

**Working Group: Cyber-bullying of APS employees by clients****Australian Public Service Commission****Agenda****Date:** Tuesday 18 September 2012**Time:** 9.30 – 11.00 am**Location:** Aviation House, 16 Furzer St, Phillip

On arrival, please contact Maria Santos—ph. 6202 3586

**Chair:** Ms Karin Fisher, Group Manager Ethics (apology)

→ Paul Casimir (Chair)

**1. Welcome and introductions**

Ms Fisher

**2. Legal Services Directions - App E**

Ms Richards

*lost issued in 2005 - under review for several yrs - draft later this yr - not App E*  
*estg orders - para 9 - could find it in interests of Cwth*  
*Crim offence - crim code - s 471?? - using common law*  
*for threatening/offence - might be able to get assist.*

An outline of the parameters placed by the Legal Services Directions on assistance agencies may provide to employees for legal proceedings. + legal assistance to EE who's acted 'reasonably & responsibly' - subject to discussion - para 20 - precludes assistance for defamation

**3. Managing unreasonable complainant conduct**

Ms Duke

*Sandra*  
*+ Julie*

An overview of the NSW Ombudsman's Office publication, 'Managing unreasonable complainant conduct', including the process recommended in that guide for managing complainants' online behaviour.

**4. Work Health and Safety**

*Andrew*  
 Mr Graves/Ms Weatheringham

*Julie*  
*Lucas*

An overview of the ways in which the new Work Health and Safety legislation might apply to cyber-bullying of employees, and information on Comcare's anti-bullying campaigns.

**5. Next steps**

All

Discussion of how to proceed: What will need to be done next? In what form? By whom?

**6. Meeting close**

Ms Fisher

*Present:* DHS - Karl  
 AGIMO - Rod + Susan Baird  
 DVA - Roger  
 DEEW - Janine (late)  
 ComCare - Andrew Graves  
 Julie Weatheringham Lucas  
 OLSC - Rod Lucas  
 Janine Richardson.

*Janine Richardson, AGD.*

*Eliz Griston ScreenSound Aust.*

NSW Ombro - Sandra Duke

Agencies to have proper strategies in place before engaging in social media.

- looking at a fact sheet to go w. "Ming Off Compl" try.
- no blanket rule in NSW against defam<sup>n</sup> finding

Andrew Arch - a/g E2 AGIMO.

### Work Health & Safety

WHS Act - primary duty on PCBU to ensure health & safety is not put at risk, (s 19)  
so far as is res. practicable.  
focus moving into workplace bullying.

Code of practice to be finalised.

Comcare's programs - promoting m. h. / preventing psych harm

- risk mgmt - workplace design (debriefing etc)
- build resilience - esp. in mngs
- team lkg at - agency tools in identifying risks in workplace
- comcare.gov.au/bullying
- expertize

→ paper for next time - APSC?

→ foundation for next discussion.

**Working Group: Cyber-bullying of APS employees by clients**  
**Australian Public Service Commission**  
**31 July 2012**

## **Record of Meeting**

### **Chair**

Ms Karin Fisher, Group Manager Ethics, Australian Public Service Commission

### **Attendance**

Mr Rodney Walsh, Senior Assistant Ombudsman, Legal, Strategic Projects, Support and Policy, Office of the Commonwealth Ombudsman

Ms Elizabeth Grinston, General Counsel, Screen Australia

Mr Carl Princehorn, National Manager, Workplace Health and Safety Branch, Department of Human Services

Mr Roger Winzenberg, Assistant Secretary, People Services Branch, Department of Veterans' Affairs

Ms Louise Gell, Director, FOI Policy, Office of the Australian Information Commissioner

Ms Janine Hollis, Director, People Solutions, Department of Education, Employment and Workplace Relations

Mr Rod Limerick, Web Policy Unit, Australian Government Information Management Office

Mr Paul Casimir, Director, Ethics Advisory Service, Australian Public Service Commission

Ms Helena Sverdlin, Assistant Director, Ethics Advisory Service, Australian Public Service Commission

### **Apologies**

Mr Andrew Graves, Director, WHS Policy and Seacare, Comcare

### **Discussion**

The following matters were discussed in the context of how best to address the problem of APS employees being harassed online by clients and other members of the public:

- **De-identifying staff.** The Group discussed the merits of an online service delivery model that does not identify staff by name. Such a model may not be appropriate in all agencies, and in some the service delivery ethos is such that it would not be appropriate even for staff to be identified only by their first names. The point was made, too, that de-identification of staff may exacerbate existing distrust in government by some members of the public.
- **Notifying internet service providers (ISPs).** It was generally agreed that notifying ISPs, and requesting that offensive material be removed from their web pages, was not a reliable strategy. Many ISPs are US-based and are likely to be reluctant to remove material on First Amendment grounds. Some websites, such as Facebook and Twitter, have reporting mechanisms; however, even if an individual offender were to have their account deactivated, it would be easy for them to create another.
- **Legal frameworks.** It was observed that under ACT law it was possible for an individual to take out a restraining order if they were being harassed online, and, too, that such harassment could constitute a criminal offence. It was noted also that the Legal Services Directions preclude agencies from assisting employees to take civil action for defamation.
  - Action 1: Commission to organise a briefing by the Attorney-General's Department at the next meeting of the Working Group on the application of the Legal Services Directions to online harassment of employees.

**Working Group: Cyber-bullying of APS employees by clients**  
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- **Protecting employees.** The Group discussed strategies such as encouraging staff to manage their online presence in a way that protects their personal information (it was acknowledged that it would be unrealistic to expect staff to have no online presence at all), and redacting employees' names in the disclosure log required for Freedom of Information disclosures, such that this information would only be available to the applicant.
  - Action 2: Ms Gell to forward OAIC guidance that confirms that agencies may do this.
- **Other matters.** It was noted that the NSW Ombudsman's Office has guidance material in place that may be useful to the Group, and that it may also be worthwhile to seek a briefing from that Office.
  - Action 3: Ms Gell to forward NSW Ombudsman guidance material
  - Action 4: Commission to liaise with NSW Ombudsman's Office before next meeting

It was agreed that Comcare's views would be crucial to any further discussion of these issues.

- Action 5: Commission to meet with Comcare before next working group meeting.

**Louise Gell**

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**From:** Louise Gell  
**Sent:** Wednesday, 8 August 2012 1:55 PM  
**To:** 'SVERDLIN, Helena'  
**Cc:** Rachael Spalding  
**Subject:** RE: Cyber bullying working group [SEC=UNCLASSIFIED]

**Security Classification:**  
 UNCLASSIFIED

Helena

As I promised at the meeting, here are some additional words from us about privacy issues, which may be useful to your thinking.

**Application of the Privacy Act to individuals publishing information online**

The Privacy Act only applies to the acts and practices agencies and organisations. It does not apply to an individual acting in their personal capacity. Generally this means that the Act will not cover the actions of disgruntled clients who publish offensive material online about agencies and their staff. Where the information published is abusive or defamatory, the subject of the information may be better off contacting the police or seeking redress under defamation law.

**Application of the Privacy Act to agencies (their obligations to protect the privacy of staff)**

Agencies must comply with the Information Privacy Principles (IPPs) when handling personal information, including the personal information of their staff. IPP 11 says that an agency may disclose personal information with the subject's consent. Generally agency staff are told of the requirements of their role and by communicating with clients and giving out information (such as name and contact details), staff are consenting to their personal information being disclosed to clients. Therefore, these disclosures will be in compliance with the Privacy Act.

**Application of the Privacy Act to ISPs**

Often ISPs fall into the small business exemption to the Privacy Act, though those with an annual turnover of more than \$3000 000 will be covered. On occasion, ISPs are called upon to cooperate with police investigations into online harassment. An ISP may be asked to disclose the identity of a client who is posting offensive information anonymously. If the ISP is covered by the Privacy Act, they would need to comply with the National Privacy Principles (NPPs) with relation to their disclosure of personal client information to police. This would generally be allowable under NPP 2.1(h) (disclosure is reasonably necessary for an enforcement body to prevent, detect, investigate or remedy seriously improper conduct or prescribed conduct).

ISPs and social media platforms have procedures for receiving complaints about this kind of online behaviour, and many take steps to remove offending content if it is found to breach their terms of use. This of course only deals with the issue once it has occurred, but may impact the issue of reputation.

**OAIC's general policy position on online privacy**

Online privacy is challenging to regulate due to the difficulty of national laws regulating the international space of the internet. For this reason, the OAIC encourages individuals to take steps to protect their own privacy online. In the context of cyber bullying of APS staff, this may mean educating staff about how to use privacy settings on social media, to ensure that disgruntled clients are less likely to be able to contact staff (or their families) on their personal social networking pages, link offensive material to those pages or inappropriately use personal photos, videos or location information. Generally social networking sites have policies in place for dealing with bullying or offensive content and where possible, staff should contact the site to have content removed. For ongoing or offensive material on dedicated blogs, staff should consider contacting police.

Regards

Louise

---

**From:** SVERDLIN, Helena [mailto:Helena.Sverdlin@apsc.gov.au]  
**Sent:** Monday, 6 August 2012 10:02 AM  
**To:** Louise Gell  
**Subject:** RE: Cyber bullying working group [SEC=UNCLASSIFIED]

Louise,

Many thanks for your participation in the meeting last week, and for the links you have provided; this information is very useful. I will be in touch again soon to discuss the next steps for the working group.

Regards,  
 Helena

**Helena Sverdlin | Assistant Director  
 Ethics Advisory Service**

**Australian Public Service Commission**

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 +612 6202 3842 | F: +612 6276 9962 | W: [www.apsc.gov.au](http://www.apsc.gov.au)

---

**From:** Louise Gell [mailto:Louise.Gell@oaic.gov.au]  
**Sent:** Wednesday, 1 August 2012 5:01 PM  
**To:** SVERDLIN, Helena  
**Subject:** RE: Cyber bullying working group [SEC=UNCLASSIFIED]

Sorry, Helena, I should have referred to paragraph 14.18 below, not 4.18.

Regards

Louise

---

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**Sent:** Wednesday, 1 August 2012 1:34 PM  
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Helena

It was good to meet you yesterday. As promised, here is a link to our FOI Guidelines, Part 14 (Disclosure Log) which notes that agencies may choose to withhold a staff member's details such as name, signature and direct phone number from a document released under FOI and published on an agency's disclosure log – see paragraph 4.18. The Guidelines also suggest that agencies might wish to consult affected staff as to whether potential harm could arise from publishing their names. See <http://www.oaic.gov.au/publications/guidelines/part14-disclosure-log.html>

The other issue I mentioned was the NSW Ombudsman's work on managing unreasonable complainants. I've looked at their website today – their updated version of the manual includes a new section (pp 107 onwards) re online harassment, including some suggested strategies – you may find that useful to start with, and I'd also suggest contacting someone there to discuss as they are very good. See <http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/unreasonable-complainant-conduct-manual-2012>

As I noted yesterday, I will also talk to my privacy colleagues here with a view to seeing if we can provide you more information on relevant issues, such as internet service providers.

Please don't hesitate to call me if you would like to discuss anything.

Regards

**Louise Gell** | Director FOI Policy  
**Office of the Australian Information Commissioner**  
GPO Box 2999 CANBERRA ACT 2601 | [www.oaic.gov.au](http://www.oaic.gov.au)  
Phone: +61 2 6239 9172 | Fax: +61 2 6239 9187  
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**Louise Gell**

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Regards,  
 Helena

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As I noted yesterday, I will also talk to my privacy colleagues here with a view to seeing if we can provide you more information on relevant issues, such as internet service providers.



Please don't hesitate to call me if you would like to discuss anything.

Regards

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## **Notes of meeting**

### **Working Group: Cyber-bullying of APS employees by clients**

#### **Australian Public Service Commission**

**Date:** 31 July 2012

**Location:** APSC, Furzer St, Phillip

**Chair:** Karin Fisher, Group Manager Ethics, APSC

**Present:** DHS - Carl Princehorn  
 DVA - Roger Winzenberg  
 DEEWR - Janine Hollis  
 AGIMO - Rod Limerick  
 OAIC - Louise Gell  
 (by teleconference) Commonwealth Ombudsman - Rodney Lee Walsh  
 (by teleconference) Screen Australia - Elizabeth Grinston  
 APSC - Helena Sverdlin, Paul Casimo

**Apologies:** Comcare – Andrew Graves

#### **Background**

The APSC had been prompted to set up the meeting by a number of calls to the Ethics Advisory Service in recent months about these issues, as well as APSC experiences. Some staff had been subjected to abusive and very personal comments online. Agencies were concerned about their duty of care to employees. The APS Commissioner has raised the issue at a meeting with Secretaries and will report back to them.

The APSC had undertaken a literature review and noted there is little available that addresses the issues of abuse by the public of employees, instead focusing on online harassment of school students. Most information about cyber bullying in the workplace focuses on harassment between employees. Strategies suggested in the literature to address the issue include employees managing their online presence and keeping records of harassment.

Raw data from the latest 'State of the Service' survey revealed that 1% of employees said they had been subjected to on line harassment in the past 12 months, with another 2% saying they were 'not sure'.

## Discussion

Agencies referred to the range of their experiences and the practices they have in place to protect staff anonymity (eg first names only on badges and in webforms).

DHS stated that they were only aware of isolated instances in their agency, and that most client aggression is either face to face or by phone. DVA noted that their service delivery ethos is to engage with their clients, with whom they have longstanding relationships, and that websites that included critical comment of their agency were based mainly in the US, making it hard to seek appropriate action. Screen Australia referred to a person's ability to make outrageous and hurtful comments about staff through blogging, which provided a new medium for harassment. The Ombudsman's office noted that their staff needed to be resilient as many of the people who approached that office were already upset at having dealt with other agencies, and referred to the publication on 'Managing Difficult Complainants' (*note this work was driven by the NSW Ombudsman's office*). DEEWR said they had not had much experience and referred to employees abusing each other on Facebook, which was a matter the department could address.

It was acknowledged that government was different from the private sector in that a private organisation could withdraw its services from a person once a certain point was reached, whereas in many cases abuse could come from an ongoing client. There was also discussion of the Workplace Health and Safety (WHS) issues, and agencies were keen to have input from Comcare. Another issue discussed was the bar in the Legal Services Direction from agencies providing assistance in actions for defamation of employees. The group also discussed the capacity to have action taken by internet service providers (ISPs). Another issue was the risk not just of abuse but of longstanding reputational damage.

## Actions

- APSC to meet with Comcare to discuss duty of care issues
- APSC to approach the NSW Ombudsman's office to seek further information on difficult complainants and the use of social media (see <http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/unreasonable-complainant-conduct-manual-2012> where there is a section on online harassment and suggested strategies)
- OAIC to provide a link to the revised FOI Guidelines (Part 14) on withholding staff details in documents published on agency disclosure logs (*done*)
- OAIC to consider providing further input on privacy issues, especially in relation to ISPs
- APSC to convene a second meeting of the working group in a few weeks.

Louise Gell

1 August 2012

**Louise Gell**

---

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Regards

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**Louise Gell**

---

**From:** Melanie Drayton  
**Sent:** Monday, 30 July 2012 2:18 PM  
**To:** Angelene Falk; Louise Gell  
**Cc:** Leife Shallcross; Rachael Spalding; Kelly Hart  
**Subject:** RE: Commission's working group on cyber-bullying of APS employees by clients and members of the public. [SEC=UNCLASSIFIED]

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Security Classification:** UNCLASSIFIED

Hello

I agree with Angelene point about the balance between accountable service delivery and employee health. It's also about *effective* service delivery.

Do customers need a name to get the info they need?

o customers need a name to get accountable service. Arguably not, the reference/correspondence number will serve that purpose.

I don't think it's at odds with the notion of open government if people can get the info they need, when they need it, with minimum effort.

It'll be very interesting to hear what other agencies have to say,  
M

---

**From:** Angelene Falk  
**Sent:** Monday, 30 July 2012 2:09 PM  
**To:** Louise Gell  
**Cc:** Tim De Sousa; Leife Shallcross; Rachael Spalding; Melanie Drayton; Kelly Hart  
**Subject:** RE: Commission's working group on cyber-bullying of APS employees by clients and members of the public. [SEC=UNCLASSIFIED]

Hi Louise.

My main thought, particularly in relation to the first dot point, is that it brings into focus the balance between an employee's health and wellbeing and open and accountable service delivery.

Is it at odds with the notion of open government if citizens don't have real people to deal with? Or is it a case where a pseudonym is appropriate? Pseudonymity is a concept recognised in the Privacy Act. At the same time, I'm not sure how big the problem is, and health and safety is obviously a paramount consideration.

I suppose I'm thinking that any response needs to be proportionate to the risk, and cognisant of the consequences of the policy response.

Angelene

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**From:** Louise Gell  
**Sent:** Monday, 30 July 2012 1:56 PM  
**To:** Melanie Drayton; Kelly Hart; Angelene Falk  
**Cc:** Tim De Sousa; Leife Shallcross; Rachael Spalding  
**Subject:** Commission's working group on cyber-bullying of APS employees by clients and members of the public. [SEC=UNCLASSIFIED]

Hi all

As you know, I'm going tomorrow morning to the first meeting of the APSC working group on cyber-bullying, and will report back.

They've sent through a background paper today with some questions listed:

## Discussion

The Commission is seeking your views on the following:

- Do agencies have a responsibility to protect employees from identification in public forums, including online forums, and potential abuse by members of the public? For example, would it be appropriate for an agency to consider
  - a less personalised approach to service delivery in which employees are not identified by name, and where emails to clients might come from a generic mailbox rather than a personal address?
  - a policy whereby more junior staff are not to be identified by name to clients?
  - if it is possible to identify those clients who are posting the offensive material, a policy whereby these clients are dealt with by more senior staff in the agency?
  - contacting the abusive client's internet service provider and request that the material, or at least the names of the agency employees be removed?
- Do agencies have a responsibility to support an employee who becomes the subject of personalised online abuse? How?
- What other strategies might be useful in addressing this issue?

There are some clear overlaps with our thinking on what should be redacted from an agency disclosure log. I've asked Kylie to have a think this afternoon about the Enquiries perspective.

If you have any thoughts you'd like to add at this stage, please email me or give me a call this afternoon.

Thanks

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## Identification and abuse of APS employees in public online forums

### Background

In recent months agencies have sought advice from the Commission regarding how best to manage situations in which their employees have been subject to abuse on public websites by agency clients. Generally these clients are dissatisfied with agency services; however, the statements made have been of a highly personal nature.

In addition, some Commission staff have been named on public blogs in relation to advice they have provided to members of the public, and have been the subject of sometimes vitriolic comments.

### *APS Values and Code of Conduct in practice*

The Commission's guidance on official conduct, *APS Values and Code of Conduct in practice: a guide to official conduct for APS employees and agency heads*, includes a section in Chapter 6 on 'Dealing with difficult people', which states, among other things:

*From time to time, employees have to deal with difficult, even abusive or aggressive, customers or clients. Each agency should have guidelines to assist employees in these situations. If confronted with a difficult or abusive person, an employee should remain calm, positive and avoid taking unnecessary risks. If in doubt, they should consult a more experienced colleague. An employee should withdraw if they feel intimidated or threatened. The police should be contacted in extreme cases.*

Underpinning this advice is the principle that, while the APS employees are expected to adhere to a high standard of ethics and conduct in their dealings with the public, this expectation does not extend to the acceptance of abuse from clients—regardless of whether such abuse takes place in person or online.

### *Legal Services Directions*

The capacity of agencies to assist their employees to seek legal redress where they have been victimised in the course of their work is limited by the *Legal Services Directions 2005*. The directions state, at Appendix E:

*Except in the case of actions for defamation, expenditure to assist an employee to institute proceedings in a matter arising from their employment may be approved where this is in the interests of the Commonwealth. For example, it may be appropriate to assist an employee to seek a restraining order against a person arising from alleged harassment in the workplace.*

*Expenditure is not to be approved to assist an employee to institute proceedings for defamation arising in the course of the performance of their duties (either for representation or the payment of legal costs). Similarly, assistance is not to be provided for any other action relating to alleged defamation, such as assistance to uphold a person's reputation, legally challenge comments damaging to a person's reputation, or in obtaining an apology (as distinct from a letter merely seeking to correct the record). The policy is the same even if the employee offers to pay to the Commonwealth any damages which they may receive. (Funding defamation proceedings could give rise to a public perception that the Government was seeking to prevent legitimate criticism.)*

### ***Work Health and Safety legislation***

Agencies have an obligation to protect the health and safety of their employees, and requirements under the new Work Health and Safety legislation may require a more proactive approach to the management of risk and the exercise of due diligence in regard to duty of care.

### **Discussion**

The Commission is seeking your views on the following:

- Do agencies have a responsibility to protect employees from identification in public forums, including online forums, and potential abuse by members of the public? For example, would it be appropriate for an agency to consider
  - a less personalised approach to service delivery in which employees are not identified by name, and where emails to clients might come from a generic mailbox rather than a personal address?
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