf>

5 Review of Action

Policy

<http://prompt.bh.local/Search/download.aspx?filename=1051289\1051908\24492164.pdf>

Procedure

<http://prompt.bh.local/Search/download.aspx?filename=1051289\1051908\24492144.pdf>

6 Enterprise Agreements

Agreements

<https://onepoint.barwonhealth.org.au/corporate/workforce-and-culture/General%20Information/Pages/Enterprise-Bargaining-Agreements.aspx>

SECTION B: DEFINITIONS AND EXPLANATIONS OF THE TYPES OF CONDUCT YOU COULD USE WURRU-KI FOR

TIP: Most things which make you feel that the conduct towards you is wrong can be dealt with by Wurru-Ki. Discrimination, harassment, victimisation, bullying or occupational violence are some examples of this.

7 Discrimination

7.1 What is Discrimination?

7.1.1 Direct Discrimination

7.1.2 Indirect Discrimination

7.1.3 Unlawful Discrimination Prohibited

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 - 7.8.6 **What is Unjustifiable Hardship?**
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- 7.13 **Physical Features Discrimination**

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7 Discrimination

7.1 WHAT IS UNLAWFUL DISCRIMINATION

Unlawful discrimination in employment happens when a person is treated *unfavourably* because that person has a particular characteristic or status (such as race or sex) and that type of discrimination is unlawful.

Unlawful discrimination can be direct or indirect.

Different treatment of two people (say of different sex or race) is not always discrimination.

The examples of discrimination provided below are for illustrative purposes only and are not references to actual events that have occurred and any similarity is coincidental only.

7.1.1 Direct Discrimination

Direct discrimination usually occurs because people are acting on the basis of their assumptions about people because of personal prejudices or assumptions about specific groups of people. For example, it is a common assumption that women with families do not want careers. A decision in relation to career or performance should not be made on this assumption. Any such decision would be direct discrimination on the basis of sex.

Direct discrimination occurs when a person is treated unfavourably because of a prohibited ground such as their sex, race, colour, marital status or disability.

Example: *Branco is not appointed to a senior nursing position because he is of Serbian heritage and the Manager is concerned that the other nurses will not accept him given that the majority of them are Croatian.*

This would be unlawful direct discrimination against Branco because of his race and ethnic origin. The unfavourable treatment is *because* he is Serbian.

7.1.2 Indirect discrimination

Indirect discrimination occurs when actions, policies or conduct appear to treat people equally, but actually disadvantage a person or group of people, and those people are disadvantaged because of their sex or their race or one of the other prohibited grounds of discrimination.

Indirect discrimination occurs where there is a requirement, rule, policy, practice or procedure, that is the same for everyone but has an unequal effect on particular groups. This type of "requirement" is likely to be indirect discrimination unless the requirement is reasonable in all the circumstances.

Such a requirement will be unlawful indirect discrimination even if there was never any intention to discriminate.

Example: An organisation wishing to recruit new employees advertises for people have recently completed Year 12. As a majority of these people are younger, this requirement will disadvantage a proportionately larger number of older applicants. It is the qualification and skills required for the job that need to be addressed rather than the period of time since completing Year 12. If the organisation persists, it will be unlawfully discriminating on the basis of age.

Indirect discrimination can be avoided by reviewing all regulations, rules, policies, procedures and practices and by working out what the impact is on the groups protected by discrimination legislation.

7.1.3 Unlawful Discrimination Prohibited

Unlawful discrimination by one worker against another will not be tolerated. Workers who discriminate against others may be appropriately disciplined. Unlawful discriminatory behaviour may lead to dismissal.

7.1.4 Will Discrimination be Unlawful if the Person Discriminating has Made a Mistake About the Other Person's Attributes?

Yes. It is unlawful to discriminate against a person because it is thought that they have one of the "protected attributes" (e.g. disability, homosexuality, etc.) even if they do not. For example, it is unlawful to treat a person less favourably on the basis that they are HIV positive status even if they are not actually HIV positive.

Example: Ben knows that Lawrence is gay. Ben refuses to work next to Lawrence on the ward because he thinks he might catch AIDS. Lawrence does not have AIDS and is not HIV positive.

Ben is unlawfully discriminating against Lawrence on the basis of an assumed disability.

7.1.5 Will Discrimination be Unlawful Even if the Discriminator does not Intend to Discriminate?

Yes. All that needs to be shown is that a person is treated unfavourably because of a person's race, sex, etc. It does not matter whether the person meant to treat the other person unfavourably because of their religion, race, sex, etc.

Example: Jim works as a Patient Services Assistant (PSA) with three female PSAs. He never lets them do heavy lifting and says things like "you little girlies take it easy. You shouldn't be lifting heavy things".

The women are not getting exposure to the full role and Jim is discriminating against them because they are women, even though he doesn't mean to.

7.1.6 Exceptions to

The anti-discrimination laws (at both the State and Federal level) provides for exceptions which makes it lawful for an employer to discriminate in certain circumstances.

For example, it is lawful for an employer to discriminate against a worker who has a disability if the employer can show that the worker cannot perform the genuine and reasonable requirements of a job even after reasonable adjustments have been made by the employer to accommodate the worker's disability.

7.2 AGE DISCRIMINATION

7.2.1 What is Age Discrimination?

It is unlawful treat a person unfavourably because of their age.

Age discrimination occurs when a person is treated unfavourably because of their actual or assumed age. Sometimes it occurs because someone is older, and sometimes discrimination occurs because a person is younger.

7.2.2 Direct Discrimination

Direct discrimination on the basis of age means treating a person of any age unfavourably because of their actual or assumed age.

Example: Garry worked as a mechanic for a large factory. Garry knows that the younger employees were receiving training on the new machinery. When Garry asked his supervisor why he had not been invited to the training sessions he was told "you're getting a bit old for learning new tricks – stick to what you know."

Garry has been directly discriminated against (treated unfavourably) because of his age.

7.2.3 Indirect Discrimination

Indirect discrimination happens when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable impact on persons of a particular age.

Example: A hospital has a vacancy for a "senior midwife". The hospital advertises internally for applicants and stipulates that people may only apply if they have 10 years or more experience.

This would be indirectly discriminatory against younger people if the number of years of experience is not a reasonable requirement of the position.

7.3 RACE DISCRIMINATION

7.3.1 What is Race Discrimination?

It is unlawful to treat a person unfavourably because of their race.

Discrimination on the basis of presumed race or characteristics associated with a particular race is illegal.

Race includes a person's colour, descent, nationality, ancestry and ethnic background.

Ethnicity

Characteristics of people who have common cultural and ethnic background for example Greek, Polish, Chinese.

National Extraction

The nationality of a person's family whether or not the person is born in the country in which their parents or grandparents were born.

Nationality

Citizenship of a particular country. People can change their nationality in various circumstances.

Race

A group of people connected by common descent and ethnic background.

7.3.2 Direct Discrimination on the Basis of Race

Occurs when a person treats another person unfavourably because of their race, colour, nationality, etc.

Example: *Sam is Swedish and works on a ward with Michael, who constantly picks at Sam's work but interferes little with the work of other employees on the ward. When Sam asked him to stop, Michael said he was only helping out because everybody knew that Swedish people are distracted often at work because they are "gossips".*

Sam has been directly discriminated against because of his race or national origin.

7.3.3 Indirect Discrimination on the Basis of Race

Occurs when a requirement, condition or practice which appears to be neutral has an unfavourable impact on persons of a particular race.

Example: *The hospital advertises for security officers. It specifies that the security officers must be at least 170 cms and at least 70 kilos. Lee is of Chinese descent from Malaysia. He is trained as a security officer and in self-defence. He has the appropriate experience as a security officer. He cannot apply for the position because he, like many other people of Asian origin, cannot meet the height and weight requirements.*

Lee is being indirectly discriminated against because of his race and ethnic origin. A substantially higher proportion of Asian persons are unable to meet the height and weight requirements than persons of other races and it is not a reasonable requirement in the circumstances. The key should be the ability to perform the role, rather than assume that these heights and weights are necessary as a threshold to apply for the job.

7.4 SEX DISCRIMINATION

7.4.1 What is Sex Discrimination?

It is unlawful to treat a person unfavourably because of their sex.

7.4.2 Direct Discrimination on the Basis of Sex

Occurs when a person is treated unfavourably because of his or her sex.

Example: *Mike saw an advertisement for a nurse role at a hospital. When he telephoned to express his interest in the position he was told "sorry, we don't have any male nurses and we'd like to keep it that way".*

Mike has been directly discriminated against because of his sex.

7.4.3 Indirect Discrimination on the Basis of Sex

Occurs when a requirement, condition or practice which appears to be neutral in fact has a disproportionately negative effect on people of a particular sex.

Example: *A manager decides that only full-time workers will be promoted. There are more female employees working in part time positions than full time positions because of family responsibilities.*

The decision of the manager indirectly discriminates against female employees because they are more likely to work part-time than full time.

7.5 DISCRIMINATION BASED ON RELIGION

7.5.1 What is Discrimination on the Basis of Religion?

It is unlawful to treat a person unfavourably because that person holds, or does not hold, a religious belief that is not against the law.

7.5.2 Direct Discrimination on the Basis of a Person's Lawful Religious Belief or Activity

Occurs when that person is treated unfavourably because the person has a particular religious belief, engages in particular religious activities, or does not have a particular religious belief or does not engage in a particular religious activity.

Example: A hospital has a large number of Muslim employees working in one ward. Alan is a Hindu person from India. He wishes to work in the ward in which some Muslim workers are employed. His manager refuses to make a recommendation that Alan be transferred to that ward because he is concerned that the move will disrupt the workplace because of the current problems in India between Muslims and Hindus.

Alan has been directly discriminated against because of his Hindu religion.

7.5.3 Indirect Discrimination on the Basis of Person's Lawful Religious Belief or Activity

Occurs when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable impact on persons of a particular religion.

Example: Sam says the workers in his food preparation area will take their 20 minute break as 2 breaks per day of 10 minutes (apart from lunchtime) and that those 10 minute breaks must be taken between particular hours in the morning and afternoon. Mustafa complains to Sam because he is a devout Muslim and wishes to be able to take breaks to fit in with the Muslim prayer times.

Mustafa has been indirectly discriminated against on the basis of his religion and it is not a reasonable requirement in the circumstances.

7.6 DISCRIMINATION BASED ON POLITICAL BELIEF OR ACTIVITY

7.6.1 What is Discrimination on the Basis of Political Belief or Activity?

It is unlawful to treat a person unfavourably because of their lawful political belief or activity.

Political belief or activity can include views held on any societal, organisational or government issues. Political belief or activity refers generally to holding or not holding a lawful political belief or taking part, or not taking part or refusing to take part in a lawful political activity.

Examples of political beliefs and activities include: views about government policies/laws, involvement with environmental activist groups, and demonstrating support of a political party or candidate.

7.6.2 Direct Discrimination on the Basis of a Person's Political Belief or Activity

Occurs when a person is treated unfavourably because of that person's lawful political belief or activity.

Example: Two managers are interviewing for prospective medical graduates. In the interview, a candidate speaks of their recent experience handing out 'how-to-vote' cards for the Greens party in the last election. The interviewers rely on this information as a reason to eliminate the candidate from the selection process.

7.6.3 Indirect Discrimination on the Basis of a Person's Political Belief or Activity

Occurs when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable impact on persons with a particular lawful political belief or activity.

Example: A hospital Social Club has a rule that all members swear an oath of allegiance to the Queen. Fred is a member of a political group which supports Republicanism. The members of this political organisation are required to refuse to take an oath of allegiance to the Queen. The Social Club runs the office canteen and because Fred will not swear the oath of allegiance and join the Social Club he is unable to use the canteen.

Fred has been indirectly discriminated against because of his political belief or activity and it is not a reasonable requirement in the circumstances.

7.7 MARITAL STATUS DISCRIMINATION

7.7.1 What is Discrimination on the Basis of Marital Status?

It is unlawful to treat a person unfavourably because of their marital status.

Marital status means being married, single, separated, divorced, widowed or living with a domestic partner.

The term 'domestic partner' covers all couples, irrespective of sex and sexual orientation.

Marital status discrimination includes discrimination against a person because that person is married. It may also include discrimination against a person because of the particular person to whom the first person is married.

7.7.2 Direct Discrimination on the Basis of a Person's Marital Status

Occurs when a person is treated unfavourably because that person is married, single, separated, divorced, widowed or living in a de facto relationship.

Example: Liam applies for a promotion. The promotion would involve him working in a different ward. Susan decides that Liam is suitable for promotion but that he will not be promoted because his wife Tran works in that ward and she does not wish husbands and wives to work together in the same area.

Susan is directly discriminating against Liam because of his marital status.

7.7.3 Indirect Discrimination on the Basis of a Person's Marital Status

Occurs when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable impact on persons who are married, single, separated, divorced, widowed or living in a de facto relationship.

Example: The Line Manager says they need extra staff at work over the Christmas/New Year period, so she has decided that only married people can take leave over Christmas to spend time with their spouse and families.

The Line Manager's requirement is not reasonable and he is indirectly discriminating against people who are not married or who are in a de facto relationship.

7.8 DISABILITY/IMPAIRMENT DISCRIMINATION

7.8.1 What is Discrimination on the Basis of Disability or Impairment?

It is unlawful to treat a person unfavourably because of that person's actual or assumed disability or impairment.

Disability or impairment includes:

- total or partial loss of a bodily function
- the presence in the body of organisms that may cause disease or illness
- total or partial loss of a part of the body
- malfunction of a part of the body including a mental or psychological disease or disorder or a condition or disorder that results in a person's learning more slowly
- malfunction or disfigurement of a part of the body
- total or partial loss of a mental function
- a disorder or malfunction that results in a person learning differently
- a disorder, illness or disease that affects the person's thought process
- past disability (eg. a person who has had a broken leg or a period of psychiatric illness)
- imputed disability (eg. discrimination against an overweight person because they might get heart disease)

It is also unlawful to treat a person less favourably because they use a guide dog, interpreter, mechanical or other aid.

7.8.2 Direct Discrimination on the Basis of Disability

Treating a person with a disability unfavourably because of that person's actual or assumed disability or impairment is direct disability discrimination.

Example: Kerry applied to transfer to a position as a PSA. Kerry was suitably qualified for the position and performed well in the interview with Greg. However, when Greg contacted her referee, he was told that Kerry was an excellent worker but that over a year ago she had had to take time off due to a mental illness. Because of this information Greg decided not to give Kerry the job.

Kerry has been directly discriminated against because of her past disability.

7.8.3 Indirect Discrimination on the Basis of Disability

Indirect discrimination occurs when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable impact on people with a disability or impairment.

Example: A private hospital builds a new amenities block for its employees. The amenities block includes a recreation area, table tennis tables, a small swimming pool and a coffee area. The only access to the amenities centre is via 6 steps. Mary is employed as a secretary. Mary wishes to use the amenities centre as it is one of the benefits available to the employees but is unable to do so because she uses a wheelchair and is unable to use the stairs.

Mary has been indirectly discriminated against because of her disability.

7.8.4 Exceptions to discrimination – Genuine Requirements and other exceptions

An employer is required to make reasonable adjustments for a person with disability if adjustments are needed for the person to perform the genuine and reasonable requirements of the job.

An adjustment is not reasonable if it causes the employer to suffer unjustifiable hardship.

Discrimination is not unlawful if the employer can show that the person cannot perform the genuine and reasonable requirements of a job even after reasonable adjustments have been made by the employer to accommodate the worker's disability.

7.8.5 What are the genuine and reasonable requirements of a job?

The genuine and reasonable requirements of a job are the requirements of the job for the ability to perform the tasks and functions essential to the performance of that job.

Example: Wanda thought it was a genuine and reasonable requirement of a finance role to be able to handwrite numbers clearly in a spreadsheet. David could show that the job could be done in another way so that being able to handwrite numbers clearly was not a genuine and reasonable requirement. The adjustment he needed was the purchase of voice recognition software to record the numbers electronically. This would not cause the employer unjustifiable hardship.

Example 2: A more “extreme” example helps to illustrate the genuine and reasonable requirement exception.

Don is employed to do patient transport between hospitals. He develops an illness that means he becomes blind. Don is dismissed, after consultation, because he can no longer perform the genuine and reasonable requirements of the job.

There is no realistic adjustment in the workplace that would allow Don to continue to do that job without unjustifiable hardship on the employer. In such a situation, the law allows this discrimination (i.e. unfavourable treatment of Don – dismissal – due to his disability) because of the “genuine and reasonable requirements” exception.

7.8.6 What is Unjustifiable Hardship?

All relevant circumstances are to be taken into account when working out what *unjustifiable hardship* would be. These circumstances include the benefits and detriments to all concerned, the nature and effect of the disability, the employer's financial circumstances and any expenditure required.

Reliance on this defence requires that an employer consider what tasks and functions are essential to the performance of that job and whether the person can do those tasks and functions with any necessary adjustments by the employer (provided those adjustments would not cause the employer undue hardship).

7.9 SEXUAL ORIENTATION DISCRIMINATION

7.9.1 What is Sexual Orientation Discrimination?

It is unlawful to treat a person unfavourably because of that person's actual or assumed sexual orientation.

The term **sexual orientation** includes heterosexual, homosexual, bisexual or transsexual orientation as well as people perceived to fall into one of these groups.

7.9.2 Direct Discrimination on the Basis of Sexual Orientation

Direct discrimination occurs when a person is treated unfavourably on the basis their sexual orientation.

Example: Winona is open about the fact she is lesbian. Mark who works with Winona, starts making comments such as “I wonder who wears the pants in her relationship?” Winona is upset by this and asks Mark not to make such comments, but he continues to do so.

Winona has been directly discriminated against on the basis of sexual orientation.

7.9.3 Indirect Discrimination on the Basis of Sexual Orientation

Indirect discrimination occurs when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable effect on a person on the basis of the person's sexual orientation.

Example: A manager is organising the end of year Christmas function for the ward. An invitation goes out saying “You are invited together with your husband or wife”. Angela is in a same sex relationship with Veronica. Angela decides not to go to the function because she cannot bring Veronica.

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Angela has been indirectly discriminated against because she is a lesbian in a same sex relationship. A substantially higher proportion of employees who are heterosexual are able to bring a husband or wife, than employees who are gay, and it is not a reasonable requirement in the circumstances.

7.10 INDUSTRIAL ACTIVITY DISCRIMINATION

7.10.1 What is Discrimination on the Basis of Industrial Activity?

It is unlawful to treat a person unfavourably because they are involved in industrial activity.

The meaning of **Industrial Activity** includes being or not being a member of or joining or refusing to join an industrial organisation (which includes trade unions and employer organisations). It also includes participating in or not participating in a lawful activity organised or provided by the organisation or organising or promoting such activities.

7.10.2 Direct Discrimination on the Basis of Industrial Activity

This occurs when a person is treated unfavourably because of their industrial activity.

Example Branco worked in a hospital. The hospital workers go on strike after a successful protected industrial action ballot. An email from Franco's manager shows clearly that upon returning to work, Franco was not given a promotion because the manager said "I can't promote Franco because he is on the union's side. He was one of those who went on strike."

Branco has been directly discriminated against because he has participated in a lawful industrial activity.

7.10.3 Indirect Discrimination on the Basis of Industrial Activity

Indirect discrimination occurs when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable impact on a particular person or group on the basis of their industrial activity.

Example The hospital advertises a 6 month project position and stipulates that due to the urgency of the project, "only people who can commit to not taking any time off except for genuine sick leave," should apply. Tony is a lead union delegate for the ANMF in negotiating for a new enterprise agreement that is currently being negotiated. Tony cannot apply because he cannot commit to not taking time off work because the ANMF is considering taking protected industrial action.

Tony has been indirectly discriminated against because he is a union member who may wish to take protected industrial action.

7.11 FAMILY RESPONSIBILITIES/PARENTAL STATUS DISCRIMINATION

7.11.1 What is Discrimination on the Basis of Family Responsibilities/Parental Status?

It is unlawful to treat a person unfavourably because the person has children or because they do not have children.

A parent includes being a step-parent, adoptive parent, foster parent or guardian. It is also unlawful to treat an applicant for a position, or a worker unfavourably because they have responsibilities to look after members of their family, including spouse, children, siblings, parents and grandparents.

7.11.2 Direct Discrimination on the Basis of Family Responsibilities/Parental Status

Direct discrimination involves treating a person who is a parent or a person who has family responsibilities unfavourably on the basis that the person is a parent or has family responsibilities.

Example: Julie is in charge of allocating overtime in the Food Services team. She gives Svetlana and Tom overtime whenever she can because they both have children. Julie thinks they need the money more than Fabiano who is single with no children.

Fabiano has been directly discriminated against because he does not have children.

7.11.3 Indirect Discrimination on the Basis of Family Responsibilities/Parental Status

Indirect discrimination occurs when a requirement, condition or practice which appears to be neutral, in fact has an unfavourable impact on people who are parents or have family responsibilities.

Example: Mary is a single parent who works in the payroll section. She has a permanent job working Monday to Friday. Mary's manager informs the payroll team that all staff will be required to work on Saturday mornings. Mary says (and proves) that she is unable to do this because she needs to be available to look after her daughter and that she has no reasonable alternative that would allow her to accommodate the changes. The manager dismisses her saying they need staff that can work on Saturdays.

Mary has been indirectly discriminated against because she is a parent. She has also been unlawfully dismissed because she has been dismissed as a result of her family responsibilities.

7.12 CARER STATUS DISCRIMINATION

7.12.1 What is Discrimination on the Basis of Carer Status?

It is unlawful to treat a person unfavourably because they are a carer.

A carer is a person on whom another is wholly or substantially dependent for ongoing care and attention, on a substantially non-commercial basis. Carers do not need to have a family relationship with the person they are caring for. Often carers look after their:

- children
- parents
- other relatives
- spouses/partners
- friends
- neighbours

(Carer status does not apply to people who are paid to provide care and attention.)

7.12.2 Direct Discrimination on the Basis of Carer Status

Direct discrimination means treating an applicant for a position, or a worker unfavourably because they are a carer.

Example: Meg applied for a position for the position of Assistant Manager of Finance in a hospital. In the job interview Meg mentioned in passing that she had spent a lot of time looking after her mother, who has Alzheimer's disease. At this point the interviewer terminated the interview saying "I'm sorry, we can't afford to employ people who cannot commit to being available to put in the time at the office."

The company has directly discriminated against Meg on the basis of her carer status.

7.12.3 Indirect Discrimination on the Basis of Carer Status

Indirect discrimination occurs when a requirement, condition or practice which appears to be neutral in fact has an unfavourable impact on a person who is a carer.

Example: An employer might require that to be employed at all, casuals in ward clerk roles must commit to being available at short notice for unscheduled work shifts. This requirement discriminates against a large number of qualified applicants with carer responsibilities.

Unless this requirement can be shown to be based on the inherent requirements of the job and is reasonable in all the circumstances, this may be indirect discrimination on the basis of carer status.

7.13 PHYSICAL FEATURES DISCRIMINATION

7.13.1 What is Physical Features Discrimination?

It is unlawful to treat a person unfavourably because of their physical features.

“Physical features” means a person’s height, weight, size or other bodily characteristics. It does not include such things as body piercing which a person may choose to acquire.

Equal opportunity legislation does not define what "other bodily characteristics" are intended to be covered by the Act. The Act would certainly cover physical features such as birthmarks and being very short. It would not cover aspects of appearance within the control of the employee, such as nose rings, Mohawk haircuts etc. It is not clear whether it would also cover physical features such as ugliness. The best approach is to make sure that all activities covered within the employment situation are based on a person’s merit and ability and are not based on their physical features. Employees should not harass or treat unfairly another person in the work place because of their physical features.

7.13.2 Direct Discrimination on the Basis of Physical Features

Direct discrimination means treating an applicant for a position, or a worker unfavourably because of their physical features.

Example: Hong is one of the best performing employees in the PSA team. He comes from Asia and is very small and slight. He is moved into a new area and shortly after comes to Workforce in tears. The reason for his tears is because he has been teased repeatedly by two of his fellow workers because of his size. They keep making comments such as that he cannot be a “real man” because of his size. This has been going on to the point that he is unable to continue to work in that area.

Hong has been directly discriminated against because of his physical features.

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7.13.3 Indirect Discrimination on the Basis of Physical Features

Indirect discrimination occurs when a requirement, condition or practice which appears to be neutral, in fact has a disproportionately negative impact on persons of particular physical features.

Example: Susie is 148cm tall. She wishes to work in a particular section of Food Services but the area in which she wishes to work has food trolleys which are too high for her to reach. It would be relatively inexpensive for steps to be made available for her to reach.

Susie has been indirectly discriminated against because of her physical features and it is not reasonable in the circumstances.

7.14 PREGNANCY DISCRIMINATION

7.14.1 What is Discrimination on the Basis of Pregnancy?

It is unlawful to treat a person unfavourably because she is pregnant, because she is a woman and therefore capable of becoming pregnant, because she has previously been pregnant or because of a characteristic which is attributable to pregnancy (for example, morning sickness).

This includes discrimination on the basis of potential pregnancy.

7.14.2 Direct Discrimination on the Basis of Pregnancy

Direct discrimination on the basis of pregnancy means treating a person who is pregnant unfavourably because of pregnancy.

Example: A woman was dismissed from her job because she notified her employer that she was pregnant.

This is direct discrimination on the basis of pregnancy.

7.14.3 Indirect Discrimination on the Basis of Pregnancy

Indirect discrimination occurs when a requirement, condition or practice which appears to be neutral, in fact has a disproportionately negative impact on pregnant women.

Example: The employer has a policy which provides that in order for an employee to be eligible for promotion, they must attend all conferences specified by the employer. Sally's boss wants her to fly to Brisbane for a conference. Sally has been advised by her doctor that because of her pregnancy, she should not fly for the next four months. Sally's manager could arrange for someone else to go to the conference but he insists that it is part of the policy that all employees are able to fly interstate for conferences as required. Sally is passed over for promotion because she cannot comply with the policy due to her pregnancy.

Sally has been indirectly discriminated against because of her pregnancy. A substantially higher proportion of non-pregnant employees could meet the requirement, and it is not a reasonable requirement in the circumstances.

7.14.4 What About Protecting the Health or Safety of Pregnant Women?

If there are unavoidable health risks then a woman's work may be restructured with her agreement. However, dismissing a pregnant woman because of risks in the workplace may be against discrimination and industrial relations laws. If there is no agreement then independent advice should be sought.

7.14.5 What if the Job Performance of the Pregnant Woman is Unsatisfactory?

A pregnant woman's work should be subject to the same assessment procedures and rules as other employees. It is, however, unlawful to dismiss an employee if their work performance is affected by illness caused by pregnancy.

7.15 BREAST FEEDING DISCRIMINATION

7.15.1 What is Discrimination on the Basis of Breastfeeding?

It is unlawful to treat a person unfavourably because of breastfeeding.

A person (a woman) is discriminated against on the ground of breastfeeding if, by reason of the woman's breastfeeding or a characteristic that pertains generally to, or is generally imputed to, women who are breastfeeding, that woman is treated unfavourably.

Breastfeeding includes the act of expressing milk.

Example: Anne is a nurse and expresses milk during her breaks, and then stores the bottles in the fridge. John, a manager, makes rude remarks to Anne about the milk and complains at the staff meeting about it. Anne feels humiliated and insulted by James' treatment.

Anne is being directly discriminated against on the basis of her expressing milk, a characteristic of breastfeeding.

7.16 LAWFUL SEXUAL ACTIVITY DISCRIMINATION

7.16.1 What is Discrimination on the Basis of Lawful Sexual Activity?

It is unlawful to treat a person unfavourably because of their engaging in, not engaging in or refusing to engage in any sexual activity that is legal in Victoria.

Examples of lawful sexual activity include engaging in lawful prostitution and attending swinger's parties.

Example: A manager discovers that one of his employees is having a sexual relationship with a staff member from a rival business. He terminates her employment because he says he "doesn't want his employees sleeping with the enemy".

The manager is directly discriminating against the employee on the basis of them engaging in a lawful sexual activity.

7.17 GENDER IDENTITY DISCRIMINATION

7.17.1 What is Discrimination on the Basis of Gender Identity?

It is unlawful to treat a person unfavourably because of their gender identity.

Gender identity refers to a situation where a person of one sex identifies as a member of the other sex or where a person of indeterminate sex identifies as a member of a particular sex.

A person can do this by assuming characteristics of the other sex – whether through medical intervention, dress or other; or by living/seeking to live as a member of a certain sex.

Example: A nurse, who was born a female and who now identifies as a male, informs his manager that he wishes to undergo sex reassignment surgery. His manager removes him from his regular shifts because the other social workers and clients would “prefer to work with female nurses and would feel uncomfortable”.

The manager is directly discriminating against the employee on the basis of gender identity.

7.18 EMPLOYMENT ACTIVITY DISCRIMINATION

7.18.1 What is Discrimination on the Basis of Employment Activity?

It is unlawful to treat a person unfavourably because of their employment activity.

This means that an employer cannot treat, or propose to treat, someone unfavourably because they:

- (a) make a reasonable request to their employer, orally or in writing, for information regarding his or her employment entitlements; or
- (b) communicate to their employer, orally or in writing, a concern that they have not been, is not being or will not be, given some or all of their employment entitlements.

Example: An employee stops receiving payslips and raises their concern with the manager. Shortly after, the manager tells the employee that they won't be providing the information because they don't have time and that the employee's shifts will be cut.

The manager is directly discriminating against the employee on the basis of their employment activity.

7.19 PERSONAL ASSOCIATION DISCRIMINATION

7.19.1 What is Discrimination on the Basis of Personal Association?

It is unlawful to treat a person unfavourably because of their personal association with any person who has one of the attributes on the basis of which a person may not be discriminated against.

Example: Ying (who is Chinese and lives now in Australia) and Sam (an Anglo Australian) are married. Sam applied for a job at the Cafeteria. The Anglo Australian cafeteria manager, Bob, told Sam that he didn't get the job because "I didn't want all your Asian relatives coming around hoping I'll give them a job".

Sam has been discriminated against by Bob because of his personal association with Ying on the basis of Ying's race.

7.20 THE LEGISLATION

7.20.1 Federal Legislation

7.20.1.1 *Racial Discrimination Act 1975*

Prohibits discrimination in employment on the basis of:

- race
- national or ethnic origin
- colour
- offensive behaviour based on racial hatred and incitement to breach the Act
- immigration
- or that of a relative or associate

7.20.1.2 *Sex Discrimination Act 1984*

Prohibits discrimination in employment on the basis of:

- sex
- marital status
- pregnancy and potential pregnancy
- family responsibilities
- breastfeeding

This Act also makes it unlawful to sexually harass another person or victimise a person for making a discrimination complaint in the work place.

7.20.1.3 *Disability Discrimination Act 1992*

Prohibits discrimination in employment on the basis of:

- physical disability
- intellectual disability
- psychiatric disability
- sensory disability
- neurological or learning disabilities
- physical disfigurement
- presence in body of disease-causing organism (eg. HIV virus)

7.20.1.4 *Age Discrimination Act 2004*

Prohibits discrimination in employment on the basis of age

7.20.1.5 Fair Work Act 2009

Prohibits "adverse action" against employees, prospective employees and independent contractors, on the basis of:

- absence from work during maternity leave
- temporary absence from work because of illness or injury
- race
- physical or mental
- colour
- sex
- sexual preference
- family responsibilities
- physical or mental disability
- marital status
- age
- pregnancy
- social origin
- religion
- national extraction
- political opinion
- industrial activity

"**Adverse action**" is defined differently depending on whether the person is an employee, prospective employee or independent contractor.

In the case of an employee it includes dismissal, altering the employee's position to their prejudice (or otherwise injuring them in their employment) or discriminating between the employee and other employees. For prospective employees it means refusing to employ them or discriminating against them in the terms and conditions offered.

7.20.1.5 Workplace Gender Equality Act 2012 (Cth)

This Act imposes requirements on employers with more than 100 employees to establish equal opportunity for women in the workplace programs for women.

7.20.2 State Legislation

Victoria – *Equal Opportunity Act 2010*

The *Equal Opportunity Act* prohibits discrimination in employment on the basis of:

- sexual orientation
- gender identity
- sex
- lawful sexual activity
- pregnancy
- breastfeeding
- age
- physical features
- marital status
- industrial activity
- race
- status as a parent or carer
- being a parent, childless or a de facto spouse
- lawful religious belief or activity
- impairment
- political belief or activity
- victimisation
- employment activity
- disability
- an expunged homosexual conviction
- personal association with any person who has one of the listed attributes

The *Equal Opportunity Act* also makes it unlawful to sexually harass another person in the work place.

In addition, the Victorian *Racial and Religious Tolerance Act 2001* prohibits racial and religious vilification.

8 Sexual Harassment

8.1 WHAT IS SEXUAL HARASSMENT?

8.1.1 The *Sex Discrimination Act 1984* (Federal) says that:

a person sexually harasses another person (the **person harassed**) if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

The circumstances to be taken into account include, but are not limited to, the following:

- (a) the sex, age, marital status, sexual preference, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- (c) any disability of the person harassed;
- (d) any other relevant circumstance.

conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

8.1.2 The various State legislation includes similar definitions of sexual harassment and says that conduct of a sexual nature may include:

- subjecting a person to any act of physical intimacy;
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in their presence;
- making any gesture, action or comment of a sexual nature in a person's presence.

8.1.3 Sexual Harassment is Sexual Conduct Which is Unwelcome and Offensive, Humiliating or Intimidating

It can be a single incident or a series of incidents. Sexual harassment may include:

- requests for sexual favours;
- leering, pinching, wolf-whistles, obscene gestures;
- comments about a person's sex life;
- offensive posters, pictures or graffiti;
- sexual jokes, suggestive behaviour, telephone calls;
- constant "pet name" calling.

Actions that may be considered normal social interaction by one person could constitute sexual harassment of another person if a reasonable person in all the circumstances would have anticipated that the other person would be offended, humiliated or intimidated.

Example 1: Belinda is employed as a graduate nurse. She works with a number of other female and male nurses on a ward. Jonathan is a male nurse who is particularly friendly towards the female nurses.

He has the habit of putting his arm around the waist of several of the women and/or leaning over them at the desk as he talks to them. Belinda tells him she does not like this behaviour, and asks him not to touch or lean over her. Jonathan laughs at her, calls her "my darling", and persists with the behaviour. Belinda is distressed. Jonathan becomes annoyed with Belinda. Belinda is upset by this reaction and becomes increasingly nervous when Jonathan is around. Her work also begins to suffer.

Belinda has been sexually harassed.

8.1.4 What is not Sexual Harassment?

Welcome and accepted interaction in the workplace based on mutual attraction, friendship and consent is not sexual harassment. However, behaviour which is acceptable privately or socially may be totally inappropriate in a work environment.

For example, just because a man and a woman are involved in an incident, and the woman is upset, this does not automatically amount to sexual harassment. For example, non-sexual swearing by a man in the presence of a woman is probably not sexual harassment of that woman, even if she is upset.

8.1.5 Who is Likely to be Sexually Harassed?

Sexual harassment can occur at any level in the organisation. Men or women can be sexually harassed although complaint statistics indicate that it is women who are most likely to be harassed. Other factors such as age, race, impairment, lack of seniority, lack of confidence and lack of assertiveness can make a person particularly vulnerable to sexual harassment.

8.1.6 Is it Sexual Harassment if the Harasser did not Intend to Harass or Offend?

Yes. It is unlawful to sexually harass another person even if the harasser did not intend to harass the other person. The definition in 8.1.1 does not require intention.

8.1.7 Reprisals or Retaliations are Unlawful

It is unlawful to victimise or retaliate against a person because they wish to complain about sexual harassment or have already done so.

For further information on victimisation refer to **Part 10**.

8.1.8 Can Conduct Outside Work Hours be Sexual Harassment?

Yes, it can be. If the harassment occurs in an out of hours context which is clearly work related, then the answer would probably be yes.

Example 1: The Admin team is having a team dinner at a restaurant and at the dinner a male employee three times asks a female employee to go home with him after the dinner even after she has said no each time. She is upset at his behaviour.

This would amount to sexual harassment and may render both the male employee and the employer liable.

Barwon Health has the right and responsibility to be able to deal with staff behaviour at work related functions.

9 Racial Harassment

9.1 WHAT IS RACIAL HARASSMENT?

In Australia, offensive behaviour which is based on racial hatred is prohibited by the *Racial Discrimination Act 1975 (Cth)*.

It is unlawful for a person to do an act (otherwise than in private) because of a person's race, colour or national or ethnic origin if that act is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate that person. It also prohibits a person from doing such an act because of the race, colour, or national or ethnic origin of some or all of the people in a group if the act is reasonably likely in all the circumstances to offend, insult or humiliate the group.

This prohibition applies to acts which are done partly for racist reasons as well as those which are done completely for those reasons.

The legislation defines when an act is not performed in private rather than when it is. An act is not performed in private if it:

- causes words, sounds, images or writing to be communicated to the public;
- is done in a public place; or
- is done in the sight or hearing of people who are in a public place.

A public place is any place to which the public has access as of right or by express or implied invitation. It does not matter whether a charge is made for admission.

Employers and principals will be liable for breaches of the legislation by their employees and agents in certain circumstances. If an employee or agent performs an act which is prohibited in connection with his or her duties as an employee or agent, the employer or principal will also be liable for that act. If, however, the employer or principal can show that he or she took all reasonable steps to prevent the employee or agent from doing the act, he or she will have established a defence and will not be liable.

9.2 OUTLINE OF LEGISLATION

Australia has legislation which outlaws incitement to racial hatred and violence, and racial harassment. Some of this legislation provides criminal sanctions or a combination of criminal sanctions and civil remedies, while some provides only civil remedies.

Federal legislation prohibits incitement to racial hatred but does not provide criminal sanctions.

10 Victimisation

10.1 WHAT IS VICTIMISATION?

It is against the law to victimise anybody because they have made, or wish to make a complaint/allegation of bullying, discrimination or sexual harassment.

It can still be unlawful to victimise a person if their original complaint/allegation is not made out. However, generally victimisation will **not** be made out where the original complaint/allegation is not made in good faith (for example, if the person makes an allegation which they know is not true).

Victimisation means treating anybody less favourably in relation to their employment because they have made a complaint or have suggested that they wish to make a complaint.

A person can be victimised or treated badly by their employer, supervisor or fellow worker.

Any such behaviour would be unlawful if the treatment occurs because the Initiator has either made a complaint or is perceived to be going to make a complaint. Any form of retaliation or retribution against a Initiator who has or is going to make a complaint is against the law.

It is also unlawful to victimise anyone who is, or might act as, a witness to any act of discrimination. Any of the following behaviour could amount to victimisation:

- swearing or yelling;
- threatening;
- physically assaulting;
- inflicting damage on a person's possessions;
- disciplinary action against the Initiator that would not have been taken unless they had complained;
- suspension in duties;
- change in duties;
- social isolation of or silent treatment towards the person;
- transfer to another section;
- not promoting a person because they were seen as a "trouble maker".

***Example:** Sue raises a bullying complaint against her manager. In an upcoming performance review, the same manager rates her performance poorly, despite her having a previously exemplary performance history.*

11 Bullying

11.1 WHAT IS BULLYING?

Bullying at work, as defined by the *Fair Work Act 2009 (Cth)*, occurs when: a person or a group of people behaves unreasonably and repeatedly towards a worker or a group of workers while at work, and the behaviour creates a risk to health and safety. Reasonable management action carried out in a reasonable manner does not constitute bullying. Bullying has no other accepted definition at law; however, guidelines issued by the Victorian Worksafe Authority define bullying as repeated, unreasonable behaviour directed towards an employee, or group of employees, that creates a genuine and material risk to health and safety. By way of elaboration:

- Unreasonable behaviour is a reference to behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten another person;
- The reference to health does include mental, but only insofar as it constitutes a risk to the mental health leading to a recognisable psychiatric illness or impairment.

11.2 Examples of What is Bullying

Some examples of bullying include:

- Spreading or instigating rumours
- Verbal abuse
- Excluding or insulting employees
- Intimidation
- Assigning meaningless tasks which are unrelated to a person's job
- Giving employees impossible assignments
- Deliberately withholding information that an employee needs in order to do their job
- Deliberately causing inconvenience to a particular employee, for example, by changing their work roster.

Example 1: Mr Smith is a senior surgeon and Tom is currently under his supervision as a trainee. Mr Smith has responsibilities for the supervision of Tom's performance. Mr Smith has Tom operate with him in surgery and makes negative comments about Tom to all those assisting with the surgery. Including that:

- *he wasn't doing a good job'*
- *he was hopeless at suturing;*
- *he will never make it in the real world; and*
- *he would not make it through this rotation if Mr Smith "had anything to do with it."*

This behaviour occurred regularly over a number of months and caused Tom to feel humiliated and intimidated. The behaviour exposed Tom to a risk to his health and safety because it could result in him suffering psychological harm

Example 2: Ann is a senior nurse. She works with a more junior nurse called Katie. When Ann gets to work and says good morning to Katie, Katie either ignores her or ‘grunts’ in acknowledgement. Katie regularly asks the other administrative staff (not just Katie’s friends) if they want to go out to lunch in front of Ann but specifically excludes Ann from the invitation.

On a number of occasions, Ann has emailed Katie asking her to do a task and Katie has responded by email in a way that unnecessarily mimics how Ann has asked her to do the task (for example, where Ann has said “Can please arrange for an urgent courier to take the document.”, Katie has responded “I have urgently couriered the document”).

Even though Ann and Katie do not get along well socially, Katie’s behaviour towards Ann is more than just a personality conflict. Katie’s behaviour is a type of indirect bullying.

11.3 Examples of What is NOT Bullying

Some examples of what is NOT bullying are:

- Differences of opinion, and non-aggressive conflicts and problems in working relationships.
- Genuine and reasonable workplace and performance management or feedback.
- Genuine and reasonable disciplinary procedures.
- Directing or controlling how work is done.
- Informing a worker about unsatisfactory work performance or inappropriate work behaviour
- Asking a worker to perform reasonable duties in keeping with their job
- Maintaining reasonable workplace goals and standards.

However, these actions must be conducted in a reasonable manner. If they are not, they could still be bullying.

Example 1: Jeremy works in the accounts department in a team of five. He has been there for 9 months. The department is busy and everyone is required to share the workload equally. Jeremy keeps falling behind because he struggles with the computer program which is used.

Jeremy’s manager arranges for him to attend a half day course. His manager only tells him the day before and is quite abrupt. Jeremy is told that his skills in that area are not at the level required and he must attend the course to try and improve those skills.

The manager then emails everyone else in the team to let them know that Jeremy will be out of the office doing this. Jeremy feels as though he has been singled out and is humiliated.

Although the manager’s manner could have been less abrupt his behaviour is not bullying. Jeremy has a performance issue which needs to be improved and the manager’s conduct in dealing with this is reasonable.

11.4 Distinction between Bullying and Unlawful Discrimination/Racial and Sexual Harassment

Behaviour which is unlawful discrimination or racial/sexual harassment may also sometimes be bullying. However, bullying can exist that is not motivated by unlawful discrimination on one of the prohibited grounds of discrimination. The motivations for bullying are much broader. Bullying may arise from a previous disagreement which escalates into a more in-depth conflict. Bullying can also be the playing of pranks on a particular person because they are a newcomer to the workplace.

11.5 Outline of Legislation Regarding Bullying

Where bullying is also unlawful discrimination, sexual harassment and/or racial harassment, complaints can be brought under Federal laws relevant to those matters.

In Victoria, the Crimes Act 1958 (Vic) includes a definition of "stalking" which is specifically intended to encompass bullying. It includes:

- making threats to the person;
- using abusive or offensive words to, or in front of the person;
- performing abusive or offensive acts in the presence of the person;
- directing abusive or offensive acts towards the person;
- any other act that could reasonably be expected to:
 - cause physical or mental harm to the person (including self-harm); or
 - make the person fear for their safety.

Bullying can also be dealt with by a person applying under the *Fair Work Act 2009 (Cth)*.

Those provisions do not make bullying a specific offence, nor can compensation be ordered by the Fair Work Commission. But the Commission can hear and make (non compensation) orders on bullying complaints brought to them. The focus is on conciliation to resolve the matter. But it can move to a formal hearing to determine if bullying occurred and (non compensation) orders can be made to address the issue and seek to prevent it continuing.

Bullying in its own right is usually dealt with in a more generic sense under the Occupational Health and Safety laws in each State and Territory (**OHS Laws**). The Victorian OHS Laws impose legal responsibilities on both employers and employees in relation to both *mental and physical health*. Bullying can sometimes be considered a mental health risk by increasing workplace stress and triggering depression and acute anxiety. However, other common forms of bullying such as pranks or initiation ceremonies also pose a risk to physical health.

Employers have a general duty under the OHS Laws to provide and maintain so far as practicable a working environment that is safe and without risk to physical and mental health. Employees have duties under the OHS Laws to take reasonable care of their own health and safety and the health and safety of others. Visitors and contractors have similar duties when they are present at a workplace.

WorkSafe can investigate bullying complaints under the OHS Laws and may prosecute employers, employees, contractors and visitors for infringement. This can lead to criminal sanctions and civil remedies.

11.6 One off instances of unacceptable behaviour

Whilst a one off occurrence may not constitute workplace bullying, it may be of such seriousness that appropriate action may be taken by Barwon Health under the relevant policies and procedures.

11.7 Reasonable management action carried out in a reasonable manner is NOT bullying

Behaviour will not be considered bullying if it is reasonable management action carried out in a reasonable manner

The following are examples of what may constitute management action:

- performance appraisals
- ongoing meetings to address underperformance
- counselling or disciplining a worker for misconduct
- modifying a worker's duties including by transferring or re-deploying the worker
- investigating alleged misconduct by a worker
- denying a worker a benefit in relation to their employment, or
- refusing an employee permission to return to work due to a medical condition.

12 Occupational Violence

12.1 WHAT IS OCCUPATIONAL VIOLENCE?

Occupational violence is any incident in which a person is abused, threatened or assaulted in circumstances relating to their work. This definition covers a broad range of behaviours that can create a risk to the health and safety of employees. **It is conduct that would usually amount to a criminal offence.**

12.2 EXAMPLES OF OCCUPATIONAL VIOLENCE

A verbal threat to harm, maim or kill, or the application of force by a person to the body, clothing or equipment worn by another person, can amount to violence.

Other examples include:

- Threatening to commit a violent act;
- Throwing objects or equipment at a person or in a dangerous manner;
- Attacking a person with a weapon/makeshift weapon (e.g. equipment, knife, or a syringe)
- Locking a person in a car-boot, room or cupboard;
- Bomb threats;
- Physical acts such as spiking a person's drink, pushing, kicking, striking, punching, biting, spitting or other unwelcome physical contact that would amount to assault.

SECTION C: WURRU-KI

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13 What Happens when an Issue is Raised?

13.1 What is Wurru-Ki?

This Section contains details of the procedure to be followed by PCOs and PROs if a worker wants to ask about any form of discrimination, sexual harassment or bullying issues confidentially and informally.

13.1.1 What are the objectives of Wurru-Ki?

Wurru-Ki has two objectives:

1. to assist in an appropriate internal resolution of issues confidentially, quickly and effectively; and
2. to provide a system by which any further discrimination, sexual or racial harassment, bullying or any other inappropriate workplace behaviour can be prevented.

13.1.2 What will Wurru-Ki achieve?

The main aspirations of Wurru-Ki are as follows:

- a resolution whereby the notified behaviour ceases;
- that the person who raises an issue suffers no reprisals or retributions;
- that any difficulties or disadvantages that might have been experienced by either party, are promptly dealt with;
- that all parties act reasonably in trying to get the issue resolved;
- a focus on resolution, not on detailed investigations or finding of fault; and
- that a non-judgmental and non-punitive approach is adopted, as far as reasonably practicable.

13.1.3 How will workers be treated?

It is important to ensure that:

- those dealing with the issue (i.e. PCOs and PROs) have no personal interest, conflicts or prejudices that would close their mind to the issues involved in the matter;
- sufficient information regarding Wurru-Ki, and the process undertaken by PROs is provided to allow the Respondent to enter into discussions with the Initiator;
- any person who is requested to attend a meeting will be given adequate notice except in extremely urgent cases; and
- the Respondent has an opportunity to discuss the issue.

13.2 What is Barwon Health's policy on confidentiality within Wurru-Ki?

A conflict as to the application of confidentiality often arises when people want to raise issues but do not want others to know the issue(s) have been raised. On the other hand, an employer cannot take investigate and/or take disciplinary action against a Respondent unless it can put full details of the matter to them.

At the same time, Barwon Health wants to stop any discrimination or harassment or other undesirable conduct that is occurring and to prevent any re-occurrences. It also wants to give workers an opportunity to discuss issues impartially, confidentially and without judgement, otherwise workers may not feel free to seek assistance or obtain information about notifying an issue for resolution.

Barwon Health has decided that the Initiator's discussions with PCOs will be completely confidential if the Initiator wishes to maintain confidentiality and not take the issue further. The PCO will explain the Initiator's choice of three confidentiality options, which are as follows:

Option 1: (No action)

The discussion will be completely confidential and no action will be taken by Barwon Health (unless the serious nature of the matter would require Barwon Health to take action. In this situation, all reasonable steps will be taken to maintain confidentiality of the Initiator);

OR

Option 2: (Issues Safe)

The discussion will be recorded confidentially in the "Issues Safe" filing system (the Issues Safe system is explained at Part 17.4). For natural justice reasons, Barwon Health cannot assume allegations about a Respondent are true or not, without telling them what is being said and by whom and giving them an opportunity to respond. However Barwon Health will not take specific action against the Respondent at the time (except in very serious situations, see Part 13.5 and Part 21). Barwon Health can monitor the situation and/or take general preventative action. No action will be taken which will identify the Initiator without his/her specific permission;

OR

Option 3: (PRO)

The key parts of the discussion between the Initiator and the PCO will be recorded in writing and the PCO will provide a summary to the PRO so that they can take further steps towards resolution if required.

13.3 Wurru-Ki Flow Chart

Who can raise an issue/concern:

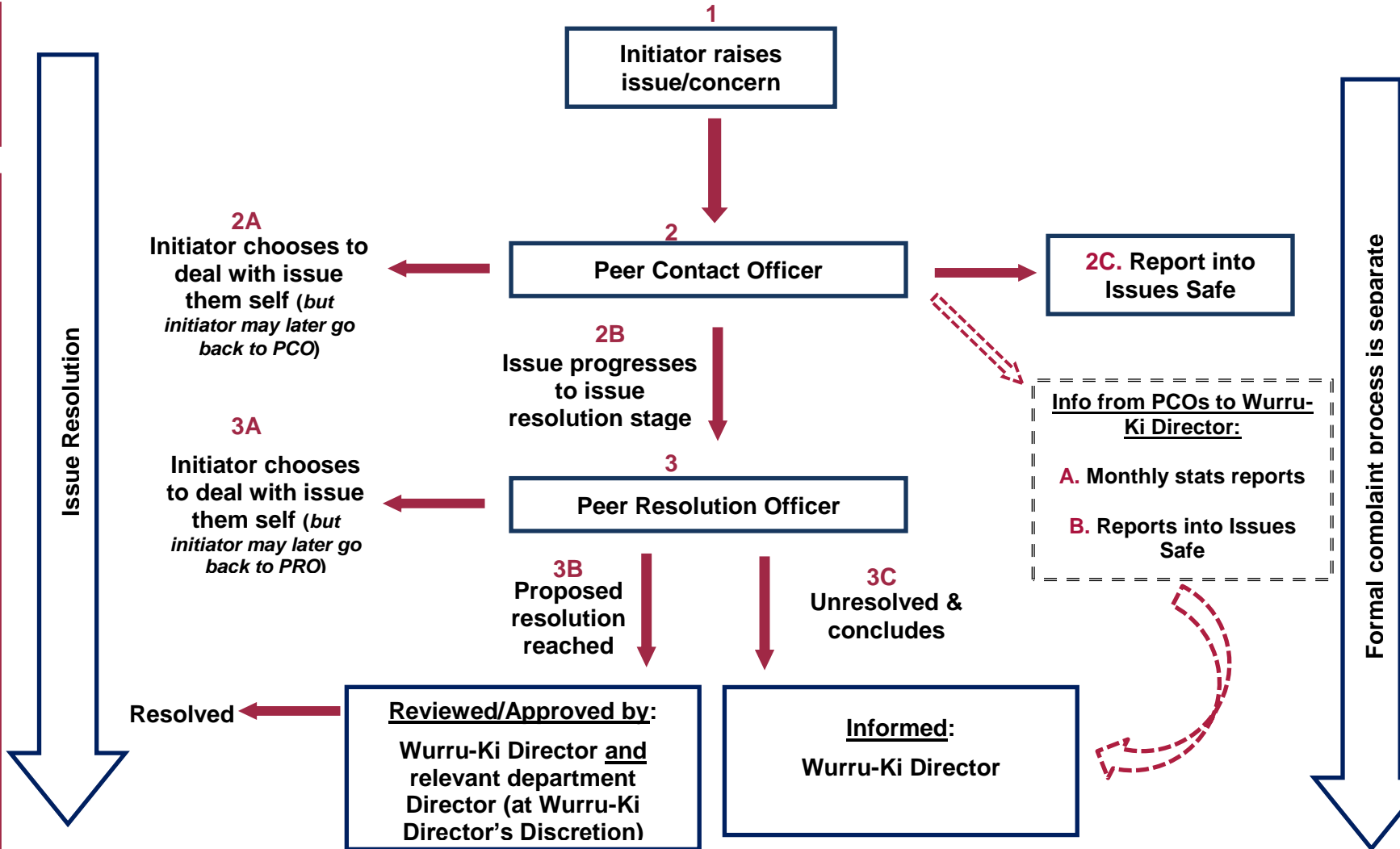
- (a) all workers engaged at Barwon Health sites (employees, contractors, trainees, students,

Issues that are included in this process involve:

- (a) interpersonal interactions
- (b) inappropriate workplace behaviour

Issues that are not included in this process:

- (a) EA negotiations
- (b) issues of a collective nature (e.g. rostering)
- (c) current proceedings in a Court/Tribunal (e.g. WorkCover or general protections claims)
- (d) current performance management/management decisions/assessment
- (e) interpretation of employment contracts/EAs
- (f) alleged breaches of OH&S laws by Barwon Health excluding bullying and harassment
- (g) issues concerning the Wurru-Ki Director
- (h) issues concerning members of the Workforce Directorate in discharging their roles



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13.4 Explaining Wurru-Ki and the Flow Chart

Wurru-Ki is set out in the flow chart in Part 13.3.

Step 1: Raising issues regarding inappropriate workplace behaviour

If a worker has:

- experienced inappropriate workplace behaviour (including discrimination, sexual harassment, bullying, swearing, aggressive verbal/physical behaviour); and/or
- witnessed such inappropriate workplace behaviour;

they may speak to a PCO of their choice.

Step 2: Speaking with the PCO

The PCO will give the worker information as to:

- how to deal with the issue;
- their choices in relation to confidentiality and Barwon Health action; and
- their options.

The PCO does not take sides or investigate or try to resolve the situation.

The PCO makes a statistical report every month to the Wurru-Ki Director. This Report is to be kept in the "Issues Safe" system. It does not name anyone and is only made for the purpose of general action by Barwon Health. The "Issues Safe" system is described in **Part 17** - "Record Keeping".

Step 2A: Worker deals with the issue themselves

The worker may then decide to deal with the issue themselves.

Step 2B: Progressing the issue to resolution

If the worker wishes to take the issue further, the PCO must refer them to a PRO.

Step 2C: Initiator records the issue confidentially in the Issues Safe

Barwon Health can monitor the situation and/or take general preventative action. No action will be taken which will identify the Initiator without his/her specific permission.

Step 3: Speaking with the PRO

The PRO will:

- contact the respondent and provide information regarding Wurru-Ki;
- listen to both sides;
- try to resolve the issue to the benefit of all parties; and
- not decide who is right or wrong.

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Step 3B: If the issue is resolved

If an issue is resolved, the Initiator and, if appropriate, the Respondent will sign an agreement.

Any resolution or agreement must be checked by the Wurru-Ki Director and the relevant Director of the department (at the Wurru-Ki Director's discretion).

Step 3C: If the issue is not resolved

If the issue has not been resolved it will be sent to the Wurru-Ki Director. The Wurru-Ki Director will assess whether the issue can be resolved or whether Barwon Health is able to, or should, take any further action on the matter.

Sometimes an issue will not be resolved and Barwon Health will not be taking any action. If this happens the Wurru-Ki Director will explain why to both parties.

The PRO will complete a Report to the Wurru-Ki Director. In most cases the relevant Program Director/Chief will in turn be informed so they are aware of the unresolved issue, but the Director will not assume either party is right or wrong.

If the matter is not resolved through Wurru-Ki the Initiator may still elect to make a formal complaint to the Workforce Directorate regarding the issue under to the formal complaint process.

13.5 What if Barwon Health is also considering a formal investigation and/or disciplinary action?

This decision will be made by the Wurru-Ki Director. The Wurru-Ki Director will be informed of potential dismissal and disciplinary situations in the Report provided to them by the PCO and/or PRO.

Where a formal investigation and/or disciplinary action is progressed, it is separate from but can be parallel to Wurru-Ki. The Wurru-Ki Director may take into account whether or not there was a resolution under Wurru-Ki when making decisions in the formal complaint process.

13.6 Can what a Respondent says (or does not say) be used in the formal complaint process?

No. Wurru-Ki is a "without prejudice" or "off the record" process, similar to a conciliation at the Fair Work Commission or in a court. Wurru-Ki is all about issue resolution and it works best if a Respondent does not have to worry that something they say will be used against them in a formal complaint process.

"Off the record" means communications and choices made by any person in Wurru-Ki are not used by management in the formal complaint process (unless the issue is of such seriousness that it must be referred to the Wurru-Ki Director).

14 Guide for Peer Contact Officers and Role Explanation

14.1 A PCO's role

14.1.1 What does the PCO do?

The role of the PCO is to:

- be the first point of contact for anyone in Barwon Health who has an issue or enquiry regarding all forms of discrimination, sexual harassment, bullying or any other inappropriate workplace behaviour;
- listen to a worker with an issue;
- take the worker and the issue seriously;
- discuss the matter with the worker confidentially, impartially and without judgement;
- provide the worker with information as to what constitutes discrimination, sexual harassment, bullying or other inappropriate workplace behaviour;
- inform the worker of the three confidentiality options;
- provide the worker with information as to their options;
- clarify the issue raised by the worker;
- advise the worker of Barwon Health's policies and procedures;
- advise the worker to be extremely careful about talking to other people about the matter given the potential aggravation of the issue;
- give information to the worker about other professionals to whom it may be appropriate to refer the person in the particular circumstances, including StaffCare;
- accurately check off the PCO checklist;
- provide accurate statistical and other information on the forms provided; and
- refer serious matters to the Wurru-Ki Director.

Enquiries, or simply sounding out a concern, are to be encouraged. It is possible that a potential "complaint" may be averted by early consultation with a PCO.

14.1.2 What doesn't the PCO do?

It is not the role of the PCO to:

- sympathise with a person who raises an issue;
- investigate matters, or determine if the issue constitutes discrimination, harassment, bullying or other inappropriate workplace behaviour;
- contact the Respondent;
- take sides;
- act as a support person, advocate or representative for the Initiator; or
- decide if the Initiator is telling the truth.

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14.1.3 What are the options for action by the Initiator?

The options available to an Initiator include:

- do nothing further;
- deal with the Respondent themselves where they feel that it is safe and appropriate to do so (see 14.1.4 below);
- proceed with attempts at resolution with a PRO; or
- make a formal complaint to the Workforce Directorate.

These are potential options to raise or resolve issues and if you have any concerns about pursuing any of the options listed above, then please discuss your concerns with a PCO.

14.1.4 What are some strategies for self-help?

Barwon Health recognises that it may not always be appropriate for an Initiator to resolve issues on their own.

However, PCOs may be able to suggest different strategies or provide guidance for the worker so that they may try to deal with the situation themselves.

For example, possible strategies for self-help include:

- Dealing with the person directly. The Initiator can speak privately to the Respondent. The Initiator should explain what it is about the Respondent's behaviour that is causing concern for the Initiator. The Initiator should explain how the behaviour makes them feel, and if appropriate, whether they believe it might constitute discrimination, sexual harassment, bullying or any other form of inappropriate workplace behaviour.
- Making a statement in front of others should the behaviour occur in front of others. It may be appropriate for the Initiator to say to the other worker in front of others that they do not like a particular form of behaviour and ask for it to stop. For example, it might be appropriate at a team meeting for one person to say:

"Please don't use language like that around me. It makes me feel very uncomfortable."

The Initiator must make sure that anything they say is true.

14.1.5 Is the discussion with the PCO confidential?

The PCO should explain to the worker that there are 3 options in relation to confidentiality in discussions with the PCO. A decision must be made by the worker at the end of the discussion and Form 14.5 filled in and signed. The options are:

- (a) the discussions will remain completely confidential and no notes identifying the Initiator or Respondent will be kept. This means that Barwon Health will not be able to take any action on the issue. The worker will sign a confidentiality acknowledgement (Form 14.5) that this has been explained. The worker will keep the confidentiality acknowledgement form. The PCO will include the contact in the PCO Monthly Report (Form 14.6) for statistical purposes only; or
- (b) notes will be made of the name of the Initiator and the names of any Respondent(s) together with a brief summary of the issue (Form 14.7). This will be sent to the Wurru-Ki Director to be filed in the Issues Safe. There may be general follow up or monitoring action but no action will be taken which would reveal the Initiator's identity without the Initiator's permission; or
- (c) if the Initiator wishes to take further action, the PCO's notes (Form 14.7) will be sent to the PRO through whom the Initiator will be seeking a resolution.

14.1.6 Taking the issue further

If the Initiator wants to take the third option of having the issue addressed further, the PCO should then explain the role of the PRO.

The PCO should also advise who the PROs are and make referral arrangements to the PRO. This could include going with the worker to the PRO if the worker has any difficulties in approaching a PRO.

The PCO should provide a short summary of the issue to the PRO, (Form 14.7). However, once this is done the PCO should not remain present.

14.2 What records does the PCO keep?

- The PCO will provide a Report (Form 14.6) to the Wurru-Ki Director every month for statistical purposes.
- Where the Initiator agrees, the PCO will provide a report for the Issues Safe (Form 14.7).
- Where the Initiator agrees, the PCO will provide a report for the PRO (Form 14.7). The PCO will keep no other records of contact with the Initiator.

14.3 How can a PCO help review Wurru-Ki?

The PCOs will meet with the PROs and the Wurru-Ki Director as and when required to review Wurru-Ki. PCOs should raise any concerns they have in relation to Wurru-Ki procedures or any difficulties they might experience when dealing with issues presented by Initiators.

14.4 Checklist For Peer Contact Officer

Without Prejudice – Attempt to Resolve Issues between Initiator and Respondent

Name: Date:

	Action Required		Tick as done
1.	<p>[Have your paperwork ready:</p> <ul style="list-style-type: none"> • Confidentiality Acknowledgment Form: Form 14.5 • Stats Form: Form 14.6 • PCO notes: Form 14.7 • Wurru-Ki Flowchart • Barwon Health Acceptable Behaviours Policy • StaffCare brochure] <p>Thanks for coming to see me. As a Peer Contact Officer I don't do this every day. So I have a script to follow which helps me make sure that I cover off everything with you. So when you see me reading from the script please don't take that as I am not listening to you.</p> <p>Also, you'll see me ticking off each stage of my checklist which helps me to make sure that I cover everything.</p>	Paperwork	
2.	<p>[Make sure that the worker understands you. YOU CAN SKIP THIS PART 2 if there is no doubt that the person has no difficulty reading and writing English]</p> <p>Part of the procedure is that I have to check with everybody whether you can understand and read and write English.</p> <p>Do you have any difficulty in speaking or reading English?</p>	Check Understands	
3.	<p>[If the worker is accompanied by another person, say:]</p> <p>I see that you have brought [X] with you.</p> <p>I would prefer to just have this discussion with you alone because to helps keep things private.</p> <p>[If they insist on them staying then:]</p>	Third Party	

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	That's fine if [X] would like to stay to provide support but I would ask you [X] not to interrupt or to actually participate in the discussion.		
4.	<p>Before I ask you to tell me about the situation I would like to explain to you what we will be doing and how the process works.</p> <p>First I would like to explain to you what my role is. I am not on anybody's side and I'm not representing anybody. I am here to listen to what you say to try and give you some options on what you can do next and to explain what the processes are that you can use.</p>	Role	
5.	<p>Our discussion will be confidential.</p> <p>There are three choices you have about confidentiality.</p> <p>You don't have to decide now but when we finish I will ask you which of these options you wish to choose.</p> <p>The choices are:</p> <p>(a) Complete confidentiality. Under this option, I will destroy any notes of this conversation. After we have finished I will fill out a stats form to show that there has been some contact with me but that doesn't have anybody's name or any details recorded in it.</p> <p>(b) A note for the Issues Safe. Let me explain what that is. With this option I will make a note of your name and the name of the other person involved and what your concerns are.</p> <p>This note will be given by me to the Wurru-Ki Director who will keep it in what we call the "Issues Safe". Under this option, no direct action will be taken in relation to the other person involved.</p> <p>The Wurru-Ki Director will be made aware of your concerns and the name of the other person, and if it is appropriate can take general action in an attempt to prevent any harassment or discrimination in the future.</p>	Confidentiality Options	

	<p>For example the Wurru-Ki Director might decide to organise a training program for certain sections of the workplace that include the other person. The other person involved will not be contacted in relation to your concerns specifically.</p> <p>(c) Lastly, the other option is informing a Peer Resolution Officer.</p> <p>At the end of our discussion, if you wish, a PRO can be informed about your concerns. You can then go to the PRO to decide whether or not you want to take your issue further.</p> <p>I'll explain more about that as we go through.</p> <p>The only exception to confidentiality is if what you tell me is so serious that there's a duty of care or mandatory reporting issue where Barwon Health has to act. In those very serious situations, I leave it to the Wurru-Ki Director to decide what to do.</p> <p>Are there any questions you would like to ask me now about the three confidentiality options?</p>		
<p>6.</p>	<p>Now I would like you to tell me about your concerns. I won't interrupt you, and I would like you to tell me the whole story from the beginning.</p> <p><i>[Try not to interrupt except to encourage the person to continue with remarks such as "I see", "go on", "what happened next?" Make notes on a piece of paper or on your Form 14.7</i></p> <p><i>Be a good listener but do not make any judgments about the information you are hearing.</i></p> <p><i>It is not up to you to decide whether the matter is unlawful discrimination or sexual harassment or bullying.</i></p> <p><i>Don't sympathise with the person who is talking to you by saying things like "you poor thing".</i></p> <p><i>It is important that you be an impartial listener.]</i></p>	<p>Story (Form 14.7)</p>	

7.	<p><i>[Make sure that you understand what they have been trying to tell you about. You can ask questions to clarify like “what do you mean when you say...?”</i></p> <p><i>You may wish to repeat the story back to make sure you have understood what the person is trying to tell you.]</i></p>	<p>Clarify / Repeat Back</p>	
8.	<p>Was there anyone else around when this happened?</p> <p>I’ll be making a note of those names if there was anyone around but I won’t contact them.</p> <p>Those people will not be contacted unless you choose to take the issue further, and even then only if the PRO thinks it is absolutely necessary to contact them in order to resolve the matter.</p> <p>I’ll just take their names now so that we’ve got it down while you still remember what happened, and so that we know if anyone was there who might have seen something.</p> <p><i>[Make a note of the names of anyone else present on Form 14.7.]</i></p>	<p>Other people in area</p>	
9.	<p>Barwon Health has policies and formal procedures for addressing discrimination, harassment, bullying and other inappropriate workplace behaviour. This is one of those formal policies to take away with you.</p> <p><i>[Show them the relevant policy]</i></p> <p>If you don’t understand it, please let me know if you have any questions.</p>	<p>Policies</p>	

<p>10.</p>	<p>This process we're following today is a structured but less formal set of options to deal with issues of discrimination, harassment, bullying and other inappropriate workplace behaviour.</p> <p>I'll show you this flow chart which sets out what the process is.</p> <p><i>[Show them the Wurru-Ki Flow Chart. Go through the flow chart numerically]</i></p> <p>At this stage you are having a talk with me, a PCO.</p> <p>It may be that after we have had a talk, you decide you do not want to do anything further - or I may have been able to help you with a way to deal with the situation yourself.</p> <p>On the other hand you might want to escalate the issue by raising it with a PRO.</p> <p>If your issue is not resolved then you still have the option to proceed with raising your issue with the Workforce Directorate as a formal complaint.</p>	<p>Procedure / Flow Chart</p>	
<p>11.</p>	<p><i>[Discuss the situation with the person. In that discussion you could cover the following things:</i></p> <p><i>Whether the situation may be covered by the discrimination, bullying or sexual harassment policies.</i></p> <p><i>Is there anything the person could do to help themselves about the situation?</i></p> <p><i>For example could the person discuss the situation with the other person?</i></p> <p><i>Could the person show the other person the policy and ask them to change their conduct to comply with the policy?</i></p> <p><i>There may be other ways in which you could suggest that the person might be able to deal with the situation themselves given your knowledge of the people and the workplace.</i></p> <p><i>Remember that as a PCO, it is not up to you to sort the situation out, or to go with the person to deal with the situation.</i></p>	<p>Discussion</p>	

	<ul style="list-style-type: none"> • Does the person want to make a note for the Issues Safe? <p>You may need to explain again what the Issues Safe involves and you can look at section 17.4 for further details.</p> <ul style="list-style-type: none"> • Does the person think that they might like to raise their issue with a PRO? <p>Again you might need to explain what that involves.]</p> <p>Do you need to go over anything again with me?</p> <p>Have you decided what you would like to do?</p> <p>If you can't decide now, it's OK if you want to go away and think about it and come and see me again later.</p>		
12.	<p>[By this time the person has made a choice as to which confidentiality option they want.]</p> <p>Now that you have decided what you want to do I need to get Form 14.5 signed so that you will have a record of which confidentiality option you chose.</p> <p>You can take Form 14.5 with you. I don't keep it.</p>	Get Form 14.5 Signed	
13.	<p>[If the Initiator decides to see a PRO then make arrangements for them to speak to the PRO. Contact the PRO and make or arrange a time with the PRO and make sure the person knows where they have to go and when to meet the PRO.</p> <p>If the Initiator decides to immediately pursue the matter or to pursue it at a later stage, briefly explain the role of the PRO and help the Initiator make arrangements to speak with a PRO. Make a call and arrange a time with the PRO and if necessary, take the person to the PRO's office].</p>	Arrange meeting with Peer Resolution Officer	

14.	<p>I suggest that you not discuss this situation with other people in the workplace.</p> <p>Sometimes situations become worse if everybody is talking about it.</p> <p>It is also more difficult to sort things out with the other person if they know or think that other people are talking about it.</p> <p>Thanks for coming to see me.</p> <p><i>[If a support person is there ask for their promise of strict confidentiality]</i></p>	Discussion with Others	
15.	<p><i>In case the Initiator is in distress, offer the Initiator information in your pack regarding StaffCare.</i></p> <p><i>In case the issue raised by the Initiator involves family violence refer the Initiator to a Barwon Health Family Violence Contact Officer.</i></p>	StaffCare or issues involving family violence	
16.	<p><i>[If the person has chosen complete confidentiality you don't need to fill out any more forms.</i></p> <p><i>If the person has chosen to lodge a note with the Wurru-Ki Director in the Issues Safe then fill out Form 14.7 to give to the Wurru-Ki Director.</i></p> <p><i>If the person has chosen to see a PRO then make sure your notes on 14.7 are filled out and forward them to the PRO.</i></p> <p><i>It is preferable if you can give the notes to the PRO yourself.</i></p> <p><i>If there is any difficulty with that then it is alright for the person to give the PRO the notes, provided you put them in a sealed envelope addressed to the PRO].</i></p>	Notes (Form 14.7)	
17.	<i>[Complete Form 14.6 – Statistical Report]</i>	Complete Stats Information (Form 14.6)	

Form 14.5 – Confidentiality Acknowledgement Form

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

1.	I,(name) have had discussions with Peer Contact Officer(name) on.....(date).
2.	The Peer Contact Officer has explained to me Barwon Health’s Policies on Discrimination, Sexual Harassment, bullying and other inappropriate workplace behaviour, and Wurru-Ki including the three confidentiality options.
DELETE TWO OF (a), (b) and (c):	
3.	<p>(a) I have decided that the discussions will be kept absolutely confidential. I understand and accept that Barwon Health will not take any action on the matters discussed with the Peer Contact Officer because I wish those matters to be kept absolutely confidential. If I do want further action taken within Wurru-Ki I understand that I will need to raise my issue with a Peer Resolution Officer for informal resolution or make a formal complaint to the Workforce Directorate.</p> <p>OR</p> <p>(b) I have decided that I want my issue recorded but that I do not want the Respondent to know about the issue that I have raised. I understand and accept that Barwon Health will not be able to take any direct action against the Respondent because I do not want that person to know that I have raised the issue and thus they won’t be able to hear and respond to the issue. Barwon Health will keep a note in the Issues Safe containing the information set out in Form 14.7. I understand the information will only be used for Barwon Health’s general review of acceptable behaviours and anti-bullying policies. If I do want any further action taken within Wurru-Ki I will have to raise my issue with a Peer Resolution Officer for informal resolution or make a formal complaint to the Workforce Directorate.</p> <p>OR</p> <p>(c) I want to raise my issue with a Peer Resolution Officer and I understand that my name may be disclosed to the Respondent.</p>
4.	The Peer Contact Officer has explained to me that the only exception to confidentiality is if what I tell her/him is so serious that the conduct, if found, might warrant dismissal, mandatory reporting or might be criminal. In those very serious situations, the Wurru-Ki Director will decide what to do.
<p>.....</p> <p>Signed <i>Date</i></p> <p>THIS FORM IS TO BE GIVEN TO (name) TO BE KEPT FOR HER/HIS OWN INFORMATION. NO RECORD OF THIS DISCUSSION IS TO BE KEPT BY THE PEER CONTACT OFFICER EXCEPT FOR A NON-IDENTIFYING STATISTICAL REPORT.</p>	

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Form 14.6 – Peer Contact Officer Monthly Statistical Report To The Wurru-Ki Director

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

MONTH _____

STATISTICAL SUMMARY OF CONTACTS					
Date	Worker Wanted Information Only Yes/No	Possible Referral to PRO? Yes/No	M or F	Grounds	Outcome*

- * NA = No action
- * IS = Form 14.7 for the Issues Safe completed
- * PRO = Referred to Peer Resolution Officer

Peer Contact Officer:

Date of Report:

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Form 14.7 – Peer Contact Officer Notes For Peer Resolution Officer and/or Issues Safe

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

Peer Contact Officer:.....

Date of Today's Contact:

Initiator:

Respondent:.....

Summary of Issue(s):

.....
.....
.....
.....
.....
.....
.....

Names of other people present at time of alleged incident(s):

.....
.....
.....

Possible dismissal situation:	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Possible criminal situation:	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Possible mandatory reporting situation:	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

If you have ticked "Yes" to any of the above:

I confirm that the issue will be referred to the Wurru-Ki Director:	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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15 Guide for Peer Resolution Officers and Role Explanation

This section gives an overview of the role of the PRO. There are three checklists that set out in detail the steps for the PRO to follow. This section also answers some important questions about the PRO'S role within Wurru-Ki.

15.1 A PRO's role

15.1.1 What does the PRO do?

- Listen to the Initiator and Respondent impartially and without judgement;
- Explain to the Initiator that resolution of their issue is focussed on the prevention of discrimination, harassment, bullying or other inappropriate workplace behaviour;
- Provide information to both parties about the PRO role;
- Discuss Barwon Health's policies on discrimination, harassment, bullying and other inappropriate workplace behaviour with the Respondent;
- Put forward suggestions as to possible resolution of the matter;
- Act as a go-between for the Initiator and Respondent;
- Assist in attempts to achieve a resolution that is in the best interests of all parties and which prevents any further discrimination, harassment, bullying or other inappropriate workplace behaviour;
- Endeavour to prevent reprisals or victimisation of the Initiator;
- At a set time after the resolution is agreed upon, monitor the outcome of resolution;
- Accurately check off the PRO checklist; and
- Keep accurate records on the forms provided.

15.1.2 What doesn't the PRO do?

- Assign blame to, or make any finding or conclusion of wrongdoing by, either party;
- Conduct informal or formal investigations;
- Decide what actually did or did not happen;
- Decide which party is right or wrong or whether or not they are telling the truth;
- Act as a representative for either party;
- Make decisions about disciplining either party;
- Make decisions as to resolution – it is for the parties to reach resolution; or
- Become personally involved in the dispute.

15.1.3 Outline of PRO procedures

- Initiator raises an issue with the PRO and completes the Workplace Issue Form (Form 15.18).
- Resolution options are considered.
- The Respondent is notified of the issue being pursued under Wurru-Ki and resolution options are discussed.
- If necessary, a meeting or meetings will be held between the PRO and the Initiator and Respondent, either separately and/or together, to attempt to resolve the matter.
- Only if essential to resolution and the Wurru-Ki Director gives prior approval, possible key witnesses are contacted.
- A Report to the Wurru-Ki Director (Form 15.23) is made.
- If the parties reach an agreement on how to resolve the issue, a draft agreement is made for final checking and approval by the Wurru-Ki Director and the relevant Program Director if necessary.
- If no resolution is reached and the Initiator wishes to pursue the issue further with the Workforce Directorate as a formal complaint matter, it will be referred to the Wurru-Ki Director.

15.2 Will resolution negotiations always include a meeting between the Initiator and the Respondent?

Any resolution of the matter may or may not include a face to face discussion between the Initiator and Respondent. In some cases it will be positive for the Initiator to communicate to the Respondent the things that the Respondent said or did which the Initiator has found offensive, inappropriate or distressing. In other cases a face to face meeting may not assist resolution of the issue. Acting as a “go-between” in separate meetings may work better in such situations. The PRO will have to make that decision, taking account of the Initiator and Respondent’s views.

15.3 What happens if the Initiator wants to withdraw from the process?

Where the Initiator has raised their issue with the PRO, the Initiator can end the process at any time by completing the Issue Withdrawal Form (refer to Form 15.20).

The PRO will write to the Respondent to inform them that the issue has been withdrawn by the Initiator and that no further action will be taken by the PRO in relation to the issue (see Form 15.21).

15.4 How will the PRO approach the Respondent?

Where the PRO decides that the resolution of the issue will involve the Respondent then the PRO should contact the Respondent. The Respondent should be contacted preferably in person or over the telephone to arrange a time to meet and discuss the matter. The PRO should approach the Respondent in a manner which is serious but not threatening. A suggested approach is:

“My name is [X] and I am calling you in my role as a Peer Resolution Officer as a part of Wurru-Ki. A staff member has just spoken with me about a matter concerning yourself which is of concern to them. Could I make a time to come and talk to you about it? Please feel welcome to read the Wurru-Ki manual before coming to talk to me.”

NOTE: Confidentiality is maintained as far as possible until such time as the Initiator consents to their identity being disclosed to the Respondent. Do not disclose the Initiator’s name until you meet with the Respondent.

15.5 What happens when the Respondent does not want to participate in the Wurru-Ki?

Wurru-Ki is a voluntary process for both the Initiator and the Respondent.

However, if the Respondent does not wish to participate in Wurru-Ki:

- The process does not automatically come to an end, as that is a decision for the PRO. The PRO might want to wait a day and approach the Respondent again, or may ask to meet a potential witness (with the prior approval of the Wurru-Ki Director) and then reapproach the PRO. The PRO will end Wurru-Ki when they believe resolution will not be achieved. The PRO is still required to report the issue to the Wurru-Ki Director.
- The PRO will inform the Initiator that the Respondent does not wish to participate and (when appropriate) will inform the Initiator that the PRO does not think that the issue can be resolved with Wurru-Ki. The PRO will remind the Initiator of their right to refer the matter to the Wurru-Ki Director.

15.6 When, if at all, will the PRO speak to possible witnesses?

It is important to all parties that any issue is handled with as much confidentiality as possible. Once other people are involved there is a possibility that the alleged incident will be the focus of attention and discussion by others in the workplace. This can lead to unnecessary exaggeration of the incident, “taking sides”, and possible victimisation of the Initiator and/or the Respondent. The PRO should not discuss the matter with anyone, other than perhaps key persons who were present at the time of the alleged conduct if the PRO decides that it is essential and has obtained the approval of the Wurru-Ki Director prior to doing so.

The PRO should only consider contacting possible witnesses to any incident if the issue cannot be resolved after the PRO has had discussions with both the Initiator and the Respondent. In that case the PRO should consider whether talking to possible witnesses could help resolve the issue.

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For example, a Respondent might say *“I did not ever call Joe ‘a wog’ and you can ask anyone. I will not agree to apologise and I will not agree to take part in any cross cultural training”*. In this situation it might help resolve the matter if the PRO speaks with one of the people named by the Initiator as being present. The PRO can then return to the Respondent and say *“I have made enquiries and at least one other person says they were there and heard you make that kind of remark”*.

The witness observations can help you to get the Initiator or Respondent to move to a resolution.

REMEMBER

- The PRO’s role is to resolve the issue not to make a decision about who is telling the truth.
- As few people as possible should be involved in Wurru-Ki process

When speaking to witnesses, tell them that they are required not to discuss the matter with anyone. To do so may be victimisation of the Initiator and/or the Respondent.

15.7 What should the resolution be about?

Any resolution of an issue should include:

- steps to make sure any discrimination, sexual harassment, bullying or other unacceptable workplace behaviour will stop and will not reoccur;
- an undertaking obtained from both parties, that all forms of discrimination, sexual harassment, bullying or other unacceptable workplace behaviour will not occur in the future;
- mutual agreement on a proposal outlining acceptable behaviour (including behaviour of both parties if necessary);
- a draft Agreement (Form 15.22) between the parties including a brief summary of the issue. An acknowledgement may be made at this point, for example, that the person’s behaviour was inappropriate and caused distress and is regretted but was unintentional;
- an agreement as to the future relationship of the parties and understanding that there are to be no reprisals against the other party; or
- agreement on a program for monitoring the outcome.

15.8 What does the PRO do once the issue is resolved?

When the PRO is satisfied that the issue has been resolved the file should then be sent to the Wurru-Ki Director (as a central record) including the Report (Form 15.23).

15.9 What does the PRO do if the issue is not resolved?

The PRO should talk to the Initiator and explain that resolution cannot be achieved. Both parties should be told what is happening next and that the PRO will send all the material on file, to the Wurru-Ki Director together with a Report (Form 15.23). Any relevant Director will also be informed (at the Wurru-Ki Director's discretion) – not for direct action – but so they are aware of an unresolved issue in their department.

15.10 What happens if the Initiator wants to withdraw their issue?

An Initiator can withdraw their issue at any time. They will need to do this in writing by completing Form 15.20 and the PRO must end Wurru-Ki at that point. The PRO will explain to the Initiator that Barwon Health will not be able to take further action if the Initiator withdraws their issue. The only thing that can be done is that the Working Notes (Form 15.15) and the withdrawal form will be kept in the Issues Safe and retained confidentiality by the Wurru-Ki Director. Check that the Issues Safe system has been explained.

Where a withdrawal of an issue occurs at any stage the Working Notes (Form 15.15), the Withdrawal Form (Form 15.20) and the Report to the Wurru-Ki Director (Form 15.23) should be forwarded to the Wurru-Ki Director for filing in the Issues Safe. If an issue is withdrawn after the Respondent has been contacted then the Respondent must be advised in writing by the PRO that the issue has been withdrawn (Form 15.21).

15.11 What records should the PRO keep?

- The PRO should keep a record of the discussion with the parties and further action on the Working Notes (Form 15.15) in a file. The working notes should be sufficiently detailed to help achieve a resolution of the matter. No prejudicial or judgmental comments should be included. For example, do not write opinions like “This person is obviously not telling the truth”.
- If the Initiator chooses not to proceed or have an Issues Safe record only, the PRO should have the Confidentiality Acknowledgement (Form 15.16) given to the Initiator and the Notes for Issues Safe (Form 15.17) completed and sent to the Wurru-Ki Director.
- The PRO should have the Initiator complete the Workplace Issue Form (Form 15.18) ensuring the Initiator signs the form and that date is recorded.
- If the Initiator withdraws the issue, then the Issue Withdrawal Form (Form 15.20) should be completed and sent to the Wurru-Ki Director for filing in the Issues Safe with the Workplace Issue Form (Form 15.18) and the PRO's Working Notes (Form 15.15).
- If the matter is resolved, the PRO should forward the agreement (Form 15.22) to the Wurru-Ki Director who will liaise with the relevant Director (at the Wurru-Ki Director's discretion) to ensure the agreed resolution is workable and to be aware of its operation in the Department. The relevant Director may need to be involved in approving or facilitating the agreement, depending on its content.

- If the PRO has discussed the issue with the Respondent then the PRO should have the Advice Acknowledgement Form (Form 15.19) completed by the Respondent.
- Once the approved Agreement (Form 15.22) is returned by the Wurru-Ki Director, copies of the agreement are forwarded to both parties. The file is then sent to the Wurru-Ki Director for secure storage.
- If the matter cannot be resolved by the PRO, then the file together with the Report (Form 15.23) should be forwarded to the Wurru-Ki Director who will inform the relevant Director.

It is the PRO's responsibility to make sure that all documents kept by the PRO at any time are kept in a locked place. It is also the PRO's responsibility to make sure that all documents and reports forwarded to the Wurru-Ki Director are sent in a secure and confidential manner.

15.12 Checklist for Peer Resolution Officer

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

Initial Contact with Initiator

	Action Required		Tick As Done
1.	<i>[Ensure that the Initiator feels comfortable: tea, coffee, water.]</i>	Comfort	
2.	<p><i>[Have your paperwork ready:</i></p> <ul style="list-style-type: none"> • <i>PRO Working Notes: Form 15.15</i> • <i>Confidentiality Acknowledgment Form: Form 15.16</i> • <i>Wurru-Ki Flowchart</i> • <i>Barwon Health Acceptable Behaviours Policy</i> • <i>StaffCare brochure]</i> • 	Paperwork	
3.	<p><i>[If the worker is accompanied by another person, say:]</i></p> <p>I see that you have brought [X] with you. I don't really think it's necessary for them to be here at this stage so if it's alright with you I would prefer just to have this first discussion with you.</p> <p><i>[If they insist on them staying:]</i></p> <p>Alright, but I'll have to ask you [X] not to interrupt or to actually participate, but you're welcome to provide moral support.</p> <p><i>[If they insist on acting as a representative do not continue. Adjourn the meeting as a matter of urgency and see the Wurru-Ki Director for assistance.]</i></p>	Third Party	
4.	Thanks for coming to see me. The first thing is that we've got plenty of time, so I don't want you to feel you have to rush this meeting.	Reassurance	
5.	<p>Before I ask you to tell me your story, I have to explain to you what we'll be doing and how the process works.</p> <p>First, I have to explain my role to you. I am not on anybody's side and I am not representing anybody. I am not here to judge anybody or to be like a judge. My role is to find a way to resolve this issue without saying anybody is right or wrong.</p>	PRO's Role	

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	Action Required		Tick As Done
6.	<p>As you probably know, Barwon Health has policies and procedures to deal with these sorts of issues. These are available on the intranet and the PCO may have provided you with these already.</p> <p>I don't have the power to make a decision in respect to what might be agreed to, but if I can work out something that you and the other person agree to then I go to the Wurru-Ki Director, Perry Muncaster, to get final approval.</p> <p>Let me show you a copy of the flow chart which shows how issues get handled.</p> <p><i>[At this stage, hand across both policies and the flow chart.]</i></p>	Procedures	
7	<p>The next thing I want to mention is confidentiality. For this whole thing to work so that I can get a resolution that everybody is happy with, it is essential that both you and anyone else involved in this procedure keep everything extremely confidential.</p> <p>If lots of other people find out about this, it makes it much harder for me to get the matter resolved because everyone takes sides, people start interfering, the issue gets bigger and bigger, and it gets out of control.</p> <p>So can you assure me that you will keep this confidential for now?</p>	Confidentiality	

	Action Required		Tick As Done
8.	<p>This procedure is really up to you to control in that I won't take action without your permission. After we have chatted today, if you decide you want to pursue the matter, then I will keep going through the procedure and try to get it resolved.</p> <p>If you change your mind at any time, you can stop the procedure. It's up to you.</p> <p>I'll only proceed further if you put your issue in writing by completing the Workplace Issue Form 15.18 at the end of our meeting and signing it. I'll show you that soon.</p> <p><i>[If they ask why they have to put their issue in writing, explain that it is essential if you are going to take it further. You don't want there to be any doubt about exactly what the person says has happened.]</i></p>	Process driven by Initiator	
9.	<p><i>[If the Initiator wants to proceed, go to step 10.</i></p> <p><i>If they don't choose to proceed to resolution, explain again the other options in Form 15.16. If they decide to take confidentiality option 1 ("no further steps") or option 2 ("the Issues Safe"), fill in Form 15.16 (and if option 2 is chosen, also Form 15.17).]</i></p>	Confidentiality Options (Form 15.16) if Initiator chooses not to proceed to resolution	
10.	<p><i>[If you have been briefed by the PCO:]</i></p> <p>I've received the paper work from the PCO and I want to read to you my understanding of the story. If I get anything wrong, please tell me.</p> <p><i>[Proceed to read out story and clarify any differences in the interpretation.]</i></p>	Summarise	

	Action Required		Tick As Done
11.	<p>OK, that's a summary of your issue. What I would like you to do now is to tell me your concern from the start. I won't interrupt you, and I'd like you to tell me the whole issue.</p> <p><i>[Try not to interrupt except to encourage the Initiator to continue, with such remarks as "I see", "go on", "what happened next".</i></p> <p><i>Do not ask questions at this stage. Make notes on the Working Notes (Form 15.15) and then return to clarify the situation with the Initiator if there are any queries. Do not attempt to sympathise with the Initiator by saying things like "that must have been terrible", or "what a dreadful thing to have happened".</i></p> <p><i>As they tell you the story, make brief jotting notes as you go. If you think of questions, make a note to remind you to come back to this question once they have finished.]</i></p>	Story – Working Notes (Form 15.15)	
12.	<p><i>[When they have finished telling their story, ask questions including</i></p> <ul style="list-style-type: none"> • <i>clarifying the chronology of events</i> • <i>clarifying any part of their story which seemed unclear</i> • <i>with each aspect of their problem, ask them to expand upon issues which were skimmed over e.g. who, what, when, where.]</i> 	Get the complete story and ask Questions	
13.	<p><i>[If you are not sure that you have the entire story straight:]</i></p> <p>I think I have the whole story, but to be sure I want to again summarise so that I am clear on what you are saying. Please tell me if I get anything wrong.</p> <p><i>[Now summarise your understanding of this story.]</i></p> <p><i>[If you believe you now have the whole story without needing to summarise, go to step 15.]</i></p>	Repeat Back if not sure you have the story straight	

	Action Required		Tick As Done
14.	<p><i>[Now is the time to think about asking the Initiator about ways that the issue could be resolved.</i></p> <p><i>Give your own suggestions to narrow the Initiator's demands (if possible). Remember that the solution might come from "outside the problem".]</i></p>	Options for Resolution	
15.	<p><i>[Now is the time to get the issue in writing from the Initiator, if you haven't already. Hand over Form 15.18 and ask them to complete it then and there. Some people may want to take it away. If the Initiator has already filled in Form 15.18, ask if they wish to amend their statement in the Form or to put together an additional written statement to attach it to the Form 15.18. That is okay. They can do it then and there or make a time for them to return it to you. While they are filling out the form, you should complete form 15.15 – see step 16.]</i></p>	Issue in Writing	
16.	<p><i>[Before the Initiator leaves the room:]</i></p> <p>Before you go, in order to follow up the issue I need your permission to do so, which you can give by signing this Part 7 of my working notes. This is just for my files and will just be kept confidentially in the Issues Safe.</p> <p><i>[Attach Form 15.15 to the Workplace Issue Form 15.18].</i></p>	Complete Form 15.15	
17.	<p>Now that you have put the issue in writing, I will be approaching [X] and telling them what you have explained to me. After they have given me their version of events, I'll then work with both of you to try and achieve a resolution that everybody is happy with.</p> <p>Of course I can only do my best. [X] might not want to have anything to do with the system or might not agree to any resolution.</p> <p>Either way, I'll come back and talk to you about how things went. It might be that I will have spoken to one or two other people, if I think that it is absolutely necessary and the Wurru-Ki Director agrees. I'd prefer not to, but if I do I'll obviously ask them to keep everything confidential.</p>	Explain Process to Approach Respondent	

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	Action Required		Tick As Done
18.	<p>If, after I have spoken to [X] and then come back to you, I feel that I can't resolve it and if you don't want to drop the matter, we can adjourn the meeting and refer to the Wurru-Ki Director.</p> <p>What will then happen is that the Wurru-Ki Director will decide whether there is any chance of resolving and whether it is appropriate for Barwon Health to take any further steps.</p> <p>We'll deal with that later if it's necessary.</p>	Referral to the Wurru-Ki Director	
19.	<p><i>[Tell the Initiator how long it will be before you'll be back in touch with them.</i></p> <p><i>Ask for a contact telephone number and write it on your working notes.]</i></p>	Time Contact Number	
20.	<p>The final thing before you go is that I want to again ask you to keep everything confidential until I get back to you. If there is some problem in the meantime, please come and see me.</p> <p>Thanks again for coming and seeing me about this. I'll be in touch.</p>	Remind Confidentiality	
21.	<p><i>In case the Initiator is in distress, offer the Initiator information in your pack regarding StaffCare.</i></p> <p><i>In case the issue raised by the Initiator involves family violence refer the Initiator to a Barwon Health Family Violence Contact Officer.</i></p>	StaffCare or issues involving family violence	
22.	<p><i>[Make a Report (Form 15.23) to the Wurru-Ki Director by filling in and sending Parts 1 to 7 of Form 15.23]</i></p>	Report to the Wurru-Ki Director Form 15.23	

15.13 Checklist for Peer Resolution Officer

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

Initial Contact with Respondent (see 15.4 for arranging meeting with Respondent)

	Action Required		Tick As Done
1.	<p>[Have your paperwork ready:</p> <ul style="list-style-type: none"> • PRO Working Notes: Form 15.15 • Advice Acknowledgment Form: Form 15.19 • Wurru-Ki Flowchart • Barwon Health Acceptable Behaviours Policy] 	Paperwork	
2.	<p>[Ensure that the Respondent feels comfortable: tea, coffee, water. The Respondent’s reaction is likely to be complex and emotional.]</p> <p>Well thanks for coming and seeing me. I appreciate that you may be concerned and curious as to what this is about.</p> <p>I will be telling you in a moment who has raised an issue against you and what they’ve said, and then discussing that with you.</p> <p>You can see that I’ve got some documents in front of me, which I will refer to shortly.</p> <p>Most of them are just there to make sure that I follow the process properly and when I get to each of them I will explain to you what they are.</p>	Comfort	
3.	<p>But before we get to that, I need to explain to you what my role is and how the process works so you have got all of the information that you need to decide what you want to do.</p> <p>I am a Peer Resolution Officer as part of Barwon Health’s peer resolution process. This process encourages workers at Barwon Health to raise and resolve issues amongst themselves without direct involvement of management or the Workforce Directorate. As I mentioned a person has raised an issue about you and I am here to try to help you and that person resolve the issue.</p>	PRO’s Role	

	Action Required		Tick As Done
	<p>I am not on anybody's side and I am not representing anybody. I am not here to judge anybody nor to be like a judge.</p> <p>My role is to find a way to resolve this issue without saying anybody is right or wrong.</p>		
4.	<p><i>[Explain that you are seeing the Respondent in your role as a PRO dealing with issues of discrimination, harassment, bullying and other inappropriate workplace behaviour.]</i></p> <p>I've told you that someone has raised an issue. You are probably aware that Barwon Health has policies and procedures to deal with appropriate workplace behaviour and bullying.</p>	Explain Reason for Meeting	
5.	<p>I want to assure you that this is a confidential process. The person who has raised the issue against you has been told by me to keep it confidential.</p> <p>To get things resolved, the fewer people involved the better. I ask that you also keep everything confidential. The more people that you go and tell, the harder it is for me to get the person who has complained to agree to a resolution.</p> <p>These things can just get bigger and bigger and bigger and then they end up with formal complaints in the Fair Work Commission, the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission and I don't think that's in anyone's interests.</p> <p>By the time an issue gets to a final stage of resolution or non-resolution then I will need to inform the Wurru-Ki Director about the situation and they may inform the relevant Director in your department.</p> <p>However, what you tell me is without prejudice, that is, it can't be used in any investigation or disciplinary process. It is part of confidential attempts at resolving issues between you and the Initiator.</p>	Confidentiality	

	Action Required		Tick As Done
6.	<p>This process we're following today is a structured but less formal set of options to deal with issues of discrimination, harassment, bullying and other inappropriate workplace behaviour.</p> <p>I don't have the power to make a decision in respect to what might be agreed to, but if I can work out something that you and the initiator agree to then I go to the Wurru-Ki Director to get final approval.</p> <p>Let me show you a copy of the relevant policy / policies and a flow chart which shows how Wurru-Ki works.</p> <p><i>[At this stage, hand across both the relevant Barwon Health policy / policies and Wurru-Ki flow chart and talk them through Wurru-Ki process in the flow chart.]</i></p>	Procedures	
7.	<p>Now before I tell you the name of the Initiator and the concern they've raised, I want to emphasise that I need your co-operation on this. These issues can get serious for all concerned and I think that it would be better for you if you can help me to get this thing sorted out.</p>	Seek Co-operation	
8.	<p>Now I'm going to read out to you my summary of what the issue is. Please let me read through it without interruption and then we'll talk about it.</p> <p>The last thing I want to say, is that when you're listening to what the Initiator has said, remember that the way the law works, it doesn't matter whether you meant it or not. It can still be unlawful conduct.</p> <p><i>[Outline briefly the details of the issue as well as the identity of the Initiator (do not show the Respondent what the Initiator has written).]</i></p>	Brief outline of issue	
9.	<p><i>[The response of the Respondent will be complex and emotional. Often there will be anger and denial. They might have an initial reaction which will be a one sentence denial of everything.]</i></p> <p><i>On the other hand, they might go into detail. You need to get a response of each of the points of the allegation from them.</i></p>	Deal with Reaction	

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	Action Required		Tick As Done
	<p><i>If they are very angry, you may wish to say something to the effect of:</i></p> <p><i>“I understand that you are annoyed, and I want you to remember that I’m not on anyone’s side. I’m here to try and bring this matter to a resolution and your co-operation will assist in doing so”.</i>]</p>		
10.	<p><i>[Ask the Respondent for their side of the story.</i></p> <p><i>Try not to interrupt except to encourage the Respondent to continue with such remarks as “I see”, “go on”, or “what happened next?”</i></p> <p><i>Do not ask questions at this stage. Make notes and then return to clarify the situation if there are any queries.]</i></p> <p>What I need now is for you to tell me your side of the story from the start.</p> <p><i>[If they do not give you a complete story, encourage a more complete response by asking them their response to each part of the issue raised.</i></p> <p><i>As they speak, encourage them with comments “I see”, “Go on” or “What happened next?”</i></p> <p><i>Resist the temptation to ask detailed questions at this stage. Remember to make notes.]</i></p>	Respondent’s Story	

	Action Required		Tick As Done
11.	<p><i>[When they have finished telling you their side of the story, you will need to fill in the gaps by asking further questions.</i></p> <p><i>Take each point of the issue and ask them questions which help you clarify their response. You need to know their side of the story in terms of who, what, when and where.</i></p> <p><i>Your questions might be either open questions or clarifying questions such as:</i></p> <p style="text-align: center;"><i>“Tell me more about...”</i></p> <p><i>Or “When/where/did this happen?”</i></p> <p><i>Or “When you say..., can you explain to me more about what you mean by that”.</i></p> <p><i>Do not make judgments about the situation.]</i></p>	Clarify Open Questions	
12.	<p>Now what I want to do is make sure I understand your side of the story and I’ll just repeat back to you my understanding. If I get anything wrong, please let me know.</p> <p><i>[Read back from your notes your understanding of their side of the story.]</i></p>	Repeat Back	
13.	<p><i>[Explain that any possible witnesses will only be spoken to if the PRO believes that it is essential to achieve resolution of the issue, the PRO has the approval of the Wurru-Ki Director and all discussions will be confidential.]</i></p>	Possible Witnesses	
14.	<p><i>[Now that you have heard their side of the story, you should begin trying to find ways to resolve the problem. Put forward and discuss the Initiator’s ideas for resolution. Put forward and discuss your ideas for resolution. Ask the respondent for any ideas they may have which could bring about resolution.]</i></p>	Resolution Options	

	Action Required		Tick As Done
15.	<p><i>[After you have discussed ideas and ways of resolving the problem, you need to get Form 15.19 completed and signed by the Respondent.]</i></p> <p>I have a form here. Barwon Health’s position is that every person who has an issue raised against them under Wurru-Ki is asked to sign this form. You’ll see that it is up to you what you say in it, and I want to take you through it now.</p> <p><i>[Take them through each of the five points and have them sign and date it. If they refuse to do so, and you do not feel that you can insist on them doing so, say:]</i></p> <p>The reason I ask for you to sign it is to show that I’ve actually had this discussion with you. I don’t want it to later become a question of your word against mine as to whether we had this discussion. If you have another read of it, you’ll see that all its saying is that we’ve had this discussion and whether you accept or don’t accept what’s been said. Ultimately if you don’t want to sign it I’ll be putting that in my Report to the Wurru-Ki Director.</p> <p><i>[If they still refuse to sign it, put a note that you handed it to them or if they won’t take it, add a note in the Working Notes (Form 15.15 that they have refused to take the document).</i></p>	<p>Advice Acknowledgement Form 15.19 (give to Respondent)</p>	
16.	<p>There are just a couple of things I want to tell you before you go.</p> <p>First, I’ll just tell you now what I’ll be doing.</p> <ul style="list-style-type: none"> • <i>[If X has agreed to the resolution proposed by the Initiator;]</i> <p>I’ll be drawing up an agreement form for you and the Initiator to sign and then I’ll show it to the Wurru-Ki Director to get approval from him/her and the relevant Director.</p> <p>OR</p> <ul style="list-style-type: none"> • <i>[If a resolution is not reached]</i> <ul style="list-style-type: none"> • I’ll have another discussion with [X] and see if I can try to find a resolution that everyone can live with; 	<p>Explain Next Step</p>	

	Action Required		Tick As Done
	<ul style="list-style-type: none"> • That might or might not involve getting a meeting together between the two of you. I think that we need to do that, would you mind meeting with them? • I'll decide whether I need to speak to the Wurru-Ki Director about contacting any witnesses; 		
17.	<p><i>[Give the Respondent an approximate idea of your time commitments and how long you think it will be before you contact him or her again.]</i></p> <p>Can you give me your contact telephone number?</p> <p><i>[Note in your working notes.]</i></p>	A Time and Contact Telephone Number	
18.	<p>What I need to tell you before you go is probably the most important of all.</p> <p>It follows on from the last point in that form I asked you to sign, about victimisation.</p> <p>The way the law works, is that if you or anyone else hassles the person who has raised the issue or treats them badly in any way, then they can make a formal complaint against you about that.</p> <p>The thing is that they can still complain about victimisation, even if the issue they have raised is completely false. Victimisation of itself is a serious issue.</p> <p>I'm going to assist you to resolve this issue as quickly as possible. So please avoid the temptation to talk about this to other people or to talk to [X] about it as that may make reaching a resolution more difficult.</p> <p>I know that it hasn't been easy but I want to thank you for talking to me. I'll get back to you.</p>	Confidentiality/ Victimisation	
19.	<p><i>[Complete and send the Report to the Wurru-Ki Director (Form 15.23)]</i></p>	Report to the Wurru-Ki Director Form 15.23	

15.14 Checklist for Peer Resolution Officer

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

Negotiation for Resolution

	Action Required		Tick As Done
1.	<p><i>[If it is felt essential to resolution, other people who may have witnessed the alleged behaviour or may have information concerning the alleged behaviour, may be approached by the PRO and asked what they know about a matter. This should only occur with the Wurru-Ki Director’s prior approval.</i></p> <p><i>The PRO must tell the person that the matter is strictly confidential and that victimisation is unlawful].</i></p>	Contacting Third Parties	
2.	<p><i>[If the parties are not able to reach initial agreement on resolution, consider whether it would assist resolution to bring the parties together for a discussion.]</i></p>	Assess Bringing Parties Together	
3.	<p><i>[If you believe that bringing the parties together would not assist resolution of the issue, the PRO should continue to meet once again with the Initiator and Respondent]</i></p>	Meeting With The Parties Individually	
4.	<p><i>[In very difficult and necessary circumstances, if you believe that it would assist to have a joint meeting, make appropriate arrangements for both the Initiator and Respondent to meet with you in a confidential setting with plenty of time to have a discussion with them.</i></p> <p><i>Where either party is senior to the PRO, decide whether parties have sufficient confidence in the PRO to make the meeting productive.</i></p> <p><i>It may be necessary to adjourn the meeting and ask the Wurru-Ki Director for input to ensure that the proposed resolution agreement is workable in the Department – but not for those Directors to change the proposed agreement for something they would prefer. If so, provide a copy to the Wurru-Ki Director of all documentation completed so far.]</i></p>	Arrange Meeting	

	Action Required		Tick As Done
5.	<p><i>[At the beginning of the meeting make sure that both parties are comfortable.]</i></p> <p>Thank you both for coming here today.</p> <p>As you know, my only job here is to act as an impartial person to try and get you to find a resolution to your differences.</p> <p>I'm not here to judge who is right or who is wrong, or even to decide who is or is not telling the truth.</p> <p>As you know, I don't have any powers to make a decision. The Wurru-Ki Director, and any relevant Director at the Wurru-Ki Director's discretion, will have to sign off on anything that we can work out.</p> <p>The two of you have some differences and if we can work those out, that's great. But if we can't, that's okay as long as we can find a way so everyone can move on from this.</p>	Comfort	
6.	<p>Now that I've explained my role, I want to remind you about confidentiality.</p> <p>Everything we say here is confidential, even though I might make some notes that will go into the Issues Safe.</p>	Role of PRO	
7.	<p><i>[Explain to both parties that anything said by them in the meeting is to remain confidential to the meeting (apart from the notes which will eventually be placed in the Issues Safe and retained confidentiality by the Wurru-Ki Director) and that it may not be possible to reach a resolution at the meeting. If a resolution is not achieved, the PRO will again be in contact with both parties.]</i></p>	Confidentiality	

	Action Required		Tick As Done
8.	<p>I want to explain how I intend to conduct today's discussion. I want to start off with [X] explaining why they came to see me and how they see the problem.</p> <p>Then I'm going to ask you [Y] to respond.</p> <p>I'm going to ask each of you to speak for about five or ten minutes during which time I ask that the other listen without interruption.</p> <p>After you've both finished, I might ask a couple of questions aimed at clarifying some issues, maybe some areas of common ground, and then look to some ways that we can resolve this.</p> <p>It might be that I'll then want to have a few minutes privately with each of you, but we'll see how we go.</p> <p><i>[Follow through that procedure. Explore ideas for resolution after both sides have put forward their side of the story. If you have spent more than an hour trying to resolve the issue after they have finished their sides of the story, and you do not feel that you are getting close to resolution, it is okay to expect that you can do no more at this stage.]</i></p> <p><i>You might decide that:</i></p> <ul style="list-style-type: none"> • <i>you'll have to refer the matter to the Wurru-Ki Director.</i> • <i>you want to try a different approach.</i> 	Procedures for Meeting	
9.	<p><i>[There will be times where no matter how hard you try, you will not be able to get the parties to agree on a resolution. The role of Barwon Health is to try and prevent discrimination and other inappropriate workplace behaviour occurring, and to prevent its continuation. At this stage, Report to the Wurru-Ki Director with Form 15.23.]</i></p>	If Can't Be Resolved	
10.	<p><i>[In certain circumstances it may be necessary for the PRO to have a further meeting with each party to clarify the terms of the agreement and to reach an agreed resolution.]</i></p>	Negotiation for Resolution	

	Action Required		Tick As Done
11.	<i>[Once a draft agreement has been made, forward Final Report (Form 15.23) and signed Agreement (Form 15.22) to the Wurru-Ki Director for approval or further suggestion.]</i>	Report and Draft Agreement to the Wurru-Ki Director (Forms 15.22 and 15.23)	
12.	<i>[On obtaining a response from the Wurru-Ki Director, provide a copy of signed agreement to the parties. All the documentation should be kept in a file and sent to the Wurru-Ki Director.]</i>	Agreement – Form 15.22 to Parties	
13.	<i>[If the issue is not resolved, advise the Respondent that it will be for the Initiator to decide what they wish to do which could include referring the matter to the Wurru-Ki Director or not proceeding further, or lodging a formal complaint with Workforce.]</i>	Advise Respondent and Initiator	

Form 15.15 – Peer Resolution Officer Working Notes

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

Meeting with Initiator

1. Name:

2. Date of meeting:

3. Initiator’s name and contact number?

.....
(Name)

.....
(Contact Number)

4. What is the issue about?

.....
.....
.....

5. Respondent’s name and contact number?

.....
(Name)

.....
(Contact Number)

6. What options for resolution are there?

.....
.....
.....

7. If the Initiator does **not** want to withdraw the issue –

(a) has a Workplace Issue Form 15.18 been completed? yes no

(b) have Initiator sign the following:

I give permission to the PRO to proceed with attempting to resolve my issue.

.....
Signed by Initiator

.....
Date

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Meeting with Respondent

8. Date of meeting with Respondent:

9. What is the Respondent's response?

.....
.....
.....
.....
.....
.....
.....
.....

10. Has the Respondent signed an Advice Acknowledgement Form? (Form 15.19)

yes no

11. What options for resolution are worth pursuing?

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.....

12. Note names of any possible witnesses the PRO believes it will be essential to speak to in order to resolve the matter.

.....
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.....
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.....
.....

13. Notes of any meeting with third party/possible witnesses.

Date of Meeting:

Summarise third party's observations of any incident/s.

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14. Notes of meeting with Initiator and Respondent.

Date of Meeting:

Note any additional matters arising from discussion.

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.....

What resolution options were discussed?

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15. Has the issue been resolved?

yes no

16. If "No" to Question 15, can you suggest any further action which could help resolve the situation?

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.....
Signed by Respondent

.....
Dated

Form 15.16 – Initiator Confidentiality Acknowledgement Form

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

(Peer Resolution Officer)

1. The PRO..... (*name of PRO*) has had discussions with me on (*date*). She/he has explained to me Wurru-Ki procedures and my options as to confidentiality.

DELETE TWO OF (a), (b) and (c):

- (a) **I have decided that I want the discussions to be absolutely confidential.** I understand and accept that Barwon Health will not be able to take any action on the matters discussed with the PRO because I wish the matter to be kept absolutely confidential. If I do want further action taken within Wurru-Ki I understand that I will need to raise my issue with a Peer Resolution Officer for informal resolution or make a formal complaint to the Workforce Directorate.

OR

- (b) **I have decided that I want my issue recorded but that I do not want the Respondent to know that I have raised an issue against them.** I understand and accept that Barwon Health will not be able to take any direct action against the Respondent because I do not want that person to know that I have raised the issue. Barwon Health will keep a note in the Issues Safe containing the information set out in Form 15.17. I understand that the information will only be used for Barwon Health’s general reviews of workplace practices and procedures. If I do want further action taken within Wurru-Ki I understand that I will need to raise my issue with a Peer Resolution Officer for informal resolution or make a formal complaint to the Workforce Directorate.

OR

- (c) I would like Barwon Health to take further action and I will discuss the matters again with a PRO. **I understand that my name may be disclosed to the Respondent.**

.....
Signed

.....
Dated

THIS FORM IS TO BE GIVEN TO (*name of Initiator*) TO BE KEPT FOR HIS/HER OWN INFORMATION.

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Form 15.17- Peer Resolution Officer’s Notes For The Issues Safe

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

PRO:.....

Date:.....

Date of Meeting
with Initiator:.....

Initiator:.....

Respondent:.....

Summary of issue:.....
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Form 15.18 – Workplace Issue Form To Be Completed By The Initiator

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

1. Initiator: Name:
 Position:
 Contact No:

2. Who is the issue concerning?

.....
.....
.....
.....
.....
.....

3. What do you say this person has done to you? Please describe:

- (i) each thing that happened including who did it;
- (ii) when each thing happened including time and date;
- (iii) where each thing happened; and
- (iv) who else was in the area at the time.

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4. Outline steps, if any, you have taken in response, to the issue you are raising:

.....
.....
.....
.....
.....

5. What can you suggest that would stop this thing or these things from happening again?

.....
.....
.....
.....

6. Is there anything else you can suggest that would help resolve your issue?

.....
.....
.....
.....

.....
Signed

.....
Dated

Form 15.19 – Respondent Advice Acknowledgment Form

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

1. I, (name) have had a discussion with a Peer Resolution Officer..... (name) on (date) about an issue that has been raised by a person about me.

2. In signing this form I **do/do not** acknowledge that I have acted in the way that has been alleged. I understand that Barwon Health has policies that addressing discrimination, harassment, bullying and other inappropriate workplace behaviour and that such behaviour will not be tolerated.

3. (name) has given me a copy of this Form 15.19 and has explained to me what Wurru-Ki procedures are.

4. (name) has also talked with me about the ways in which my alleged behaviour could potentially be unlawful discrimination, harassment and/or bullying, or other inappropriate conduct (delete as appropriate).

5. I understand that if I victimise or treat badly the Initiator or in any way cause anyone else to do so then I could be liable for the unlawful act EVEN IF THE INITIATOR’S ALLEGATIONS ARE NOT TRUE.

.....
Signed

.....
Dated

Form 15.20 – Issue Withdrawal Form

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

1. I, (name) raised an issue with on (date).

2. I have decided that I want to withdraw my issue.

3. I understand and accept that Barwon Health will take no further formal or informal action in relation to the Respondent unless what I have raised is so serious that the conduct, if found, might warrant dismissal, mandatory reporting or might be criminal. In those very serious situations, the Wurru-Ki Director will decide what to do.

4. I understand that a copy of this Issue Withdrawal Form will be kept in the Issues Safe and retained confidentiality with my issue. The PRO has explained to me what the Issues Safe is.

.....
Signed

.....
Dated

Form 15.21 – Advice That Issue Withdrawn

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

Dear

As we have discussed, (*name*) has raised an issue against you regarding unlawful discrimination/harassment/ bullying/ inappropriate workplace behaviour (delete as appropriate) on (*date*).

I wish to advise you that they have decided to withdraw their issue. A record of the withdrawal will be kept in the Issues Safe and retained in confidence by Barwon Health. No further action will be taken within Wurru-Ki in relation to the issue.

Thank you for your co-operation.

Yours sincerely

.....

Peer Resolution Officer

.....

Dated

Form 15.22 – Agreement

Without Prejudice – Resolution of Issues between the Initiator and Respondent

1. (name) raised an issue regarding unlawful discrimination/harassment/bullying/inappropriate workplace behaviour (delete as appropriate) against (name).

2. Both (name) and (name) have agreed to resolve the issue.

OR (delete as appropriate)

..... (name) has agreed to a resolution of his/her issue without the consent of the Respondent.

3. To resolve the issue.

..... (name) agrees to do the following things:

.....
.....
.....
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.....

..... (name) agrees to do the following things:

.....
.....
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.....

The following things will also be done:

.....
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.....
.....
.....

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4. If apology, list agreed wording:

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.....

5. Date that PRO will follow up with the Initiator and the Respondent:

.....

6. Both(name) and..... (name) agree to keep this Agreement confidential and that each of them will not disclose it to any other person unless they have the written consent of each other.

.....
Signed by Initiator

.....
Dated

.....
Signed by Respondent

.....
Dated

Approved

.....
Signed by the Wurru-Ki Director

.....
Dated

Form 15.23 – Report To The Wurru-Ki Director

Without Prejudice – Attempt to Resolve Issues between the Initiator and Respondent

1. Peer Resolution Officer’s name and contact number:

.....
(Name)

.....
(Contact Number)

2. Name of Initiator:

3. Name of Respondent:

4. Date issue raised with PCO:

5. Date issue raised with PRO:

6. Summary of issue:

.....
.....
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.....
.....

7. Date of discussion with Respondent:

8. Summary of Respondent’s response:

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9. Is the issue definitely NOT a complaint about unlawful discrimination, harassment and/or bullying?

.....
.....
.....

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16 Role of the Wurru-Ki Director

16.1 Overview of the Wurru-Ki Director's responsibilities

This section gives an overview of the Wurru-Ki Director's overall responsibilities and an outline of their role within Wurru-Ki. Wurru-Ki focuses on prevention and speedy, confidential and effective resolution of any issues that arise, on a without prejudice basis. When considering what should be done in a particular situation, remember that Barwon Health has a responsibility to take all reasonable steps to prevent discrimination or sexual harassment, bullying and other inappropriate workplace behaviour.

16.2 How will the Wurru-Ki Director be involved?

- The Wurru-Ki Director is responsible for managing the implementation of Wurru-Ki.
- Maintenance of Issues Safe system.
- Reviewing monthly Reports from PCOs and filing such reports in the Issues Safe.
- Deciding whether any monitoring or educational action should be taken.
- Promptly reading all Reports from PROs.
- Providing support and assistance to PCOs and PROs.
- Reviewing any resolution proposals and making a prompt decision on implementation.
- Dealing with situations where the Wurru-Ki Director receives a referral from a PCO, because an Initiator has described an issue which the PCO thinks sounds like a situation which could possibly involve dismissal, mandatory reporting, or a criminal offence. (See 16.4 below for details)
- The Wurru-Ki Director will also be involved in ensuring any proposed resolution agreements reached by an Initiator and a Respondent, are workable. In a situation of an attempted but unresolved issue, the Wurru-Ki Director will be made aware of that fact, so that it assists in understanding and managing the dynamics in the relevant work area of the Initiator and Respondent.

16.3 Issue Resolution

The Wurru-Ki Director has a general supervisory/monitoring role which includes promptly reviewing and filing all Issues Safe materials and reviewing all reports from PROs. The Wurru-Ki Director should use this information to decide on preventative educational programs.

If the Initiator and the Respondent have come to an agreement on how to resolve the matter, and recorded that agreement (Form 15.22) then the Wurru-Ki Director and relevant Director (at the Wurru-Ki Director's discretion) must check the resolution proposals and if they are satisfactory, sign the agreement and return it to the PRO to forward to the parties.

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If the issue has not been resolved and the PRO is of the view that he/she cannot mediate the matter or that a proposed resolution requires structured decisions to be made by the Wurru-Ki Director and/or relevant department Director or, if there has been a breach of resolution, then the Wurru-Ki Director and Director assess whether the issue can be resolved or whether Barwon Health is able to take any further action on the matter. Where resolution appears to be possible, the Wurru-Ki Director should contact the PRO, the Initiator and the Respondent. This may, if helpful, also involve the relevant Director.

If the Wurru-Ki Director (and relevant Director) is/are requested by a PRO to be present at a resolution conference, they must allow the PRO to run the conference and give him/her their support.

16.4 Possible Criminal, Dismissal or Mandatory Reporting Situations

Wurru-Ki is separate to the formal complaints procedures that apply in the conduct of formal investigations and disciplinary action. Please refer to Barwon Health's Managing Complaints of Unsatisfactory Performance Misconduct Guidelines – in Section A.

Where an issue is raised with a PRO involving behaviour which may warrant dismissal then it will be indicated in the PRO's or PCO's Report to the Wurru-Ki Director. The Wurru-Ki should continue but the Wurru-Ki Director should also put in place measures necessary to ensure that appropriate procedures in relation to possible formal investigation and/or disciplinary actions are followed. An exception to this will be where there is overwhelming independent evidence of the misconduct complained of confidentially.

Where the Wurru-Ki Director receives a referral from a PCO, because an Initiator has described an issue which the PCO thinks sounds like a situation which could possibly involve dismissal, mandatory reporting, or a criminal offence, the following would apply:

- the Wurru-Ki Director will exercise their best judgement as to how to deal with that situation.
- the Wurru-Ki Director will seek to balance confidentiality; the hospital's overriding duty of care; and that at that point in time a Respondent has not yet been spoken with.

It is expected that other than exceptional circumstances, the first two people that the Wurru-Ki Director would speak with when they receive that type of referral from a PCO, will be the PCO and the Initiator. How it is then further progressed by the Wurru-Ki Director will depend upon all of the particular circumstances

It should be noted, that unless a formal complaint is made, at no stage can information that has been given confidentially within Wurru-Ki be used in formal complaint processes. Fairness requires that if Barwon Health is to take action against the Respondent, the whole issue, including the identity of the Initiator must be put to the alleged Respondent and an opportunity given to them to respond, within a separate formal complaint process.

17 Record Keeping

17.1 Record keeping by PCOs

- The PCO will provide a Report (Form 14.6) to the Wurru-Ki Director every month for statistical purposes.
- Where the Initiator agrees the PCO will provide a report for the Issues Safe (Form 14.7).
- Where the Initiator agrees the PCO will provide a report for the PRO (Form 14.7).
- The PCO will keep no other records of contact with Initiators.

It is the PCO's responsibility to ensure that all documents in their possession are kept in a locked place.

It is also the responsibility of the PCO to ensure that any reports to the PRO are made in a manner that will ensure their confidentiality.

17.2 Recording keeping by PROs

- The PRO should keep a record of the discussion with the parties and further action on the Working Notes (Form 15.15) in a file. The working notes should be sufficiently detailed to help achieve a resolution of the matter. No prejudicial or judgmental comments should be included. For example - do not write an opinion like "This person is obviously not telling the truth".
- If the Initiator chooses not to proceed or have an Issues Safe record, only the PRO should have the Confidentiality Acknowledgement (Form 15.16) and the Notes for Issues Safe (Form 15.17) completed and sent to the Wurru-Ki Director.
- If the Initiator chooses to proceed, the PRO should have the Initiator complete the Workplace Issue Form (Form 15.18) ensuring the Initiator signs the form and that the date is recorded.
- If the Initiator withdraws their issue then the withdrawal (Form 15.20) should be completed and sent to the Wurru-Ki Director for filing in the Issues Safe with the Workplace Issue Form (Form 15.18) and the PRO's Working Notes (Form 15.15).
- If the matter is resolved, the PRO should forward the draft agreement (Form 15.22) to the Wurru-Ki Director together with a Report Form (Form 15.23).
- If advice is provided to the Respondent of the issue raised against them then the PRO should have the Advice Acknowledgement Form (Form 15.19) completed.
- Once the approved agreement (Form 15.22) is returned by the Wurru-Ki Director, copies of the agreement are forwarded to both parties. The file is then retained/returned by the Wurru-Ki Director for secure storage.
- If the matter cannot be resolved by the PRO, then the file, together with the Report (Form 15.23), should be forwarded to the Wurru-Ki Director.

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- If there is a breach of resolution reached by the parties, the PRO will indicate this on the Report to the Wurru-Ki Director (Form 15.23).

It is the PRO's responsibility to ensure that all documents kept by the PRO at any time are kept in a secure location. It is also the PRO's responsibility to make sure that all documents and reports forwarded to the Wurru-Ki Director are sent in a secure and confidential manner.

17.3 Record keeping by the Wurru-Ki Director

- The Wurru-Ki Director reviews monthly reports from PCOs and retains these reports confidentially.
- The Wurru-Ki Director has a responsibility to maintain and monitor the Issues Safe and implement monitoring and educational action as required.
- The Wurru-Ki Director is responsible for the secure storage of all files.

17.4 The "Issues Safe"

17.4.1 What is the "Issues Safe"?

There are various occasions when an issue may be raised in relation to a worker and a formal record is not placed on their personnel file. Such examples include issues raised anonymously; and issues raised by an Initiator who does not wish to escalate the issue, but wants some record made of the issue(s) which are resolved without an admission of liability.

There may be a variety of other circumstances when it would be considered inappropriate for the issue to be placed on the Respondent's personnel file because to do so would unfairly tarnish their record and prospects of promotion in circumstances where the allegations have not been proven or admitted. An issue should only be kept on a personnel file if Barwon Health has taken disciplinary action against a worker, separate from Wurru-Ki.

At the same time, Barwon Health cannot allow multiple issues/concerns/complaints to build up over time in relation to a person without further action being taken to prevent any further incidents. For this reason, a system of storage of the issues raised and file notes as to how the issues were dealt with called the "Issues Safe" system should be used. The secure storage system is maintained separately from personnel files

The reason for keeping a copy of the issues raised, and files notes taken, is to enable Barwon Health to detect persons who are either habitual complainers or genuinely regular victims of some type of discrimination or other inappropriate workplace behaviour. The reason for keeping files on regular respondents is to identify potential systemic issues which require further investigation.

The Wurru-Ki Director will be responsible for arranging for the filing of reports received from PCOs and PROs.

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Documents placed in the Issues Safe system should be retained until 7 years after the worker(s), to whom the documents relate, have left Barwon Health.

17.4.2 What will be in the “Issues Safe”?

The Issues Safe will contain files in the name of each Initiator and Respondent where an issue has been raised. The files should include:

- Workplace Issue Form
- The PRO's working notes
- Resolution Agreements
- The Issue Withdrawal Form if the issue has been withdrawn
- Report to the Wurru-Ki Director from PROs
- Monthly reports from PCOs

The reports can be emailed to wurru-ki@barwonhealth.org.au

SECTION D: OTHER ISSUES WHICH MAY ARISE WHEN USING WURRU-KI

18 Can Someone Else Raise an Issue For Me?

- 18.1 Can someone else accompany me to see the PCO, PRO or the Wurru-Ki Director?
- 18.2 What happens if an issue is raised by someone other than the Initiator?

19 Raising Issues Anonymously

- 19.1 Can an issue be raised anonymously?
- 19.2 Method for dealing with issues raised anonymously

20 Confidentiality Options

21 What if it is a Potential Dismissal Situation?

- 21.1 Serious behaviour warranting disciplinary action up to and including dismissal

22 How Does Defamation Fit In?

- 22.1 What is a defamatory statement?
- 22.2 What is not a defamatory statement?

23 What about natural justice?

- 23.1 What is natural justice?

24 Potential resolutions of issues

- 24.1 What can the resolution be about?
- 24.2 What can't the resolution be about?

25 How and when formal complaint process becomes invoked

- 25.1 Formal complaint process may be invoked by the Initiator
- 25.2 Formal complaint process may be invoked by the Wurru-Ki Director

18 Can Someone Else Raise an Issue for Me?

18.1 Can someone accompany me to see the PCO, PRO or the Wurru-Ki Director?

The situation may arise where an Initiator wants another person to accompany them when they meet with the PCO, PRO, or the Wurru-Ki Director.

Generally, it is unnecessary for another person to attend (and often unhelpful, especially in the resolution phase) as:

- Wurru-Ki is a private process with a large emphasis on confidentiality, which may be compromised by having another person present; and
- the presence of a person other than the PCO or PRO and the Initiator is usually not conducive to confidential, prompt and effective resolution. A Respondent is going to feel far less comfortable making admissions, compromises or agreements if another person is present.

Due to the wide variety of PCOs at Barwon Health and the various levels of positions they hold, it should be unlikely that an Initiator would feel that they were unable to approach a PCO without having another person present.

Nonetheless, Barwon Health's process does allow an Initiator to be accompanied by another worker to provide them with moral support.

But in no way should the other worker act as a representative of the Initiator. They will be advised by the PCO not to take an active or representative role in the Wurru-Ki process. **It is important that the person raising the issue speak on their own behalf so that the information is not distorted in any way.**

NOTE: Only Barwon Health workers can be brought as support people in Wurru-Ki discussions. Wurru-Ki is a voluntary process and is only for Barwon Health workers, not others, to be involved in.

18.2 What happens when an issue is raised by someone other than the Potential Initiator?

If a PCO or PRO is approached by a worker who wishes to raise an issue on behalf of another worker (i.e. the Potential Initiator) but who did not witness the incident giving rise to the issue (**informing worker**) then the following procedure will be adopted:

- The informing worker will be advised that nothing further can be done unless the Potential Initiator comes forward to a PCO as Barwon Health cannot take specific action against a worker given that fairness requires that the full issue be put to the Respondent and the Respondent be given an opportunity to respond.
- The Potential Initiator will be approached by the PCO/PRO and it will be indicated to them that an issue has been raised on their behalf and then asked whether they wish to take the matter further.

- If the Potential Initiator **does** wish to take the matter further then they should be advised to approach a PCO who will go through the options available to the Initiator.
- If the Potential Initiator **does not** wish to pursue the matter further then they should be informed of the following:
 - Barwon Health cannot take specific action against the Respondent, as fairness requires that the full issue be put to the Respondent and the Respondent be given an opportunity to respond.
 - However, the fact that an approach has been made by the informing worker should be brought to the attention of the Wurru-Ki Director.
 - The Wurru-Ki Director might in some cases decide to inform the Respondent that they are aware of an allegation regarding their behaviour and any inappropriate action in which the Respondent may have been involved will not be tolerated further.
 - The Wurru-Ki Director may also to decide to inform the Respondent that if such behaviour occurs in the future, it may result in formal complaints and possible dismissal or disciplinary action in the future.
- If the informing worker themselves feels they have been discriminated against, harassed or bullied by the actions of the Respondent, then they can raise an issue using Wurru-Ki on their own behalf and the normal Wurru-Ki process will be followed.
- Ultimately, Wurru-Ki is a process that involves attempted resolution between an Initiator and a Respondent. Therefore issues raised anonymously do not permit a Respondent the opportunity to fully understand what is being raised and by whom, in order to respond and participate in resolution with an Initiator.

19 Raising issues anonymously

19.1 Can an issue be raised anonymously?

An issue can be raised anonymously in two ways:

1. An issue is raised by a person who either will not identify themselves (for example, the issue becomes known about through an intermediary) or raises their issue without disclosing their identity (for example, in an anonymous letter).

In this situation Barwon Health must ensure that attention is paid to the issue raised. Obviously, Barwon Health will not be sure whether the information is true or correct, but such information will not be ignored. In ignoring information which was accurate, Barwon Health might in some cases not be taking reasonable steps to prevent discrimination, harassment, bullying or other inappropriate workplace behaviour from occurring.

2. Where an Initiator gives their identity to a PCO but chooses the second confidentiality option (Issues Safe) because they want Barwon Health to be aware of the alleged situation, but do not want their identity revealed to the Respondent.

Again, Barwon Health must take all reasonable steps to prevent all forms of discrimination, harassment or, bullying or other inappropriate workplace behaviour from occurring and so it should not ignore the issue. But at the same time, in most cases, further action cannot be taken against the Respondent unless the identity of the Initiator is given to the Respondent. This is because it would not be fair to take further action unless the Respondent has had a proper opportunity to respond to the specific issue and know who is raising it.

NOTE: There are three exceptions to confidentiality.

There are some situations that arise where as an employer, our duty of care means we simply must take some action. This would involve reports of very serious conduct which:

- (a) may be criminal in nature (e.g., sexual assault); or
- (b) is so serious that it may justify dismissal; or
- (c) may trigger statutory reporting obligations, or similar.

Please see **Part 21** for further information regarding serious misconduct.

19.2 Method for dealing with issues raised anonymously

Any issues raised anonymously with a PCO should be forwarded for filing in the Issues Safe to the Wurru-Ki Director.

The Wurru-Ki Director should keep all such issues confidential, except where the Wurru-Ki Director considers it appropriate to report the issue to the authorities or to other managers or workers within Barwon Health (for example where the issue requires mandatory reporting to the police).

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The Wurru-Ki Director should try to discreetly monitor any possible problem areas, and should not assume the matters alleged by the Initiator are either true or not true.

Depending on the issues raised it may be appropriate to take some action in the workplace. This might include broad (non-targeted) education or drawing the Barwon Health Code of Conduct and Acceptable Behaviours policy to the attention of workers.

20 Confidentiality options

The Initiator will have **three** options in relation to confidentiality as follows:

Option 1: (No action)

The discussion will be completely confidential and no action will be taken by Barwon Health (unless the serious nature of the matter requires that Barwon Health takes action immediately. In this situation, all reasonable steps will be taken to maintain confidentiality of the Initiator);

OR

Option 2: (Issues Safe)

The discussion will be recorded confidentially in the "Issues Safe" filing system (the Issues Safe system is explained at Part 17.4). For natural justice reasons, Barwon Health cannot assume allegations about a Respondent are true or not, without telling them what is being said and by whom and giving them an opportunity to respond. However Barwon Health will not take specific action against the Respondent at the time (except in very serious situations, see Part 13.5 and Part 21). Barwon Health can monitor the situation and/or take general preventative action. No action will be taken which will state the Initiator's identity without his/her specific permission;

OR

Option 3: (Peer Resolution Officer)

The key parts of the discussion between the Initiator and the PCO will be recorded in writing and the PCO will provide a summary to the PRO so that they can take further steps towards resolution if required.

Only the following information will be passed on to the Wurru-Ki Director:

Option 1 – No action

- Monthly Statistical report (Form 14.6)
 - No names or positions are recorded (completely anonymous)

Who has access to the above information?

Only the Wurru-Ki Director sees this information except where the issue is very serious (e.g. involving conduct that may warrant dismissal, mandatory reporting or might be criminal) in which case the Wurru-Ki Director may deal with the issue on a case by case basis.

Option 2 – Issues Safe

- Peer Contact Officer Notes for Issues Safe (Form 14.7)
 - Summary of the issue (including names of Initiator and Respondent) recorded and placed in the confidential Issues Safe
- Monthly Statistical report (Form 14.6)

Who has access to the above information?

Only the Wurru-Ki Director sees this information except where the issue is very serious (e.g. involving conduct that may warrant dismissal, mandatory reporting or might be criminal) in which case the Wurru-Ki Director may deal with the issue on a case by case basis.

Option 3 – Seeking resolution

- Peer Contact Officer Notes for Peer Resolution Officer (Form 14.7)
 - Summary of the issue (including names of Initiator and Respondent) recorded and sent to the Peer Resolution Officer
- Monthly Statistical report (Form 14.6)
- If **resolved**: The proposed resolution provided to the Wurru-Ki Director for approval (Form 15.22). The Wurru-Ki Director may notify and consult the relevant department director regarding the proposed resolution
- If **not resolved**: All the material on file including a report prepared by the PRO (Form 15.23) will be provided to the Wurru-Ki Director.

Who has access to the above information?

Only the PRO and the Wurru-Ki Director sees this information (except where the issue is “super serious” in which case the Wurru-Ki Director may deal with the issue on a case by case basis and where the relevant department director is informed of a proposed resolution).

EXCEPTION: If the content of the Initiator’s issue is of such a serious nature that a PCO must report it, then the Wurru-Ki Director will be informed. Where appropriate, the Initiator may continue using Wurru-Ki.

21 What if it is a potential dismissal situation?

Wurru-Ki is separate to the procedures required in dismissing (or other types of disciplining) a worker. Please refer to Barwon Health's Managing Complaints of Unsatisfactory Performance and Misconduct Policy.

If the PCO receives information about behaviour which might lead to dismissal and the Initiator wishes to be referred to a PRO, then the PCO should indicate this in the report to the PRO (Form 14.7).

It should be noted that unless formal investigation and/or disciplinary action is deemed necessary by the Wurru-Ki Director, at no stage can information that has been given confidentially within Wurru-Ki be used in formal complaint procedures. Fairness requires that if Barwon Health is to take formal action against the Respondent, the whole issue, including the identity of the Initiator should in almost every circumstance be put to the alleged Respondent and an opportunity given to them to respond, as part of the usual, separate investigation and/or disciplinary processes.

Where an issue is raised with a PCO and involves behaviour which could lead to dismissal then it will be indicated in the PRO Report to the Wurru-Ki Director (Form 15.23) that a possible dismissal situation exists. Wurru-Ki should continue but the Wurru-Ki Director, in consultation with the PRO, should also put in place those steps which are necessary to ensure that appropriate procedures for the conduct of a formal investigation and/or possible termination of employment are followed, in addition to Wurru-Ki Procedures.

Please refer to Barwon Health's Code of Conduct, Acceptable Behaviours Policy and Managing Complaints of Unsatisfactory Performance and Misconduct Guidelines.

NOTE: An exception to this will be where there is overwhelming independent evidence of very serious misconduct complained of confidentially, which cannot be left un-actioned by an employer – e.g. assault.

22 How does defamation fit in?

Defamation is the publication of false and derogatory statements in respect of another person without lawful justification.

22.1 What is a defamatory statement?

A defamatory statement is one which is likely to injure another's reputation, expose another to hatred, ridicule or contempt, cause another to be shunned or avoided, or which has a tendency to injure another in their office, profession or trade. A statement can be defamatory whether it is made verbally or in writing.

If a person makes false allegations in a workplace that a worker has been unlawfully discriminating against, or harassing or bullying another worker, then they may be defaming the worker, who can sue for defamation. The making of a statement of truth may be a defence at common law.

22.2 What is not a defamatory statement?

It would not be defamation for a person to raise an issue in good faith, in accordance with Wurru-Ki, and for PCOs, PROs and the Wurru-Ki Director to deal with the issue in the manner set out in this document. They are proper processes and there is lawful justification for any statements made about another person.

It is very important that:

- all parties keep to the truth and facts of the matter and do not make statements which are not based on the truth and facts;
- the proper processes are followed;
- all participants are advised at all stages that they must maintain confidentiality; and
- all participants maintain confidentiality.

The area of defamation is a very technical legal area, however, the fundamental principle is that a person should never publicly make an untrue statement orally or in writing. If you have any further queries about defamation, then you should seek independent legal advice.

23 What about natural justice?

23.1 What is natural justice?

Natural justice is a system of rules about fair procedure. It involves rules and procedures followed by a person or body making a decision about a dispute or deciding on someone's rights. The purpose of natural justice is to ensure that the decision maker acts fairly.

The requirements of natural justice vary from situation to situation.

Wurru-Ki seeks to strike a balance of fairness for all workers. This helps to prevent discrimination, harassment, bullying and other inappropriate workplace behaviour and to resolve any problems. It is important that all workers be treated fairly. Fair treatment means that a person should be given an opportunity to put their side of the story. Where an issue that has been raised is put to a Respondent, then that person should be provided with enough information to be able to put their side of the story properly, without having to guess about who is involved and when and where the incidents took place.

If a Respondent says "*I want my lawyer / union official present*" the PRO should explain that this is not appropriate nor necessary in an informal and voluntary peer resolution process. If the person persists the PRO should make a note of this on the Working Notes (Form 15.15) and follow up the matter with the Wurru-Ki Director.

24 Potential resolutions of issues

24.1 What can the resolution be about?

The following outcomes can be included in a proposed resolution under Wurru-Ki:

- apology (written or verbal);
- acknowledgment that certain behaviour did occur;
- Respondent agreeing and/or undertaking to not engage in the type of behaviour alleged;
- Respondent undertaking training or coaching to address behavioural issues (i.e. effective people management skills training); and
- Anything else the parties are agreeable to and which is not unlawful nor a breach of any Barwon Health policy or guideline.

24.2 What can't the resolution be about?

The following outcomes **cannot** be included in any proposed resolution under Wurru-Ki:

- payment of monies;
- job promotion or demotion;
- dismissal of the Respondent or any other disciplinary action; and
- legal release from any/all future claims in relation to the issue raised.

A PRO may consult with the Wurru-Ki Director if they are unsure as to whether an outcome can be included in a resolution.

25 How and when formal complaint process becomes invoked?

Barwon Health's formal complaint process may be invoked in two ways:

25.1 Formal complaint process may be invoked by the Initiator

At any time during Wurru-Ki, the initiator may choose to raise a formal complaint through the Managing Complaints of Unsatisfactory Performance and Misconduct Policy.

25.2 Formal complaint process may be invoked by the Wurru-Ki Director

If the issue is of a "very serious" nature and is referred to the Wurru-Ki Director by a PCO or PRO, the Wurru-Ki Director can recommend to the Chief Workforce & Culture Officer that the matter raised be dealt with under the *Managing Complaints of Unsatisfactory Performance and Misconduct Guidelines*,.