



DRAFT CODE OF PRACTICE Violence and aggression at work

PUBLIC CONSULTATION SUBMISSION

This draft code of practice has been developed by the Commission for Occupational Safety and Health (the Commission) under the *Occupational Safety and Health Act 1984* (the OSH Act).

The Commission's objective is to promote comprehensive and practical preventive strategies that improve the working environment of Western Australians.

This code of practice is intended to assist employers and employees identify and deal with external, client-related and service-related violence and aggression in the workplace.

It provides practical guidance for workplaces where people may be exposed to various forms of workplace violence and aggression including physical assault, verbal abuse, threats, intimidation and harassment. It sets out a risk management approach to the prevention and management of violence and aggression in the workplace.

Internal violence and aggression among co-employees at a workplace is addressed under the Bullying and harassment code of practice currently in development. On completion, the Bullying and harassment code of practice will be also released for public consultation.

The Commission is aware of the recently published report by the Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces* (March 2020) and comments relating to this report are welcomed as part of the consultation process.

The Commission is aware of increased reporting of incidence of family and domestic violence, particularly during the period of COVID-19 pandemic restrictions. The Commission is interested in views about family and domestic violence risks, including when working from home.

The Commission seeks your comments about the draft code of practice from Wednesday 24 June 2020 to Wednesday 23 September 2020.

Submissions close: 5.00 pm WST, Wednesday 23 September 2020.

Please use this cover sheet and feedback template to submit your comments to safetycomms@dmirs.wa.gov.au

Suggested content changes may also be tracked on the Word document and submitted together with this completed template.

Section 1: Submission details

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Internet publication

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Section 2: Feedback

Track-changed document submission

Does this submission contain a **track-changed version** of the draft code?

Yes

No

If yes, submit as a Microsoft Word compatible document (.docx)*

General comments

Structure and content

Separating Bullying and Harassment from Violence and Aggression into two separate codes is a relevant move. However, the draft Violence and Aggression at Work Code of Practice (CoP) is deficient in several ways, outlined as follows.

Firstly the reference to legislative frameworks does not acknowledge resource safety legislation. Given that the Department now oversees legislation for general workplaces, as well as resource safety any new code issued by the department for completeness should include all legislation for workplaces in WA that are part of the DMIRS portfolio. Namely:

- Mines Safety and Inspection Act 1994
- Mines Safety and Inspection Regulations 1995.

This draft does not make the clear distinction between what will be covered in the Bullying and Harassment and Violence and Aggression instruments, which may represent the complexity of this workplace hazard. While the Bullying and Harassment CoP can cover internal Workplace Violence and Aggression (WVA), incidents of WVA may not always be attributed to Bullying and Harassment, consequently there is the risk that these scenarios are not adequately covered in either document.

Definitional problems and failures to link to existing relevant materials

It is noted that Model WHS Act language is used which seems appropriate given that WA is confirmed as adopting the Model Act; however the date of effect is unconfirmed and the draft CoP does not acknowledge the incoming legislation.

There are several issues with definitions throughout the document, and a range of existing useful materials are not referred to. By way of illustration, the four 'areas' classifications are very unclear, their explanations overlap, and the examples provided for each area are too brief to make sense. For example, the 'external' area mentions family members, but the client-related area also refers to family, but how 'family' is different between the two area classifications is not explained. Some more detail is given under "Who is at risk"; this content needs to be better arranged so it is coherent.

A better framework for classification is to refer to the perpetration source first, and then the nature of the service relationship. In other words:

- Internal (perpetrated by other workers); or
- External (perpetrated by a non-worker, including clients / customers, patients, or members of the public (includes worker family members [irrespective of whether the worker is working from home, or not])).

External can then be divided into direct and indirect sub-clarifications depending on whether the perpetrator is involved in a service relationship, or not.

- Direct external (perpetrated by a party to a service relationship, e.g., clients, patients, and customers); or
- Indirect external (perpetrated in the absence of a service-relationship, e.g., members of the public

and family members).

The case for the latter even being differentiated into indirect and direct must be much more robustly established, and if not, should be abandoned as it adds little to no value to the CoP.

Foreseeability of perpetration is relevant from a SFAIRP perspective, but this perspective is not discussed. For example, it may be argued that the PCBU has greater knowledge of and control over targeted / repeat clients than they do over members of the public, and therefore can better control the risks of aggression and violence by clients than by members of the public.

There are also problems with the definition of violence and aggression. The definition for violence and aggression adopted in the CoP should match that already used to classify claims data. For example, psychological injuries (disease) causal mechanism data has an 'occupational violence' category, and physical injuries causal mechanism data have a 'being hit by moving objects' category, with a subcategory of 'being assaulted by a person or persons.' The CoP definitions should align with these existing definitions used to classify claims.

It is unclear why internal (worker-on-worker) violence and aggression is excluded from this CoP. While it is briefly stated that internal violence (but not aggression) is 'covered under the bullying and harassment CoP', this document is not yet available even in draft format and thus it is impossible to know whether this is an appropriate or useful exclusion. For example, bullying refers to repeated acts, so a single act of aggression or violence would not be classified as bullying.

Further, the most popular definition of harassment currently deployed nationally is premised in anti-discrimination, and specifically refers to feelings of intimidation, insult or humiliation due to comments or conduct relating to a workers protected attribute/s - aka race, colour, national or ethnic origin; sex; disability; sexual preference; or some other characteristic specified under anti-discrimination or human rights legislation. Thus, the term harassment does not necessarily cover acts of violence or aggression perpetrated by another worker if those acts do not relate to a protected attribute.

The exclusion of worker-on-worker violence and aggression is fraught with the danger of some conduct not being covered by either of the new CoPs. If pursuing separation as appears to be the agenda, the CoP needs to clearly outline the differences between violence and aggression, bullying, and harassment, as a starting point. Otherwise, CoP users will not know which CoP they should be applying in each situation.

However, a far more useful approach to CoP development is to develop a single CoP that covers all forms of hazardous interpersonal conduct; rather than creating confusion as to what CoP applies to a given case, when objectively differentiating between these behaviours is difficult. For example, verbal threats could be classified as bullying, violence, harassment, sexual harassment, conflict, OR aggression, depending on a range of factors.

This umbrella approach aligns with existing national guidance material on psychological health and safety duties, which includes all these behaviours under the heading of "Poor workplace relationships." This guidance material explicitly covers such behaviours by co-workers, and clients, for example, as follows: "workplace bullying, aggression, harassment including sexual harassment, discrimination, or other unreasonable behaviour by co-workers, supervisors or clients."

Intersection between physical and psychological injuries

While the CoP mentions that violence and aggression can result in both physical and psychological injury, it does not adequately cover either of these two dimensions, nor does it discuss the co-dependent and recursive - thus complex - nature of the injuries typically arising for this sort of hazardous conduct. For example, an armed robbery may result in a concurrent physical injury and psychological injury. Verbal aggression may only result in a psychological injury. A single act of patient violence may result in a primary physical injury from which the worker recovers, but exposure to several single acts of violence over time may lead the development of a primary psychological injury (e.g., PTSD) with no physical injury present at the time. An aggressive act may result in a major primary physical injury requiring extended time off work, during which the worker may also develop a secondary, psychological injury.

The CoP needs to provide guidance on risk management based on both the Hierarchy of Control usually deployed for physical injuries, and the three-tiered system adopted for psychological injuries (prevent

harm, intervene early, and support recovery). It also needs to provide guidance on complex claims.

Inherently hazardous roles/work environment

The CoP does not recognise the existence of inherently hazardous roles and threatening work environments experienced by many workers. Examples include:

- Doctors, nurses and ambulance officers
- Prison guards
- Police officers
- Bus drivers and transit guards.

These workers face the potential threat of violence and aggression daily. Due to the public being the primary source of the risk, and the necessity of the services they provide to the community, this risk is very difficult to prevent or control.

Further barriers to preventing violence and aggression for these critical service providers lie in the availability of funding. Many of the organisations who employ these workers are either government run or contracted to the government.

Whilst local data is limited, there appears to be high rates of mental health issues experienced by people who work within these inherently hazardous roles. Without better data it would be difficult to determine whether this is pure correlation or if the threat of violence has a causation factor.

Unfortunately, there appears to be no obvious solutions to prevent violence and aggression in these inherently hazardous roles/environments. Communities of practice and research would be beneficial in this area. Where the risk is considered to be managed to the ALARP/SFARP, this should be acknowledged.

Mentally Health Workplaces Audit Tool

We suggest adding reference, the violence and aggression as internal and external factors could be added to the MENTALLY HEALTHY WORKPLACES AUDIT TOOL – TEMPLATE that is an existing DMIRS publication. <https://www.dmp.wa.gov.au/Safety-Publications-Library-3834.aspx>

Essentially WPVA is one hazard that impacts mental health and is in fact a psychosocial hazard and as such currently existing comprehensive documents such as the Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors could be updated to specify the WPVA factor. https://www.dmp.wa.gov.au/Documents/Safety/MSH_MHW_FIFO_COP.pdf#

Case studies

Although several case studies have been provided within the CoP, this is only a small representation of the number of jobs that are at risk of acts of violence and aggression every day. It would be helpful to include a summary of all known roles and the nature of the violence and aggression they are most at risk of. Where that industry has accepted preventative practices defined, it would be helpful to have a summary of these controls. Whilst those in the same industry might already be aware of them, other industries may be able to learn and share.

Detailed comments

If commenting on specific content, you may wish to use the table below.

Reference to specific chapter/section/page	Comment
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Refer to mark-up within the draft CoP