



Supreme Court Policy on Inappropriate Workplace Conduct

Aims

The Supreme Court recognises the importance of fairness, dignity and respect for others in the workplace and that each person has a safe and secure place in which to work. The Court does not tolerate inappropriate workplace behaviour, which includes bullying, harassment, sexual harassment, other forms of unlawful discrimination, vilification and violence.

The objects of the Policy are twofold: first, to define clear standards of appropriate behaviour and, second, to provide a safe and secure method by which any person who is concerned that these guidelines are being or have been breached can raise the matter in confidence. The Policy also sets out the framework within which any such concerns will be addressed.

Introduction

The Court, after research and consultation, has determined it would be appropriate to promulgate a workplace conduct policy which is not in substitution for but intended to be complementary to the relevant Department of Communities and Justice Guidelines.

In seeking to implement the most appropriate policy, consultation has taken place and information obtained from the Bar Association, Law Society, and, on a confidential basis, from the private sector within the legal profession.

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.

It is also important to ensure transparency of reporting procedures so that there is a clear understanding both of the protocol for reporting concerns and how such concerns will be addressed.

More information regarding organisations and resources to deal with concerns as to inappropriate workplace behaviour can be obtained by reference to external sources such as the Department of Communities and Justice publications; the New South Wales Bar Association's various guidelines on the topic; the Law Society guidelines 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.

Scope

The Policy is intended to apply to the conduct of both judges and judicial staff, and to be for the benefit of judges and judicial staff (being those directly involved in working in judges' chambers). It also applies to the conduct of judges in their dealings with other staff working in court premises. The Policy is addressed and limited to those persons because they are in a unique position in the judicial system. 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.

Unacceptable Workplace Conduct

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

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 account of a range of grounds (such as gender, sexual preference, disability, age, marital or domestic status, ethnicity or religious background, race and carer responsibilities). 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.

Bullying

Workplace bullying is unreasonable and belittling, insulting, aggressive or intimidating conduct directed towards a person or group of persons in the workplace (such as abusive or offensive language or comments; victimisation; unjustified criticism or complaints; deliberate exclusion from work-related activities; and such other 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.

Justified and reasonable criticism, differences of opinion and disagreements are generally not workplace bullying.

Harassment/sexual harassment

Harassment is unwelcome, uninvited or unsolicited behaviour, which offends, humiliates, intimidates or belittles someone.

Sexual harassment includes uninvited sexual advances, requests for sexual favours or other uninvited conduct of a sexual nature that could reasonably be expected to be unwelcome or unsolicited or make a person feel offended, humiliated or intimidated.

Victimisation

Victimisation is subjecting another person to a detriment or treating that person unfairly or unequally on the grounds that the person victimised has made a complaint (or is suspected of making a complaint or intending to make a complaint) or because that person has sought or made an enquiry into or is witness to a complaint 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).

Vilification

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

Procedure 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. Any person with concerns or complaints as to suspected unacceptable workplace conduct is encouraged to seek support, information and advice as to such concerns from the judicial officers nominated below (or, if they are comfortable so doing, with the judge with whom they work or the head of Division or President of the Court of Appeal).

Where the concern or complaint is by a judicial staff member in relation to conduct by another judicial staff member or by a judge, the matter should be referred in the first instance, at the complainant's option, to any one of the following persons: (a) the

external consultant nominated by the Court for receiving and dealing with complaints at first instance; (b) the Executive Director; or (c) one or both of the judges from the respective Divisions of the Court nominated by the Chief Justice as having responsibility from time to time for receiving complaints at the judicial level.

Where the concern or complaint is by a judge in relation to another judge or a judicial staff member, the matter should be referred directly to the Chief Justice, unless the judge prefers to raise the matter with the President of the Court of Appeal or the Head of the relevant Division; or wishes to refer the matter direct to the Judicial Commission.

External Consultant

Staff will be informed of the identity of the external consultant and a dedicated phone line on which she can be contacted at any time.

The role of the external consultant is to advise the complainant as to the steps he or she can take in relation to his or her complaint, and as to the resources available to deal with any issues; and if the complainant wishes the external consultant to do so (or if the external consultant considers this necessary) she will raise the matter anonymously and confidentially with the Chief Justice and a person nominated by the Chief Justice (his nominee) for review as to the next steps to be taken, including whether an external investigation should be conducted or the matter should be referred to the Judicial Commission or other appropriate steps should be taken.

Dealing with Complaints

If the matter is referred to one of the persons identified in (b)-(c) above, that person will, as considered appropriate, report concerns or complaints (and the outcome of any attempted resolution of those concerns or complaints) confidentially to the Chief Justice and his nominee with a view to considering whether any further action is necessary; and that person may also, as appropriate, report the matter to the President of the Court of Appeal or Head of the relevant Division.

Where concerns or complaints are raised, this will be kept confidential to the extent possible (having regard to the need to investigate the complaint and any obligations to report particular conduct, as the case may be); having regard also to the wishes of the complainant and the need to afford procedural fairness to all concerned.

Informal procedures (focussed on resolution of the issue rather than substantiation of the underlying concern or complaint) may be appropriate where the person raising the concern wishes to resolve the issue informally.

Formal procedures (focussed on establishing whether a concern or complaint is substantiated) are usually appropriate where the complainant has been victimised or where the concern or complaint involves serious allegations of inappropriate workplace behaviour, or where informal attempts at resolution have been unsuccessful, and where the complaint is denied and the person raising the concern or complaint wishes to proceed with a formal investigation, or where that is required as a matter of law.

Documentation in relation to the concern or complaint will be treated confidentially (subject to the need to afford procedural fairness and natural justice to the person the subject of the concern or complaint) with details available only to the nominated judge with responsibility for receiving such complaints and/or the Chief Justice and those required to conduct any investigation into the concern or complaint and to initiate appropriate action (subject, again, to the need to afford procedural fairness to all concerned).

Investigation of complaints at a formal level will be conducted by an independent external adviser to be appointed by the Chief Justice or, where appropriate, referred to the Judicial Commission of New South Wales.

Complainants will be informed, and 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.

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; and he or she will be supported and will suffer no adverse consequences from the making of

such a complaint. Judicial staff should be assured that any such complaint directed to the Judicial Commission will be dealt with in accordance with the normal processes of the Judicial Commission.

Advice and Support

The Chief Justice will also nominate a small group of senior people within the Court, which will include the Associate to the Chief Justice and the Research Director to the Chief Justice, from whom judicial staff can confidentially seek advice and support.

Additional Information

The Executive Director of the Court, the Associate to the Chief Justice or the Research Director to the Chief Justice may be contacted for details as to where further information in relation to the Policy or the matters the subject of the Policy can be found.

The Court proposes broadly to follow the recommendations announced by the Chief Justice of the High Court of Australia, including a review of the induction process for associates and tipstaves; the introduction of a more formal mentoring system for judicial staff; clarification as to the scope of confidentiality obligations of judicial staff; and obtaining more focussed feedback on the experiences of judicial staff in their work at the Court. In particular, it will be made clear to judicial staff that, while they may be expected in the course of their duties to assist when there are social functions in the Court (by, for example, assisting in the preparation for those functions, serving food and beverages, and cleaning up), they should not be required by judges to participate in social functions if they do not wish to do so.
