



8 October 2020

Workplace Conduct Policy

The District Court of New South Wales (“the Court”) and the Dust Diseases Tribunal of New South Wales (“the Tribunal”) recognise the importance of fairness, dignity and respect for others in the workplace and takes the safety and security of judicial and court staff seriously.

This Policy aims to:

- Define clear standards of appropriate conduct expected of all judicial and court staff;
- Set out the procedure for any person concerned these standards have been breached, to raise the matter in a safe and secure way;
- Provide the framework within which any such concern will be addressed.

The Court and the Tribunal do not tolerate inappropriate workplace behaviour, which includes bullying, harassment, sexual harassment, other forms of unlawful discrimination, vilification and violence.

This Policy is intended to complement relevant Department of Communities and Justice Guidelines but specifically applies to judges, associates and tipstaff of the Court and the Tribunal because of their unique position in the judicial system. It also applies to the conduct of judges in their dealings with other staff working in court premises. Other Departmental policies and guidelines will apply to Registry staff in general. Nevertheless, the conduct regarded as unacceptable workplace conduct also applies to those within the Registry.

This Policy applies to all work circumstances, including where judicial staff members are required to travel with their judge to circuit hearings and the like; or to work with the judge away from chambers. It also applies to all social functions attended by judicial staff and judges.

It is important that there be clarity of roles and responsibilities within judges' chambers, so that it is clearly understood what is expected of judges and their staff. Induction programmes will emphasise this and the importance of adherence to the values set out in this Policy.

Unacceptable workplace conduct

Broadly speaking, unacceptable workplace conduct includes the following types of conduct.

Bullying

Workplace bullying is repeated and unreasonable, belittling, insulting, aggressive or intimidating behaviour directed towards a person or group of persons in the workplace that creates a risk to health and safety. It may include abusive or offensive language or comments, victimisation, unjustified criticism or complaints, deliberate exclusion from workplace activities, and conduct that impedes effective work performance.

It is important to recognise that reasonable allocation of work and supervision, including the giving of feedback on work, and reasonable management action in the workplace, is not workplace bullying. In this regard, high standards of performance and diligence will be expected of work in judges' chambers, commensurate with the role and responsibilities of the judge and his or her judicial staff.

It should also be noted that justified and reasonable criticism, differences of opinion and disagreements are generally not workplace bullying.

Discrimination

Discrimination, both direct and indirect, is unacceptable. Direct discrimination includes less favourable treatment of a person who is relevantly in the same circumstances, or in circumstances which are not relevantly materially different, on the basis of factors such as gender, sexual preference, disability, age, marital or domestic status, ethnicity or religious background, race, carer responsibilities and association. Indirect discrimination arises where there is a requirement or practice which, unreasonably in all the circumstances, disadvantages one group of persons more than another by reason of one or more of those prohibited grounds.

Harassment

Harassment is unwelcome, uninvited or unsolicited behaviour which, offends, humiliates, intimidates or belittles someone. Unlawful harassment is conduct which offends, humiliates or intimidates someone on the basis of a protected attribute such as race, gender, sexual preference, disability, age, marital status or carer's responsibilities. Harassment can include telling insulting jokes, displaying offensive material, making derogatory comments or asking intrusive questions. It is important to note that a one-off incident can constitute harassment.

Sexual Harassment

Sexual harassment includes any unwanted, uninvited or unsolicited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment.

Examples of sexual harassment include:

- Smutty jokes or comments
- Making promises or threats to procure sexual favours
- Displays of sexually graphic material
- Repeated invitations to go out after prior refusal
- Indecent exposure or sexual gestures
- Insults, taunts, teasing or name-calling of a sexual nature
- Staring or leering at a person or at parts of their body
- Unwelcome physical contact such as kisses, embraces or touching
- Requests for sex
- Sexually explicit conversation
- Persistent questions or insinuations about a person's private life
- Offensive phone calls or letters
- Offensive emails or computer screen savers.

Conduct not amounting to sexual harassment

Conduct does not amount to sexual harassment where it is based on mutual attraction, friendship and respect or where the interaction is consensual, welcome and reciprocated.

Vilification

Vilification is a public act that incites hatred, serious contempt, or severe ridicule against another person or group of people, because of their race, ethnicity, religion, sexuality or gender. It may include speech, writing and the display of symbols, material and gestures which convey a message of hatred, serious contempt or severe ridicule.

Vilification includes behaviour towards a person by reference to that person's gender, sexuality, HIV status, ethnicity, racial or religious background or nationality, which is likely, in all of the circumstances, to offend, insult, humiliate or intimidate the person.

Victimisation

Victimisation is subjecting another person to a detriment or treating that person unfairly or unequally on the grounds that the person victimised has, intends to or is suspected of making a complaint, or because the person has made an enquiry into or is witness to a complaint including, for example, where the person victimised has brought (or is suspected of intending to do so) proceedings or made allegations against the other person under legislation such as the *Anti-Discrimination Act 1977* (NSW) or the *Public Interest Disclosures Act 1994* (NSW).

Procedures for raising concerns

All persons, including judges and staff, are encouraged to make a complaint about any inappropriate or unacceptable workplace conduct and to report any suspected inappropriate or unacceptable workplace conduct. It is not only desirable but important that such conduct be reported. Such reports may be made formally or informally and not only by a complainant but by witnesses to the conduct.

Consistently with any reporting requirements, complainants of or witnesses to unacceptable workplace conduct will be offered anonymity and confidentiality (though anonymity may inhibit how the complaint is dealt with). All such persons will be offered support without risk of adverse repercussions in their employment. All persons are also encouraged to seek support, information and advice as to such concerns in the manner indicated below.

Raising a complaint

Where the complaint or concern is by an associate or tipstaff in relation to conduct by either another associate, tipstaff or judge, the complaint or concern is to be directed to the Associate of the Chief Judge, Ms Lisa Freeman lisa.freeman@courts.nsw.gov.au or Ms Jenifar Garvey, the Judicial Support Co-ordinator jenifar.garvey@courts.nsw.gov.au.

Where the complaint or concern is by a judge in relation to conduct by an associate, tipstaff or judge, the complaint or concern is to be directed to the Chief Judge.

Complaints may be recorded in writing so there is no misunderstanding as to the nature of the complaint and the wishes of the complainant in resolving the matter.

Informal Procedures

In some situations, informal procedures may be appropriate where the allegations are of a less serious nature and the complainant wants it to cease, where the complainant wishes to pursue an informal resolution, or where the parties are likely to have ongoing contact and the complainant wishes to continue the working relationship. To that end, informal procedures will focus on resolution of the issue rather than substantiation of the underlying concern or complaint.

Without limiting the scope of available measures, informal procedures may include seeking advice as to strategies to deal with the issue, seeking to have the other party spoken to on an informal basis, seeking additional support through counselling services available through the Department of Communities and Justice.

Informal procedures do not need to be exhausted before formal procedures are commenced.

Formal Procedures

In other situations, formal procedures may be appropriate. Such situations may include where informal attempts at resolution have failed; or the complainant wishes to proceed with a formal investigation; or the complaint involves serious allegations of unacceptable workplace conduct; or the allegations are denied; or where such an investigation is required as a matter of law.

Formal procedures focus on establishing whether a complaint is substantiated and may involve external investigation of the allegations.

Any documentation in relation to the concern or complaint will be treated confidentially subject to the need to afford procedural fairness to the person the subject of the concern or complaint.

Formal investigations of complaints will be conducted by an independent, external adviser to be appointed by the Chief Judge or, where appropriate, referred to the Judicial Commission of New South Wales.

Complainants will be kept informed, of the nature of the steps that are proposed for any formal or informal resolution process and the progress and outcome of those steps.

Judicial Commission of New South Wales

This protocol for reporting complaints is not intended to preclude the right of judicial staff to complain directly to the Judicial Commission or to other authorities. Judicial staff will be supported and will suffer no adverse consequences in their employment from the making of such a complaint. Judicial staff are assured that any such complaint directed to the Judicial Commission will be dealt with in accordance with the normal processes of the Judicial Commission.

The obligation to report a serious indictable offence

Where a complaint or concern is raised it will be kept confidential, having regard to the need to investigate the complaint and any obligation to report the particular conduct of concern. The Court recognises that while the obligation arises under s 316 of the Crimes Act 1900 (NSW) to report information relating to a serious indictable offence to the NSW Police Force or other appropriate authority, it is a reasonable excuse not to report the information if the alleged victim is an adult and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported. The Court will otherwise report the information, with the alleged victim's consent. Serious indictable offences include the offences of indecent assault and sexual assault.

Social Functions

Although judicial staff may be expected in the course of their duties to assist when there are judicial functions in the Court and the Tribunal (by, for example, assisting in the preparation for those functions, serving food and beverages, and cleaning up), judicial staff are not to be required by Judges to participate in social functions after their duties have been completed if they do not wish to do so.

Review

The Court and Tribunal emphasise that this policy is being further reviewed. The review includes the induction process for judicial staff, education programs for Judges and judicial staff and complaint procedures.

Additional Information and Resources

Further information and resources to deal with concerns as to inappropriate workplace conduct can be obtained by reference to external sources such as Department of Communities and Justice publications; guidelines of the NSW Bar Association and NSW Law Society; and the Law Council of Australia policy documents. Reference may also be made to external organisations such as the Judicial Commission and the Australian Human Rights Commission.
