



TITLE

Respectful Workplace Behaviour Policy

SUMMARY OF POLICY

This policy describes the Court's expectations about respectful workplace behaviour and the steps that can be taken to address concerns of unacceptable behaviour in the workplace.

EMPLOYEES AFFECTED

Unless stated otherwise, all employees (including SES and non-SES employees), contractors, workers and judges within the Federal Court, Federal Circuit and Family Court and National Native Title Tribunal (referred to as 'Staff' or 'Staff members'). Paragraphs 66 to 68 deal with complaints about individuals outside of the Court.

CONTACT OFFICER

Director, Human Resources

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Introduction

1. The Court aims to be a workplace that exemplifies mutual respect, diversity and accountability.
2. The Court will work to acknowledge, address and fairly remedy instances that fail to maintain our standards of respectful workplace behaviour.
3. The Court is committed to:
 - providing a workplace where Staff treat each other with respect and courtesy;
 - wherever possible, providing a safe, fair and inclusive workplace and preventing or eliminating discrimination, harassment and bullying; and
 - responding sensitively and effectively to complaints relating to our standards of respectful workplace behaviour.
4. The Court will partner with Staff to ensure we build a culture that delivers on these aims and commitments.

Policy objectives

5. This policy is designed to make Staff aware of:
 - the Court's standards in relation to respectful workplace behaviour and what constitutes discrimination, harassment and bullying;
 - obligations of Staff in relation to discrimination, harassment and bullying;
 - the procedures the Court has in place to deal with complaints relating to our standards of respectful workplace behaviour; and
 - who they can talk to in relation to discrimination, harassment or bullying.
6. The expectations in this policy apply to all work-related activities and are not restricted to the workplace. Any conduct that occurs in connection with a Staff member's employment/engagement or a Court workplace may be dealt with in accordance with this policy.
7. The Court's standards in relation to respectful workplace behaviour apply to the conduct of Judges, who are required to ensure that they do not engage in discrimination, harassment and bullying within the workplace. Each Court has in place a procedure for resolving complaints about unacceptable workplace conduct from a Judge of any Court or, in the case of the NNTT, the Members, President or Registrar of the Tribunal (see paragraphs 51 to 53 below for more detail).

Legislation

8. Behaviour, or conduct, that may be considered as discrimination, harassment and bullying in a work-related context may breach not only the [*Public Service Act 1999*](#) (PS Act), but also various provisions in other Commonwealth legislation including, but not limited to, the:
 - [*Work Health and Safety Act 2011*](#);
 - [*Racial Discrimination Act 1975*](#);
 - [*Sex Discrimination Act 1984*](#);
 - [*Australian Human Rights Commission Act 1986*](#);

- [Disability Discrimination Act 1992](#),
 - [Age Discrimination Act 2004](#), and
 - [Fair Work Act 2009](#).
9. Subsection 10A(e) of the PS Act requires that the Public Service provides a safe workplace. This policy supports that requirement.
 10. Discrimination, harassment and bullying behaviour may also constitute a breach of criminal law.
 11. In certain circumstances, the Court is required to treat a report of discrimination, harassment or bullying as a public interest disclosure for the purposes of the [Public Interest Disclosure Act 2013](#) (PID Act). If the report is made to an authorised officer for the purposes of that Act, or to a Staff member's supervisor or manager, the Court will deal with the report in accordance with the [Public Interest Disclosure Procedures](#).

Discrimination

What are the grounds of discrimination?

12. Commonwealth legislation makes discrimination, because of any of the following characteristics of a person, unlawful:
 - sex, marital status, including same-sex de facto couples, pregnancy or potential pregnancy;
 - family or carer's responsibilities;
 - breastfeeding;
 - sexual preference, sexual orientation, gender identity and intersex status;
 - race, colour, descent, nationality, national or ethnic origin, national extraction, ethnicity or social origin;
 - disability - including physical, mental, intellectual or psychiatric disability, and including a disability that presently exists, previously existed but no longer exists, may exist in the future or is imputed to a person;
 - religion;
 - political opinion;
 - age; or
 - status as a Defence Reservist.

How can discrimination occur?

13. Discrimination can be direct or indirect. Direct discrimination is where a person or group is treated less favourably than another person or group because they have one or more of the characteristics listed in paragraph 12. Indirect discrimination is where a rule, policy or directive of the Court or one of its entities applies to everyone, but has the effect of disadvantaging a person or group because they have one or more of the characteristics listed in paragraph 12, and the rule, policy or directive is not reasonable in all the circumstances.

14. However, there are exceptions under anti-discrimination laws which may apply in some situations. Further, discrimination that is not based on a characteristic listed in paragraph 12 is not unlawful and is therefore not covered by this policy.

Harassment

What is and isn't harassment?

15. Harassment is a form of discrimination, and generally occurs when a person or group is humiliated, offended or intimidated because of one or more characteristics listed in paragraph 12. Some examples may include:
- displaying racially offensive posters or screen savers;
 - telling jokes about particular racial groups;
 - making derogatory comments or taunts about someone's race or religion, gender, sexual orientation or disability; and
 - making jokes and innuendos, or threats to a person based on their sexual orientation.
16. One form of harassment is sexual harassment. This occurs when:
- a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or engages in other unwelcome conduct of a sexual nature in relation to the person harassed;
 - in circumstances where a reasonable person, having regard to all of the circumstances, would have anticipated the possibility that the person harassed would be humiliated, offended or intimidated.
17. It is important to understand that some forms of sexual harassment may also constitute criminal behaviour and may be treated as a criminal offence.
18. Harassment may be unintentional. Behaviour or conduct may not intend to offend, humiliate or intimidate another person.
19. Harassment will not be unlawful, as such, if it is not based on one of the characteristics in paragraph 12. However, the PS Act requires employees to treat everyone with respect and courtesy, and without harassment (PS Act section 13(3)). Failure to meet this requirement may be determined to be a breach of the [Australian Public Service Code of Conduct](#).
20. In some cases, a single action or incident may be considered harassment. Harassing behaviour is often, but not always, repeated. Often, harassment will continue or escalate, adversely affecting the person to whom the harassment is directed and others in the workplace, creating a hostile environment and generally poor working relationships
21. Sexual harassment can include written or verbal comments about physical appearance or sexual preference, demands for dates or sexual favours, jokes about sex, sexual innuendo, sexual gestures, unwelcome comments about a person's sex life, unnecessary familiarity, intrusive questions about a person's private life, displaying sexual pictures or screensavers, the circulation of sexual material (including via social media or text messages), staring, leering or unwelcome touching.
22. Conduct which is welcome or consensual is not harassment. However, a Staff member should take great care before engaging in conduct which they believe to be welcome or consensual. Staff should always

remember that a person may not feel comfortable telling another Staff member that their behaviour or conduct is offending them and is not welcome. Humour, friendship and relationships based on mutual consent do not amount to sexual harassment. However, consent is something actively given, and frequently people being sexually harassed are too uncomfortable, embarrassed or scared to object openly. It is therefore a Staff member's responsibility to ensure that they do not engage in conduct which is not welcome or consensual. Similarly, Staff members are encouraged to tell someone if they do not feel comfortable with another person's behaviour, or at least to raise the issue with their manager or another appropriate person as per paragraph 43.

23. Further, any personal friendships that develop should not adversely impact on a Staff member's ability to do their work or on the performance or productivity of their co-workers and section.
24. Staff should also remember that even conduct which is welcome or consensual may be inappropriate in the workplace.

Bullying

What is and isn't bullying?

25. Workplace bullying is defined by the [*Fair Work Act 2009*](#) and occurs when:

- a person or a group of people repeatedly behaves unreasonably towards a worker or a group of workers while at work; and
- the behaviour creates a risk to health and safety.

26. Bullying does not include reasonable management action carried out in a reasonable manner.

27. Other behaviour that does not meet the definition of bullying, but is nevertheless unreasonable behaviour, may still amount to a breach of the [*Australian Public Service Code of Conduct*](#).

28. Bullying can occur by way of direct face-to-face or online communication, and can include a range of behaviours such as:

- yelling, screaming or offensive language;
- excluding or isolating Staff members;
- psychological harassment;
- intimidation;
- assigning meaningless tasks unrelated to the job;
- giving Staff members impossible jobs;
- deliberately changing work rosters to inconvenience particular Staff members;
- undermining work performance by deliberately withholding information vital for effective work performance;
- constant unconstructive criticism;
- suppression of ideas; and
- overloading a person with work or allowing insufficient time for completion, and criticising the Staff member's work in relation to this.

29. Behaviour or conduct, provided it is carried out in a reasonable manner, that does not constitute bullying includes, but is not limited to:
- appropriate performance management;
 - providing constructive and courteous performance feedback;
 - legitimate disciplinary action;
 - reasonable supervisory practices;
 - allocation of work in accordance with terms and conditions of employment and organisational practices;
 - reasonable directions by management;
 - expressing differences of opinion;
 - carrying out legitimate managerial decisions; and
 - making a complaint about the conduct of a manager or another Staff member, if the complaint is made in an appropriate and reasonable way.

Responsibilities

The Court

30. The Court aims to take all reasonable and practical steps to prevent discrimination, harassment and bullying in the workplace, including:
- distributing and promoting this policy;
 - providing managers with access to appropriate training in relation to handling complaints;
 - maintaining a network of trained Harassment Contact Officers;
 - explaining the process available under the procedures dealing with judicial workplace conduct, and supporting Staff raising complaints under that process; and
 - providing employees with access to a free counselling service through the Court's Employee Assistance Provider (EAP).
31. The Court must also, as far as reasonably practicable, maintain a safe system of work that is without risk to health and safety and that minimises the risk of Staff being discriminated against, or being harassed or bullied.

Managers

32. Managers have an overarching responsibility to ensure that the Court has, and uses, appropriate resources and processes to eliminate or minimise the risk of discrimination, harassment and bullying at work.
33. Managers also have a responsibility to advocate and promote this policy within their work areas.
34. Complaints reported to managers that are dealt with under this policy are to be treated seriously and actioned accordingly and expeditiously. Managers must use their best endeavours to deal with a complaint effectively and quickly for the benefit of all parties involved.

Staff

35. Staff are responsible for ensuring that their behaviour and conduct meets reasonable, acceptable standards fit for this work environment, and for reporting any improper behaviour or conduct directed at them, or observed in the workplace, to a Harassment Contact Officer, their manager, or a senior officer in the People and Culture section, or a member of the Senior Executive Service (SES).
36. Staff also have a duty to comply with this policy, to take care of their own health and safety at work, and to ensure that their acts or omissions (including those relating to potentially discriminatory, harassing and bullying acts) do not adversely affect the health and safety of others. Duties of workers in relation to work health and safety is further detailed in section 28 of the [*Work Health and Safety Act 2011*](#).

Harassment Contact Officers

37. Harassment Contact Officers are Staff members selected by the Court. Harassment Contact Officers are trained to provide information and support to Staff in relation to concerns of discrimination, harassment and bullying. Harassment Contact Officers are one of a number of contact points, including the individuals listed in paragraph 43.
38. The Court will aim to have a mix of Harassment Contact Officers, ranging across different work groups and locations. A Staff member may choose to speak with a Harassment Contact Officer as their initial point of contact, and may continue to receive support and assistance while the matter or complaint is being investigated and resolved.
39. Harassment Contact Officers are representatives of the Court and will consult with a Staff member who contacts them about what information must be shared with the Court.
40. A Harassment Contact Officer's role is not to resolve a matter or complaint but to provide information and support, particularly in relation to the options available to resolve a matter or complaint. Harassment Contact Officers may also provide information and support to a Staff member who believes that a complaint may be made about them.
41. The names and contact details for Harassment Contact Officers are published on the Court's intranet.

Seeking advice or making a complaint

42. If a Staff member makes a complaint asserting that they have been, or are being discriminated against, harassed and bullied, the complaint will be dealt with as expeditiously and with as little formality as a proper consideration of the matter allows.
43. A Staff member who believes they have been, or are being, discriminated against, harassed or bullied by another Staff member is encouraged to report the relevant behaviour or conduct to one, or more, of the parties detailed below:
 - a Harassment Contact Officer;
 - their manager;
 - a senior officer in the People and Culture section; or
 - a member of the SES.

44. For Staff working in Chambers, the appropriate management contact point is generally the Judicial Services Team Leader. Additional guidance on supervision and support for Staff working in Chambers will be provided through induction processes.
45. A Staff member who has made a complaint, or has had a complaint made against them that is being dealt with under this policy, may choose to have a support person accompany them to meetings in relation to the matter.
46. Staff who are not the person alleging discrimination, harassment or bullying, or who have not been identified as potential witnesses to such behaviour, should not involve themselves in a matter. In particular, Staff should be aware of the need to maintain confidentiality and not breach the privacy of other employees.
47. An employee may also seek support from a counsellor from the Court's Employee Assistance Provider (EAP) in relation to the matter.

Responsibilities of managers receiving complaints

48. If a Staff member makes a complaint to a manager about discrimination, harassment or bullying, the manager must, when dealing with the complaint under this policy:
 - remain objective when discussing the Staff member's complaint;
 - seek the Staff member's feedback regarding their desired outcome and acknowledge that the preferred outcome may not be possible;
 - inform the Director, People and Culture to confirm correct procedures to manage the complaint (e.g. whether the matter may be informally resolved or whether a formal investigation may be required);
 - if the complaint is about the conduct of a Judge, consult with the Staff member about the applicable procedure and refer the matter to the Chief Justice where appropriate (see paragraphs 51 to 53 below for more detail);
 - objectively discuss the matter with the individual, or parties, the complaint has been made against;
 - advise the parties involved in the matter to only discuss the matter with other parties legitimately involved with the matter, which may include an EAP counsellor;
 - inform the relevant senior executive service manager of the situation (if appropriate);
 - if necessary, take appropriate and achievable corrective action to deal with the matter and to prevent its continuance and recurrence;
 - afford procedural fairness if action is to be taken, or an adverse decision is to be made, against an individual;
 - provide no guarantees of confidentiality as some complaints will require action irrespective of the parties' preference;
 - advise the parties involved if there is likely to be a delay in attempting to resolve the complaint;
 - advise the parties involved if the alleged complaint was established and explain that it may not be possible to state what actions have been taken and why that is so; and
 - monitor the relevant work areas after a resolution has been implemented to identify if the behaviour or conduct is repeated.

49. If, in particular circumstances, the manager wishes to depart from these general guidelines, the manager must consult with the Director, People and Culture before doing so.
50. Accurate, written records must be kept of all discussions with parties to the matter, including reasons for decisions and actions taken. These written records must be stored in accordance with instructions provided by the Director, People and Culture.

Complaints about Judges

51. The head of each relevant jurisdiction has oversight of the procedure for handling complaints regarding the alleged unacceptable workplace conduct of a Judge or relevant Tribunal official.
52. Where relevant, complaints that concern unacceptable conduct of a Judge or relevant Tribunal official will be referred to the head of jurisdiction and dealt with in accordance with the following applicable procedure/policy:
- for complaints about Judges or Tribunal officials in the Federal Court: the [Judicial Workplace Conduct Procedure](#); and
 - for complaints about Judges or Tribunal officials in the Federal Circuit and Family Court of Australia: the [Judicial Workplace Conduct Policy](#).
53. The relevant procedure/policy specified above will apply in place of the section headed 'Resolving Complaints' below (as per paragraphs 54 to 64 below).

Resolving complaints

54. It is often in the best interest of all parties to resolve complaints informally, with the formal complaints procedure available as a safeguard. Which complaint resolution path is followed will depend upon the circumstances of the complaint, but in all cases it is important to act promptly, constructively, and reasonably and to keep all parties informed of timeframes.

Resolving complaints informally

55. A complaint being considered under this policy may be dealt with informally, and resolved quickly, in certain circumstances and after discussion about the proposed course of action with the Director, People and Culture. For example, if an individual is not aware that their behaviour or conduct is or may be discrimination, harassment or bullying, the affected Staff member observing the relevant behaviour or conduct may attempt to resolve the matter by:
- bringing the behaviour or conduct to the Staff member's notice, either verbally or in writing, and requesting that it cease;
 - asking the relevant supervisor or manager to assist by discussing the matter with the individual and requesting that it cease; or
 - requesting that the relevant supervisor or manager reinforces appropriate work behaviours with the work area, without identifying those involved in the matter.

Formal complaints

56. If a complaint is unable to be resolved informally, or if the matter is of a more serious nature, the affected Staff member may choose to make a formal complaint. In such circumstances, the Staff member may choose to:
- submit a written complaint to the Director, People and Culture or the Executive Director, People, Culture and Communication, providing details of the complaint, including the names of witnesses (if any) and a statement as to the desired outcome; or
 - submit a written complaint to the Australian Public Service Commissioner or the Merit Protection Commissioner; or
 - submit a complaint to an external body such as the [Australian Human Rights Commission](#), the [Fair Work Commission](#), or the [Fair Work Ombudsman](#). This option is available to Staff at any stage. However, Staff are encouraged to lodge a complaint with the Court in the first instance, so that every reasonable and practical action can be taken to attempt to resolve the matter at the earliest opportunity.
57. Formal complaints received by the Director, People and Culture or the Executive Director, People, Culture and Communications will be considered and a course of action decided having regard to the circumstances.
58. The courses of action that may be taken in relation to a formal complaint of discrimination, harassment or bullying include, but are not limited to:
- Taking no action for reasons including those listed in paragraph 70.
 - Dealing with the complaint informally as set out in paragraph 55.
 - Investigating the complaint. This may be done by an experienced employee or an external investigator.
 - Dealing with the complaint in accordance with the Court's [Procedures for Determining Suspected Breaches of the Australian Public Service Code of Conduct and for determining sanctions](#).
 - Dealing with the complaint using alternate resolution strategies including, but not limited to, mediation.
 - Referring the matter to another party (e.g. the Australian Federal Police or state or territory-based police force).

Fair Work Commission application

59. A worker, as defined in the Fair Work Act, who reasonably believes that they have been bullied at work may also apply to the [Fair Work Commission](#) for an order under the Fair Work Act to stop bullying.
60. If the [Fair Work Commission](#) is satisfied that a worker has been bullied by an individual or group, and there is a risk that the bullying will continue, it may make any order it considers appropriate (other than an order for the payment of compensation) to prevent the worker from being bullied at work.
61. In making any such order, the [Fair Work Commission](#) must have regard to any internal investigation being undertaken, any grievance or dispute resolution procedures in place (such as those set out in this policy), and outcomes from such procedures, and any other matters it considers relevant.

62. Making this type of application does not prevent a worker from also taking action under work health and safety legislation.

After a complaint has been made

63. It may be necessary to take interim action, such as temporarily moving one of the parties to a different work area, until the situation is investigated or resolved. If such action is being considered, the matter should first be discussed with the relevant senior manager and the Director, People and Culture.
64. A Staff member making a complaint will generally be informed of whether or not the alleged complaint was established and that the matter has been dealt with. It may not, however, be possible to provide any additional information to the Staff member making the complaint.

Rights of review

65. If a non SES-employee is not satisfied with the outcome of the Court's resolution process, they may lodge a request, in writing, for a review of actions under section 33 of the PS Act.

Complaints involving persons outside the Court

66. Staff are encouraged to advise their manager or another appropriate person immediately if they observe behaviour or conduct, directed at them or another Staff member, by a person outside the Court, that is or may be discrimination, harassment or bullying. The action taken will depend on the nature of the behaviour or conduct and the outside person involved.
67. If a matter involves a pattern of behaviour or recurring conduct of a person outside the Court, and where there is an ongoing relationship with the Court, the matter should be referred to the Executive Director, Corporate Services; Director, Security; or the Deputy Principal Register, to determine the action to be taken.
68. In certain circumstances, the Court is required to treat a complaint about a person outside the Court as a public interest disclosure for the purposes of the PID Act.

Responsibility of Staff raising complaints

69. If a Staff member makes a complaint, they are responsible for ensuring that they:
- make the complaint honestly and in good faith;
 - provide all facts relevant to the complaint;
 - cooperate with the resolution process; and
 - keep the complaint confidential within the resolution process and the parties involved.
70. The Court may not be able to further investigate a complaint under this policy if:
- The complaint may be considered a criminal offence where the matter must be promptly referred to the police for investigation.
 - The complaint has been satisfactorily dealt with or resolved previously (unless further discrimination, harassment or bullying behaviour or conduct has occurred since).
 - The complaint is made anonymously without providing sufficient detail to allow investigation or resolution of the matter.

- The complaint is frivolous, vexatious or malicious. For example, if false or misleading information is provided; if relevant information is withheld; if facts are distorted or there is no demonstrated commitment to resolution. Depending on the circumstances, in these situations, action may be taken against the person raising the complaint, in accordance with the Court's [Procedures for Determining Suspected Breaches of the Australian Public Service Code of Conduct and for determining sanctions](#).

Victimisation

71. The Court will use its best endeavours to ensure that Staff will not be victimised or otherwise disadvantaged as a result of making a complaint, or acting as a witness to a complaint, if they do so in good faith.
72. There are statutory protections and remedies aimed to prevent such victimisation under the [Fair Work Act 2009](#), the anti-discrimination legislation, and the [Work Health and Safety Act 2011](#).

Reference material

73. Further information in relation to discrimination, harassment and bullying is available on various websites including, but not limited to, the [Australian Public Service Commission](#), the [Fair Work Commission](#), the [Commonwealth Ombudsman](#), [Safe Work Australia](#) and [Comcare](#).

Schedule: Policy flowchart – Process for raising a concern

