

Policy on Inappropriate Workplace Conduct

Purpose

The Court seeks to foster a safe and supportive workplace for all and does not tolerate inappropriate workplace conduct by judges, chambers staff, Registry or other Court support staff.

Inappropriate conduct may occur in any workplace but is more likely to occur, and is more likely to have significant consequences, in workplaces characterised by substantial power differences, including courts.

A formal complaint about inappropriate workplace conduct by a judge may be made to the Judicial Council: see www.actjudicialcouncil.org.au

A formal complaint about inappropriate workplace conduct by chambers staff, Registry or other Court support staff may be made in accordance with public service procedures.

Aggrieved persons who do not wish to make a formal complaint about inappropriate conduct may be prepared to make a less formal complaint.

This policy is intended to:

- a) alert judges, chambers staff, Registry and other Court support staff to their rights and responsibilities in relation to inappropriate workplace conduct; and
- b) state the processes for making and addressing less formal complaints about such conduct.

What is inappropriate workplace conduct?

Inappropriate workplace conduct includes:

- a) Bullying – repeated, unreasonable behaviour such as repeated blaming, insults, putdowns, shouting or verbal aggression.
- b) Harassment – conduct that lacks a legitimate purpose and offends, humiliates or intimidates the recipient, including teasing or offensive joking about gender, sexual orientation, physical features, disability, age, or racial or cultural difference.
- c) Sexual harassment – unwelcome sexual or gender-orientated conduct that offends, humiliates or intimidates the recipient, including uninvited touching, and promises of reward or threats of repercussions if sexual favours are or are not provided.
- d) Victimization associated with allegations of inappropriate workplace conduct.
- e) Other conduct that unreasonably causes personal discomfort to the recipient.

It includes conduct by judges, chambers staff, Registry staff or other staff who support the Court.

It includes conduct directed towards judges, chambers staff, Registry or other Court staff, lawyers, litigants, witnesses or other Court users.

It includes conduct that occurs outside the workplace but in a workplace context, such as a work sanctioned party or travel for the purpose of work. It also extends to conduct that occurs anywhere outside the workplace which leverages off power imbalance within the workplace.

What should you do if you are subjected to, witness or are told of inappropriate workplace conduct?

All inappropriate conduct should be reported as soon as possible, either formally or less formally.

A less formal complaint may be made either orally or in writing.

Inappropriate conduct by a judge or member of chambers staff

If the complaint concerns inappropriate conduct by a judge, a formal complaint may be made to the Judicial Council.

If the complaint concerns inappropriate conduct by a chambers staff member, a formal complaint may be made to the Principal Registrar or Registrar.

If no formal complaint is made, then a less formal complaint should be made by the person affected (the complainant) and/ or any witness. Preferably, the conduct should be reported to the Chief Justice, another judge, the Chambers Manager, or one of the Chief Justice's associates. However, if the complainant or witness feels more comfortable doing so, the complaint may be made to someone else.

If the complaint is made to someone other than the Chief Justice then, unless the complaint concerns the Chief Justice, the person to whom the complaint is made must seek the complainant's consent to convey the complaint (or, at least, the substance of the complaint) to the Chief Justice. The Chief Justice may discuss the complaint with the Principal Registrar.

If the complaint concerns the Chief Justice, then the person to whom the complaint is made must seek the complainant's consent to convey the complaint (or, at least, the substance of the complaint) to the Principal Registrar, who will consult the Chief Justice of another jurisdiction.

If the complainant wishes to remain anonymous, they may do so.

All complaints will be treated as confidentially as is possible. However, if the complainant chooses to remain anonymous, this may limit the extent to which the complaint can be pursued in accordance with this policy.

Inappropriate conduct by Registry and other Court support staff

A formal complaint may be made to the Principal Registrar, Registrar or Sheriff.

If no formal complaint is made, then the complainant or witness should make a less formal complaint. Preferably, the conduct should be reported to the Principal Registrar, Registrar or Sheriff. However, if the complainant feels more comfortable doing so, the complaint may be made to someone else.

If the complaint is made to someone other than the Principal Registrar then, unless the complaint concerns the Principal Registrar, the person to whom the complaint is made must seek the complainant's consent to convey the complaint (or, at least, the substance of the complaint) to the Principal Registrar. The Principal Registrar may discuss the complaint with the Chief Justice, Registrar and/or Sheriff.

If the complaint concerns the Principal Registrar then the person to whom the complaint is made must seek the complainant's consent to convey the complaint (or, at least, the substance of the complaint) to the Chief Justice, who may consult the Director-General, Justice and Community Services (JACS).

If the complainant wishes to remain anonymous, they may do so.

All complaints will be treated as confidentially as is possible. However, if the complainant chooses to remain anonymous, this may limit the extent to which the complaint can be pursued in accordance with this policy.

What will happen if a less formal complaint is made?

Consultation

If the identity of the complainant is known, they will be consulted concerning the action to be taken and their views will be respected. They will be offered support.

If the Chief Justice or Principal Registrar considers that the complaint raises serious misconduct, they will encourage the complainant to make a formal complaint.

Counselling

The person the subject of a less formal complaint will be counselled about the conduct, provided that:

- a) after discussing the general allegation with the person, the Chief Justice or Principal Registrar considers that counselling may be beneficial; and
- b) if their identity is known, the complainant has expressed no contrary preference.

If the complainant so desires, their anonymity will be maintained during counselling of the person complained about.

If the allegation concerns a judge other than the Chief Justice, the Chief Justice will counsel the judge and/or arrange for a suitable person (such as another judge or a psychologist) to do so. If the allegation concerns the Chief Justice, the Principal Registrar will ask the Chief Justice of another jurisdiction to counsel the Chief Justice and/or arrange for a suitable person to do so.

If the allegation concerns a chambers staff member, the Chief Justice will counsel the staff member and/or arrange for a suitable person to do so.

If the allegation concerns Registry or other Court support staff, the Principal Registrar will counsel the staff member and/or arrange for a suitable person to do so. If the allegation concerns the Principal Registrar, the Chief Justice and/or the Director-General JACS will counsel the Principal Registrar and/or arrange for a suitable person to do so.

If the identity of the complainant is known, they will be advised about whether counselling occurred. If it did occur, they will be advised in general terms about the outcome. If it did not occur, they will be advised in general terms about why it did not occur.

Support

Unless the Chief Justice or Principal Registrar decides that it is inappropriate, the complainant will be offered:

- a) a mentor and/or support person with whom they are happy; and
- b) independent, free psychological counselling and support, as agreed.

If the complainant is a member of chambers staff, the Chief Justice will endeavour to ensure that they are able to continue comfortably in their role. If necessary, they will be offered another position of equal status.

If the complainant is a member of the Registry or other Court support staff, the Principal Registrar will endeavour to ensure that they are able to continue comfortably in their role. If necessary, the person about whom the complaint is made or the complainant will be offered another position of equal status.

If the Chief Justice or Principal Registrar decides that it is appropriate, the person about whom a complaint has been made will be offered:

- a) a mentor and/or support person with whom they are happy; and
- b) independent, free psychological counselling and support, as agreed.

Mediation

If the Chief Justice or Principal Registrar decides that mediation is likely to be beneficial, they will arrange for free mediation by a person who is acceptable to both the complainant and the person complained about.

Induction and ongoing education

When inducted and thereafter, judges, chambers staff, Registry staff and other Court support staff will be educated about:

- a) What constitutes appropriate and inappropriate workplace conduct.
- b) Techniques to deal with inappropriate workplace conduct, particularly in circumstances of power imbalance.
- c) What they should do if they are subjected to, witness or are told about inappropriate workplace conduct.
- d) How to make a formal and a less formal complaint about inappropriate workplace conduct.
- e) What will happen if a formal or a less formal complaint is made.

Distribution and review of policy

This policy will be included in the Judges Guide and the Associates Guide and will be disseminated to Registry and other Court support staff and Court users.

This policy will be reviewed regularly.

ACTPS Employment Portal

Note that the ACTPS Employment Portal provides information, policies and guidance on workplace behaviour and includes a resource on work bullying, harassment and discrimination.