

<Insert company name>

Complaint Handling and Investigation Procedure – Workplace Discrimination, Harassment, Sexual Harassment and Bullying

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1. Purpose

This procedure outlines how a complaint and investigation into discrimination, harassment, sexual harassment, bullying, vilification or victimisation will be conducted when a complaint is received.

<Insert company name> encourages any employee who believes they have been subjected to or has witnessed an employee being subjected to discrimination, harassment, sexual harassment or bullying to report the behaviour to their <Insert relevant manager or Contact Person here> (e.g. producer, line producer, manager, general manager/ director /human resources manager/head of department or the Complaints Person).

<Insert company name> will deal with a complaint regarding discrimination, harassment, sexual harassment or bullying in accordance with this procedure. However, where it is considered appropriate, <Insert company name> may deal with the complaint in an

alternative way in order to resolve the complaint in a confidential, efficient and sensitive manner. In those circumstances, <Insert company name> will provide details of the process for dealing with the complaint.

2. Who this procedure applies to

This procedure applies to:

- Company owners and board members;
- All employees engaged by <Insert company name> in Australia, including:
 - Leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, general managers, company managers, human resources managers, managers, supervisors);
 - Production and venue personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house);
 - Full-time, part-time, freelance seasonal and casual employees;
 - Job candidates, including people auditioning for roles;
 - Student placements, apprentices, work experience students/interns;
 - Contractors, sub-contractors and secondees;
 - Volunteers.

For the purposes of this procedure, the definition of employees includes company owners and board members.

All employees must comply with the procedures set out in this document, which may be amended from time to time.

This procedure forms part of and is incorporated into any employee's contract of employment or contract for service with <Insert company name>.

This procedure extends to every associated entity of the company with the meaning of Section 50AAA of the *Corporations Act 2001 (Cth)*.

3. Related documents

All employees are required to read this procedure in conjunction with other relevant <Insert company name>'s policies, procedures, documents and agreements, including [Guidance note (delete this later): list relevant policies and procedures such as:

- Workplace discrimination, harassment, sexual harassment and bullying policy
- Code of Conduct: workplace discrimination, harassment, sexual harassment and bullying
- Flexible work arrangements policy

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- Pregnancy and work procedure policy
- Work health and safety policy
- Discipline procedure
- Mission, vision and values statements
- Enterprise bargaining agreements [Guidance note (delete this later): list relevant agreements.]
- Service agreement [Guidance note (delete this later): any document that outlines the rights of clients and customers to complain about the service they are receiving.]

4. Raising a complaint

4.1. Who can raise a complaint?

Any employee can raise a concern or complaint if they believe there has been a breach of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy.

A complaint can be raised by an employee who is experiencing or is a witness to discrimination, harassment, sexual harassment or bullying.

4.2. How to raise a complaint

Employees should raise any concerns or complaints with <Insert relevant manager or Contact Person here>. Where <Insert relevant manager or Contact Person here> is unavailable or it is inappropriate they be involved in the process, the complainant should contact <Insert relevant manager or Contact Person here>.

If employees do not feel comfortable raising a complaint with <Insert relevant manager, Contact Person or Complaints Person here>, they could seek independent legal advice or raise the complaint with one of the following organisations:

- Australian Human Rights Commission;
- Anti-Discrimination Board of New South Wales;
- Victorian Equal Opportunity and Human Rights Commission;
- Anti-discrimination Commission Queensland;
- Equal Opportunity Commission Western Australia;
- South Australian Equal Opportunity Commission;
- Equal Opportunity Tasmania;
- ACT Human Rights Commission;
- Northern Territory Anti-Discrimination Commission;
- Fair Work Commission (for complaints related to bullying);
- Relevant union (e.g. Media, Entertainment and Arts Alliance);

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- The police (if the allegations are of a criminal nature such as physical or sexual assault, some instances of sexual harassment).

Employees may raise concerns or complaints verbally or in writing. Depending on the nature of the complaint, **<Insert relevant manager or Contact Person here>** may ask the complainant to document the complaint in writing (e.g. in an email or using **<Insert company name>**'s complaint form).

5. Key considerations when dealing with complaints

5.1. Confidentiality

When a complaint is raised, **<Insert company name>** will maintain confidentiality to the maximum extent possible, taking into account its obligation to provide a safe work environment and to afford natural justice to those against whom a complaint is made (respondent).

Employees who are directly involved with a complaint or an accompanying investigation must maintain confidentiality. A failure to do so may result in disciplinary action.

5.2. Natural justice and impartiality

Where an allegation is made against another person, that person is entitled to be afforded natural justice – a right to have their side of the story heard and respond to those allegations.

When a complaint is raised, **<Insert company name>** will appoint someone (internal or external to the company) to investigate the complaint. This person will collect and consider all relevant evidence before making a determination.

Complaints Persons are to remain impartial, as far as is reasonably practicable.

5.3. No victimisation

Victimisation means adversely treating an employee who has raised a complaint or has assisted someone in raising a complaint.

Victimisation is unlawful and will not be tolerated at **<Insert company name>**. Any incidents of victimisation should be immediately reported to **<Insert relevant manager or Contact Person here>**.

An employee who makes a complaint under this procedure will be treated with respect and the matter will be dealt with in the strictest confidence possible. **<Insert company name>** will take all reasonable steps to ensure that no employee is treated poorly, victimised or disadvantaged as a result of:

- Making or intending to make a complaint;
- Providing information as a witness;
- Providing support to a person who has made a complaint.

5.4. Availability of a support person

All participants in an investigation are entitled to have a support person (such as a friend or a union representative) present when being interviewed. The support person should not be a party to the complaint or a witness to the behaviour that is the subject of the complaint.

A support person's role is to provide emotional support; they should not act as an advocate or speak for the participant. A support person is required to keep all details of the complaint and investigation confidential.

5.5. Use of an advocate

All participants in an investigation are entitled to have an advocate (such as union representation or lawyer) present when being interviewed.

An advocate may act and speak on the participant's behalf. An advocate is also required to keep all details of the complaint and investigation confidential.

6. Dealing with complaints

6.1. Deciding the most appropriate course of action

Once a concern or a complaint has been raised, **<Insert relevant manager or Contact Person here>** will outline to the complainant the options available for dealing with the concern or complaint. Options include following **<Insert company name>**'s internal informal or formal procedure, or raising the complaint with an external agency such as Australian Human Rights Commission, Fair Work Commission, the police if the allegations are of a criminal nature.

Informal procedures emphasise resolution rather than factual proof or substantiation of a complaint. **Formal procedures** focus on proving whether a complaint is substantiated. A formal complaint procedure will be more appropriate where the alleged behaviour is of a serious nature and, if substantiated, would lead to disciplinary action (e.g. termination of employment).

It will not always be appropriate for the complainant to determine whether to use the informal or formal complaint procedure. For example, **<Insert company name>** may determine that the nature of the complaint is serious and warrants a formal investigation.

An employee cannot 'own' a complaint. **<Insert company name>** recognises that sometimes an employee may be reluctant for **<Insert company name>** to take any action. However, **<Insert company name>** may have a duty of care to act, as other employees may be at risk.

6.1.1. Dealing with complainants who wish to remain anonymous and dealing with anonymous complaints

Where a complainant makes a complaint but advises **<Insert company name>** that they wish to be anonymous, **<Insert company name>** will discuss the support that **<Insert company name>** can offer the complainant during the complaints process and will clearly outline the

complaint process to the complainant. If the complainant still wishes to remain anonymous, the complainant should be advised that there are certain situations in which the employer may be compelled to disclose the identity of the complainant in order to ensure that the alleged perpetrator is afforded natural justice during the complaint handling process.

Where complaints are anonymously made about an employee or person engaged at <Insert company name>, <Insert company name> will use all reasonable endeavours to investigate the anonymous complaint in accordance with this Complaint Handling and Investigation Procedure. If <Insert company name> determines that it does not have sufficient information to deal with a complaint, <Insert company name> may act on an anonymous report by undertaking the following:

- If there is more than one anonymous complaint or report, the employer can instigate its own independent investigation into the person(s) observing due diligence;
- The employer may decide to implement additional training or targeted training where the complaints are arising from specific areas of the business;
- The employer may wish to survey their workers to obtain more information to assist the investigation process.

6.1.2. Dealing with complaints which may constitute a criminal offence

Some instances of unlawful conduct can also be criminal offences, including physical assault, sexual assault, stalking or cybercrime, which is where a carriage service is used to menace, harass or cause offence. This can include conduct that occurs over the phone, in text messages or online.

<Insert company name> encourages a complainant to report the matter to the police and will provide appropriate support to do so.

If a complainant does not wish to report the matter to the police, <Insert company name> will:

- respect this decision;
- enquire whether the complainant would like access to counselling or other support;
- if appropriate, consider whether it is necessary to implement any changes to the workplace to provide the employee with a safe work environment while the complaint is being investigated;
- deal with the complaint consistent with the procedures outlined in this section.

6.2. Informal complaint procedure

The informal complain procedure emphasises resolution rather than factual proof or substantiation of a complaint.

In some cases, despite the complainant preferring to utilise the informal complaint procedure, an employer may decide that a complaint is serious enough to warrant formal investigation. Formal investigation may be warranted where the conduct that is the subject of the complaint is of a serious enough nature that, if substantiated, would warrant disciplinary action against the alleged perpetrator.

Informal ways of dealing with complaints can include the following actions:

- A direct private discussion is held or mediated by **<Insert name and job title>** between the complainant and the respondent;
- An impartial third person conveys information between those involved;
- An impartial third person helps those involved to talk to each other and find a solution;
- A complaint is made, the respondent admits the behaviour, investigation is not required, and the complaint can be resolved through conciliation or counselling;
- The complainant wants to deal with the situation themselves but may seek advice on possible strategies from **<Insert relevant manager or Contact Person here>**;
- The complainant asks **<Insert relevant manager or Contact Person here>** to speak to the respondent on their behalf – **<Insert relevant manager or Contact Person here>** privately conveys the individual's concerns and reiterates **<insert company name>**'s policy to the respondent without assessing the merits of the case; A supervisor or manager observes unacceptable conduct occurring and takes independent action even though no formal complaint has been made.

An informal complaint may also be dealt with without individually identifying a respondent. Informal ways of dealing with the complaint can also include collective actions such as:

- Providing a refresher induction to all employees;
- Redistributing and again explaining the policies;
- Requiring all employees to complete appropriate training;
- Making alterations to working arrangements to reduce the risk.

In some instances, **<Insert company name>** may engage an independent mediator.

6.3. Formal complaint procedure

6.3.1. Steps involved in a formal complaint and investigation

The process for dealing with formal complaints is set out below. However, where it is considered appropriate to do so, **<Insert company name>** may alter the process and advise the complainant of the new complaint handling and investigation process.

As part of a formal complaint process, **<Insert company name>** will appoint an impartial person to investigate the complaint (Complaints Person). This may be a person employed by **<Insert company name>** or an external investigator.

Step 1: Obtain information from the complainant

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As soon as practicable but within one week of receiving the complaint, the Complaints Person will meet with the complainant to better understand the complaint and obtain any additional information. During this meeting, the Complaints Person will also:

- Provide information about the complaint process, potential outcomes, options for assistance/support and protections from victimisation;
- Ensure the allegations are documented in writing, either by the complainant or the Complaints Person;
- Explain that the process is confidential, what this means and why it is important;
- Explain what records of the complaint will be kept, for how long and where;
- Explain the action that may be taken if the complaint is found to be vexatious or malicious;
- Ask the complainant to provide relevant documents or details of witnesses that may support the allegations.

Where there is a concern about supporting information being destroyed or compromised, the Complaints Person should try to obtain this information before taking any further action.

The complainant is welcome to have a support person or advocate present during the meeting.

Step 2: Advise the respondent about the complaint

As soon as practicable but within one week of receiving all necessary information from the complainant, the Complaints Person will meet with the respondent to advise that a complaint has been made. The Complaints Person will provide as much information as possible about the allegation(s) (and supporting information, where applicable), both verbally and in writing.

During the meeting, the Complaints Person will also:

- Confirm that the respondent will be given the opportunity to respond to the allegations in writing or through an interview;
- Provide information about the complaint process, potential outcomes and options for assistance/support;
- Explain that the process is confidential, what this means and why it is important;
- Explain what records of the complaints will be kept, for how long and where;
- Explain that it is unacceptable to victimise someone who has made a complaint.

The respondent may be asked to take leave without loss of pay or be transferred to another part of the business or a different location so that a fair and efficient investigation can occur. In the event that it is safe for and a complainant and respondent are required to work together during the complaints process, a representative of the employer shall work closely and actively amongst them to monitor their relationship and ensure that safety, wellbeing and respect is intact.

Step 3: Provide the respondent with the opportunity to respond to the allegation(s)

The respondent will have the opportunity to respond to the allegation(s) in writing and/or verbally in a follow up meeting with the Complaints Person. The respondent is welcome to have a support person or advocate present during the meeting. The meeting will normally occur within three working days of the respondent being notified of the allegation(s).

The Complaints Person will document the information obtained during the meeting and the respondent will be asked to review and confirm the accuracy of the information.

Step 4: Interview any relevant witnesses

If the Complaints Person considers it necessary or appropriate, they will interview any relevant witnesses to the alleged conduct. To maintain confidentiality, witnesses should only be advised of the nature of the investigation insofar as it relates to them providing accurate and truthful evidence.

Step 5: Clarify contradictory or new evidence

If new or contradictory evidence comes to light during the investigation, the Complaints Person will hold further discussions with the respondent and/or complainant to clarify information.

If either the respondent or complainant disputes any of the new or contradictory evidence, the Complaints Person may:

- Seek further information from the respondent and/or complainant;
- Seek further statements/information from any witnesses;
- Gather any other relevant evidence.

The Complaints Person may continue to seek additional information or clarification from the respondent, complainant or witnesses on any outstanding matters until the Complaints Person is satisfied that there is no additional evidence to be collected or further clarification required.

Step 6: Assess the evidence and make a determination

The Complaints Person will assess the information and evidence gathered and form an opinion about the complaint. The Complaints Person may find one of the following:

- The complaint is substantiated;
- The complaint is not substantiated;
- It is not possible to make a conclusive finding about whether discrimination, harassment, sexual harassment and/or bullying occurred.

The Complaints Person's findings and the standard of proof in the investigation are based on 'the balance of probabilities' – which means it is more likely than not that the conduct occurred.

<Insert company name>

If the respondent confirms the alleged conduct occurred, the Complaints Person should provide the respondent with the opportunity to comment on any proposed decision and outcome before a final decision is made.

In making a determination, the Complaints Person may access the industry register of findings.

Where the complaint is substantiated, the Complaints Person may recommend disciplinary action. If the Complaints Person identifies an area that could be improved to reduce or avoid such complaints in the future, the Complaints Person may recommend that **<Insert company name>** consider implementing those improvements.

Step 7: Prepare a report

The Complaints Person will prepare a report documenting the investigation process, the evidence, the finding(s), the recommended outcome(s) and reasons for the recommended outcome(s). The Complaints Person will submit the report to the appropriate decision-maker (senior management) as soon as possible and within a week of concluding the investigation.

Step 8: Respond to report

The decision-maker will implement the recommended outcome(s) or decide on an alternative course of action.

Step 9: Notify the complainant and respondent of the outcome

Within one week of receiving the investigation report, the decision-maker will notify the complainant and the respondent of the outcome of the complaint in writing (and verbally if appropriate).

6.3.2. Variation to the timeframe

There may be occasions, when having regard to the complexity of the facts and the seriousness of the allegations, that the process takes longer or there is a departure from the process.

If the timeframes for the investigation are likely to differ greatly from those outlined above, the complainant and the respondent will be informed of this during the course of the investigation. However, **<Insert company name>** will take all practicable steps to undertake and conclude investigations in a timely way, ideally within a fortnight and less than a month.

6.3.3. Work arrangements

When a complaint is lodged, the complainant and respondent are required to continue work as normal, unless notified otherwise by **<Insert company name>**. For example, either the complainant or the respondent may be asked to take leave without loss of pay or be transferred to another part of the business or a different location so that a fair and efficient investigation can occur.

The complainant and respondent have a responsibility to:

- Participate in the investigation process and the implementation of this policy in good faith
- Co-operate fully in the investigation process and the implementation of this policy
- Not make vexatious or malicious complaints
- Maintain confidentiality as described above

6.3.4. Outcomes from the investigation

Substantiated complaints

Where the complaint is substantiated, **<Insert relevant manager here>** will make a decision on the appropriate action to take, based on the Complaints Person's findings.

Outcomes of a formal investigation can include any combination of the following:

- Counselling, coaching or mentoring
- Formal written warning
- Termination of employment (including without notice or pay in lieu of notice)
- **<insert company name>** facilitating a meeting between the complainant and the respondent to attempt to resolve the matter by direct discussion
- Developing a process for 'moving forward'
- Regular monitoring of behaviour
- Further training and education
- A commitment by the respondent to change behaviour or conduct
- A change in working arrangements
- An apology

The most appropriate outcome in each case will depend upon factors such as:

- The severity and frequency of the inappropriate conduct
- The weight of the evidence against the respondent
- The wishes of the complainant (however this will not be determinative of the matter)
- Whether the respondent has been given any prior warnings for the same or similar conduct
- Training previously provided to the respondent specifically related to the subject matter of the complaint

The disciplinary procedure will be applied in a manner that is consistent, clearly explained, fair and proportionate.

Unsubstantiated complaints

Where allegations have not been admitted or substantiated, <Insert company name> may decide to take some action as a result of the complaint. For example, <Insert company name> may:

- Provide refresher training for all staff regarding appropriate workplace behaviour
- Re-issue the workplace discrimination, harassment, sexual harassment and bullying policy, the Code of Conduct and other related policies to all employees

7. Frivolous, vexatious or malicious complaints

<Insert company name> encourages the reporting of behaviours that an employee genuinely believes to be discrimination, harassment, sexual harassment or bullying. Further, any such employee will not be disadvantaged or treated unfairly for making a complaint.

However, if a complaint is found to be frivolous, vexatious or malicious, then appropriate disciplinary action up to dismissal may be invoked against the complainant. Examples of frivolous, vexatious or malicious complaints include:

- Fabricating a complaint
- Making a complaint with the intention of deliberately harming someone (e.g. for the purposes of revenge)
- Making a meritless complaint to harass or sub-due someone
- Seeking to re-agitate issues that have already been addressed or determined
- Making a complaint against reasonable management actions
- Making a complaint that the complainant does not genuinely believe to be true

8. Additional information, support and advice

If you have a query about this procedure or would like to raise a concern or complaint, please contact [Guidance note (delete this later): list contacts].

9. Review details

This procedure was adopted by <Insert company name> on [insert date].

This procedure was last updated on [insert date].