

Guidelines on preventing bullying and harassment

POL-G-052

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1. Title

Guidelines on preventing bullying and harassment

2. Introduction

The National Museum of Australia (the Museum) is a major cultural institution charged with researching, collecting, preserving and exhibiting historical material of the Australian nation. The Museum focuses on the three interrelated areas of First Nations history and culture, Australia's history and society since European settlement and the interaction of people with the environment.

Established in 1980, the Museum is a publicly funded institution governed as a statutory authority in the Commonwealth Arts portfolio. The Museum's building on Acton Peninsula, Canberra opened in March 2001.

3. Scope

This guideline applies to all Museum employees and should be read in conjunction with the Museum's enterprise agreement and other relevant documents.

3.1 Description

These guidelines set out the National Museum of Australia's guidance on preventing bullying and harassment in the workplace and dealing with allegations of bullying or harassment.

3.2 Purpose

The purpose of the policy is to reduce the incidences of bullying and harassment within the Museum and to assist staff dealing with such allegations.

3.3 Rationale

The policy will enable the Museum to meet its legal obligations to take proactive and meaningful action to prevent bullying and harassment before it occurs.

4. Principles or guidelines

4.1 Commitment

Every worker has the right to be treated with respect and to work in a safe environment, free from bullying and harassment. The Museum is committed to ensuring the APS Values (Impartial, Committed to Service, Accountable, Respectful, Ethical) consistently form part of our decisions and actions. This will create and sustain a safe, happy and productive working environment.

Bullying and harassment have no part in the Museum workplace. The Museum is committed to sound workplace relations that ensure employees demonstrate the highest ethical and professional standards.

The Museum commits to take all reasonable measures to eliminate discriminatory conduct and victimisation in the workplace through actions outlined in this policy.

The Museum commits to the promotion, employee acknowledgement requirements and accessibility of this policy, and to ensuring awareness of unacceptable conduct and what actions are being undertaken to prevent these behaviours.

4.2 What is bullying and harassment?

Definitions of 'bullying' and 'harassment' are included in section 5 of this policy.

For ease of reading, the term 'harassment' has been used generally throughout to mean both 'harassment' and 'bullying'. Harassment should not be confused with performance management or provision of feedback about an employee's performance. Advice or counselling on the work performance or work-related behaviour of an individual or group, which might include critical comments indicating performance deficiencies, is not harassment. Legitimate feedback by an employee to a manager or supervisor about work-related issues is not harassment.

Harassment can occur in connection with employment and can include behaviour towards employees and others, for example contractors, visitors and volunteers. Aside from Museum premises, this can include, but is not limited to, work-related social functions, conferences and seminars, including those that take place outside working hours.

For harassment to occur, there does not have to be an intention to offend or harass. Moreover, harassing behaviour may appear to be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to the alleged harassment may seem unaffected, however the perception of the person subjected to the alleged harassment is important.

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 or in connection with employment
- 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
- phone calls or messages on electronic mail, computer or mobile phones which are threatening, abusive or offensive
- deliberately withholding information that is vital for effective work performance
- deliberately changing work rosters to inconvenience particular employees
- persistent following or stalking within the workplace, or to and from work or elsewhere
- inappropriate or unfair application of work policies or rules
- interfering with another person's personal property or work equipment
- intentionally isolating employees from group activities
- disparaging remarks about employees, contractors, visitors or volunteers.

An employee who fails to observe these requirements may be found to have breached the Code of Conduct and, in some circumstances (for example, indecent/physical assault, stalking, sending offensive emails, sending obscene material through the mail, making nuisance phone calls), could be the subject of criminal proceedings. Harassment on the basis of a number of grounds, including race, sex, sexuality or disability may also breach Commonwealth anti-discrimination and work health and safety legislation.

A prompt, assertive, timely and critical response to harassment by witnesses ensures that victims are not isolated and harassers (or alleged harassers) are not left with the impression that their behaviour is approved or condoned by others.

4.3 Harassment by or of outsiders

If an employee is harassed by a person engaged as a contractor on Museum premises, the Museum cannot conduct an internal inquiry under the Code of Conduct because the alleged harassment is not an action taken by an employee of the Museum. However, the standard form of contract or agreement for services between the Museum and a supplier should be written to obligate the contractor and their agents to act in a manner consistent with the APS Values, Employment Principles and Code of Conduct. The Museum can then deal appropriately with any allegations under the agreed contractual arrangements.

If applicable, an employee may complain to the Australian Human Rights Commission about the behaviour of a contractor by lodging a complaint under the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992*, or the *Australian Human Rights Commission Act 1986*. Some forms of harassment also may be criminal offences. In these circumstances, the employee should immediately notify their manager.

If a contractor continues to harass an employee, the relevant manager should immediately relieve the employee from all official contact with the contractor. The relevant manager with responsibility for the contract should seek to address the issue directly under the terms of the contract, for example, by asking the contracted organisation to address the issue, replace their worker or by terminating the contract. If the harassment persists, the employee may wish to consider seeking an apprehended violence order against the contractor. Support could be provided to the employee via, for example, the provision of affidavits from employees who witnessed the harassment.

If a person/persons who is/are not an employee/employees, for example a member of the public, harasses, abuses and/or physically assaults an employee or another member of the public on Museum premises, the matter must be reported immediately to the Security Control Room. The Security Control Room will take appropriate action and follow escalation processes to Museum Security Management as required. Legislation under the Australian Government Protective Security Policy Framework and the Museum's own security policy covers the Museum in providing 'move on' powers for Authorised Officers to deal with situations like this and, in some instances, the requirement to contact law enforcement agencies to attend on site.

In situations where a contractor is being harassed by an employee, the relevant Museum manager with responsibility for the contract (or the Contract Manager) must report this immediately to People and Culture, who will determine if escalation to Security Management is required.

4.4 Procedures for identifying and handling bullying or harassment

The following options and approaches are available to staff. Any or all of these options may be pursued, depending upon the severity or type of inappropriate behaviour and the outcome of earlier efforts to resolve the situation.

It is important to note that, whether or not an individual complains about harassment, it is possible for the Director or their delegate to take action in accordance with the Museum's Code of Conduct guidelines in response to any reports or observations that come to their attention.

In considering any complaint, procedural fairness must be afforded to all involved. This includes, but is not limited to, informing the alleged harasser(s) of the substance of the allegation(s) made and giving them the opportunity to respond. The conduct must be described to the alleged harasser in such a way so that he or she understands the acts, facts and circumstances. The name of the complainant may have to be revealed so that the alleged harasser 'knows the case against them'. For this reason, promises of confidentiality cannot be given.

The person who receives a complaint will act expeditiously and with as little formality as a proper consideration of the matter allows and may, as appropriate, take one or more of the following actions:

- meet independently with the complainant and alleged harasser(s) to explore the scope for informal resolution
- if, following inquiries or otherwise, no further action is proposed, inform the complainant in writing of the reasons for not pursuing the matter and of available avenues to further pursue the complaint
- act to address the matters as required under the Enterprise Agreement dispute resolution procedures, the review of actions framework (section 33 of the *Public Service Act 1999*) and/or the Museum's performance management framework

- appoint a person to investigate a suspected breach of the APS Code of Conduct in accordance with the Museum's Code of Conduct Procedures and Guidelines or refer the alleged behaviour to the Australian Federal Police or other relevant external authority.

4.5 Self help

Tell the person that you consider their behaviour is inappropriate and ask them to stop. Let the person know that you are upset, uncomfortable or fearful as a result of the behaviour of that person or persons. In most cases, the inappropriate behaviour will cease at this stage. Before taking this step, you might wish to speak to a Workplace Support Officer, People and Culture, the Employee Assistance Provider (EAP) or Health and Safety Representative to obtain advice and support about how to have this conversation.

4.6 Intervention in the work area

You can approach People and Culture or your health and safety representative, supervisor or manager to seek assistance to resolve the issue. Where your manager is the person with whom you have the conflict the following reference to manager should be read as 'manager once removed'. Where possible, managers are encouraged to seek to resolve the matter within the work area.

Your manager can discuss possible resolution methods with you:

- with your consent, the manager may facilitate a meeting with you and the employee you perceive as behaving in an inappropriate way towards you
- with your consent, the manager can assist with arranging a facilitator or mediator with the aim of a mutually appropriate settlement.

Managers may give the employee demonstrating inappropriate behaviour a written direction about the standards expected and the possible consequences if those standards are not reached. Where a written direction is issued and this direction is not complied with, the issue may be dealt with under the Museum's Code of Conduct Guidelines and Procedures.

4.7 Formal complaint

A formal complaint may be made to the Head of People and Culture, the Director, a Deputy Director or the Associate Director if:

- the complaint has not been resolved informally
- harassment continues, despite an agreed informal resolution
- the complainant has good reasons not to seek resolution within the immediate work area, for example because the complaint involved the employee's manager
- the alleged bullying or harassment is significant or has an immediate effect on the safety or wellbeing of the employee or others.

Note: none of the above prevents an employee from making a formal complaint at any stage if they so choose.

Where possible, the complaint should be in writing. Regardless of whether the complaint is made in writing or orally, it is necessary to:

- identify the person or persons who are the subject of the complaint
- describe the alleged bullying or harassing behaviour and indicate why the employee objects to the behaviour
- identify whether the person believes there is either a health and safety risk to themselves or to other people. If there is a risk, the complainant will need to complete and submit an Incident/Hazard Report form
- indicate what steps have been taken, if any, to seek informal resolution and explain why informal resolution has not been sought or in what way such informal action has been unsuccessful in resolving the complaint
- identify possible witnesses and what events or behaviour they may have witnessed

- if possible, outline the expected outcomes being sought from the process.

4.8 External review

A request for a review of actions can be lodged directly with the Merit Protection Commissioner (MPC). Further information about the review process, timelines and details of what can and cannot be submitted to the MPC for consideration can be found in the Museum's Review of Actions Guideline and on the MPC's website.

In addition to the options contained in this guideline, if the alleged harassment is based on attributes including sex, race or ethnic origin, disability, marital status, sexual preference or age, a complaint can be lodged, usually in writing, with the Australian Human Rights Commission (AHRC). The staff member may wish to advise the Museum that the case will be referred to the AHRC for review.

Workplace bullying is not prescribed in the *Work Health and Safety Regulations 2011* as a notifiable incident. However, on rare occasions workplace bullying may satisfy the criteria in section 36(a) of the *Work Health and Safety Act 2011* if it results in the victim requiring immediate treatment as an inpatient in a hospital (irrespective of whether they receive the treatment or not).

An employee may apply to the Fair Work Commission (FWC) for an order to stop bullying. Under the *Fair Work Act 2009*, bullying is defined as repeated unreasonable behaviour by an individual or group that creates a risk to another worker's health and safety. Management action carried out in a reasonable manner will not constitute bullying (e.g. performance management or disciplinary action). The remedies that can be ordered by the FWC include orders requiring an individual or group to stop bullying behaviour or requiring an employer to implement anti-bullying policies and training. However, orders for compensation or reinstatement are not available. The FWC's anti-bullying jurisdiction is limited, but includes employees, contractors, labour hire personnel, trainees, apprentices etc. employed by the Commonwealth. An employee who makes an application to FWC is not precluded from taking action under work health and safety legislation.

4.9 Protection of individual's rights

One of the major factors that inhibit people from bringing cases of harassment to the attention of others is fear of consequences such as defamation suits and victimisation. It is important that all employees are aware of their rights and responsibilities where they are involved in cases of bullying or harassment as a complainant, witness, or as an alleged bully or harasser.

Of particular concern to those involved in cases of harassment is a fear that their involvement will affect their future career prospects and their working relationships with others in the work area (for example, when the allegation of harassment involves their own manager or another manager/staff member senior in level to them). However, employees who are in this situation should be aware of the following:

- Victimisation of complainants is treated very seriously.
- The person against whom allegations of harassment are made also has a right to protection of reputation, a fair hearing and employment without discrimination.
- All employees should ensure that allegations are treated confidentially and disclosed on a 'need-to-know' basis only.
- Assistance in relation to any legal proceedings brought or threatened against a complainant and those investigating a complaint may be approved in line with the provisions in *Appendix E of the Commonwealth's Legal Services Directions* for assistance to officials in relation to legal proceedings.

Allegations of any form of bullying or harassment are serious and need to be dealt with in a sensitive and discreet manner. While any form of harassment should not be tolerated, there is a responsibility on the complainant to ensure that any complaint is not frivolous or malicious.

It is important that allegations are made, considered and/or formally investigated in good faith by all parties. This is important to ensure fairness is provided to the person against whom a complaint is made, and to avoid any possible harm which could result in a claim of defamation.

Where a complaint is resolved, action should generally be taken to ensure that those who had official knowledge of the making of the complaint are also informed of the outcome. Information, especially the collection, disclosure and disposal of personal information, will be dealt with in accordance with the *Privacy Act 1988* and relevant records disposal authorities.

5. Definition of terms

Bullying

Bullying is repeated unreasonable behaviour in the workplace or in connection with employment which:

- is directed towards a person or group of persons
- is humiliating, intimidating, threatening or demeaning to those persons
- creates a risk to health and safety.

Harassment

Harassment is behaviour that is unwelcome, unsolicited, usually unreciprocated and usually (but not always) repeated. It makes the workplace or association with work unpleasant, humiliating or intimidating for the individual or group targeted by this behaviour. Harassment is often directed at a particular characteristic of a person or group, such as a person's gender, cultural or racial background or disability. Bullying is a form of workplace harassment and may include both covert or overt types of conduct or behaviour. Bullying and harassment are not always intentional.

Harassment can include sexual harassment (as defined in section 28A(1) of the *Sex Discrimination Act 1984*). In broad terms, sexual harassment occurs when a person makes an unwelcome sexual advance or unwelcome request for sexual favours to the person harassed, or engages in other unwelcome conduct of a sexual nature in relation to the person harassed in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

6. Definition of responsibilities

The Museum, as an Australian Public Service Agency bound by the *Public Service Act 1999*, is responsible for ensuring that systems are in place to prevent and address harassment. Harassment is inconsistent with the APS Values, the APS Employment Principles and the APS Code of Conduct as well as Commonwealth anti-discrimination, anti-harassment and work health and safety laws.

Preventing bullying and harassment is everyone's responsibility and preventing such behaviour will make the Museum a more pleasant and productive workplace. Particular responsibilities may vary from time to time according to the employee's role and the circumstances relating to an issue or event. Employees can have managerial and supervisory responsibilities as well as individual responsibility.

Individual employees

Individual staff members have responsibility for preventing harassment, contributing to a productive work environment and ensuring that their behaviour meets acceptable standards.

Director and Senior Executives

In addition to their responsibilities as individuals, the Director and Senior Executives have organisational and managerial responsibility to proactively prevent bullying and harassment. In particular, they are responsible for promoting the APS Values, the APS Employment Principles and the Code of Conduct by personal example and by taking prompt action when they become aware of alleged instances of bullying or harassment, wherever it occurs in the Museum.

Workplace Support Officers

Workplace Support Officers:

- provide information and confidential advice to managers and staff about their responsibilities under these guidelines
- support staff who may be the subject of bullying or harassment or who may have witnessed or who have been accused of instances of bullying or harassment, while ensuring that no active part is taken in the resolution of the case
- attend meetings and interviews with employees, without becoming an advocate on their behalf
- provide information to managers/supervisors on possible ways to manage and resolve complaints
- clarify what types of behaviours are unacceptable at work, in line with the APS Code of Conduct, APS Values and APS Employment Principles
- monitor and report on the nature of instances of alleged bullying and harassment that are reported to them.

Note: support cannot be provided to the complainant and the respondent on the same matter. If this becomes apparent, one of the staff members must be referred to another Workplace Support Officer as soon as a conflict of interest is identified.

7. References

Age Discrimination Act 2004 (Cth)
Australian Human Rights Commission Act 1986 (Cth)
Disability Discrimination Act 1992 (Cth)
Public Service Act 1999
Racial Discrimination Act 1975 (Cth)

8. Implementation

8.1 Coverage

All staff.

8.2 Other related policies

Code of Conduct guidelines and procedures (PRO-015)
 Work Health and Safety policy (POL-G-062)

8.3 Exclusions

There are no exclusions to this policy.

8.4 Superseded policies

This policy supersedes:

Former policy/ies title	Version number	Version date	Council approval date
Guidelines on preventing bullying and harassment in the workplace	1.1	June 2011	9/6/11
Guidelines on preventing Bullying and Harassment	2.0	December 2013	19/12/13

Guidelines on preventing bullying and harassment	2.2	September 2020	N/A
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8.5 **Monitoring**

This guideline will be reviewed every two years.