



Good practice, good business

Eliminating discrimination and harassment from your workplace

DEVELOPING AND IMPLEMENTING INTERNAL COMPLAINTS PROCEDURES

Employers should establish internal complaints procedures for dealing with discrimination and harassment complaints to maximise the possibility of in-house resolution. There is no one 'right' internal complaints procedure – so employers have the flexibility to design a system that suits their organisation's size, structure and resources.

Because of the variables that can arise in discrimination and harassment cases (eg, the severity and complexity of the allegations, relative seniority of the parties, whether the allegations are admitted or denied, etc), it is recommended that employers offer staff both **informal** and **formal** complaint procedures.

Employers can establish a specific procedure for discrimination and harassment complaints or, alternatively, use the procedure that is already in place for other types of work-related grievances. However, discrimination and harassment complaints can be complex, sensitive and potentially volatile. Anyone who has responsibility for dealing with them will require specialist expertise and should receive appropriate training. An organisation's *internal complaints procedures checklist* to use as a guide is included in this fact sheet.

Informal complaint procedures

Informal procedures emphasise resolution rather than factual proof or substantiation of a complaint. Informal ways of dealing with complaints of discrimination and harassment can include the following action:

- the individual who has been discriminated against or harassed wants to deal with the situation themselves but may seek advice on possible strategies from their supervisor

or another officer (eg, harassment contact officer, EEO officer, industrial relations manager, etc)

- the individual who has been discriminated against or harassed asks their supervisor to speak to the alleged harasser on their behalf – the supervisor privately conveys the individual's concerns and reiterates the organisation's policy to the alleged perpetrator without assessing the merits of the case
- a complaint is made, the perpetrator admits the behaviour, investigation is not required and the complaint can be resolved through conciliation or counselling
- a supervisor or manager observes unacceptable conduct occurring and takes independent action even though no complaint has been made.

Informal action is usually appropriate where:

- the allegations are of a less serious nature but the individual subjected to the behaviour wants it to cease nonetheless
- the individual subjected to the behaviour wishes to pursue an informal resolution
- the parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.

An employee should not be required to exhaust informal attempts at resolution before formal action commences. Employees have the right to formalise their complaint or approach an external agency, such as the Australian Human Rights Commission, at any stage.

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For specific information see the guide *Informal resolution of complaints by managers or supervisors*.

Formal complaint procedures

Formal complaints procedures focus on looking at whether a complaint can be substantiated, or at least whether the parties can be brought together to try and reach a satisfactory outcome. Formal complaints procedures usually involve:

- investigation of the allegations
- application of the principles of natural justice
- making a finding as to whether the discrimination or harassment occurred, or whether it is likely it occurred
- submitting a report with a recommended course of action to the appropriate decision-maker (senior management)
- implementation of an appropriate outcome.

Formal procedures are usually appropriate where:

- informal attempts at resolution have failed
- the person alleging discrimination or harassment has been victimised
- the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties
- the complaint is against a more senior member of staff - formal procedures may help to ensure that the complainant is not victimised or disadvantaged
- the allegations are denied and the person who claims to have been harassed wishes to proceed and investigation is required to substantiate the complaint
- the person alleging discrimination or harassment wishes to make a formal complaint from the outset.

The steps involved in a formal complaint

To ensure consistency and fairness, employers should document the steps involved in a formal complaint. The usual sequence of events is as follows:

- the complainant is interviewed and the allegations are particularised in writing
- the allegations are conveyed to the alleged perpetrator in full
- the alleged perpetrator is given the opportunity to respond and defend themselves against the allegations
- if there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered
- a finding is made as to whether the complaint has substance
- a report documenting the investigation process, the evidence, the finding and recommended outcome(s) is submitted to the appropriate decision-maker (senior management)
- the decision-maker implements the recommended outcome/s or decides on an alternative course of action.

The parties should be permitted to have a union official, support person, advocate or other representative accompany them to any interviews or meetings.

Consideration of evidence

A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature of the offence, there are often no direct witnesses to alleged acts of discrimination and harassment. Those responsible for investigating complaints should consider all available evidence, including any surrounding evidence. The following type of evidence may be relevant:

- supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker
- supervisors reports and personnel records (eg, unexplained requests for transfer or shift changes, sudden increase in sick leave)

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- complaints or information provided by other employees about the behaviour of the alleged perpetrator
- records kept by the person claiming to have been discriminated against or harassed
- whether the evidence was presented by the parties in a credible and consistent manner
- the absence of evidence where it should logically exist.

Outcomes

Outcomes can include any combination of the following:

- counselling
- disciplinary action (eg, demotion, transfer, suspension, probation or dismissal)
- formal apology
- conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
- re-crediting any leave taken as a result of the discrimination or harassment
- official warnings that are noted on the perpetrator's personnel file
- disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious.

Outcomes will depend on factors such as:

- the severity and frequency of the discrimination or harassment
- the weight of the evidence
- the wishes of the person who was discriminated against or harassed
- whether the harasser could have been expected to know that such behaviour was a breach of policy

- whether there have been any prior incidents or warnings.

If there is insufficient proof to decide whether or not discrimination or harassment occurred employers should nevertheless:

- remind those involved of expected standards of conduct
- conduct further training and awareness raising sessions for staff
- monitor the situation carefully.

Employers must ensure that the outcome of a substantiated complaint does not disadvantage in any way the person who was discriminated against or harassed.

CHECKLIST

Employers should ensure that their organisation's internal complaints procedures:



- ✓ **are clearly documented and accessible to all employees**
- ✓ **offer both informal and formal options**
- ✓ **guarantee timeliness, confidentiality and objectivity**
- ✓ **are administered by trained personnel**
- ✓ **provide clear guidance on investigation procedures and record keeping**
- ✓ **guarantee that no employee will be victimised or disadvantaged for making a complaint**
- ✓ **are regularly reviewed for effectiveness.**

This fact sheet is part of *good practice, good business* – information and resources for employers to address discrimination and harassment in the workplace.

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