



Australian Government
Australian Research Council

Discrimination and Harassment-free Workplace Policy

RESEARCH for a creative, innovative and productive Australia



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Revision History

This document will be reviewed in consultation with ARC employees and the PMDC at least every two years. It will be assessed through consultation in line with any changes to legislation and any other relevant information.

Version	Date	Authorisation Name	Authorisation Position
1.0	October 2012	Lesley Nelson	Director People and Services

Policy Overview

Introduction

The Australian Research Council (ARC) is committed to providing a safe, healthy and fair workplace where all employees work together with respect, courtesy and professionalism. To this end, discrimination, bullying and harassment of any nature, whether intended or not, will not be tolerated in the workplace.

The ARC is committed to providing a fair, flexible, safe and rewarding workplace, where all employees are responsible for promoting a work environment free from harassment, bullying or discrimination. Harassment, bullying and discrimination are unacceptable in the ARC and contrary to the APS Values and Code of Conduct.

Managers and supervisors have particular responsibilities for implementing the ARC's policy, being alert to issues in the workplace and taking timely action in response to reported or observed harassment, bullying or discrimination.

Employees under the *Public Service Act 1999 (the PS Act)* are required to uphold the APS Values and Code of Conduct, are expected to behave with honesty, integrity, care, diligence, respect and courtesy and at all times behave in a way that upholds APS Values. Employee Performance Agreements should be developed in support of these behaviours and should be discussed and reviewed as part of the mid-and end cycle review process.

The ARC does not tolerate behaviour which undermines morale and productivity and which, if not dealt with, can harm the wellbeing and performance of individuals and work units.

In circumstances where a harassment, bullying or discrimination issue arises, the ARC will take prompt action to address specific concerns of the affected employee including, where appropriate, changes to work placements.

With the common goal of promoting a productive workplace, the ARC will seek to ensure:

1. that employees are provided with a fair, flexible, safe and rewarding workplace, characterised by respect, courtesy, inclusion and equity
2. early intervention in instances of workplace harassment, bullying or discrimination and fair treatment of employees involved
3. appropriate resolution of employees' complaints about alleged workplace harassment, bullying or discrimination.

Legislation

Workplace discrimination, bullying and harassment runs counter to the APS Values and Code of Conduct, as well as Commonwealth anti-discrimination laws.

All APS employees are subject to the Code of Conduct, set out in section 13 of the *Public Service Act 1999 (the PS Act)*. Subsection 13(3) of the Code of Conduct directly prohibits harassment:

- “An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.”

Subsection 13(4) provides that APS employees must comply with all applicable Australian laws. In relation to workplace harassment the relevant laws include:

- The PS Act – the APS Values and APS Code of Conduct prohibit harassment. The PS Act also protects whistle-blowers against victimisation and discrimination.
- The *Fair Work Act 2009* – prevents discrimination in awards, agreements and termination of employment.
- The *Work Health and Safety Act 2011* – obliges employers to provide a safe place to work.
- Criminal laws and/or anti-discrimination laws – where some harassment behaviour may be a criminal offence:
 - [Age Discrimination Act 2004](#)
 - [Disability Discrimination Act 1992](#)
 - [Human Rights and Equal Opportunity Commission Act 1986](#)
 - [Racial Discrimination Act 1975](#)
 - [Sex Discrimination Act 1984](#)

Code of Conduct and APS Values

The APS Code of Conduct and APS Values are stipulated in the *PS Act*.

- The APS Code of Conduct is a clear statement of the principles and standards of behaviour for all public servants and directly prohibits harassment. The Code sets out our responsibilities as employees, and in accordance with the PS Act all of us who work within the ARC are required to comply with the Code.
- The APS Values establish the working environment of the APS and describe the standards and outcomes expected of the APS and its employees. Conducting or condoning harassment in our workplace clearly contradicts these values.

Failure to comply with this Policy may mean a breach of the APS Code of Conduct and action under the *Procedures for Determining Breaches of the Code of Conduct* may commence.

Vexatious use of the APS Code of Conduct is in itself a breach of the APS Code of Conduct and APS Values.

In addition to being a breach of the Code of Conduct, workplace harassment on the basis of race, age, sex or disability may also breach both the anti-harassment and the anti-discrimination provisions of Commonwealth anti-discrimination legislation. This includes sexual harassment and discrimination under the *Sex Discrimination Act 1984*, disability harassment and discrimination under the *Disability Discrimination Act 1992*, discrimination on the basis of age under the *Age Discrimination Act 2004* and racial discrimination under the

Racial Discrimination Act 1975. Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986*.

There may be instances where harassment amounts to a criminal offence. Sexual harassment involving physical or indecent assault, stalking, sending offensive emails, sending obscene material through the mail and making nuisance phone calls, for example, may be criminal offences.

Application of this policy

This policy applies to all employees, contractors and visitors to the workplace and to all ARC representatives conducting business within the community.

Benefits to the ARC

Having a discrimination-free and harassment-free workplace makes the ARC an employer of choice and helps the ARC to:

- increase efficiency, productivity and profitability
- prevent adverse publicity, poor public image
- create a safe work environment
- reduce the chances of absenteeism, sick leave, staff turnover, compensation claims and legal costs; and
- improve morale and worker loyalty and commitment.

Discrimination

Commonwealth anti-discrimination law is currently contained in four separate pieces of legislation, namely the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*. A fifth, the *Australian Human Rights Commission Act 1986*, establishes the Australian Human Rights Commission and provides mechanisms for resolving complaints of unlawful discrimination.

What is discrimination?

Discrimination occurs when a person or a group of people is treated less favourably than another person or group because of:

- race
- colour
- national or ethnic origin
- sex
- pregnancy or potential pregnancy
- breastfeeding
- family or caring responsibilities
- marital status
- age
- disability
- religion
- political beliefs
- sexual preference
- membership of a trade union activity or
- any other central characteristic including association with any of the above characteristics.

Discrimination occurs when a person is denied the opportunity to participate freely and fully in normal day to day activities. Discrimination can either be direct or indirect.

Direct discrimination takes place when an individual is disadvantaged or treated less favourably than another person. An example is failing to employ someone because he or she is in a wheelchair.

Indirect discrimination happens when a practice or policy appears to be fair because it treats everyone the same way but actually disadvantage people from a particular group. An example is requiring all people who apply for a certain job to pass an English test even though English is not necessary for the job. This test might exclude more people whose first language is not English.

Discrimination is unlawful under federal and state anti-discrimination legislation and human rights legislation.

Age discrimination

The *Age Discrimination Act 2004 (ADA)* makes it unlawful to discriminate on the basis of age in a number of areas of public activity, including work, accommodation, education, access to goods, facilities, services and premises, requests for information and the administration of Commonwealth laws and programs.

The ADA helps to promote positive attitudes about the contributions that both younger and older people make to society. The PS Act also allows benefits and other assistance to be given to people of a certain age in recognition of their individual circumstances.

Parliament passed the *Sex and Age Discrimination Legislation Amendment Act 2011* in June 2011. The Act amends the *Age Discrimination Act 2004* to introduce a new, dedicated Age Discrimination Commissioner in the Australian Human Rights Commission.

Racial discrimination

The *Racial Discrimination Act 1975 (RD Act)* prohibits discrimination on the basis of race in many areas of public life. These include in employment, renting or buying property, the provision of goods and services, accessing public places and in advertising. The RD Act also prohibits offensive behaviour based on racial hatred (racial vilification).

Sex discrimination

The *Sex Discrimination Act 1984 (the SD Act)* prohibits discrimination on the basis of sex, marital status, pregnancy or potential pregnancy, breast feeding or family responsibilities in a range of areas of public activity, including work, accommodation, education, the provision of goods, facilities and services, the activities of clubs and the administration of Commonwealth laws and programs.

Some of the key aims of the SD Act are to protect employees with family responsibilities from discrimination, eliminate sexual harassment in areas of public activity and promote recognition and acceptance of the principle of the equality of men and women in the Australian community.

On 24 May 2011, Parliament passed *the Sex and Age Discrimination Legislation Amendment Act 2011*. The amended Act, which came into effect on 20 June 2011, amends the SD Act to provide greater protections for men and women against discrimination and sexual harassment by:

- amending the definition of sexual harassment in relation to the reasonable person standard that provided that sexual harassment occurred if a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated and the circumstances relevant to determining this (included in the amended SDA)
- establishing breastfeeding as a separate grounds of discrimination rather than a subset of sex discrimination

- extending protections from discrimination on the grounds of family responsibilities to both women and men in all areas of work (previously only related to termination decisions)
- ensuring that protections from sex discrimination apply equally to women and men
- strengthening the protection against sexual harassment of students be improved by removing age limits and requirements that the harasser and victim be from the same educational institution
- extending the coverage of sexual harassment to protect workers from harassment perpetrated by customers, clients and others who the victim came in contact with by customers, clients and other persons that they come into contact with in connection with their employment
- prohibiting sexual harassment conducted through new technologies (e.g. over the internet, or through social media or texting).

Disability discrimination

The *Disability Discrimination Act 1992 (the DD Act)* prohibits discrimination on the ground of a person's disability in many areas of public life. These include employment, education, access to premises and access to goods, services and facilities.

The *Carer Recognition Act 2010* came into effect on 18 November 2010. The aim of the *Carer Recognition Act 2010* is to increase recognition and awareness of the role carer's play in providing daily care and support to people with disability, medical conditions, mental illness or who are frail and aged. The Act formally acknowledges this valuable social and economic contribution. The legislation provides support for carers as customers and in the workplace.

Same-Sex reforms

The ARC believes that people are entitled to respect, dignity and the opportunity to participate in society and receive the protection of the law regardless of their sexuality.

Following the Australian Human Rights Commission's report, *Same-Sex: Same Entitlements* and an audit of Commonwealth legislation, the Australian Government introduced reforms to remove discrimination to enable same-sex couples and their children to be recognised by Commonwealth law. The reforms aim to ensure that same-sex couples and their families are recognised and have the same entitlements as opposite-sex de facto couples.

Responsibility

It is the responsibility of ARC Management to take all reasonable steps to prevent discrimination in our workplace. But everyone in the ARC workplace is responsible and accountable for their own actions and behaviour.

This means:

All employees (including management) must not:

- discriminate against or harass anyone at work
- victimise anyone involved in a discrimination complaint or investigation
- make a vexatious or knowingly false complaint.

All managers must:

- implement this policy and ensure all employees work in an environment free from the threat or risk of discrimination and harassment
- ensure that all employees are aware that discrimination and harassment will not be tolerated
- role model appropriate behaviour at all times
- act on any matter brought to their attention in accordance with this policy.

Reporting

Any form of workplace discrimination must be immediately reported. Employees who become aware of an incident or series of incidents must immediately report the situation to their supervisor or the Director People and Services or any other management representative with whom they feel comfortable.

Burden of Proof

In a proceeding under the SD Act, the burden of proving that an act does not constitute discrimination lies on the person who did the act.

Harassment

Workplace harassment is offensive, abusive, belittling, bullying or threatening behaviour directed at an individual or group of people. The behaviour is unwelcome, unsolicited, usually unreciprocated and usually (but not always) repeated. It makes the workplace or association with work unpleasant, humiliating, or intimidating for the people or group targeted by this behaviour and can make it difficult for effective work to be done.

For harassment to occur there does not have to be an intention to offend or harass.

Individual incidents may be of a minor nature and seem too trivial to warrant attention, or the person subjected to the harassment may seem unaffected. Where such behaviour continues over an extended period and is not addressed, however, it may undermine the standard of conduct within a work area.

It may be a result of some real or perceived attribute or difference: for example, on the basis of race, culture, religion, language, location, sex, place of birth or disability. It may be any unwanted, unsolicited and unreciprocated conduct of a sexual nature.

In the ARC, the term "workplace harassment" includes harassment that occurs outside the workplace and/or work hours, where it affects productivity and harmony within the workplace.

Appropriate constructive feedback or counselling from supervisors about work performance or work-related behaviour, carried out in a constructive way with respect and courtesy and intended to assist the person improve work performance, is **not** included under the term "workplace harassment".

Workplace harassment on the basis of attributes such as race, age, sex or disability, marital status, pregnancy, potential pregnancy, breastfeeding, family responsibilities or involving sexual harassment may also constitute workplace discrimination. Behaviour that is discriminatory will be addressed through the anti-discrimination provisions of Commonwealth anti-discrimination legislation.

Harassment of employees by non-employees

If a person who is not an employee and not on official business in the ARC harasses an ARC employee on Commonwealth premises, the matter should be reported to a manager or supervisor or Human Resources (HR).

Under Section 28G of the SDA it is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, goods, services or facilities to that other person or for a person to sexually harass another person in the course of seeking, or receiving, goods, services or facilities from that other person.

If the external person (Harasser) remains on the premises (especially if he or she continues to harass employees), the matter should be immediately reported to the Executive General Manager.

Examples of Harassing Behaviour

Examples of harassing behaviour include, but are not limited to:

- intimidating actions such as offensive physical contact or derogatory language
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
- repeated jokes that might be offensive to other employees
- unjustified and unnecessary comments about a person's work or capacity for work
- phone calls, messages on electronic mail or computer networks that are threatening, abusive or offensive to employees
- persistent following of a person, stalking within the workplace, to and from work or elsewhere
- inappropriate or offensive material being displayed in the workplace including but not limited to openly displayed pictures, posters, graffiti or written materials that might be offensive to other employees.

Behaviours that are not workplace harassment

Examples of behaviours that are not considered to be harassment include:

- expressing differences of opinion
- providing constructive and courteous feedback, counselling or advice about work-related behaviour and performance
- carrying out legitimate or reasonable management decisions or actions, undertaken in a reasonable way and with respect and courtesy, for example:
 - taking action to transfer an employee
 - allocating work to an employee, and setting reasonable goals, standards and deadlines
 - making a decision not to select an employee for promotion
 - warning employees about unsatisfactory performance
 - transferring or terminating excess employees.
- making a complaint about a manager's or other employee's conduct, if the complaint is made in a proper and reasonable way.

Sexual Harassment

What is the difference between workplace harassment and sexual harassment?

Sexual harassment is unwelcome behaviour of a sexual nature such as an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, and where a reasonable person in the circumstances would anticipate the possibility the person harassed would be offended, humiliated or intimidated.

Workplace harassment also includes harassment of a person due to their race, ethnic background, religion, physical or mental capabilities, sexual preference, or sex.

It is possible for a person to experience both types of harassment at the same time. For example, a person who is being sexually harassed may be treated that way because of his or her race.

Workplace and sexual harassment are both unwanted and offensive. They both leave the person feeling demeaned, intimidated or embarrassed. They both go beyond the bounds of normally accepted behaviour. While one has sexual overtones, the other is a form of discrimination resulting from prejudice.

How do I know if what is happening to me is sexual harassment?

If the person's behaviour towards you is unwelcome and unwanted, and there are sexual overtones, then you are being sexually harassed. Touching is only one form of sexual harassment. There are other forms of sexual harassment, such as jokes, repeated and unwelcome invitations, etc., that may not involve physical contact. Any behaviour or conduct that makes your work environment intimidating, hostile or offensive can be harassment.

What is seen as sexual harassment by one person may not be by another. Just because the harasser is treating one of your co-workers the same way and that person does not mind, does not mean you are not being harassed. This is why it is important for you to let the harasser know that you do not welcome the behaviour, and that it makes you feel uncomfortable. If the behaviour persists despite your objections, then it is sexual harassment.

If you think you are being sexually harassed, you may feel embarrassed, confused or intimidated. Don't ignore your feelings – speak to a HCO, your supervisor or HR for information and advice.

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

Sexual harassment is not interaction, flirtation or friendship which is mutual or consensual.

Sexual harassment may include:

- staring or leering
- unnecessary familiarity, such as deliberately brushing up against you or unwelcome touching
- suggestive comments or jokes
- insults or taunts of a sexual nature
- intrusive questions or statements about your private life
- displaying posters, magazines or screen savers of a sexual nature
- sending sexually explicit emails or text messages
- inappropriate advances on social networking sites

- accessing sexually explicit internet sites
- 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.

Bullying

Bullying is physical or psychological behaviour or conduct where strength (including strength of personality) and/or a position of power is misused by a person in a position of authority or by a person who perceives that they are in a position of power or authority. While bullying is normally associated with unequal power relationships, peer to peer bullying is not uncommon and is an equally unacceptable behaviour. Bullying can affect people at all levels.

Although there are many different definitions of bullying, all of them contain the element of power in one form or another. The bully's power can come from several sources. In some cases a bully may use a position of authority in an organisation, such as that of a manager, to bully subordinates. In others people who control the supply of things that people want use that power to bully others. People in authority can use their positions to bully and intimidate others, and may not be aware of the effect that his or her behaviour may be having. Bullying may include a variety of behaviours and acts which, over time, create a negative workplace environment.

People who are bullied may find that over a period of time they are constantly and consistently:

- criticised and subjected to destructive and unwarranted criticism under the guise of constructive criticism - explanations and proof of achievement are ridiculed, overruled, dismissed or ignored
- subject to nit-picking and trivial fault-finding
- undermined, especially in front of others; false concerns are raised, or doubts which lack substantive and quantifiable evidence are expressed over a person's performance or standard of work
- overruled, ignored, sidelined, marginalised, ostracised
- isolated and excluded from what's happening
- singled out and treated differently
- belittled, degraded, demeaned, ridiculed, patronised, subject to disparaging remarks, threatened, and humiliated, especially in front of others
- taunted and teased where the intention is to embarrass and humiliate
- set unrealistic goals and deadlines which are unachievable or which are changed without notice or reason or whenever they get near achieving them
- working under constantly changing guidelines when others in the same area are not
- denied information or knowledge necessary for undertaking work and achieving objectives
- denied the resources and/or support necessary to do their work
- denied support by their supervisor and thus find themselves working in a management vacuum when others in the same area are not
- either overloaded with work or have all their work taken away and replaced with inappropriate menial jobs, not consistent with their work classification

- have their responsibilities increased but their authority removed
- subject to excessive monitoring, supervision, micro-management, reporting requirements etc. when others in the same area are not
- denied annual leave, sickness leave, or compassionate leave
- when away from work receiving unwelcome calls at home or on holiday, often out of work hours
- encouraged to feel guilty, and to believe they're always the one at fault.

Bullying is usually an accumulation of many small incidents each of which may seem trivial when looked at in isolation or out of context but which, over time, can cause such anxiety that people gradually lose all belief in themselves, suffering physical ill health and mental distress as a direct result.

Where a staff member makes unsubstantiated allegations of workplace bullying that are designed to put pressure on another staff member, this will also be regarded as a form of workplace bullying and will be dealt with accordingly.

Victimisation of a staff member who has reported any bullying or harassment will be regarded as a serious breach of the Code of Conduct and will automatically result in a formal investigation which, if proven, may result in disciplinary action being taken against the perpetrator.

Physical assault is a criminal offence and should be reported to the police immediately.

What is the effect of workplace bullying?

The effect of bullying can be to humiliate or intimidate an individual staff member or groups of staff and may actually or potentially adversely affect their health and well-being. Bullying in the workplace can result in absenteeism, reduced staff productivity and wastage of experienced and skilled staff through resignation. This results in the ARC facing increased costs in recruitment and training, sick leave, lost productivity, low morale, increased Comcare premiums and, potentially, high legal costs. Bullying may also have significant social and health costs for individual staff by gradually wearing them down and making them feel inadequate in every aspect of their lives.

Responsibilities

Everyone has a responsibility to ensure that their actions do not negatively affect another staff member's career, health or well-being and are consistent with the APS Code of Conduct.

Harassment Contact Officer

The roles of Harassment Contact Officer (HCO) will be filled by ARC employees. The employees filling these roles will be trained by the Australian Public Service Commission or similar for their roles as HCO. The HCO will provide advice and support for individuals who believe that he or she is being harassed.

The names and contact details of the HCO will be prominently displayed in the workplace.

The HCO must:

- provide impartial support where a complaint has been made
- provide accurate and comprehensive information in relation to harassment issues
- detail complaint resolution options available to staff
- model and promote behaviour free of discrimination

- assist managers fulfil their responsibilities in relation to harassment issues including the implementation of strategies to prevent and eliminate workplace harassment
- undertake regular training, networking and professional development to raise awareness amongst staff about workplace harassment issues and their rights and responsibilities in relation to those issues.

The HCO must assist in:

- promotional activities aimed at increasing the profile of HCO
- provide an annual (or as required) report to the Director, People and Services about the number of complaints lodged and their resolution
- educational campaigns aimed at preventing and eliminating all forms of harassment.

The HCO do not:

- have a role in resolving complaints - this is the responsibility of ARC management
- provide support to more than one party to a complaint
- manage Equal Employment Opportunity (EEO) matters, resolve EEO related complaints or implement, monitor, evaluate or develop Workplace Diversity Plans
- take sides in complaint processes
- provide mediation or conflict resolution services
- become complaint investigating officers.

Senior Management

The ARC's Executive urges any individual to report perceived harassment promptly to either her or his supervisor, the HCO or HR, whether it is directed at him or her or is happening to someone else, and undertakes that action to address the matter will occur immediately.

Managers and Supervisors

Managers and supervisors have a responsibility to provide a safe work environment that enables employees to carry out their work responsibilities free from bullying or any form of harassment. This includes:

- ensuring staff are aware of the desired standards of behaviour
- modelling the desired standards of behaviour
- establishing a supportive working environment in which it is clear that harassment is not tolerated and that everyone is to be treated with respect
- investigating complaints of bullying thoroughly and promptly
- ensuring that there is no retaliation against workers who report workplace bullying.

Failure by managers and supervisors to act when they become aware of bullying or harassment, to investigate complaints, or to take prompt and effective remedial action to deal with such complaints, may be perceived as condoning or tolerating such behaviour. Where appropriate action is not taken, the ARC may be vicariously liable.

Accountability for people management, including the prevention of bullying or harassment, lies with all managers and supervisors who share the legal and managerial responsibilities for detecting and dealing with behaviour that constitutes bullying or harassment or has the potential to develop into bullying or harassment.

When workplace bullying or harassment does occur, it has a serious and sustained impact on both the complainant and the ARC. It is important for all managers and supervisors to be

familiar with, and to actively promote and support, the ARC's policy and strategies for dealing with bullying and harassment.

Commitment Checklist

Ensure that leaders:

- demonstrate visible and strong commitment to the APS Values and Code of Conduct
- senior leaders communicate to all employees that they have a responsibility to ensure their behaviour is consistent with the Values and Code of Conduct
- senior leaders communicate to employees that inappropriate behaviour, including harassment and bullying, is not tolerated
- employees have mechanisms to protect them from victimisation for reporting inappropriate behaviour
- strategic directions incorporate values-based decision-making, and that this is integrated at all levels of planning and performance
- learning and development programs for leaders and managers include how to model the Values, and training in coaching and mentoring for values-based management
- induction programs for all employees include information about behavioural standards and expectations, and the Values and Code
- all employees know about and conform with expected standards of conduct and behaviour
- management selection policies assess whether candidates are capable of fostering a positive and productive work environment
- all employees have training and supporting material that cover their responsibilities under the Values and Code.

Individual Employees

Accountability and responsibility for both preventing and eliminating bullying and harassment behaviour rests with staff at all levels. Everyone in the ARC has a responsibility to:

- ensure their behaviour meets acceptable standards and cannot be seen as harassment
- contribute to a productive work environment
- report perceived harassment early
- report harassment of others, if witnessed, and not ignore or condone unacceptable behaviour by other employees.

Resolving Complaints

Complaint and dispute resolution should, in the first instance, be informal and then, as needed, progress through the more formal escalation processes.

When an issue arises the relevant parties should hold informal discussions in an attempt to deal with the issue in dispute. The relevant seniority of those involved in informal discussions will vary depending on the significance of that dispute. Any case involving a potentially serious dispute must be raised with the Director People and Services immediately.

Where a matter remains unresolved Employees should use the dispute resolution processes outlined in Schedule 4 of the ARC's *Enterprise Agreement 2011-2014*.

Employees have a range of reporting options, both informal and formal, for resolving complaints.

Employees can seek assistance/advice from the following people:

- a manager or supervisor (**section 5:3**)
- a trained (harassment) contact officer (HCO) (**section 5:1**)
- the Director people and Services (**section 11**)
- the employee assistance program (EAP) (**section 11**)
- the union workplace delegate.

Signals that may indicate when to use an informal process are:

- if it is a single incident
- if it appears the behaviour is unintentional
- if it appears that it can be resolved within the work area
- if the person who raised the issue agrees to an informal process.

Signals that may indicate when to use a formal process are:

- if informal processes have failed and it is unlikely that an informal process will resolve the issue
- if the behaviour is serious or longstanding
- if there is significant disagreement about what has occurred and what should happen.

Informal processes

Wherever possible, employees should be encouraged to use a process that resolves a concern or complaint through an 'informal' or 'self-resolution' process, which may involve a simple discussion through to a facilitated or mediated meeting. The outcome could be a clearer understanding of the person's concerns, an apology, an agreement about future behaviour, or improved work practices. Keeping records of the processes and resolutions is important.

In the first instance, employees may approach the alleged bully or harasser directly and ask them to stop. If an employee feels unable or uncomfortable to do this, they may ask another to act as their intermediary – normally their supervisor, an HCO or someone from HR. Anyone asked to play this role will be expected to act in a non-judgemental manner, explaining to the alleged bully or harasser how their behaviour is being interpreted and, if necessary, working with them to develop strategies to address that behaviour and in some cases to apologise. The result of this discussion and the action which is proposed should then be reported back to the complainant.

The aim is to seek to resolve the matter in the immediate work area through discussion, possibly involving mediation and an apology, or at least the cessation of the unacceptable behaviour.

In most instances such direct measures are a desirable way to resolve cases.

- They allow the issue to be addressed without an employee necessarily being labelled a troublemaker (the complainant) or as a harasser (the person against whom harassment has been alleged). This is particularly important where the behaviour was unintentional or misguided.
- They allow for positive action on the part of the alleged bully or harasser to be taken to correct or alter behaviour.
- They allow management to develop preventive measures throughout a work area without attributing blame to one person or another. This can be important when the harassment is the result of group behaviour or when what has been regarded as

“normal” behaviour in the work area is perceived as harassment by someone new to the area.

- They focus effort on putting future working relationships onto a proper basis by clarifying what is regarded as acceptable behaviour and what is not.

Most of the time informal processes will resolve the matter but sometimes it will be necessary to make a formal complaint.

Formal processes

Depending on the circumstances, employees may choose to follow through with a formal complaint by, for example:

- using formal mechanisms included in the ARC Enterprise Agreement
- reporting the behaviour to HR
- exercising the right to seek a review of action in accordance with the PS Act the Public Service Regulations 1999
- approaching the Australian Human Rights Commission.

The ARC may decide—at any stage and without consulting the employee who has made a complaint—that a formal investigation is required due to the nature and seriousness of the behaviour that is being alleged. This decision may invoke a Code of Conduct investigation.

For more serious incidents or where informal processes have not been successful, formal methods of resolution may be an appropriate course of action. An individual or group can lodge a complaint in accordance with the ARC’s Procedures for Determining Breaches of the APS Code of Conduct.

Where a matter is so serious or sensitive that it is inappropriate that it be investigated within the ARC (e.g. an allegation involving a senior officer), a request for review can be lodged direct with the Merit Protection Commissioner.

Complaints may be made under the *Australian Human Rights Commission Act 1986* where the alleged harassment is based on attributes such as sex, religion, race or ethnic origin, national extraction, social origin, colour, mental, intellectual, psychiatric or physical disability, marital status, sexual preference, age, political opinion or trade union activity.

Individuals are strongly encouraged to contact HR or EAP to discuss issues prior to proceeding with any formal action. HR or the EAP are able to provide information about workplace harassment and its prevention, to assist managers and supervisors in educating and promoting the benefits of good working relationships, and to deal effectively with harassment issues that may arise.

Any suspected breaches of the criminal law should be reported to the Executive General Manager. The *PS Act* affords protections to whistleblowers against discrimination and victimisation. Personal information will be treated in accordance with the Information Privacy Principles of the *Privacy Act 1988*.

Record Keeping

The nature of the documentation to be collected and retained will depend on the level of formality of the complaint.

The ARC will maintain basic records of harassment cases for a number of reasons:

- to make mandatory reports to the Public Service Merit Protection Commissioner
- to ensure that the incidence of sexual harassment is monitored and particular problems areas are identified and targeted for further awareness-raising strategies. Statistical records will assist the ARC to determine whether an incident is isolated or forms part of a pattern

- to ensure evidence on how the organisation dealt with a particular case can be submitted in any subsequent legal proceedings. For example, if a complaint is lodged with the Australian Human Rights Commission or another anti-discrimination agency, records of internal action will be useful in establishing whether “reasonable steps” were taken to deal with the harassment and may assist in discharging the organisation’s liability.

Information submitted to the Public Service Merit Protection Commissioner will not contain any details as to the identity of the complainant or the alleged harasser.

When a harassment problem has been resolved within the work area, it is appropriate for supervisors to keep only limited records such as brief diary notes noting the incident and the action taken. If the complaint is subsequently formalised (either internally or externally), this can be used to demonstrate that steps were taken to deal with the matter when it was first raised. Comprehensive notes are not necessary.

Where the matter is dealt with formally outside the work area, a greater degree of documentation is likely to be required in accordance with what is required for any request for a Review of a Decision or investigation into a possible Breach of the Code of Conduct.

All notes and records must be stored in a confidential manner, in accordance with *the Privacy Act 1988* and the Administrative Functions Disposal Authority of the National Archives of Australia.

Natural Justice

The terms natural justice and procedural fairness are interchangeable and have the following three common law requirements:

- **The hearing rule:** that the person who has allegedly breached the Code has the right to be heard or present their case.
 - This means that during an investigation the accused is advised of the allegations and given the opportunity to reply.
- **The bias rule:** that no one ought to judge their own case i.e. there is a requirement that the decision maker is unbiased.
 - This means that investigators and decision makers:
 - must act without bias in relation to all procedures
 - must be impartial
 - must make decisions based on a balanced and considered assessment of the information and evidence without favour
 - should be careful to avoid the appearance of bias and,
 - should ensure there is no conflict of interest.
- **The evidence rule:** that an administrative decision must be based on logical proof or evidence material.

This means that investigators and decision makers should not base their decisions on mere speculation or suspicion, and should be able to clearly point to the evidence on which the inference or determination is based.

Defamation

Defamation is an issue that often arises in sexual harassment complaints because of the potential damage that can be inflicted on a person’s character, reputation and standing. This may affect the readiness of an employee to pursue a complaint because they have unfounded fears of being sued. Alternatively, an alleged harasser who claims to have been falsely or vexatiously accused of sexual harassment may indicate that they intend to commence an action for defamation.

Defamation law is concerned with protecting a person's reputation in the eyes of others. It is therefore not defamatory for an individual to confront a harasser directly (either in person or by letter) to alert them to the fact that their behaviour is unwelcome. Private communications of this nature do not damage reputation. Nor will it be defamatory for an individual to make a complaint to a person who has a legitimate and genuine interest in knowing about the incident, as long as the complaint is made in good faith through the proper channels it is unlikely to be defamatory.

This protection will be lost if an individual makes a complaint in bad faith without genuinely believing it to be true, is motivated by ill will or malice or indiscriminately broadcasts the allegations.

The parties to a complaint should be warned of the legal risks associated with disclosing the allegations or counter allegations to all and sundry. They should be advised to maintain confidentiality and to discuss the complaint only with those who have official responsibility for dealing with it.

Anyone with a recognised genuine interest in the resolution or investigation of a complaint of sexual harassment (either informal or formal) is protected by the defence of qualified privilege.

Statements which would ordinarily be defamatory may be made by a person in the performance of a moral, social or legal duty to another person who has a corresponding duty to receive that information. As harassment is unlawful, a person who is responsible for dealing with complaints can discuss the allegations where it is required for the performance of their duty.

Supervisors, HCO, investigation officers, etc., should maintain confidentiality at all times. Information concerning the complaint should only be discussed with other authorised personnel involved in the particular case. They should also take reasonable steps to deal with any gossip or rumours that may be circulating about the complaint.

Privacy Issues

All personal information about employees is protected under the provisions of the *Privacy Act 1988*. *The Privacy Act 1988* governs the way in which personal information is collected, accessed, secured, used and disclosed. It provides that personal information may be disclosed without the individual's consent only in certain exceptional circumstances, such as where it is required by law or where the disclosure is necessary to prevent or lessen serious and imminent harm to an individual or other parties.

Section 15A of *the Freedom of Information Act 1982* (FOI Act) makes provision for staff to gain access to documents relating to information that is personal to themselves by way of standard access under the *Privacy Act 1988*. However, since records relating to alleged workplace harassment incidents are likely to contain personal information about the complainant and the alleged harasser, the decision to grant or refuse access to these documents must be made in accordance with the FOI Act which requires consultation with the parties involved. All decisions under the FOI Act are made by officers who are specifically authorised to do so by the Chief Executive Officer (CEO). Officers who are not authorised to make freedom of information decisions are not protected from actions that may follow from unreasonable disclosure of personal information.

There are a number of exemptions that provide for documents to be refused if they contain third party information or where the disclosure of information would inhibit the resolution of a case of workplace harassment.

While the ARC will make every effort to keep information confidential, it cannot guarantee absolute confidentiality in relation to any matter that becomes the subject of subsequent legal proceedings.

Tips for encouraging a culture of respect and courteous workplace behaviour

Ensuring open communication

- make sure communication within the team is open, clear and friendly
- maintain an 'open' door
- monitor potential bullying, harassment or low morale
- provide constructive performance guidance, including positive feedback.

Strategies to promote respect and courtesy

- develop a set of agreed team behaviours that embed the APS Values and Code of Conduct
- incorporate the APS Values into performance planning and feedback cycles for all staff
- agree on a process for team members to provide feedback
- include a team building session at planning days or team meetings
- ensure support for a culturally inclusive workplace
- check that all staff have read, understood and apply the ARC's policy on Discrimination Harassment-free Workplace
- provide managers at all levels with 360-degree feedback.

Managing workloads and priorities

- prioritise tasks, and set clear and realistic deadlines
- manage the allocation of urgent work and help staff to re-prioritise workloads where necessary
- ensure staff have all the information they need to do their work
- confirm that all employees understand their role and have the skills, capabilities and training they need to perform to their full potential
- design jobs to ensure workloads are fairly distributed
- consider job rotation to give employees opportunities to broaden their experience and skills
- encourage employees to find a good work–life balance.

Examples of failing to show respect and courtesy include:

- promoting or expressing political, religious or social views at the workplace that offend other staff
- questioning a team member or supervisor in a raised voice, accusing them of bias, or claiming they are unprincipled
- yelling and/or speaking all the time and not allowing others to be heard
- ignoring and working around someone who should be involved in the process
- displaying a contemptuous attitude towards staff, particularly junior staff
- attempting humour by diminishing the dignity of a co-worker
- making belittling or derogatory remarks that diminish the dignity of other staff

- leaning toward or standing over a person so that they feel uncomfortable or threatened.

When confrontation is not courteous

Under pressure, an assertive management style may give way to bullying behaviour. Managers should be sensitive about how they are perceived by others and to know the best ways to communicate difficult or sensitive matters. In some situations, behaviour that is not intended to be humiliating, threatening or demeaning may cause distress and be perceived as bullying. Discourteous behaviour like this is unacceptable in the APS.

Perceptions matter

People's perceptions can differ about behaviour that is disrespectful or harassing. Someone might perceive a supervisor's approach as 'assertive'. Yet the person affected may think the supervisor's tone is 'inappropriate and/or rude' or 'sarcastic and belittling'.

Employees from various cultural and social backgrounds may also have different views and expectations of cultural norms and appropriate workplace behaviour.

Sometimes, even though a manager has tried to create a friendly and open environment, people working for them may feel intimidated because of the manager's status.

Frequently asked questions about workplace harassment and bullying

What's the difference between bullying or harassment and tough management?

Isn't there a fine line between admonishing people who are not performing and using strong management to get the job done?

Bullying or harassment is frequently the cause of underperformance, not the solution. There are recognised ways of dealing with underperformance; bullying or harassing the employee is not one of them and is likely to make any underperformance worse rather than better by preventing the employee from fulfilling their duties. The line between bullying and harassment is crossed when the person bullied begins to show signs of being distressed and either physically or psychologically damaged. The role of supervisors is to coach and mentor staff to achieve results. Bullying or harassment prevents employees from fulfilling their duties.

How do I make sure I don't do or say something that will offend someone?

There are some comments and behaviours that are obviously offensive. There are others that you may not realise are degrading, embarrassing or insulting. What is considered offensive may vary from person to person. Think about how you would feel to be on the receiving end. If you are unsure about whether or not something might be offensive, it probably is. Have a sensible conversation with your work colleagues if you are uncertain and ask them how they feel about it.

What should I do if I feel I am being bullied or harassed?

If someone else's behaviour towards you makes you feel uncomfortable it is important to tell them straight away and ask them to stop. The longer you leave it before saying anything, the more likely it is that the behaviour will be repeated. If you find it difficult to speak to someone about it, consider sending them a short email along the lines of "When you do I feel and I would like you to not do this again."

You may also elect to speak to a HCO, your supervisor, HR or the EAP.

What should I do if I see something happening to someone else that I consider to be harassment or bullying?

Everyone has a responsibility for preventing harassment and contributing to a productive work environment.

Harassment will generally be apparent to more people than just the person being harassed. If you see a situation that looks like harassment or bullying, take steps to stop the offending behaviour. Tell the harasser that you consider their actions inappropriate.

Be supportive and understanding if the person being harassed discusses the situation with you. Encourage them to take steps to stop the offending behaviour. If the person is too intimidated to take action, offer to accompany them in taking the matter forward to a supervisor, a workplace HCO or HR. If you have relevant information, be willing to share it. This will help if an investigation takes place.

An assertive and critical response to harassment by witnesses will clearly demonstrate that the behaviour is not approved or condoned by others.

Do I have a responsibility to report what I have seen?

Yes. Every Australian Public Service employee is responsible for helping to keep the workplace free of any form of harassment.

Why did he/she pick on me? Is it my fault I'm being harassed or bullied?

You did not ask to be harassed. You have a right to work in an environment that is free of harassment of any kind.

Workplace harassment is usually an attempt by one person or a group of people to use power over another. The issue, then, is not what you did to invite the harassment. Harassment is behaviour that the person ought reasonably to have known would be unwelcome. It is important, though, for you to let the person know that the behaviour is, in fact, unwelcome and to do this as quickly as possible – the longer the behaviour goes on the more difficult it is to raise it. If you do not feel able to do this face-to-face you can seek support from your manager, the HCO, the EAP or HR.

What if people tell me I am being too sensitive?

In many instances people do not commit workplace harassment maliciously. Some people use the guise of good-natured teasing to isolate someone who is different but what they consider good-natured teasing may hurt or embarrass the other person. In those cases, it is important to let the person know you do not appreciate their behaviour. In most cases of unintentional harassment, the behaviour will stop. However, if it continues, it is important to seek help from someone in authority.

What do I do if the behaviour doesn't stop after I've confronted the harasser?

If you've tried to resolve the situation on your own with no success, you now need to get someone else involved. Who you choose and how you want them to intervene will depend on the situation -- how serious it is, how long it has been going on, who the harasser is, and so on. Consider talking to:

- your manager or supervisor (unless, of course, this person is the harasser)
- the harasser's supervisor
- a HCO

- the EAP
- HR

They can provide you with information and advice and may be able to take steps to help resolve the issue informally such as through discussion, possibly involving mediation and an apology, or at least the cessation of the unacceptable behaviour.

In most instances such direct measures are a desirable way to resolve cases because:

- they allow the issue to be addressed without an employee necessarily being labelled a troublemaker (the complainant) or as a harasser (the person against whom harassment has been alleged). This is particularly important where the behaviour was unintentional or misguided
- they allow for positive action to be taken to correct or alter behaviour
- they allow management to develop preventive measures throughout a work area without attributing blame to one person or another. This can be important when the harassment is the result of group behaviour or when that has been regarded as "normal" behaviour in the work area is perceived as harassment by someone new to the area.
- they focus effort on putting future working relationships onto a proper basis by clarifying what is regarded as acceptable behaviour and what is not.

Most of the time informal processes will resolve the issue but sometimes it will be necessary to make a formal complaint.

What should I do before making a formal complaint?

If you believe that you are being harassed or bullied and are not confident that the situation can be resolved informally, prepare for the next step by making a written record of the dates, times and nature of the behaviour, and the names of any witnesses. If the harassment consisted of verbal remarks, try to write down the exact words used. Also, record what you did to stop the behaviour or show disapproval. Make a record as soon as possible after the harassment occurs, so the details are still fresh in your memory. Once you have noted things down, sign and date your account of the incident. Keep a copy of this written record in another place.

You may still be able to resolve the complaint informally through a mediator. This may be as effective as a formal complaint and is less time consuming and less visible. Severe situations of harassment, however, may call for an immediate formal complaint. You are the best person to decide which route to take. Ask a HCO, HR or the EAP about the options available to you.

What if I am harassed in the workplace after I have made a complaint?

Under the *Discrimination and Harassment-free Workplace Policy*, management is required to protect you against retaliation. If you experience any retaliation after you have made a complaint, advise someone in authority. Retaliation may include even subtle forms such as a "chilly climate" in your workplace.

What should I do if someone accuses me of harassment?

Make sure you understand the exact behaviour that is making the person uncomfortable. Apologise, and stop the behaviour **immediately**. If you think there has been a misunderstanding about the behaviour between you and the person, ask your supervisor to work with you to resolve the situation on an informal basis.

If I've always acted like this with my staff and co-workers, why all of a sudden is it harassment?

Each person reacts differently to certain situations. What is harassment to one person may not be to another. For example, some people may find certain behaviour, such as a supervisor putting their arm around an employee or a co-worker telling an ethnic joke, to be entirely appropriate. Others may consider this harassment. In cases such as this, the person who is uncomfortable with the behaviour has a responsibility to let you know their feelings. However, you also need to notice how an individual reacts to your behaviour. Look for body language that indicates the person is uncomfortable with what you are doing or saying. If you are unsure of their reaction, ask the person if your behaviour is unwelcome.

Situations of more obvious harassment (such as touching of a more sexual nature or physical assault) will be viewed on the basis that you ought reasonably to have known your behaviour was inappropriate in the workplace.

What if I didn't intentionally harass the person?

The results of the behaviour, rather than the intentions behind them, are what matter. If your behaviour is unwelcome, and causes the person to feel uncomfortable, embarrassed or degraded, then it is harassment. Situations such as this can normally be resolved by a sincere apology and immediately stopping the behaviour.

What can I as a supervisor do to prevent harassment?

- Be a role model. Never engage in or condone behaviour that could be interpreted as harassment.
- Establish a supportive working environment in which it is clear that harassment is not tolerated and that everyone is to be treated with respect.
- Ensure that staff maintain appropriate standards of behaviour in the workplace.
- Monitor the working environment. Inappropriate pictures or posters, insults or offensive jokes may indicate a harassing environment. Remove them.
- Show you take the issue seriously. Discuss it at meetings. Host an awareness session. Ensure your staff know that workplace harassment and discrimination are unlawful.
- Watch for signs that harassment is taking place. Rumours, sudden changes in turnover or illness, decreased motivation and lower job performance may indicate that harassment is taking place.
- Respond to complaints promptly.

What is vicarious liability?

Vicarious liability refers to the responsibility of the ARC, including its managers and supervisors, to ensure they promote management and work practices that ensure the workplace is free from harassment under anti-discrimination legislation. The ARC may be found to be vicariously liable for the acts or omissions of its staff unless it can demonstrate that it took all reasonable steps to prevent the acts from occurring. The ARC may therefore be liable for damages for harassment by one of its staff even if it is not directly involved in the harassment.

I've warned one of my employees a number of times about harassing a colleague in the work group. The employee persists in this behaviour, and the colleague has now asked to be transferred out of the area. What do I do?

Transferring the colleague to another area may bring a short-term remedy, but it does not solve the problem. You must make your standards known and take action against those who engage in harassment, and not just 'rescue the victim'. Where the harasser has not followed instructions, you should initiate action to determine whether there has been a breach of the

Code of Conduct, in accordance with the ARC's procedures under section 15 of the PS Act. It may be appropriate to assign the alleged harasser to other duties while determining the outcome of the investigation.

One of my employees seems to be having trouble with excessive attention from a colleague in the next work area. The employee has not made any type of complaint. Should I interfere?

As a supervisor, you are to ensure your employees have a safe workplace where they can work effectively and efficiently. There are various reasons why people do not complain about harassment: fear of retaliation, lack of confidence, fear of ridicule, embarrassment or belief that it is normal behaviour in the ARC. When talking to your employee, you might emphasise your responsibility for ensuring that everyone has a harmonious work environment and ask if there are any difficulties with the work colleague. The colleague's supervisor should be made aware of the possibility of harassing behaviour. If you sense that there is a problem and do nothing at all, the situation may develop to the point where there are regular absences, work-related stress and lowered work output. There is also the possibility that your organisation will be liable if no action is taken.

What do I as a supervisor do when I get a complaint?

You have an obligation to treat every harassment complaint seriously and help those involved find mutually agreed outcomes. You must respond to any complaints made to you immediately, without delay. You must also treat them discreetly, with respect for the sensitivity of the situation. The complaint should be discussed only with those who are involved in the resolution of the case.

Informal ways of dealing with harassment complaints focus on resolution rather than factual proof or substantiation of a complaint. They can include:

- the person who feels harassed wanting to deal with the situation themselves but seeking advice on possible strategies
- the person who feels harassed asking you to speak to the alleged harasser on their behalf which would involve you speaking to the alleged harasser in private and reiterating the ARC's Discrimination and Harassment-free Workplace Policy to them without assessing the merits of the case
- the person who feels harassed making a complaint and the alleged harasser admitting the behaviour with the complaint being resolved through mediation or counselling.

Informal action is usually appropriate where allegations are of a less serious nature but the person feeling harassed wants it to stop, or where that person wants to pursue an informal resolution, especially when the people involved are likely to have ongoing contact with each other and want to pursue an informal resolution so that the working relationship can be sustained. It is not necessary for someone to exhaust informal attempts at resolution before making a formal complaint.

Formal complaint procedures focus on proving whether a complaint is substantiated. They normally involve:

- investigation of the allegations
- application of the principles of natural justice (see below for further information)
- making a finding as to whether the harassment occurred
- submitting a report with a recommended course of action to the appropriate decision maker
- implementation of a considered outcome.

Formal procedures may involve either a request for review of actions or a complaint alleging a breach of the Code of Conduct. Formal procedures are usually appropriate where informal

attempts at resolution have failed; the person alleging harassment has been victimised; the person alleging harassment wants to make a formal complaint; the complaint is against a more senior member of staff (formal procedures may help to ensure that the complainant is not victimised or disadvantaged); the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of people involved; or where allegations of harassment are denied and the person who made the allegations wishes to proceed and an investigation is required to substantiate the complaint. If someone wants to lodge a formal complaint, speak to HR as soon as possible

Training on how to handle harassment complaints is available. If you are not certain what to do, speak to HR.

How do I tell the difference between someone who is really being bullied or harassed and someone who is claiming bullying to hide their poor performance?

The person who is genuinely being bullied will have, or quickly be able to construct, a folder of evidence, often covering several months, maybe years. They will report a stream of bullying behaviours, especially nit-picking, fault-finding, overloading with work, removal of work and constant criticism and allegations, all of which lack substantive and quantifiable evidence, for they are just the bully's opinion. It's the PATTERNS, the regularity and the number of incidents that reveal bullying.

The person who is making a spurious claim is likely to produce far less evidence and is more likely to concentrate on substantive complaints about their work performance.

It is particularly for Managers to keep good written records or conversations about performance feedback and if possible to get the employee to sign a record of conversation/meeting to confirm it is an accurate reflection of the meeting.

What will happen to the harasser?

If the situation is resolved informally and the harasser stops the behaviour, nothing will happen. If a formal complaint is made, and the person has been found to have committed harassment, they will be disciplined. The discipline taken will depend on the seriousness of the misconduct and the circumstances surrounding the harassment. It can range from a reprimand, to suspension without pay, to dismissal.

What if I put in a complaint and the person is found innocent? Will I be disciplined?

No. Disciplinary action will only be taken against you if you are found to have knowingly made a false accusation against the other person.

What if I am wrongfully accused of harassment?

All complaints will be addressed. The expectation is that complaints will generally be made in good faith and will be dealt with accordingly. The consequences of making a false accusation can range from a reprimand, to suspension without pay, to dismissal.

If a formal investigation takes place and you are found to be guilty of harassment, you have the right to appeal any disciplinary action taken against you.

If you have reason to believe that, in making a complaint against you, the employee has breached the Code of Conduct in some way, then you can bring this to the attention of the ARC – this may invoke a Code of Conduct investigation.

Further Resources

- [Human Resources Intranet](#)
- [ARC Harassment Contact Officer](#)
- [Employee Assistance Program](#)
- [Ethics Advisory Service](#) and [Ethics Advisory Service Website](#)
- [WHS Legislation](#)
- ARC Procedures for Determining a Breach of the Code of Conduct
- [APSC Publications](#)
- [Building a Positive Workplace \(APSC\)](#)
- [Values in the Australian Public Service, Values and Conduct \(2002\)](#)
- [Guidelines on solving Workplace Issues](#)
- Advice No 22: Discrimination in APS Employment.

Examples of hypothetical Case Studies

1. In a series of meetings, a staff member engaged in behaviours which were discourteous and disrespectful towards others. He was rude and used inappropriate tone, and spoke in a sarcastic and belittling way. He adopted an adversarial style, interrupted other participants and made repeated demands for information he had been told was not available. He did not allow a participant to give her side of the story and instead accused her of lying and berated her aggressively. He also leaned towards and used body language that caused a participant to feel uncomfortable and threatened.

The employee ultimately had his employment terminated for breaching section 13(3) of the Code of Conduct—see *Curr v Australian Taxation Office* (2004) U2004/3067 PR953053, 8 November 2004.

2. Jane is making great progress on a graduated return to work program following an injury and subsequent treatment under compensation. Jane is determined to live a full life again and is making great efforts to regain her normal strength. Some of her colleagues regularly make remarks about her great ability to cope, and imply that she has faked much of her problem, especially as she has now returned to her Thursday evening craft class and goes swimming twice a week.

Harassment can occur even when there is no intention to harass. If the 'victim' feels threatened, humiliated, offended etc. then it is harassment. Employees are to be sensitive to how the other person feels and to refrain from behaviour that could be seen as harassment. Providing a stressful work environment for Jane is only likely to aggravate her problem and delay her full recovery. Rehabilitation after an injury is intended to restore the person to a full life, and is not intended to enable the person to go to work and have no time or strength for an outside life. The social contacts and sporting activities may be very helpful in Jane's recovery, and the swimming may actually be part of the treatment.

3. Stefan is annoyed that his supervisor takes such an interest in his work – checking what he is doing and hovering nearby whenever he answers telephone enquiries. Stefan feels he is the only one to be watched so closely, and thinks it is because he speaks English with a noticeable accent. Is this harassment, or just careful, responsible supervision?

Stefan would have received appropriate training and coaching in the subject matter of his job and the supervisor should be satisfied he is capable of providing accurate

information to telephone callers. Presumably, the selection criteria for Stefan's job indicated that the person would need to take telephone enquiries and Stefan would not have been selected if he could not satisfy this requirement. In a normal workplace conversation, the supervisor would know if Stefan was not capable of doing the job because of poor English – there should be no reason to listen to his telephone conversations. The supervisor may be making a common mistake by assuming a distinct accent indicates poor language skills. The supervisor's behaviour could become quite worrying for Stefan and cause him stress and doubt about his job security, leading to lowered work performance. The supervisor seems to be discriminating against Stefan on the basis of his language background, and if this persists, it could be regarded as harassment, not just inappropriate supervision. (On the other hand – maybe the supervisor is just checking whether reports of numerous personal calls are true!)

4. Lois is concerned that a male colleague often finds excuses to make contact at work, and even rings her at home. He has invited her out for lunch several times, which she has always declined with some polite excuse. Lois has told him she is not interested in any personal relationship with him. Does Lois have any right to consider this as harassment, or should she just be more assertive?

Maybe Lois could benefit from assertiveness training, but even so, there would be no justification for the colleague to take advantage of her hesitancy. This is definitely a case of harassment. If Lois has told him she is not interested in a relationship and has never given him hope by accepting his invitations, she now needs to tell him she wants the invitations and contacts to cease. He should immediately stop making approaches to her. The fact that he has rung her at home is a concern, because any discomfort Lois feels at work because of his attentions has now extended to her private life. The colleague is causing her anxiety at all times. This will in time have an effect on her health, her work performance and her willingness to attend work. Even staying home on sick leave may not remove her from the source of stress. Where this type of harassment is not stopped, the 'victim' often loses even further, as she may feel she has no option but to resign. For Lois, the harassment could continue even after resignation.

Where a supervisor is aware of such harassment, action should be taken against the harasser, even if Lois does not lodge some sort of complaint. If counseling is unsuccessful, disciplinary action could be taken. Management could issue a written direction to the harasser not to pursue unofficial contact with Lois, since this behaviour has an adverse effect on working relationships and on the work performance of the person being harassed. In a case similar to this, the Federal Court decision held that it was reasonable and appropriate for management to direct an employee not to make contact with another employee apart from official duties, at any time, inside or outside working hours.

Re needing to be rude – no one should have to change their normal personality in order to be treated properly, assuming their normal personality is normal! We are supposed to welcome and value diversity and this should include reasonable personality differences.