

Guideline: Preventing and Addressing Harassment and Discrimination in the Workplace

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**Government
of South Australia**

Office of the Commissioner
for Public Sector Employment

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ABOUT THIS GUIDELINE

Who is covered by this guideline?

This Guideline applies to employment under Part 7 of the *Public Sector Act 2009* and contains material relevant to all employment in the South Australian public sector.

It has been developed to assist South Australian public sector employees and human resource professionals to prevent and address harassment, including sexual harassment, and discrimination within the workplace and sets the standards expected for the South Australian public sector.

It is issued under section 14(d) of the *Public Sector Act 2009*, which empowers the Commissioner for Public Sector Employment to issue guidelines relating to public sector employment. This Guideline provides a best practice framework in accordance with the *Public Sector Act 2009* and the *Code of Ethics for the South Australian Public Sector*.

Other resources

This Guideline also supports the aims of the *Safety, Wellbeing and Injury Management Strategy (SWIM)*, the *Diversity, Equity and Inclusion Strategy*, the *Mentally Healthy Workplaces Framework* and the *Anti-racism Strategy*.

Information about bullying in the workplace is contained in the *Guideline: Preventing and Managing Bullying in the Workplace*.

Information about managing misconduct is contained in the *Guideline: Management of Misconduct*.

Legal framework

In Australia, all employers have a duty of care to provide a safe work environment for their employees and to address risks in the workplace. While there is a range of legislation that deals with harassment and discrimination, including sexual harassment, the objective is always to prevent the behaviour and to provide a process to address instances of such behaviour when they occur.

The South Australian government's values and professional conduct standards, as stated in the *Code of Ethics for the South Australian Public Sector*, requires public sector employees to treat other persons, at all times, with respect and courtesy.

The following is a list of relevant legislation:

- *Disability Inclusion Act 2018 (SA)*
- *Equal Opportunity Act 1984 (SA)*
- *Fair Work Act 1994 (SA)*
- *Public Sector Act 2009 (SA)*
- *Public Sector (Honesty and Accountability Act) 1995 (SA)*
- *Public Sector Regulations 2010 (SA)*
- *Racial Vilification Act 1996 (SA)*
- *Return to Work Act 2014 (SA)*
- *Sex Discrimination Act 1984 (Cth)*
- *Work Health and Safety Act 2012 (SA)*

KEY TERMS

Term	Explanation
Agency	A public sector agency is defined in the PS Act. It includes administrative units (departments and attached offices) and other agencies or instrumentalities of the Crown
Code of Ethics	Code of Ethics for the South Australian public sector
CPSE	Commissioner for Public Sector Employment
EAP	Employee Assistance Program
HR	Human resources
Leader	The term leader covers line management positions and other senior positions within the organisation, such as executives or recognised authorities for a particular group
Manager	Includes all line management positions, for example team leader, supervisor
OCPSE	Office of the Commissioner for Public Sector Employment
Positive Duty	Under the <i>Sex Discrimination Act 1984</i> (Cth), organisations and businesses have a legal duty to take reasonable and proportionate measures to eliminate unlawful conduct as far as possible. The positive duty requires organisations and businesses to be proactive (rather than reactive) and take appropriate measures to eliminate relevant conduct, as far as possible. Responding to individual complaints as they arise is no longer enough.
Procedural fairness (natural justice)	Procedural fairness requires that: <ul style="list-style-type: none"> the decision-maker is impartial and free of actual or apparent bias (rule against bias) a person, whose interests are affected by a proposed decision, receives a fair hearing, including the opportunity to respond to any adverse material that could influence the decision (the hearing rule) findings are based on evidence that is relevant and logically capable of supporting the decision (the evidence rule)
Psychosocial hazards	Is a hazard that arise from, or relates to:

	<ul style="list-style-type: none"> • the design or management of work • a work environment • plant at a workplace • workplace interactions or behaviours, and <p>may cause psychological harm (whether or not it may also cause physical harm)</p>
Public Sector Values and Behaviours Framework	South Australian Public Sector Values and Behaviours Framework
WHS	Work Health and Safety

Introduction

A strong public sector is vital to delivering the strategic and economic priorities of the South Australian Government. These priorities set clear expectations for what the public sector does and how we do it to ensure we meet community expectations and deliver services effectively and efficiently. Research clearly demonstrates that employees who are engaged and happy in their work produce better results and provide higher levels of service.

A positive workplace requires excellent leadership and management and a commitment from all employees to be inclusive and create an environment where everyone feels they belong.

It also requires agencies to address negative behaviours as quickly as they can before they escalate in severity. Harassment and discrimination can be major disruptors to workplace productivity and particularly damaging to employee engagement and wellbeing if not addressed early.

Preventing inappropriate and harmful behaviour in the workplace, such as harassment and discrimination, is an obligation under state and federal laws. Harassment and discrimination are also not acceptable under the *Code of Ethics*.

Since December 2022 the *Sex Discrimination Act 1984* (Cth) has included a new positive legal obligation requiring an employer or a person conducting a business or undertaking (PCBU) (noting that a PCBU has the same meaning as under the *Work Health and Safety Act 2012* (SA)) to take reasonable and proportionate measures to eliminate as far as possible:

- unlawful discrimination on the ground of a person’s sex in a work context;
- unlawful sexual harassment or harassment on the ground of sex in connection with work;
- unlawful conduct creating a workplace environment that is hostile on the ground of sex;
- related acts of victimisation.

It is important to note that this positive legal obligation, or positive duty, means that agencies should take proactive, rather than reactive, action. It is no longer the case that a person needs to make a complaint before action is taken. From 12 December 2023, the Australian Human Rights Commission has new

powers in regard to investigation and compliance with the positive duty. Agencies are encouraged to seek legal advice from the Crown Solicitor's Office in relation to the powers of the Australian Human Rights Commission.

Since August 2023, the *Work Health and Safety Regulations 2012 (SA)* explicitly requires proactive management of psychosocial hazards. Harassment (including sexual and racial harassment) may be defined as a psychosocial hazard. From 25 December 2023, SafeWork SA will have the power to investigate and bring forward prosecutions under this provision.

Harassment (including sexual harassment) and discrimination can be prevented by creating positive and respectful workplaces. We therefore have an obligation to create and foster workplaces where employees feel engaged in their work and supported to do the best job possible. HR and WHS professionals help leaders to create positive work environments and increase their awareness of psychosocial hazards (workplace stressors) in their work area. All employees, regardless of level, should be held accountable to the same standards for their behaviour.

This guideline focuses on preventing inappropriate behaviour, in particular harassment (including sexual harassment) and discrimination, by creating positive work environments.

Key principles to prevent and address harassment and discrimination

These key principles summarise the overall approach to prevent and address harassment and discrimination in the workplace.

'No exceptions' approach

Agencies should adopt a 'no exceptions' approach. Harassing and discriminating behaviour should be consistently addressed regardless of the individual's level in the organisation, status, how rare their skillset is, or their previous performance.

Identify and change negative attitudes, biases and beliefs

Harassing behaviour starts with negative attitudes, biases and false beliefs. Not all negative attitudes about groups in society lead to harassment but all harassment starts with some form of negative attitude, belief or bias about a group. Often these false beliefs and biases are unconscious, however they can impact behaviour and cause harassment to occur.

Educate staff to eliminate discrimination and harassment

Agencies should take reasonable and proportionate measures to eliminate unlawful conduct (such as harassment and discrimination) as far as possible from the workplace This includes:

- Educating all employees about inappropriate behaviour, how to recognise it, speak up, report it and prevent it from occurring.
- Acknowledging and addressing unconscious biases and making it a positive duty for all employees to eliminate harassment from the workplace.

- Training employees to question negative societal attitudes, to stand for respect at every opportunity and to keep learning about the precursors to harassment.

Unconscious biases are:

- attitudes beyond our regular perceptions of ourselves and others
- reinforced by our environment and experiences
- the basis for a great deal of our patterns of behaviour about diversity

Focus on diversity and equality

Research consistently shows that workplace diversity can reduce the risk of harassment occurring. Ensure policies, processes and practices promote diversity and equality in the workplace and celebrate achievements in this area. This includes recruitment and attraction strategies (such as inclusive language and encouraging a diversity of applicants).

Teams are inclusive

The more inclusive a team is, the lower the risk of harassment. Inclusion is the extent to which people feel valued, respected and accepted for who they are and connected with their team. There needs to be equal opportunities to contribute to their team's work and progress their careers. All team members need to proactively work to build an inclusive team with high levels of psychological safety where all members are treated with respect, are comfortable to raise concerns with each other and can hold each other accountable for enabling inclusive practices and cultures.

Inclusive and supportive management

Managers need to practice inclusive and supportive leadership, so employees feel safe to speak up about harassment or other challenges regarding their work or wellbeing. Managers also need to set and role model the agency's expectations regarding appropriate behaviour and promote a positive culture of inclusivity and respect.

PART ONE

Appropriate behaviour at work

Appropriate behaviour in the workplace is respectful and inclusive, recognising that people may have different backgrounds, interests and personal values. It is behaviour that is free from harassment, bullying and discrimination, victimisation and vilification.

The importance and obligation of all employees to behave appropriately in the workplace is reinforced in the:

- *Code of Ethics*
- *Public Sector Values and Behaviours Framework*, which includes examples of the types of organisational practices and personal behaviours that will support the public sector values. It also provides examples of taboos (behaviour you don't want to see at work).

INAPPROPRIATE BEHAVIOUR

Inappropriate behaviour is not respectful or inclusive. In some instances, laws have been created to set a minimum standard of behaviour in Australia. Some forms of inappropriate behaviour are explained below.

Sexual Harassment

Sexual harassment is a specific form of harassment. It is against the law in South Australia (see the *Equal Opportunity Act 1984 (SA)*) and must be prevented due to the positive obligation imposed under Commonwealth law (see the *Sex Discrimination Act 1984 (Cth)*).

Under the *Equal Opportunity Act 1984 (SA)*, sexual harassment is:

- an unwelcome sexual advance,
- an unwelcome request for sexual favours,
- other unwelcome conduct of a sexual nature, and
- it is reasonable to expect that the other person would be offended, intimidated or humiliated.

Sexual harassment can happen at an employee's usual workplace or in other places where they work, such as a client's home and during a work-related activity such as a work trip, conference or an event.

Examples of the types of behaviour that may be considered as sexual harassment include:

- unwelcome touching or kissing
- commenting on a person's appearance
- comments, jokes or name-calling
- leering or staring
- sexual pictures, objects, emails, text messages or literature
- direct or implied propositions, or requests for dates
- asking about a person's sexual history or sexual activities
- intrusive questions about a person's private life or body
- requests for sex

- unnecessary familiarity, such as deliberately brushing up against a person
- insults or taunts based on sex
- sexually explicit physical contact

Mutual attraction or friendship with consent is not sexual harassment.

Section 14 of the *Sex Discrimination Act 1984* (Cth) also makes it unlawful for an employer to discriminate against an employee or a person seeking to become an employee on specified sex related grounds. Section 28B of the *Sex Discrimination Act 1984* (Cth) makes it unlawful for:

- a person to sexually harass an 'employee' or person seeking to become an 'employee';
- an 'employee' to sexually harass a fellow 'employee'; and
- a 'workplace participant' to sexually harass another 'workplace participant' in their workplace.

The *Sex Discrimination Act 1984* (Cth) has been recently amended to update the definition of 'employment' to include employment as a 'State employee' of a State. A 'State employee' will include persons employed by the newly defined 'public authority of a State'.

The *Sex Discrimination Act 1984* (Cth) relevantly defines 'public authority of a State' as "a body that is incorporated for a public purpose by a law of the State" (paragraph (a)) or "a body that is not a body corporate and is established for a public purpose by, or in accordance with the provisions of, a law of the State" (paragraph (b)).

Under the *Sex Discrimination Act 1984* (Cth), an employer or a person conducting a business or undertaking (PCBU) (noting that a PCBU has the same meaning as under the *Work Health and Safety Act 2012* (SA)) now have a positive duty to take reasonable and proportionate measures to eliminate, as far as possible:

- unlawful discrimination on the ground of a person's sex in a work context;
- unlawful sexual harassment or harassment on the grounds of sex in connection with work;
- unlawful conduct creating a workplace environment that is hostile on the ground of sex;
- related acts of victimisation.

It is no longer the case that a person needs to make a complaint before action is taken. The new laws shift the focus from responding to harm after it happens, to preventing it before it occurs. This is because preventative action that addresses conduct at a systemic level is more effective at creating safe, respectful and inclusive workplaces.

The Australian Human Rights Commission has developed seven standards that outline what it expects organisations and businesses (including government departments and authorities) to do to satisfy the positive duty. The Australian Human Rights Commission [website](#) has excellent resources, including factsheets and Guides, on how to satisfy the positive duty.

From 12 December 2023, the Australian Human Rights Commission will have new powers with regard to investigation and compliance with the positive duty.

Agencies should seek legal advice where required in relation to the powers of the Australian Human Rights Commission.

Using Non-disclosure agreements for sexual harassment cases

Non-Disclosure Agreements (NDAs) and confidentiality clauses are often used in the settlement of sexual harassment cases, as well as other workplace matters. Where NDA's are used in an appropriate and victim-centred manner, they can be beneficial to both the employer and the employee. Benefits can include providing parties with privacy or anonymity, creating greater bargaining power for the complainant, and providing parties with a better chance of reaching a settlement without proceeding to litigation. However, where not used appropriately, NDAs carry the risk of causing victims to remain silent, which can impact their wellbeing and recovery. NDAs can also risk potentially concealing unlawful conduct and facilitating repeat offending.

Applicable principles when using NDAs

Where an NDA is being considered for use in the settlement of a workplace sexual harassment matter, the following victim-centred principles should be considered.

- NDAs should only be used with the full and informed consent of the complainant, recognising the potential power imbalance between an employee and their employer.
- NDAs and confidentiality clauses should be drafted in plain English, and clearly state what information cannot be disclosed.
- Employees should be supplied with sufficient time to understand the terms of a confidentiality agreement, and be reminded of their rights to seek legal advice on the proposed NDA.
- Where it is appropriate for a matter to be referred to the police, NDA's should not prevent this.
- NDAs should not restrict an employee from obtaining counselling or psychological support in response to alleged workplace sexual harassment.

Advice from the Crown Solicitor's Office

Agencies are encouraged to seek legal advice from the Crown Solicitor's Office prior to the use of an NDA in the settlement of a workplace matter that involves sexual harassment.

DISCRIMINATION

Discrimination is treating someone unfavourably because of their background or personal characteristic that is protected by law. Direct discrimination is behaviour that discriminates against another person on the basis of personal characteristics or attributes.

Indirect discrimination is when an unreasonable requirement, condition or practice that purports to treat everyone the same, ends up actually or potentially disadvantaging someone with a protected personal characteristic because of that characteristic. Personal characteristics which relate to discrimination matters, are defined by the applicable federal and state laws, and can include:

- race, including colour, immigrant status, national or ethnic origin
- disability
- age
- marital or relationship status
- sex or sexuality
- sexual orientation, gender identity or intersex status
- family responsibilities
- breastfeeding
- pregnancy
- trade union or employer association activity
- religious appearance or dress
- political opinion
- irrelevant medical record
- irrelevant criminal record

POSITIVE DISCRIMINATION

Not all discrimination is unlawful. Sometimes referred to as ‘positive discrimination’, this is behaviour that aims to foster greater equality, for example, providing support and targeted recruitment strategies to support increased employment of Aboriginal people. For more information, refer to [Special measures | Equal Opportunity \(eoc.sa.gov.au\)](http://eoc.sa.gov.au).

HARASSMENT

Harassment is behaviour which is directed at a person because of a personal characteristic and that could reasonably result in a person feeling offended, humiliated or intimidated or places them in a hostile environment. Harassment does not need to be repeated and can be a single occurrence.

Harassment is an example of treating people less favourably on the basis of particular protected attributes such as gender, sexual orientation, race, disability or age. It includes:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying racially offensive or pornographic posters or screen savers
- making derogatory comments or taunts about a person’s disability
- asking intrusive questions about someone’s personal life, including their sex life

Harassment can be physical, verbal or visual and can occur through any means of communication, including in person, in writing, by telephone (voice or text messaging), by fax, via the internet (email, instant messaging, social media, photos or videos to cause hurt or embarrassment). Harassment does not have to occur during working hours.

Harassment does not have to be directed towards a person and it may not intend to be hurtful. The behaviour can extend to treating another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other.

OTHER FORMS OF INAPPROPRIATE BEHAVIOUR

Workplace bullying

Bullying behaviours may breach state and federal laws, in particular the South Australian *Work Health and Safety Act 2012* (SA). Bullying is generally defined as “*repeated unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety*”.

Workplace Violence and Aggression

Workplace violence and aggression occurs when a person is abused, threatened or assaulted at the place they are working. It includes aggression between employees and from other people including clients and customers. Instances of workplace violence and aggression may lead to police involvement and charges being laid against the perpetrator. In an emergency, call 000.

Victimisation

Victimisation is subjecting or threatening to subject someone to something detrimental because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be a form of discrimination, sexual harassment

or victimisation. It is unlawful for a person to take action against another, because the other person (or anyone else) has made, or intends to use a workplace right.

Racial Vilification

Racial vilification is behaviour that incites hatred, serious contempt or severe ridicule of a person or group of persons, because of their race. A person's race includes their nationality, country of origin, colour or ethnic origin of the person or of another person with whom the person resides or associates. It is unlawful to vilify people because of their race by threatening to harm them or their property or urging others to do so.

PART TWO

Preventing harassment and discrimination in the workplace

Harassment and discrimination are unacceptable in any context, including the workplace. All managers have a responsibility to take reasonably practicable steps to ensure their workplace is free from inappropriate behaviour such as harassment and discrimination. Preventing workplace harassment and discrimination is essential in the SA public sector, which has a zero-tolerance stance towards any forms of harassment and discrimination.

Building a positive workplace culture where respectful behaviour is normalised is a significant factor to create a safe work environment. Proactive effort is needed to educate employees to equip them with the tools to create a positive workplace culture that is inclusive, mentally healthy and promotes respect for all.

The *Guideline: Preventing and Managing Bullying in the Workplace* focuses on the process to building a positive workplace culture through managing and reducing psychosocial hazards and team discussions about appropriate behaviours. These actions may also help to prevent harassment and other inappropriate behaviour from occurring in the workplace.

While preventing discrimination and harassment through workplace practices is an emerging field of research, the following organisational factors are important considerations for all agencies when designing and managing work and building organisational culture. Not attending to these risk factors may lead to a higher probability of discriminatory conduct in the workplace.

ORGANISATIONAL RISK FACTORS

- Workplaces with high levels of homogeneity (for example similar ages, racial backgrounds)
- Very diverse workplace demographic groupings where strong informal teams exist, highlighting perceived differences
- Workplaces where norms are applied unequally
- Tolerance of poor behaviour
- Employees who are considered irreplaceable or untouchable and whose behaviour is not addressed

- Short term contracts where making a complaint may risk future employment
- Isolated workplaces (for example overnight stays, shift work)
- High pressure environments
- Decentralisation, particularly where lines of reporting are unclear
- Outside work events where the lines of work and social activity are blurred
- The impact of events outside the workplace can have an influence on how particular groups of employees are perceived

EDUCATE EMPLOYEES ON APPROPRIATE BEHAVIOUR

The Code of Ethics identify the values and behaviours that all employees have a responsibility to comply with. These form the foundation upon which workplaces that are free of harassment and discrimination are built. Education and training of employees should focus on these values and behaviours and how they are embedded, reinforced and promoted within each workplace and team.

Agency policies set expectations for behaviour in the workplace and senior leaders must lead by example to demonstrate the desired culture of their workplace.

All managers and leaders have a responsibility for creating an environment where employees know what appropriate behaviour and treating others with respect looks like.

All employees have a responsibility to treat others with respect and engage in appropriate behaviour so that everyone in their workplace is safe and free from bullying, harassment and discrimination at work.

PEER SUPPORT PROGRAMS

Peer support (or contact) officers can play a vital role in assisting employees to feel safe and supported in the workplace. Peers who share similar work experiences provide informal and non-directive support to people with a workplace concern, such as harassment or discrimination. Having a [peer support program](#) in an agency sends a message to employees that their wellbeing is a priority, increases awareness of inappropriate behaviour and how to seek help and can provide early practical support to help resolve issues quickly.

CULTURAL SAFETY MATTERS

“Central to feeling safe at work is the expectation that a person’s cultural identity will not be demeaned or diminished by others. Each person has their own unique cultural identity.” SAPS WHS Framework for Cultural Safety”

The [South Australian Public Sector Work Health and Safety Framework for Cultural Safety](#).

All employees, regardless of how they identify, must have regard to cultural safety and be mindful of the impact as well as the intent of practices and behaviours on others. This Framework provides guidance on how to prevent and manage harassing or discriminating behaviours based on these attributes.

The SA public sector is committed to ensuring it:

- reflects the diverse communities that the public sector serves
- builds diversity and inclusion knowledge and capability

- is accountable for diversity and inclusion

Setting and achieving goals in these areas contributes to creating workplaces where harassment and discrimination is less likely to occur and more likely to be responded to appropriately and effectively.

Implementing inclusivity training and education for employees are important strategies for preventing harassment in our workplaces. This could include gender equality and respect, LGBTIQ+ inclusion, disability inclusion, culturally and linguistically diverse inclusivity, neurodiversity, Aboriginal and Torres Strait Islander respect training, age inclusivity, and anti-racism.

PART THREE

Addressing Complaints

Policy and procedures to address harassment and discrimination in the workplace

All agencies should have a written and well publicised policy that makes it clear that harassment and discrimination in the workplace is not tolerated. This may be a standalone document or may be included in other grievance and complaint processes.

The table below contains key considerations for developing policies and procedures.

Table 1 Key Considerations for Policies and Procedures

Consideration	Explanation
Policy and procedures are clear and accessible	Policies and procedures should state that harassment and discrimination in the workplace is unacceptable. All employees should be educated on the content and know how to access the policy and procedure. Agencies should consider their induction processes for new employees and ongoing training opportunities for existing employees to ensure that everyone is aware of applicable policies and procedures.
Clear standards of behaviour	Respectful behaviour and inappropriate behaviour should be clearly defined in line with the Code of Ethics. Employees witnessing inappropriate behaviour should be supported to speak up about it. Policies and procedures clearly define what respectful behaviour is, what is inappropriate and the possible consequences for engaging in inappropriate behaviour.
Available reporting options	Policies and procedures should include clearly defined reporting options.
Clear response and resolution options	Policies and procedures should explain the response and possible resolution options. A range of options should be offered to employees to resolve the complaint (further information is provided below).

Support is provided to all parties	Support is provided to all parties involved, including an agency's EAP, as well as other support and assistance services. The option to have a support person present should also be included.
Monitoring and reviewing	Policies and procedures should be regularly monitored and reviewed to ensure they are up to date and relevant.

OPTIONS TO RESOLVE COMPLAINTS

Employees are encouraged to talk to their line manager if they have concerns about inappropriate behaviour that they have been affected by or seen (an example template for managers to record details of an event(s) is provided in the [Resources](#) section). Alternatively, they may approach other suitable officers in the agency, such as their HR or WHS representative, or their 'one-up' manager. Managers should seek HR support at any stage if they are unsure how to proceed or need support.

Typically, the options to resolve a complaint are:

Self-Manage – Direct Conversation

This is where the employee chooses, if they feel safe to do so, to raise the issue directly with the person who is behaving inappropriately. Bringing attention to the behaviour could resolve it. Explaining the behaviour, how it affects the employee and asking the person to stop the behaviour may be enough.

Facilitated Resolution

This is where an employee may not feel comfortable approaching the other person directly (so a third party is used).

A third party may be their manager or HR representative and possibly external mediation. Records need to be kept.

Note: There are circumstances where the manager or HR consider that self-management or informal resolution is not appropriate and a formal resolution/action is required, for example, where there is a significant power imbalance between the parties, or the conduct is sufficiently serious to warrant a disciplinary approach.

Formal Resolution

The formal process should follow the agency formal complaints process. Substantiated behaviour that amounts to bullying, discrimination, harassment, victimisation or vilification may constitute misconduct or serious misconduct and could lead to disciplinary action.

External Formal Resolution

Employees are encouraged to use internal options. However, they have the right to seek advice from and/or lodge a complaint with external bodies such as a state or federal discrimination body (including the Equal Opportunity Commission (SA)). Instances of harassment or occupational violence may be referred to the Police.

OTHER CONSIDERATIONS

Confirming the limits of confidentiality

When a harassment or discrimination concern is raised, it is important to communicate the limits to confidentiality. Managers have a responsibility to act on misconduct and to minimise risks to their employees and therefore might not be able to keep the conversation confidential, however every attempt should be made to protect the affected employee from further emotional harm.

Employees should be provided with the agency's complaint resolution process so that they can understand the roles of other parties who may be able to help resolve the situation. If a report of harassment or discrimination needs to be formally investigated, the employee's initial statement may need to be provided to the person allegedly undertaking the inappropriate behaviour and this should be explained to the affected employee.

SA Government WHS incident reporting requirements

Employees should report all incidents using their agency's WHS incident reporting system. It is important to report these incidents so that patterns of behaviour in areas of the workplace can be identified. Employees can use the restricted reporting option to limit who reads their report. This will be determined by the agency policy and in most agencies restricted reports can only be viewed by select people within their WHS team who will then contact the employee to discuss the report. ***The name of the person allegedly undertaking the inappropriate behaviour should not be reported in the system.***

RECORD KEEPING

Records should be kept by employees, managers, HR and WHS professionals of all discussions about harassment or discrimination. Records can identify patterns of behaviour over time and may be needed if a formal complaint or investigation occurs. Records include emails about events and general notes taken to record discussions and decisions made. All records should be kept securely.

Consistent reporting of hazards and incidents allows for the identification of trends in unmanaged hazards within work teams and across the organisation, as well as identification of poor behaviour across multiple worksites.

If the behaviour constitutes misconduct, the *Guideline: Management of Misconduct* should be followed.

Records should be kept of all actions taken to reduce the risks of harassment and discrimination as evidence of effective WHS management practice.

INVESTIGATIONS

Once a formal report of discrimination or harassment has been made, an investigation is usually required depending on the nature of the report or claim that has been lodged.

A WHS investigation may be undertaken to identify the cause(s) of any alleged harassment or discrimination to determine what measures can be taken to prevent the behaviour from recurring. This investigation can consider the causes in the local environment and if the causes exist more broadly within the agency, in which case preventative actions may be required.

A HR investigation will identify if behaviour constituting misconduct occurred and what, if any, sanction may be imposed under the PS Act or other employment legislation.

Where a workers compensation claim is lodged (most often for psychological injury, medical expenses or lost time arising from an incapacity for work), an investigation is required to determine if the worker is entitled to compensation pursuant to the *Return to Work Act 2014 (SA)*.

Resources

FURTHER RESOURCES

- [Guideline: Performance Management and Development](#)
- [Guideline: Management of Misconduct](#)
- [Guideline: Management of Unsatisfactory Performance](#)
- [Mentally Healthy Workplaces Framework and Toolkit | Office of the Commissioner for Public Sector Employment](#)
- Australian Human Rights Commission [Sexual Harassment Resources](#)
- Australian Human Rights Commission [Workplace bullying: Violence, Harassment and Bullying Fact sheet | Australian Human Rights Commission](#)
- [Bullying & Inappropriate behaviours | SafeWork SA](#)
- [Bullying | Safe Work Australia](#)
- [Equal Opportunity | Equal Opportunity \(eoc.sa.gov.au\)](#)
- [Diversity, Equity and Inclusion | Office of the Commissioner for Public Sector Employment](#)

MENTAL HEALTH ASSISTANCE

Urgent Support Services

- Emergency: Call 000 (Triple Zero)
- Mental Health Triage: Call 13 14 65 [Mental Health Services | SA Health](#)
- Lifeline: Call 13 11 14 www.lifeline.org.au
- Suicide Call Back Service: Call 1300 659 467 www.suicidecallbackservice.org.au
- [Respect.gov.au – Violence against women. Let's stop it at the start Call 1800 RESPECT](#)
- Mensline Call 1300 78 99 78

Employee Assistance Programs

All agencies have an EAP. Agencies contract an organisation to provide professional counselling to their employees for a set number of sessions (usually between three to four sessions annually). These sessions are confidential and no identifying information is reported back to the agency. Contact details for an agency's EAP should be easily accessible to all staff, and are usually posted on the agency intranet.

Mental Health Treatment Plans

General Practitioners can refer people directly to a mental health professional (Psychologist, Social Worker or Occupational Therapist) for treatment using a Mental Health Treatment Plan under the [Better Access initiative](#). This initiative gives Medicare rebates to help people access services and therefore reduces the costs of accessing professionals. Speaking to your GP about your mental health is a good place to start.

Online Options

A range of e-mental health options are now available to access mental health support online. The [e-Mental Health in Practice Project](#) provides access to free training and support from a wide range of mental health organisations. Accessing support online provides anonymity and convenience that may suit some people.

TEMPLATE: INITIAL RECORD OF ALLEGED INAPPROPRIATE BEHAVIOUR

Reporting employee name	
Position title	
Date of reporting	
Person assisting	

Describe what has happened?		
Date:	Time:	Location:
Who was present?		
What was said (or done) and by who?		
What was the impact of this behaviour/actions? How did this behaviour make you feel?		
How has this behaviour affected your work?		
What actions have you taken and, if so, what happened?		

Looking at the brief explanations of inappropriate behaviour below, how would you describe the type of behaviour?

Are you aware of the responses to inappropriate behaviour?

(Discuss options as per the relevant agency policy/CPSE guideline and provide a copy)

At this stage, what action would you like to take?

- Reporting of the incident(s) via the WHS restricted system is recommended. This information will help us make the work environment safer.
- Seek initial support from a peer support officer (or similar role in your agency)
- Directly talk to the employee whose behaviour is impacting you
- Request facilitated conversation (e.g. with your manager or HR present)
- Make a formal complaint

For the employee: Your wellbeing is important. Your agency has an EAP provider who can offer support. You can also seek assistance via your general practitioner or union. There are also various phone and online counselling services. Some are listed in the CPSE Bullying for Employees FAQ

Inappropriate behaviours are:

Bullying	Repeated unreasonable behaviour that creates a risk to health and safety in the workplace.
Discrimination	Treating someone unfavourably because of a personal characteristic or attribute that is protected by law (for example racial discrimination).
Harassment	Behaviour which is directed at a person because of a personal characteristic and that could reasonably result in a person feeling offended, humiliated or intimidated or places them in a hostile environment. It can be a single event.
Sexual harassment	Unwelcome sexual advance or request for sexual favours, to another person in circumstances where a reasonable person would anticipate the other person would be offended, humiliated or intimidated.
Victimisation	Subjecting or threatening to subject someone to something detrimental because they have asserted their rights, e.g. made a complaint.
Racial Vilification	Behaviour that incites hatred, serious contempt or severe ridicule of a person or group of persons because of their race.

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