



**Australian Government**

**Department of Innovation  
Industry, Science and Research**

## **POLICY STATEMENT**

### **Workplace Discrimination and Harassment**

The Department is committed to eliminating all forms of workplace discrimination and harassment.

#### **Principles**

- To maintain an appropriate level of employee awareness of what constitutes unacceptable behaviour in the workplace.
- To ensure that employees are aware of their rights and responsibilities relating to workplace discrimination and harassment.
- To provide employees with details of the informal and formal processes for investigating and resolving complaints.

**References:** Legal Framework – see page 11.

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# DIISR Workplace Discrimination and Harassment Policy

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# DIISR Workplace Discrimination and Harassment Policy

## Introduction

The Department is strongly committed to providing its employees with a workplace free from all forms of discrimination and harassment.

Workplace discrimination and harassment have serious implications for both productivity and morale. The negative consequences for employees and the Department include:

### For Employees

Sustained harassment or discrimination can have a devastating effect on the lives of victims. Individuals can suffer fear, anxiety and stress which can cause or exacerbate physical illness, reduce their work performance, increase absenteeism and even cause them to resign from work.

### For the Department

If unchecked, harassment can also damage the workplace by creating tension and conflict which can lead to poor staff morale, divided teams, absenteeism, reduced productivity and higher staff turnover.

The aim of achieving a harassment free workplace is not intended to impose restrictions on individual working styles or on workplace related relationships and social activities. Rather, its aim is to recognise that people of different backgrounds and interests need to treat each other with respect and courtesy if the Department is to be an effective organisation.

## What is Workplace Discrimination?

**Workplace Discrimination** is denying any person equality of treatment in employment matters for any grounds other than those directly related to the requirements of the job.

Discrimination can occur directly or indirectly:

***Direct discrimination:*** occurs when a person or group of people are treated in an unfair or less favourable way because of an attribute such as age, gender, race, religion, sexual orientation, disability, pregnancy, or marital status.

***Indirect discrimination:*** occurs when a person or organisation imposes a requirement (a rule, policy, practice or procedure) that is the same for everyone, but has an unequal or disproportionate effect on a particular group or groups. If the requirement is not reasonable in all the circumstances, it is likely to be indirect discrimination.

As an equal opportunity employer, the Department will treat all employees and prospective employees fairly and on the basis of their individual merit.

### What is Workplace Harassment?

#### Harassment

Harassment is any form of behaviour that is unwelcome, unsolicited, unreciprocated and usually (but not always) repeated. It is behaviour that is likely to offend, humiliate or intimidate. It can make it difficult for effective work to be done by the individual or groups targeted or affected by this behaviour.

For harassment to occur there does not have to be an intention to offend or harass. It is the *impact* of the behaviour on the person who is receiving it, together with the nature of the behaviour, which determines whether it is harassment.

Further, 'workplace' in this context is defined to include not only the usual work environment, but also work related events, seminars, conferences, work functions, Christmas parties, and business trips.

Some examples of workplace harassment might include:

- offensive physical contact, derogatory language or intimidating actions;
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace;
- unjustified and unnecessary comments about a person's work or capacity for work;
- openly displayed pictures, posters, graffiti or written materials which might be offensive to some;
- phone calls or messages on electronic mail or computer networks which are threatening, abusive or offensive to employees;
- persistent following or stalking within the workplace, or to and from work; and
- the exclusion of a person or group from normal conversations, work assignments, work related social activities and networks in the workplace.

Workplace harassment should not be confused with legitimate comment and advice on the work performance or work-related behaviour of an individual or group. However, feedback and counselling should always be carried out in a constructive way that is not humiliating or threatening, and that is consistent with the performance management appraisal process.

### Sexual Harassment

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature that is likely to offend, humiliate or intimidate.

Sexual harassment can take many forms and may include:

- belittling jokes or comments based on gender stereotypes;
- behaviour which insists that gender stereotypes be maintained and exercised in the workplace;
- uninvited touching, kissing or embracing; • making promises or threats in return for sexual favours;
- displays of sexually graphic material including posters, cartoons and screen savers;
- repeated invitations to go out after prior refusal;
- staring or leering at a person or parts of their body;
- sexually explicit conversation;
- persistent questions or insinuations about a person's private life; and
- any behaviour that creates a sexually hostile work environment.

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Behaviour that is based on mutual attraction and that is consensual, welcome and reciprocated is not sexual harassment.

### **Bullying**

Workplace bullying is the repeated, less favourable treatment of a person by another or others in the workplace. It includes behaviour that intimidates, offends, degrades or humiliates a worker.

Bullying can be distinguished from more common examples of harassment in that it is often about changing the perceptions and behaviours of others, whereas harassment focuses on belittling or targeting individuals or groups on the basis of perceived differences.

Bullies may use loud and aggressive tactics like yelling or screaming abuse. They may also use subtle intimidation like inappropriate comments about personal appearance, constant criticism, isolating workers from normal work interaction, withholding information or imposing impossible deadlines.

### **Victimisation**

Victimisation involves treating someone unfairly because they have made, or intend to make, a discrimination or harassment complaint. This also includes those who have supported another person in making a complaint.

Workplace discrimination and harassment, including sexual harassment, bullying and victimisation, will not be tolerated at The Department. Any conduct amounting to discrimination or harassment will be addressed promptly and in a serious manner.

### **Roles and Responsibilities**

#### **All Employees**

All employees have the responsibility to monitor their own conduct and to maintain appropriate standards of behaviour. Further, all employees must:

- Act in accordance with the APS Values and Code of Conduct;
- Speak out against discrimination and harassment if it is witnessed;
- Be aware of the issue of harassment, of the forms it can take and of the damage it can do to individuals and organisations; and
- Ensure that their conduct does not include behaviour that could possibly constitute harassment.

#### **Managers/Supervisors**

Managers and supervisors have additional responsibilities, and are expected to:

- Be aware of and familiar with The Department's policy on workplace discrimination and harassment and its application;
- Actively support and promote this policy;
- Set a good example of professional behaviour and establish high standards of behaviour in the workplace;

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- Take action to stop discrimination and harassment immediately it is observed or reported;
- Encourage employees to report instances of workplace harassment; and
- Respond promptly, seriously and with sensitivity to every complaint

It is important to note that managers and supervisors have a positive duty to prevent discrimination and harassment in the workplace. That is, they must be proactive in addressing incidents when they become aware – or could reasonably be expected to be aware – of them. This includes cases where the employee has not made a complaint.

Further, a supervisor or manager who contributes to assists or encourages unacceptable behaviour may be held personally liable in any civil court action that might be taken by a complainant, without support or indemnity from the Department.

### **WCOs**

Workplace Contact Officers are trained staff within the Department, who have volunteered to provide guidance on Workplace Diversity issues. They can also:

- Advise on what constitutes workplace diversity,
- Listen sympathetically and without judgement to a complainant,
- Find out what the complainant wants to happen and explains available and appropriate options, and
- Provide support to the complainant in any further action to resolve the matter, including accompanying the complainant to internal enquiries and formal interviews.

### **Workplace Diversity Coordinator**

The Workplace Diversity Coordinator has a responsibility to ensure that:

- All allegations are treated seriously and, where required, investigations are carried out,
- There is no retaliation against an employee for lodging a complaint,
- The Department meets requirements regarding workplace diversity,
- Advice to staff is up to date, accurate and relevant, and
- Maintains the Department's Workplace Diversity network.

## **Procedures**

The review of allegations of harassment/discrimination may be divided into two major parts: an informal resolution process and a formal resolution process.

These processes are outlined below.

### **Informal Resolution Process**

Any employee who believes he or she is being subjected to any kind of discrimination/harassment should not ignore it, as ignoring it may be seen as unspoken consent from the alleged harasser's point of view.

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Any incident or situation that an employee believes involves discrimination by a colleague, supervisor, manager or other individual must be brought to the immediate attention of those who are involved in the resolution of the case. If an employee alleges discrimination by a supervisor, another senior manager should seek to resolve the issue. If the manager receives an allegation of discrimination he or she is bound to investigate and, if appropriate, take remedial action.

Generally these issues can be resolved without the need for formal intervention. The options available to you are:

- Talk to the person who is making you feel uncomfortable or whom you may have offended (if you feel able);
- Contact your Workplace Contact Officer for advice about how to resolve the matter, and the options available to you;
- Talk to your supervisor;
- Talk to your manager; or
- Contact Human Resources.

In many instances, such simplistic measures are a success as:

- It allows the matter to be addressed quietly and without labels being attached to anyone. This is particularly important where the behaviour was unintentional or misguided.
- It allows for positive action to be taken to correct or alter behaviour.
- It allows management to develop preventative measures throughout a work area without attributing blame to one person or another. This can be important when the discrimination is the result of group behaviour or when what has been regarded as 'normal' behaviour in the work area is perceived as discrimination by someone new to the area.
- It focuses effort on putting future working relationships onto a proper basis by clarifying what is regarded as acceptable behaviour and what is not.

Leaving employees with no option other than to accept continuing offensive behaviour is not an acceptable solution. Supervisors should ensure that the situation is resolved to the satisfaction of the affected parties. At the same time, the supervisor should ensure that the person alleging discrimination is acting in good faith and not out of malice. It is important that should any investigation be conducted that it complies with principles of procedural fairness, which include informing the alleged discriminator of the substance of the allegations made and giving them an opportunity to put their case forward. It should be noted that procedural fairness may require the identification of the person alleging discrimination.

If the employee who has complained of discrimination is satisfied with the outcome of the informal process, he or she should inform their supervisor so that normal working relationships can resume.

NB: The Workplace Contact Officer can be utilised during any stage of the informal process to provide information and support to anyone who may be involved in a discrimination case. In all circumstances it would be inappropriate for a contact officer

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to advise both the alleged harasser and the complainant in the same case. It is the responsibility of management to address complaints involving discrimination or workplace conduct that may amount to harassment.

### Formal Process

If you are not satisfied with the outcome of the informal discussions, or you feel that you are unable to raise the issue through informal means you should contact the General Manager, Human Resources and Facilities. In some cases it may be appropriate for the General Manager, Human Resources and Facilities. to appoint an independent person to investigate an allegation of harassment so as to determine whether any further action may be required.

If the matter is so serious or sensitive that it is inappropriate for it to be investigated within the Department a request for review can be lodged direct with the Merit Protection Commissioner or the Human Rights and Equal Opportunity Commission (HEROC).

### Record Keeping

It is important that you document any action taken to address complaints. Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and corrective action be taken. In addition, adequate records will be essential if the matter leads to formal misconduct action, i.e. to determine whether the behaviour is a breach of Code of Conduct and a sanction is subsequently imposed. Should there be questions as to whether a discrimination claim was properly handled, adequately maintained records may be vital in any later review of the processes undertaken.

It is important that investigations of allegations of workplace discrimination maintain confidentiality with information provided only on a 'need to know' basis. Because of the sensitivity of material relating to workplace discrimination, special care should be taken to protect the confidentiality of any records relating to complaint processes.

## Appendix A: Legal Framework

### General Framework

- The [Racial Discrimination Act 1975](#) makes it unlawful to discriminate in employment on the grounds of race, colour or national or ethnic origin.
- The [Sex Discrimination Act 1984](#) makes it unlawful to discriminate in employment on the grounds of a person's sex, marital status, pregnancy or potential pregnancy, or to sexually harass another person.
- The [Human Rights and Equal Opportunity Commission Act 1986](#) provides for the rights of people with physical or mental disabilities and addresses complaints of discrimination in employment.
- Under the [Occupational Health and Safety \(Commonwealth Employment\) Act 1991](#) all employers and employees must maintain a secure, healthy and safe working environment. An employer must take practical precautions to prevent harassment.
- The [Disability Discrimination Act 1992](#) makes it unlawful for an employer to discriminate against a person on the grounds of disability (including a disease).
- The [Workplace Relations Act 1996](#) prohibits discrimination in awards and agreements and (subject to some exemptions) in the termination of employment<sup>1</sup>.

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### APS Values and Code of Conduct

All APS employees are subject to the APS Values and APS Code of Conduct. The [APS Values](#) that relate to workplace discrimination and harassment include:

- The APS is a service in which employment decisions are based on merit;
- The APS provides a workplace that is free from discrimination and recognise and utilises the diversity of the Australian community it serves;
- The APS provides a fair, flexible, safe and rewarding workplace; and
- The APS promotes equity in employment.

The relevant provisions of the [APS Code of Conduct](#) are:

- An APS employee must treat everyone with respect and courtesy, and without harassment; and
- An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.

<sup>1</sup> Acknowledgement: some of the information used here is published by the APSC

### Criminal Law

There may be instances where harassment amounts to an offence under criminal law. Incidents involving physical or indecent assault, stalking, the sending of obscene material electronically or through the mail, and the making of nuisance phone calls, for example, may be offences under criminal law and should be reported to the police.