

Legal Aid ACT



Workplace Bullying and Harassment Policy

(includes Sexual Harassment and Discrimination)

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1. Context

Bullying and harassment, including sexual harassment and discrimination, in the workplace is unacceptable and is not tolerated in the Commission or any other work spaces employees attend. The Commission is committed to:

- providing a workplace where employees treat each other with respect and courtesy
- taking all reasonable steps to prevent or eliminate bullying and/or harassment
- responding effectively **to reports of bullying and/or harassment.**

Employees (permanent, temporary and casual) are expected to display high standards of ethical and personal conduct in connection with their employment and model the behaviours described in the ACTPS Code of Conduct and ACTPS Values & Signature Behaviours.

2. Authority

The Commission's relevant Enterprise Agreement expressly incorporates the *Public Sector Management Act 1994* (PSMA) and the Code of Conduct and Signature Behaviours.

The PSMA, section 9 requires that:

A public servant must not –
when acting in connection with the public servants job – bully, harass or intimidate anyone.

Workplace bullying, harassment and discrimination are all breaches of the PSMA, which may be dealt with as misconduct in accordance with the procedures outlined in Section H (Workplace Values and Behaviours) of the Commissions Enterprise Agreement.

If substantiated, bullying and/or harassment may also potentially contravene provisions in other legislation including, but not limited to, the:

- [Work Health and Safety Act 2011](#)
- [Fair Work Act 2009](#)
- [Human Rights Act 2004 \(ACT\)](#)
- [Discrimination Act 1991 \(ACT\)](#)
- [Racial Discrimination Act 1975 \(Cwlth\)](#)
- [Sex Discrimination Act 1984 \(Cwlth\)](#)
- [Disability Discrimination Act 1992 \(Cwlth\)](#)
- [Age Discrimination Act 2004 \(Cwlth\)](#)
- [Privacy Act 1988 \(Cwlth\)](#)

3. What is Bullying and Harassment?

3.1. Harassment

Harassment can be a wide range of behaviours that are offensive to the person/s receiving them. It includes unwelcome contact, which can be physical, verbal or electronic communications that annoy, humiliate, offend or intimidate a person or group of people.

Generally, harassment is repeated, offensive behaviour that persists over time, however serious one-time incidents may be considered harassment.

Harassment can include (but is not limited to):

- sexual harassment
- bullying
- direct discrimination
- stalking
- intimidation
- verbal abuse or comments that degrade or stereotype a person or group of persons
- electronic communications (e.g. emails, instant messaging or text messages) that degrade or stereotype a person or group of persons
- telling insulting or offensive jokes
- offensive gestures
- ignoring or isolating a person or group of persons
- the display or circulation of racist, pornographic or other material that may be offensive to others.

3.2. Sexual Harassment

Sexual harassment is a specific form of harassment. Sexual harassment is any unwanted or unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated.

Sexual harassment can be physical, spoken or written and may include (but is not limited to):

- staring, leering or inappropriate comments about the way a person looks
- unwelcome physical contact, (i.e. touching, hugging, kissing or deliberately brushing up against a person)
- suggestive sexual comments or jokes
- insults or taunts of a sexual nature
- intrusive questions or statements about a person's private life
- displaying photos, posters, magazines, calendars or screen savers of an offensive or sexual nature
- sending inappropriate or sexually explicit communications including emails, text messages and interactions via online social networks
- accessing and/or viewing sexually explicit internet sites in a work area on a personal device or work computer
- requests for sex or repeated unwanted requests to go out on dates
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

Sexual harassment in the workplace is not limited to behaviour that occurs in the physical work environment. It can include sexual harassment at work-related events, between people sharing the same workplace, or between colleagues outside of work.

Sexual harassment is not sexual interaction, flirtation, attraction or friendship, which is invited, mutual, consensual or reciprocated. A single incident may constitute sexual harassment. It does not have to be repeated.

Just because someone does not object to inappropriate behaviour in the workplace at the time, it does not mean they are consenting to the behaviour.

Employees should be mindful that conduct, which is welcome or consensual, may be considered inappropriate in the workplace by others. That is, while the primary parties may not be offended, a third party may take offence to the conduct and report it.

3.3. Bullying

Bullying is a specific form of harassment. Workplace bullying is defined as repeated unreasonable and/or inappropriate behaviour directed towards an employee or a group of employees that creates a risk to health and safety.

Bullying may include (but is not limited to):

- demeaning language, including sarcasm, ridicule or insults
- outbursts of anger or aggression, physical or verbal abuse or shouting
- physical/verbal intimidation or threats
- showing contempt or disrespect
- ostracising, excluding, isolating or ignoring an employee
- spreading malicious gossip or rumours about an employee
- intentionally denying access to information, or resources to the detriment of the employee
- changing work arrangements, such as rosters or leave if it is done to deliberately inconvenience a particular employee or employees.

Workplace bullying can be physical, verbal and/or emotional and may be carried out in person, by email, by telephone (both in conversations and/or by text messages) and via online social networking sites. Bullying may also amount to a criminal offence or unlawful discrimination if it is based on age, sex, pregnancy, race, disability, sexual orientation, and religion.

3.4. Discrimination

Discrimination can be harassment when a person, or a group of people, is directly and deliberately treated less favourably on the basis of certain personal attributes. Protected personal attributes under discrimination law include, but may not be limited to:

- accommodation,
- age,
- association,
- breastfeeding,
- disability,
- employment status,
- gender identity,
- genetic information,
- immigration status,
- industrial activity
- intersex status
- irrelevant criminal record
- parent, carer or kinship responsibilities
- physical features
- political conviction
- pregnancy
- profession, trade, occupation or calling

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- race,
 - record of a person's sex having been altered under the Births, Deaths and Marriages Registration Act 1997 or a law of another jurisdiction that corresponds, or substantially, corresponds, to the Act, section 26 (Alteration of register);
 - relationship status;
 - religious conviction;
 - sex;
 - sexuality;
 - subjection to domestic or family violence.

4. Behaviour not considered Bullying or Harassment

Behaviour or conduct that is reasonable management action undertaken in a reasonable manner does not constitute workplace bullying or harassment. This includes:

- appropriate performance management
- constructive performance feedback provided in a reasonable manner
- structural changes to a workplace, including changes to individual roles and/or supervisory arrangements
- legitimate disciplinary action
- reasonable supervisory practices
- allocation of work in accordance with terms and conditions of employment and organisational practices
- reasonable directions by management
- monitoring attendance and working times
- expressing differences of opinion in a respectful manner
- carrying out legitimate or reasonable managerial decisions or actions, some examples are:
 - taking action to reassign an employee
 - allocating work to an employee, and setting goals, standards and deadlines
 - making a merit-based decision not to select an employee for a position
 - providing a referee report (verbal or written) that includes comments about work or behaviour that is less than satisfactory
 - warning an employee about unsatisfactory performance and the possible consequences of unsatisfactory performance.

5. Performance Management and Bullying and/or Harassment Allegations

Where an allegation of workplace bullying or harassment is made by an employee involved in a performance management process, investigation of the allegations will not defer or stop the performance management process from continuing.

A manager is obliged to manage staff performance and underperformance; monitor attendance and submission of attendance records and leave applications; provide constructive feedback to the employee; issue directions to the employee; and report any suspected misconduct. These actions are reasonable management actions and, if undertaken in a reasonable manner, do not constitute workplace bullying and/or harassment.

It is also important to note that allegations of bullying and/or harassment are not restricted to an employee making allegations against their manager, but may be made by a manager against an employee. Should allegations of bullying or harassment be made, the employee or manager will be made aware of the allegations against them and given an opportunity to respond before any finding is made.

Where a decision is made to formally investigate allegations of bullying or harassment occurring during a performance management process, the investigation will be conducted in accordance with the Commission's normal processes as outlined in the Enterprise Agreement.

6. Other Employment Actions and Bullying and/or Harassment Allegations

The lodgement of a complaint outlining allegations in regards to another employee or manager does not defer or cease an employment action that may be underway (e.g. formal directions issued, Code of Conduct investigation, Preliminary Assessment, Performance Management or Suspension etc).

Any employment actions will continue unless the Chief Executive Officer makes a decision to the contrary.

7. Complaint Process

Where an employee feels that they or a colleague have been subject to bullying or harassment they should consider their responsibility to ensure that a matter is appropriately reported. However, an employee directly impacted may determine that less serious isolated behaviour or conduct is able to be addressed directly with the other party, without any reporting, to prevent any future and/or ongoing unwanted behaviours occurring.

When it comes to the safety and wellbeing of employees, there is no option for no complaint if the safety and wellbeing of yourself or a colleague is at risk physically or psychologically. Information disclosed must be actioned in accordance with its severity.

Please consider the result of doing nothing and seek out some suitable supports to determine the best approach, including the [Employee Assistance Program](#), your General Practitioner or refer to section 14

7.1. Informal Complaint Process

Depending on the nature of the complaint, it is preferable to resolve complaints informally at the level of management closest to the parties. Decisions about the most appropriate level of action are based on the complexity and seriousness of the issue.

Managers must treat all matters reported to them seriously and action all complaints as quickly as possible. A manager's responsibility in actioning an informal complaint is outlined in section 10.2 and 10.3

An employee may ask for the issue to be dealt with at an informal level but it may be so serious that it requires escalation to a formal response.

If a complaint is made to a manager or 'alternate' manager of bullying and/or harassment, the manager receiving the complaint is required to:

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- be open, supportive and non-judgemental
 - maintain confidentiality, only involving others on a strict “need-to-know” basis
 - 1. An ‘alternate’ manager may need to defer to a direct manager or the Human Resources Manager
 - establish whether the recipient of the behaviour is still at risk, and if so, take all reasonable steps to ensure no further harm or incidents of bullying or harassment occur
 - establish the facts of the matter in as much detail as possible and use ‘who, what, where, when, why and how’ as prompts to acquire detail
 - make a record of any meetings, preferably during the discussion, as this will allow for re-checking and clarification of points
 - seek the employee's feedback regarding their desired outcome being cautious not to pre-empt a possible outcome or be prejudicial to what is being alleged to have occurred
 - remind the employee of the support available through the Commission’s [Employee Assistance Program](#), who are available to provide free and confidential counselling should the employee consider that they may benefit from such services.

A high level of caution is recommended at this point as the facts have not yet been established and natural justice must be applied to all parties.

Once an informal complaint is resolved, managers should:

- monitor the relevant work area/s after a resolution has been implemented to identify if the behaviour or conduct is repeated
- ensure no adverse action (i.e. victimisation) is taken against the complainant
- file any record of conversations/actions with the Human Resources Manager.

7.2. Formal Complaint Process

Formal complaints should be in writing. The written complaint should include specific details of the bullying and/or harassment allegations, names of witnesses (if any) and a statement as to the desired outcome.

Manager responsibilities in actioning a formal complaint are outlined in sections 10.2, 10.3 and 10.4

A written complaint may be submitted by the complainant directly or via a manager on behalf of a complainant. Any complaint in person will be documented by a manager or the Human Resources Manager.

A formal complaint can move to an informal process where it is deemed appropriate.

The Human Resources Manager will determine the action, if any, to be taken in response. This could include:

- preliminary investigation of the complaint
- informal or formal counselling for one or more parties
- mediation
- a formal Code of Conduct investigation
- any other action deemed appropriate in the circumstances.

In some circumstances, after an assessment of the complaint, the Commission may decide not to take action. Examples where this may occur include where a complaint is:

- made anonymously without providing sufficient detail to allow investigation of the matter

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- frivolous, vexatious or malicious
 - clearly or obviously false or misleading.

Where the nature of a complaint may raise allegations of a criminal nature, the complaint may be referred to others, including but not limited to, the Executive Team and/or the Australian Federal Police.

Complaints that are deemed to be frivolous, vexatious or malicious may result in a formal code of conduct investigation.

8. Victimisation

Victimisation means subjecting, or threatening to subject, a person to any detriment as a result of asserting their rights, making a complaint, or helping someone else to make a complaint. Examples of victimisation may include an employee:

- being moved to a position with lesser responsibilities due to submitting a complaint
- being denied the opportunity for promotion due to lodging a complaint
- receiving a critical reference because they have made a complaint in the workplace
- being bullied or intimidated by a work colleague.

The Commission has a zero tolerance approach to victimisation. The process for lodging a formal complaint is outlined at 7.2 above.

9. Confidentiality

Employees and managers who become aware of, experience, observe behaviour or conduct that may be bullying or harassment have responsibilities to ensure they are allowing or undertaking appropriate management of a situation by refraining from gossip or inappropriate discussions with colleagues in order to allow natural justice to be applied to all parties.

10. Responsibilities

10.1 Employees

All employees are responsible for ensuring that their behaviour and conduct meets acceptable standards in accordance with the ACTPS Values and Signature Behaviours and the Code of Conduct.

Employees are encouraged to report all incidents of suspected bullying or harassment experienced or observed in the workplace to their ¹direct manager, an alternate manager or to the Human Resources Manager.

Employees who experience or observe behaviour or conduct that may be bullying or harassment can attempt to resolve the matter by:

- bringing the behaviour to the individual's attention, either verbally or in writing, and requesting that it cease
- asking the direct manager assists by discussing the matter with the individual and requesting that it cease
- requesting the direct manager reinforces appropriate work behaviours within the work

¹ A manager is a person who has supervisory responsibility of an employee or employees.

area

- seeking assistance from an alternate manager for support or advice on options for resolution/reporting with the direct manager or the Human Resources Manager.

Employees who experience or observe behaviour or conduct that may be bullying or harassment have further responsibilities to ensure they are allowing appropriate management of a situation by refraining from gossip or inappropriate discussions with colleagues.

10.2 Direct Manager

Managers are responsible for taking immediate and decisive action in response to bullying or harassment complaints. A manager's failure to take action promptly may be perceived as condoning the behaviour.

Managers also have a role in preventing bullying or harassment. Some management practices which assist in doing this are:

- ensuring that all team members are familiar with the supporting ACTPS legislation that the Commission adopts – see 2. Authority
- modelling leadership behaviours and conduct
- demonstrating a commitment to behaviours that are respectful and courteous and making it clear that inappropriate behaviour will not be tolerated
- effective performance management
- providing frequent and constructive feedback to team members
- consulting with team members before workplace changes are implemented
- ensuring open and respectful communication in the team
- completing bullying and harassment training
- recording and filing all complaints and actions with the Human Resources Manager
- escalating any recurrent and/or multiple workplace bullying and harassment complaints against an employee to the Human Resources Manager or Chief Executive Officer
- following the procedures outlined within the relevant Enterprise Agreement
- promoting, supporting, and implementing this Policy.

10.3 Alternate Manager

Employees may seek out support and/or assistance from a manager that they do not report to. This manager may assist the employee by:

- being a support for the employee, if requested, to meet with a direct manager where an informal or formal report should be made
- being a support for the employee, if requested, to meet with the Human Resources Manager where a formal report should be made
- escalating any recurrent and/or multiple workplace bullying and harassment complaints they have become aware of to the Human Resources Manager or Chief Executive Officer
- completing bullying and harassment training
- promoting, supporting, and implementing this Policy.

The alternate manager does not directly participate in any informal or formal process where they do not have any management of the area or employees involved.

10.4 Human Resources Manager

The Human Resources Manager is able to provide information to employees in relation to instances of perceived bullying or harassment.

The specific role of the Human Resources Manager is to:

- provide a confidential 'point of contact' for employees and managers with enquiries related to what constitutes bullying or harassment
- provide information and guidance to employees and managers in relation to rights and responsibilities contained in this Policy
- raise awareness in the Commission about the Workplace Bullying and Harassment Policy
- ensure that employees and managers are informed that they are able to make a complaint and how that complaint may be managed
- assist employees and managers to determine where a matter may need to be addressed at an informal or formal level

****Note:** Any employee is required to immediately advise the Human Resources Manager or a member of the Executive Team if they are of the view that a person may be in danger or potentially endanger someone else or if they reasonably believe the issue may be extremely serious.*

The Human Resources Manager generally does not resolve a complaint at an informal level and may not have any knowledge of its existence until written outcomes have been provided for filing. The Human Resources Manager can provide information particularly in relation to the options available to employees and managers.

The Human Resources Manager will become involved and oversee a formal process.

11. Record Keeping

It is important that any action taken to address both informal and formal complaints is documented. Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and corrective action taken. Records should be provided to the Human Resources Manager in any case to allow appropriate assessment of any reoccurring patterns within or under the same practice/section or manager. In addition, accurate records will be essential if the matter leads to formal misconduct action, (i.e. breach of the ACTPS Code of Conduct). Maintained records will be essential in any review of the processes undertaken.

Records related to formal ACTPS Code of Conduct investigations and disciplinary action is kept with Human Resources in accordance with governing legislation. Access to such records is only granted on a strict "need-to-know" basis.

12. Support Available

An employee who has made a complaint, or has had a complaint made against them, may choose to have a support person present at meetings regarding the complaint and/or appoint an employee representative to assist or represent them. A representative requested by an employee to act in this capacity may include a union workplace delegate, an elected representative, or a work colleague.

An employee may also seek assistance from [Employee Assistance Provider](#) in relation to the matter.

13. Sanctions for non-compliance

Employees and managers are required to adhere to their respective responsibilities in regards to the application of this Policy. Failure to adhere to any aspect of this Policy may constitute a breach of the [Code of Conduct](#).

Managers also have specific responsibilities under the [Work Health and Safety Act 2011](#), that can result in personal sanctions for non-compliance.

14. External supports and advice

- **WorkSafe ACT**

If an employee is unhappy with the way in which their complaint is handled or with the conduct of the Commission in relation to the complaint, they can contact WorkSafe ACT to discuss their concerns. More information is available here:

https://www.worksafe.act.gov.au/health_safety

- **Fair Work Commission (FWC)**

The FWC may be able to help individuals resolve issues in the workplace if they cannot be resolved internally. This can include issues such as: discrimination; workplace rights; dismissal; and bullying. More information is available here:

<https://www.fwc.gov.au/>

- **Fair Work Ombudsman (FWO)**

The FWO can provide individuals with information about resolving an issue or dispute in the workplace and has a range of online resources that may be of assistance. More information is available here: <https://www.fairwork.gov.au/>

- **ACT Human Rights Commission**

If an employee believes they are being discriminated against for a particular reason such as their sex, disability, race or another attribute that is protected under the Discrimination Act 1991, or the bullying is of a sexual nature, they can contact the ACT Human Rights Commission to discuss the matter or lodge a complaint. More information is available here: <https://hrc.act.gov.au/>

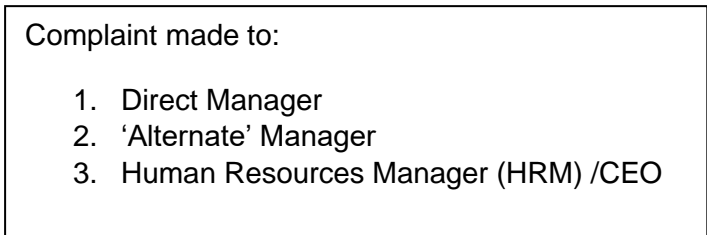
15. More information

For more information, please contact the Human Resources Manager or email hr@legalaidact.org.au

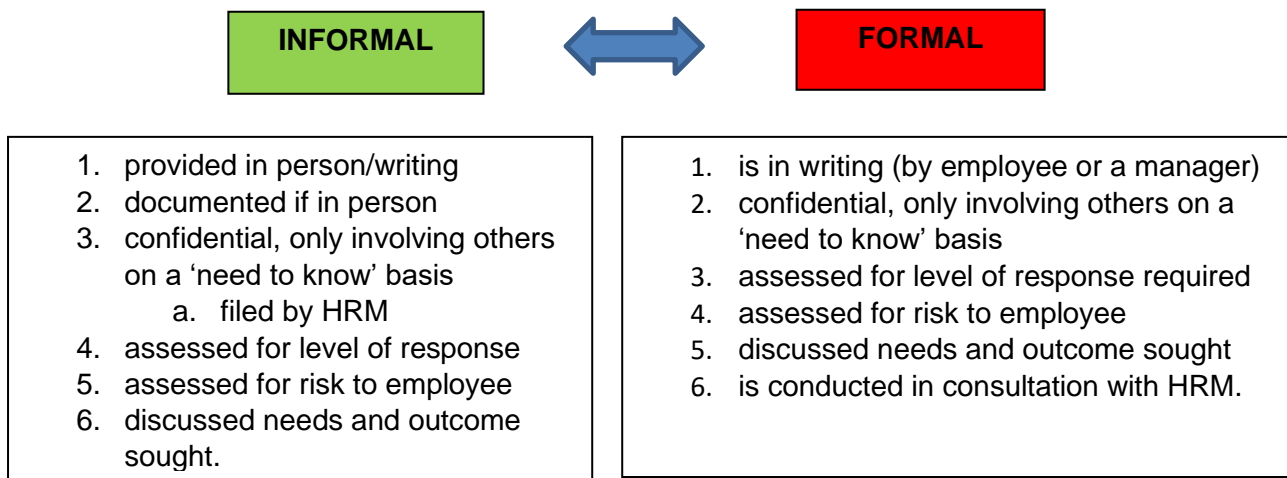
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16. COMPLAINT Flowchart



An **informal** complaint may be considered so serious that it requires escalation to a formal process.
 A **formal** complaint can move to an informal process where it is deemed appropriate.



A high level of caution is recommended at this point as the facts have not yet been established and natural justice must be applied to all parties.

