



AFP National Guideline on Workplace Harassment

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Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on disclosure of information](#).

Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

Aim of Policy

The aim of this policy is ultimately to eliminate all workplace harassment, through education and by establishing processes which focus primarily on workplace resolution and place responsibility on managers and team leaders for such resolution.

The emphasis is on changed behaviour rather than punishment, except where such behaviour is potentially a criminal offence, or where agreements to change or desist are not adhered to, in which case disciplinary procedures may have to be invoked.

The policy follows a similar approach to the Conflict Management Policy, which also focuses primarily on workplace resolution.

What is harassment

Workplace harassment is behaviour which is offensive, abusive, threatening or belittling, directed at an individual or group of workers because of some perceived or real attribute. Such attributes may include race, colour, ethnic origin, religion, sex, sexual preference, marital status, pregnancy, age, or physical or mental disability.

Harassment is behaviour that is unwelcome, unsolicited, unreciprocated and usually (although not always) repeated. It makes the workplace unpleasant, humiliating or intimidating for the person or group targeted by this behaviour.

Workplace harassment is a form of workplace discrimination, and as such, is unlawful. Discrimination generally operates in an environment in which the balance of power is unequal. Harassment occurs when that power is improperly exercised to the detriment of a person or a group of people. It is the way that some people go about exerting power over other people, or making themselves feel good by making someone else feel miserable.

There are many consequences of harassment at work, both at individual and organisation levels:

For individuals, these can include lack of self-esteem or confidence in carrying out tasks, to actual or potential disadvantage in individuals' opportunities for appointment, promotion or transfer

For an organisation, it often results in loss of productivity and of effective work practices.

Workplace harassment should not be confused with legitimate comment and advice, including negative comment or feedback, from managers and supervisors on the work performance of an individual or group.

Examples of Workplace Harassment

Some examples of the forms that harassment at work can take include:

- offensive physical contact or coercive behaviour which is intended to be derogatory or intimidating
- interference with an employee's workspace, work materials, equipment or property, apart from that which is necessary for the ongoing work of the organisation
- continual unjustified and unnecessary comments about an employee's work or capacity for work
- pictures, posters, graffiti or written material which is offensive or obscene
- phone calls, letters or electronic mail messages on computer networks which are threatening, offensive or abusive - directed either to home or work
- persistent following or stalking within the workplace, or to and from work
- dismissive treatment or material expressive of prejudice or stereotyped assumptions about the group to which an employee may belong, eg about religious or food preferences, social or cultural customs
- trivialising issues which relate to the status of ethnic groups, either sex or in relation to homosexuality
- continual exclusion of an employee from normal conversation, work assignments, work related social activities and networks in the workplace
- telling sexually oriented jokes, engaging in unwanted sexual teasing, subjecting another employee to pressure for dates, sexual advances or unwelcome touching
- comments about a person's physical shape, appearance, age (either young or old)
- sexual assault or rape. **Note** - that these are criminal offences and unlike the other behaviours above, should always be treated formally.

Legislative Provisions

Harassment is made unlawful by the following legislation:

the [Sex Discrimination Act 1984](#)

Under this Act, sexual harassment is defined as unwanted, unsolicited and unreciprocated conduct of a sexual nature. It may be an isolated incident or a series of incidents. Sexual harassment can happen to anyone; to women and men, to homosexuals and heterosexuals, to young and old. It is conduct about which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

Different social or cultural backgrounds may lead people to perceive the same conduct differently.

Conduct of a sexual nature includes making a statement of a sexual nature either to the harassed person or in his or her presence. It applies to both oral and written statements.

the [Racial Discrimination Act 1975](#)

This Act defines as unlawful any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin to a person which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

Racial harassment is covered by this legislation as a form of racial discrimination.

the [Disability Discrimination Act 1992](#)

This legislation outlaws any discrimination or harassment in employment due to disability. Harassment that is based on a relative or associate having a disability is also unlawful.

Disability is fully defined in the Act, but in brief it covers total or partial loss of physical or mental functions, total or partial loss of part of the body (eg amputation), presence in the body of organisms capable of causing disease or illness (eg HIV or hepatitis), malformation or disfigurement, a disorder that results in the person learning differently (eg dyslexia) or having a psychiatric condition. It also covers people who use a palliative or therapeutic device, including leg or neck braces, using a wheelchair or a guide or hearing dog.

In this regard such a disability can be present at the time, have occurred in the past, may occur in the future and can include people to whom a disability is imputed (eg assuming a healthy male homosexual has AIDS).

Legal Liability of the AFP

Under these Acts, the AFP is liable for the actions of its staff or the failure of its managers and team leaders to act where there is a breach of these statutes.

In addition, under the [Occupational Health and Safety \(Commonwealth Employment\) Act 1991](#), managers and team leaders must take all reasonably practicable steps to protect the health and safety of their staff at work. They must provide and maintain a work environment that is safe for employees without risk to their health and ensure adequate facilities for their welfare in the workplace.

Failure to take reasonable precautions to prevent workplace harassment from occurring, or to deal promptly and effectively with any complaint of harassment, may be in breach of an employer's duty of care to employees.

Management Responsibilities

Management of the AFP has a responsibility to develop and advise all personnel of policies, practices and procedures to minimise the risk of harassment and to deal promptly with complaints and with instances of harassment. Failure to take prompt and effective remedial action can be seen by employees as condoning or tolerating such behaviour.

Individual managers and team leaders have a responsibility to ensure that harassment does not occur in the workplace or work team and to deal swiftly with instances. It is not necessary to wait for a complaint; if a team leader becomes aware of behaviour that could give rise to complaints of harassment, he/she has a responsibility to make it clear that such behaviour is unacceptable and to take further action if it does not cease. Employee concerns or complaints of harassment must be treated seriously and addressed sensitively and confidentially.

Managers and team leaders also have a responsibility to model appropriate and acceptable standards of behaviour at work, to make employees aware of these standards and to ensure that proper standards of conduct are always maintained in the workplace. In relation to actual

or potential harassment, they have a responsibility to take appropriate action.

Employee Initiated Resolution

Employee Options

An **employee** may take up a workplace harassment issue either informally or formally.

Informal Options

Employees may take the issue directly to their immediate manager or team leader. This option is to be preferred for most instances, in the interests of a swift and appropriate response. Where the issue concerns rape or sexual assault, informal resolution is not appropriate and all such instances must be dealt with as a formal complaint through IID.

In the event that the manager or team leader is the alleged harasser, that manager's supervisor or a member of senior management should be approached to resolve the situation.

Employees can also choose to first approach their union or an Equity and Diversity Contact Officer.

Equity and Diversity Contact Officers

All AFP regions have nominated and trained Equity and Diversity Contact Officers (EDCOs) who can be approached as the first point of contact for any workplace harassment issue. A list of these people should be readily accessible within each region.

Their advice can be sought by complainants on ways of resolving the issue.

They are also available to provide advice to managers about resolution options, and about workplace harassment in general, including education for work areas.

Please note that for a manager or the person complained about to seek advice from the same contact officer who has been approached by a potential complainant could pose a conflict of interest for that officer. Advice should be sought from another contact officer in such a case.

Formal Options

Formally, the person may choose to make a formal complaint to the Human Rights and Equal Opportunity Commission (HREOC) under the Sex Discrimination Act 1984, the Racial Discrimination Act 1975 or the Disability Discrimination Act 1992. A complaint can be lodged with HREOC by the employee, a number of employees or by a trade union on behalf of employees.

Within the AFP, the person or persons may also take the issue up through the Grievance Handling Procedures or the AFP formal complaints procedures as set out in the Regulations.

Solving Workplace Harassment Issues Informally

Policy

The policy of the AFP is that, as far as possible, all workplace harassment issues should initially be dealt with informally within the workplace. Where the issue concerns sexual assault or rape, or where the workplace supervisor is involved, such an approach is not suitable. Unless there is a good reason why informal workplace resolution is not appropriate, more formal methods will not be attempted until serious attempts at resolution within the workplace have been pursued.

Informal measures are desirable to resolve all but the most serious cases because:

- they focus on putting future working relationships onto a proper basis by clarifying what is regarded as acceptable behaviour
- managers and team leaders can set up awareness raising or preventive measures across the work area without blaming one person or another - this can be important when harassment is the result of group behaviour or when what has been regarded as normal behaviour in a work place is perceived as harassment by someone new to the area
- they allow individuals concerned to take positive actions themselves to correct or alter their behaviour
- they allow the case to be resolved without an individual necessarily being labelled as a harasser or as a victim - this is important where the behaviour was unintentional.

Informal Resolution by the Person being Harassed

An employee who believes he/she is the target of harassment can seek advice on what to do about it on an informal, confidential basis from his or her manager, team leader, an EDCO or a union representative.

Options for direct action on the part of the employee include

- asking or telling the person(s) to stop and in the process, drawing their attention to the AFP's legal responsibilities in relation to the prevention of workplace harassment and the AFP's policies for its prevention
- writing a personal confidential letter to the person(s) outlining the behaviour which is considered offensive and asking that it stop - keep to the facts - what was said or what was done and effect of it - do not include matters that are irrelevant.

Direct action can be particularly useful when the person concerned does not realise that his or her behaviour is perceived as offensive.

The least effective ways of responding are to go along with the behaviour, to avoid the behaviour or to ignore the behaviour and do nothing.

It can also be useful, in the eventuality that swift, informal resolution does not occur, to document the facts about particular instances, including times, dates and the names of anyone who witnessed the behaviour.

Workplace Resolution by Manager

Informal harassment complaints must be treated seriously and sensitively. Ways of approaching resolution include:

- confidential discussion with the concerned personnel
- the manager or team leader conciliating an outcome between the parties
- using a trained conciliator external to the workplace or from outside the AFP
- supporting the complainant in taking direct, informal action
- workplace awareness raising about harassment.

Confidential discussion with both the employee and the alleged harasser should be a first step, ensuring that they are informed of their rights and responsibilities.

At the same time, a manager or team leader should ensure the employee complaining is acting in good faith.

The main outcome sought through discussion should be an understanding of the effect of the any offensive behaviour and its cessation, and, if appropriate, an apology from the alleged harasser.

The manager may take primary responsibility for conciliating a satisfactory outcome, or he/she may seek the assistance of a trained conciliator from within or outside the AFP. Any conciliator so used should be someone who not only has skills in conciliating differences between individuals, but understands the employment and discrimination framework within which such a case must be dealt with.

A manager or team leader must not resolve the case in such a way as to leave the employee no options other than being reconciled to offensive behaviour.

In some cases, it may be appropriate to go beyond the concerned parties for resolution, such as when it becomes apparent that the workplace culture supports inappropriate behaviour. If, for example, one or more employees have expressed offence at posters, jokes or certain types of behaviour, it is important that all staff in the workplace are made aware of the issue and that the manager makes it clear to all what is considered to be acceptable behaviour. It may also be necessary to monitor the workplace to ensure that the message has been received and is acted upon.

The manager or team leader may also support the complainant in taking direct action, as explained below. In such a process, the manager would be available to provide advice and then follow up such action if it were not successful.

Considering Outcomes

In considering appropriate resolution outcomes, managers or team leaders should ensure that the wishes of the person complaining are taken into account. Judgment needs to be exercised in this regard so that the outcome is commensurate with the behaviour. It is not appropriate that serious offences be virtually ignored because the complainant does not wish to get someone into trouble. Neither is it appropriate that unacceptable behaviour be treated as though it were a criminal offence.

Appropriate outcomes may include:

- cessation of the behaviour and understanding by the individual(s) concerned that further instances may be the subject of more formal disciplinary processes
- an apology and cessation of the behaviour
- understanding across the workplace that certain types of behaviour are unacceptable and

how certain types of behaviour may offend

- greater understanding between concerned parties about language or behaviour that ensures that offence is unlikely to be given or taken in future
- group or individual counselling.

It may be necessary to go beyond such outcomes and consider the following:

- physically relocating some or all of the concerned individuals. It is important that such an outcome does not focus on moving only the complainant; this is in effect a punishment of the aggrieved person and is only appropriate when that is the desired outcome of that person
- management action or, where there is a suspected conduct issue as defined by part V of the *Australian Federal Police Act 1979* (Cth), the matter must be reported either through the Confidant Network or CRAMS
- bringing in external assistance in changing the cultural norms of the work area
- introduction of a new manager or team leader.

Formal Resolution of Workplace Harassment

Not all issues will be appropriate for informal resolution and some informal resolutions will not be successful. Where the employee is dissatisfied with the outcome of such a process or believes that because of the seriousness and sensitivity of the matter, external and/or formal resolution can be sought through:

- the AFP complaints or grievance mechanisms
- HREOC
- the Ombudsman.

The processes for internal investigations are not included in this policy paper, but the point should be made that using the above mechanisms to seek resolution does not guarantee that the matter will be the subject of a formal investigation. IID will make judgments about complaints and may ask that it be dealt with in the workplace in the first instance, and, in relation to most workplace harassment issues, both the Ombudsman and HREOC will usually require the organisation concerned to attempt an internal resolution before they are prepared to undertake their own investigation or hearing.

Privacy Issues: Record Keeping

Any formal AFP records in relation to sexual harassment cases are covered by policies in relation to the keeping of and access to, private records. Notes kept by EDCOs should be treated similarly; their notes however, should not be available to investigating officers without the specific approval of the complainant.

Such records need to be kept in confidential files in secure cabinets and only disclosed to those staff who need to have access for official purposes. This does not include private notes or records kept by a complainant.

Records kept by managers or team leaders in relation to the informal resolution of a particular issues should be maintained in case:

- the issue proves not to be resolved and further action is necessary - eg counselling or

disciplinary action, claims of compensation or the issue is then taken to a formal investigation or outside body

- there is need to monitor the behaviour of individuals and/or a particular workplace to ensure that the issue has been resolved.

With counselling or a formal finding from the Human Rights and Equal Employment Opportunity Commission, records should be kept for a period of two years.

Defamation

Any form of harassment is a potentially serious offence which should be dealt with in a sensitive and discreet manner. An allegation should therefore only be discussed with those people whose job involves dealing with such issues, who are there to provide welfare or psychological support for employees or who have managerial responsibility for the conduct of relevant personnel. This will include EDCOs, union delegates, Equity and Diversity staff and where relevant, officers investigating complaints and witnesses.

If a complaint is made in good faith and is disclosed only to those with a genuine need to know, complainants and those investigating or with a genuine role in resolution, are protected against defamation actions.

It is not defamatory for the complainant to confront the alleged harasser directly and in private, nor to send him or her a private letter outlining the offensive behaviour.