

Bullying and Harassment Policy

Policy endorsed by Executive: November 2019

Policy approved by NSWIS Board:

CEO: _____
(signature)

Next formal review by Executive: November 2021

**Policy Author and
Contact person for more information: Manager, People
& Culture**

NOTE: Any agreed changes to the Policy approved by the NSWIS Board between the date of issue and the date for next review are to be updated and made available to all staff for advice.

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Revision History

Date	Version	Reviewed by	Changes made
21/11/19	Version 1	Reviewed by Kirsten Thomson	Approved by Board
Date	Version	Reviewed by	Changes made
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Bullying and Harassment



In accordance with Work Health and Safety legislation and requirements, the NSW Institute of Sport (NSWIS) is required to provide a safe and healthy workplace for all its members, which includes a workplace free of bullying, harassment, sexual harassment, discrimination, vilification or victimisation.

NSWIS has a zero tolerance for any form of bullying or harassment within the workplace.

This policy has been developed in accordance with:

- *NSW Anti-Discrimination Act 1977*
- *NSW Government Sector Employment Act 2013*
- *NSW Government Sector Employment Rules 2014*
- *NSW Government Sector Employment Regulation 2014*
- *NSW Health and Safety Act 2011*
- *NSW Work, Health and Safety Regulation 2017*
- *NSW Privacy Act 1988*

This policy should be read in conjunction with:

- NSWIS Code of Conduct
- NSWIS Complaints Handling Guidelines
- NSWIS contracts and agreements such as employment contracts, fee for service contracts, athlete agreement, talent agreement, visiting athlete agreement
- NSWIS Enterprise Agreement
- NSWIS Grievance Handling and Dispute Resolution Policy
- NSWIS Social Media Policy

1. PURPOSE

NSWIS is committed to providing a safe and equitable workplace and training environment for all staff, coaches and athletes where everyone's contribution is valued and respected. As part of this commitment, workplace behaviours such as bullying, harassment, sexual harassment and discrimination will not be tolerated. The purpose of this Policy is to provide guidelines for the prevention and management of bullying and harassment at NSWIS.

This Policy defines the principles under which the NSWIS will prevent or deal with bullying and harassment in the workplace. It provides information and guidance on:

- defining the behaviours that could amount to bullying and harassment or related inappropriate conduct;
- describing the impacts of bullying and harassment or related inappropriate behaviours;
- the actions to be taken in relation to the prevention of bullying and harassment or related inappropriate behaviours, including disciplinary action;
- provide information for staff, coaches and athletes in relation to their rights, obligations and available options for raising concerns about unacceptable workplace behaviour.

2. SCOPE AND APPLICATION

This Policy applies to all NSWIS staff, coaches, Board members and athletes (herein referred to as 'Members') who are operating under NSWIS policies and procedures.

Compliance is mandatory and this Policy extends to conduct in any work, training or competition related context including outside of normal working hours including (but not limited to) at competitions, conferences, functions, office parties, business trips and meetings conducted outside of normal business hours.

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This Policy also includes Members travelling to competitions and training camps with national or state sporting organisations as well as those Members that have dual employment relationships with national or state sporting organisations.

This Policy also includes online communication and engagement from and between Members.

3. POLICY

NSWIS will not tolerate any form of bullying, harassment, sexual harassment, discrimination, vilification or victimisation (see below 'definitions' for further information).

All Members must adhere to all NSWIS policies and procedures including the Code of Conduct.

Any instance of bullying, harassment, sexual harassment, discrimination, vilification or victimisation must be reported and addressed in accordance with this Policy.

Disciplinary action can be taken against any Member:

- a) Found to be in breach of this Policy
- b) Found to have made a false allegation in relation to this Policy
- c) Who victimises a Member who has made an allegation
- d) Who victimises a Member who has supported a Member who has made an allegation, and
- e) Who breaches confidentiality or privacy in relation to an allegation or breach of this Policy.

Investigations and the implementation of any remedial or disciplinary action in relation to alleged breaches of this Policy will be in accordance with the relevant provisions of the legislation and policies listed on page two (2) of this document.

4. DEFINITIONS

Managers

For the purpose of this Policy 'Manager' means Board members, Executive team members, managers and heads of area.

Bullying

Bullying is repeated, unreasonable behaviour directed towards a worker/athlete, or a group of workers/athletes that creates a risk to their health and safety.

Repeated behaviour refers to the persistent nature of the behaviour and can include a range of behaviours over time. Repeated behaviour can also include single acts towards multiple people within close proximity.

Unreasonable behaviour refers to behaviour that a reasonable person, having regard for the circumstances, would see as victimising, humiliating, undermining or distressing. Bullying is a workplace health and safety risk.

The person may be the target of such behaviour on the grounds set out in the *NSW Anti-Discrimination Act 1977* (i.e. because of their sex, race, disability etc.). It is possible for a person to be bullied and discriminated against at the same time.

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Harassment

Harassment is unwelcomed behaviour that intimidates, offends, or humiliates someone because of a particular personal characteristic, such as age, race or gender.

Unlike bullying, harassment does not have to be repeated. It can take place between:

- Members, and
- A Member and other person in the workplace, for example, a Member and another public official, a citizen or a contractor.

Harassment can occur in any location where people are working/training or competing, including where services are delivered outside the usual place of work or daily training environment.

Sexual Harassment

As defined by the *Anti-Discrimination Act 1977*, a person sexually harasses another person if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- (b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

Discrimination

As defined by the Anti-Discrimination Board of NSW, discrimination occurs when someone is treated less favourably than others in similar circumstances, and it is because they belong to a particular group of people or have a particular characteristic. 'Less favourably' means you have suffered a loss, harm or injury.

There are two types of discrimination, direct discrimination and indirect discrimination.

- Direct Discrimination – when a person is treated unfairly or disadvantaged because he or she has one or more specific attributes.
- Indirect Discrimination – when a reasonable requirement or condition has the practical effect of disadvantaging a person, group of people, who have one or more specific attributes.

Vilification

Vilification, as defined within the *Anti-Discrimination Act 1977*, makes it unlawful for a person, by a public act, to incite hatred towards serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include:

- (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Victimisation

As defined by the Anti-Discrimination Board of NSW, victimisation is when someone is hassled or victimised or treated unfairly because they make a discrimination complaint, even if it is not a formal complaint, or support someone who has made one.

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5. REQUIREMENTS

Members are expected to contribute to the achievement of a positive and productive culture by carefully considering their own behaviour and its possible effects on others.

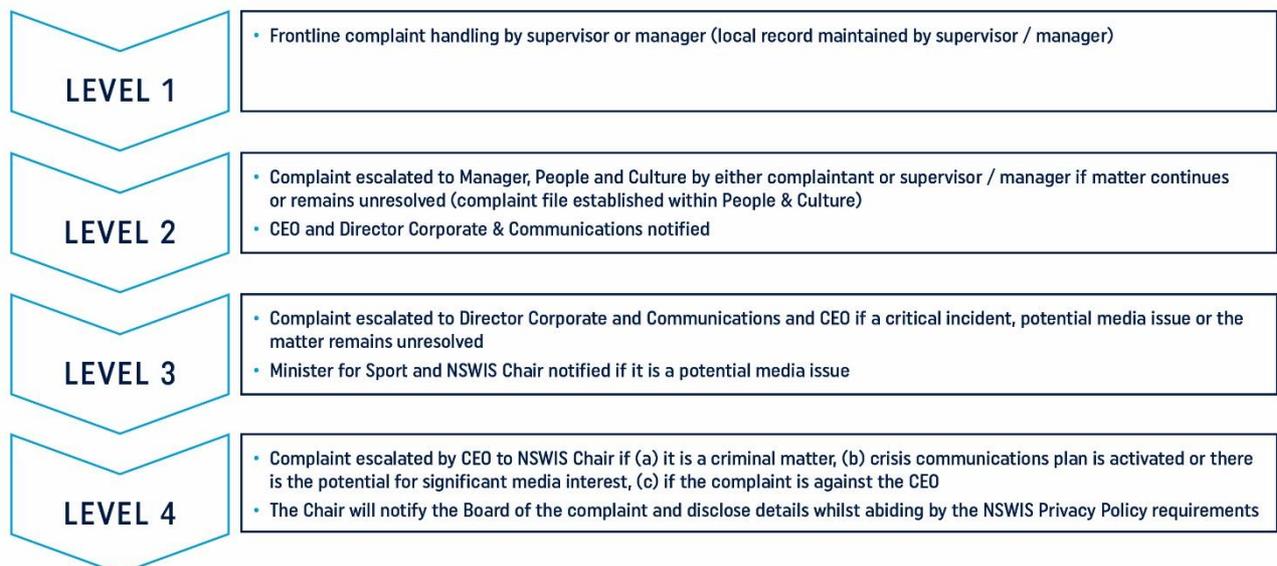
The NSWIS Code of Conduct provides the standards of behaviour and conduct that is expected of all Members at all times. All Members are responsible for fostering an environment that is free from bullying, harassment and promotes NSWIS values.

Managers and coaches must take all reasonable steps to identify, assess and eliminate or minimise the potential for bullying and harassment.

All complaints about bullying and harassment must be treated sensitively, seriously, fairly and acted on promptly. An initial assessment must be conducted immediately. Managers and High-Performance Managers (for sport programs and athletes), or senior executives where the complaint involves a manager, are responsible for ensuring that identified risks, related to a complaint, are assessed and managed.

Those involved in a complaint have both the right to confidentiality and the responsibility for maintaining confidentiality.

Complaints should be managed as locally as appropriate in the first instance. The below table demonstrates the escalation process for a complaint:



Where Level 1 complaints are against direct supervisors, managers or coaches Members are encouraged to commence at Level 2.

All complaints will be reported within bi-annual WHS Board reports. These reports will meet the requirements of the Privacy Policy.

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When notified of a complaint the CEO and Director Corporate and Communications will determine the need for an investigation. If there is likely to be media interest, or if an external investigation is deemed necessary, the CEO will notify the Chair of the Board and Chair of the People & Culture Committee. On most occasions matters are likely to be resolved at a local level or via an internal investigation led by the People & Culture team (for Level 1 and 2 complaints).. All involved parties must be made aware of the process and expected timelines and kept up to date about progress.

All stages of the process (including the initial assessment) must be appropriately documented and this documentation maintained in accordance with the *NSW State Records Act 1998*.

For further information in relation to the NSWIS complaint management system please refer to the NSWIS Complaints Handling Guidelines.

6. POLICY BREACHES

Any Member found to breach this Policy will be managed in accordance with the NSWIS Athlete Disciplinary Guidelines or NSWIS Grievance Handling & Dispute Resolution Guidelines, NSWIS Code of Conduct and in line with the principles and processes outlined in this Policy.

7. PREVENTION OF BULLYING AND HARASSMENT

8.1 A risk management approach

This Policy takes a risk management approach to the prevention of workplace bullying and harassment as required by Work Health and Safety (WHS) legislation.

NSWIS must ensure, so far as is reasonably practicable, the health and safety of Members. Members have a responsibility to:

- Take reasonable care for their own health and safety
- Take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- Comply with reasonable instruction and policy or procedure.

The key consideration is that where management becomes aware of a work, health or safety risk, they have a responsibility to intervene and eliminate or minimise the risk.

As with all foreseeable workplace risks, the potential for workplace bullying and harassment must be identified, assessed and eliminated or minimised as far as practicable. Appropriate risk controls must be put in place. Consultation with Members and their representatives must take place at all stages of the process and their input considered when determining and implementing bullying risk controls.

8.2 Identifying and assessing risk

Managers must consult with staff and coaches to identify and assess the potential for bullying and harassment to create risk in the workplace, daily training or competition/camp environments. Indicators to assess include, but are not limited to:

- staff turnover

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- absenteeism
- exit survey information
- conflict
- complaint data

Factors contributing to risk include:

- leadership/coaching style and experience
- change management practices
- work systems
- staffing levels
- lack of clarity about the expectations of team and individual roles
- skills gaps
- workplace / squad relationships

8.3 Implementing risk controls

Controlling the risk of bullying and harassment will involve implementing preventative and management procedures and training to eliminate, avoid or minimise the risk of harm occurring through bullying and harassment.

Managers and coaches should implement the following strategies in their areas of responsibility, as far as reasonably practicable:

- Ensure staff and athletes are aware of their conduct requirements as outlined in the NSWIS Code of Conduct
- Promote a positive culture and safe environment by modelling appropriate conduct and behaviour
- Ensure that information about what types of behaviours do, and do not, constitute bullying and harassment is communicated, with a particular emphasis on any high-risk areas identified through a risk assessment process
- Ensure that NSWIS Grievance and Dispute Resolution and Complaints Handling Guidelines are adequately communicated in staff and athlete inductions
- Encourage and support staff in the self-resolution of low-level conflict and grievances by providing appropriate information and training where necessary, e.g. conflict resolution
- Provide a clear and simple process for reporting workplace bullying and harassment
- Ensure they are equipped to, and do, respond promptly and effectively to complaints related to bullying harassment
- Ensure induction programs include the organisation's commitment to zero tolerance of bullying and harassment.

8. CONFIDENTIALITY

All Members have rights and responsibilities in relation to confidentiality. Information about a bullying and harassment complaint should not be provided to third parties or other Members with no legitimate involvement in the process.

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NSWIS will notify sport program partners (national sporting organisations) if the complaint involves an athlete, coach or staff member within the national program. In these situations, the nature of the complaint will only be disclosed if there is risk of an unsafe environment.

Those involved in a complaint have both the *right* to confidentiality and the *responsibility* for maintaining confidentiality in respect of both the identity of those involved as well as the subject matter. Inappropriate release of information relating to a complaint, or a person involved with a complaint, to any third party with no legitimate involvement in the process will be subject to disciplinary action.

The person against whom a complaint is made needs to be provided with sufficient information to allow them to respond fully to the issues raised. As most bullying and harassment complaints usually involve a complaint by one person against another, the person against whom the complaint is made will generally need to know who their alleged conduct was directed to in order to adequately respond to the matters raised.

The situation may arise where a staff member makes a complaint but wishes their identity to be kept anonymous or in particular not disclosed to the person against whom the complaint is made. Anonymity may prevent adequate investigation of a complaint, in addition to impeding a response to allegations. In most circumstances, complainants should be advised that effective action to deal with a complaint requires their identity to be made known.

9. MAKING A COMPLAINT

Where a Member feels that they are, or have been, the target of bullying and harassment, they should have ready access to sufficient information that will help them to determine how best to respond and their options for raising their concerns.

Information can be obtained from their manager, the Manager People and Culture or coach. A copy of the NSWIS Complaints Handling Guidelines can be found on www.nswis.com.au or for staff via the policy section of Arena.

Complaints should be made to the relevant manager or coach. Where the complaint is against the manager or coach or where there may be a perceived conflict of interest, the complaint should be referred to People & Culture for appropriate action.

The Member must be offered EAP services (staff) or psychology support services or referral (athletes) and staff may seek advice and support from their union / association.

9.1 What if the Member requests that no action be taken?

A Member may advise that they are being subjected to bullying and/or harassment but do not wish to make a formal complaint. This may be appropriate where the allegation does not meet the definitions within this Policy and could be resolved using a grievance resolution model. However, it could be that the Member fears that making a complaint will cause them more distress, make the situation worse or make them the subject of reprisals.

In these circumstances, the Members should be advised of options to resolve the matter. Any concerns regarding the process should be explored with the Member and addressed as far as possible. Members should be advised of NSWIS reporting obligations particularly with respect to Child Protection.

There is an obligation on the manager to take action, depending on the individual circumstances and whether the allegations meet the definitions outlined within this Policy. For example, if the allegation meets the definition of

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bullying, if the Member appears distressed, or where it becomes evident over time that the situation is not improving or is getting worse, a significant risk may arise which requires action.

While any management response will need careful consideration in such circumstances, it may be possible to discuss potential organisational responses with the Member, in the context of the manager's responsibilities to ensure as far as practicable a safe and healthy workplace.

Appropriate organisational responses could include:

- Reissuing and reinforcing the organisation's anti-bullying policy
- Reminding workers of their obligations under WHS legislation and relevant NSW
- Health policies
- Requiring workers to attend bullying prevention briefings or training
- Emphasising that all complaints will be taken seriously
- Consulting with the potentially affected Members.

The key consideration is that where management becomes aware of a significant work, health and safety workplace risk, they have a responsibility to intervene and eliminate or minimise the risk.

9.2 Complaint via workers compensation claim

A manager may first become aware of a potential bullying or harassment issue as a result of a worker's compensation claim citing bullying or harassment as the cause of injury, usually psychological injury. It needs to be recognised that the two issues are distinct and need to be managed separately.

The Manager, People and Culture can assist the manager in liaising with treatment providers such as the psychologist and / or nominated treating doctor to enable the worker to participate in the investigation of the complaint. This process, including any investigation by the employer, should not be confused with any investigation by the insurer to determine liability or management of the worker's injury.

It is important that the manager and the Manager, People and Culture work together to ensure the resolution of the worker's complaint and the management of the worker's injury.

10. Risk assessment of a complaint

After any immediate issues are addressed by way of arrangements, more comprehensive assessment of potential ongoing risks to all parties involved with the complaint in respect of current work/training arrangements should be conducted in consultation with potentially affected Members.

This will determine whether any further action needs to be taken to ensure as far as practical the wellbeing of those involved until any action to address the complaint is finalised.

In determining an appropriate response, the following should be considered:

Relevant information from the initial assessment

- The physical / psychological state of the complainant, and where necessary, the person against whom a complaint is made

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- How long the alleged behaviour has been going on
- How serious the initial allegations appear to be
- The degree of disruption the issue appears to be causing in the working environment
- Any evident complicating factors e.g. previous history of conflict between the parties
- Any previous history of allegations of unacceptable workplace behaviour involving the parties to the complaint, and the outcome

If the alleged behaviour involves violence, for example actual or threatened physical or sexual assault, it must be reported to the police. The Member should be provided with the necessary support and assistance. Investigation of the alleged behaviour should proceed even if the police decide not to pursue the allegations.

11. Notifying the person against whom a complaint is made

The person against whom a complaint is made should be provided with the substance of the complaint as soon as it is safe and appropriate to do so (for e.g. notifying the person against whom a sexual harassment / assault complaint is made may jeopardise a NSW Police investigation). They must be given reasonable opportunity to respond to the allegations.

Consideration should be given to the most appropriate way of advising a Member that a complaint has been made against them. A face-to-face meeting with an appropriate manager is the preferred means of initially advising that a complaint has been received. Such an approach avoids causing unnecessary distress which might readily arise if the person against whom a complaint has been made simply receives a letter containing little information other than that they must attend a meeting.

Any such face-to-face meetings should be held in a private setting that minimises the risk of breaching confidentiality and the person that is the subject of the complaint should be offered the right to have a legal representative or support person present. The initial meeting should be separate from and undertaken prior to, any further action to resolve the complaint. It should be followed up by correspondence confirming the information relayed during the meeting. While such a meeting may not be possible or appropriate in all circumstances, the communication, be it verbal or written, needs to be clear, concise, polite, include all necessary information and name a contact person.

Both the complainant and the person who is the subject of the complaint should be provided with the following information at the appropriate time:

- Any immediate action deemed necessary
- An overview of how the complaint will be managed
- An assurance that their right to privacy and confidentiality will be maintained and that no information in relation to the complaint will be provided to third parties unless considered necessary and / or where reporting obligations apply
- Their own roles in ensuring that confidentiality is maintained
- They be given a fair opportunity to put forward their case
- That it is expected they will make themselves available in order to assist in resolving the complaint and, where necessary, facilitate this availability by providing contact details and numbers, including when on leave
- They be provided with information on the progress of the investigation and any decisions made which may affect them
- That access to EAP services is provided
- The right to seek independent advice, including from a union / association representative
- The right to a support person, and the role of that support person.

12. Documenting the complaint

Appropriate documentation of all complaints must be kept. The type of documentation and level of detail will depend on the type of issue, whether the matter was low or high level in the nature of its seriousness and level of complexity. For Level 1 complaints that do not require investigation or a possible disciplinary response, brief notes should be maintained locally for all other levels of complaints a central file will be maintained by the Manager, People & Culture.

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The record of the initial assessment should document the issue raised, state what advice has been provided, and the actions taken and why. It should be dated and signed and kept confidential. Where further action to resolve a complaint occurs, such as an investigation, a copy of the initial assessment must be maintained with all other documentation on a confidential file.

13. Investigating the complaint

Conducting a detailed investigation may not always be the appropriate response. An investigation is only necessary where there is uncertainty about the relevant facts, complex issues arise which require clarification for the complaint to be dealt with, or where the complaint makes credible assertions of serious misconduct. The CEO will determine the necessity to undertake an investigation for Level 2 – 3 complaints. The NSWIS Chair will be the approver for Level 4 complaints.

The purpose of an investigation is to gather and analyse all relevant information to help identify whether or not the complaint is able to be substantiated, and whether there are any extenuating circumstances or other contributing factors that may need to be considered.

The person(s) identified to do the investigation should possess the skills necessary for undertaking the type of investigation that is required and be able to act impartially.

In some circumstances, NSWIS may consider it necessary for an independent external investigator to undertake the investigation.

A decision to use an external investigator is a decision to be made by the CEO, after considering all relevant information (Level 2 – Level 3) and the Chair for Level 4 complaints. Where an external investigator is used, a scope of services to be provided needs to be developed, clearly identifying what is to be done, the time frames, the type of report to be provided and confidentiality requirements.

Where the findings suggest it is unlikely that bullying and harassment occurred, an organisational response may still be necessary. The investigation may have identified gaps in the bullying prevention and risk management framework that require remedy. Action may also be necessary to re-establish effective working relationships, even where allegations were not substantiated.

14. SUPPORT AND ADVICE

What to do if you have a bullying or harassment concern or complaint

1. *Ask for the behaviour to be stopped*

Firmly and politely inform the person that their behaviour is inappropriate or unreasonable and ask them to stop. They may not realise their behaviour is affecting you and may change their behaviour. If you feel uncomfortable acting alone, ask a colleague, coach, teammate or supervisor, for their support or contact the NSWIS People and Culture team.

If you are under 18 years of age it is recommended that you discuss the situation with your parent/guardian.

2. *Speak to someone you trust*

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Get advice from someone you trust, such as a friend, colleague, coach, supervisor etc. They may be able to assist in developing a personal intervention plan.

3. Keep records

Keep a record of what happened (including what was said or done), dates and times, who was involved, names of witnesses and, if possible, copies of any documents such as emails.

4. Report the issue If you cannot resolve a bullying or harassment issue, report it to one or more of the following:

- your manager / coach or AW&E Advisor
- the Manager People & Culture

5. Seek assistance for your wellbeing

If you would like to talk confidentially and get more information about what you can do, you can speak to internal or external support listed under the Support and advice section in this policy document. You can also ask your doctor to refer you for counselling.

If you want assistance, it is important to know who to contact about your situation.

Staff and coaches may contact:

- Your Manager or supervisor in the first instance
- The Manager, People & Culture where it is an ongoing matter or where the complaint is against your manager or supervisor
- The CEO or member of the NSWIS Executive
- Staff and coaches may also contact the Employee Assist Program on (02) 8205 0566

Athletes may contact:

- Their NSWIS AW&E Advisor
- The Manager, People and Culture (via NSWIS reception (02) 9763 0222)

Immediate support:

- Employee assistance Program (EAP) -
- Lifeline on 13 11 14 – 24-hour counselling service providing emotional support in times of crisis
- Mental Health Line on 1800 011 511 – 24-hour support service across NSW that can connect you with a mental health professional
- Headspace on (02) 9114 4100 – a national youth mental health foundation that helps young people between 12 and 25 who are going through a tough time.
- Beyond Blue on 1300 224 636

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- AIS Mental Health referral Network on 02 6214 1130 (Mon-Fri 9am-5pm AEST) or mentalhealth@sportaus.gov.au Elite athletes with mental health concerns are encouraged to call the service for a private discussion

You can find information about, and report, online bullying at <https://esafety.gov.au/>

For anyone under 18 years of age it may also be considered child abuse.

Independent reporting options:

The Ombudsman of NSW encourages you to talk directly to NSWIS first and try and resolve the complaint. However, you may contact the Ombudsman and submit a written complaint for assessment via <https://www.ombo.nsw.gov.au/complaints/making-a-complaint>

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APPENDIX 1 – A guide for supervisors and coaches

What to do if a Member you supervise has a bullying or harassment concern or complaint

If a Member alleges bullying or harassment and approaches you for advice:

- be aware that the Member may be feeling a range of emotions such as anger, distress, vulnerability, frustration, and powerlessness
- listen carefully, be sensitive, and non-judgmental
- take notes including date, time, place, and basic elements of the issues etc. (sending an email to yourself is a good method)
- reassure the Member that if they choose to lodge a report, the matter will be dealt with promptly, thoroughly, fairly, and with respect to the privacy of those concerned
- provide the Member with a copy of this Policy
- advise the Member to get assistance from support resources listed in the support and advice section of this document, and
- keep a confidential record of your discussion.