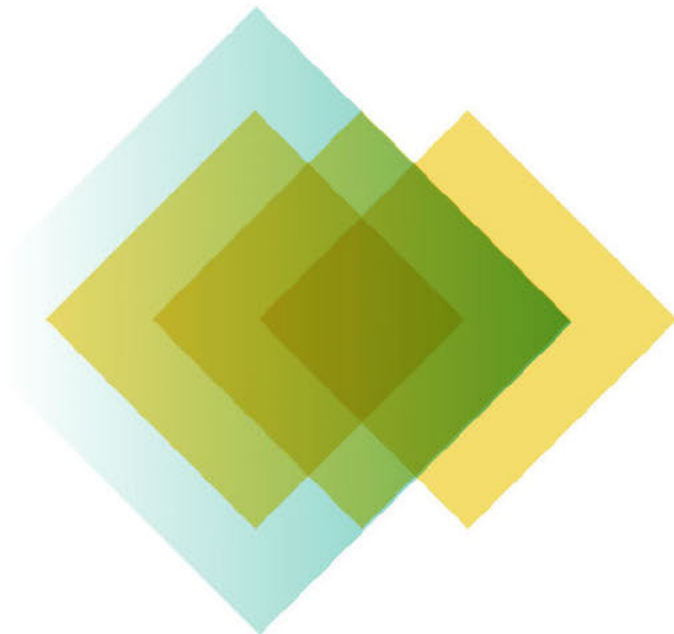




Australian Government

Office of the Australian Information Commissioner

OAIC Workplace Harassment policy



6 September 2021

Version	Name	Changes	Date
0.1		Clearance from Human Resources	13 November 2012
1.0		Final signed by Australian Information Commissioner	30 November 2012
1.1		Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0		Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1		Updated Word template	January 2019
3.0	Mark Smolonogov	Revised and updated policy following consultation with OCF	September 2021

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Statement by the Australian Information Commissioner and Privacy Commissioner

The Office of the Australian Information Commissioner (OAIC) is an organisation which values fairness, equity and diversity. The OAIC seeks to promote a work environment which both supports productivity and values individual staff members. To meet these objectives, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. The OAIC supports a workplace that upholds the Australian Public Sector (APS) values and is one in which all employees are treated with courtesy and respect and without harassment.

Harassment in the OAIC will not be tolerated. It is a form of employment discrimination and is unlawful. Ignoring workplace harassment can have serious consequences. Our managers and supervisors are responsible for providing leadership and for maintaining a non-discriminatory and harassment free workplace. They should ensure that all staff are aware of their rights and responsibilities regarding workplace harassment under this policy and are responsible for taking action if they become aware of harassment. Every staff member has a responsibility to treat colleagues and members of the public with courtesy and respect, and to behave at all times in a manner that maintains or enhances the reputation of the OAIC and the APS.

In an increasingly complex online world, we should remain vigilant to the many platforms across which bullying and harassing behaviours can occur.

The OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Staff may choose to approach any of the HCOs even if they do not wish to make a formal complaint. There are procedures in place if staff choose to lodge a formal complaint about harassment. Staff are also able to contact our People and Culture Team for further information, advice or support.

The OAIC is committed to providing a workplace free of harassment and one in which staff are supported and treated with courtesy and respect.

Angelene Falk

Australian Information Commissioner and Privacy Commissioner

September 2021

1. What is workplace harassment?

- 1.1 Workplace harassment is offensive, abusive, belittling or threatening behaviour directed at an individual or a group, which may result from some real or perceived attribute or difference. Such attributes or differences may include gender, race, disability, age, sexual orientation or religion. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour. Harassment may also occur in any work-related context not only during working hours and at the workplace. This may include attending conferences, office social events, business trips, social networking sites and also include interactions with clients.
- 1.2 Any form of harassment or victimisation is unlawful, is inconsistent with the APS Values and Code of Conduct and diversity principles and is likely to undermine work relationships and efficiency.
- 1.3 For harassment to occur there does not need to be an intention to offend or harass. Moreover, often harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to harassment may seem unaffected. However, a series of individual incidents or a single serious incident can undermine the standard of conduct within a work area, which may erode the wellbeing of the individual or group targeted.
- 1.4 The absence of complaints is not necessarily an indication of the absence of harassment. The person subjected to harassing behaviour does not always complain. This is not necessarily because the harassment is trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.
- 1.5 Workplace harassment should not be confused with legitimate comment and advice (including relevant negative feedback) from managers and supervisors on the work performance or work-related behaviour of an individual or group. The process of providing feedback to staff during a formal performance appraisal or counselling staff regarding their work performance will not always be free of stress. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening. Managers should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff. The publication 'Sharpening focus: managing performance' issued by the APS Commission, advises managers about how to give effective feedback and counselling.
- 1.6 'Uncivil' behaviour is not considered to be bullying or harassment. Whilst 'uncivil' behaviour clearly should be avoided, being discourteous, rude or impolite does not carry the same weight as bullying or harassing behaviour, particularly in the absence of a power imbalance.
- 1.7 Examples of harassing behaviour include:
 - offensive physical contact, derogatory language or intimidating actions
 - insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
 - sexualised comments, innuendo or contact
 - unjustified and unnecessary comments about a person's work or capacity for work

- openly displayed pictures, posters, graffiti or written materials which might offend some people
- phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees
- persistent following or stalking within the workplace, or to and from work or elsewhere
- disparaging remarks about malingering to employees who have made a claim for compensation.

2. Sexual harassment

- 2.1 Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. Sexual harassment is legally recognised as a form of sex discrimination. Sexual harassment and sex discrimination are both unlawful under the *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act).
- 2.2 The legal test for sexual harassment under the Sex Discrimination Act is that the behaviour must be unwelcome, be of a sexual nature and be such that a reasonable person would anticipate in the circumstances that the person who was harassed would be offended, humiliated and/or intimidated. The unwelcome behaviour need not be repeated or continuous. A single incident can amount to sexual harassment. A complaint of sexual harassment will not necessarily be dismissed because the person subjected to the behaviour did not directly inform the harasser that it was unwelcome. However, there does need to be some indication from the person's conduct or the surrounding circumstances that the behaviour was in fact unwelcome.
- 2.3 Sexual harassment can take various forms. It can involve:
- unwelcome touching, hugging or kissing
 - staring or leering
 - suggestive comments or jokes
 - sexually explicit pictures, screen savers or posters
 - unwanted invitations to go out on dates or requests for sex
 - intrusive questions about an employees' private life or body
 - unnecessary familiarity
 - insults or taunts based on your sex
 - sexually explicit emails or SMS messages
 - suggestive or sexually explicit comments or references on social media networks
 - accessing sexually explicit internet sites

- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

2.4 Sexual harassment is not interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated. It is also unlawful for a person to be victimised for making or proposing to make a complaint of sexual harassment to the OAIC or asserting a right under the Sex Discrimination Act.

3. Racial harassment

3.1 Racial harassment is unwanted behaviour towards a person based upon that person's race, colour, descent or national or ethnic. While the *Racial Discrimination Act 1975* (Cth) (the RDA) does not use the term 'racial harassment', the Act defines as unlawful any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin of 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. The RDA also makes racial hatred unlawful. Some types of workplace harassment could be seen as unlawful behaviour under the Act. Examples of racial harassment at work may include:

- threatening language and behaviour
- taunting or ostracising
- mocking of accents, cultures and customs
- practical jokes
- the display of racist cartoons, posters and graffiti
- racist emails or SMS messages
- derogatory comments about race, accents, culture, religion and customs made in person, by electronic mail, SMS messaging or through social media networks.

4. Harassment on the ground of disability

4.1 Under the *Disability Discrimination Act 1992* (Cth) (the DDA), discrimination or harassment in employment based on disability can be unlawful. Examples of harassment on the ground of disability may include:

- humiliating comments/emails or actions about a person's disability
- comments/emails or actions which create hostile environment
- overbearing or abusive behaviour towards staff with intellectual disabilities
- emails or SMS text messages that are insulting of a person's disability
- disparaging remarks/emails to staff referring to compensation claims they have made relating to their disability.

5. Pregnancy and harassment

- 5.1 The *Sex Discrimination Act 1984* (Cth) (the Sex Discrimination Act) offers protections for employees who have experienced discrimination as a result of their pregnancy or potential pregnancy. Pregnancy-related harassment may include:
- personal comments about body shape
 - unwanted and inappropriate touching of their body
 - sexualised comments
 - references to abortion
 - unwanted comments about when the worker is leaving and whether she should come back.
- 5.2 Some employees may also experience a lack of employment security or have opportunities denied to them as a result of their pregnancy or potential pregnancy.

6. Sex, sexual orientation, gender identity, intersex status, relationship status and harassment

- 6.1 The Sex Discrimination Act makes it unlawful to discriminate against someone on the basis of sex, sexual orientation, gender identity, intersex status, or marital or relationship status. While the Sex Discrimination Act does not use the term 'harassment' with reference to sexual orientation, gender identity, intersex status, or marital or relationship status, some types of workplace harassment may constitute unlawful discrimination.
- 6.2 Harassment on the basis of sex, sexual orientation, gender identity, intersex status and/or marital or relationship status, can be directed towards sexuality, sex and gender diverse people, as well as towards their partner and family members. Examples may include:
- comments about using the 'right' bathroom or shower facilities
 - comments about clothing and physical appearance
 - use of derogatory terms, slurs and name-calling
 - refusal to use someone's chosen name and pronoun
 - inappropriate questions or discussion of someone's body
 - demeaning jokes, comments, cartoons or emails
 - unwanted disclosure of personal details on record.

7. Other forms of workplace harassment

- 7.1 Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* (Cth) which defines discrimination to mean any distinction, exclusion or

preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference, or trade union activity.

7.2 The *Age Discrimination Act 2004* (Cth) (the ADA) makes it against the law to treat you less favourably because of your age. The ADA protects both younger and older Australians. Although there are no specific provisions relating to age harassment, like the RDA the general discrimination provision may capture such behaviour if based on age.

7.3 **Workplace bullying** is also harassment and is 'repeated, unreasonable behaviour directed toward an employee, or group of employees that creates a risk to health and safety'. In other words, bullying is a repeated behaviour that intimidates, offends, degrades or humiliates a worker, possibly in front of co-workers or clients. There are bound to be differences of opinion, conflicts and problems in working relations but bullying occurs when the behaviour is repeated and offends or harms an employee. The following types of behaviour could be considered bullying:

- intimidation
- teasing or regularly being subject to practical jokes.
- demeaning language, including sarcasm, ridicule or insults
- threats
- verbal abuse or shouting
- outbursts of anger or aggression
- physical or verbal intimidation
- showing contempt or disrespect, or
- ostracising, excluding, isolating or ignoring a worker; and spreading malicious gossip or rumours about a worker.

7.4 A workplace situation can be identified as bullying if a worker or workers are:

- harmed
- intimidated
- threatened
- victimised
- undermined
- offended
- degraded, or

- humiliated.

7.5 While some workplace bullying may involve verbal abuse and physical violence, bullying can also be subtle intimidation with inappropriate comments about personal appearance, constant criticisms, isolation of workers from others and unrealistic, embarrassing or degrading work demands. Workplace bullying can also be carried out via letters, email, telephone text messages and social networking sites. Bullying may also amount to unlawful discrimination or workplace harassment. Behaviour or conduct that does not constitute workplace harassment or bullying includes:

- appropriate performance management
- providing constructive and courteous performance feedback
- making structural changes to a workplace, including changes to individual roles and/or supervisory arrangements
- legitimate disciplinary action
- reasonable supervisory practices
- allocation of work in accordance with terms and conditions of employment and organisational practices
- reasonable directions by management
- expressing differences of opinion
- carrying out legitimate managerial decisions or making a complaint about the conduct of a manager or another worker, if the complaint is made in an appropriate and reasonable way.

8. Cyber-bullying

8.1 Cyber-bullying is any bullying behaviour (as defined above) using digital technologies. It is distinct from other types of bullying in several key ways:

- it allows a potentially global audience
- it is often anonymous, making it hard to hold perpetrators to account
- it can take place at any time of the day or any day of the week
- it has a degree of permanence, as online information can be difficult to remove and may be recorded and archived
- it may be difficult to escape from whilst we continue to use digital technology for many uses
- content can be duplicated easily and is often searchable.

8.2 Examples of inappropriate online conduct may include:

- using offensive or abusive language
- personal attacks
- spamming
- cyber-stalking
- creating fake social networking profiles of APS employees.

9. Victimisation

9.1 All staff must ensure that a worker is not victimised or otherwise disadvantaged in any way as a result of making an internal or external complaint, raising a grievance, or acting as a witness to a complaint. Any such victimisation may be a criminal offence.

10. Harassment by contractors or clients

10.1 Harassment may also occur where an employee is harassed by a contractor or client. This behaviour may occur in person, by telephone or online. Harassing behaviour from contractors or clients will not be tolerated. In situations such as these the employee should immediately notify their manager. The matter should be referred to People and Culture team or the Deputy Commissioner for any follow up action with the contractor or client. Where the person is from an employment agency, the agency will be notified.

11. Preventing harassment

11.1 Workplace harassment runs counter to the APS Values and Code of Conduct, as well as Commonwealth anti-discrimination laws which are administered by the Australian Human Rights Commission. Harassment is unacceptable in the workplace. Both managers and employees have a responsibility to ensure an appropriate and acceptable standard of behaviour in the workplace.

12. Legal responsibilities

12.1 Management has a legal responsibility to prevent harassment. All employees are bound by various legislation that prohibits harassment of fellow employees and ensures that there is an appropriate standard of conduct maintained in the workplace. This includes:

13. APS Values

13.1 The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the PS Act) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.

Impartial – The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to Service – The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Accountable – The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful – The APS respects all people, including their rights and their heritage.

Ethical – The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

14. APS Code of Conduct

14.1 All employees are subject to the Code of Conduct set out in section 13 of the PS Act and outlined in the OAIC's Enterprise Agreement. The Code of Conduct directly prohibits harassment.

It requires that an employee must:

- when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment
- when acting in connection with APS employment, comply with all applicable Australian laws.

14.2 An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Breaches of the APS Code of Conduct procedures include dismissal (further details are available on the OAIC's intranet).

15. Commonwealth anti-discrimination legislation

15.1 In addition to being a breach of the Code of Conduct, workplace harassment on the basis of race, sex, age, disability or sexual orientation may also breach both the anti-harassment and the anti-discrimination provisions of Commonwealth anti-discrimination legislation.

15.2 This includes sexual harassment and discrimination under the Sex Discrimination Act 1984, disability harassment and discrimination under the Disability Discrimination Act 1992, and racial discrimination under the Racial Discrimination Act 1975. While the Racial Discrimination Act does not use the term 'racial harassment' some types of workplace harassment could be unlawful discrimination under this Act.

15.3 In addition to an employees' personal liability for harassing behaviour under the anti-discrimination legislation, agencies can be held vicariously liable for the acts or omissions of their employees, unless they can demonstrate they have taken all reasonable steps to prevent the acts from occurring. An agency may therefore be liable for damages awarded in compensation for the harassment by one of its employees even though the employer is not directly involved in the harassing behaviour. The employer can seek to recover damages from the harasser.

- 15.4 Workplace harassment may also constitute discrimination under the Australian Human Rights Commission Act 1986 (Cth) if it is based on particular grounds including sexual preference, religion and/or trade union activities.

16. Other Commonwealth legislation

- 16.1 The *Fair Work Act 2009* (Cth) aims to help prevent and eliminate discrimination in the making of awards and agreements and in the termination of employment and provides access to the Fair Work Commission to resolve complaints of bullying. Aspects of this Act may be relevant to a workplace harassment allegation.
- 16.2 Under the *Work Health and Safety Act 2011* (Cth), employers must also take all reasonably practicable steps to protect the health and safety of employees to work.

17. Criminal law

- 17.1 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. The police should be contacted for advice and assistance on appropriate action in these circumstances.

18. Public Interest Disclosures

- 18.1 The *Public Interest Disclosure Act 2013* (Cth) applies when people report a suspected breach of the Code of Conduct to an authorised person. The Act offers protections to those making such disclosures and requires agencies to take action in relation to the alleged breach. Allegations of such breaches may include reports made by employees who believe that harassment is occurring, even where there is no formal complaint from the person(s) being harassed.

19. OAIC responsibilities

- 19.1 OAIC is committed to ensuring all reasonable steps are taken to prevent discrimination, harassment or bullying in the workplace, including:
- distributing and promoting this policy
 - providing employees with training on anti-discrimination bullying and harassment
 - providing managers with training, advice and guidance in handling complaints
 - ensuring that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to harassment and bullying
 - maintaining a network of trained Harassment Contact Officers, drawn from all parts of the OAIC, to provide initial information, support and assistance to employees

- providing an accessible and transparent procedure for resolving complaints
- providing employees with access to a free counselling service through the OAIC's Employee Assistance Program
- taking timely and appropriate action in response to any reports of unlawful discrimination, harassment or bullying
- working actively through the Executive Committee and other appropriate mechanisms to proactively identify opportunities to adopt best practice and prevent discrimination.

19.2 All supervisors and managers in OAIC have a responsibility to support, implement and promote this policy within their work areas.

20. Workers' responsibilities

20.1 All workers are responsible for ensuring that their behaviour and conduct meets reasonable, acceptable standards fit for the OAIC work environment.

20.2 Workers are expected to take action (which includes speaking to a supervisor, HCO, People and Culture or a member of the Executive) in relation to any incidents of unlawful discrimination, harassment or bullying experienced or observed in the workplace or between workers outside the workplace in the course of, or related to, their work.

20.3 Workers who observe behaviour or conduct that may be discrimination, bullying or harassment may attempt to resolve the matter by:

- bringing the behaviour to the worker's notice, either verbally or in writing, and requesting that it cease
- asking the relevant supervisor or manager to assist by discussing the matter with the individual and requesting that it cease
- requesting that the relevant supervisor or manager reinforces appropriate work behaviours with the work area, without identifying those involved in the matter.

20.4 Workers making a complaint are responsible for ensuring that they:

- make the complaint honestly and in good faith
- provide all facts relevant to the complaint
- cooperate with the resolution process
- keep the complaint confidential within the resolution process, the parties involved, and their chosen support person.

21. Harassment Contact Officer Responsibilities and Expectations

- 21.1 Harassment Contact Officers (HCOs) are OAIC employees trained to provide information, support and assistance to other workers in relation to instances of perceived unlawful discrimination, harassment or bullying.
- 21.2 HCOs must:
- attend training – generally 2 days in duration. In addition, they will need to attend HCO refresher training (generally one day) every 2 years or as required or directed by People and Culture.
 - respond to an initial enquiry regarding discrimination, harassment or bullying as soon as possible and no longer than within 3 working days
 - complete and submit confidential HCO incident reports to People and Culture within 3 working days of meeting with a worker
 - attend HCO network meetings as required
 - maintain confidentiality and impartiality at all times, noting that there is no guarantee of confidentiality but the need to know principle applies
 - participate in the review of relevant OAIC material as required.
- 21.3 A worker may choose to speak with a HCO as their initial point of contact and may continue to receive support and assistance while the matter or complaint is being investigated and resolved.
- 21.4 A HCO's role is not to resolve a matter or complaint but to provide information, support and assistance, particularly in relation to the options available to resolve a matter or complaint. HCOs may also provide information, support and assistance to a worker who believes that a complaint may be lodged against them.
- 21.5 HCOs may also be asked to provide assistance to workers who require a support person to attend discussions involving other staffing processes including performance management and counselling processes.
- 21.6 A list of HCOs is available [on FYI](#) and on Content Manager at [D2018/000992](#).

22. Making a complaint

- 22.1 Workers who believe they have been, or are being, unlawfully discriminated against, harassed or bullied are encouraged to discuss the relevant behaviour or conduct with one or more of the parties detailed below, as soon as practicable:
- their supervisor or manager
 - an HCO

- People and Culture, or
- a member of the Executive.

22.2 Early intervention may lead to faster and more effective management of the underlying behaviour or conduct. A worker who has made a complaint, or has had a complaint made against them, may choose to have a support person, such as a HCO or any other support person of the worker's choice, present at meetings in relation to the complaint. The OAIC may not be able to investigate a complaint if the complaint:

- involves an allegation of conduct that may be a criminal offence and any investigation could jeopardize a criminal process (e.g. sexual assault)
- has been satisfactorily resolved (unless further unlawful discrimination, harassment or bullying has since occurred)
- is made anonymously without providing sufficient detail to allow investigation of the matter
- is frivolous, vexatious or malicious
- is false or misleading or if facts are distorted.

22.3 It may be necessary to take interim action, such as temporarily moving one or both/all parties to a different work area, until the situation is investigated or resolved. Any interim action should not disadvantage the worker making a complaint in any way.

22.4 The method of resolution will depend upon the circumstances of the complaint. Informal resolution, where appropriate, is the preferred method of resolution. However, the OAIC or the worker may choose to adopt the formal complaint process at any time, either within the OAIC or externally.

23. Resolving Complaints Informally

23.1 It is often in the best interest of all parties to resolve complaints informally at the level of management closest to the parties. Managers and supervisors should consult with People and Culture about their proposed course of action.

23.2 In certain circumstances, a complaint may be resolved informally after agreement on a proposed course of action with input from People and Culture. For example, if an individual is not aware of the impact of their behaviour.

23.3 Importantly, the harasser does not need to have intended to harass another person in order for harassment to be substantiated. Conduct can still be harassment where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that their conduct would offend, humiliate, intimidate or cause a person unnecessary hurt or distress. A persistent series of minor incidents may constitute harassment.

24. Responsibilities of Supervisors and Managers Receiving Complaints

24.1 Supervisors or managers are to treat all matters reported to them seriously and action all complaints directly and expeditiously. If a worker makes a complaint to a supervisor or manager of unlawful discrimination, harassment or bullying, the supervisor or manager must take the following steps in order of priority:

- be open, supportive and non-judgemental. Do not make, or agree to, any undertakings that could prejudice or compromise satisfactory resolution or any parties involved in the matter
- establish whether the recipient of the behaviour is still at risk. If so, take all reasonable steps to ensure no further harm or incidents of bullying, harassment or discrimination occur
- confirm whether the worker expects action to be taken, noting that in some cases the manager will be required to take action
- establish the facts of the matter in as much detail as possible. Use the 'who what, where, when, why and how' as prompts to acquire detail
- make a record of the meeting within 24 hours, preferably during the discussion as this will allow for re-checking and clarification of points
- seek the worker's feedback regarding their desired outcome. Be careful to avoid pre-judgement, and
- seek advice from People and Culture as soon as possible to consider the most appropriate course of action.

24.2 Caution is recommended at this point as no facts have been established and natural justice must be applied to all parties. Managers can unilaterally initiate an investigation without receiving a formal complaint if circumstances warrant this course of action.

24.3 Supervisors or Managers should provide the following guidance to all parties to a complaint:

- advise the parties involved of the process and proposed timing to resolve the complaint
- let all parties know EAP counselling is available
- advise the parties involved in the matter to only discuss the matter with other parties legitimately involved with the matter, which may include an EAP counsellor or support person
- advise a worker who has made a complaint, or has had a complaint made against them, that they are entitled to have a support person, such as a HCO or any other support person of the worker's choice, present at meetings in relation to the complaint
- explain that in some circumstances further action may need to be taken regardless of the parties' preferences and therefore no guarantee of confidentiality can be given.

- 24.4 Once a complaint is resolved, supervisors or managers should:
- monitor the relevant work area/s after a resolution has been implemented to identify if the behaviour or conduct is repeated
 - ensure no adverse action is taken against the complainant unless it is proven that the complaint was false and made in bad faith.
- 24.5 It is important that all parties to an allegation of workplace discrimination maintain confidentiality with information provided only on a 'need to know' basis. Because of the sensitivity of material relating to workplace discrimination, special care should be taken to protect the confidentiality of any records relating to complaint processes.
- 24.6 Where a supervisor or manager is made aware of discrimination, harassment or bullying, with or without a complaint, they may also choose to reinforce appropriate work behaviours with the work area, without identifying those involved in the matter. This might also include organising training in diversity, discrimination, harassment or bullying. People and Culture should be contacted for more information.

25. Formal process for all workers

- 25.1 In some circumstances, workers may wish to make a formal complaint. This could include situations where a complaint is unable to be resolved informally between the parties or through informal resolution strategies, and it is unlikely that further informal strategies will resolve the issue, where the behaviour/incident is serious or longstanding, or there is significant disagreement about what has occurred and what should happen. Workers wishing to make a formal complaint are encouraged to seek further information and discuss their options with People and Culture.
- 25.2 Any formal complaint should be in writing and submitted to the Assistant Commissioner, Corporate Branch or the Deputy Commissioner providing details of the complaint, including the names of witnesses (if any) and a statement as to the desired outcome. The Assistant Commissioner, Corporate or Deputy Commissioner will decide the action to be taken in respect of the complaint which could include conciliation, counselling, a Review of Action or Code of Conduct investigation.
- 25.3 APS employees have additional options for resolution of formal complaints. In the OAIC the preferred process for managing formal complaints from APS employees is resolution through the Review of Action provisions of the PS Act. This provides for an APS employee to seek a formal review by the OAIC in the first instance.
- 25.4 Once a review has been concluded within the OAIC, the employee may apply for a further review by the Merit Protection Commissioner¹ if they are not satisfied with the outcome of the OAIC review. The review process allows for use of alternative dispute resolution methods where possible.

¹ The Merit Protection Commissioner is a statutory position located with the Australian Public Service Commission. A key part of the Merit Protection Commissioner's role is to help agencies meet the requirements of the APS Values, Principles and Conduct by providing independent external review of actions affecting individual APS employees.

25.5 Other processes available for considering formal complaints made in respect of APS employees include:

- a formal investigation under the OAIC's procedures for investigating suspected breaches of the APS Code of Conduct
- the dispute resolution mechanisms contained in the OAIC's Enterprise Agreement.

25.6 A worker making a complaint will generally be informed of whether or not the alleged complaint was established and that the matter has been dealt with. It may not, however, be possible to provide any additional information to the worker making the complaint, particularly in the case of Code of Conduct investigations.

26. Record keeping

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

27. External complaints

27.1 Workers may choose to make an external complaint. External complaint mechanisms include:

- the Fair Work Commission – www.fwc.gov.au
- the Australian Human Rights Commission – www.humanrights.gov.au
- the Australian Public Service Commission – www.apsc.gov.au (for APS employees only).

27.2 There may also be avenues available to workers under the *Work Health and Safety Act 2011* (WHS Act). Workers wishing to explore those avenues may wish to discuss their concerns with a Health and Safety Representative, or seek further information from the Comcare website at www.comcare.gov.au.

27.3 Supervisors should also consider whether the complaint may represent a disclosure under the *Public Interest Disclosure Act 2013*.

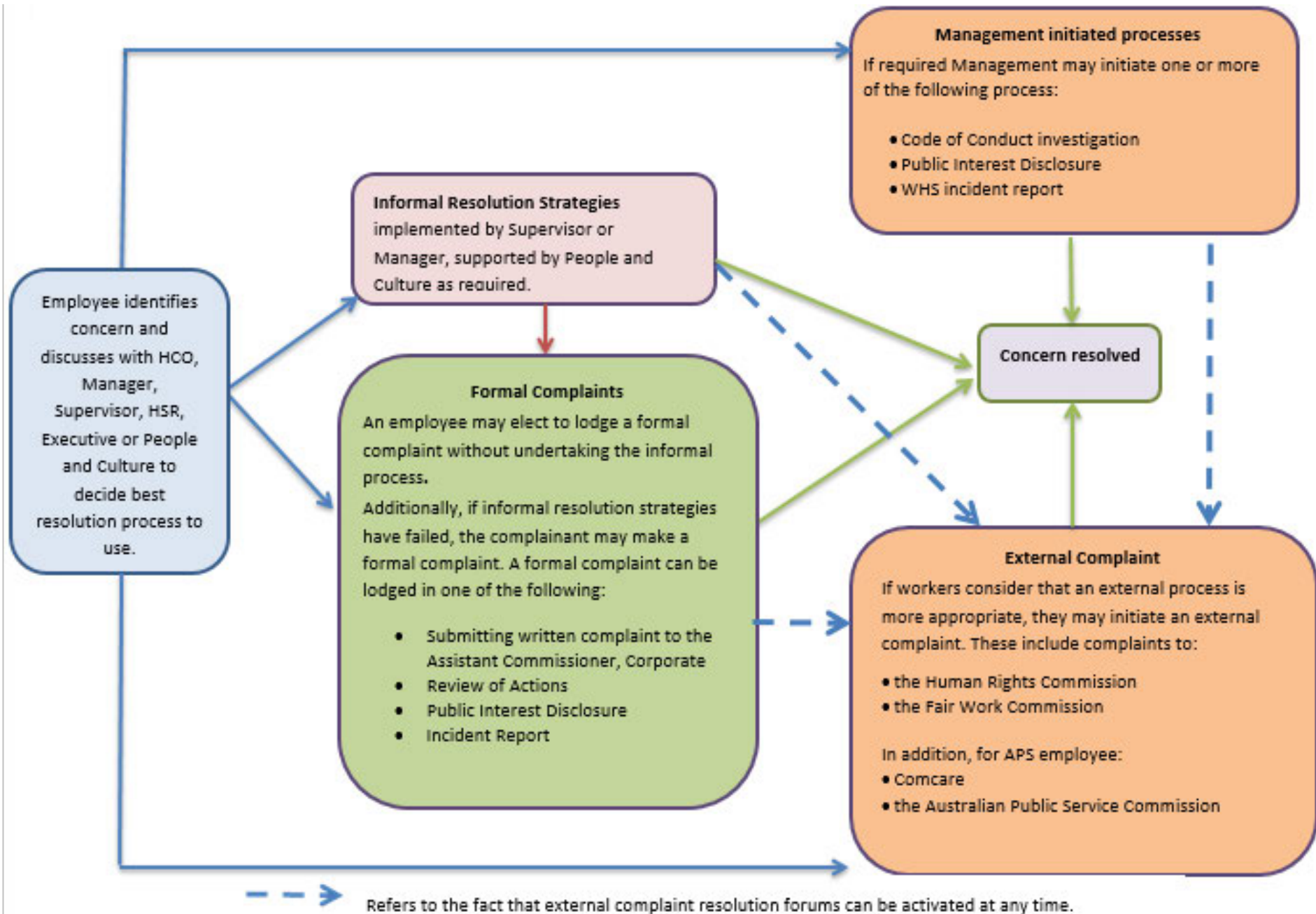
27.4 Further information on these options is available from People and Culture and from the websites of the relevant agencies. Workers are encouraged to discuss these options before making a formal complaint.

28. Further information

28.1 Additional information regarding the elimination and prevention of workplace harassment is available from the OAIC's People and Culture Team.

28.2 Relevant references and links include:

- [Fair Work Act 2009](#)
- [Public Service Act 1999](#)
- [Public Service Regulations 1999](#)
- [Australian Public Service Commissioner's Directions 2016](#)
- [APS Code of Conduct and APS Values](#)
- [OAIC Enterprise Agreement 2016-2019](#)
- [OAIC Breaches to the APS Code of Conduct](#)
- [OAIC Diversity Strategy](#)
- [OAIC's ICT Facilities Usage Policy](#)
- [OAIC Public Interest Disclosure Procedures](#)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Disability Discrimination Act 1992](#)
- [Age Discrimination Act 2004](#)
- [Australian Human Rights Commission Act 1986](#)
- [Work Health and Safety \(Commonwealth Employment\) Act 2011](#)
- [Privacy Act 1988](#)
- [Public Interest Disclosure Act 2013](#)
- ["Effectively preventing and responding to sexual harassment: A Code of Practice for Employers \(2008\) – AHRC Publication, Chapter 2: A guide to the Code of Practice](#)
- ["Sharpening the focus: Managing performance in the APS" – AHRC Publication, <https://www.apsc.gov.au/sharpening-focus-managing-performance-aps>](#)

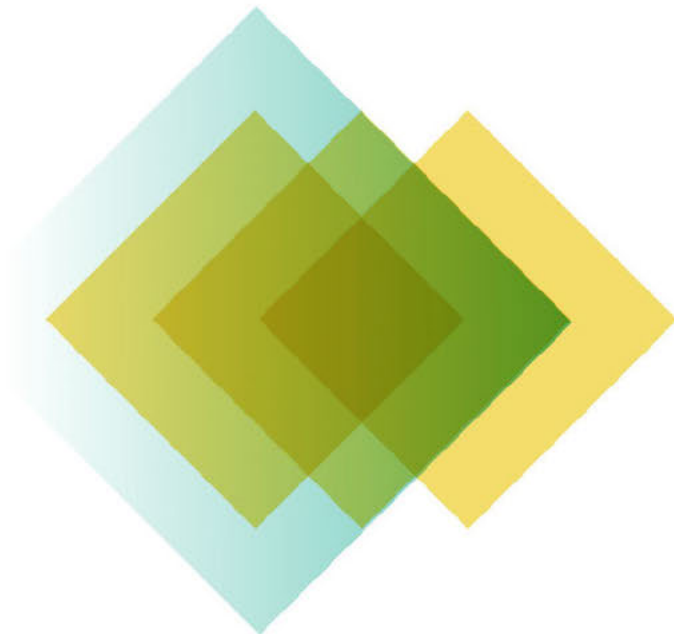




Australian Government

Office of the Australian Information Commissioner

OAIC Workplace Harassment policy



6 September 2021

Version	Name	Changes	Date
0.1		Clearance from Human Resources	13 November 2012
1.0		Final signed by Australian Information Commissioner	30 November 2012
1.1		Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0		Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1		Updated Word template	January 2019
3.0	Mark Smolonogov	Revised and updated policy following consultation with OCF	September 2021
3.1	Penny Ryder	Updated to include reference to updated Public Service Regulations 2023	April 2023

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Statement by the Australian Information Commissioner and Privacy Commissioner

The Office of the Australian Information Commissioner (OAIC) is an organisation which values fairness, equity and diversity. The OAIC seeks to promote a work environment which both supports productivity and values individual staff members. To meet these objectives, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. The OAIC supports a workplace that upholds the Australian Public Sector (APS) values and is one in which all employees are treated with courtesy and respect and without harassment.

Harassment in the OAIC will not be tolerated. It is a form of employment discrimination and is unlawful. Ignoring workplace harassment can have serious consequences. Our managers and supervisors are responsible for providing leadership and for maintaining a non-discriminatory and harassment free workplace. They should ensure that all staff are aware of their rights and responsibilities regarding workplace harassment under this policy and are responsible for taking action if they become aware of harassment. Every staff member has a responsibility to treat colleagues and members of the public with courtesy and respect, and to behave at all times in a manner that maintains or enhances the reputation of the OAIC and the APS.

In an increasingly complex online world, we should remain vigilant to the many platforms across which bullying and harassing behaviours can occur.

The OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Staff may choose to approach any of the HCOs even if they do not wish to make a formal complaint. There are procedures in place if staff choose to lodge a formal complaint about harassment. Staff are also able to contact our People and Culture Team for further information, advice or support.

The OAIC is committed to providing a workplace free of harassment and one in which staff are supported and treated with courtesy and respect.

Angelene Falk

Australian Information Commissioner and Privacy Commissioner

September 2021

1. What is workplace harassment?

- 1.1 Workplace harassment is offensive, abusive, belittling or threatening behaviour directed at an individual or a group, which may result from some real or perceived attribute or difference. Such attributes or differences may include gender, race, disability, age, sexual orientation or religion. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour. Harassment may also occur in any work-related context not only during working hours and at the workplace. This may include attending conferences, office social events, business trips, social networking sites and also include interactions with clients.
- 1.2 Any form of harassment or victimisation is unlawful, is inconsistent with the APS Values and Code of Conduct and diversity principles and is likely to undermine work relationships and efficiency.
- 1.3 For harassment to occur there does not need to be an intention to offend or harass. Moreover, often harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to harassment may seem unaffected. However, a series of individual incidents or a single serious incident can undermine the standard of conduct within a work area, which may erode the wellbeing of the individual or group targeted.
- 1.4 The absence of complaints is not necessarily an indication of the absence of harassment. The person subjected to harassing behaviour does not always complain. This is not necessarily because the harassment is trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.
- 1.5 Workplace harassment should not be confused with legitimate comment and advice (including relevant negative feedback) from managers and supervisors on the work performance or work-related behaviour of an individual or group. The process of providing feedback to staff during a formal performance appraisal or counselling staff regarding their work performance will not always be free of stress. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening. Managers should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff. The publication 'Sharpening focus: managing performance' issued by the APS Commission, advises managers about how to give effective feedback and counselling.
- 1.6 'Uncivil' behaviour is not considered to be bullying or harassment. Whilst 'uncivil' behaviour clearly should be avoided, being discourteous, rude or impolite does not carry the same weight as bullying or harassing behaviour, particularly in the absence of a power imbalance.
- 1.7 Examples of harassing behaviour include:
 - offensive physical contact, derogatory language or intimidating actions
 - insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
 - sexualised comments, innuendo or contact
 - unjustified and unnecessary comments about a person's work or capacity for work

- openly displayed pictures, posters, graffiti or written materials which might offend some people
- phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees
- persistent following or stalking within the workplace, or to and from work or elsewhere
- disparaging remarks about malingering to employees who have made a claim for compensation.

2. Sexual harassment

2.1 Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. Sexual harassment is legally recognised as a form of sex discrimination. Sexual harassment and sex discrimination are both unlawful under the *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act).

2.2 The legal test for sexual harassment under the Sex Discrimination Act is that the behaviour must be unwelcome, be of a sexual nature and be such that a reasonable person would anticipate in the circumstances that the person who was harassed would be offended, humiliated and/or intimidated. The unwelcome behaviour need not be repeated or continuous. A single incident can amount to sexual harassment. A complaint of sexual harassment will not necessarily be dismissed because the person subjected to the behaviour did not directly inform the harasser that it was unwelcome. However, there does need to be some indication from the person's conduct or the surrounding circumstances that the behaviour was in fact unwelcome.

2.3 Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures, screen savers or posters
- unwanted invitations to go out on dates or requests for sex
- intrusive questions about an employees' private life or body
- unnecessary familiarity
- insults or taunts based on your sex
- sexually explicit emails or SMS messages
- suggestive or sexually explicit comments or references on social media networks
- accessing sexually explicit internet sites

- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

2.4 Sexual harassment is not interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated. It is also unlawful for a person to be victimised for making or proposing to make a complaint of sexual harassment to the OAIC or asserting a right under the Sex Discrimination Act.

3. Racial harassment

3.1 Racial harassment is unwanted behaviour towards a person based upon that person's race, colour, descent or national or ethnic. While the *Racial Discrimination Act 1975* (Cth) (the RDA) does not use the term 'racial harassment', the Act defines as unlawful any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin of 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. The RDA also makes racial hatred unlawful. Some types of workplace harassment could be seen as unlawful behaviour under the Act. Examples of racial harassment at work may include:

- threatening language and behaviour
- taunting or ostracising
- mocking of accents, cultures and customs
- practical jokes
- the display of racist cartoons, posters and graffiti
- racist emails or SMS messages
- derogatory comments about race, accents, culture, religion and customs made in person, by electronic mail, SMS messaging or through social media networks.

4. Harassment on the ground of disability

4.1 Under the *Disability Discrimination Act 1992* (Cth) (the DDA), discrimination or harassment in employment based on disability can be unlawful. Examples of harassment on the ground of disability may include:

- humiliating comments/emails or actions about a person's disability
- comments/emails or actions which create hostile environment
- overbearing or abusive behaviour towards staff with intellectual disabilities
- emails or SMS text messages that are insulting of a person's disability
- disparaging remarks/emails to staff referring to compensation claims they have made relating to their disability.

5. Pregnancy and harassment

- 5.1 The *Sex Discrimination Act 1984* (Cth) (the Sex Discrimination Act) offers protections for employees who have experienced discrimination as a result of their pregnancy or potential pregnancy. Pregnancy-related harassment may include:
- personal comments about body shape
 - unwanted and inappropriate touching of their body
 - sexualised comments
 - references to abortion
 - unwanted comments about when the worker is leaving and whether she should come back.
- 5.2 Some employees may also experience a lack of employment security or have opportunities denied to them as a result of their pregnancy or potential pregnancy.

6. Sex, sexual orientation, gender identity, intersex status, relationship status and harassment

- 6.1 The Sex Discrimination Act makes it unlawful to discriminate against someone on the basis of sex, sexual orientation, gender identity, intersex status, or marital or relationship status. While the Sex Discrimination Act does not use the term 'harassment' with reference to sexual orientation, gender identity, intersex status, or marital or relationship status, some types of workplace harassment may constitute unlawful discrimination.
- 6.2 Harassment on the basis of sex, sexual orientation, gender identity, intersex status and/or marital or relationship status, can be directed towards sexuality, sex and gender diverse people, as well as towards their partner and family members. Examples may include:
- comments about using the 'right' bathroom or shower facilities
 - comments about clothing and physical appearance
 - use of derogatory terms, slurs and name-calling
 - refusal to use someone's chosen name and pronoun
 - inappropriate questions or discussion of someone's body
 - demeaning jokes, comments, cartoons or emails
 - unwanted disclosure of personal details on record.

7. Other forms of workplace harassment

- 7.1 Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* (Cth) which defines discrimination to mean any distinction, exclusion or

preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference, or trade union activity.

7.2 The *Age Discrimination Act 2004* (Cth) (the ADA) makes it against the law to treat you less favourably because of your age. The ADA protects both younger and older Australians. Although there are no specific provisions relating to age harassment, like the RDA the general discrimination provision may capture such behaviour if based on age.

7.3 **Workplace bullying** is also harassment and is 'repeated, unreasonable behaviour directed toward an employee, or group of employees that creates a risk to health and safety'. In other words, bullying is a repeated behaviour that intimidates, offends, degrades or humiliates a worker, possibly in front of co-workers or clients. There are bound to be differences of opinion, conflicts and problems in working relations but bullying occurs when the behaviour is repeated and offends or harms an employee. The following types of behaviour could be considered bullying:

- intimidation
- teasing or regularly being subject to practical jokes.
- demeaning language, including sarcasm, ridicule or insults
- threats
- verbal abuse or shouting
- outbursts of anger or aggression
- physical or verbal intimidation
- showing contempt or disrespect, or
- ostracising, excluding, isolating or ignoring a worker; and spreading malicious gossip or rumours about a worker.

7.4 A workplace situation can be identified as bullying if a worker or workers are:

- harmed
- intimidated
- threatened
- victimised
- undermined
- offended
- degraded, or

- humiliated.

7.5 While some workplace bullying may involve verbal abuse and physical violence, bullying can also be subtle intimidation with inappropriate comments about personal appearance, constant criticisms, isolation of workers from others and unrealistic, embarrassing or degrading work demands. Workplace bullying can also be carried out via letters, email, telephone text messages and social networking sites. Bullying may also amount to unlawful discrimination or workplace harassment. Behaviour or conduct that does not constitute workplace harassment or bullying includes:

- appropriate performance management
- providing constructive and courteous performance feedback
- making structural changes to a workplace, including changes to individual roles and/or supervisory arrangements
- legitimate disciplinary action
- reasonable supervisory practices
- allocation of work in accordance with terms and conditions of employment and organisational practices
- reasonable directions by management
- expressing differences of opinion
- carrying out legitimate managerial decisions or making a complaint about the conduct of a manager or another worker, if the complaint is made in an appropriate and reasonable way.

8. Cyber-bullying

8.1 Cyber-bullying is any bullying behaviour (as defined above) using digital technologies. It is distinct from other types of bullying in several key ways:

- it allows a potentially global audience
- it is often anonymous, making it hard to hold perpetrators to account
- it can take place at any time of the day or any day of the week
- it has a degree of permanence, as online information can be difficult to remove and may be recorded and archived
- it may be difficult to escape from whilst we continue to use digital technology for many uses
- content can be duplicated easily and is often searchable.

8.2 Examples of inappropriate online conduct may include:

- using offensive or abusive language
- personal attacks
- spamming
- cyber-stalking
- creating fake social networking profiles of APS employees.

9. Victimisation

9.1 All staff must ensure that a worker is not victimised or otherwise disadvantaged in any way as a result of making an internal or external complaint, raising a grievance, or acting as a witness to a complaint. Any such victimisation may be a criminal offence.

10. Harassment by contractors or clients

10.1 Harassment may also occur where an employee is harassed by a contractor or client. This behaviour may occur in person, by telephone or online. Harassing behaviour from contractors or clients will not be tolerated. In situations such as these the employee should immediately notify their manager. The matter should be referred to People and Culture team or the Deputy Commissioner for any follow up action with the contractor or client. Where the person is from an employment agency, the agency will be notified.

11. Preventing harassment

11.1 Workplace harassment runs counter to the APS Values and Code of Conduct, as well as Commonwealth anti-discrimination laws which are administered by the Australian Human Rights Commission. Harassment is unacceptable in the workplace. Both managers and employees have a responsibility to ensure an appropriate and acceptable standard of behaviour in the workplace.

12. Legal responsibilities

12.1 Management has a legal responsibility to prevent harassment. All employees are bound by various legislation that prohibits harassment of fellow employees and ensures that there is an appropriate standard of conduct maintained in the workplace. This includes:

13. APS Values

13.1 The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the PS Act) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.

Impartial – The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to Service – The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Accountable – The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful – The APS respects all people, including their rights and their heritage.

Ethical – The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

14. APS Code of Conduct

14.1 All employees are subject to the Code of Conduct set out in section 13 of the PS Act and outlined in the OAIC's Enterprise Agreement. The Code of Conduct directly prohibits harassment.

It requires that an employee must:

- when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment
- when acting in connection with APS employment, comply with all applicable Australian laws.

14.2 An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Breaches of the APS Code of Conduct procedures include dismissal (further details are available on the OAIC's intranet).

15. Commonwealth anti-discrimination legislation

15.1 In addition to being a breach of the Code of Conduct, workplace harassment on the basis of race, sex, age, disability or sexual orientation may also breach both the anti-harassment and the anti-discrimination provisions of Commonwealth anti-discrimination legislation.

15.2 This includes sexual harassment and discrimination under the Sex Discrimination Act 1984, disability harassment and discrimination under the Disability Discrimination Act 1992, and racial discrimination under the Racial Discrimination Act 1975. While the Racial Discrimination Act does not use the term 'racial harassment' some types of workplace harassment could be unlawful discrimination under this Act.

15.3 In addition to an employees' personal liability for harassing behaviour under the anti-discrimination legislation, agencies can be held vicariously liable for the acts or omissions of their employees, unless they can demonstrate they have taken all reasonable steps to prevent the acts from occurring. An agency may therefore be liable for damages awarded in compensation for the harassment by one of its employees even though the employer is not directly involved in the harassing behaviour. The employer can seek to recover damages from the harasser.

- 15.4 Workplace harassment may also constitute discrimination under the Australian Human Rights Commission Act 1986 (Cth) if it is based on particular grounds including sexual preference, religion and/or trade union activities.

16. Other Commonwealth legislation

- 16.1 The *Fair Work Act 2009* (Cth) aims to help prevent and eliminate discrimination in the making of awards and agreements and in the termination of employment and provides access to the Fair Work Commission to resolve complaints of bullying. Aspects of this Act may be relevant to a workplace harassment allegation.
- 16.2 Under the *Work Health and Safety Act 2011* (Cth), employers must also take all reasonably practicable steps to protect the health and safety of employees to work.

17. Criminal law

- 17.1 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. The police should be contacted for advice and assistance on appropriate action in these circumstances.

18. Public Interest Disclosures

- 18.1 The *Public Interest Disclosure Act 2013* (Cth) applies when people report a suspected breach of the Code of Conduct to an authorised person. The Act offers protections to those making such disclosures and requires agencies to take action in relation to the alleged breach. Allegations of such breaches may include reports made by employees who believe that harassment is occurring, even where there is no formal complaint from the person(s) being harassed.

19. OAIC responsibilities

- 19.1 OAIC is committed to ensuring all reasonable steps are taken to prevent discrimination, harassment or bullying in the workplace, including:
- distributing and promoting this policy
 - providing employees with training on anti-discrimination bullying and harassment
 - providing managers with training, advice and guidance in handling complaints
 - ensuring that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to harassment and bullying
 - maintaining a network of trained Harassment Contact Officers, drawn from all parts of the OAIC, to provide initial information, support and assistance to employees

- providing an accessible and transparent procedure for resolving complaints
- providing employees with access to a free counselling service through the OAIC's Employee Assistance Program
- taking timely and appropriate action in response to any reports of unlawful discrimination, harassment or bullying
- working actively through the Executive Committee and other appropriate mechanisms to proactively identify opportunities to adopt best practice and prevent discrimination.

19.2 All supervisors and managers in OAIC have a responsibility to support, implement and promote this policy within their work areas.

20. Workers' responsibilities

20.1 All workers are responsible for ensuring that their behaviour and conduct meets reasonable, acceptable standards fit for the OAIC work environment.

20.2 Workers are expected to take action (which includes speaking to a supervisor, HCO, People and Culture or a member of the Executive) in relation to any incidents of unlawful discrimination, harassment or bullying experienced or observed in the workplace or between workers outside the workplace in the course of, or related to, their work.

20.3 Workers who observe behaviour or conduct that may be discrimination, bullying or harassment may attempt to resolve the matter by:

- bringing the behaviour to the worker's notice, either verbally or in writing, and requesting that it cease
- asking the relevant supervisor or manager to assist by discussing the matter with the individual and requesting that it cease
- requesting that the relevant supervisor or manager reinforces appropriate work behaviours with the work area, without identifying those involved in the matter.

20.4 Workers making a complaint are responsible for ensuring that they:

- make the complaint honestly and in good faith
- provide all facts relevant to the complaint
- cooperate with the resolution process
- keep the complaint confidential within the resolution process, the parties involved, and their chosen support person.

21. Harassment Contact Officer Responsibilities and Expectations

21.1 Harassment Contact Officers (HCOs) are OAIC employees trained to provide information, support and assistance to other workers in relation to instances of perceived unlawful discrimination, harassment or bullying.

21.2 HCOs must:

- attend training – generally 2 days in duration. In addition, they will need to attend HCO refresher training (generally one day) every 2 years or as required or directed by People and Culture.
- respond to an initial enquiry regarding discrimination, harassment or bullying as soon as possible and no longer than within 3 working days
- complete and submit confidential HCO incident reports to People and Culture within 3 working days of meeting with a worker
- attend HCO network meetings as required
- maintain confidentiality and impartiality at all times, noting that there is no guarantee of confidentiality but the need to know principle applies
- participate in the review of relevant OAIC material as required.

21.3 A worker may choose to speak with a HCO as their initial point of contact and may continue to receive support and assistance while the matter or complaint is being investigated and resolved.

21.4 A HCO's role is not to resolve a matter or complaint but to provide information, support and assistance, particularly in relation to the options available to resolve a matter or complaint. HCOs may also provide information, support and assistance to a worker who believes that a complaint may be lodged against them.

21.5 HCOs may also be asked to provide assistance to workers who require a support person to attend discussions involving other staffing processes including performance management and counselling processes.

21.6 A list of HCOs is available [on FYI](#) and on Content Manager at [D2018/000992](#).

22. Making a complaint

22.1 Workers who believe they have been, or are being, unlawfully discriminated against, harassed or bullied are encouraged to discuss the relevant behaviour or conduct with one or more of the parties detailed below, as soon as practicable:

- their supervisor or manager
- an HCO

- People and Culture, or
- a member of the Executive.

22.2 Early intervention may lead to faster and more effective management of the underlying behaviour or conduct. A worker who has made a complaint, or has had a complaint made against them, may choose to have a support person, such as a HCO or any other support person of the worker's choice, present at meetings in relation to the complaint. The OAIC may not be able to investigate a complaint if the complaint:

- involves an allegation of conduct that may be a criminal offence and any investigation could jeopardize a criminal process (e.g. sexual assault)
- has been satisfactorily resolved (unless further unlawful discrimination, harassment or bullying has since occurred)
- is made anonymously without providing sufficient detail to allow investigation of the matter
- is frivolous, vexatious or malicious
- is false or misleading or if facts are distorted.

22.3 It may be necessary to take interim action, such as temporarily moving one or both/all parties to a different work area, until the situation is investigated or resolved. Any interim action should not disadvantage the worker making a complaint in any way.

22.4 The method of resolution will depend upon the circumstances of the complaint. Informal resolution, where appropriate, is the preferred method of resolution. However, the OAIC or the worker may choose to adopt the formal complaint process at any time, either within the OAIC or externally.

23. Resolving Complaints Informally

23.1 It is often in the best interest of all parties to resolve complaints informally at the level of management closest to the parties. Managers and supervisors should consult with People and Culture about their proposed course of action.

23.2 In certain circumstances, a complaint may be resolved informally after agreement on a proposed course of action with input from People and Culture. For example, if an individual is not aware of the impact of their behaviour.

23.3 Importantly, the harasser does not need to have intended to harass another person in order for harassment to be substantiated. Conduct can still be harassment where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that their conduct would offend, humiliate, intimidate or cause a person unnecessary hurt or distress. A persistent series of minor incidents may constitute harassment.

24. Responsibilities of Supervisors and Managers Receiving Complaints

24.1 Supervisors or managers are to treat all matters reported to them seriously and action all complaints directly and expeditiously. If a worker makes a complaint to a supervisor or manager of unlawful discrimination, harassment or bullying, the supervisor or manager must take the following steps in order of priority:

- be open, supportive and non-judgemental. Do not make, or agree to, any undertakings that could prejudice or compromise satisfactory resolution or any parties involved in the matter
- establish whether the recipient of the behaviour is still at risk. If so, take all reasonable steps to ensure no further harm or incidents of bullying, harassment or discrimination occur
- confirm whether the worker expects action to be taken, noting that in some cases the manager will be required to take action
- establish the facts of the matter in as much detail as possible. Use the 'who what, where, when, why and how' as prompts to acquire detail
- make a record of the meeting within 24 hours, preferably during the discussion as this will allow for re-checking and clarification of points
- seek the worker's feedback regarding their desired outcome. Be careful to avoid pre-judgement, and
- seek advice from People and Culture as soon as possible to consider the most appropriate course of action.

24.2 Caution is recommended at this point as no facts have been established and natural justice must be applied to all parties. Managers can unilaterally initiate an investigation without receiving a formal complaint if circumstances warrant this course of action.

24.3 Supervisors or Managers should provide the following guidance to all parties to a complaint:

- advise the parties involved of the process and proposed timing to resolve the complaint
- let all parties know EAP counselling is available
- advise the parties involved in the matter to only discuss the matter with other parties legitimately involved with the matter, which may include an EAP counsellor or support person
- advise a worker who has made a complaint, or has had a complaint made against them, that they are entitled to have a support person, such as a HCO or any other support person of the worker's choice, present at meetings in relation to the complaint
- explain that in some circumstances further action may need to be taken regardless of the parties' preferences and therefore no guarantee of confidentiality can be given.

- 24.4 Once a complaint is resolved, supervisors or managers should:
- monitor the relevant work area/s after a resolution has been implemented to identify if the behaviour or conduct is repeated
 - ensure no adverse action is taken against the complainant unless it is proven that the complaint was false and made in bad faith.
- 24.5 It is important that all parties to an allegation of workplace discrimination maintain confidentiality with information provided only on a 'need to know' basis. Because of the sensitivity of material relating to workplace discrimination, special care should be taken to protect the confidentiality of any records relating to complaint processes.
- 24.6 Where a supervisor or manager is made aware of discrimination, harassment or bullying, with or without a complaint, they may also choose to reinforce appropriate work behaviours with the work area, without identifying those involved in the matter. This might also include organising training in diversity, discrimination, harassment or bullying. People and Culture should be contacted for more information.

25. Formal process for all workers

- 25.1 In some circumstances, workers may wish to make a formal complaint. This could include situations where a complaint is unable to be resolved informally between the parties or through informal resolution strategies, and it is unlikely that further informal strategies will resolve the issue, where the behaviour/incident is serious or longstanding, or there is significant disagreement about what has occurred and what should happen. Workers wishing to make a formal complaint are encouraged to seek further information and discuss their options with People and Culture.
- 25.2 Any formal complaint should be in writing and submitted to the Assistant Commissioner, Corporate Branch or the Deputy Commissioner providing details of the complaint, including the names of witnesses (if any) and a statement as to the desired outcome. The Assistant Commissioner, Corporate or Deputy Commissioner will decide the action to be taken in respect of the complaint which could include conciliation, counselling, a Review of Action or Code of Conduct investigation.
- 25.3 APS employees have additional options for resolution of formal complaints. In the OAIC the preferred process for managing formal complaints from APS employees is resolution through the Review of Action provisions of the PS Act. This provides for an APS employee to seek a formal review by the OAIC in the first instance.
- 25.4 Once a review has been concluded within the OAIC, the employee may apply for a further review by the Merit Protection Commissioner¹ if they are not satisfied with the outcome of the OAIC review. The review process allows for use of alternative dispute resolution methods where possible.

¹ The Merit Protection Commissioner is a statutory position located with the Australian Public Service Commission. A key part of the Merit Protection Commissioner's role is to help agencies meet the requirements of the APS Values, Principles and Conduct by providing independent external review of actions affecting individual APS employees.

25.5 Other processes available for considering formal complaints made in respect of APS employees include:

- a formal investigation under the OAIC's procedures for investigating suspected breaches of the APS Code of Conduct
- the dispute resolution mechanisms contained in the OAIC's Enterprise Agreement.

25.6 A worker making a complaint will generally be informed of whether or not the alleged complaint was established and that the matter has been dealt with. It may not, however, be possible to provide any additional information to the worker making the complaint, particularly in the case of Code of Conduct investigations.

26. Record keeping

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

27. External complaints

27.1 Workers may choose to make an external complaint. External complaint mechanisms include:

- the Fair Work Commission – www.fwc.gov.au
- the Australian Human Rights Commission – www.humanrights.gov.au
- the Australian Public Service Commission – www.apsc.gov.au (for APS employees only).

27.2 There may also be avenues available to workers under the *Work Health and Safety Act 2011* (WHS Act). Workers wishing to explore those avenues may wish to discuss their concerns with a Health and Safety Representative, or seek further information from the Comcare website at www.comcare.gov.au.

27.3 Supervisors should also consider whether the complaint may represent a disclosure under the *Public Interest Disclosure Act 2013*.

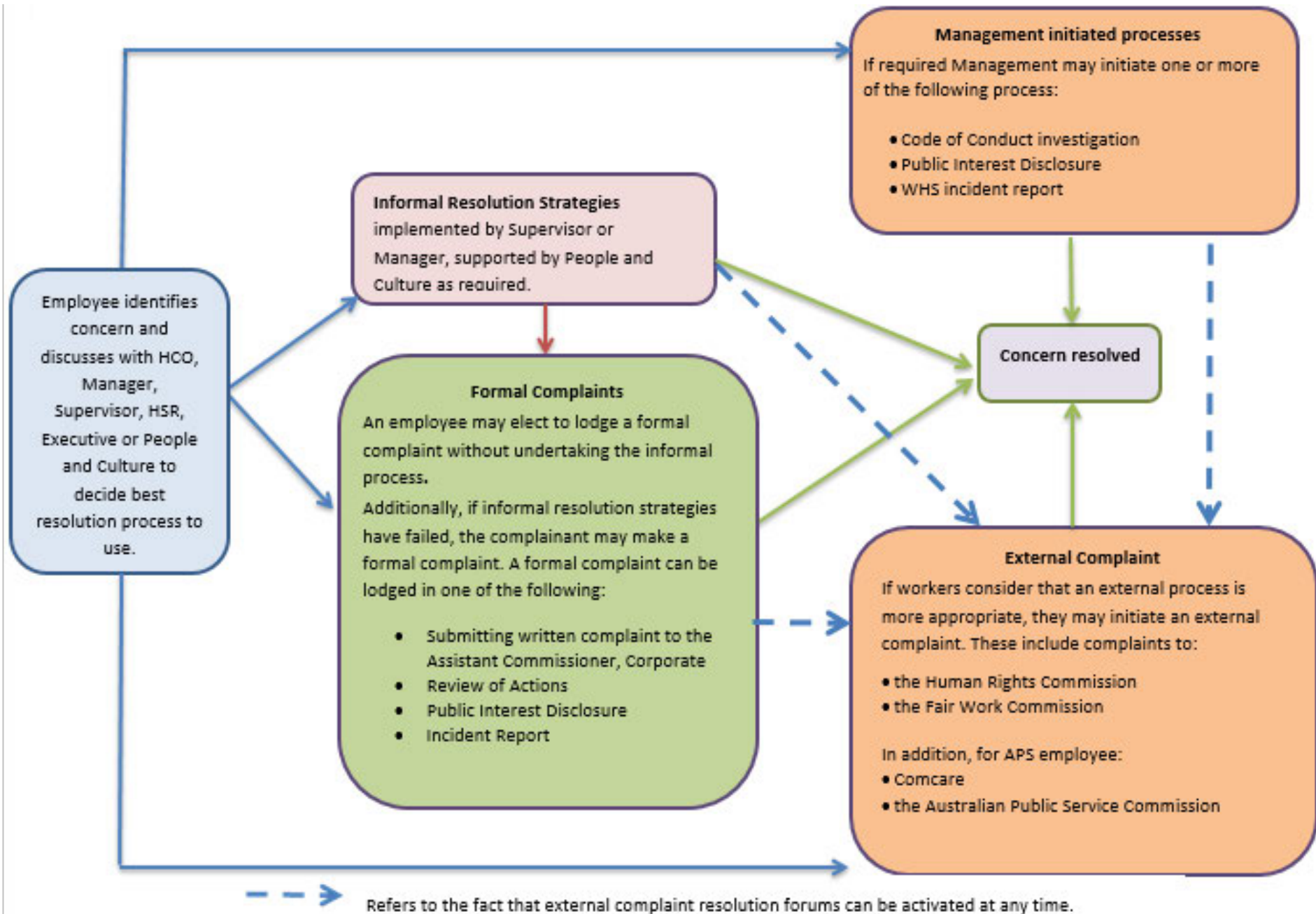
27.4 Further information on these options is available from People and Culture and from the websites of the relevant agencies. Workers are encouraged to discuss these options before making a formal complaint.

28. Further information

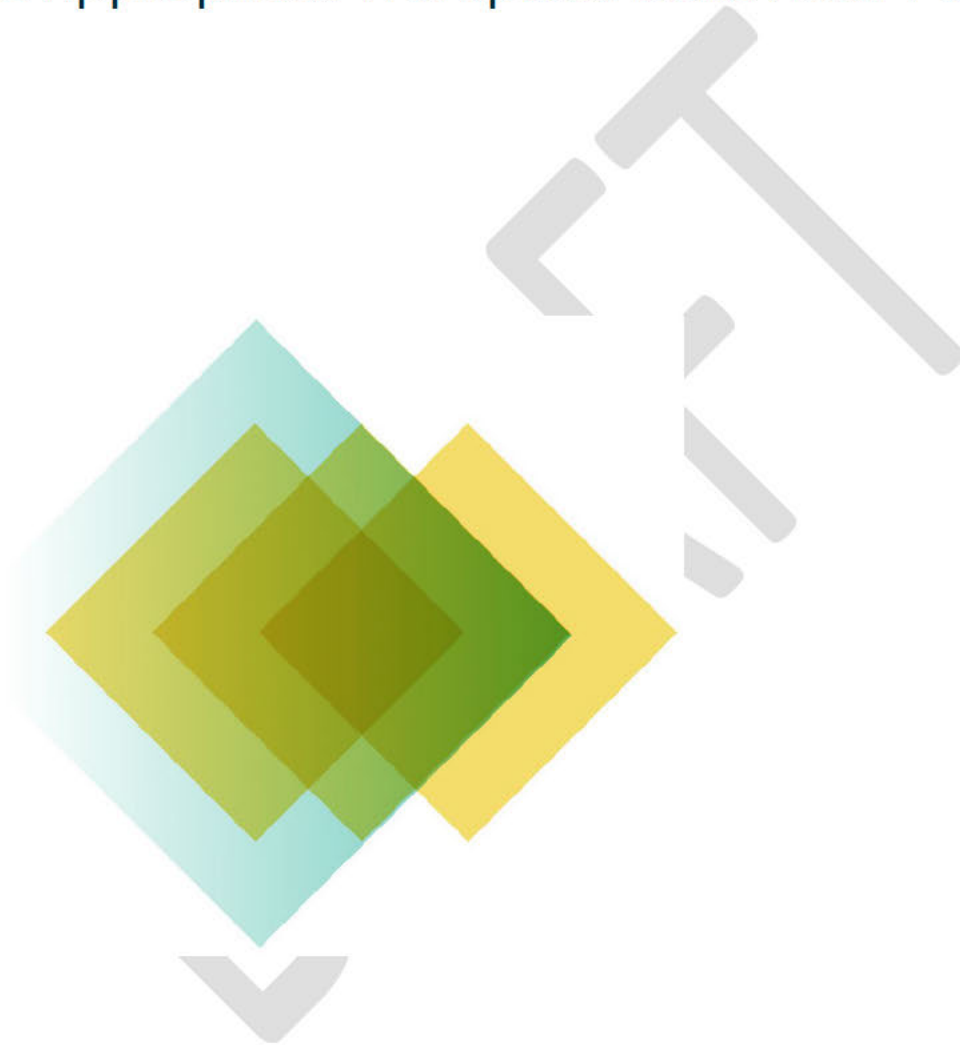
28.1 Additional information regarding the elimination and prevention of workplace harassment is available from the OAIC's People and Culture Team.

28.2 Relevant references and links include:

- [Fair Work Act 2009](#)
- [Public Service Act 1999](#)
- [Public Service Regulations 2023](#)
- [Australian Public Service Commissioner's Directions 2016](#)
- [APS Code of Conduct and APS Values](#)
- [OAIC Enterprise Agreement 2016-2019](#)
- [OAIC Breaches to the APS Code of Conduct](#)
- [OAIC Diversity Strategy](#)
- [OAIC's ICT Facilities Usage Policy](#)
- [OAIC Public Interest Disclosure Procedures](#)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Disability Discrimination Act 1992](#)
- [Age Discrimination Act 2004](#)
- [Australian Human Rights Commission Act 1986](#)
- [Work Health and Safety \(Commonwealth Employment\) Act 2011](#)
- [Privacy Act 1988](#)
- [Public Interest Disclosure Act 2013](#)
- ["Effectively preventing and responding to sexual harassment: A Code of Practice for Employers \(2008\) – AHRC Publication, Chapter 2: A guide to the Code of Practice](#)
- ["Sharpening the focus: Managing performance in the APS" – AHRC Publication, <https://www.apsc.gov.au/sharpening-focus-managing-performance-aps>](#)



OAIC Appropriate Workplace Behaviour Policy



[insert]

Version	Name	Changes	Date
0.1		Clearance from Human Resources	13 November 2012
1.0		Final signed by Australian Information Commissioner	30 November 2012
1.1		Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0		Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1		Updated Word template	January 2019
3.0	Mark Smolonogov	Revised and updated policy following consultation with OCF	September 2021
4.0	Annamie Hale	Updated to change name of policy, expand to more cover more general inappropriate behaviour and to align to changes to the Sex Discrimination Act.	Dec 2023

DRAFT

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Statement by the Australian Information Commissioner and Privacy Commissioner

The Office of the Australian Information Commissioner (OAIC) is an agency which values fairness, equity and diversity. We are committed to maintaining a safe and inclusive workplace which upholds the Australian Public Service (APS) Values, Employment Principles and Code of Conduct. To meet this commitment, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. This requires ensuring that people are treated with respect and courtesy, and without harassment.

Inappropriate behaviour, such as harassment, discrimination, bullying, victimisation and racism will not be tolerated and it is the responsibility of every OAIC employee to contribute to an environment free of inappropriate behaviour. Ignoring inappropriate behaviour can have serious consequences.

Sexual harassment, sex-based harassment, sex discrimination, conduct that creates a hostile workplace on the ground of sex and related acts of victimisation are particularly serious forms of inappropriate behaviour that are unlawful, unacceptable and have no place in the OAIC. Such conduct is collectively referred to as unlawful conduct based on sex. The OAIC has a positive duty under the *Sex Discrimination Act 1984* (Ch) to take reasonable and proportionate measures to eliminate, so far as possible, unlawful conduct based on sex.

Our managers and supervisors are responsible for leading by example and maintaining a respectful working environment. They should ensure that all employees are aware of their rights and responsibilities under this policy and take action if they become aware of inappropriate behaviour.

Every employee has a responsibility to treat colleagues and members of the public with respect and courtesy, and to contribute to a safe and supportive work environment, where employees collaborate together to foster an inclusive workplace for all. Each employee is to behave at all times in a manner that maintains or upholds the integrity and good reputation of the OAIC and the APS.

Angelene Falk

Australian Information Commissioner and Privacy Commissioner

[date]

1. Scope

- 1.1 This policy applies to all OAIC workers, including full-time, part-time, non-ongoing and casual employees, contractors and volunteers.
- 1.2 This policy applies to employees whenever they are undertaking work for the OAIC (regardless of work location) and whenever they are, or may be perceived as, representing the OAIC or the APS.
- 1.3 This policy may apply to behaviour which occurs outside the workplace if it has a sufficient connection to the OAIC or the APS, including if the behaviour is incompatible with the person's work duties for the OAIC.
- 1.4 Nothing in this policy prevents an employee from using the dispute resolution procedures available in the OAIC Enterprise Agreement, or a person from referring a matter to the Fair Work Commission or the Australian Human Rights Commissioner. Further information regarding external forums where persons can address concerns about inappropriate behaviour is contained in clause 13 of this policy.

2. Appropriate behaviour

- 2.1 Appropriate behaviour is behaviour that is consistent with the OAIC's objective to ensure the workplace is a safe, respectful and inclusive environment, free from harassment, discrimination, bullying, victimisation, racism and other unlawful conduct.
- 2.2 Behaving appropriately requires:
 - acting in a manner that is consistent with the APS Values and Code of Conduct
 - treating other employees and contractors with respect, fairness and courtesy
 - engaging in honest and ethical conduct
 - considering the potential impact of one's behaviour on others
 - ensuring that one's actions, communications and attitude are appropriate to the circumstances
 - complying with applicable policies, laws, rules and regulations.
- 2.3 Inappropriate behaviour is any behaviour which is not appropriate behaviour. Inappropriate behaviour can be intentional or unintentional and includes behaviour that occurs in person, by telephone, virtually or by other means.
- 2.4 Types of inappropriate behaviour include the following:

Type of inappropriate behaviour	Further information
Harassment	2.5 Harassment is unwelcome behaviour that a reasonable person would have anticipated might offend, humiliate or intimidate

	<p>the person or group it is directed towards. Harassment can be unlawful when it occurs in connection with an actual or perceived characteristic (including gender, race, disability, age, sexual orientation, religion, pregnancy, marital or domestic status or carer's responsibilities).</p> <p>2.6 Harassment may occur in any work-related context, including outside of working hours and the physical workplace. Examples include conferences, office social events, business trips and social networking sites as well as interactions with clients.</p> <p>2.7 A one-off incident can constitute harassment and a person's intention is irrelevant in determining whether the harassment has occurred.</p> <p>2.8 Examples of harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • offensive physical contact, derogatory language or intimidating actions • insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace • unjustified and unnecessary comments about a person's work or capacity for work • openly displayed pictures, posters, graffiti or written materials which might offend some people • phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees • persistent following or stalking within the workplace, or to and from work or elsewhere • disparaging remarks about malingering to employees who have made a claim for compensation.
<p>Sexual harassment</p>	<p>2.9 Sexual harassment is a type of harassment that involves unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. The unwelcome behaviour need not be repeated or continuous; a single incident can amount to sexual harassment.</p> <p>2.10 Sexual harassment is not interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated. However, behaviour can become sexual harassment if the</p>

	<p>interaction changes to unwelcome contact following the end of a consensual relationship.</p> <p>2.11 Examples of sexual harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • unwelcome touching, hugging, kissing or other types of inappropriate physical contact • staring or leering at a person or their body parts • sexually suggestive comments or jokes • displays of sexually explicit material including pornography, pictures, screen savers or posters • unwanted invitations to go out on dates or requests for sex • intrusive questions about a person's private life or body • insults or taunts based on a person's sex • sexually explicit emails or SMS messages • suggestive or sexually explicit comments or references on social media networks • threatening to share or sharing intimate images or videos of someone without consent • behaviour which would also be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.
Sex-based harassment	<p>2.12 Sex-based harassment (which is also referred to as harassment on the ground of sex) is unwelcome behaviour that is sexist and demeaning in nature, but is not necessarily sexual, that occurs in circumstances where a reasonable person who is aware of the circumstances would anticipate that the person being harassed might feel offended, humiliated or intimidated.</p> <p>2.13 Sex-based harassment can occur when a person is degraded or disrespected because of their sex, or a characteristic associated with people of that sex.</p> <p>2.14 Examples of sexual harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • asking intrusive personal questions based on a person's sex (such as inappropriate questions about menopause, menstruation or genitalia)

	<ul style="list-style-type: none"> • making inappropriate comments or jokes based on a person's sex • displaying images or making comments that are sexist or strongly prejudiced against a particular sex • asking a person to engage in degrading conduct based on their sex.
Discrimination	<p>2.15 Discrimination is treating someone less favourably than another person or group because of their background or certain personal characteristics.</p> <p>2.16 Discrimination is unlawful when it is based on one or more of the following attributes:</p> <ul style="list-style-type: none"> • age • disability • race, including colour, national or ethnic origin or immigrant status • sex, pregnancy, marital or relationship status, family/carer's responsibilities or breastfeeding • sexual orientation, gender identity or intersex status • political opinion • religion. <p>2.17 Discrimination can occur directly and indirectly.</p> <p>2.18 Examples of direct discrimination include, but are not limited to:</p> <ul style="list-style-type: none"> • stating or suggesting a preferred candidate's gender in a job advertisement • excluding potential staff from consideration for promotions due to their age • promoting a person based on their marital status. <p>2.19 Examples of indirect discrimination include, but are not limited to:</p> <ul style="list-style-type: none"> • a policy, requirement or condition being applied to everyone but operating to disadvantage a particular group of people

	<ul style="list-style-type: none"> office facilities that are not accessible to those with a physical disability.
<p>Sex discrimination</p>	<p>2.20 Sex discrimination is when someone is treated unfairly or is unreasonably disadvantaged because of their sex, or a characteristic that is generally associated with people of their sex.</p> <p>2.21 An example of direct sex discrimination is not giving a woman a promotion to a position she has the necessary qualifications and skills for, because she is female.</p> <p>2.22 An example of indirect sex discrimination is requiring job candidates to meet physical criteria such as to disadvantage a particular sex.</p>
<p>Conduct that creates a hostile work environment on the ground of sex</p>	<p>2.23 Conduct that creates a hostile work environment on the ground of sex occurs where:</p> <ul style="list-style-type: none"> a person engages in conduct in a workplace and a second person is in the workplace at the same time or after the conduct occurs the conduct fails the 'reasonable person' test, which involves considering whether, having regard to all the circumstances, a reasonable person would have anticipated the possibility of the conduct resulting in a workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person, by reason of the sex of the person or a characteristic associated with the sex of the person. <p>2.24 A workplace may be hostile to people of a particular sex even if the behaviour is not specifically directed at them.</p> <p>2.25 Examples of conduct that creates a hostile work environment on the ground of sex include, but are not limited to:</p> <ul style="list-style-type: none"> conduct involving gendered stereotypes, such as only making female employees responsible for tidying the office or going to get coffee engaging in sexist or derogatory jokes or banter, for example making demeaning comments about male employees who chose to take caring responsibilities

	<ul style="list-style-type: none"> • making demeaning comments about anatomical attributes or topics such as pregnancy, menstruation or menopause • addressing a transgender or nonbinary employee with a pronoun based on their sex assigned at work, rather than the gender they identify with • displaying or circulating obscene, sexist, pornographic or sexually explicit photos, materials, posters or gifts • making suggestive or sexual comments.
Bullying	<p>2.26 Bullying is repeated, unreasonable behaviour directed towards an individual, or group of people that creates a risk to health and safety. Bullying can occur face-to-face, over the phone, by email, through instant messaging or by other electronic means.</p> <p>2.27 Bullying can involve many different forms of unreasonable behaviour, which can be direct (obvious or overt) or indirect (subtle). Respectful differences of opinion, reasonable performance management, conflicts in working relationships and personality clashes can happen in the workplace, but do not necessarily amount to bullying.</p> <p>2.28 Examples of direct bullying include, but are not limited to:</p> <ul style="list-style-type: none"> • teasing or regularly being subject to practical jokes • demeaning language, including sarcasm, ridicule or insults • threatening language • verbal abuse or shouting • outbursts of anger or aggression • physical or verbal intimidation • showing contempt or disrespect • ostracising, excluding, isolating or ignoring a person • spreading malicious gossip or rumours about a person • interfering with someone's personal property or work equipment • harmful or offensive initiation practices. <p>2.29 Examples of indirect bullying include:</p>

	<ul style="list-style-type: none"> • unreasonably overloading a person with work or not providing enough work • setting unreasonable timelines that are difficult to achieve or constantly changing deadlines • setting tasks that are unreasonably above or below a person's skill level • deliberately excluding, isolating or marginalising a person from normal work activities • unreasonably withholding or denying access to information or resources that is vital for effective work performance • deliberately changing work arrangements to inconvenience a particular person • unfair treatment in relation to accessing entitlements such as leave. <p>2.30 Reasonable management action taken in a reasonable way is not bullying. Examples of this include, but are not limited to:</p> <ul style="list-style-type: none"> • setting reasonable performance goals, standards and deadlines in consultation with employees and after considering their respective skills and experience • allocating work to an employee in accordance with terms and conditions of their engagement and agency practices • fairly rostering and allocating working hours • transferring an employee for legitimate and explained operational reasons • deciding not to select an employee for promotion, following a fair and documented process • informing a person about unsatisfactory work performance in a constructive way • informing a person about inappropriate behaviour in an objective and confidential way • implementing organisational changes or restructuring • appropriate performance management processes.
Victimisation	<p>2.31 Victimisation occurs when a person is subjected to, or threatened with, some form of detriment because they have</p>

	<p>asserted their personal, workplace or legal rights or are involved in a process for dealing with inappropriate behaviour.</p> <p>2.32 Conduct which constitutes victimisation can be unlawful under employment, anti-discrimination and work health and safety legislation.</p> <p>2.33 Examples of victimisation include, but are not limited to:</p> <ul style="list-style-type: none"> • altering an employee’s working arrangements so that they receive less pay after they have made a report of inappropriate behaviour • choosing not to promote an employee because they have asked questions about their pay.
Racism	<p>2.34 Racism is behaviour which is prejudicial, discriminatory or antagonistic towards an individual, community or institution based on their membership of a particular racial or ethnic group, typically one that is a minority or marginalised.</p> <p>2.35 Examples of racism include, but are not limited to:</p> <ul style="list-style-type: none"> • racially motivated slurs, insults or jokes • differential treatment on work matters because of a person’s race • expressing unreasonable racial opinion which includes any opinion which is likely to cause a reasonable person offence • excluding or isolating a person because of their race • degrading or intolerant comments towards racial or ethnic groups
Unlawful conduct based on sex	<p>2.36 Unlawful conduct based on sex is an umbrella term that comprises inappropriate behaviour in the form of sexual harassment, sex-based harassment, sex discrimination and conduct that creates a hostile workplace on the ground of sex.</p> <p>2.37 The OAIC has a positive duty to eliminate, so far as possible, unlawful conduct based on sex and may be vicariously liable for such conduct committed by employees if the OAIC fails to take all reasonable steps to prevent the conduct from occurring.</p> <p>2.38 Unlawful conduct based on sex may have underlying drivers, including:</p>

	<ul style="list-style-type: none"> • gender inequality • power imbalances • lack of accountability • fears of victimisation • intersecting forms of discrimination and exclusion. <p>2.39 Unlawful conduct based on sex may have different impacts on different people. A person's experience of such unlawful conduct can be compounded by other forms of inequality they face. Factors which may influence a person's experience of unlawful conduct based on sex include:</p> <ul style="list-style-type: none"> • their sex or gender identity • their sexual orientation • whether they have a disability • whether they identify as Aboriginal or Torres Strait Islander • whether they are from culturally and linguistically diverse or culturally and racially marginalised communities • their socioeconomic class.
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3. Preventing inappropriate behaviour

- 3.1 Inappropriate behaviour is preventable and all employees are expected to take responsibility for ensuring that inappropriate behaviour does not occur. This requires contributing to a workplace culture that aligns with the APS Values, Code of Conduct and Employment Principles.
- 3.2 No person is expected to tolerate inappropriate behaviour in the course of their work for the OAIC. All persons have the right to raise concerns about inappropriate behaviour without fear of victimisation or punishment.
- 3.3 The OAIC is committed to taking a proactive and holistic approach to preventing all forms of inappropriate behaviour. Prevention requires the identification and assessment of risks in the workplace. This involves:
- conducting agency-wide risk assessments to identify key operations and areas within which risks arise
 - implementing appropriate control measures to address identified risks
 - regular and ongoing review and assessment of potential risks and the effectiveness of control measures to ensure continuous improvement.

- 3.4 Psychosocial hazards, including those presented by potential inappropriate behaviour, have been the subject of a risk assessment that is documented in the OAIC Psychosocial Hazard and Risk Assessment [consider hyperlinking].
- 3.5 Management has a legal responsibility to take steps to prevent and respond to inappropriate behaviour. All persons are bound by various legislation that prohibits different types of inappropriate behaviour and ensures that there is an appropriate standard of conduct maintained in the workplace.

4. APS Values and Code of Conduct

- 4.1 The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the **PS Act**) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.
- 4.2 All APS employees are subject to the Code of Conduct set out in section 13 of the PS Act. The Code of Conduct requires that, when acting in connection with APS employment, an employee:
- treat everyone with respect and courtesy, and without harassment
 - comply with all applicable Australian laws.
- 4.3 An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Further information can be found in OAIC Code of Conduct policies.

5. Responsibilities

Role	Responsibilities
The OAIC	<p>5.1 The OAIC is committed to ensuring all reasonable steps are taken to prevent inappropriate behaviour, including:</p> <ul style="list-style-type: none"> • distributing and promoting this policy • providing employees with training on inappropriate workplace behaviour • providing managers with training, advice and guidance in handling reports of inappropriate behaviour • ensuring that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to inappropriate behaviour • maintaining a network of trained HCOs, drawn from all parts of the OAIC, to provide initial information, support and assistance to employees

	<ul style="list-style-type: none"> • providing an accessible and transparent procedure for addressing reports of inappropriate behaviour • providing employees with access to a free counselling service through the OAIC's Employee Assistance Program • taking timely and appropriate action in response to any reports of unlawful discrimination, harassment, bullying or other inappropriate behaviour • working actively through the Workplace Health and Safety and Wellbeing Committee and other appropriate mechanisms to proactively identify opportunities to adopt best practice and prevent discrimination. <p>5.2 In circumstances where a concern about inappropriate behaviour arises, the OAIC will take prompt action and provide all involved with the necessary support and resources to resolve the concern.</p>
Managers	<p>5.3 All managers have a responsibility to</p> <ul style="list-style-type: none"> • support, implement and promote this policy within their work areas • model appropriate behaviour • manage reports of inappropriate behaviour at a workplace level or escalate to People & Culture where appropriate. • assist People & Culture to manage reports of inappropriate behaviour.
Employees	<p>5.4 All employees are responsible for ensuring that their workplace behaviour is appropriate.</p> <p>5.5 Employees are expected to address (which includes speaking to a manager, HCO, People and Culture or a member of the Executive) incidents of inappropriate behaviour which they experience or observe in the workplace or between employees outside the workplace in the course of, or related to, their work.</p> <p>5.6 Employees who observe inappropriate workplace behaviour may attempt to resolve the matter by:</p> <ul style="list-style-type: none"> • bringing the behaviour to the employee's notice, either verbally or in writing, and requesting that it cease • asking the relevant manager to assist by discussing the matter with the individual and requesting that it cease • requesting that the relevant manager reinforce appropriate work behaviours with the work area, without identifying those involved in the matter.

	<p>5.7 Employees reporting inappropriate behaviour are responsible for ensuring that they:</p> <ul style="list-style-type: none"> • make the report honestly and in good faith • provide all facts relevant to the report • cooperate with the resolution process • keep the report confidential within the resolution process, the parties involved, and their chosen support person.
Harassment Contact Officers (HCOs)	<p>5.8 HCOs provide information and support to workers, including managers. HCOs are OAIC employees trained to provide information, support and assistance to other workers in relation to instances of perceived inappropriate behaviour.</p> <p>5.9 HCOs must:</p> <ul style="list-style-type: none"> • attend training – generally 2 days in duration, as well as HCO refresher training (generally one day) every 2 years or as required or directed by People and Culture • respond to any communication about inappropriate behaviour as soon as possible and within 3 working days • complete and submit an HCO incident report to People and Culture within 3 working days of meeting with a person about inappropriate behaviour, although the incident report can be anonymised if that is the preference of the person the HCO met with • attend HCO network meetings as required • maintain confidentiality and impartiality at all times, noting that there is no guarantee of confidentiality but the ‘need to know’ principle applies • participate in the review of relevant material as required. <p>5.10 A person may choose to speak with an HCO as their initial point of contact and may continue to receive support and assistance while the matter is being resolved.</p> <p>5.11 An HCO’s role is not to resolve a matter but to provide information, support and assistance, particularly in relation to the options available to resolve a matter. HCOs may also provide information, support and assistance to a worker who believes that a report may be, or has been, made against them.</p> <p>5.12 An HCO may also be asked to assist workers who require a support person to attend discussions involving other processes such as performance management and counselling processes.</p>

5.13 A list of HCOs is available on FYI and on Content Manager at D2018/000992
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6. Confidentiality

- 6.1 All information that is provided by parties in relation to any alleged behaviour pursuant to this policy will be handled confidentially. Allegations of this nature have the potential to cause damage to an individual's reputation, regardless of whether the allegation is found to be substantiated.
- 6.2 Notwithstanding the above, information relating to a report of inappropriate behaviour may be disclosed to:
- OAIC staff members with a legitimate work related need to know, for example, supervisors
 - people directly involved in the assessment or resolution of a report of inappropriate behaviour insofar as they require access to information, subject to legal requirements for disclosure.
- 6.3 Any person entrusted with confidential and personal information must take all reasonable care and necessary precautions to maintain confidentiality and prevent disclosure of such information.
- 6.4 This material is often sensitive in nature and should be marked OFFICIAL Sensitive/Personal Privacy.

7. Reporting inappropriate behaviour

- 7.1 Any person who believes they have been subjected to or witnessed inappropriate behaviour is encouraged to report the behaviour.
- 7.2 Generally speaking, a person should report inappropriate behaviour to their manager. However, if they do not feel comfortable reporting the inappropriate behaviour to their manager (for whatever reason), they can also report the inappropriate behaviour to:
- People and Culture
 - a member of the Executive
 - an HCO.
- 7.3 Inappropriate behaviour can be reported verbally or in writing.
- 7.4 Inappropriate behaviour can also be reported anonymously. If it is reported anonymously, the report should contain specific details about what happened, where and when the behaviour occurred, and whether there were any witnesses to the behaviour, as well as any other relevant details.
- 7.5 It may not be possible to take action in relation to a report of inappropriate behaviour if:
- the report is made anonymously without providing sufficient detail to allow investigation of the matter

- the report involves an allegation of conduct that may be a criminal offence and any investigation could jeopardise a criminal process (e.g. sexual assault)
- the report has already been satisfactorily resolved (unless further inappropriate behaviour has since occurred)
- the report is false or misleading, or if facts are distorted.

8. Determining how to manage a report

8.1 All reports of inappropriate behaviour will be treated seriously and managed expeditiously.

8.2 A person who receives a report of inappropriate behaviour will:

- be open, supportive and non-judgemental but will not make, or agree to, any undertakings that could prejudice or compromise satisfactory resolution or any parties involved in the matter
- take a person-centred and trauma-informed approach (see Part 11)
- establish whether the alleged recipient of the behaviour is still at risk and, if they are, take all reasonable steps to ensure no further harm or incidents of inappropriate behaviour occur
- confirm whether the person making the report would like action to be taken, although explain that in some cases it will be necessary for action to be taken even if that is not the preference
- establish the facts of the matter in as much detail as possible using 'who what, where, when, why and how' as prompts to acquire detail
- make a record of relevant information within 24 hours of receiving it and, if this occurs by way of a discussion, preferably during the discussion
- remind the person that counselling and other support services are available through the EAP (if they are an employee).

8.3 A person who receives a report of inappropriate behaviour must then determine how inappropriate behaviour should be managed.

8.4 There are two ways in which a report of inappropriate behaviour may be managed:

- by a manager at the workplace level (see Part 9)
- by a process determined by People and Culture (see Part 10).

8.5 How a report of inappropriate behaviour should be managed will depend on the nature and circumstances of the report. Generally:

- a report of inappropriate behaviour can often be responded to at the workplace level where it involves an allegation of behaviour that is less serious in nature, including (for example) where the reported behaviour is not unlawful and is in the nature of an interpersonal issue

- a report of inappropriate behaviour should be responded to by People and Culture where it involves an allegation of behaviour that has a high degree of seriousness, including (for example) where the reported behaviour is unlawful, presents a serious risk to health and safety, or is alleged against a senior staff member.

8.6 How a report of inappropriate behaviour is managed and responded to should be determined having regard to the preference (if any) of the person who has made the report. However, in some circumstances, it may not be appropriate to deal with the matter in the way requested and the person will be informed where this is the case.

- 8.7 If a person who receives a report of inappropriate behaviour is unsure how the report should be managed, or would like any support or guidance, they should contact People and Culture. People and Culture may then:
- provide support and guidance so that the report can be dealt with informally at the workplace level, or
 - determine that the report should be dealt with more formally by a process it determines.
- 8.8 While a report of inappropriate behaviour is being managed, it may be necessary for interim action to be taken, such as by temporarily varying work duties or moving a person to a different work area. Any interim action taken should not disadvantage the person who reported the inappropriate behaviour in any way.

9. Managing a report of inappropriate behaviour at the workplace level

- 9.1 The OAIC encourages reports of inappropriate behaviour to be responded to at the workplace level where possible.
- 9.2 A manager who manages a report of inappropriate behaviour at the workplace level should determine what action to take having regard to the nature and circumstances of the report.
- 9.3 Actions that may be taken to respond to a report of inappropriate behaviour include:
- discussions with those involved, either together or separately
 - mediation or facilitated discussions
 - training or coaching for any person involved
 - escalating the report to be managed with People & Culture.
- 9.4 Depending on the circumstances and the behaviour, a report may also be dealt with in accordance with other OAIC policies such as performance management.
- 9.5 Managers should take a person-centred and trauma-informed approach when managing reports of inappropriate behaviour (see Part 11).
- 9.6 Before determining what action to take, the manager should seek the feedback of the recipient of the alleged inappropriate behaviour regarding their desired outcome.

- 9.7 The manager may also seek support and guidance from People and Culture regarding what action to take, or how to approach any discussions.
- 9.8 Once the manager has determined what action to take, they should:
- advise the parties involved of the process and proposed timing to respond to the report
 - advise a person who has made a report, or has had a report made against them, that they are entitled to have a support person, such as an HCO or another person of their choice, present at any meetings in relation to the report
 - remind the parties that counselling and other support services are available through the Employee Assistance Program (if they are an employee)
 - advise the parties of the need to maintain confidentiality, but that this does not preclude someone from discussing matters with an EAP counsellor or support person.
- 9.9 If a report is responded to at the workplace level, the manager should:
- monitor the relevant work area for future behavioural issues
 - ensure no adverse action is taken against the person who made the report unless it is proven that the report was false and made in bad faith
 - consider whether any steps should be taken to reinforce appropriate behaviour within the relevant work area without identifying those involved, including potentially by organising relevant training.
- 9.10 The manager must maintain confidentiality all times, including by sharing information only on a 'need to know' basis (see Part 6). Because of the sensitivity of material relating to inappropriate behaviour, special care should be taken to protect the confidentiality of any records relating to reporting processes.

10. Escalating a report to People & Culture

- 10.1 A report of inappropriate behaviour will be managed with People and Culture if:
- it would be inappropriate to manage the report informally at the workplace level having regard to the nature and circumstances of the reported behaviour (as outlined above), or
 - a report of inappropriate behaviour has not been able to be successfully resolved at the workplace level.
- 10.2 In order for People and Culture to determine what action should be taken to address the report of inappropriate behaviour, it may be necessary for an initial information gathering process to be undertaken so that People and Culture can better understand the nature and circumstances of the report. This may involve discussions with persons who can provide relevant information or obtaining relevant information and documents. The initial information gathering process is not for the purpose of establishing whether the alleged behaviour occurred and should only be undertaken to the extent necessary to enable an informed decision to be made about how the report of inappropriate behaviour should be dealt with. **People and Culture will take a person-centred and trauma-informed approach (See Part 11).**

10.3 Once People and Culture has sufficient information to enable it to understand the report of inappropriate behaviour, it may determine to deal with the report of inappropriate behaviour in one of the following ways:

- making findings of fact, including potentially by undertaking an internal or external investigation, informed by the OAIC's investigations policy
- engaging in discussions with the persons involved
- arranging a mediation or a facilitated discussion
- arranging counselling or further training
- making a report to the Police or another external authority
- undertaking a process under the OAIC's Procedures for Managing Suspected Breaches of the APS Code of Conduct
- taking no further action.

10.4 The factors that People and Culture may consider when determining what action to take may include, but are not limited to:

- the facts and circumstances giving rise to the reported behaviour
- the seriousness of the reported behaviour
- the connection of the reported behaviour to employment
- the role and seniority of the person reported to have engaged in the behaviour
- the availability of relevant documentation and witnesses
- any action already taken in relation to the reported behaviour
- whether the reported behaviour, if established, indicates a pattern of behaviour by the person
- whether the reported behaviour, if established, may constitute a criminal act or other offence
- whether the reported behaviour, if established, would amount to a breach of this policy.

10.5 If a fact-finding process is undertaken in respect of a report of inappropriate behaviour, findings will be made on the balance of probabilities (i.e. by assessing if it is more likely than not that the alleged behaviour occurred).

10.6 If an investigation is to be undertaken for the purpose of a fact-finding process, the investigation may be undertaken in any way People and Culture considers appropriate in the circumstances. However, the investigation must be undertaken in a way that affords procedural fairness to those involved and deals with the report of inappropriate behaviour in a sensitive, fair, confidential and timely manner.

10.7 An investigation process will usually involve the following steps:

- speaking to the person who reported the inappropriate behaviour to obtain further detail about the reported behaviour
 - collecting relevant evidence, including documentary and witness evidence
 - putting allegations to the respondent in writing and providing them an opportunity to respond to the reported behaviour in person and/or in writing
 - making any further enquiries as necessary based on information provided by the respondent in their response
 - making findings of fact based on the available evidence and preparing a report setting out the findings
 - informing the person who reported the behaviour and the respondent in writing of the findings.
- 10.8 While a person who reported inappropriate behaviour will be advised of the findings of any fact-finding process, it may not be possible to provide any additional information (including, for example, in relation to the action taken in respect of the findings) for confidentiality reasons.
- 10.9 If inappropriate behaviour is established against any person by way of a fact-finding process, action may be taken including but not limited to:
- a further process under the OAIC's Procedures for Managing Suspected Breaches of the APS Code of Conduct, which may result in one or more of the sanctions under section 15(1) of the PS Act being imposed
 - counselling or training being arranged
 - communications to remind the person of expected standards of behaviour
 - if the person is a contractor, action under the relevant contract for services, including potentially action which brings an end to the working relationship.

11. Person-centred and trauma-informed approach

11.1 The safety and wellbeing of the people impacted by the inappropriate behaviour is a priority for the OAIC and a person-centred and trauma-informed approach will be taken in managing reports of inappropriate behaviour in the workplace. This is particularly important when dealing with reports about unlawful conduct based on sex.

11.2 A person-centred approach focuses on ensuring systems and processes understand and meet the person's needs. It involves prioritising a person's needs, value and preferences, including by listening to the person to understand their needs and respecting their ability to make choices for themselves.

11.3 A trauma-informed approach focuses on ensuring workplace processes incorporate an understanding of trauma and how it affects people and avoiding causing further harm. It involves prioritising safety, choice and empowerment. It also recognises the impact of trauma on a person's ability to recall information.

11.4 Using person-centred and trauma-informed approaches does not necessarily mean the OAIC has to address a report in the way a person requests. Rather, it means their wishes and the impact that decisions may have on them will be considered.

11.5 The ways in which the OAIC may adopt a person-centred and trauma-informed approach include:

- the person impacted by the reported inappropriate behaviour being asked what support they would like from the OAIC
- consideration being given to any interim changes to working arrangements or other reasonable adjustments while the reported inappropriate behaviour is being addressed
- where meetings are to be conducted with a person impacted by the reported inappropriate behaviour, the meeting location being agreed between the convenor and relevant person, with consideration given to meeting locations outside of the person's usual workplace where appropriate
- the person impacted by the inappropriate behaviour not being required to re-tell their story unnecessarily.

12. Record keeping

- 12.1 It is important that a person who deals with a report of inappropriate behaviour keeps adequate records of the report, action taken, and reasons for decision-making (see Part 6).
- 12.2 Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and corrective action to be taken. Should there be questions as to whether a report was properly handled, adequately maintained records may be vital in any later review of the processes undertaken.
- 12.3 If an investigation is undertaken as part of a fact-finding process, records should be kept of any material relevant to or obtained during the investigation, including:
- the report of inappropriate behaviour
 - all written correspondence exchanged with the person who made the report, the respondent, witnesses and any other relevant persons
 - contemporaneous records of all verbal communications relevant to the investigation, including detailed notes of meetings and telephone conversations
 - documented reasons for all significant decisions made
 - any written statements of the person who reported the inappropriate behaviour, the respondent and witnesses.

13. Review

- 13.1 An employee may have the right to seek review of decisions that are made in relation to a report of inappropriate behaviour under the provisions of the PS Act. This may involve a formal

review by the OAIC in the first instance. If an employee is not satisfied with the outcome of any formal review by the OAIC, they may also be entitled to seek secondary review of the action.

14. External complaints

14.1 Employees may choose to make an external complaint. External bodies to which a complaint may be made include:

- the Fair Work Commission – www.fwc.gov.au
- the Australian Human Rights Commission – www.humanrights.gov.au
- the Australian Public Service Commission – www.apsc.gov.au (for APS employees only).

14.2 There may also be avenues available to persons under the *Work Health and Safety Act 2011* (WHS Act). Persons wishing to explore those avenues may wish to discuss their concerns with a Health and Safety Representative, or to seek further information from the Comcare website at www.comcare.gov.au.

14.3 Persons who experience conduct that could amount to a criminal offence, such as sexual assault, can report their experience to the Police.

14.4 External reports can be made regardless of whether the matter has been, or is being, dealt with internally.

15. Policy review and feedback

15.1 This policy will be reviewed annually or on an as needs basis, whichever is sooner.

15.2 People & Culture are responsible for this policy and any person wishing to provide feedback on this policy is welcome to do so by contacting the Director of People & Culture.

16. Other legislation

16.1 Inappropriate behaviour can be unlawful under various legislation. This includes but is not limited to:

- Commonwealth anti-discrimination legislation, including:
 - the *Racial Discrimination Act 1975* (Cth)
 - the *Sex Discrimination Act 1984* (Cth)
 - the *Disability Discrimination Act 1992* (Cth)
 - the *Age Discrimination Act 2004* (Cth)
 - the *Australian Human Rights Commission Act 1986* (Cth)
- State and Territory based anti-discrimination legislation
- the *Fair Work Act 2009* (Cth)

- the *Work Health and Safety Act 2011* (Cth)
- other criminal legislation.

16.2 Under certain legislation such as anti-discrimination legislation, employers can be held vicariously liable for the acts or omissions of their employees who engage in discriminatory or harassing behaviour. This includes vicarious liability under the *Sex Discrimination Act 1984* (Cth) for sexual harassment, sex-based harassment, sex discrimination, conduct that creates a hostile workplace on the ground of sex and related acts of victimisation.

17. Further information

17.1 Additional information regarding the elimination and prevention of inappropriate behaviour is available from People and Culture.

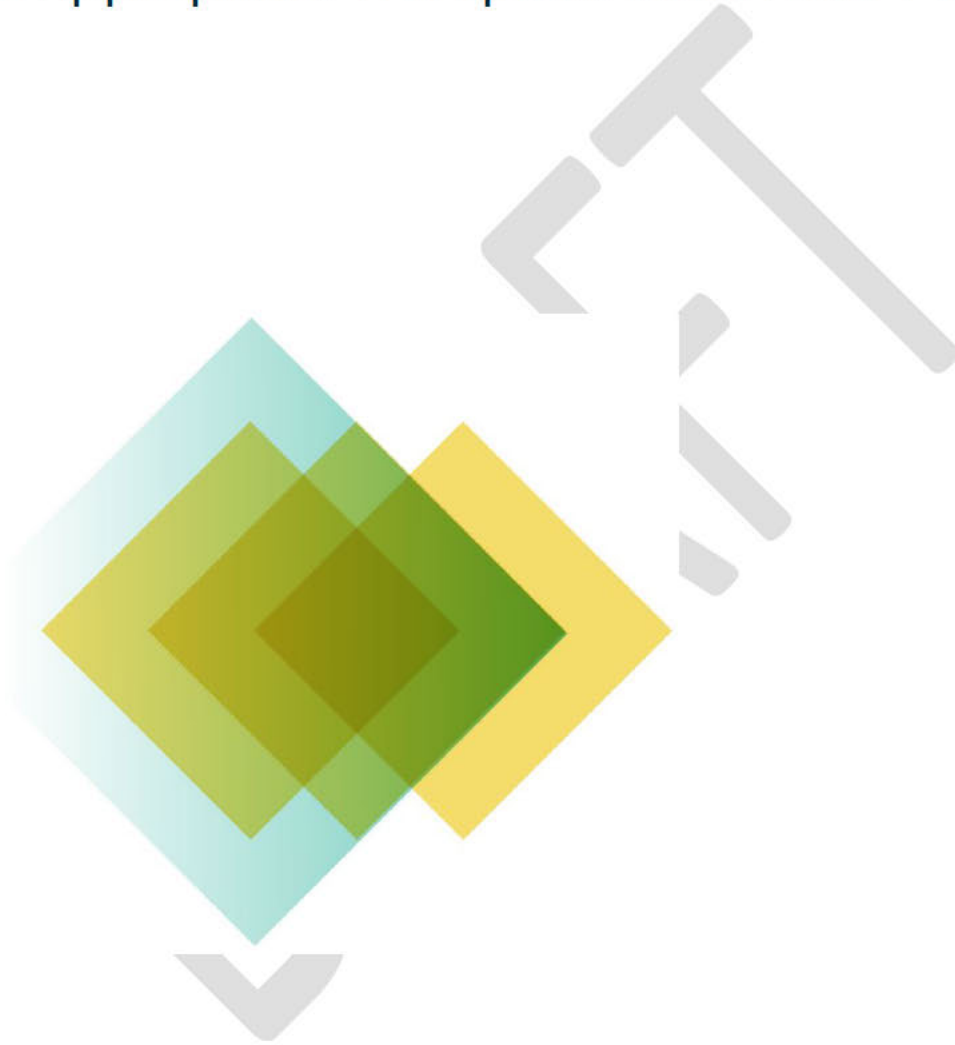
17.2 Relevant references and links include:

- [*Fair Work Act 2009*](#)
- [*Public Service Act 1999*](#)
- [*Public Service Regulations 2023*](#)
- [*Australian Public Service Commissioner's Directions 2022*](#)
- [*APS Code of Conduct and APS Values*](#)
- [*OAIC Enterprise Agreement 2016-2019*](#)
- [*OAIC Breaches to the APS Code of Conduct*](#)
- [*OAIC Diversity Strategy*](#)
- [*OAIC's ICT Facilities Usage Policy*](#)
- [*OAIC Public Interest Disclosure Procedures*](#)
- [*Racial Discrimination Act 1975*](#)
- [*Sex Discrimination Act 1984*](#)
- [*Disability Discrimination Act 1992*](#)
- [*Age Discrimination Act 2004*](#)
- [*Australian Human Rights Commission Act 1986*](#)
- [*Work Health and Safety \(Commonwealth Employment\) Act 2011*](#)
- [*Privacy Act 1988*](#)
- [*Public Interest Disclosure Act 2013*](#)
- [*Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\) – AHRC Publication*](#)

- “Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008) – AHRC Publication, Chapter 2: A guide to the Code of Practice
- “Sharpening the focus: Managing performance in the APS” – AHRC Publication,

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OAIC Appropriate Workplace Behaviour Policy



[February 2024]

Version	Name	Changes	Date
0.1		Clearance from Human Resources	13 November 2012
1.0		Final signed by Australian Information Commissioner	30 November 2012
1.1		Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0		Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1		Updated Word template	January 2019
3.0	Mark Smolonogov	Revised and updated policy following consultation with OCF	September 2021
4.0	Annamie Hale	Updated to change name of policy, expand to more cover more general inappropriate behaviour and to align to changes to the Sex Discrimination Act.	Dec 2023

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Statement by the Australian Information Commissioner and Privacy Commissioner

The Office of the Australian Information Commissioner (OAIC) is an agency which values fairness, equity and diversity. We are committed to maintaining a safe and inclusive workplace which upholds the Australian Public Service (APS) Values, Employment Principles and Code of Conduct. To meet this commitment, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. This requires ensuring that people are treated with respect and courtesy, and without harassment.

Inappropriate behaviour, such as harassment, discrimination, bullying, victimisation and racism will not be tolerated and it is the responsibility of every OAIC employee to contribute to an environment free of inappropriate behaviour. Ignoring inappropriate behaviour can have serious consequences.

Sexual harassment, sex-based harassment, sex discrimination, conduct that creates a hostile workplace on the ground of sex and related acts of victimisation are particularly serious forms of inappropriate behaviour that are unlawful, unacceptable and have no place in the OAIC. Such conduct is collectively referred to as unlawful conduct based on sex. The OAIC has a positive duty under the *Sex Discrimination Act 1984* (Ch) to take reasonable and proportionate measures to eliminate, so far as possible, unlawful conduct based on sex.

Our managers and supervisors are responsible for leading by example and maintaining a respectful working environment. They should ensure that all employees are aware of their rights and responsibilities under this policy and take action if they become aware of inappropriate behaviour.

Every employee has a responsibility to treat colleagues and members of the public with respect and courtesy, and to contribute to a safe and supportive work environment, where employees collaborate together to foster an inclusive workplace for all. Each employee is to behave at all times in a manner that maintains or upholds the integrity and good reputation of the OAIC and the APS.

Angelene Falk

Australian Information Commissioner and Privacy Commissioner

[date]

1. Scope

- 1.1 This policy applies to all OAIC workers, including full-time, part-time, non-ongoing and casual employees, contractors and volunteers.
- 1.2 This policy applies to employees whenever they are undertaking work for the OAIC (regardless of work location) and whenever they are, or may be perceived as, representing the OAIC or the APS.
- 1.3 This policy may apply to behaviour which occurs outside the workplace if it has a sufficient connection to the OAIC or the APS, including if the behaviour is incompatible with the person's work duties for the OAIC.
- 1.4 Nothing in this policy prevents an employee from using the dispute resolution procedures available in the OAIC Enterprise Agreement, or a person from referring a matter to the Fair Work Commission or the Australian Human Rights Commissioner. Further information regarding external forums where persons can address concerns about inappropriate behaviour is contained in clause 13 of this policy.

2. Appropriate behaviour

- 2.1 Appropriate behaviour is behaviour that is consistent with the OAIC's objective to ensure the workplace is a safe, respectful and inclusive environment, free from harassment, discrimination, bullying, victimisation, racism and other unlawful conduct.
- 2.2 Behaving appropriately requires:
- acting in a manner that is consistent with the APS Values and Code of Conduct
 - treating other employees and contractors with respect, fairness and courtesy
 - engaging in honest and ethical conduct
 - considering the potential impact of one's behaviour on others
 - ensuring that one's actions, communications and attitude are appropriate to the circumstances
 - complying with applicable policies, laws, rules and regulations.
- 2.3 Inappropriate behaviour is any behaviour which is not appropriate behaviour. Inappropriate behaviour can be intentional or unintentional and includes behaviour that occurs in person, by telephone, virtually or by other means.
- 2.4 Types of inappropriate behaviour include the following:

Type of inappropriate behaviour	Further information
Harassment	2.5 Harassment is unwelcome behaviour that a reasonable person would have anticipated might offend, humiliate or intimidate

	<p>the person or group it is directed towards. Harassment can be unlawful when it occurs in connection with an actual or perceived characteristic (including gender, race, disability, age, sexual orientation, religion, pregnancy, marital or domestic status or carer's responsibilities).</p> <p>2.6 Harassment may occur in any work-related context, including outside of working hours and the physical workplace. Examples include conferences, office social events, business trips and social networking sites as well as interactions with clients.</p> <p>2.7 A one-off incident can constitute harassment and a person's intention is irrelevant in determining whether the harassment has occurred.</p> <p>2.8 Examples of harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • offensive physical contact, derogatory language or intimidating actions • insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace • unjustified and unnecessary comments about a person's work or capacity for work • openly displayed pictures, posters, graffiti or written materials which might offend some people • phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees • persistent following or stalking within the workplace, or to and from work or elsewhere • disparaging remarks about malingering to employees who have made a claim for compensation.
Sexual harassment	<p>2.9 Sexual harassment is a type of harassment that involves unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. The unwelcome behaviour need not be repeated or continuous; a single incident can amount to sexual harassment.</p> <p>2.10 Sexual harassment is not interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated. However, behaviour can become sexual harassment if the</p>

	<p>interaction changes to unwelcome contact following the end of a consensual relationship.</p> <p>2.11 Examples of sexual harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • unwelcome touching, hugging, kissing or other types of inappropriate physical contact • staring or leering at a person or their body parts • sexually suggestive comments or jokes • displays of sexually explicit material including pornography, pictures, screen savers or posters • unwanted invitations to go out on dates or requests for sex • intrusive questions about a person's private life or body • insults or taunts based on a person's sex • sexually explicit emails or SMS messages • suggestive or sexually explicit comments or references on social media networks • threatening to share or sharing intimate images or videos of someone without consent • behaviour which would also be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.
Sex-based harassment	<p>2.12 Sex-based harassment (which is also referred to as harassment on the ground of sex) is unwelcome behaviour that is sexist and demeaning in nature, but is not necessarily sexual, that occurs in circumstances where a reasonable person who is aware of the circumstances would anticipate that the person being harassed might feel offended, humiliated or intimidated.</p> <p>2.13 Sex-based harassment can occur when a person is degraded or disrespected because of their sex, or a characteristic associated with people of that sex.</p> <p>2.14 Examples of sexual harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • asking intrusive personal questions based on a person's sex (such as inappropriate questions about menopause, menstruation or genitalia)

	<ul style="list-style-type: none"> • making inappropriate comments or jokes based on a person's sex • displaying images or making comments that are sexist or strongly prejudiced against a particular sex • asking a person to engage in degrading conduct based on their sex.
Discrimination	<p>2.15 Discrimination is treating someone less favourably than another person or group because of their background or certain personal characteristics.</p> <p>2.16 Discrimination is unlawful when it is based on one or more of the following attributes:</p> <ul style="list-style-type: none"> • age • disability • race, including colour, national or ethnic origin or immigrant status • sex, pregnancy, marital or relationship status, family/carer's responsibilities or breastfeeding • sexual orientation, gender identity or intersex status • political opinion • religion. <p>2.17 Discrimination can occur directly and indirectly.</p> <p>2.18 Examples of direct discrimination include, but are not limited to:</p> <ul style="list-style-type: none"> • stating or suggesting a preferred candidate's gender in a job advertisement • excluding potential staff from consideration for promotions due to their age • promoting a person based on their marital status. <p>2.19 Examples of indirect discrimination include, but are not limited to:</p> <ul style="list-style-type: none"> • a policy, requirement or condition being applied to everyone but operating to disadvantage a particular group of people

	<ul style="list-style-type: none"> office facilities that are not accessible to those with a physical disability.
Sex discrimination	<p>2.20 Sex discrimination is when someone is treated unfairly or is unreasonably disadvantaged because of their sex, or a characteristic that is generally associated with people of their sex.</p> <p>2.21 An example of direct sex discrimination is not giving a woman a promotion to a position she has the necessary qualifications and skills for, because she is female.</p> <p>2.22 An example of indirect sex discrimination is requiring job candidates to meet physical criteria such as to disadvantage a particular sex.</p>
Conduct that creates a hostile work environment on the ground of sex	<p>2.23 Conduct that creates a hostile work environment on the ground of sex occurs where:</p> <ul style="list-style-type: none"> a person engages in conduct in a workplace and a second person is in the workplace at the same time or after the conduct occurs the conduct fails the 'reasonable person' test, which involves considering whether, having regard to all the circumstances, a reasonable person would have anticipated the possibility of the conduct resulting in a workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person, by reason of the sex of the person or a characteristic associated with the sex of the person. <p>2.24 A workplace may be hostile to people of a particular sex even if the behaviour is not specifically directed at them.</p> <p>2.25 Examples of conduct that creates a hostile work environment on the ground of sex include, but are not limited to:</p> <ul style="list-style-type: none"> conduct involving gendered stereotypes, such as only making female employees responsible for tidying the office or going to get coffee engaging in sexist or derogatory jokes or banter, for example making demeaning comments about male employees who chose to take caring responsibilities

	<ul style="list-style-type: none"> • making demeaning comments about anatomical attributes or topics such as pregnancy, menstruation or menopause • addressing a transgender or nonbinary employee with a pronoun based on their sex assigned at work, rather than the gender they identify with • displaying or circulating obscene, sexist, pornographic or sexually explicit photos, materials, posters or gifts • making suggestive or sexual comments.
Bullying	<p>2.26 Bullying is repeated, unreasonable behaviour directed towards an individual, or group of people that creates a risk to health and safety. Bullying can occur face-to-face, over the phone, by email, through instant messaging or by other electronic means.</p> <p>2.27 Bullying can involve many different forms of unreasonable behaviour, which can be direct (obvious or overt) or indirect (subtle). Respectful differences of opinion, reasonable performance management, conflicts in working relationships and personality clashes can happen in the workplace, but do not necessarily amount to bullying.</p> <p>2.28 Examples of direct bullying include, but are not limited to:</p> <ul style="list-style-type: none"> • teasing or regularly being subject to practical jokes • demeaning language, including sarcasm, ridicule or insults • threatening language • verbal abuse or shouting • outbursts of anger or aggression • physical or verbal intimidation • showing contempt or disrespect • ostracising, excluding, isolating or ignoring a person • spreading malicious gossip or rumours about a person • interfering with someone's personal property or work equipment • harmful or offensive initiation practices. <p>2.29 Examples of indirect bullying include:</p>

	<ul style="list-style-type: none"> • unreasonably overloading a person with work or not providing enough work • setting unreasonable timelines that are difficult to achieve or constantly changing deadlines • setting tasks that are unreasonably above or below a person's skill level • deliberately excluding, isolating or marginalising a person from normal work activities • unreasonably withholding or denying access to information or resources that is vital for effective work performance • deliberately changing work arrangements to inconvenience a particular person • unfair treatment in relation to accessing entitlements such as leave. <p>2.30 Reasonable management action taken in a reasonable way is not bullying. Examples of this include, but are not limited to:</p> <ul style="list-style-type: none"> • setting reasonable performance goals, standards and deadlines in consultation with employees and after considering their respective skills and experience • allocating work to an employee in accordance with terms and conditions of their engagement and agency practices • fairly rostering and allocating working hours • transferring an employee for legitimate and explained operational reasons • deciding not to select an employee for promotion, following a fair and documented process • informing a person about unsatisfactory work performance in a constructive way • informing a person about inappropriate behaviour in an objective and confidential way • implementing organisational changes or restructuring • appropriate performance management processes.
Victimisation	<p>2.31 Victimisation occurs when a person is subjected to, or threatened with, some form of detriment because they have</p>

	<p>asserted their personal, workplace or legal rights or are involved in a process for dealing with inappropriate behaviour.</p> <p>2.32 Conduct which constitutes victimisation can be unlawful under employment, anti-discrimination and work health and safety legislation.</p> <p>2.33 Examples of victimisation include, but are not limited to:</p> <ul style="list-style-type: none"> • altering an employee’s working arrangements so that they receive less pay after they have made a report of inappropriate behaviour • choosing not to promote an employee because they have asked questions about their pay.
Racism	<p>2.34 Racism is behaviour which is prejudicial, discriminatory or antagonistic towards an individual, community or institution based on their membership of a particular racial or ethnic group, typically one that is a minority or marginalised.</p> <p>2.35 Examples of racism include, but are not limited to:</p> <ul style="list-style-type: none"> • racially motivated slurs, insults or jokes • differential treatment on work matters because of a person’s race • expressing unreasonable racial opinion which includes any opinion which is likely to cause a reasonable person offence • excluding or isolating a person because of their race • degrading or intolerant comments towards racial or ethnic groups
Unlawful conduct based on sex	<p>2.36 Unlawful conduct based on sex is an umbrella term that comprises inappropriate behaviour in the form of sexual harassment, sex-based harassment, sex discrimination and conduct that creates a hostile workplace on the ground of sex.</p> <p>2.37 The OAIC has a positive duty to eliminate, so far as possible, unlawful conduct based on sex and may be vicariously liable for such conduct committed by employees if the OAIC fails to take all reasonable steps to prevent the conduct from occurring.</p> <p>2.38 Unlawful conduct based on sex may have underlying drivers, including:</p>

	<ul style="list-style-type: none"> • gender inequality • power imbalances • lack of accountability • fears of victimisation • intersecting forms of discrimination and exclusion. <p>2.39 Unlawful conduct based on sex may have different impacts on different people. A person's experience of such unlawful conduct can be compounded by other forms of inequality they face. Factors which may influence a person's experience of unlawful conduct based on sex include:</p> <ul style="list-style-type: none"> • their sex or gender identity • their sexual orientation • whether they have a disability • whether they identify as Aboriginal or Torres Strait Islander • whether they are from culturally and linguistically diverse or culturally and racially marginalised communities • their socioeconomic class.
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3. Preventing inappropriate behaviour

- 3.1 Inappropriate behaviour is preventable and all employees are expected to take responsibility for ensuring that inappropriate behaviour does not occur. This requires contributing to a workplace culture that aligns with the APS Values, Code of Conduct and Employment Principles.
- 3.2 No person is expected to tolerate inappropriate behaviour in the course of their work for the OAIC. All persons have the right to raise concerns about inappropriate behaviour without fear of victimisation or punishment.
- 3.3 The OAIC is committed to taking a proactive and holistic approach to preventing all forms of inappropriate behaviour. Prevention requires the identification and assessment of risks in the workplace. This involves:
- conducting agency-wide risk assessments to identify key operations and areas within which risks arise
 - implementing appropriate control measures to address identified risks
 - regular and ongoing review and assessment of potential risks and the effectiveness of control measures to ensure continuous improvement.

- 3.4 Psychosocial hazards, including those presented by potential inappropriate behaviour, have been the subject of a risk assessment that is documented in the OAIC Psychosocial Hazard and Risk Assessment [consider hyperlinking].
- 3.5 Management has a legal responsibility to take steps to prevent and respond to inappropriate behaviour. All persons are bound by various legislation that prohibits different types of inappropriate behaviour and ensures that there is an appropriate standard of conduct maintained in the workplace.

4. APS Values and Code of Conduct

- 4.1 The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the **PS Act**) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.
- 4.2 All APS employees are subject to the Code of Conduct set out in section 13 of the PS Act. The Code of Conduct requires that, when acting in connection with APS employment, an employee:
- treat everyone with respect and courtesy, and without harassment
 - comply with all applicable Australian laws.
- 4.3 An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Further information can be found in OAIC Code of Conduct policies.

5. Responsibilities

Role	Responsibilities
The OAIC	<p>5.1 The OAIC is committed to ensuring all reasonable steps are taken to prevent inappropriate behaviour, including:</p> <ul style="list-style-type: none"> • distributing and promoting this policy • providing employees with training on inappropriate workplace behaviour • providing managers with training, advice and guidance in handling reports of inappropriate behaviour • ensuring that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to inappropriate behaviour • maintaining a network of trained HCOs, drawn from all parts of the OAIC, to provide initial information, support and assistance to employees

	<ul style="list-style-type: none"> • providing an accessible and transparent procedure for addressing reports of inappropriate behaviour • providing employees with access to a free counselling service through the OAIC's Employee Assistance Program • taking timely and appropriate action in response to any reports of unlawful discrimination, harassment, bullying or other inappropriate behaviour • working actively through the Workplace Health and Safety and Wellbeing Committee and other appropriate mechanisms to proactively identify opportunities to adopt best practice and prevent discrimination. <p>5.2 In circumstances where a concern about inappropriate behaviour arises, the OAIC will take prompt action and provide all involved with the necessary support and resources to resolve the concern.</p>
Managers	<p>5.3 All managers have a responsibility to</p> <ul style="list-style-type: none"> • support, implement and promote this policy within their work areas • model appropriate behaviour • manage reports of inappropriate behaviour at a workplace level or escalate to People & Culture where appropriate. • assist People & Culture to manage reports of inappropriate behaviour.
Employees	<p>5.4 All employees are responsible for ensuring that their workplace behaviour is appropriate.</p> <p>5.5 Employees are expected to address (which includes speaking to a manager, HCO, People and Culture or a member of the Executive) incidents of inappropriate behaviour which they experience or observe in the workplace or between employees outside the workplace in the course of, or related to, their work.</p> <p>5.6 Employees who observe inappropriate workplace behaviour may attempt to resolve the matter by:</p> <ul style="list-style-type: none"> • bringing the behaviour to the employee's notice, either verbally or in writing, and requesting that it cease • asking the relevant manager to assist by discussing the matter with the individual and requesting that it cease • requesting that the relevant manager reinforce appropriate work behaviours with the work area, without identifying those involved in the matter.

	<p>5.7 Employees reporting inappropriate behaviour are responsible for ensuring that they:</p> <ul style="list-style-type: none"> • make the report honestly and in good faith • provide all facts relevant to the report • cooperate with the resolution process • keep the report confidential within the resolution process, the parties involved, and their chosen support person.
Harassment Contact Officers (HCOs)	<p>5.8 HCOs provide information and support to workers, including managers. HCOs are OAIC employees trained to provide information, support and assistance to other workers in relation to instances of perceived inappropriate behaviour.</p> <p>5.9 HCOs must:</p> <ul style="list-style-type: none"> • attend training – generally 2 days in duration, as well as HCO refresher training (generally one day) every 2 years or as required or directed by People and Culture • respond to any communication about inappropriate behaviour as soon as possible and within 3 working days • complete and submit an HCO incident report to People and Culture within 3 working days of meeting with a person about inappropriate behaviour, although the incident report can be anonymised if that is the preference of the person the HCO met with • attend HCO network meetings as required • maintain confidentiality and impartiality at all times, noting that there is no guarantee of confidentiality but the ‘need to know’ principle applies • participate in the review of relevant material as required. <p>5.10 A person may choose to speak with an HCO as their initial point of contact and may continue to receive support and assistance while the matter is being resolved.</p> <p>5.11 An HCO’s role is not to resolve a matter but to provide information, support and assistance, particularly in relation to the options available to resolve a matter. HCOs may also provide information, support and assistance to a worker who believes that a report may be, or has been, made against them.</p> <p>5.12 An HCO may also be asked to assist workers who require a support person to attend discussions involving other processes such as performance management and counselling processes.</p>

5.13 A list of HCOs is available on FYI and on Content Manager at D2018/000992
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6. Confidentiality

- 6.1 All information that is provided by parties in relation to any alleged behaviour pursuant to this policy will be handled confidentially. Allegations of this nature have the potential to cause damage to an individual's reputation, regardless of whether the allegation is found to be substantiated.
- 6.2 Notwithstanding the above, information relating to a report of inappropriate behaviour may be disclosed to:
- OAIC staff members with a legitimate work related need to know, for example, supervisors
 - people directly involved in the assessment or resolution of a report of inappropriate behaviour insofar as they require access to information, subject to legal requirements for disclosure.
- 6.3 Any person entrusted with confidential and personal information must take all reasonable care and necessary precautions to maintain confidentiality and prevent disclosure of such information.
- 6.4 This material is often sensitive in nature and should be marked OFFICIAL Sensitive/Personal Privacy.

7. Reporting inappropriate behaviour

- 7.1 Any person who believes they have been subjected to or witnessed inappropriate behaviour is encouraged to report the behaviour.
- 7.2 Generally speaking, a person should report inappropriate behaviour to their manager. However, if they do not feel comfortable reporting the inappropriate behaviour to their manager (for whatever reason), they can also report the inappropriate behaviour to:
- People and Culture
 - a member of the Executive
 - an HCO.
- 7.3 Inappropriate behaviour can be reported verbally or in writing.
- 7.4 Inappropriate behaviour can also be reported anonymously. If it is reported anonymously, the report should contain specific details about what happened, where and when the behaviour occurred, and whether there were any witnesses to the behaviour, as well as any other relevant details.
- 7.5 It may not be possible to take action in relation to a report of inappropriate behaviour if:
- the report is made anonymously without providing sufficient detail to allow investigation of the matter

- the report involves an allegation of conduct that may be a criminal offence and any investigation could jeopardise a criminal process (e.g. sexual assault)
- the report has already been satisfactorily resolved (unless further inappropriate behaviour has since occurred)
- the report is false or misleading, or if facts are distorted.

8. Determining how to manage a report

8.1 All reports of inappropriate behaviour will be treated seriously and managed expeditiously.

8.2 A person who receives a report of inappropriate behaviour will:

- be open, supportive and non-judgemental but will not make, or agree to, any undertakings that could prejudice or compromise satisfactory resolution or any parties involved in the matter
- take a person-centred and trauma-informed approach (see Part 11)
- establish whether the alleged recipient of the behaviour is still at risk and, if they are, take all reasonable steps to ensure no further harm or incidents of inappropriate behaviour occur
- confirm whether the person making the report would like action to be taken, although explain that in some cases it will be necessary for action to be taken even if that is not the preference
- establish the facts of the matter in as much detail as possible using 'who what, where, when, why and how' as prompts to acquire detail
- make a record of relevant information within 24 hours of receiving it and, if this occurs by way of a discussion, preferably during the discussion
- remind the person that counselling and other support services are available through the EAP (if they are an employee).

8.3 A person who receives a report of inappropriate behaviour must then determine how inappropriate behaviour should be managed.

8.4 There are two ways in which a report of inappropriate behaviour may be managed:

- by a manager at the workplace level (see Part 9)
- by a process determined by People and Culture (see Part 10).

8.5 How a report of inappropriate behaviour should be managed will depend on the nature and circumstances of the report. Generally:

- a report of inappropriate behaviour can often be responded to at the workplace level where it involves an allegation of behaviour that is less serious in nature, including (for example) where the reported behaviour is not unlawful and is in the nature of an interpersonal issue

- a report of inappropriate behaviour should be responded to by People and Culture where it involves an allegation of behaviour that has a high degree of seriousness, including (for example) where the reported behaviour is unlawful, presents a serious risk to health and safety, or is alleged against a senior staff member.
- 8.6 How a report of inappropriate behaviour is managed and responded to should be determined having regard to the preference (if any) of the person who has made the report. However, in some circumstances, it may not be appropriate to deal with the matter in the way requested and the person will be informed where this is the case.
- 8.7 If a person who receives a report of inappropriate behaviour is unsure how the report should be managed, or would like any support or guidance, they should contact People and Culture. People and Culture may then:
- provide support and guidance so that the report can be dealt with informally at the workplace level, or
 - determine that the report should be dealt with more formally by a process it determines.
- 8.8 While a report of inappropriate behaviour is being managed, it may be necessary for interim action to be taken, such as by temporarily varying work duties or moving a person to a different work area. Any interim action taken should not disadvantage the person who reported the inappropriate behaviour in any way.

9. Managing a report of inappropriate behaviour at the workplace level

- 9.1 The OAIC encourages reports of inappropriate behaviour to be responded to at the workplace level where possible.
- 9.2 A manager who manages a report of inappropriate behaviour at the workplace level should determine what action to take having regard to the nature and circumstances of the report.
- 9.3 Actions that may be taken to respond to a report of inappropriate behaviour include:
- discussions with those involved, either together or separately
 - mediation or facilitated discussions
 - training or coaching for any person involved
 - escalating the report to be managed with People & Culture.
- 9.4 Depending on the circumstances and the behaviour, a report may also be dealt with in accordance with other OAIC policies such as performance management.
- 9.5 Managers should take a person-centred and trauma-informed approach when managing reports of inappropriate behaviour (see Part 11).
- 9.6 Before determining what action to take, the manager should seek the feedback of the recipient of the alleged inappropriate behaviour regarding their desired outcome.

- 9.7 The manager may also seek support and guidance from People and Culture regarding what action to take, or how to approach any discussions.
- 9.8 Once the manager has determined what action to take, they should:
- advise the parties involved of the process and proposed timing to respond to the report
 - advise a person who has made a report, or has had a report made against them, that they are entitled to have a support person, such as an HCO or another person of their choice, present at any meetings in relation to the report
 - remind the parties that counselling and other support services are available through the Employee Assistance Program (if they are an employee)
 - advise the parties of the need to maintain confidentiality, but that this does not preclude someone from discussing matters with an EAP counsellor or support person.
- 9.9 If a report is responded to at the workplace level, the manager should:
- monitor the relevant work area for future behavioural issues
 - ensure no adverse action is taken against the person who made the report unless it is proven that the report was false and made in bad faith
 - consider whether any steps should be taken to reinforce appropriate behaviour within the relevant work area without identifying those involved, including potentially by organising relevant training.
- 9.10 The manager must maintain confidentiality all times, including by sharing information only on a 'need to know' basis (see Part 6). Because of the sensitivity of material relating to inappropriate behaviour, special care should be taken to protect the confidentiality of any records relating to reporting processes.

10. Escalating a report to People & Culture

- 10.1 A report of inappropriate behaviour will be managed with People and Culture if:
- it would be inappropriate to manage the report informally at the workplace level having regard to the nature and circumstances of the reported behaviour (as outlined above), or
 - a report of inappropriate behaviour has not been able to be successfully resolved at the workplace level.
- 10.2 In order for People and Culture to determine what action should be taken to address the report of inappropriate behaviour, it may be necessary for an initial information gathering process to be undertaken so that People and Culture can better understand the nature and circumstances of the report. This may involve discussions with persons who can provide relevant information or obtaining relevant information and documents. The initial information gathering process is not for the purpose of establishing whether the alleged behaviour occurred and should only be undertaken to the extent necessary to enable an informed decision to be made about how the report of inappropriate behaviour should be dealt with. People and Culture will take a person-centred and trauma-informed approach (See Part 11).

10.3 Once People and Culture has sufficient information to enable it to understand the report of inappropriate behaviour, it may determine to deal with the report of inappropriate behaviour in one of the following ways:

- making findings of fact, including potentially by undertaking an internal or external investigation, informed by the OAIC's investigations policy
- engaging in discussions with the persons involved
- arranging a mediation or a facilitated discussion
- arranging counselling or further training
- making a report to the Police or another external authority
- undertaking a process under the OAIC's Procedures for Managing Suspected Breaches of the APS Code of Conduct
- taking no further action.

10.4 The factors that People and Culture may consider when determining what action to take may include, but are not limited to:

- the facts and circumstances giving rise to the reported behaviour
- the seriousness of the reported behaviour
- the connection of the reported behaviour to employment
- the role and seniority of the person reported to have engaged in the behaviour
- the availability of relevant documentation and witnesses
- any action already taken in relation to the reported behaviour
- whether the reported behaviour, if established, indicates a pattern of behaviour by the person
- whether the reported behaviour, if established, may constitute a criminal act or other offence
- whether the reported behaviour, if established, would amount to a breach of this policy.

10.5 If a fact-finding process is undertaken in respect of a report of inappropriate behaviour, findings will be made on the balance of probabilities (i.e. by assessing if it is more likely than not that the alleged behaviour occurred).

10.6 If an investigation is to be undertaken for the purpose of a fact-finding process, the investigation may be undertaken in any way People and Culture considers appropriate in the circumstances. However, the investigation must be undertaken in a way that affords procedural fairness to those involved and deals with the report of inappropriate behaviour in a sensitive, fair, confidential and timely manner.

10.7 An investigation process will usually involve the following steps:

- speaking to the person who reported the inappropriate behaviour to obtain further detail about the reported behaviour
 - collecting relevant evidence, including documentary and witness evidence
 - putting allegations to the respondent in writing and providing them an opportunity to respond to the reported behaviour in person and/or in writing
 - making any further enquiries as necessary based on information provided by the respondent in their response
 - making findings of fact based on the available evidence and preparing a report setting out the findings
 - informing the person who reported the behaviour and the respondent in writing of the findings.
- 10.8 While a person who reported inappropriate behaviour will be advised of the findings of any fact-finding process, it may not be possible to provide any additional information (including, for example, in relation to the action taken in respect of the findings) for confidentiality reasons.
- 10.9 If inappropriate behaviour is established against any person by way of a fact-finding process, action may be taken including but not limited to:
- a further process under the OAIC's Procedures for Managing Suspected Breaches of the APS Code of Conduct, which may result in one or more of the sanctions under section 15(1) of the PS Act being imposed
 - counselling or training being arranged
 - communications to remind the person of expected standards of behaviour
 - if the person is a contractor, action under the relevant contract for services, including potentially action which brings an end to the working relationship.

11. Person-centred and trauma-informed approach

- 11.1 The safety and wellbeing of the people impacted by the inappropriate behaviour is a priority for the OAIC and a person-centred and trauma-informed approach will be taken in managing reports of inappropriate behaviour in the workplace. This is particularly important when dealing with reports about unlawful conduct based on sex.
- 11.2 A person-centred approach focuses on ensuring systems and processes understand and meet the person's needs. It involves prioritising a person's needs, value and preferences, including by listening to the person to understand their needs and respecting their ability to make choices for themselves.
- 11.3 A trauma-informed approach focuses on ensuring workplace processes incorporate an understanding of trauma and how it affects people and avoiding causing further harm. It involves prioritising safety, choice and empowerment. It also recognises the impact of trauma on a person's ability to recall information.

- 11.4 Using person-centred and trauma-informed approaches does not necessarily mean the OAIC has to address a report in the way a person requests. Rather, it means their wishes and the impact that decisions may have on them will be considered.
- 11.5 The ways in which the OAIC may adopt a person-centred and trauma-informed approach include:
- the person impacted by the reported inappropriate behaviour being asked what support they would like from the OAIC
 - consideration being given to any interim changes to working arrangements or other reasonable adjustments while the reported inappropriate behaviour is being addressed
 - where meetings are to be conducted with a person impacted by the reported inappropriate behaviour, the meeting location being agreed between the convenor and relevant person, with consideration given to meeting locations outside of the person's usual workplace where appropriate
 - the person impacted by the inappropriate behaviour not being required to re-tell their story unnecessarily.

12. Record keeping

- 12.1 It is important that a person who deals with a report of inappropriate behaviour keeps adequate records of the report, action taken, and reasons for decision-making (see Part 6).
- 12.2 Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and corrective action to be taken. Should there be questions as to whether a report was properly handled, adequately maintained records may be vital in any later review of the processes undertaken.
- 12.3 If an investigation is undertaken as part of a fact-finding process, records should be kept of any material relevant to or obtained during the investigation, including:
- the report of inappropriate behaviour
 - all written correspondence exchanged with the person who made the report, the respondent, witnesses and any other relevant persons
 - contemporaneous records of all verbal communications relevant to the investigation, including detailed notes of meetings and telephone conversations
 - documented reasons for all significant decisions made
 - any written statements of the person who reported the inappropriate behaviour, the respondent and witnesses.

13. Review

- 13.1 An employee may have the right to seek review of decisions that are made in relation to a report of inappropriate behaviour under the provisions of the PS Act. This may involve a formal

review by the OAIC in the first instance. If an employee is not satisfied with the outcome of any formal review by the OAIC, they may also be entitled to seek secondary review of the action.

14. External complaints

- 14.1 Employees may choose to make an external complaint. External bodies to which a complaint may be made include:
- the Fair Work Commission – www.fwc.gov.au
 - the Australian Human Rights Commission – www.humanrights.gov.au
 - the Australian Public Service Commission – www.apsc.gov.au (for APS employees only).
- 14.2 There may also be avenues available to persons under the *Work Health and Safety Act 2011* (WHS Act). Persons wishing to explore those avenues may wish to discuss their concerns with a Health and Safety Representative, or to seek further information from the Comcare website at www.comcare.gov.au.
- 14.3 Persons who experience conduct that could amount to a criminal offence, such as sexual assault, can report their experience to the Police.
- 14.4 External reports can be made regardless of whether the matter has been, or is being, dealt with internally.

15. Policy review and feedback

- 15.1 This policy will be reviewed annually or on an as needs basis, whichever is sooner.
- 15.2 People & Culture are responsible for this policy and any person wishing to provide feedback on this policy is welcome to do so by contacting the Director of People & Culture.

16. Other legislation

- 16.1 Inappropriate behaviour can be unlawful under various legislation. This includes but is not limited to:
- Commonwealth anti-discrimination legislation, including:
 - the *Racial Discrimination Act 1975* (Cth)
 - the *Sex Discrimination Act 1984* (Cth)
 - the *Disability Discrimination Act 1992* (Cth)
 - the *Age Discrimination Act 2004* (Cth)
 - the *Australian Human Rights Commission Act 1986* (Cth)
 - State and Territory based anti-discrimination legislation
 - the *Fair Work Act 2009* (Cth)

- the *Work Health and Safety Act 2011* (Cth)
- other criminal legislation.

16.2 Under certain legislation such as anti-discrimination legislation, employers can be held vicariously liable for the acts or omissions of their employees who engage in discriminatory or harassing behaviour. This includes vicarious liability under the *Sex Discrimination Act 1984* (Cth) for sexual harassment, sex-based harassment, sex discrimination, conduct that creates a hostile workplace on the ground of sex and related acts of victimisation.

17. Further information

17.1 Additional information regarding the elimination and prevention of inappropriate behaviour is available from People and Culture.

17.2 Relevant references and links include:

- [*Fair Work Act 2009*](#)
- [*Public Service Act 1999*](#)
- [*Public Service Regulations 2023*](#)
- [*Australian Public Service Commissioner's Directions 2022*](#)
- [*APS Code of Conduct and APS Values*](#)
- [*OAIC Enterprise Agreement 2016-2019*](#)
- [*OAIC Breaches to the APS Code of Conduct*](#)
- [*OAIC Diversity Strategy*](#)
- [*OAIC's ICT Facilities Usage Policy*](#)
- [*OAIC Public Interest Disclosure Procedures*](#)
- [*Racial Discrimination Act 1975*](#)
- [*Sex Discrimination Act 1984*](#)
- [*Disability Discrimination Act 1992*](#)
- [*Age Discrimination Act 2004*](#)
- [*Australian Human Rights Commission Act 1986*](#)
- [*Work Health and Safety \(Commonwealth Employment\) Act 2011*](#)
- [*Privacy Act 1988*](#)
- [*Public Interest Disclosure Act 2013*](#)
- [*Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\) – AHRC Publication*](#)

- “Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008) – AHRC Publication, Chapter 2: A guide to the Code of Practice
- “Sharpening the focus: Managing performance in the APS” – AHRC Publication,

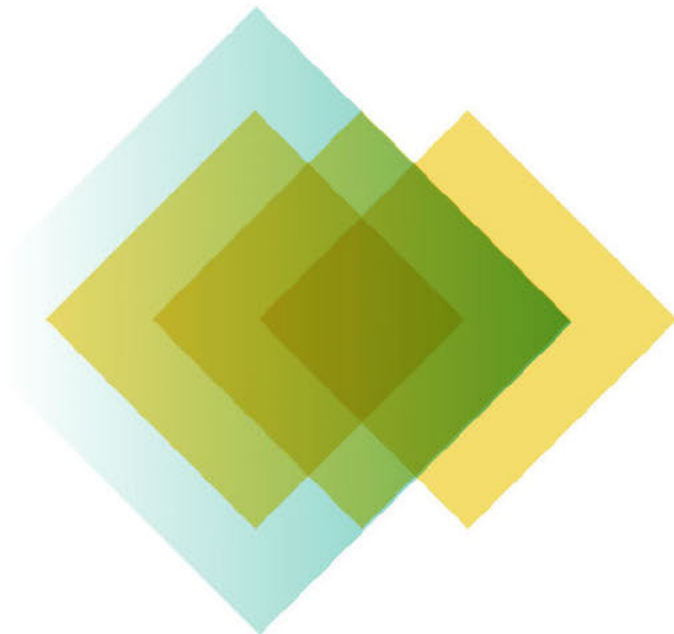
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Australian Government

Office of the Australian Information Commissioner

OAIC Appropriate Workplace Behaviour Policy



6 September 2021

Version	Name	Changes	Date
0.1		Clearance from Human Resources	13 November 2012
1.0		Final signed by Australian Information Commissioner	30 November 2012
1.1		Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0		Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1		Updated Word template	January 2019
3.0	Mark Smolonogov	Revised and updated policy following consultation with OCF	September 2021

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Statement by the Australian Information Commissioner and Privacy Commissioner

The Office of the Australian Information Commissioner (OAIC) is an organisation which values fairness, equity and diversity. We are committed to maintaining a safe and inclusive workplace which upholds the Australian Public Sector (APS) Values, Employment Principles and Code of Conduct. To meet this commitment, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. This requires ensuring that people are treated with respect and courtesy, and without harassment.

Inappropriate behaviour, such as harassment, discrimination, bullying, victimisation and racism will not be tolerated and it is the responsibility of every OAIC worker to contribute to an environment free of harassment, bullying and discrimination. Ignoring inappropriate behaviour can have serious consequences.

Our managers and supervisors are responsible for leading by example and maintaining a respectful working environment. They should ensure that all workers are aware of their rights and responsibilities under this policy and take action if they become aware of inappropriate behaviour.

Every worker has a responsibility to treat colleagues and members of the public with respect and courtesy, and to contribute to a safe and supportive work environment, where workers collaborate together to foster an inclusive workplace for all. Each worker is to behave at all times in a manner that maintains or upholds the integrity and good reputation of the OAIC and the APS.

The OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to workers, including managers. Workers can approach any of the HCOs even if they do not wish to make a formal complaint. There are procedures in place if staff choose to lodge a formal complaint about inappropriate behaviour. Workers can also contact our People and Culture Team for further information, advice or support.

Angelene Falk

Australian Information Commissioner and Privacy Commissioner

September 2021

1. Scope

- 1.1 This policy applies to all OAIC workers, including full-time, part-time, fixed term and casual employees, contractors and volunteers.
- 1.2 This policy applies to workers whenever they are undertaking work for the OAIC (regardless of work location) and whenever they are, or may be perceived as, representing the OAIC or the APS.
- 1.3 Workers should be aware that the application of this policy is not limited to behaviour which occurs in the workplace. Behaviour outside the workplace may fall within the scope of this policy if it has a sufficient connection to the OAIC or the APS, including if the behaviour is incompatible with the person's work duties for the OAIC.
- 1.4 Nothing in this policy prevents a worker from using the dispute resolution procedures available in the OAIC Enterprise Agreement and/or referring a matter to the Fair Work Commission or the Australian Human Rights Commissioner, where applicable. Further information regarding external forums where workers can raise complaints about inappropriate behaviour is contained in clause 21 of this policy.

2. Appropriate behaviour

- 2.1 Appropriate behaviour is behaviour that is consistent with the OAIC's objective to ensure the workplace is a safe, respectful and inclusive environment, free from harassment, discrimination, bullying, victimisation and racism.
- 2.2 Behaving appropriately requires:
 - acting in a manner that is consistent with the APS Values and Code of Conduct
 - treating other employees and contractors with respect, fairness and courtesy
 - engaging in honest and ethical conduct
 - considering the potential impact of one's behaviour on others
 - ensuring that one's actions, communications and attitude are appropriate to the circumstances
 - complying with applicable policies, laws, rules and regulations.
- 2.3 Inappropriate behaviour is any behaviour which is not appropriate behaviour. Inappropriate behaviour can be intentional or unintentional and includes behaviour that occurs in person, by telephone, virtually or by other means.
- 2.4 Examples of inappropriate behaviour include harassment, discrimination, bullying, victimisation and racism.

3. Confidentiality

All information that is provided by parties in relation to any alleged behaviour pursuant to this policy will be handled confidentially. Allegations of this nature have the potential to cause damage to an individual's reputation, regardless of whether the allegation is found to be substantiated.

Notwithstanding the above, information relating to an allegation or complaint may be disclosed to:

- OAI staff members with a legitimate work related need to know, for example, supervisors;
- People directly involved in the assessment or resolution of a complaint insofar as they require access to information, subject to legal requirements for disclosure.

Any person entrusted with confidential and personal information must take all reasonable care and necessary precautions to maintain confidentiality and prevent disclosure of such information.

4. Harassment

- 4.1 Harassment is unwelcome behaviour that a reasonable person would have anticipated might offend, humiliate or intimidate the person or group it is directed towards. Harassment can be unlawful when it occurs in connection with an actual or perceived characteristic (including gender, race, disability, age, sexual orientation, religion, pregnancy, marital or domestic status or carer's responsibilities).
- 4.2 Harassment may occur in any work-related context, including outside of working hours and the physical workplace. Examples include conferences, office social events, business trips and social networking sites as well as interactions with clients.
- 4.3 A one-off incident can constitute harassment and a person's intention is irrelevant in determining whether the harassment has occurred.
- 4.4 Examples of harassing behaviour include, but are not limited to:
 - offensive physical contact, derogatory language or intimidating actions
 - insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
 - sexualised comments, innuendo or contact
 - unjustified and unnecessary comments about a person's work or capacity for work
 - openly displayed pictures, posters, graffiti or written materials which might offend some people
 - phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees
 - persistent following or stalking within the workplace, or to and from work or elsewhere
 - disparaging remarks about malingering to employees who have made a claim for compensation.

4.5 Sexual harassment is a type of harassment that involves unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. The unwelcome behaviour need not be repeated or continuous; a single incident can amount to sexual harassment.

4.6 An individual could also experience sexual harassment by being exposed to or witnessing this kind of behaviour, regardless of whether the behaviour was directed at them. For example, overhearing a conversation or seeing a sexually explicit image in the workplace.

4.7 Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures, screen savers or posters
- unwanted invitations to go out on dates or requests for sex
- intrusive questions about a person's private life or body
- insults or taunts based on a person's sex
- sexually explicit emails or SMS messages
- suggestive or sexually explicit comments or references on social media networks
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications
- Sexual harassment is not interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

4.8 The fact that an individual does not object to the inappropriate behaviour in the workplace at the time, does not mean that they are consenting to that particular behaviour.

5. Discrimination

5.1 Discrimination is treating someone less favourably than another person or group because of their background or certain personal characteristics. Discrimination can occur directly and indirectly.

5.2 Discrimination is unlawful when it is based on one or more of the following attributes:

- age
- disability
- race, including colour, national or ethnic origin or immigrant status
- sex, pregnancy, marital or relationship status, family/carer's responsibilities or breastfeeding

- sexual orientation, gender identity or intersex status
- political opinion
- religion.

5.3 Examples of direct discrimination include, but are not limited to:

- stating or suggesting a preferred candidate's gender in a job advertisement
- excluding potential staff from consideration for promotions due to their age
- promoting a person based on their marital status.

5.4 Examples of indirect discrimination include, but are not limited to:

- a policy, requirement or condition being applied to everyone but operating to disadvantage a particular group of people
- office facilities that are not accessible to those with a physical disability
- requiring job candidates to meet physical criteria that has the effect of advantaging a particular gender.

6. Bullying

6.1 Bullying is repeated, unreasonable behaviour directed towards an individual, or group of people that creates a risk to health and safety. Bullying can occur face-to-face, over the phone, by email, through instant messaging or by other electronic means.

6.2 Bullying can involve many different forms of unreasonable behaviour, which can be direct (obvious or overt) or indirect (subtle). Respectful differences of opinion, reasonable performance management, conflicts in working relationships and personality clashes can happen in the workplace, but do not necessarily amount to bullying.

6.3 Examples of direct bullying include:

- teasing or regularly being subject to practical jokes
- demeaning language, including sarcasm, ridicule or insults
- threatening language
- verbal abuse or shouting
- outbursts of anger or aggression
- physical or verbal intimidation
- showing contempt or disrespect
- ostracising, excluding, isolating or ignoring a worker, including withholding of information to enable effective work performance

- spreading malicious gossip or rumours about a worker
- interfering with someone's personal property or work equipment
- harmful or offensive initiation practices
- setting unrealised timelines or constantly changing deadlines or work requirements
- setting tasks that are unreasonable below or above an individual's skill and expertise.

6.4 Examples of indirect bullying include:

- unreasonably overloading a person with work or not providing enough work
- setting unreasonable timelines that are difficult to achieve or constantly changing deadlines
- setting tasks that are unreasonably above or below a person's skill level
- deliberately excluding, isolating or marginalising a person from normal work activities
- unreasonably withholding or denying access to information or resources that is vital for effective work performance
- deliberately changing work arrangements to inconvenience a particular person
- unfair treatment in relation to accessing entitlements such as leave.

6.5 Reasonable management action taken in a reasonable way is not bullying. Examples of this include:

- setting reasonable performance goals, standards and deadlines in consultation with workers and after considering their respective skills and experience
- allocating work to a worker in accordance with terms and conditions of their engagement and organisational practices
- fairly rostering and allocating working hours
- transferring a worker for legitimate and explained operational reasons
- deciding not to select an employee for promotion, following a fair and documented process
- informing a worker about unsatisfactory work performance in a constructive way
- informing a worker about inappropriate behaviour in an objective and confidential way
- implementing organisational changes or restructuring
- appropriate performance management processes.

7. Victimisation

- 7.1 Victimisation occurs when a person is subjected to, or threatened with, some form of detriment because they have asserted their personal, workplace or legal rights or are involved in a complaints process.
- 7.2 Conduct which constitutes victimisation can be unlawful under employment, anti-discrimination and work health and safety legislation.
- 7.3 Examples of victimisation include, but are not limited to:
 - altering a worker's working arrangements so that they receive less pay after they have made a workplace complaint
 - choosing not to promote an employee because they have asked questions about their pay.

8. Racism

- 8.1 Racism is behaviour which is prejudicial, discriminatory or antagonistic towards an individual, community or institution based on their membership of a particular racial or ethnic group, typically one that is a minority or marginalised.
- 8.2 Examples of racism include, but are not limited to:
 - racially motivated slurs, insults or jokes
 - differential treatment on work matters because of a person's race
 - expressing unreasonable racial opinion which includes any opinion which is likely to cause a reasonable person offence
 - excluding or isolating a person because of their race
 - degrading or intolerant comments towards racial or ethnic groups.

9. Preventing inappropriate behaviour

- 9.1 Inappropriate behaviour is preventable and all workers are expected to take responsibility for ensuring that inappropriate behaviour does not occur. This requires contributing to a workplace culture that aligns with the APS Values, Code of Conduct and Employment Principles.
- 9.2 Workers are not expected to tolerate inappropriate behaviour from others in the course of their work for the OAIC. Workers have the right to raise concerns about inappropriate behaviour and should feel comfortable to do so without fear of victimisation or punishment.

10. Legal responsibilities

10.1 Management has a legal responsibility to take steps to prevent and respond to inappropriate behaviour. All workers are bound by various legislation that prohibits different types of inappropriate behaviour and ensures that there is an appropriate standard of conduct maintained in the workplace.

11. APS Values

11.1 The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the **PS Act**) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.

11.2 The APS Values are as follows:

Impartial – The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to Service – The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Accountable – The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful – The APS respects all people, including their rights and their heritage.

Ethical – The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

12. APS Code of Conduct

12.1 All APS employees are subject to the Code of Conduct set out in section 13 of the PS Act . The Code of Conduct requires that, when acting in connection with APS employment, an employee:

- treat everyone with respect and courtesy, and without harassment
- comply with all applicable Australian laws.

12.2 An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act.

13. Other legislation

13.1 Inappropriate behaviour can be unlawful under various legislation. This includes but is not limited to:

- Commonwealth anti-discrimination legislation, including:
 - the Racial Discrimination Act 1975 (Cth)

- the Sex Discrimination Act 1984 (Cth)
- the Disability Discrimination Act 1992 (Cth)
- the Age Discrimination Act 2004 (Cth)
- the *Australian Human Rights Commission Act 1986* (Cth)
- the *Fair Work Act 2009* (Cth)
- the *Work Health and Safety Act 2011* (Cth)
- other criminal legislation.

13.2 Under certain legislation such as anti-discrimination legislation, employers can be held vicariously liable for the acts or omissions of their employees who engage in discriminatory or harassing behaviour.

14. Public Interest Disclosures

14.1 The *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) applies when people report a suspected breach of the Code of Conduct to an authorised person. The PID Act offers protections to those making such disclosures and requires agencies to take action in relation to the alleged breach. Allegations of such breaches may include reports made by employees who believe that inappropriate behaviour is occurring, even where there is no formal complaint from the person who is the subject of the inappropriate behaviour.

15. Key responsibilities

Role	Responsibilities
The OAIC	<p>The OAIC is committed to ensuring all reasonable steps are taken to prevent inappropriate behaviour, including:</p> <ul style="list-style-type: none"> ● distributing and promoting this policy ● providing employees with training on inappropriate behaviour ● providing managers with training, advice and guidance in handling complaints ● ensuring that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to inappropriate behaviour ● maintaining a network of trained HCOs, drawn from all parts of the OAIC, to provide initial information, support and assistance to workers ● providing an accessible and transparent procedure for resolving complaints

	<ul style="list-style-type: none"> • providing employees with access to a free counselling service through the OAIC's Employee Assistance Program • taking timely and appropriate action in response to any reports of unlawful discrimination, harassment or bullying • working actively through the Executive Committee and other appropriate mechanisms to proactively identify opportunities to adopt best practice and prevent discrimination. <p>In circumstances where a concern or complaint arises, the OAIC will take prompt action and provide all involved with the necessary support and resources to resolve the concern or complaint.</p>
Managers	All managers have a responsibility to support, implement and promote this policy within their work areas.
Workers	<p>All workers are responsible for ensuring that their behaviour is appropriate.</p> <p>Workers are expected to take action (which includes speaking to a manager, HCO, People and Culture or a member of the Executive) in relation to any incidents of inappropriate behaviour which they experience or observe in the workplace or between workers outside the workplace in the course of, or related to, their work.</p> <p>Workers who observe inappropriate behaviour may attempt to resolve the matter by:</p> <ul style="list-style-type: none"> • bringing the behaviour to the worker's notice, either verbally or in writing, and requesting that it cease • asking the relevant manager to assist by discussing the matter with the individual and requesting that it cease • requesting that the relevant manager reinforce appropriate work behaviours with the work area, without identifying those involved in the matter. <p>Workers making a complaint are responsible for ensuring that they:</p> <ul style="list-style-type: none"> • make the complaint honestly and in good faith • provide all facts relevant to the complaint • cooperate with the resolution process • keep the complaint confidential within the resolution process, the parties involved, and their chosen support person.
Harassment Contact Officers (HCOs)	HCOs are OAIC employees trained to provide information, support and assistance to other workers in relation to instances of perceived unlawful discrimination, harassment or bullying.

	<p>HCOs must:</p> <ul style="list-style-type: none"> • attend training – generally 2 days in duration, as well as HCO refresher training (generally one day) every 2 years or as required or directed by People and Culture • respond to an initial enquiry regarding inappropriate behaviour as soon as possible and within 3 working days • complete and submit confidential HCO incident reports to People and Culture within 3 working days of meeting with a worker • attend HCO network meetings as required • maintain confidentiality and impartiality at all times, noting that there is no guarantee of confidentiality but the ‘need to know’ principle applies • participate in the review of relevant material as required. <p>A worker may choose to speak with an HCO as their initial point of contact and may continue to receive support and assistance while the matter or complaint is being investigated and resolved.</p> <p>An HCO’s role is not to resolve a matter or complaint but to provide information, support and assistance, particularly in relation to the options available to resolve a matter or complaint. HCOs may also provide information, support and assistance to a worker who believes that a complaint may be lodged against them.</p> <p>An HCO may also be asked to assist workers who require a support person to attend discussions involving other processes such as performance management and counselling processes.</p> <p>A list of HCOs is available on FYI and on Content Manager at D2018/000992</p>
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16. Making a complaint

16.1 Workers who believe they have been, or are being, subjected to inappropriate behaviour or conduct are encouraged to discuss the relevant behaviour or conduct with one or more of the parties detailed below, as soon as practicable:

- their manager
- an HCO
- People and Culture, or
- a member of the Executive.

16.2 Workers are also able to report inappropriate behaviour anonymously, in writing. The anonymous complaint should contain specific details about what happened, where the event

or behaviour occurred, the time and date of the behaviour, and whether there were any witnesses to the behaviour, as well as any other relevant details. If sufficient information is not provided with an anonymous complaint, the OAIC may be unable to manage the complaint in accordance with this policy.

16.3 Early intervention may lead to faster and more effective management of the underlying behaviour or conduct. A worker who has made a complaint, or has had a complaint made against them, may choose to have a support person, such as an HCO or any other support person of the worker's choice, present at meetings in relation to the complaint. The OAIC may not be able to take action in relation to a complaint if the complaint:

- involves an allegation of conduct that may be a criminal offence and any investigation could jeopardise a criminal process (e.g. sexual assault)
- has been satisfactorily resolved (unless further inappropriate behaviour has since occurred)
- is made anonymously without providing sufficient detail to allow investigation of the matter
- is frivolous, vexatious or malicious
- is false or misleading or if facts are distorted.

16.4 It may be necessary to take interim action, such as temporarily moving one or both/all parties to a different work area, until the situation is investigated or resolved. Any interim action should not disadvantage the worker making a complaint in any way.

16.5 The method of resolution will depend upon the circumstances of the complaint. Informal resolution, where appropriate, is the preferred method of resolution. However, the OAIC or the worker may choose to adopt the formal complaint process at any time, either within the OAIC or externally.

17. Resolving complaints informally

17.1 It is often in the best interest of all parties to resolve complaints informally at the level of management closest to the parties. If it is appropriate to try to resolve the issue informally, managers should consult with People and Culture about their proposed course of action.

17.2 In certain circumstances, a complaint may be resolved informally after agreement on a proposed course of action with input from People and Culture. Examples of action that may be taken to resolve a complaint informally include:

- informal discussions between those involved
- training or coaching
- mediation or facilitated discussions.

18. Responsibilities of managers receiving complaints

- 18.1 Managers are to treat all matters reported to them seriously and action all complaints directly and expeditiously. If a worker makes a complaint to a manager alleging inappropriate behaviour, the manager must take the following steps in order of priority:
- be open, supportive and non-judgemental but do not make, or agree to, any undertakings that could prejudice or compromise satisfactory resolution or any parties involved in the matter
 - establish whether the alleged recipient of the behaviour is still at risk and, if they are, take all reasonable steps to ensure no further harm or incidents of inappropriate behaviour occur
 - confirm whether the worker making the complaint expects action to be taken, noting that in some cases the manager will be required to take action
 - establish the facts of the matter in as much detail as possible using the ‘who what, where, when, why and how’ as prompts to acquire detail
 - make a record of the meeting within 24 hours, preferably during the discussion as this will allow for re-checking and clarification of points
 - seek the feedback of the alleged recipient of the behaviour regarding their desired outcome
 - seek advice from People and Culture as soon as possible to consider the most appropriate course of action.
- 18.2 Caution is recommended at this point as no facts have been established and natural justice must be applied to all parties. Managers can unilaterally initiate an investigation without receiving a formal complaint if circumstances warrant this course of action.
- 18.3 Managers should provide the following guidance to all parties to a complaint:
- advise the parties involved of the process and proposed timing to resolve the complaint
 - let the parties know that EAP counselling is available
 - advise the parties of the need to maintain confidentiality, but that this does not preclude someone from discussing matters with an EAP counsellor or support person
 - advise a worker who has made a complaint, or has had a complaint made against them, that they are entitled to have a support person, such as an HCO or any other support person of the worker’s choice, present at meetings in relation to the complaint
 - explain that in some circumstances further action may need to be taken regardless of the parties’ preferences and therefore no guarantee of confidentiality can be given.
- 18.4 Once a complaint is resolved through an informal process, managers should:

- monitor the relevant work area/s after a resolution has been implemented to identify if the behaviour or conduct is repeated
- ensure no adverse action is taken against the complainant unless it is proven that the complaint was false and made in bad faith.

18.5 It is important that all parties to an allegation of inappropriate behaviour maintain confidentiality, with information to be shared only on a 'need to know' basis. Because of the sensitivity of material relating to inappropriate behaviour, special care should be taken to protect the confidentiality of any records relating to complaint processes.

18.6 Where a manager is made aware of inappropriate conduct, with or without a complaint, they may also choose to reinforce appropriate work behaviours with the work area, without identifying those involved in the matter. This might also include organising relevant behaviour training.

19. Formal process for all workers

19.1 In some circumstances, workers may wish to make a formal complaint. This could include situations where a complaint is unable to be resolved informally between the parties or through informal resolution strategies, and it is unlikely that further informal strategies will resolve the issue, where the behaviour/incident is serious or longstanding, or there is significant disagreement about what has occurred and what should happen. Workers wishing to make a formal complaint are encouraged to seek further information and discuss their options with People and Culture.

19.2 Any formal complaint should be in writing and submitted to the Assistant Commissioner, Corporate Branch or the Deputy Commissioner providing details of the complaint, including the names of witnesses (if any) and the complainant's desired outcome. **Nothing in this policy prevents the OAIC taking action in relation to inappropriate behaviour in the absence of receiving a complaint.**

19.3 Once a formal complaint or information which suggests inappropriate behaviour has occurred has been received by the Assistant Commissioner, Corporate Branch or the Deputy Commissioner, an initial information gathering process may need to be undertaken to better understand the alleged inappropriate behaviour and determine the appropriate action to be taken in response. The initial information gathering process may involve discussions with workers who can provide relevant information or collecting other relevant information and documents. The initial information gathering process does not need to establish whether the alleged conduct occurred and should only be undertaken to the extent necessary to enable an informed decision to be made about how the complaint should be dealt with.

19.4 Once the Assistant Commissioner, Corporate Branch or the Deputy Commissioner has sufficient information to enable them to understand the alleged inappropriate behaviour, they may determine to deal with the complaint in one of the following ways:

- making findings of fact, including potentially by undertaking an internal or external investigation

- undertaking a formal process under the OAIIC's procedures for managing suspected breaches of the APS Code of Conduct
 - undertaking a less formal process, such as through discussions with the persons involved
 - arranging counselling or a mediation
 - making a report to the police or other external authority
 - taking no further action.
- 19.5 The factors that may be considered when determining how to deal with a complaint include, but are not limited to:
- the facts and circumstances giving rise to the alleged behaviour
 - the seriousness of the alleged behaviour
 - the connection of the alleged behaviour to employment
 - the role and seniority of the worker alleged to have engaged in the behaviour
 - the availability of relevant documentation and witnesses
 - any action already taken in relation to the alleged behaviour
 - whether the alleged behaviour, if established, indicates a pattern of behaviour by the worker
 - whether the alleged behaviour, if established, may constitute a criminal act or other offence
 - whether the alleged behaviour, if established, would amount to a breach of this policy.
- 19.6 If the alleged inappropriate behaviour is to be dealt with through a fact finding process, findings are to be made on the balance of probabilities (i.e. it is more likely than not that the alleged behaviour occurred).
- 19.7 If an investigation is to be undertaken for the purpose of a fact finding process, the investigation may be undertaken in any way People and Culture considers appropriate in the circumstances. However, the investigation must be undertaken in a way that affords procedural fairness to those involved and deals with the complaint in a sensitive, fair, confidential and timely manner.
- 19.8 While the investigation process may vary depending on the circumstances of the complaint, it will usually involve the following steps:
- speaking to the complainant to obtain further detail about the allegations
 - collecting relevant evidence including documentary and witness evidence
 - putting allegations to the respondent in writing and providing them an opportunity to respond to the allegations in person and/or in writing
 - making any further enquiries as necessary based on information provided by the respondent in their response

- making findings of fact based on the available evidence and preparing a report setting out the findings
 - informing the complainant and respondent in writing of the outcome of the complaint.
- 19.9 A worker who has made a complaint will generally be informed of whether or not the alleged complaint was established and that the matter has been dealt with. It may not, however, be possible to provide any additional information to the worker due to confidentiality obligations.
- 19.10 APS employees have additional options for resolution of formal complaints through the review of action provisions of the PS Act. This provides for an APS employee to seek a formal review by the OAIC in the first instance.
- 19.11 Once a review has been concluded within the OAIC, the employee may be entitled to seek secondary review of the action if they are not satisfied with the outcome of the primary review.

20. Record keeping

- 20.1 It is important that workers adequately document any action taken to address complaints and reasons for the decision to deal with the complaint in that manner. Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and corrective action to be taken. Should there be questions as to whether a complaint was properly handled, adequately maintained records may be vital in any later review of the processes undertaken.
- 20.2 If an investigation is undertaken as part of a fact finding process, records should be kept of any material relevant to or obtained during the investigation, including:
- the complaint
 - all written correspondence exchanged with the complainant, respondent, witnesses and any other relevant persons regarding the investigation
 - contemporaneous records of all verbal communications relevant to the investigation, including detailed notes of meetings and telephone conversations
 - documented reasons for all significant decisions made
 - any written statements of the complainant, respondent and witnesses.

21. External complaints

- 21.1 Workers may choose to make an external complaint. External bodies to which a complaint may be made include:
- the Fair Work Commission – www.fwc.gov.au
 - the Australian Human Rights Commission – www.humanrights.gov.au
 - the Australian Public Service Commission – www.apsc.gov.au (for APS employees only).

- 21.2 There may also be avenues available to workers under the *Work Health and Safety Act 2011* (WHS Act). Workers wishing to explore those avenues may wish to discuss their concerns with a Health and Safety Representative, or seek further information from the Comcare website at www.comcare.gov.au.
- 21.3 Managers should also consider whether the complaint may represent a disclosure under the *Public Interest Disclosure Act 2013*.
- 21.4 Further information on these options is available from People and Culture and from the websites of the relevant agencies. Workers are encouraged to discuss these options before making a formal complaint.

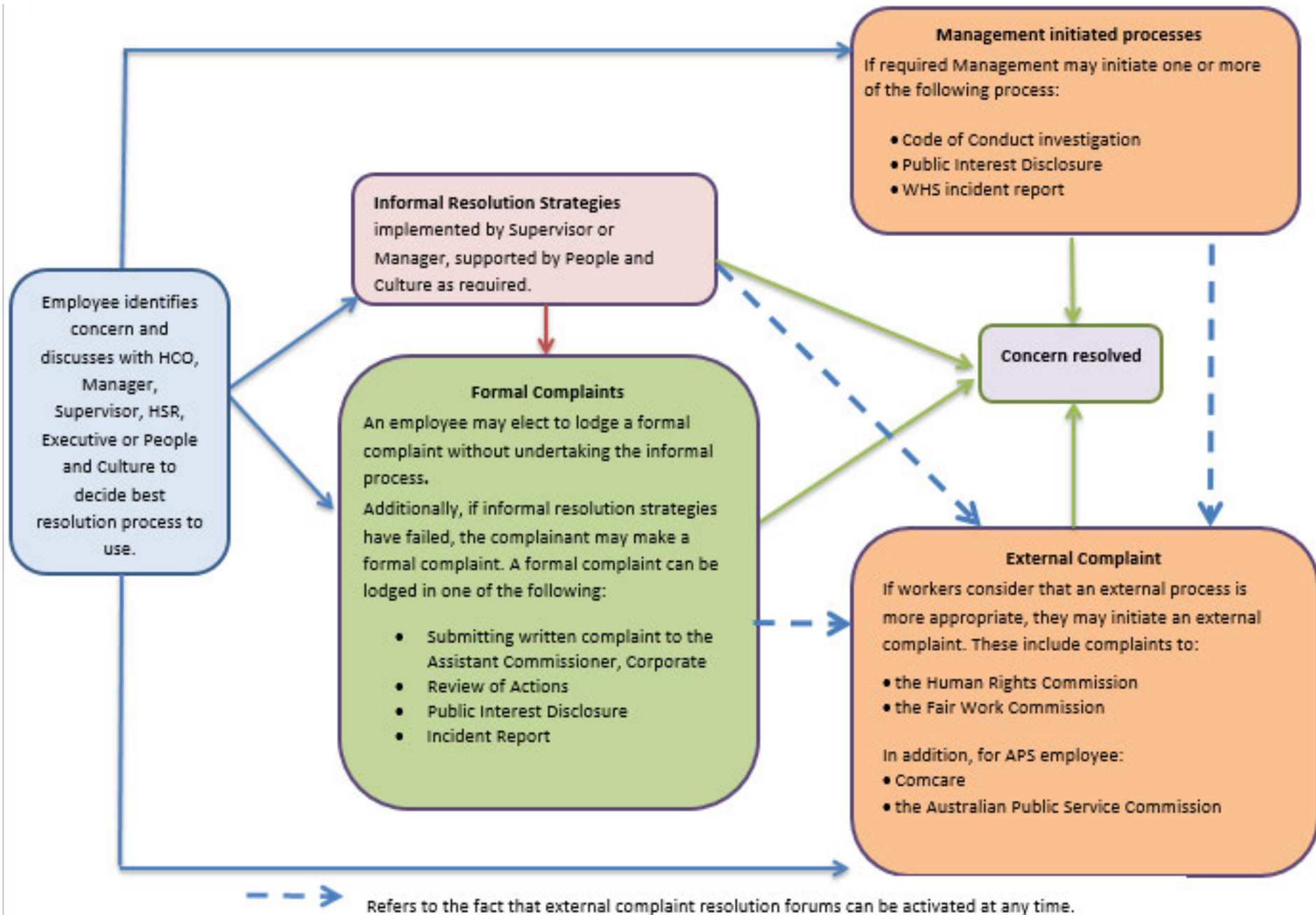
22. Further information

22.1 Additional information regarding the elimination and prevention of workplace harassment is available from the OAIC's People and Culture Team.

22.2 Relevant references and links include:

- [*Fair Work Act 2009*](#)
- [*Public Service Act 1999*](#)
- [*Public Service Regulations 2023*](#)
- [*Australian Public Service Commissioner's Directions 2022*](#)
- [*APS Code of Conduct and APS Values*](#)
- [*OAIC Enterprise Agreement 2016-2019*](#)
- [*OAIC Breaches to the APS Code of Conduct*](#)
- [*OAIC Diversity Strategy*](#)
- [*OAIC's ICT Facilities Usage Policy*](#)
- [*OAIC Public Interest Disclosure Procedures*](#)
- [*Racial Discrimination Act 1975*](#)
- [*Sex Discrimination Act 1984*](#)
- [*Disability Discrimination Act 1992*](#)
- [*Age Discrimination Act 2004*](#)
- [*Australian Human Rights Commission Act 1986*](#)
- [*Work Health and Safety \(Commonwealth Employment\) Act 2011*](#)
- [*Privacy Act 1988*](#)
- [*Public Interest Disclosure Act 2013*](#)

- “Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008) – AHRC Publication, Chapter 2: A guide to the Code of Practice
- “Sharpening the focus: Managing performance in the APS” – AHRC Publication, <https://www.apsc.gov.au/sharpening-focus-managing-performance-aps>

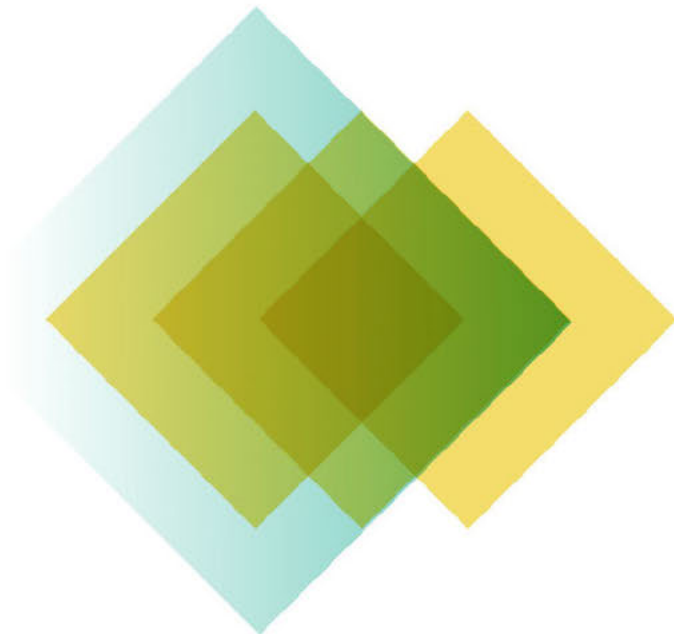




Australian Government

Office of the Australian Information Commissioner

OAIC Appropriate Workplace Behaviour Policy



6 September 2021

Version	Name	Changes	Date
0.1		Clearance from Human Resources	13 November 2012
1.0		Final signed by Australian Information Commissioner	30 November 2012
1.1		Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0		Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1		Updated Word template	January 2019
3.0	Mark Smolonogov	Revised and updated policy following consultation with OCF	September 2021

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Statement by the Australian Information Commissioner and Privacy Commissioner

The Office of the Australian Information Commissioner (OAIC) is an agency which values fairness, equity and diversity. We are committed to maintaining a safe and inclusive workplace which upholds the Australian Public Service (APS) Values, Employment Principles and Code of Conduct. To meet this commitment, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. This requires ensuring that people are treated with respect and courtesy, and without harassment.

Inappropriate behaviour, such as harassment, discrimination, bullying, victimisation and racism will not be tolerated and it is the responsibility of every OAIC employee to contribute to an environment free of harassment, bullying and discrimination. Ignoring inappropriate behaviour can have serious consequences.

Our managers and supervisors are responsible for leading by example and maintaining a respectful working environment. They should ensure that all employees are aware of their rights and responsibilities under this policy and take action if they become aware of inappropriate behaviour.

Every employee has a responsibility to treat colleagues and members of the public with respect and courtesy, and to contribute to a safe and supportive work environment, where employees collaborate together to foster an inclusive workplace for all. Each employee is to behave at all times in a manner that maintains or upholds the integrity and good reputation of the OAIC and the APS.

The OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to employees, including managers. Employees can approach any of the HCOs even if they do not wish to make a formal complaint. There are procedures in place if staff choose to lodge a formal complaint about inappropriate behaviour. Employees can also contact our People and Culture Team for further information, advice or support.

Angelene Falk

Australian Information Commissioner and Privacy Commissioner

September 2021

1. Scope

- 1.1 This policy applies to all OAIC employees, including full-time, part-time, fixed term and casual employees, contractors and volunteers.
- 1.2 This policy applies to employees whenever they are undertaking work for the OAIC (regardless of work location) and whenever they are, or may be perceived as, representing the OAIC or the APS.
- 1.3 Employees should be aware that the application of this policy is not limited to behaviour which occurs in the workplace. Behaviour outside the workplace may fall within the scope of this policy if it has a sufficient connection to the OAIC or the APS, including if the behaviour is incompatible with the person's work duties for the OAIC.
- 1.4 Nothing in this policy prevents an employee from using the dispute resolution procedures available in the OAIC Enterprise Agreement and/or referring a matter to the Fair Work Commission or the Australian Human Rights Commissioner, where applicable. Further information regarding external forums where employees can raise complaints about inappropriate behaviour is contained in clause 21 of this policy.

2. Appropriate workplace behaviour

- 2.1 Appropriate workplace behaviour is behaviour that is consistent with the OAIC's objective to ensure the workplace is a safe, respectful and inclusive environment, free from harassment, discrimination, bullying, victimisation and racism.
- 2.2 Behaving appropriately requires:
 - acting in a manner that is consistent with the APS Values and Code of Conduct
 - treating other employees and contractors with respect, fairness and courtesy
 - engaging in honest and ethical conduct
 - considering the potential impact of one's behaviour on others
 - ensuring that one's actions, communications and attitude are appropriate to the circumstances
 - complying with applicable policies, laws, rules and regulations.
- 2.3 Inappropriate behaviour is any behaviour which is not appropriate behaviour. Inappropriate behaviour can be intentional or unintentional and includes behaviour that occurs in person, by telephone, virtually or by other means.
- 2.4 Examples of inappropriate behaviour include harassment, discrimination, bullying, victimisation and racism.

3. Confidentiality

All information that is provided by parties in relation to any alleged behaviour pursuant to this policy will be handled confidentially. Allegations of this nature have the potential to cause damage to an individual's reputation, regardless of whether the allegation is found to be substantiated.

Notwithstanding the above, information relating to an allegation or complaint may be disclosed to:

- OAI staff members with a legitimate work related need to know, for example, supervisors;
- People directly involved in the assessment or resolution of a complaint insofar as they require access to information, subject to legal requirements for disclosure.

Any person entrusted with confidential and personal information must take all reasonable care and necessary precautions to maintain confidentiality and prevent disclosure of such information.

4. Workplace Harassment

- 4.1 Harassment is unwelcome behaviour that a reasonable person would have anticipated might offend, humiliate or intimidate the person or group it is directed towards. Harassment can be unlawful when it occurs in connection with an actual or perceived characteristic (including gender, race, disability, age, sexual orientation, religion, pregnancy, marital or domestic status or carer's responsibilities).
- 4.2 Harassment may occur in any work-related context, including outside of working hours and the physical workplace. Examples include conferences, office social events, business trips and social networking sites as well as interactions with clients.
- 4.3 A one-off incident can constitute harassment and a person's intention is irrelevant in determining whether the harassment has occurred.
- 4.4 Examples of harassing behaviour include, but are not limited to:
 - offensive physical contact, derogatory language or intimidating actions
 - insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
 - sexualised comments, innuendo or contact
 - unjustified and unnecessary comments about a person's work or capacity for work
 - openly displayed pictures, posters, graffiti or written materials which might offend some people
 - phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees
 - persistent following or stalking within the workplace, or to and from work or elsewhere
 - disparaging remarks about malingering to employees who have made a claim for compensation.

4.5 Sexual harassment is a type of harassment that involves unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. The unwelcome behaviour need not be repeated or continuous; a single incident can amount to sexual harassment.

4.6 An individual could also experience sexual harassment by being exposed to or witnessing this kind of behaviour, regardless of whether the behaviour was directed at them. For example, overhearing a conversation or seeing a sexually explicit image in the workplace.

4.7 Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures, screen savers or posters
- unwanted invitations to go out on dates or requests for sex
- intrusive questions about a person's private life or body
- insults or taunts based on a person's sex
- sexually explicit emails or SMS messages
- suggestive or sexually explicit comments or references on social media networks
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications
- Sexual harassment is not interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

4.8 The fact that an individual does not object to the inappropriate behaviour in the workplace at the time, does not mean that they are consenting to that particular behaviour.

5. Discrimination

5.1 Discrimination is treating someone less favourably than another person or group because of their background or certain personal characteristics. Discrimination can occur directly and indirectly.

5.2 Discrimination is unlawful when it is based on one or more of the following attributes:

- age
- disability
- race, including colour, national or ethnic origin or immigrant status
- sex, pregnancy, marital or relationship status, family/carer's responsibilities or breastfeeding

- sexual orientation, gender identity or intersex status
- political opinion
- religion.

5.3 Examples of direct discrimination include, but are not limited to:

- stating or suggesting a preferred candidate's gender in a job advertisement
- excluding potential staff from consideration for promotions due to their age
- promoting a person based on their marital status.

5.4 Examples of indirect discrimination include, but are not limited to:

- a policy, requirement or condition being applied to everyone but operating to disadvantage a particular group of people
- office facilities that are not accessible to those with a physical disability
- requiring job candidates to meet physical criteria that has the effect of advantaging a particular gender.

6. employeeBullying

6.1 Bullying is repeated, unreasonable behaviour directed towards an individual, or group of people that creates a risk to health and safety. Bullying can occur face-to-face, over the phone, by email, through instant messaging or by other electronic means.

6.2 Bullying can involve many different forms of unreasonable behaviour, which can be direct (obvious or overt) or indirect (subtle). Respectful differences of opinion, reasonable performance management, conflicts in working relationships and personality clashes can happen in the workplace, but do not necessarily amount to bullying. employeeemployee

6.3 Examples of direct bullying include:

- teasing or regularly being subject to practical jokes
- demeaning language, including sarcasm, ridicule or insults
- threatening language
- verbal abuse or shouting
- outbursts of anger or aggression
- physical or verbal intimidation
- showing contempt or disrespect
- ostracising, excluding, isolating or ignoring a employee, including withholding of information to enable effective work performance

- spreading malicious gossip or rumours about a employee
- interfering with someone's personal property or work equipment
- harmful or offensive initiation practices

6.4 employeeemployeeemployeeExamples of indirect bullying include:

- unreasonably overloading a person with work or not providing enough work
- setting unreasonable timelines that are difficult to achieve or constantly changing deadlines
- setting tasks that are unreasonably above or below a person's skill level
- deliberately excluding, isolating or marginalising a person from normal work activities
- unreasonably withholding or denying access to information or resources that is vital for effective work performance
- deliberately changing work arrangements to inconvenience a particular person
- unfair treatment in relation to accessing entitlements such as leave.

6.5 Reasonable management action taken in a reasonable way is not bullying. Examples of this include:

- setting reasonable performance goals, standards and deadlines in consultation with employees and after considering their respective skills and experience
- allocating work to a employee in accordance with terms and conditions of their engagement and agency practices
- fairly rostering and allocating working hours
- transferring a employee for legitimate and explained operational reasons
- deciding not to select an employee for promotion, following a fair and documented process
- informing a employee about unsatisfactory work performance in a constructive way
- informing a employee about inappropriate behaviour in an objective and confidential way
- implementing organisational changes or restructuring
- appropriate performance management processes.

7. employeeVictimisation

7.1 Victimisation occurs when a person is subjected to, or threatened with, some form of detriment because they have asserted their personal, workplace or legal rights or are involved in a complaints process.

7.2 Conduct which constitutes victimisation can be unlawful under employment, anti-discrimination and work health and safety legislation.

7.3 employee Examples of victimisation include, but are not limited to:

- altering a employee's working arrangements so that they receive less pay after they have made a workplace complaint
- choosing not to promote an employee because they have asked questions about their pay.

8. Racism

8.1 Racism is behaviour which is prejudicial, discriminatory or antagonistic towards an individual, community or institution based on their membership of a particular racial or ethnic group, typically one that is a minority or marginalised.

8.2 Examples of racism include, but are not limited to:

- racially motivated slurs, insults or jokes
- differential treatment on work matters because of a person's race
- expressing unreasonable racial opinion which includes any opinion which is likely to cause a reasonable person offence
- excluding or isolating a person because of their race
- degrading or intolerant comments towards racial or ethnic groups.

9. Preventing inappropriate behaviour

9.1 Inappropriate behaviour is preventable and all employees are expected to take responsibility for ensuring that inappropriate behaviour does not occur. This requires contributing to a workplace culture that aligns with the APS Values, Code of Conduct and Employment Principles.

9.2 Employees are not expected to tolerate inappropriate behaviour from others in the course of their work for the OAIC. Employees have the right to raise concerns about inappropriate behaviour and should feel comfortable to do so without fear of victimisation or punishment.

10. Legal responsibilities

10.1 Management has a legal responsibility to take steps to prevent and respond to inappropriate behaviour. All employees are bound by various legislation that prohibits different types of inappropriate behaviour and ensures that there is an appropriate standard of conduct maintained in the workplace.

11. APS Values

11.1 The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the **PS Act**) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.

11.2 The APS Values are as follows:

Impartial – The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to Service – The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Accountable – The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful – The APS respects all people, including their rights and their heritage.

Ethical – The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

12. APS Code of Conduct

12.1 All APS employees are subject to the Code of Conduct set out in section 13 of the PS Act . The Code of Conduct requires that, when acting in connection with APS employment, an employee:

- treat everyone with respect and courtesy, and without harassment
- comply with all applicable Australian laws.

12.2 An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act.

13. Other legislation

13.1 Inappropriate behaviour can be unlawful under various legislation. This includes but is not limited to:

- Commonwealth anti-discrimination legislation, including:
 - the Racial Discrimination Act 1975 (Cth)
 - the Sex Discrimination Act 1984 (Cth)
 - the Disability Discrimination Act 1992 (Cth)
 - the Age Discrimination Act 2004 (Cth)
 - the *Australian Human Rights Commission Act 1986* (Cth)
- the *Fair Work Act 2009* (Cth)

- the *Work Health and Safety Act 2011* (Cth)
- other criminal legislation.

13.2 Under certain legislation such as anti-discrimination legislation, employers can be held vicariously liable for the acts or omissions of their employees who engage in discriminatory or harassing behaviour.

14. Key responsibilities

Role	Responsibilities
The OAIC	<p>The OAIC is committed to ensuring all reasonable steps are taken to prevent inappropriate behaviour, including:</p> <ul style="list-style-type: none"> • distributing and promoting this policy • providing employees with training on inappropriate workplace behaviour • providing managers with training, advice and guidance in handling complaints • ensuring that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to inappropriate behaviour • maintaining a network of trained HCOs, drawn from all parts of the OAIC, to provide initial information, support and assistance to employees • providing an accessible and transparent procedure for resolving complaints • providing employees with access to a free counselling service through the OAIC's Employee Assistance Program • taking timely and appropriate action in response to any reports of unlawful discrimination, harassment or bullying • working actively through the Workplace Health and Safety and Wellbeing Committee and other appropriate mechanisms to proactively identify opportunities to adopt best practice and prevent discrimination. <p>In circumstances where a concern or complaint arises, the OAIC will take prompt action and provide all involved with the necessary support and resources to resolve the concern or complaint.</p>

Managers	All managers have a responsibility to support, implement and promote this policy within their work areas.
Employees	<p>All employees are responsible for ensuring that their workplace behaviour is appropriate.</p> <p>Employees are expected to address (which includes speaking to a manager, HCO, People and Culture or a member of the Executive) incidents of inappropriate behaviour which they experience or observe in the workplace or between employees outside the workplace in the course of, or related to, their work.</p> <p>Employees who observe inappropriate workplace behaviour may attempt to resolve the matter by:</p> <ul style="list-style-type: none"> • bringing the behaviour to the employee's notice, either verbally or in writing, and requesting that it cease • asking the relevant manager to assist by discussing the matter with the individual and requesting that it cease • requesting that the relevant manager reinforce appropriate work behaviours with the work area, without identifying those involved in the matter. <p>Employees making a complaint are responsible for ensuring that they:</p> <ul style="list-style-type: none"> • make the complaint honestly and in good faith • provide all facts relevant to the complaint • cooperate with the resolution process • keep the complaint confidential within the resolution process, the parties involved, and their chosen support person.
Harassment Contact Officers (HCOs)	<p>HCOs are OAIC employees trained to provide information, support and assistance to other employees in relation to instances of perceived unlawful discrimination, harassment or bullying.</p> <p>HCOs must:</p> <ul style="list-style-type: none"> • attend training – generally 2 days in duration, as well as HCO refresher training (generally one day) every 2 years or as required or directed by People and Culture • respond to an initial enquiry regarding inappropriate behaviour as soon as possible and within 3 working days • complete and submit confidential HCO incident reports to People and Culture within 3 working days of meeting with a employee

	<ul style="list-style-type: none"> • attend HCO network meetings as required • maintain confidentiality and impartiality at all times, noting that there is no guarantee of confidentiality but the ‘need to know’ principle applies • participate in the review of relevant material as required. <p>A employee may choose to speak with an HCO as their initial point of contact and may continue to receive support and assistance while the matter or complaint is being investigated and resolved.</p> <p>An HCO’s role is not to resolve a matter or complaint but to provide information, support and assistance, particularly in relation to the options available to resolve a matter or complaint. HCOs may also provide information, support and assistance to a employee who believes that a complaint may be lodged against them.</p> <p>An HCO may also be asked to assist employees who require a support person to attend discussions involving other processes such as performance management and counselling processes.</p> <p>A list of HCOs is available on FYI and on Content Manager at D2018/000992</p>
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15. employeeEmployeeemployeeEmployeeemployeeEmployeeEmployeeEmployeeEmployeeEmployeeEmployeeEmployeeEmployeeEmployeeEmployeeMaking a complaint

15.1 Employees who believe they have been, or are being, subjected to inappropriate behaviour or conduct are encouraged to discuss the relevant behaviour or conduct with one or more of the parties detailed below, as soon as practicable:

- their manager
- an HCO
- People and Culture, or
- a member of the Executive.

15.2 Employees are also able to report inappropriate behaviour anonymously, in writing. The anonymous complaint should contain specific details about what happened, where the event or behaviour occurred, the time and date of the behaviour, and whether there were any witnesses to the behaviour, as well as any other relevant details. If sufficient information is not provided with an anonymous complaint, the OAIC may be unable to manage the complaint in accordance with this policy.

15.3 Early intervention may lead to faster and more effective management of the underlying behaviour or conduct. A employee who has made a complaint, or has had a complaint made

against them, may choose to have a support person, such as an HCO or any other support person of the employee's choice, present at meetings in relation to the complaint. The OAIC may not be able to take action in relation to a complaint if the complaint:

- involves an allegation of conduct that may be a criminal offence and any investigation could jeopardise a criminal process (e.g. sexual assault)
- has been satisfactorily resolved (unless further inappropriate behaviour has since occurred)
- is made anonymously without providing sufficient detail to allow investigation of the matter
- is frivolous, vexatious or malicious
- is false or misleading or if facts are distorted.

15.4 It may be necessary to take interim action, such as temporarily moving one or both/all parties to a different work area, until the situation is investigated or resolved. Any interim action should not disadvantage the employee making a complaint in any way.

15.5 The method of resolution will depend upon the circumstances of the complaint. Informal resolution, where appropriate, is the preferred method of resolution. However, the OAIC or the employee may choose to adopt the formal complaint process at any time, either within the OAIC or externally.

16. Resolving complaints informally

16.1 It is often in the best interest of all parties to resolve complaints informally at the level of management closest to the parties. If it is appropriate to try to resolve the issue informally, managers should consult with People and Culture about their proposed course of action.

16.2 In certain circumstances, a complaint may be resolved informally after agreement on a proposed course of action with input from People and Culture. Examples of action that may be taken to resolve a complaint informally include:

- informal discussions between those involved
- training or coaching
- mediation or facilitated discussions.

17. Responsibilities of managers receiving complaints

17.1 Managers are to treat all matters reported to them seriously and action all complaints directly and expeditiously. If a employee makes a complaint to a manager alleging inappropriate behaviour, the manager must take the following steps in order of priority:

- be open, supportive and non-judgemental but do not make, or agree to, any undertakings that could prejudice or compromise satisfactory resolution or any parties involved in the matter

- establish whether the alleged recipient of the behaviour is still at risk and, if they are, take all reasonable steps to ensure no further harm or incidents of inappropriate behaviour occur
- confirm whether the employee making the complaint expects action to be taken, noting that in some cases the manager will be required to take action
- establish the facts of the matter in as much detail as possible using the ‘who what, where, when, why and how’ as prompts to acquire detail
- make a record of the meeting within 24 hours, preferably during the discussion as this will allow for re-checking and clarification of points
- seek the employee feedback of the alleged recipient of the behaviour regarding their desired outcome
- seek advice from People and Culture as soon as possible to consider the most appropriate course of action.

17.2 Caution is recommended at this point as no facts have been established and natural justice must be applied to all parties. Managers can unilaterally initiate an investigation without receiving a formal complaint if circumstances warrant this course of action.

17.3 Managers should provide the following guidance to all parties to a complaint:

- advise the parties involved of the process and proposed timing to resolve the complaint
- let the parties know that EAP counselling is available
- advise the parties of the need to maintain confidentiality, but that this does not preclude someone from discussing matters with an EAP counsellor or support person
- advise a employee who has made a complaint, or has had a complaint made against them, that they are entitled to have a support person, such as an HCO or any other support person of the employee’s choice, present at meetings in relation to the complaint
- explain that in some circumstances further action may need to be taken regardless of the parties’ preferences and therefore no guarantee of confidentiality can be given.

17.4 Once a complaint is resolved through an informal process, managers should:

- monitor the relevant work area/s after a resolution has been implemented to identify if the behaviour or conduct is repeated
- ensure no adverse action is taken against the complainant unless it is proven that the complaint was false and made in bad faith.

17.5 It is important that all parties to an allegation of inappropriate behaviour maintain confidentiality, with information to be shared only on a ‘need to know’ basis. Because of the sensitivity of material relating to inappropriate behaviour, special care should be taken to protect the confidentiality of any records relating to complaint processes.

17.6 Where a manager is made aware of inappropriate conduct, with or without a complaint, they may also choose to reinforce appropriate work behaviours with the work area, without identifying those involved in the matter. This might also include organising relevant behaviour training.

18. Formal process for all employees

18.1 In some circumstances, employees may wish to make a formal complaint. This could include situations where a complaint is unable to be resolved informally between the parties or through informal resolution strategies, and it is unlikely that further informal strategies will resolve the issue, where the behaviour/incident is serious or longstanding, or there is significant disagreement about what has occurred and what should happen. Employees wishing to make a formal complaint are encouraged to seek further information and discuss their options with People and Culture.

18.2 Any formal complaint should be in writing and submitted to the Assistant Commissioner, Corporate Branch or the Deputy Commissioner providing details of the complaint, including the names of witnesses (if any) and the complainant's desired outcome. **Nothing in this policy prevents the OAIC taking action in relation to inappropriate behaviour in the absence of receiving a complaint.**

18.3 Once a formal complaint or information which suggests inappropriate behaviour has occurred has been received by the Assistant Commissioner, Corporate Branch or the Deputy Commissioner, an initial information gathering process may need to be undertaken to better understand the alleged inappropriate behaviour and determine the appropriate action to be taken in response. The initial information gathering process may involve discussions with employees who can provide relevant information or collecting other relevant information and documents. The initial information gathering process does not need to establish whether the alleged conduct occurred and should only be undertaken to the extent necessary to enable an informed decision to be made about how the complaint should be dealt with.

18.4 Once the Assistant Commissioner, Corporate Branch or the Deputy Commissioner has sufficient information to enable them to understand the alleged inappropriate behaviour, they may determine to deal with the complaint in one of the following ways:

- making findings of fact, including potentially by undertaking an internal or external investigation
- undertaking a formal process under the OAIC's procedures for managing suspected breaches of the APS Code of Conduct
- undertaking a less formal process, such as through discussions with the persons involved
- arranging counselling or a mediation
- making a report to the police or other external authority
- taking no further action.

18.5 The factors that may be considered when determining how to deal with a complaint include, but are not limited to:

- the facts and circumstances giving rise to the alleged behaviour
 - the seriousness of the alleged behaviour
 - the connection of the alleged behaviour to employment
 - the role and seniority of the employee alleged to have engaged in the behaviour
 - the availability of relevant documentation and witnesses
 - any action already taken in relation to the alleged behaviour
 - whether the alleged behaviour, if established, indicates a pattern of behaviour by the employee
 - whether the alleged behaviour, if established, may constitute a criminal act or other offence
 - whether the alleged behaviour, if established, would amount to a breach of this policy.
- 18.6 If the alleged inappropriate behaviour is to be dealt with through a fact finding process, findings are to be made on the balance of probabilities (i.e. it is more likely than not that the alleged behaviour occurred).
- 18.7 If an investigation is to be undertaken for the purpose of a fact finding process, the investigation may be undertaken in any way People and Culture considers appropriate in the circumstances. However, the investigation must be undertaken in a way that affords procedural fairness to those involved and deals with the complaint in a sensitive, fair, confidential and timely manner.
- 18.8 While the investigation process may vary depending on the circumstances of the complaint, it will usually involve the following steps:
- speaking to the complainant to obtain further detail about the allegations
 - collecting relevant evidence including documentary and witness evidence
 - putting allegations to the respondent in writing and providing them an opportunity to respond to the allegations in person and/or in writing
 - making any further enquiries as necessary based on information provided by the respondent in their response
 - making findings of fact based on the available evidence and preparing a report setting out the findings
 - informing the complainant and respondent in writing of the outcome of the complaint.
- 18.9 A employee who has made a complaint will generally be informed of whether or not the alleged complaint was established and that the matter has been dealt with. It may not, however, be possible to provide any additional information to the employee due to confidentiality obligations.

- 18.10 APS employees have additional options for resolution of formal complaints through the review of action provisions of the PS Act. This provides for an APS employee to seek a formal review by the OAIC in the first instance.
- 18.11 Once a review has been concluded within the OAIC, the employee may be entitled to seek secondary review of the action if they are not satisfied with the outcome of the primary review.

19. employee Record keeping

- 19.1 It is important that employees adequately document any action taken to address complaints and reasons for the decision to deal with the complaint in that manner. Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and corrective action to be taken. Should there be questions as to whether a complaint was properly handled, adequately maintained records may be vital in any later review of the processes undertaken.
- 19.2 If an investigation is undertaken as part of a fact finding process, records should be kept of any material relevant to or obtained during the investigation, including:
- the complaint
 - all written correspondence exchanged with the complainant, respondent, witnesses and any other relevant persons regarding the investigation
 - contemporaneous records of all verbal communications relevant to the investigation, including detailed notes of meetings and telephone conversations
 - documented reasons for all significant decisions made
 - any written statements of the complainant, respondent and witnesses.

20. External complaints

- 20.1 Employees may choose to make an external complaint. External bodies to which a complaint may be made include:
- the Fair Work Commission – www.fwc.gov.au
 - the Australian Human Rights Commission – www.humanrights.gov.au
 - the Australian Public Service Commission – www.apsc.gov.au (for APS employees only).
- 20.2 There may also be avenues available to employees under the *Work Health and Safety Act 2011* (WHS Act). Employees wishing to explore those avenues may wish to discuss their concerns with a Health and Safety Representative, or seek further information from the Comcare website at www.comcare.gov.au.
- 20.3 Managers should also consider whether the complaint may represent a disclosure under the *Public Interest Disclosure Act 2013*.

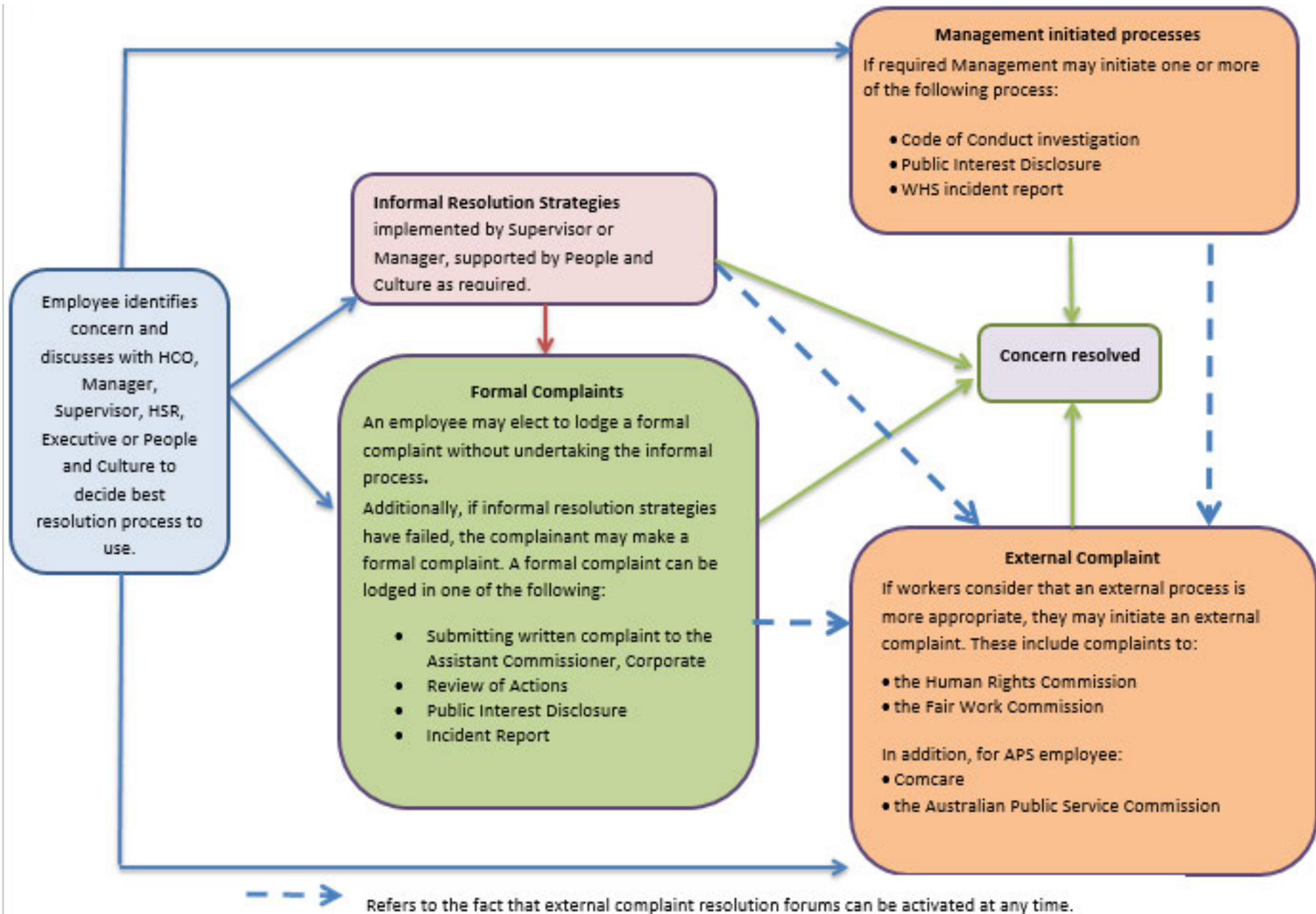
20.4 Further information on these options is available from People and Culture and from the websites of the relevant agencies. Employees are encouraged to discuss these options before making a formal complaint.

21. Further information

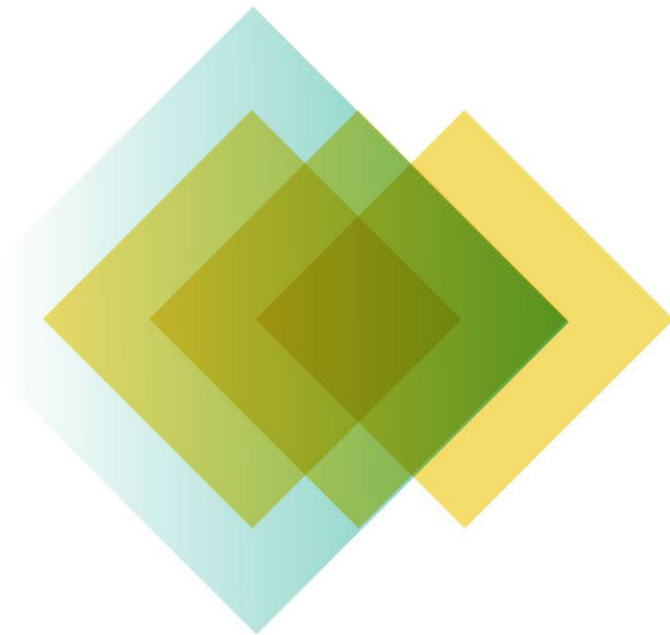
21.1 Additional information regarding the elimination and prevention of workplace harassment is available from the OAIC's People and Culture Team.

21.2 Relevant references and links include:

- [Fair Work Act 2009](#)
- [Public Service Act 1999](#)
- [Public Service Regulations 2023](#)
- [Australian Public Service Commissioner's Directions 2022](#)
- [APS Code of Conduct and APS Values](#)
- [OAIC Enterprise Agreement 2016-2019](#)
- [OAIC Breaches to the APS Code of Conduct](#)
- [OAIC Diversity Strategy](#)
- [OAIC's ICT Facilities Usage Policy](#)
- [OAIC Public Interest Disclosure Procedures](#)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Disability Discrimination Act 1992](#)
- [Age Discrimination Act 2004](#)
- [Australian Human Rights Commission Act 1986](#)
- [Work Health and Safety \(Commonwealth Employment\) Act 2011](#)
- [Privacy Act 1988](#)
- [Public Interest Disclosure Act 2013](#)
- ["Effectively preventing and responding to sexual harassment: A Code of Practice for Employers \(2008\) – AHRC Publication, Chapter 2: A guide to the Code of Practice](#)
- ["Sharpening the focus: Managing performance in the APS" – AHRC Publication, <https://www.apsc.gov.au/sharpening-focus-managing-performance-aps>](#)



OAIC Appropriate Workplace Behaviour Policy



[14 March 2024]

Version	Name	Changes	Date
0.1		Clearance from Human Resources	13 November 2012
1.0		Final signed by Australian Information Commissioner	30 November 2012
1.1		Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0		Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1		Updated Word template	January 2019
3.0	Mark Smolonogov	Revised and updated policy following consultation with OCF	September 2021
4.0	Annamie Hale	Updated to change name of policy, expand to more cover more general inappropriate behaviour and to align to changes to the Sex Discrimination Act.	Dec 2023
4.1		Final approved by Australian Information Commissioner	14 March 2024

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Statement by the Australian Information Commissioner and Privacy Commissioner

The Office of the Australian Information Commissioner (OAIC) is an agency which values fairness, equity and diversity. We are committed to maintaining a safe and inclusive workplace which upholds the Australian Public Service (APS) Values, Employment Principles and Code of Conduct. To meet this commitment, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. This requires ensuring that people are treated with respect and courtesy, and without harassment.

Inappropriate behaviour, such as harassment, discrimination, bullying, victimisation and racism will not be tolerated and it is the responsibility of every OAIC employee to contribute to an environment free of inappropriate behaviour. Ignoring inappropriate behaviour can have serious consequences.

Sexual harassment, sex-based harassment, sex discrimination, conduct that creates a hostile workplace on the ground of sex and related acts of victimisation are particularly serious forms of inappropriate behaviour that are unlawful, unacceptable and have no place in the OAIC. Such conduct is collectively referred to as unlawful conduct based on sex. The OAIC has a positive duty under the *Sex Discrimination Act 1984* (Ch) to take reasonable and proportionate measures to eliminate, so far as possible, unlawful conduct based on sex.

Our managers and supervisors are responsible for leading by example and maintaining a respectful working environment. They should ensure that all employees are aware of their rights and responsibilities under this policy and take action if they become aware of inappropriate behaviour.

Every employee has a responsibility to treat colleagues and members of the public with respect and courtesy, and to contribute to a safe and supportive work environment, where employees collaborate together to foster an inclusive workplace for all. Each employee is to behave at all times in a manner that maintains or upholds the integrity and good reputation of the OAIC and the APS.

Angelene Falk

Australian Information Commissioner

14 March 2024

1. Scope

- 1.1 This policy applies to all OAIC workers, including full-time, part-time, non-ongoing and casual employees, contractors and volunteers.
- 1.2 This policy applies to employees whenever they are undertaking work for the OAIC (regardless of work location) and whenever they are, or may be perceived as, representing the OAIC or the APS.
- 1.3 This policy may apply to behaviour which occurs outside the workplace if it has a sufficient connection to the OAIC or the APS, including if the behaviour is incompatible with the person's work duties for the OAIC.
- 1.4 Nothing in this policy prevents an employee from using the dispute resolution procedures available in the OAIC Enterprise Agreement, or a person from referring a matter to the Fair Work Commission or the Australian Human Rights Commissioner. Further information regarding external forums where persons can address concerns about inappropriate behaviour is contained in clause 13 of this policy.

2. Appropriate behaviour

- 2.1 Appropriate behaviour is behaviour that is consistent with the OAIC's objective to ensure the workplace is a safe, respectful and inclusive environment, free from harassment, discrimination, bullying, victimisation, racism and other unlawful conduct.
- 2.2 Behaving appropriately requires:
- acting in a manner that is consistent with the APS Values and Code of Conduct
 - treating other employees and contractors with respect, fairness and courtesy
 - engaging in honest and ethical conduct
 - considering the potential impact of one's behaviour on others
 - ensuring that one's actions, communications and attitude are appropriate to the circumstances
 - complying with applicable policies, laws, rules and regulations.
- 2.3 Inappropriate behaviour is any behaviour which is not appropriate behaviour. Inappropriate behaviour can be intentional or unintentional and includes behaviour that occurs in person, by telephone, virtually or by other means.
- 2.4 Types of inappropriate behaviour include the following:

Type of inappropriate behaviour	Further information
Harassment	2.5 Harassment is unwelcome behaviour that a reasonable person would have anticipated might offend, humiliate or intimidate

	<p>the person or group it is directed towards. Harassment can be unlawful when it occurs in connection with an actual or perceived characteristic (including gender, race, disability, age, sexual orientation, religion, pregnancy, marital or domestic status or carer's responsibilities).</p> <p>2.6 Harassment may occur in any work-related context, including outside of working hours and the physical workplace. Examples include conferences, office social events, business trips and social networking sites as well as interactions with clients.</p> <p>2.7 A one-off incident can constitute harassment and a person's intention is irrelevant in determining whether the harassment has occurred.</p> <p>2.8 Examples of harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • offensive physical contact, derogatory language or intimidating actions • insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace • unjustified and unnecessary comments about a person's work or capacity for work • openly displayed pictures, posters, graffiti or written materials which might offend some people • phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees • persistent following or stalking within the workplace, or to and from work or elsewhere • disparaging remarks about malingering to employees who have made a claim for compensation.
Sexual harassment	<p>2.9 Sexual harassment is a type of harassment that involves unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. The unwelcome behaviour need not be repeated or continuous; a single incident can amount to sexual harassment.</p> <p>2.10 Sexual harassment is not interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated. However, behaviour can become sexual harassment if the</p>

	<p>interaction changes to unwelcome contact following the end of a consensual relationship.</p> <p>2.11 Examples of sexual harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • unwelcome touching, hugging, kissing or other types of inappropriate physical contact • staring or leering at a person or their body parts • sexually suggestive comments or jokes • displays of sexually explicit material including pornography, pictures, screen savers or posters • unwanted invitations to go out on dates or requests for sex • intrusive questions about a person's private life or body • insults or taunts based on a person's sex • sexually explicit emails or SMS messages • suggestive or sexually explicit comments or references on social media networks • threatening to share or sharing intimate images or videos of someone without consent • behaviour which would also be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.
Sex-based harassment	<p>2.12 Sex-based harassment (which is also referred to as harassment on the ground of sex) is unwelcome behaviour that is sexist and demeaning in nature, but is not necessarily sexual, that occurs in circumstances where a reasonable person who is aware of the circumstances would anticipate that the person being harassed might feel offended, humiliated or intimidated.</p> <p>2.13 Sex-based harassment can occur when a person is degraded or disrespected because of their sex, or a characteristic associated with people of that sex.</p> <p>2.14 Examples of sexual harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • asking intrusive personal questions based on a person's sex (such as inappropriate questions about menopause, menstruation or genitalia)

	<ul style="list-style-type: none"> • making inappropriate comments or jokes based on a person's sex • displaying images or making comments that are sexist or strongly prejudiced against a particular sex • asking a person to engage in degrading conduct based on their sex.
Discrimination	<p>2.15 Discrimination is treating someone less favourably than another person or group because of their background or certain personal characteristics.</p> <p>2.16 Discrimination is unlawful when it is based on one or more of the following attributes:</p> <ul style="list-style-type: none"> • age • disability • race, including colour, national or ethnic origin or immigrant status • sex, pregnancy, marital or relationship status, family/carer's responsibilities or breastfeeding • sexual orientation, gender identity or intersex status • political opinion • religion. <p>2.17 Discrimination can occur directly and indirectly.</p> <p>2.18 Examples of direct discrimination include, but are not limited to:</p> <ul style="list-style-type: none"> • stating or suggesting a preferred candidate's gender in a job advertisement • excluding potential staff from consideration for promotions due to their age • promoting a person based on their marital status. <p>2.19 Examples of indirect discrimination include, but are not limited to:</p> <ul style="list-style-type: none"> • a policy, requirement or condition being applied to everyone but operating to disadvantage a particular group of people

	<ul style="list-style-type: none"> office facilities that are not accessible to those with a physical disability.
Sex discrimination	<p>2.20 Sex discrimination is when someone is treated unfairly or is unreasonably disadvantaged because of their sex, or a characteristic that is generally associated with people of their sex.</p> <p>2.21 An example of direct sex discrimination is not giving a woman a promotion to a position she has the necessary qualifications and skills for, because she is female.</p> <p>2.22 An example of indirect sex discrimination is requiring job candidates to meet physical criteria such as to disadvantage a particular sex.</p>
Conduct that creates a hostile work environment on the ground of sex	<p>2.23 Conduct that creates a hostile work environment on the ground of sex occurs where:</p> <ul style="list-style-type: none"> a person engages in conduct in a workplace and a second person is in the workplace at the same time or after the conduct occurs the conduct fails the ‘reasonable person’ test, which involves considering whether, having regard to all the circumstances, a reasonable person would have anticipated the possibility of the conduct resulting in a workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person, by reason of the sex of the person or a characteristic associated with the sex of the person. <p>2.24 A workplace may be hostile to people of a particular sex even if the behaviour is not specifically directed at them.</p> <p>2.25 Examples of conduct that creates a hostile work environment on the ground of sex include, but are not limited to:</p> <ul style="list-style-type: none"> conduct involving gendered stereotypes, such as only making female employees responsible for tidying the office or going to get coffee engaging in sexist or derogatory jokes or banter, for example making demeaning comments about male employees who chose to take caring responsibilities

	<ul style="list-style-type: none"> • making demeaning comments about anatomical attributes or topics such as pregnancy, menstruation or menopause • addressing a transgender or nonbinary employee with a pronoun based on their sex assigned at work, rather than the gender they identify with • displaying or circulating obscene, sexist, pornographic or sexually explicit photos, materials, posters or gifts • making suggestive or sexual comments.
Bullying	<p>2.26 Bullying is repeated, unreasonable behaviour directed towards an individual, or group of people that creates a risk to health and safety. Bullying can occur face-to-face, over the phone, by email, through instant messaging or by other electronic means.</p> <p>2.27 Bullying can involve many different forms of unreasonable behaviour, which can be direct (obvious or overt) or indirect (subtle). Respectful differences of opinion, reasonable performance management, conflicts in working relationships and personality clashes can happen in the workplace, but do not necessarily amount to bullying.</p> <p>2.28 Examples of direct bullying include, but are not limited to:</p> <ul style="list-style-type: none"> • teasing or regularly being subject to practical jokes • demeaning language, including sarcasm, ridicule or insults • threatening language • verbal abuse or shouting • outbursts of anger or aggression • physical or verbal intimidation • showing contempt or disrespect • ostracising, excluding, isolating or ignoring a person • spreading malicious gossip or rumours about a person • interfering with someone's personal property or work equipment • harmful or offensive initiation practices. <p>2.29 Examples of indirect bullying include:</p>

	<ul style="list-style-type: none"> • unreasonably overloading a person with work or not providing enough work • setting unreasonable timelines that are difficult to achieve or constantly changing deadlines • setting tasks that are unreasonably above or below a person's skill level • deliberately excluding, isolating or marginalising a person from normal work activities • unreasonably withholding or denying access to information or resources that is vital for effective work performance • deliberately changing work arrangements to inconvenience a particular person • unfair treatment in relation to accessing entitlements such as leave. <p>2.30 Reasonable management action taken in a reasonable way is not bullying. Examples of this include, but are not limited to:</p> <ul style="list-style-type: none"> • setting reasonable performance goals, standards and deadlines in consultation with employees and after considering their respective skills and experience • allocating work to an employee in accordance with terms and conditions of their engagement and agency practices • fairly rostering and allocating working hours • transferring an employee for legitimate and explained operational reasons • deciding not to select an employee for promotion, following a fair and documented process • informing a person about unsatisfactory work performance in a constructive way • informing a person about inappropriate behaviour in an objective and confidential way • implementing organisational changes or restructuring • appropriate performance management processes.
Victimisation	<p>2.31 Victimisation occurs when a person is subjected to, or threatened with, some form of detriment because they have</p>

	<p>asserted their personal, workplace or legal rights or are involved in a process for dealing with inappropriate behaviour.</p> <p>2.32 Conduct which constitutes victimisation can be unlawful under employment, anti-discrimination and work health and safety legislation.</p> <p>2.33 Examples of victimisation include, but are not limited to:</p> <ul style="list-style-type: none"> • altering an employee’s working arrangements so that they receive less pay after they have made a report of inappropriate behaviour • choosing not to promote an employee because they have asked questions about their pay.
Racism	<p>2.34 Racism is behaviour which is prejudicial, discriminatory or antagonistic towards an individual, community or institution based on their membership of a particular racial or ethnic group, typically one that is a minority or marginalised.</p> <p>2.35 Examples of racism include, but are not limited to:</p> <ul style="list-style-type: none"> • racially motivated slurs, insults or jokes • differential treatment on work matters because of a person’s race • expressing unreasonable racial opinion which includes any opinion which is likely to cause a reasonable person offence • excluding or isolating a person because of their race • degrading or intolerant comments towards racial or ethnic groups
Unlawful conduct based on sex	<p>2.36 Unlawful conduct based on sex is an umbrella term that comprises inappropriate behaviour in the form of sexual harassment, sex-based harassment, sex discrimination and conduct that creates a hostile workplace on the ground of sex.</p> <p>2.37 The OAIC has a positive duty to eliminate, so far as possible, unlawful conduct based on sex and may be vicariously liable for such conduct committed by employees if the OAIC fails to take all reasonable steps to prevent the conduct from occurring.</p> <p>2.38 Unlawful conduct based on sex may have underlying drivers, including:</p>

	<ul style="list-style-type: none"> • gender inequality • power imbalances • lack of accountability • fears of victimisation • intersecting forms of discrimination and exclusion. <p>2.39 Unlawful conduct based on sex may have different impacts on different people. A person’s experience of such unlawful conduct can be compounded by other forms of inequality they face. Factors which may influence a person’s experience of unlawful conduct based on sex include:</p> <ul style="list-style-type: none"> • their sex or gender identity • their sexual orientation • whether they have a disability • whether they identify as Aboriginal or Torres Strait Islander • whether they are from culturally and linguistically diverse or culturally and racially marginalised communities • their socioeconomic class.
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3. Preventing inappropriate behaviour

- 3.1 Inappropriate behaviour is preventable and all employees are expected to take responsibility for ensuring that inappropriate behaviour does not occur. This requires contributing to a workplace culture that aligns with the APS Values, Code of Conduct and Employment Principles.
- 3.2 No person is expected to tolerate inappropriate behaviour in the course of their work for the OAIC. All persons have the right to raise concerns about inappropriate behaviour without fear of victimisation or punishment.
- 3.3 The OAIC is committed to taking a proactive and holistic approach to preventing all forms of inappropriate behaviour. Prevention requires the identification and assessment of risks in the workplace. This involves:
- conducting agency-wide risk assessments to identify key operations and areas within which risks arise
 - implementing appropriate control measures to address identified risks
 - regular and ongoing review and assessment of potential risks and the effectiveness of control measures to ensure continuous improvement.

- 3.4 Psychosocial hazards, including those presented by potential inappropriate behaviour, have been the subject of a risk assessment that is documented in the OAIC Psychosocial Hazard and Risk Assessment.
- 3.5 Management has a legal responsibility to take steps to prevent and respond to inappropriate behaviour. All persons are bound by various legislation that prohibits different types of inappropriate behaviour and ensures that there is an appropriate standard of conduct maintained in the workplace.

4. APS Values and Code of Conduct

- 4.1 The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the **PS Act**) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.
- 4.2 All APS employees are subject to the Code of Conduct set out in section 13 of the PS Act. The Code of Conduct requires that, when acting in connection with APS employment, an employee:
- treat everyone with respect and courtesy, and without harassment
 - comply with all applicable Australian laws.
- 4.3 An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Further information can be found in OAIC Code of Conduct policies.

5. Responsibilities

Role	Responsibilities
The OAIC	<p>5.1 The OAIC is committed to ensuring all reasonable steps are taken to prevent inappropriate behaviour, including:</p> <ul style="list-style-type: none"> • distributing and promoting this policy • providing employees with training on inappropriate workplace behaviour • providing managers with training, advice and guidance in handling reports of inappropriate behaviour • ensuring that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to inappropriate behaviour • maintaining a network of trained HCOs, drawn from all parts of the OAIC, to provide initial information, support and assistance to employees

	<ul style="list-style-type: none"> • providing an accessible and transparent procedure for addressing reports of inappropriate behaviour • providing employees with access to a free counselling service through the OAIC's Employee Assistance Program • taking timely and appropriate action in response to any reports of unlawful discrimination, harassment, bullying or other inappropriate behaviour • working actively through the Workplace Health and Safety and Wellbeing Committee and other appropriate mechanisms to proactively identify opportunities to adopt best practice and prevent discrimination. <p>5.2 In circumstances where a concern about inappropriate behaviour arises, the OAIC will take prompt action and provide all involved with the necessary support and resources to resolve the concern.</p>
Managers	<p>5.3 All managers have a responsibility to</p> <ul style="list-style-type: none"> • support, implement and promote this policy within their work areas • model appropriate behaviour • manage reports of inappropriate behaviour at a workplace level or escalate to People & Culture where appropriate. • assist People & Culture to manage reports of inappropriate behaviour.
Employees	<p>5.4 All employees are responsible for ensuring that their workplace behaviour is appropriate.</p> <p>5.5 Employees are expected to address (which includes speaking to a manager, HCO, People and Culture or a member of the Executive) incidents of inappropriate behaviour which they experience or observe in the workplace or between employees outside the workplace in the course of, or related to, their work.</p> <p>5.6 Employees who observe inappropriate workplace behaviour may attempt to resolve the matter by:</p> <ul style="list-style-type: none"> • bringing the behaviour to the employee's notice, either verbally or in writing, and requesting that it cease • asking the relevant manager to assist by discussing the matter with the individual and requesting that it cease • requesting that the relevant manager reinforce appropriate work behaviours with the work area, without identifying those involved in the matter.

	<p>5.7 Employees reporting inappropriate behaviour are responsible for ensuring that they:</p> <ul style="list-style-type: none"> • make the report honestly and in good faith • provide all facts relevant to the report • cooperate with the resolution process • keep the report confidential within the resolution process, the parties involved, and their chosen support person.
Harassment Contact Officers (HCOs)	<p>5.8 HCOs provide information and support to workers, including managers. HCOs are OAIC employees trained to provide information, support and assistance to other workers in relation to instances of perceived inappropriate behaviour.</p> <p>5.9 HCOs must:</p> <ul style="list-style-type: none"> • attend training – generally 2 days in duration, as well as HCO refresher training (generally one day) every 2 years or as required or directed by People and Culture • respond to any communication about inappropriate behaviour as soon as possible and within 3 working days • complete and submit an HCO incident report to People and Culture within 3 working days of meeting with a person about inappropriate behaviour, although the incident report can be anonymised if that is the preference of the person the HCO met with • attend HCO network meetings as required • maintain confidentiality and impartiality at all times, noting that there is no guarantee of confidentiality but the ‘need to know’ principle applies • participate in the review of relevant material as required. <p>5.10 A person may choose to speak with an HCO as their initial point of contact and may continue to receive support and assistance while the matter is being resolved.</p> <p>5.11 An HCO’s role is not to resolve a matter but to provide information, support and assistance, particularly in relation to the options available to resolve a matter. HCOs may also provide information, support and assistance to a worker who believes that a report may be, or has been, made against them.</p> <p>5.12 An HCO may also be asked to assist workers who require a support person to attend discussions involving other processes such as performance management and counselling processes.</p>

5.13 A list of HCOs is available on FYI

6. Confidentiality

- 6.1 All information that is provided by parties in relation to any alleged behaviour pursuant to this policy will be handled confidentially. Allegations of this nature have the potential to cause damage to an individual's reputation, regardless of whether the allegation is found to be substantiated.
- 6.2 Notwithstanding the above, information relating to a report of inappropriate behaviour may be disclosed to:
- OAIC staff members with a legitimate work related need to know, for example, supervisors
 - people directly involved in the assessment or resolution of a report of inappropriate behaviour insofar as they require access to information, subject to legal requirements for disclosure.
- 6.3 Any person entrusted with confidential and personal information must take all reasonable care and necessary precautions to maintain confidentiality and prevent disclosure of such information.
- 6.4 This material is often sensitive in nature and should be marked OFFICIAL Sensitive/Personal Privacy.

7. Reporting inappropriate behaviour

- 7.1 Any person who believes they have been subjected to or witnessed inappropriate behaviour is encouraged to report the behaviour.
- 7.2 Generally speaking, a person should report inappropriate behaviour to their manager. However, if they do not feel comfortable reporting the inappropriate behaviour to their manager (for whatever reason), they can also report the inappropriate behaviour to:
- People and Culture
 - a member of the Executive
 - an HCO.
- 7.3 Inappropriate behaviour can be reported verbally or in writing.
- 7.4 Inappropriate behaviour can also be reported anonymously. If it is reported anonymously, the report should contain specific details about what happened, where and when the behaviour occurred, and whether there were any witnesses to the behaviour, as well as any other relevant details.
- 7.5 It may not be possible to take action in relation to a report of inappropriate behaviour if:
- the report is made anonymously without providing sufficient detail to allow investigation of the matter

- the report involves an allegation of conduct that may be a criminal offence and any investigation could jeopardise a criminal process (e.g. sexual assault)
- the report has already been satisfactorily resolved (unless further inappropriate behaviour has since occurred)
- the report is false or misleading, or if facts are distorted.

8. Determining how to manage a report

8.1 All reports of inappropriate behaviour will be treated seriously and managed expeditiously.

8.2 A person who receives a report of inappropriate behaviour will:

- be open, supportive and non-judgemental but will not make, or agree to, any undertakings that could prejudice or compromise satisfactory resolution or any parties involved in the matter
- take a person-centred and trauma-informed approach (see Part 11)
- establish whether the alleged recipient of the behaviour is still at risk and, if they are, take all reasonable steps to ensure no further harm or incidents of inappropriate behaviour occur
- confirm whether the person making the report would like action to be taken, although explain that in some cases it will be necessary for action to be taken even if that is not the preference
- establish the facts of the matter in as much detail as possible using ‘who what, where, when, why and how’ as prompts to acquire detail
- make a record of relevant information within 24 hours of receiving it and, if this occurs by way of a discussion, preferably during the discussion
- remind the person that counselling and other support services are available through the EAP (if they are an employee).

8.3 A person who receives a report of inappropriate behaviour must then determine how inappropriate behaviour should be managed.

8.4 There are two ways in which a report of inappropriate behaviour may be managed:

- by a manager at the workplace level (see Part 9)
- by a process determined by People and Culture (see Part 10).

8.5 How a report of inappropriate behaviour should be managed will depend on the nature and circumstances of the report. Generally:

- a report of inappropriate behaviour can often be responded to at the workplace level where it involves an allegation of behaviour that is less serious in nature, including (for example) where the reported behaviour is not unlawful and is in the nature of an interpersonal issue

- a report of inappropriate behaviour should be responded to by People and Culture where it involves an allegation of behaviour that has a high degree of seriousness, including (for example) where the reported behaviour is unlawful, presents a serious risk to health and safety, or is alleged against a senior staff member.
- 8.6 How a report of inappropriate behaviour is managed and responded to should be determined having regard to the preference (if any) of the person who has made the report. However, in some circumstances, it may not be appropriate to deal with the matter in the way requested and the person will be informed where this is the case.
- 8.7 If a person who receives a report of inappropriate behaviour is unsure how the report should be managed, or would like any support or guidance, they should contact People and Culture. People and Culture may then:
- provide support and guidance so that the report can be dealt with informally at the workplace level, or
 - determine that the report should be dealt with more formally by a process it determines.
- 8.8 While a report of inappropriate behaviour is being managed, it may be necessary for interim action to be taken, such as by temporarily varying work duties or moving a person to a different work area. Any interim action taken should not disadvantage the person who reported the inappropriate behaviour in any way.

9. Managing a report of inappropriate behaviour at the workplace level

- 9.1 The OAIC encourages reports of inappropriate behaviour to be responded to at the workplace level where possible.
- 9.2 A manager who manages a report of inappropriate behaviour at the workplace level should determine what action to take having regard to the nature and circumstances of the report.
- 9.3 Actions that may be taken to respond to a report of inappropriate behaviour include:
- discussions with those involved, either together or separately
 - mediation or facilitated discussions
 - training or coaching for any person involved
 - escalating the report to be managed with People & Culture.
- 9.4 Depending on the circumstances and the behaviour, a report may also be dealt with in accordance with other OAIC policies such as performance management.
- 9.5 Managers should take a person-centred and trauma-informed approach when managing reports of inappropriate behaviour (see Part 11).
- 9.6 Before determining what action to take, the manager should seek the feedback of the recipient of the alleged inappropriate behaviour regarding their desired outcome.

- 9.7 The manager may also seek support and guidance from People and Culture regarding what action to take, or how to approach any discussions.
- 9.8 Once the manager has determined what action to take, they should:
- advise the parties involved of the process and proposed timing to respond to the report
 - advise a person who has made a report, or has had a report made against them, that they are entitled to have a support person, such as an HCO or another person of their choice, present at any meetings in relation to the report
 - remind the parties that counselling and other support services are available through the Employee Assistance Program (if they are an employee)
 - advise the parties of the need to maintain confidentiality, but that this does not preclude someone from discussing matters with an EAP counsellor or support person.
- 9.9 If a report is responded to at the workplace level, the manager should:
- monitor the relevant work area for future behavioural issues
 - ensure no adverse action is taken against the person who made the report unless it is proven that the report was false and made in bad faith
 - consider whether any steps should be taken to reinforce appropriate behaviour within the relevant work area without identifying those involved, including potentially by organising relevant training.
- 9.10 The manager must maintain confidentiality all times, including by sharing information only on a 'need to know' basis (see Part 6). Because of the sensitivity of material relating to inappropriate behaviour, special care should be taken to protect the confidentiality of any records relating to reporting processes.

10. Escalating a report to People & Culture

- 10.1 A report of inappropriate behaviour will be managed with People and Culture if:
- it would be inappropriate to manage the report informally at the workplace level having regard to the nature and circumstances of the reported behaviour (as outlined above), or
 - a report of inappropriate behaviour has not been able to be successfully resolved at the workplace level.
- 10.2 In order for People and Culture to determine what action should be taken to address the report of inappropriate behaviour, it may be necessary for an initial information gathering process to be undertaken so that People and Culture can better understand the nature and circumstances of the report. This may involve discussions with persons who can provide relevant information or obtaining relevant information and documents. The initial information gathering process is not for the purpose of establishing whether the alleged behaviour occurred and should only be undertaken to the extent necessary to enable an informed decision to be made about how the report of inappropriate behaviour should be dealt with. People and Culture will take a person-centred and trauma-informed approach (See Part 11).

10.3 Once People and Culture has sufficient information to enable it to understand the report of inappropriate behaviour, it may determine to deal with the report of inappropriate behaviour in one of the following ways:

- making findings of fact, including potentially by undertaking an internal or external investigation, informed by the OAIC's investigations policy
- engaging in discussions with the persons involved
- arranging a mediation or a facilitated discussion
- arranging counselling or further training
- making a report to the Police or another external authority
- undertaking a process under the OAIC's Procedures for Managing Suspected Breaches of the APS Code of Conduct
- taking no further action.

10.4 The factors that People and Culture may consider when determining what action to take may include, but are not limited to:

- the facts and circumstances giving rise to the reported behaviour
- the seriousness of the reported behaviour
- the connection of the reported behaviour to employment
- the role and seniority of the person reported to have engaged in the behaviour
- the availability of relevant documentation and witnesses
- any action already taken in relation to the reported behaviour
- whether the reported behaviour, if established, indicates a pattern of behaviour by the person
- whether the reported behaviour, if established, may constitute a criminal act or other offence
- whether the reported behaviour, if established, would amount to a breach of this policy.

10.5 If a fact-finding process is undertaken in respect of a report of inappropriate behaviour, findings will be made on the balance of probabilities (i.e. by assessing if it is more likely than not that the alleged behaviour occurred).

10.6 If an investigation is to be undertaken for the purpose of a fact-finding process, the investigation may be undertaken in any way People and Culture considers appropriate in the circumstances. However, the investigation must be undertaken in a way that affords procedural fairness to those involved and deals with the report of inappropriate behaviour in a sensitive, fair, confidential and timely manner.

10.7 An investigation process will usually involve the following steps:

- speaking to the person who reported the inappropriate behaviour to obtain further detail about the reported behaviour
- collecting relevant evidence, including documentary and witness evidence
- putting allegations to the respondent in writing and providing them an opportunity to respond to the reported behaviour in person and/or in writing
- making any further enquiries as necessary based on information provided by the respondent in their response
- making findings of fact based on the available evidence and preparing a report setting out the findings
- informing the person who reported the behaviour and the respondent in writing of the findings.

10.8 While a person who reported inappropriate behaviour will be advised of the findings of any fact-finding process, it may not be possible to provide any additional information (including, for example, in relation to the action taken in respect of the findings) for confidentiality reasons.

10.9 If inappropriate behaviour is established against any person by way of a fact-finding process, action may be taken including but not limited to:

- a further process under the OAIC's Procedures for Managing Suspected Breaches of the APS Code of Conduct, which may result in one or more of the sanctions under section 15(1) of the PS Act being imposed
- counselling or training being arranged
- communications to remind the person of expected standards of behaviour
- if the person is a contractor, action under the relevant contract for services, including potentially action which brings an end to the working relationship.

11. Person-centred and trauma-informed approach

11.1 The safety and wellbeing of the people impacted by the inappropriate behaviour is a priority for the OAIC and a person-centred and trauma-informed approach will be taken in managing reports of inappropriate behaviour in the workplace. This is particularly important when dealing with reports about unlawful conduct based on sex.

11.2 A person-centred approach focuses on ensuring systems and processes understand and meet the person's needs. It involves prioritising a person's needs, value and preferences, including by listening to the person to understand their needs and respecting their ability to make choices for themselves.

11.3 A trauma-informed approach focuses on ensuring workplace processes incorporate an understanding of trauma and how it affects people and avoiding causing further harm. It involves prioritising safety, choice and empowerment. It also recognises the impact of trauma on a person's ability to recall information.

- 11.4 Using person-centred and trauma-informed approaches does not necessarily mean the OAIC has to address a report in the way a person requests. Rather, it means their wishes and the impact that decisions may have on them will be considered.
- 11.5 The ways in which the OAIC may adopt a person-centred and trauma-informed approach include:
- the person impacted by the reported inappropriate behaviour being asked what support they would like from the OAIC
 - consideration being given to any interim changes to working arrangements or other reasonable adjustments while the reported inappropriate behaviour is being addressed
 - where meetings are to be conducted with a person impacted by the reported inappropriate behaviour, the meeting location being agreed between the convenor and relevant person, with consideration given to meeting locations outside of the person's usual workplace where appropriate
 - the person impacted by the inappropriate behaviour not being required to re-tell their story unnecessarily.

12. Record keeping

- 12.1 It is important that a person who deals with a report of inappropriate behaviour keeps adequate records of the report, action taken, and reasons for decision-making (see Part 6).
- 12.2 Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and corrective action to be taken. Should there be questions as to whether a report was properly handled, adequately maintained records may be vital in any later review of the processes undertaken.
- 12.3 If an investigation is undertaken as part of a fact-finding process, records should be kept of any material relevant to or obtained during the investigation, including:
- the report of inappropriate behaviour
 - all written correspondence exchanged with the person who made the report, the respondent, witnesses and any other relevant persons
 - contemporaneous records of all verbal communications relevant to the investigation, including detailed notes of meetings and telephone conversations
 - documented reasons for all significant decisions made
 - any written statements of the person who reported the inappropriate behaviour, the respondent and witnesses.

13. Review

- 13.1 An employee may have the right to seek review of decisions that are made in relation to a report of inappropriate behaviour under the provisions of the PS Act. This may involve a formal

review by the OAIC in the first instance. If an employee is not satisfied with the outcome of any formal review by the OAIC, they may also be entitled to seek secondary review of the action.

14. External complaints

14.1 Employees may choose to make an external complaint. External bodies to which a complaint may be made include:

- the Fair Work Commission – www.fwc.gov.au
- the Australian Human Rights Commission – www.humanrights.gov.au
- the Australian Public Service Commission – www.apsc.gov.au (for APS employees only).

14.2 There may also be avenues available to persons under the *Work Health and Safety Act 2011* (WHS Act). Persons wishing to explore those avenues may wish to discuss their concerns with a Health and Safety Representative, or to seek further information from the Comcare website at www.comcare.gov.au.

14.3 Persons who experience conduct that could amount to a criminal offence, such as sexual assault, can report their experience to the Police.

14.4 External reports can be made regardless of whether the matter has been, or is being, dealt with internally.

15. Policy review and feedback

15.1 This policy will be reviewed annually or on an as needs basis, whichever is sooner.

15.2 People & Culture are responsible for this policy and any person wishing to provide feedback on this policy is welcome to do so by contacting the Director of People & Culture.

16. Other legislation

16.1 Inappropriate behaviour can be unlawful under various legislation. This includes but is not limited to:

- Commonwealth anti-discrimination legislation, including:
 - the *Racial Discrimination Act 1975* (Cth)
 - the *Sex Discrimination Act 1984* (Cth)
 - the *Disability Discrimination Act 1992* (Cth)
 - the *Age Discrimination Act 2004* (Cth)
 - the *Australian Human Rights Commission Act 1986* (Cth)
- State and Territory based anti-discrimination legislation
- the *Fair Work Act 2009* (Cth)

- the *Work Health and Safety Act 2011* (Cth)
- other criminal legislation.

16.2 Under certain legislation such as anti-discrimination legislation, employers can be held vicariously liable for the acts or omissions of their employees who engage in discriminatory or harassing behaviour. This includes vicarious liability under the *Sex Discrimination Act 1984* (Cth) for sexual harassment, sex-based harassment, sex discrimination, conduct that creates a hostile workplace on the ground of sex and related acts of victimisation.

17. Further information

17.1 Additional information regarding the elimination and prevention of inappropriate behaviour is available from People and Culture.

17.2 Relevant references and links include:

- [*Fair Work Act 2009*](#)
- [*Public Service Act 1999*](#)
- [*Public Service Regulations 2023*](#)
- [*Australian Public Service Commissioner's Directions 2022*](#)
- [*APS Code of Conduct and APS Values*](#)
- [*OAIC Enterprise Agreement 2016-2019*](#)
- [*OAIC Breaches to the APS Code of Conduct*](#)
- [*OAIC Diversity Strategy*](#)
- [*OAIC Public Interest Disclosure Procedures*](#)
- [*Racial Discrimination Act 1975*](#)
- [*Sex Discrimination Act 1984*](#)
- [*Disability Discrimination Act 1992*](#)
- [*Age Discrimination Act 2004*](#)
- [*Australian Human Rights Commission Act 1986*](#)
- [*Work Health and Safety \(Commonwealth Employment\) Act 2011*](#)
- [*Privacy Act 1988*](#)
- [*Public Interest Disclosure Act 2013*](#)
- [*Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\) – AHRC Publication*](#)

- “Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008) – AHRC Publication, Chapter 2: A guide to the Code of Practice
- “Sharpening the focus: Managing performance in the APS” – AHRC Publication,



Australian Government

Office of the Australian Information Commissioner

Harassment Policy

For the Office of the Australian Information Commissioner

November 2012



Change history

Version	Changes	Date
0.1	Clearance from Human Resources	13 November 2012
1.0	Final signed by Australian Information Commissioner	30 November 2012
1.1	Update for new Canberra HCO	3 February 2014

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Statement by the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an organisation which values fairness, equity and diversity. The OAIC seeks to promote a work environment which supports both productivity and the self-esteem of staff members. To meet these objectives, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. The OAIC supports a workplace that upholds the APS values and is one in which all employees are treated with courtesy and respect and without harassment.

Harassment in the OAIC will not be tolerated. It is a form of employment discrimination and is unlawful. Ignoring workplace harassment can have serious consequences. Our managers and supervisors are responsible for providing leadership and example and for maintaining a non-discriminatory and harassment free workplace. They should ensure that all staff are aware of their rights and responsibilities regarding workplace harassment under this policy and are responsible for taking action if they become aware of harassment. Every staff member has a responsibility to treat colleagues and members of the public with courtesy and sensitivity, and to behave at all times in a manner that maintains or enhances the reputation of the OAIC and the Australian Public Sector (APS).

The OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Employees may choose to approach any of the HCOs even if they do not wish to make a formal complaint. There are procedures in place should staff choose to lodge a formal complaint in any matter of harassment.

The OAIC is committed to providing a workplace free of harassment and one in which staff are supported and treated with courtesy and respect.

John McMillan
Australian Information Commissioner

November 2012

What is workplace harassment?

Workplace harassment

Workplace harassment is offensive, abusive, belittling or threatening behaviour directed at an individual or a group, which may result from some real or perceived attribute or difference. Such attributes or differences may include gender, race, disability, sexual preference or age. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour. Harassment may also occur in any work-related context not only in working hours and at the workplace. This may include conferences, office Christmas parties and business trips and also include interactions with clients.

Any form of harassment or victimisation is unlawful, is inconsistent with the APS Values and Code of Conduct and diversity principles and is likely to undermine work relationships and efficiency.

For harassment to occur there does not need to be an intention to offend or harass. Moreover, often harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to harassment may seem unaffected. However, a series of individual incidents or a single serious incident can undermine the standard of conduct within a work area, which may erode the wellbeing of the individual or group targeted and lower overall staff performance.

The absence of complaints is not necessarily an indication that no harassment is occurring. The person subjected to harassing behaviour does not always complain. This is not necessarily because the harassment is trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.

Workplace harassment should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work related behaviour of an individual or group. The process of providing feedback to staff during a formal performance appraisal or counselling staff regarding their work performance will not always be free of stress. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening. Managers should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff. The booklet 'Counselling for better work performance' issued by the APS Commission and Comcare, advises managers about how to give effective feedback and counselling.

Examples of harassing behaviour include:

- offensive physical contact, derogatory language or intimidating actions
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
- unjustified and unnecessary comments about a person's work or capacity for work

- openly displayed pictures, posters, graffiti or written materials which might be offensive to some
- phone calls or messages on electronic mail or computer networks which are threatening, abusive or offensive to employees
- persistent following or stalking within the workplace, or to and from work or elsewhere
- disparaging remarks about malingering to employees who have made a claim for compensation.

Sexual harassment

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. Sexual harassment in employment is unlawful under the *Sex Discrimination Act 1984 (Cth)*. It is also unlawful for a person to be victimised for making or proposing to make, a complaint of sexual harassment to the Australian Human Rights Commission.

Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures, screen savers or posters
- unwanted invitations to go out on dates or requests for sex
- intrusive questions about an employees' private life or body
- unnecessary familiarity
- insults or taunts based on your sex
- sexually explicit emails for SMS messages
- accessing sexually explicit internet sites
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

Sexual harassment is not sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

Sexual harassment is legally recognised as a form of sex discrimination. Sexual harassment and sex discrimination are both unlawful under the *Sex Discrimination Act*. The legal test for sexual harassment in the federal *Sex Discrimination Act* is that the behaviour must be unwelcome, be of a sexual nature and be such that a reasonable person would anticipate in the circumstances that the person who has harassed would be offended, humiliated and/or intimidated. The unwelcome behaviour need not be

repeated or continuous. A single incident can amount to sexual harassment. A complaint of sexual harassment will not necessarily be dismissed because the person subjected to the behaviour did not directly inform the harasser that it was unwelcome. However, there does need to be some indication from the person's conduct or the surrounding circumstances that the behaviour was in fact unwelcome.

Racial harassment

Racial harassment is unwanted behaviour towards a person based upon that person's race or related aspects including ethnic origin, language, background, culture and religion. While the *Racial Discrimination Act 1975* (RDA) does not use the term 'racial harassment' the Act defines as unlawful any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin of 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. The RDA makes racial hatred unlawful. Clearly some types of workplace harassment could be seen as unlawful behaviour under the Act.

Examples of racial harassment at work may include:

- threatening language and behaviour
- taunting or ostracising
- mocking of accents, cultures and customs
- practical jokes
- the display of racist cartoons, posters and graffiti
- racist emails or SMS text messages
- derogatory comments about race, accents, culture, religion and customs.

Harassment on disability grounds

The *Disability Discrimination Act 1992* (DDA) outlaws any discrimination or harassment in employment due to disability.

Examples of harassment on disability grounds may include:

- humiliating comments/emails or actions about a person's disability
- comments/emails or actions which create hostile environment
- overbearing or abusive behaviour towards staff with intellectual disabilities
- emails or SMS text messages that are insulting of a person's disability
- disparaging remarks/emails to staff referring to compensation claims they have made relating to their disability.

Other forms of workplace harassment

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act* which defines discrimination to mean any distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference, or trade union activity.

The *Age Discrimination Act 2004* (ADA) makes it against the law to treat you less favourably because of your age. The ADA protects both younger and older Australians. Although there are no specific provisions relating to age harassment, like the RDA the general discrimination provision may capture such behaviour if based on age.

Workplace bullying is also harassment and is 'repeated, unreasonable behaviour directed toward an employee, or group of employees that creates a risk to health and safety'. In other words bullying is a repeated behaviour that intimidates, offends, degrades or humiliates a worker, possibly in front of co-workers or clients. There are bound to be differences of opinion, conflicts and problems in working relations but bullying occurs when the behaviour is repeated and offends or harms an employee. The following types of behaviour could be considered bullying:

- verbal abuse
- intimidation
- teasing or regularly being subject to practical jokes.

Harassment by contractors or clients

Harassment may also occur where an employee is harassed by a contractor or client. Harassing behaviour from contractors or clients will not be tolerated. In situations such as these the employee should immediately notify their manager. The matter should be referred to the Human Resources Manager for any follow up action with the contractor or client. Where the person is from an employment agency, the agency will be notified.

Preventing harassment

Workplace harassment runs counter to the APS Values and Code of Conduct, as well as Commonwealth anti-discrimination laws which are administered by the Australian Human Rights Commission. Harassment is unacceptable in the workplace. Both managers and employees have a responsibility to ensure an appropriate and acceptable standard of behaviour in the workplace.

Legal responsibilities

Management has a legal responsibility to prevent harassment. All employees are bound by various legislation that prohibits harassment of fellow employees and ensures that there is an appropriate standard of conduct maintained in the workplace. This includes:

APS Values

The APS Values set out in section 10 of the *Public Service Act* (PS Act) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential. Some values are particularly relevant here. For example:

- *the APS establishes workplace relations that value communication, consultation, cooperation and input from employees on matters that affect their workplace*
- *the APS provides a fair, flexible, safe and rewarding workplace.*

The APS Code of Conduct

All employees are subject to the Code of Conduct set out in section 13 of the PS Act and outlined in the OAIC's Enterprise Agreement. 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.*

It also provides directly that APS employees must comply with the Australian legislation.

- *An APS employee when acting in the course of APS employment must comply with all applicable Australian laws.*

An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Breaches to the Code of Conduct procedures are available on the OAIC's intranet site.

Commonwealth anti-discrimination legislation

In addition to being a breach of Code of Conduct, workplace harassment on the basis of race, 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 *Sex Discrimination Act 1984*, disability harassment and discrimination under the *Disability Discrimination Act 1992*, and racial discrimination under the *Racial Discrimination Act 1975*. While the *Racial Discrimination Act* does not use the term 'racial harassment' some types of workplace harassment could be lawful discrimination under this Act.

In addition to an employees' personal liability for harassing behaviour under the anti-discrimination legislation, agencies are vicariously liable for the acts or omissions of their employees, unless they can demonstrate they have taken all reasonable steps to prevent

the acts from occurring. An agency may therefore be liable for damages awarded in compensation for the harassment by one of its employees even though the employer is not directly involved in the harassing behaviour. The employer can seek to recover damages from the harasser.

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* if it is based on particular grounds including sexual preference, religion and trade union activities.

Other Commonwealth legislation

The [Fair Work Act 2009](#) aims to help prevent and eliminate discrimination in the making of awards and agreements and in the termination of employment. Aspects of this Act may be relevant to a workplace harassment allegation.

Under the *Work Occupational Health and Safety Act 2011*, employers must also take all reasonably practicable steps to protect the health and safety of employees to work.

Criminal law

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. The police should be contacted for advice and assistance on what matters should be reported and appropriate action in these circumstances.

Whistleblowing

Anti-discrimination legislation prohibits the victimisation of anyone connected with a complaint. The PS Act (section 16) protects whistle blowers against victimisation or discrimination. This protection applies when people report a suspected breach of the Code of Conduct to the Australian Information Commissioner, the Public Service Commissioner or the Merit Protection Commissioner, or to a person authorised by any one of them. Allegations of such breaches may include reports made by employees who believe that harassment is occurring, even when there is no formal complaint from the person(s) being harassed.

Management responsibility

Accountability for people management, including the prevention of harassment, lies with senior management and supervisors. They share the legal and managerial responsibilities for detecting and dealing with behaviour which constitutes harassment or has the potential to develop into harassment.

Although management does not have the right to intrude into personal relationships freely entered into by staff, it does have a responsibility to ensure that proper standards of conduct are maintained at all times in the workplace. Management has a proper concern where the behaviour of staff towards others:

- adversely affects a staff members prospects for employment or promotion or other work related benefits
- adversely affects the work performance of an individual or group
- undermines morale or causes distress through for example, the display of the offensive material
- creates an intimidating, hostile, offensive or distressing work environment
- leads to physical or emotional stress which may force a staff member to take leave to cope with the behaviour or to seek transfer or resignation
- reflects adversely on the integrity and standing of the OAIC as seen by members of the public or by staff.

Responsibilities of managers and supervisors

When workplace harassment does occur, it has a serious and sustained impact on both the complainant and the organisation. It is important that all managers and supervisors are familiar with and actively promote and support the OAIC's policy and strategies for dealing with harassment. Managers and supervisors should advocate and explain the standards of behaviour expected of employees and be mindful of the need to model these standards in their own behaviour. Managers should also provide support for their staff when they seek advice about dealing with workplace harassment, including providing information about review and complaint mechanisms.

Managers and supervisors must take action when they become aware of harassment (even without a complaint necessarily being lodged). Failure by managers and supervisors when they become aware of harassment to act, investigate complaints or take prompt and effective remedial action to deal with such complaints may be perceived as condoning or tolerating such behaviour. Where no such action is taken the agency may be vicariously liable.

Managers and supervisors are usually best placed to become aware of and deal with harassment as part of their role in maintaining a productive environment and promoting proper standards of conduct in their work unit.

In particular managers and supervisors have a responsibility to:

- adhere to, support and promote the APS Code of Conduct and APS Values
- support the OAIC's policy on workplace harassment and ensure that their own conduct is above reproach
- ensure that staff in their work units are familiar with the OAIC's policy on workplace harassment and are aware of the appropriate and acceptable standards of behaviour at work
- take early corrective action to deal with behaviour which may be offensive or intimidating

- stop behaviour in the work area which may develop into harassment
- deal promptly with any incidents of harassment, if possible before a complaint is made
- where a complaint has been made, take action to ensure that the complaint is properly resolved and that there is no repetition of offensive behaviour or victimisation of the complainant
- maintain confidentiality about any complaint.

Depending on the circumstances, the actions that managers and supervisors could take when they become aware of any harassing or intimidating behaviour at work may include:

- talking with the staff member about appropriate behaviour for work
- explaining why another staff member may be interpreting behaviour as harassment
- drawing attention to the OAIC's policy on workplace harassment and the relevant legislation
- referring a staff member to a harassment contact officer or the OAIC's Employee Assistance Program
- referring the matter to the Human Resources Manager or Assistant Commissioner Corporate Support and Communication for consideration as to what action should be taken if the matter is not resolved.

As in any situation where an employee is causing concern either for work performance or personal conduct, and informal discussions with the supervisor have not rectified the problem, the employee's manager can give the person a written direction about the standards expected and the possible consequences if those standards are not reached. Where a written direction is given and this direction is not complied with the issue could be dealt with under the OAIC's misconduct procedures.

Situations may arise where the supervisor is the alleged harasser. Where this is the case the supervisor's manager or Human Resources Manager should assume the responsibility to deal with the situation.

Role of Harassment Contact Officers (HCOs)

The primary role of an HCO is to provide support and information to people who believe they are being harassed. The HCO is able to explain the various options for dealing with harassment and if necessary to accompany a complainant to any meetings to resolve the problem. It is not necessary for a staff member to make a formal complaint against a named person in order to approach the HCO.

HCOs have a role in providing information to managers, supervisors and employees on:

- processes available to resolve complaints including through external bodies such as the Merit Protection Commissioner and the Australian Human Rights Commission
- types of behaviour which are inappropriate at work in line with the APS Code of Conduct.

It is not the role of HCOs to resolve harassment complaints. Their role is to provide information and support to anyone who may be involved in a harassment case. In most circumstances it would be inappropriate for a contact officer to advise both the alleged harasser and the complainant in the same case.

It is the responsibility of management to address complaints involving harassment or workplace conduct that may amount to harassment.

In general, information provided to HCOs should not be passed on without the person's consent. There may be occasions however, where HCOs have a responsibility to advise management when they become aware of harassment occurring if the agency is to avoid vicarious liability. Situations may arise where the safety and wellbeing of other employees is at risk. For example where staff have been physically threatened or assaulted or where a number of people have complained about one person. An HCO could be considered negligent if such incidents are not referred appropriately. An absolute guarantee of confidentiality cannot be made by HCOs when dealing with harassment in these situations. The behaviour in question may be part of a broader pattern. Whenever it becomes apparent that a person is discussing a matter that may require being referred the HCO should raise with the person the issue of confidentiality and the possibility of being obliged to pass on the information. Taking into account the relevant Information Privacy Principles, the HCO should advise how information is passed on in such circumstances, who may have access to it and the extent to which the staff member will be identified.

Management has appointed HCOs who have been trained in the role and are able to provide information and support to staff and managers. Employees may choose to approach any of the HCOs even if they do not wish to make a formal complaint. A list of current HCOs is identified on the OAIC's telephone lists and at Attachment A along with an outline of the role and responsibilities of HCOs.

There may be instances where an HCO will not be able to assist for personal or other reasons. In these circumstances a complainant or manager will be referred to another HCO. An HCO is not required to give reasons for being unable to assist.

Staff may also discuss any harassment issues with the Human Resources Manager.

Responsibilities of employees

Staff who become aware of a situation that they consider to be harassment by fellow staff members may bring it to the attention of management. However an accusation of harassment is a serious matter that should not be made lightly. It should be noted that it is not necessary to label someone a harasser in order to bring an issue to management's

attention. Any situations of perceived harassment should only be discussed with a person who has a legitimate role in their resolution, such as a manager, the Human Resources Manager, a supervisor or an HCO.

All staff have responsibilities for preventing harassment in the workplace and ensuring that their own behaviour meets acceptable standards under the APS Code of Conduct.

Staff also have a duty under the *Work Health and Safety Act 2011* not to create or increase a risk to their own or other people's health and to cooperate with their employer to the extent necessary to enable the employer's duty to be met. Harassing fellow staff or failing to follow the OAIC's policies and procedures in relation to the prevention of harassment could involve employees in a breach of the legislation.

Role of Workplace Representatives

Staff may approach a workplace (union) delegate regarding workplace harassment as they can about any matter affecting their employment. It is not the delegate's role to investigate or resolve cases of harassment however they can support their members in resolving a complaint.

Resolving complaints of harassment

Options for complainants

The OAIC will treat harassment complaints seriously and deal with them in a sensitive, fair, timely and confidential manner. A number of mechanisms are in place to support staff who feel they are being harassed and options available to staff include:

- seeking advice from a manager or supervisor, an HCO, the Human Resources Manager, or workplace (union) representative to assist in resolving the matter
- seeking support and assistance from the OAIC's Employee Assistance Provider. This is a confidential free service available to all employees (Tel: 1300 361008)
- approaching the alleged harasser directly (but only if the individual feels confident to do so)
- lodging an informal complaint with their manager
- lodging a formal grievance (review of action) under the OAIC Enterprise Agreement
- lodging a grievance (review of action) to the Merit Protection Commissioner.

Further information on each of these options is available from the Human Resources Manager.

Outcomes

Depending on the severity of the matter responses may include an apology, counselling, transfer, dismissal, demotion or other forms of disciplinary action. Action will also be taken against anyone who victimises a person who has complained of harassment.

Other issues

Confidentiality

All approaches to an HCO will be treated in confidence. It is important that investigations of allegations of workplace harassment maintain confidentiality with information provided only on a 'need to know' basis.

Defamation

Allegations of harassment are serious issues which may reflect adversely on the reputation of the alleged harasser. The possibility of being sued for defamation arises when:

- a complainant speaks to anyone other than the alleged harasser or those with a genuine interest in knowing
- that communication is made other than in good faith.

A person with a 'genuine interest in knowing' is a person who is involved in investigating or resolving a complaint either informally or formally. This includes HCOs, the complainants and/or alleged harassers manager, the Human Resources Manager (or other corporate services staff member consulted for advice), workplace delegates, and any person directed to investigate a complaint.

'Good faith' for this purpose means that the complainant is not motivated by ill-will or malice towards the person against who the complaint is made.

Keeping of records relating to complaints of harassment

It is good management practice that records be kept of any formal complaints of harassment and of any follow up counselling or other action. Because of the sensitivity of this material special care should be taken to protect the confidentiality of such records. Records are to be kept in accordance with the OAIC's policy on record keeping and with Privacy Legislation.

Further information

Additional information regarding the elimination and prevention of workplace harassment is available from the Human Resources Manager.

Relevant references and links include:

- [Public Service Act 1999](#)

- [Public Service Regulations 1999](#)
- [Public Service Commissioners Directions 1999](#)
- [APS Code of Conduct](#) and [APS Values](#)
- [APS Values and Code of Conduct in Practice](#)
- [OAIC Enterprise Agreement](#)
- [OAIC Breaches to the Code of Conduct](#)
- [OAIC Workplace Diversity Plan](#)
- [Australian Human Rights Commission and OAIC's Email/Internet Policy](#)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Disability Discrimination Act 1992](#)
- [Age Discrimination Act 2004](#)
- [Australian Human Rights Commission Act 1986](#)
- [Work Health and Safety Act 2011](#)
- ['Sexual Harassment A Code of Practice'](#) – Australian Human Rights Commission Publication
- ['Respect: promoting a culture free from harassment and bullying in the APS'](#) - APS Commission Publication

Other Contacts

Employee Assistance Program – Telephone: 1300 361 008

Merit Protection Commissioner – Telephone: 02 6202 3506

Attachment A

Harassment Contact Officers (HCOs) roles and responsibilities

The OAIC is committed to ensuring a workplace free from discrimination and harassment. Workplace harassment is a form of employment discrimination. It consists of offensive, abusive, belittling or threatening behaviour directed at an individual or a group. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour.

As part of the mechanisms in place to resolve any instances of alleged workplace harassment, the OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Employees may choose to approach any of the HCOs even if they do not wish to make a formal complaint.

The HCO's role is to assist either a complainant or an alleged harasser to understand the OAIC's policy and procedures and assist them work through the options available to them.

Harassment Contact Officers may:

- Provide information on the options available for resolution of the situation.
- Assist the complainant to clarify what outcome they want.
- Assist the complainant or alleged harasser through any process as a support person. For example, assisting someone to clarify their thoughts for a letter, accompanying someone to a meeting at their request.

Harassment Contact Officers cannot:

- Investigate the complaint or attempt to conciliate the parties.
- Counsel the complainant or alleged harasser.
- Present the case for the complainant or alleged harasser at meetings or inquiries.
- Support both parties at the same time.
- Recommend a particular course of action or pre-empt outcomes.
- Disclose the information to anyone who does not have a need to know.

Other options

As well as seeking support from the HCOs, employees who believe they have been discriminated against or harassed may choose to go directly to their supervisor, Human Resources, senior management, workplace (union) representative or the Employee Assistance Program. Employees can also request an external review by the Australian

Public Service Commission in some circumstances and further information is available from the Human Resources Manager or HCOs.

Harassment Contact Officers

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Australian Government

Office of the Australian Information Commissioner

Harassment Policy

For the Office of the Australian Information Commissioner

April 2014



Change history

Version	Changes	Date
0.1	Clearance from Human Resources	13 November 2012
1.0	Final signed by Australian Information Commissioner	30 November 2012
1.1	Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014

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Statement by the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an organisation which values fairness, equity and diversity. The OAIC seeks to promote a work environment which supports both productivity and the self-esteem of staff members. To meet these objectives, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. The OAIC supports a workplace that upholds the APS values and is one in which all employees are treated with courtesy and respect and without harassment.

Harassment in the OAIC will not be tolerated. It is a form of employment discrimination and is unlawful. Ignoring workplace harassment can have serious consequences. Our managers and supervisors are responsible for providing leadership and example and for maintaining a non-discriminatory and harassment free workplace. They should ensure that all staff are aware of their rights and responsibilities regarding workplace harassment under this policy and are responsible for taking action if they become aware of harassment. Every staff member has a responsibility to treat colleagues and members of the public with courtesy and sensitivity, and to behave at all times in a manner that maintains or enhances the reputation of the OAIC and the Australian Public Sector (APS).

In an increasingly complex online world, we should remain vigilant to the many platforms across which bullying and harassing behaviours can occur.

The OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Employees may choose to approach any of the HCOs even if they do not wish to make a formal complaint. There are procedures in place should staff choose to lodge a formal complaint in any matter of harassment.

The OAIC is committed to providing a workplace free of harassment and one in which staff are supported and treated with courtesy and respect.

John McMillan
Australian Information Commissioner

What is workplace harassment?

Workplace harassment

Workplace harassment is offensive, abusive, belittling or threatening behaviour directed at an individual or a group, which may result from some real or perceived attribute or difference. Such attributes or differences may include gender, race, disability, age, sexual orientation or religion. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour. Harassment may also occur in any work-related context not only in working hours and at the workplace. This may include attending conferences, office Christmas parties, business trips, social networking sites and also include interactions with clients.

Any form of harassment or victimisation is unlawful, is inconsistent with the APS Values and Code of Conduct and diversity principles and is likely to undermine work relationships and efficiency.

For harassment to occur there does not need to be an intention to offend or harass. Moreover, often harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to harassment may seem unaffected. However, a series of individual incidents or a single serious incident can undermine the standard of conduct within a work area, which may erode the wellbeing of the individual or group targeted and lower overall staff performance.

The absence of complaints is not necessarily an indication that no harassment is occurring. The person subjected to harassing behaviour does not always complain. This is not necessarily because the harassment is trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.

Workplace harassment should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work related behaviour of an individual or group. The process of providing feedback to staff during a formal performance appraisal or counselling staff regarding their work performance will not always be free of stress. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening. Managers should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff. The booklet 'Counselling for better work performance' issued by the APS Commission and Comcare, advises managers about how to give effective feedback and counselling.

'Uncivil' behaviour is not considered to be bullying or harassment. Whilst 'uncivil' behaviour clearly should be avoided, being discourteous, rude or impolite does not carry the same weight as bullying or harassing behaviour.

Examples of harassing behaviour include:

- offensive physical contact, derogatory language or intimidating actions
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
- unjustified and unnecessary comments about a person's work or capacity for work
- openly displayed pictures, posters, graffiti or written materials which might be offensive to some
- phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees
- persistent following or stalking within the workplace, or to and from work or elsewhere
- disparaging remarks about malingering to employees who have made a claim for compensation.

Sexual harassment

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. Sexual harassment is legally recognised as a form of sex discrimination. Sexual harassment and sex discrimination are both unlawful under the *Sex Discrimination Act 1984 (Cth)* (Sex Discrimination Act).

The legal test for sexual harassment under the Sex Discrimination Act is that the behaviour must be unwelcome, be of a sexual nature and be such that a reasonable person would anticipate in the circumstances that the person who was harassed would be offended, humiliated and/or intimidated. The unwelcome behaviour need not be repeated or continuous. A single incident can amount to sexual harassment. A complaint of sexual harassment will not necessarily be dismissed because the person subjected to the behaviour did not directly inform the harasser that it was unwelcome. However, there does need to be some indication from the person's conduct or the surrounding circumstances that the behaviour was in fact unwelcome.

Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures, screen savers or posters
- unwanted invitations to go out on dates or requests for sex
- intrusive questions about an employees' private life or body
- unnecessary familiarity

- insults or taunts based on your sex
- sexually explicit emails or SMS messages
- suggestive or sexually explicit comments or references on social media networks
- accessing sexually explicit internet sites
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

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

It is also unlawful for a person to be victimised for making or proposing to make a complaint of sexual harassment to the OAIC or asserting a right under the Sex Discrimination Act.

Racial harassment

Racial harassment is unwanted behaviour towards a person based upon that person's race, colour, descent, ethnic or national origin (including being Jewish or Sikh). While the *Racial Discrimination Act 1975* (Cth) (the RDA) does not use the term 'racial harassment' the Act defines as unlawful any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin of 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. The RDA also makes racial hatred unlawful. Some types of workplace harassment could be seen as unlawful behaviour under the Act.

Examples of racial harassment at work may include:

- threatening language and behaviour
- taunting or ostracising
- mocking of accents, cultures and customs
- practical jokes
- the display of racist cartoons, posters and graffiti
- racist emails or SMS messages
- derogatory comments about race, accents, culture, religion and customs made in person, by electronic mail, SMS messaging or through social media networks.

Harassment on the ground of disability

Under the *Disability Discrimination Act 1992* (Cth) (the DDA), discrimination or harassment in employment based on disability can be unlawful.

Examples of harassment on the ground of disability may include:

- humiliating comments/emails or actions about a person's disability
- comments/emails or actions which create hostile environment
- overbearing or abusive behaviour towards staff with intellectual disabilities
- emails or SMS text messages that are insulting of a person's disability
- disparaging remarks/emails to staff referring to compensation claims they have made relating to their disability.

Pregnancy and harassment

The *Sex Discrimination Act 1984* (Cth) (the SDA) offers protections for employees who have experienced discrimination as a result of their pregnancy or potential pregnancy.

Pregnancy-related harassment may include:

- personal comments about body shape
- unwanted and inappropriate touching of their body
- sexualised comments
- references to abortion
- unwanted comments about when the worker is leaving and whether she should come back.

Some employees may also experience a lack of employment security in relation to their pregnancy.

Sexual orientation, gender identity, intersex status, relationship status and harassment

The SDA was amended on 1 August 2013 to make it unlawful to discriminate against someone on the basis of their sexual orientation, gender identity, intersex status or relationship status. While the SDA does not use the term 'harassment' with reference to sexual orientation, gender identity, intersex status or relationship status, some types of workplace harassment may constitute unlawful discrimination.

Harassment on the basis of sexual orientation, gender identity, intersex status and/or relationship status can be directed towards sexuality, sex and gender diverse people, as well as towards their partner and family members. Examples may include:

- comments about using the 'right' bathroom or shower facilities
- comments about clothing and physical appearance
- use of derogatory terms, slurs and name-calling
- refusal to use someone's chosen name and pronoun
- inappropriate questions or discussion of someone's body
- demeaning jokes, comments, cartoons or emails
- unwanted disclosure of personal details on record
- dress code requirements that insist on gender conformity.

Other forms of workplace harassment

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* (Cth) which defines discrimination to mean any distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference, or trade union activity.

The *Age Discrimination Act 2004* (Cth) (the ADA) makes it against the law to treat you less favourably because of your age. The ADA protects both younger and older Australians. Although there are no specific provisions relating to age harassment, like the RDA the general discrimination provision may capture such behaviour if based on age.

Workplace bullying is also harassment and is ‘repeated, unreasonable behaviour directed toward an employee, or group of employees that creates a risk to health and safety’. In other words bullying is a repeated behaviour that intimidates, offends, degrades or humiliates a worker, possibly in front of co-workers or clients. There are bound to be differences of opinion, conflicts and problems in working relations but bullying occurs when the behaviour is repeated and offends or harms an employee. The following types of behaviour could be considered bullying:

- verbal abuse
- intimidation
- teasing or regularly being subject to practical jokes.

Cyber-bullying

Cyber-bullying is any bullying behaviour (as defined above) using digital technologies. It is distinct from other types of bullying in several key ways:

- it allows a potentially global audience
- it is often anonymous, making it hard to hold perpetrators to account
- it can take place at any time of the day or any day of the week
- it has a degree of permanence, as online information can be difficult to remove and may be recorded and archived
- it may be difficult to escape from whilst we continue to use digital technology for many uses
- content can be duplicated easily and is often searchable.

Examples of inappropriate online conduct may include:

- using offensive or abusive language
- personal attacks

- spamming
- cyber-stalking
- creating fake social networking profiles of APS employees.

Harassment by contractors or clients

Harassment may also occur where an employee is harassed by a contractor or client. This behaviour may occur in person, by telephone or on-line. Harassing behaviour from contractors or clients will not be tolerated. In situations such as these the employee should immediately notify their manager. The matter should be referred to the Human Resources Manager or Assistant Commissioner Corporate Support and Communication for any follow up action with the contractor or client. Where the person is from an employment agency, the agency will be notified.

Preventing harassment

Workplace harassment runs counter to the APS Values and Code of Conduct, as well as Commonwealth anti-discrimination laws which are administered by the Australian Human Rights Commission. Harassment is unacceptable in the workplace. Both managers and employees have a responsibility to ensure an appropriate and acceptable standard of behaviour in the workplace.

Legal responsibilities

Management has a legal responsibility to prevent harassment. All employees are bound by various legislation that prohibits harassment of fellow employees and ensures that there is an appropriate standard of conduct maintained in the workplace. This includes:

APS Values

The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the PS Act) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.

Impartial - The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to Service – The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Accountable – The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful - The APS respects all people, including their rights and their heritage.

Ethical – The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

The APS Code of Conduct

All employees are subject to the Code of Conduct set out in section 13 of the PS Act and outlined in the OAIC's Enterprise Agreement. The Code of Conduct directly prohibits harassment.

It requires that an employee must:

- *when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment.*
- *when acting in connection with APS employment, comply with all applicable Australian laws.*

An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Breaches to the Code of Conduct procedures are available on the OAIC's intranet site.

Commonwealth anti-discrimination legislation

In addition to being a breach of Code of Conduct, workplace harassment on the basis of race, sex, age, disability or sexual orientation may also breach both the anti-harassment and the anti-discrimination provisions of Commonwealth anti-discrimination legislation.

This includes sexual harassment and discrimination under *Sex Discrimination Act 1984*, disability harassment and discrimination under the *Disability Discrimination Act 1992*, and racial discrimination under the *Racial Discrimination Act 1975*. While the *Racial Discrimination Act* does not use the term 'racial harassment' some types of workplace harassment could be lawful discrimination under this Act.

In addition to an employees' personal liability for harassing behaviour under the anti-discrimination legislation, agencies can be held vicariously liable for the acts or omissions of their employees, unless they can demonstrate they have taken all reasonable steps to prevent the acts from occurring. An agency may therefore be liable for damages awarded in compensation for the harassment by one of its employees even though the employer is not directly involved in the harassing behaviour. The employer can seek to recover damages from the harasser.

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* (Cth) if it is based on particular grounds including sexual preference, religion and/or trade union activities.

Other Commonwealth legislation

The *Fair Work Act 2009* (Cth) aims to help prevent and eliminate discrimination in the making of awards and agreements and in the termination of employment. New

provisions introduced in December 2013 provide access to the Fair Work Commission to resolve complaints of bullying. Aspects of this Act may be relevant to a workplace harassment allegation.

Under the *Work Health and Safety (Cth) Act 2011*, employers must also take all reasonably practicable steps to protect the health and safety of employees to work.

Criminal law

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. The police should be contacted for advice and assistance on what matters should be reported and appropriate action in these circumstances.

Public Interest Disclosures

The *Public Interest Disclosure Act 2013* (Cth) applies when people report a suspected breach of the Code of Conduct to an authorised person. The Act offers protections to those making such disclosures and requires agencies to take action in relation to the alleged breach. Allegations of such breaches may include reports made by employees who believe that harassment is occurring, even where there is no formal complaint from the person(s) being harassed.

Management responsibility

Accountability for people management, including the prevention of harassment, lies with senior management and supervisors. They share the legal and managerial responsibilities for detecting and dealing with behaviour which constitutes harassment or has the potential to develop into harassment.

Although management does not have the right to intrude into personal relationships freely entered into by staff, it does have a responsibility to ensure that proper standards of conduct are maintained at all times in the workplace. Management has a proper concern where the behaviour of staff towards others:

- adversely affects a staff members prospects for employment or promotion or other work related benefits
- adversely affects the work performance of an individual or group
- undermines morale or causes distress through for example, the display of the offensive material
- creates an intimidating, hostile, offensive or distressing work environment
- leads to physical or emotional stress which may force a staff member to take leave to cope with the behaviour or to seek transfer or resignation

- reflects adversely on the integrity and standing of the OAIC as seen by members of the public or by staff.

Induction and ongoing education

The OAIC will ensure that all new staff whether on ongoing, non-ongoing, on secondment or special placement receive an induction that includes information about harassment and bullying and our no tolerance approach.

Where opportunities and resources exist, the OAIC will support ongoing education and/or training for staff to reinforce their understanding of what constitutes harassment and strategies for prevention of harassment.

Responsibilities of managers and supervisors

When workplace harassment does occur, it has a serious and sustained impact on both the complainant and the organisation. It is important that all managers and supervisors are familiar with and actively promote and support the OAIC's policy and strategies for dealing with harassment. Managers and supervisors should advocate and explain the standards of behaviour expected of employees and be mindful of the need to model these standards in their own behaviour. Managers should also provide support for their staff when they seek advice about dealing with workplace harassment, including providing information about review and complaint mechanisms.

Managers and supervisors must take action when they become aware of harassment (even without a complaint necessarily being lodged). Failure by managers and supervisors when they become aware of harassment to act, investigate complaints or take prompt and effective remedial action to deal with such complaints may be perceived as condoning or tolerating such behaviour. Where no such action is taken the agency may be vicariously liable.

Managers and supervisors are usually best placed to become aware of and deal with harassment as part of their role in maintaining a productive environment and promoting proper standards of conduct in their work unit.

In particular managers and supervisors have a responsibility to:

- adhere to, support and promote the APS Code of Conduct and APS Values
- support the OAIC's policy on workplace harassment and ensure that their own conduct is above reproach
- ensure that staff in their work units are familiar with the OAIC's policy on workplace harassment and are aware of the appropriate and acceptable standards of behaviour at work
- take early corrective action to deal with behaviour which may be offensive or intimidating
- stop behaviour in the work area which may develop into harassment

- deal promptly with any incidents of harassment, if possible before a complaint is made
- where a complaint has been made, take action to ensure that the complaint is properly resolved and that there is no repetition of offensive behaviour or victimisation of the complainant
- maintain confidentiality about any complaint.

Depending on the circumstances, the actions that managers and supervisors could take when they become aware of any harassing or intimidating behaviour at work may include:

- talking with the staff member about appropriate behaviour for work
- explaining why another staff member may be interpreting behaviour as harassment
- drawing attention to the OAIC's policy on workplace harassment and the relevant legislation
- referring a staff member to a harassment contact officer or the OAIC's Employee Assistance Program
- referring the matter to the Human Resources Manager or Assistant Commissioner Corporate Support and Communication for consideration as to what action should be taken if the matter is not resolved.

As in any situation where an employee is causing concern either for work performance or personal conduct, and informal discussions with the supervisor have not rectified the problem, the employee's manager can give the person a written direction about the standards expected and the possible consequences if those standards are not reached. Where a written direction is given and this direction is not complied with the issue could be dealt with under the OAIC's misconduct procedures.

Situations may arise where the supervisor is the alleged harasser. Where this is the case the supervisor's manager or Human Resources Manager should assume the responsibility to deal with the situation.

Role of Harassment Contact Officers (HCOs)

The primary role of an HCO is to provide support and information to people who believe they are being harassed. The HCO is able to explain the various options for dealing with harassment and if necessary to accompany a complainant to any meetings to resolve the problem. It is not necessary for a staff member to make a formal complaint against a named person in order to approach the HCO. More information about the role of HCOs is at **Attachment A**.

Responsibilities of employees

Staff who become aware of a situation that they consider to be harassment by fellow staff members may bring it to the attention of management. However an accusation of

harassment is a serious matter that should not be made lightly. It should be noted that it is not necessary to label someone a harasser in order to bring an issue to management's attention. Any situations of perceived harassment should only be discussed with a person who has a legitimate role in their resolution, such as a manager, the Human Resources Manager, a supervisor or an HCO.

All staff have responsibilities for preventing harassment in the workplace and ensuring that their own behaviour meets acceptable standards under the APS Code of Conduct.

Staff also have a duty under the *Work Health and Safety (Commonwealth Employment) Act 2011* not to create or increase a risk to their own or other people's health and to cooperate with their employer to the extent necessary to enable the employer's duty to be met. Harassing fellow staff or failing to follow the OAIC's policies and procedures in relation to the prevention of harassment could involve employees in a breach of the legislation.

Role of Workplace Representatives

Staff may approach a workplace (union) delegate regarding workplace harassment as they can about any matter affecting their employment. It is not the delegate's role to investigate or resolve cases of harassment however they can support their members in resolving a complaint.

Resolving complaints of harassment

Options for complainants

The OAIC will treat harassment complaints (formal or informal) seriously and deal with them in a sensitive, fair, timely and confidential manner. A number of mechanisms are in place to support staff who feel they are being harassed and options available to staff include:

- seeking advice from a manager or supervisor, an HCO, the Human Resources Manager, or workplace (union) representative to assist in resolving the matter
- seeking support and assistance from the OAIC's Employee Assistance Provider. This is a confidential free service available to all employees (Tel: 1300 361 008)
- approaching the alleged harasser directly (but only if the individual feels confident to do so)
- lodging an informal complaint with their manager
- lodging a formal grievance (review of action) under the OAIC Enterprise Agreement
- lodging a complaint with the Fair Work Commission
- making a public interest disclosure under the *Public Interest Disclosure Act 2013* to an authorised officer; and

- lodging a complaint with the Australian Human Rights Commission.

Staff are encouraged to seek an internal resolution as a first resort and further information on each of the options is available from the Human Resources Manager.

Outcomes

Depending on the severity of the matter responses may include an apology, counselling, transfer, dismissal, demotion or other forms of disciplinary action. Action will also be taken against anyone who victimises a person who has complained of harassment.

Other issues

Confidentiality

All approaches to an HCO will be treated in confidence. It is important that investigations of allegations of workplace harassment maintain confidentiality with information provided only on a 'need to know' basis.

Defamation

Allegations of harassment are serious issues which may reflect adversely on the reputation of the alleged harasser. The possibility of being sued for defamation arises when:

- a complainant speaks to anyone other than the alleged harasser or those with a genuine interest in knowing
- that communication is made other than in good faith.

A person with a 'genuine interest in knowing' is a person who is involved in investigating or resolving a complaint either informally or formally. This includes HCOs, the complainants and/or alleged harasser's manager, the Human Resources Manager (or other corporate services staff member consulted for advice), workplace delegates, and any person directed to investigate a complaint.

'Good faith' for this purpose means that the complainant is not motivated by ill-will or malice towards the person against who the complaint is made.

Keeping of records relating to complaints of harassment

It is good management practice that records be kept of any formal complaints of harassment and of any follow up counselling or other action. Because of the sensitivity of this material special care should be taken to protect the confidentiality of such records. Records are to be kept in accordance with the OAIC's policy on record keeping and with the *Privacy Act 1988* (Cth).

Further information

Additional information regarding the elimination and prevention of workplace harassment is available from the Human Resources Manager.

Relevant references and links include:

- [Fair Work Act 2009](#)
- [Public Service Act 1999](#) www.apsc.gov.au
- [Public Service Regulations 1999](#)
- [Public Service Commissioners Directions 1999](#)
- [APS Code of Conduct, Employment Principles](#) and [APS Values](#)
- [OAIC Enterprise Agreement](#) (available on the Intranet site)
- [OAIC Breaches to the Code of Conduct](#) (available on the Intranet site)
- [OAIC Workplace Diversity Plan](#) (available on the Intranet site)
- [OAIC's Email/Internet Policy](#) (available on the Intranet site)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Disability Discrimination Act 1992](#)
- [Age Discrimination Act 2004](#)
- [Australian Human Rights Commission Act 1986](#)
- [Work Health and Safety \(Commonwealth Employment\) Act 2011](#)
- [Public Interest Disclosure Act 2013](#)
- “Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008)” - AHRC Publication
- “Respect: promoting a culture free from harassment and bullying in the APS” – APS Commission Publication - <http://www.apsc.gov.au/publications-and-media/current-publications/respect-building-a-positive-work-environment>
- “Sharpening the focus: Managing performance in the APS” APSC publication - <http://www.apsc.gov.au/publications-and-media/current-publications/managing-performance>

Other Contacts

Employee Assistance Program – Telephone: 1300 361 008

APSC- Merit Protection Commissioner – Telephone: 02 6202 3500

Fair Work Commission – Telephone: 1300 799 675

Attachment A

Harassment Contact Officers (HCOs) roles and responsibilities

The OAIC is committed to ensuring a workplace free from discrimination and harassment. Workplace harassment is a form of employment discrimination. It consists of offensive, abusive, belittling or threatening behaviour directed at an individual or a group. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour.

As part of the mechanisms in place to resolve any instances of alleged workplace harassment, the OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Employees may choose to approach any of the HCOs even if they do not wish to make a formal complaint.

The HCO's role is to assist either a complainant or an alleged harasser to understand the OAIC's policy and procedures and assist them work through the options available to them.

Harassment Contact Officers may:

- Provide information on the options available for resolution of the situation.
- Assist the complainant to clarify what outcome they want.
- Assist the complainant or alleged harasser through any process as a support person. For example, assisting someone to clarify their thoughts for a letter, accompanying someone to a meeting at their request.

Harassment Contact Officers cannot:

- Investigate the complaint or attempt to conciliate the parties.
- Counsel the complainant or alleged harasser.
- Present the case for the complainant or alleged harasser at meetings or inquiries.
- Support both parties at the same time.
- Recommend a particular course of action or pre-empt outcomes.
- Disclose the information to anyone who does not have a need to know.

Other options

As well as seeking support from the HCOs, employees who believe they have been discriminated against or harassed may choose to go directly to their supervisor, Human Resources, senior management, workplace (union) representative or the Employee Assistance Program. Employees can also request an external review by the Australian

Public Service Commission in some circumstances and further information is available from the Human Resources Manager or HCOs.

Harassment Contact Officer

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Australian Government
**Office of the Australian
Information Commissioner**

OAIC Harassment Policy

March 2021

oaic.gov.au

Change history

Version	Changes	Date
0.1	Clearance from Human Resources	13 November 2012
1.0	Final signed by Australian Information Commissioner	30 November 2012
1.1	Revised by Human Resources for the <i>Public Interest Disclosure Act 2013</i> , revised APS values and <i>Fair Work Act 2009</i>	March 2014
2.0	Revised by OAIC in new policy template, update positions and remove HCO name	August 2017
2.1	Updated Word template	January 2019
3.0	Updated Word template	March 2021

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Statement by the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) is an organisation which values fairness, equity and diversity. The OAIC seeks to promote a work environment which supports both productivity and the self-esteem of staff members. To meet these objectives, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. The OAIC supports a workplace that upholds the Australian Public Sector (APS) values and is one in which all employees are treated with courtesy and respect and without harassment.

Harassment in the OAIC will not be tolerated. It is a form of employment discrimination and is unlawful. Ignoring workplace harassment can have serious consequences. Our managers and supervisors are responsible for providing leadership and example and for maintaining a non-discriminatory and harassment free workplace. They should ensure that all staff are aware of their rights and responsibilities regarding workplace harassment under this policy and are responsible for taking action if they become aware of harassment. Every staff member has a responsibility to treat colleagues and members of the public with courtesy and sensitivity, and to behave at all times in a manner that maintains or enhances the reputation of the OAIC and the APS.

In an increasingly complex online world, we should remain vigilant to the many platforms across which bullying and harassing behaviours can occur.

The OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Staff may choose to approach any of the HCOs even if they do not wish to make a formal complaint. There are procedures in place should staff choose to lodge a formal complaint in any matter of harassment. Staff are also able to contact our People and Culture Team for further information, advice or support.

The OAIC is committed to providing a workplace free of harassment and one in which staff are supported and treated with courtesy and respect.

Angelene Falk
Australian Information Commissioner and Privacy Commissioner
March 2021

What is workplace harassment?

Workplace harassment

Workplace harassment is offensive, abusive, belittling or threatening behaviour directed at an individual or a group, which may result from some real or perceived attribute or difference. Such attributes or differences may include gender, race, disability, age, sexual orientation, or religion. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour. Harassment may also occur in any work-related context not only during working hours and at the workplace. This may include attending conferences, office Christmas parties, business trips, social networking sites and also include interactions with clients.

Any form of harassment or victimisation is unlawful, is inconsistent with the APS Values and Code of Conduct and diversity principles, and is likely to undermine work relationships and efficiency.

For harassment to occur there does not need to be an intention to offend or harass. Moreover, often harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to harassment may seem unaffected. However, a series of individual incidents or a single serious incident can undermine the standard of conduct within a work area, which may erode the wellbeing of the individual or group targeted and lower overall staff performance.

The absence of complaints is not necessarily an indication that no harassment is occurring. The person subjected to harassing behaviour does not always complain. This is not necessarily because the harassment is trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.

Workplace harassment should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work related behaviour of an individual or group. The process of providing feedback to staff during a formal performance appraisal or counselling staff regarding their work performance will not always be free of stress. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening. Managers should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff. The publication 'Sharpening focus: managing performance' issued by the APS Commission, advises managers about how to give effective feedback and counselling.

'Uncivil' behaviour is not considered to be bullying or harassment. Whilst 'uncivil' behaviour clearly should be avoided, being discourteous, rude or impolite does not carry the same weight as bullying or harassing behaviour.

Examples of harassing behaviour include:

- offensive physical contact, derogatory language or intimidating actions
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace
- unjustified and unnecessary comments about a person's work or capacity for work
- openly displayed pictures, posters, graffiti or written materials which might be offensive to some
- phone calls or messages on email, SMS or computer networks which are threatening, abusive or offensive to employees

- persistent following or stalking within the workplace, or to and from work or elsewhere
- disparaging remarks about malingering to employees who have made a claim for compensation.

Sexual harassment

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. Sexual harassment is legally recognised as a form of sex discrimination. Sexual harassment and sex discrimination are both unlawful under the *Sex Discrimination Act 1984 (Cth)* (Sex Discrimination Act).

The legal test for sexual harassment under the Sex Discrimination Act is that the behaviour must be unwelcome, be of a sexual nature and be such that a reasonable person would anticipate in the circumstances that the person who was harassed would be offended, humiliated and/or intimidated. The unwelcome behaviour need not be repeated or continuous. A single incident can amount to sexual harassment. A complaint of sexual harassment will not necessarily be dismissed because the person subjected to the behaviour did not directly inform the harasser that it was unwelcome. However, there does need to be some indication from the person's conduct or the surrounding circumstances that the behaviour was in fact unwelcome.

Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing
- staring or leering
- suggestive comments or jokes
- sexually explicit pictures, screen savers or posters
- unwanted invitations to go out on dates or requests for sex
- intrusive questions about an employees' private life or body
- unnecessary familiarity
- insults or taunts based on your sex
- sexually explicit emails or SMS messages
- suggestive or sexually explicit comments or references on social media networks
- accessing sexually explicit internet sites
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

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

It is also unlawful for a person to be victimised for making or proposing to make a complaint of sexual harassment to the OAIC or asserting a right under the Sex Discrimination Act.

Racial harassment

Racial harassment is unwanted behaviour towards a person based upon that person's race, colour, descent or national or ethnic. While the *Racial Discrimination Act 1975 (Cth)* (the RDA) does not use the term 'racial harassment', the Act defines as unlawful any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin of 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. The RDA also makes racial hatred unlawful. Some types of workplace harassment could be seen as unlawful behaviour under the Act.

Examples of racial harassment at work may include:

- threatening language and behaviour
- taunting or ostracising
- mocking of accents, cultures and customs
- practical jokes
- the display of racist cartoons, posters and graffiti
- racist emails or SMS messages
- derogatory comments about race, accents, culture, religion and customs made in person, by electronic mail, SMS messaging or through social media networks.

Harassment on the ground of disability

Under the *Disability Discrimination Act 1992* (Cth) (the DDA), discrimination or harassment in employment based on disability can be unlawful.

Examples of harassment on the ground of disability may include:

- humiliating comments/emails or actions about a person's disability
- comments/emails or actions which create hostile environment
- overbearing or abusive behaviour towards staff with intellectual disabilities
- emails or SMS text messages that are insulting of a person's disability
- disparaging remarks/emails to staff referring to compensation claims they have made relating to their disability.

Pregnancy and harassment

The *Sex Discrimination Act 1984* (Cth) (the Sex Discrimination Act) offers protections for employees who have experienced discrimination as a result of their pregnancy or potential pregnancy.

Pregnancy-related harassment may include:

- personal comments about body shape
- unwanted and inappropriate touching of their body
- sexualised comments
- references to abortion
- unwanted comments about when the worker is leaving and whether she should come back.

Some employees may also experience a lack of employment security in relation to their pregnancy.

Sex, sexual orientation, gender identity, intersex status, relationship status and harassment

The Sex Discrimination Act makes it unlawful to discriminate against someone on the basis of sex, sexual orientation, gender identity, intersex status, or marital or relationship status. While the Sex Discrimination Act does not use the term ‘harassment’ with reference to sexual orientation, gender identity, intersex status, or marital or relationship status, some types of workplace harassment may constitute unlawful discrimination.

Harassment on the basis of sex, sexual orientation, gender identity, intersex status and/or marital or relationship status, can be directed towards sexuality, sex and gender diverse people, as well as towards their partner and family members. Examples may include:

- comments about using the ‘right’ bathroom or shower facilities
- comments about clothing and physical appearance
- use of derogatory terms, slurs and name-calling
- refusal to use someone’s chosen name and pronoun
- inappropriate questions or discussion of someone’s body
- demeaning jokes, comments, cartoons or emails
- unwanted disclosure of personal details on record
- dress code requirements that insist on gender conformity.

Other forms of workplace harassment

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* (Cth) which defines discrimination to mean any distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference, or trade union activity.

The *Age Discrimination Act 2004* (Cth) (the ADA) makes it against the law to treat you less favourably because of your age. The ADA protects both younger and older Australians. Although there are no specific provisions relating to age harassment, like the RDA the general discrimination provision may capture such behaviour if based on age.

Workplace bullying is also harassment and is ‘repeated, unreasonable behaviour directed toward an employee, or group of employees that creates a risk to health and safety’. In other words bullying is a repeated behaviour that intimidates, offends, degrades or humiliates a worker, possibly in front of co-workers or clients. There are bound to be differences of opinion, conflicts and problems in working relations but bullying occurs when the behaviour is repeated and offends or harms an employee. The following types of behaviour could be considered bullying:

- intimidation
- teasing or regularly being subject to practical jokes.
- demeaning language, including sarcasm, ridicule or insults
- threats
- verbal abuse or shouting

- outbursts of anger or aggression
- physical or verbal intimidation
- showing contempt or disrespect, or
- ostracising, excluding, isolating or ignoring a worker; and spreading malicious gossip or rumours about a worker.

A workplace situation can be identified as bullying if a worker or workers are:

- harmed
- intimidated
- threatened
- victimised
- undermined
- offended
- degraded, or
- humiliated.

While some workplace bullying may involve verbal abuse and physical violence, bullying can also be subtle intimidation with inappropriate comments about personal appearance, constant criticisms, isolation of workers from others and unrealistic, embarrassing or degrading work demands. Workplace bullying can also be carried out via letters, email, telephone text messages and social networking sites. Bullying may also amount to unlawful discrimination or workplace harassment.

Behaviour or conduct that does not constitute workplace harassment or bullying includes:

- appropriate performance management
- providing constructive and courteous performance feedback
- making structural changes to a workplace, including changes to individual roles and/or supervisory arrangements
- legitimate disciplinary action
- reasonable supervisory practices
- allocation of work in accordance with terms and conditions of employment and organisational practices
- reasonable directions by management
- expressing differences of opinion
- carrying out legitimate managerial decisions, or making a complaint about the conduct of a manager or another worker, if the complaint is made in an appropriate and reasonable way.

Cyber-bullying

Cyber-bullying is any bullying behaviour (as defined above) using digital technologies. It is distinct from other types of bullying in several key ways:

- it allows a potentially global audience
- it is often anonymous, making it hard to hold perpetrators to account
- it can take place at any time of the day or any day of the week
- it has a degree of permanence, as online information can be difficult to remove and may be recorded and archived
- it may be difficult to escape from whilst we continue to use digital technology for many uses
- content can be duplicated easily and is often searchable.

Examples of inappropriate online conduct may include:

- using offensive or abusive language
- personal attacks
- spamming
- cyber-stalking
- creating fake social networking profiles of APS employees.

Victimisation

All staff must ensure that a worker is not victimised or otherwise disadvantaged in any way as a result of making an internal or external complaint or raising a grievance, or acting as a witness to a complaint. Any such victimisation may attract criminal proceedings.

Harassment by contractors or clients

Harassment may also occur where an employee is harassed by a contractor or client. This behaviour may occur in person, by telephone or online. Harassing behaviour from contractors or clients will not be tolerated. In situations such as these the employee should immediately notify their manager. The matter should be referred to People and Culture team or Deputy Commissioner for any follow up action with the contractor or client. Where the person is from an employment agency, the agency will be notified.

Preventing harassment

Workplace harassment runs counter to the APS Values and Code of Conduct, as well as Commonwealth anti-discrimination laws which are administered by the Australian Human Rights Commission. Harassment is unacceptable in the workplace. Both managers and employees have a responsibility to ensure an appropriate and acceptable standard of behaviour in the workplace.

Legal responsibilities

Management has a legal responsibility to prevent harassment. All employees are bound by various legislation that prohibits harassment of fellow employees and ensures that there is an appropriate standard of conduct maintained in the workplace. This includes:

APS Values

The APS Values set out in section 10 of the *Public Service Act 1999* (Cth) (the PS Act) provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.

Impartial – The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to Service – The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Accountable – The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful – The APS respects all people, including their rights and their heritage.

Ethical – The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

APS Code of Conduct

All employees are subject to the Code of Conduct set out in section 13 of the PS Act and outlined in the OAIC's Enterprise Agreement. The Code of Conduct directly prohibits harassment.

It requires that an employee must:

- when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment
- when acting in connection with APS employment, comply with all applicable Australian laws.

An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the PS Act. Breaches of the APS Code of Conduct procedures are available on the OAIC's intranet.

Commonwealth anti-discrimination legislation

In addition to being a breach of Code of Conduct, workplace harassment on the basis of race, sex, age, disability or sexual orientation 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*, and racial discrimination under the *Racial Discrimination Act 1975*. While the *Racial Discrimination Act* does not use the term 'racial harassment' some types of workplace harassment could be lawful discrimination under this Act.

In addition to an employees' personal liability for harassing behaviour under the anti-discrimination legislation, agencies can be held vicariously liable for the acts or omissions of their employees, unless they can demonstrate they have taken all reasonable steps to prevent the acts from occurring. An agency may therefore be liable for damages awarded in compensation for the harassment by one of its employees even though the employer is not directly involved in the harassing behaviour. The employer can seek to recover damages from the harasser.

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* (Cth) if it is based on particular grounds including sexual preference, religion and/or trade union activities.

Other Commonwealth legislation

The *Fair Work Act 2009* (Cth) aims to help prevent and eliminate discrimination in the making of awards and agreements and in the termination of employment and provides access to the Fair Work Commission to resolve complaints of bullying. Aspects of this Act may be relevant to a workplace harassment allegation.

Under the *Work Health and Safety (Cth) Act 2011*, employers must also take all reasonably practicable steps to protect the health and safety of employees to work.

Criminal law

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. The police should be contacted for advice and assistance on appropriate action in these circumstances.

Public Interest Disclosures

The *Public Interest Disclosure Act 2013* (Cth) applies when people report a suspected breach of the Code of Conduct to an authorised person. The Act offers protections to those making such disclosures and requires agencies to take action in relation to the alleged breach. Allegations of such breaches may include reports made by employees who believe that harassment is occurring, even where there is no formal complaint from the person(s) being harassed.

Management responsibility

Accountability for people management, including the prevention of harassment, lies with senior management and supervisors. They share the legal and managerial responsibilities for detecting and dealing with behaviour which constitutes harassment or has the potential to develop into harassment.

Although management does not have the right to intrude into personal relationships freely entered into by staff, it does have a responsibility to ensure that proper standards of conduct are maintained at all times in the workplace. Management has a proper concern where the behaviour of staff towards others:

- adversely affects a staff members prospects for employment or promotion or other work related benefits
- adversely affects the work performance of an individual or group
- undermines morale or causes distress through for example, the display of the offensive material
- creates an intimidating, hostile, offensive or distressing work environment
- leads to physical or emotional stress, which may force a staff member to take leave to cope with the behaviour, seek transfer, or resign
- reflects adversely on the integrity and standing of the OAIC as seen by members of the public or by staff.

Induction and ongoing education

The OAIC will ensure that all new staff, whether ongoing, non-ongoing, secondment or special placement, receive an induction that includes information about the OAIC's no tolerance approach to harassment and bullying.

Where opportunities and resources exist, the OAIC will support ongoing education and/or training for staff to reinforce their understanding of what constitutes harassment and strategies for prevention of harassment.

Responsibilities of managers and supervisors

When workplace harassment does occur, it has a serious and sustained impact on both the complainant and the organisation. It is important that all managers and supervisors are familiar with and actively promote and support the OAIC's policy and strategies for dealing with harassment. Managers and supervisors should advocate and explain the standards of behaviour expected of employees and be mindful of the need to model these standards in their own behaviour. Managers should also provide support for their staff when they seek advice about dealing with workplace harassment, including providing information about review and complaint mechanisms.

Managers and supervisors must take action when they become aware of harassment (even without a complaint necessarily being lodged). Failure by managers and supervisors when they become aware of harassment to act, investigate complaints, or take prompt and effective remedial action to deal with such complaints may be perceived as condoning or tolerating such behaviour. Where no such action is taken the agency may be vicariously liable.

Managers and supervisors are usually best placed to become aware of and deal with harassment as part of their role in maintaining a productive environment and promoting proper standards of conduct in their work unit.

In particular managers and supervisors have a responsibility to:

- adhere to, support and promote the APS Code of Conduct and APS Values
- support the OAIC's policy on workplace harassment and ensure that their own conduct is above reproach
- ensure that staff in their teams are familiar with the OAIC's policy on workplace harassment and are aware of the appropriate and acceptable standards of behaviour at work
- take early corrective action to deal with behaviour which may be offensive or intimidating
- stop behaviour in the work area which may develop into harassment
- deal promptly with any incidents of harassment, if possible before a complaint is made
- where a complaint has been made, take action to ensure that the complaint is properly resolved and that there is no repetition of offensive behaviour or victimisation of the complainant
- maintain confidentiality about any complaint.

Depending on the circumstances, the actions that managers and supervisors could take when they become aware of any harassing or intimidating behaviour at work may include:

- talking with the staff member about appropriate behaviour for work
- explaining why another staff member may be interpreting behaviour as harassment

- drawing attention to the OAIC's policy on workplace harassment and the relevant legislation
- referring a staff member to a Harassment Contact Officer or the OAIC's Employee Assistance Program
- referring the matter to the People and Culture Team or Deputy Commissioner for consideration as to what action should be taken if the matter is not resolved.

As in any situation where an employee is causing concern either for work performance or personal conduct, and informal discussions with the supervisor have not rectified the problem, the employee's manager can give the person a written direction about the standards expected and the possible consequences if those standards are not reached. Where a written direction is given and this direction is not complied with the issue could be dealt with under the OAIC's misconduct procedures.

Situations may arise where the supervisor is the alleged harasser. Where this is the case, the supervisor's manager or staff from our People and Culture Team should assume the responsibility to deal with the situation.

Role of Harassment Contact Officers (HCOs)

The primary role of the HCO is to provide support and information to people who believe they are being harassed. The HCO is able to explain the various options for dealing with harassment and, if necessary, to accompany a complainant to any meetings to resolve the problem. It is not necessary for a staff member to make a formal complaint against a named person in order to approach the HCO. More information about the role of HCOs is at **Attachment A**.

Responsibilities of employees

Staff who become aware of a situation that they consider to be harassment by fellow staff members may bring it to the attention of management. However, an accusation of harassment is a serious matter that should not be made lightly. It should be noted that it is not necessary to label someone a harasser in order to bring an issue to management's attention. Any situations of perceived harassment should only be discussed with a person who has a legitimate role in their resolution, such as a manager, the People and Culture Team, a supervisor, or a HCO.

All staff have responsibilities for preventing harassment in the workplace and ensuring that their own behaviour meets acceptable standards under the APS Code of Conduct.

Staff also have a duty under the *Work Health and Safety (Commonwealth Employment) Act 2011* not to create or increase a risk to their own or other people's health, and to cooperate with their employer to the extent necessary to enable the employer's duty to be met. Harassing fellow staff or failing to follow the OAIC's policies and procedures in relation to the prevention of harassment could result in a breach of the legislation.

Role of workplace representatives

Staff may approach a workplace (union) delegate regarding workplace harassment about any matter affecting their employment. It is not the delegate's role to investigate or resolve cases of harassment, however, they can support their members in resolving a complaint.

Resolving complaints of harassment

Options for complainants

The OAIC will treat harassment complaints (formal or informal) seriously and deal with them in a sensitive, fair, timely and confidential manner. A number of mechanisms are in place to support staff who feel they are being harassed and options available to staff include:

- seeking advice from a manager or supervisor, a HCO, OAIC's People and Culture Team, or workplace (union) representative to assist in resolving the matter
- seeking support and assistance from the OAIC's Employee Assistance Provider. This is a confidential free service available to all employees (Tel: 1300 687 327)
- approaching the alleged harasser directly (but only if the individual feels confident to do so)
- lodging an informal complaint with their manager
- lodging a formal grievance (review of action) under the OAIC Enterprise Agreement
- lodging a complaint with the Fair Work Commission
- making a public interest disclosure under the *Public Interest Disclosure Act 2013* to an authorised officer
- the Australian Public Service Commission (www.apsc.gov.au) (in the case of APS employees only) lodging a complaint with the Australian Human Rights Commission.

Staff are encouraged to seek an internal resolution as a first resort and further information on each of the options is available from our People and Culture team.

Further information on these options is available from the websites of the relevant agencies, and staff are encouraged to discuss these options before making a formal complaint.

Outcomes

Depending on the severity of the matter, responses may include an apology, counselling, transfer, dismissal, demotion, or other disciplinary action. Action will also be taken against anyone who victimises a person who has complained of harassment.

Other issues

Confidentiality

All approaches to a HCO will be treated in confidence. It is important that investigations of allegations of workplace harassment maintain confidentiality with information provided only on a 'need to know' basis.

Defamation

Allegations of harassment are serious issues which may reflect adversely on the reputation of the alleged harasser. The possibility of being sued for defamation arises when:

- a complainant speaks to anyone other than the alleged harasser or those with a genuine interest in knowing, and

- that communication is not made in good faith.

A person with a 'genuine interest in knowing' is a person who is involved in investigating or resolving a complaint either informally or formally. This may include HCOs, the complainants and/or alleged harasser's manager, the staff within OAIC's People and Culture team (or other corporate services staff member consulted for advice), workplace delegates, and any person directed to investigate a complaint.

'Good faith' for this purpose means that the complainant is not motivated by ill-will or malice towards the person against who the complaint is made.

Keeping of records relating to complaints of harassment

It is good management practice that records be kept of any formal complaints of harassment and of any follow up counselling or other action. Special care should be taken to protect the confidentiality of such records. Records are to be kept in accordance with the OAIC's policy on record keeping and with the [Privacy Act 1988](#) (Cth).

Further information

Additional information regarding the elimination and prevention of workplace harassment is available from the OAIC's People and Culture Team.

Relevant references and links include:

[Fair Work Act 2009](#)

[Public Service Act 1999](#)

[Public Service Regulations 1999](#)

[Australian Public Service Commissioner's Directions 2016](#)

[APS Code of Conduct and APS Values](#)

[OAIC Enterprise Agreement 2016-2019](#)

[OAIC Breaches to the APS Code of Conduct](#)

[OAIC Diversity Strategy](#)

[OAIC's ICT Facilities Usage Policy](#)

[Racial Discrimination Act 1975](#)

[Sex Discrimination Act 1984](#)

[Disability Discrimination Act 1992](#)

[Age Discrimination Act 2004](#)

[Australian Human Rights Commission Act 1986](#)

[Work Health and Safety \(Commonwealth Employment\) Act 2011](#)

[Public Interest Disclosure Act 2013](#)

["Effectively preventing and responding to sexual harassment: A Code of Practice for Employers \(2008\)" - AHRC Publication](#)

<https://humanrights.gov.au/our-work/chapter-2-guide-code-practice-effectively-preventing-and-responding-sexual-harassment-code>

[“Sharpening the focus: Managing performance in the APS” -APSC publication](https://www.apsc.gov.au/sharpening-focus-managing-performance-aps)

<https://www.apsc.gov.au/sharpening-focus-managing-performance-aps>

Other Contacts

Employee Assistance Program – Telephone: 1300 687 327 or email eap@convergeintl.com.au

APSC Merit Protection Commissioner – Telephone: 02 8239 5330

Fair Work Commission – Telephone: 1300 799 675

Attachment A: Harassment Contact Officers (HCOs) roles and responsibilities

Attachment A

Harassment Contact Officers (HCOs) roles and responsibilities

The OAIC is committed to ensuring a workplace free from discrimination and harassment. Workplace harassment is a form of employment discrimination. It consists of offensive, abusive, belittling or threatening behaviour directed at an individual or a group. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour.

As part of the mechanisms in place to resolve any instances of alleged workplace harassment, the OAIC has appointed Harassment Contact Officers (HCOs) to provide information and support to staff and managers. Employees may choose to approach any of the HCOs at any time, even if they do not wish to make a formal complaint.

The HCO's role is to assist either a complainant or an alleged harasser to understand the OAIC's policy and procedures, and to assist them to work through the options available to them.

Harassment Contact Officers may:

- Listen, ask questions and provide information on the options available for resolution of the situation.
- Assist the complainant to clarify what outcome they want.
- Assist the complainant or alleged harasser through any process as a support person. For example, assisting someone to clarify their thoughts for a letter, or accompanying someone to a meeting.
- Keep a confidential (anonymous) record of the conversation, which may assist in the event of any follow-up or formal investigation.

Harassment Contact Officers cannot:

- Investigate the complaint or attempt to conciliate the parties.
- Counsel the complainant or alleged harasser.
- Present the case for the complainant or alleged harasser at meetings or inquiries.
- Support both parties at the same time.
- Recommend a particular course of action or pre-empt outcomes.
- Disclose the information to anyone who does not have a need to know.
- Make decisions for the complainant.

The contact list for all Health and Safety Officers, including HCO's can be found here [D2018/000992](#)

Other options

As well as seeking support from the HCOs, employees who believe they have been discriminated against or harassed may choose to go directly to their supervisor, People and Culture, senior management, workplace (union) representative or the Employee Assistance Program. Employees can also request an external review by the Australian Public Service Commission in some circumstances and further information is available from OAIC's People and Culture Team or HCOs.



Australian Government

Office of the Australian Information Commissioner

Complaints about OAIC employees or contractors

Operational policy for the management of complaints about the behaviour of OAIC employees or contractors



Audience and location: All staff

Review Date: 30 June 2021

8 July 2020

Version	Name	Changes	Date
0.1	E. Hampton	Initial draft	5 June 2020
0.2	A. Falk	Amendment to draft	29 June 2020
1.0	A. Falk	Policy approved	30 June 2020
1.1	E. Hampton	Amendment	8 July 2020

Executive summary

This operational policy describes the way in which the Office of the Australian Information Commissioner (OAIC) will manage complaints about the behaviour of its employees or contractors (staff members).

Complaints that a staff member has interfered with the privacy of an individual are not managed under this operational policy. Such complaints must be managed in accordance with the *Privacy Complaints about OAIC employees or contractors* policy.

This policy is modelled on the *Better Practice Guide to Complaint Handling* published by the Office of the Commonwealth Ombudsman.

The value of complaints

The OAIC values complaints and recognises their importance in highlighting weaknesses in its systems, processes or customer service, providing an opportunity to resolve problems with stakeholders and improve its accountability and effectiveness.

In line with this, the OAIC defines a complaint broadly, as

an expression of dissatisfaction by a complainant, inquirer, subject or respondent, for which there is a reasonable expectation that the OAIC will consider and, where appropriate, investigate and resolve the matter.

This is different from feedback

where information is provided to the OAIC for the purposes of improving its systems or processes, but about which there is no expectation of an investigation or response.

Complaints can be provided to the OAIC through a range of mechanisms:

- over the telephone
- in an email
- in formal correspondence
- during a meeting (such as an exit interview for an assessment)

and at any time during an individual's interaction with the OAIC. There is no requirement for a complaint to be made using a specific form, or in a specified manner.

Staff must be aware of the different ways an individual may make a complaint and follow this policy in the event a complaint about an OAIC staff member is made.

Complaint handling process

Acknowledge

All complaints must be acknowledged quickly. The acknowledgement should outline the complaint process, likely timeframes and that the complaint will be provided to the relevant Assistant Commissioner or Principal Director for assessment.

Complaints can be acknowledged over the phone, by email or through formal correspondence, depending on the circumstances.

Complaints must be entered into Resolve by the person receiving the complaint, using the 'complaints' case type.

Where the complaint is linked to an existing case type in Resolve, the complaint must be cross-referenced to that existing matter.

The complaint must be assigned to the Assistant Commissioner or Principal Director of the person about whom the complaint is made.

The staff member receiving the complaint must not discuss the complaint with any other staff member, including the person about whom the complaint is made, members of their team or their supervisor.

Assess

The complaint must be assessed by the Assistant Commissioner or Principal Director for the staff member about whom the complaint is made.

The Assistant Commissioner or Principal Director will decide who should investigate the complaint, the timeframes for that investigation, and whether any changes to processes should be implemented while the investigation is undertaken. For example, if the complaint relates to a difficult interaction between an individual and a staff member, the Assistant Commissioner or Principal Director may decide that another staff member will manage contact with the individual while the complaint is investigated.

The Assistant Commissioner or Principal Director will also decide whether the complaint should be managed in accordance with this policy, or under the OAIC's Breaches of the APS Code of Conduct Procedures ([D2017/000927](#)).

The Assistant Commissioner or Principal Director may contact the complainant to ask how they would like to see the complaint resolved – what outcome they are seeking – if that is not evident from the complaint. They may also provide more information to the complainant about the investigation of the complaint and the contact details of the person who will undertake the investigation.

The Assistant Commissioner or Principal Director may decide that a complaint does not need to be investigated. For example, the subject of the complaint may have been previously considered, or the staff member about whom the complaint is made may no longer work for the OIAC and the complaint does not identify any systemic issues that would otherwise warrant investigation.

The Assistant Commissioner or Principal Director must record the outcome of their assessment in Resolve – including the details of the person to whom it is assigned for investigation and required timeframes for any investigation, or a decision not to investigate the matter.

The Assistant Commissioner or Principal Director will assign the matter to the investigator in Resolve.

In the event of a decision not to investigate the matter, the Assistant Commissioner or Principal Director must advise the complainant of that decision and close the matter in Resolve.

Plan

The person to whom the complaint is assigned for investigation should prepare a short, written plan for the investigation that includes:

- what is the issue to be investigated?
- what information is required?
- how will that information be obtained?
- how long will it take to obtain that information?
- are there any special considerations that apply to the complaint – for example, is there sensitive or confidential information that needs to be safeguarded?

The investigation plan must be attached to the Resolve record within two days of the matter being assigned to the investigator.

Investigate

The investigation must be quick, confidential and impartial.

Quick:

Investigations into complaints about staff members should take no more than two weeks.

Confidential:

Confidentiality is owed to both the complainant and the staff member.

For the complainant:

- Staff members investigating regulatory matters raised by the complainant do not need to know that the complainant has made a complaint about the behaviour of a staff member.
- The Resolve record relating to the complaint must only be accessed by individuals who have a need to know about the complaint.

For the staff member:

- Confidentiality is also owed to the staff member who is the subject of the complaint. The fact that there has been a complaint made and the nature of the complaint should not be shared with other staff members. In the event the complaint is substantiated, any appropriate steps will be managed between the staff member and their supervisor.

Impartial:

The investigation should be impartial and fair. There is no onus on the complainant to 'prove' their complaint, nor any obligation on the staff member to 'prove' they behaved appropriately. Rather, the matter must be weighed carefully through a balanced investigation of all relevant facts and circumstances.

Findings on disputed facts should be based on evidence, not preconceptions, assumptions or ‘how we usually do things’.

A written record should be kept and relevant evidence, including statements where appropriate, attached to the Resolve record.

The staff member about whom the complaint has been made should be advised of the details of the complaint and provided an opportunity to respond.

A complainant should be given an opportunity to comment on information or claims that are inconsistent with their account of the matter. A complainant is not obliged to substantiate each fact or element in their complaint but it is reasonable for the investigator to ask them to assist the investigation by providing information about what they know, including documents and dates where applicable.

It is acknowledged that in some cases there will not be clear evidence to support or dispute the complaint.

An investigation report must be attached to the Resolve record.

Respond

When the investigation has been completed, the complainant should be advised of the findings and decision reached. The relevant Assistant Commissioner or Principal Director must clear any response.

Thought should be given to whether a remedy can be provided to a complainant where the complaint is substantiated. Remedies might include an apology or a change in process. The complainant must not be told whether or not disciplinary action is being taken or considered in relation to the staff member.

The response can be provided by telephone, email or formal correspondence, depending on the circumstances.

Systemic issues

In all cases following the investigation and resolution of a complaint, consideration must be given to whether the complaint identifies systemic weaknesses in the OAIC’s policies, procedures or training. Even if the complaint is unsubstantiated, the investigation may identify matters that could have been managed differently and better, the need for training (for particular staff or in relation to particular interactions) or improvements to recordkeeping.

Every complaint provides an opportunity for the OAIC to improve its work practices, procedures and interactions.

Either as part of the response to the complainant, or following as appropriate, the investigator should consider and document whether the complaint identifies systemic issues and must bring them to the attention of the relevant Assistant Commissioner or Principal Director.

The Assistant Commissioner or Principal Director will decide how those systemic issues can be addressed.

The Resolve record must include a file note about whether and what systemic issues have been raised by the complaint, and how they will be addressed.

Complaints regarding Assistant Commissioners or Principal Directors

Complaints made by an external person about Assistant Commissioners or Principal Directors will be handled by the Deputy Commissioner personally, or by Legal Services or an external provider as appropriate. The Commissioner must be made aware of the complaint and its outcome.

Appropriate record keeping and procedural fairness requirements must be complied with.

Complaints regarding the Deputy Commissioner

Complaints made by an external person about the Deputy Commissioner will be handled by the Commissioner personally, or by Legal Services or an external provider as appropriate.

Appropriate record keeping and procedural fairness requirements must be complied with.



Australian Government

Office of the Australian Information Commissioner

External complaints about OAIC employees or contractors – overarching policy

Operational policy for the management of external complaints about the behaviour of OAIC employees or contractors



Audience and location: All staff
Review Date: 30 September 2021
26 November 2020

Version	Name	Changes	Date
0.1	E. Hampton	Initial draft	23 August 2020
0.2	AGS	Amendments	24 September 2020
0.3	A.Falk	Approved	26 November 2020

Executive summary

This operational policy describes the way in which the Office of the Australian Information Commissioner (OAIC) will manage external complaints about the behaviour of its employees or contractors (staff members).

Members of the public, businesses and government agencies have the right to complain about OAIC staff members. The OAIC's service commitment to the community it regulates is contained in the Service Charter (D2020/015181).

There are two types of complaints that external people or entities might make about OAIC staff members:

1. Complaints that an OAIC staff member has interfered with the privacy of an individual
2. Complaints about conduct that does not involve interference with the privacy of an individual.

Either type of complaint can involve conduct that may amount to a breach of the Australian Public Service (APS) Code of Conduct by a current or former employee and which may be handled under OAIC's *Breaches of the APS Code of Conduct Procedures* instead of being handled under the relevant complaints policy.

This policy provides guidance to staff members about the correct handling of all types of complaints.

Complaints of an interference with privacy

Where a complaint is received that an OAIC staff member has interfered with an individual's privacy it must be managed in accordance with the *Privacy complaints about the OAIC* policy.

Such complaints will be managed by the Legal team.

Complaints about conduct

Where a complaint is received about the conduct of a staff member that does not involve interference with an individual's privacy it must be managed in accordance with the *External complaints about OAIC employees or contractors – operational policy* – found at [D2021/004230](#).

Complaints about conduct might include:

- rudeness
- delay
- failing to respond to reasonable requests.

Such complaints will be managed by the staff member's manager and reported to the relevant Assistant Commissioner or Principal Director.

Complaints about breaches of the APS Code of Conduct

The above policies do not preclude action being taken under the *Breaches of the APS Code of Conduct Procedures* if the complaint relates to a current or former OAIC employee (but not a contractor). Where a complaint concerns the conduct of a current or former OAIC employee that may amount to a breach of the APS Code of Conduct, such complaints may be managed in accordance with the *Breaches of the APS Code of Conduct Procedures* – found at [D2021/004229](#). The *Breaches of the APS Code of Conduct Procedures* also apply where concerns come to light other than through an external complaint.

If you are uncertain about which policy applies to a complaint, please discuss the matter with the Principal Lawyer or a member of Executive.

Regardless of the type of complaint made, the staff member receiving the complaint must register the matter as a complaint in Resolve.



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Office of the Australian Information Commissioner

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Complaints about breaches of the APS Code of Conduct

The above policies do not preclude action being taken under the *Breaches of the APS Code of Conduct Procedures* if the complaint relates to a current or former OAIC employee (but not a contractor).

Where a complaint concerns the conduct of a current or former OAIC employee that may amount to a breach of the APS Code of Conduct, such complaints may be managed in accordance with the *Breaches of the APS Code of Conduct Procedures* – found at [D2021/004229](#). The *Breaches of the APS Code of Conduct Procedures* also apply where concerns come to light other than through an external complaint.

If you are uncertain about which policy applies to a complaint, please discuss the matter with the Principal Lawyer or a member of Executive.

Regardless of the type of complaint made, the staff member receiving the complaint must register the matter as a complaint in Resolve.