

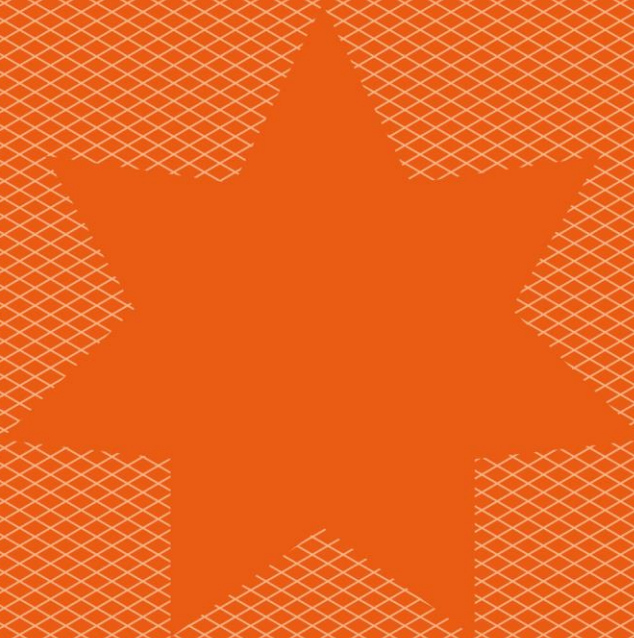


CDPP

Australia's Federal Prosecution Service

People Branch

WORKPLACE RESPECT & COURTESY GUIDELINES



WORKPLACE RESPECT AND COURTESY

OVERVIEW

These guidelines explain the commitment of the Office of the Commonwealth Director of Public Prosecutions (CDPP) to provide a workplace environment which upholds the Australian Public Service (APS) Values, Employment Principles and Code of Conduct (the Code) and where forms of inappropriate workplace behaviour including discrimination, harassment and bullying are not tolerated. The CDPP is an equal opportunity employer that promotes appropriate, reasonable, fair, respectful and courteous behaviour in the workplace at all times.

The CDPP is firmly committed to:

- creating and maintaining a workplace where everyone is treated with respect and courtesy, and without harassment
- cultivating and maintaining an environment that supports a positive workplace culture through effective and appropriate communication, cooperation and teamwork
- taking all reasonable and practicable steps to prevent all forms of inappropriate workplace behaviour including bullying and harassment from occurring in the workplace
- responding sensitively and effectively to incidents of inappropriate workplace behaviour that may occur
- respecting differences such as gender, cultural and social backgrounds and expertise.

There may be serious consequences for CDPP employees who are found to have engaged in any form of inappropriate workplace behaviour in connection with their APS employment.

Those consequences include the possibility of facing formal disciplinary proceedings which may also result in the imposition of sanctions under section 15(1) of the [Public Service Act 1999](#) (PS Act), including, in the most serious circumstances, termination of employment.

APPLICATION

These Guidelines apply to all employees engaged with the CDPP under section 22 of the PS Act, as well as contractors, counsel and volunteers, and complement other related CDPP policy, procedures and guidelines available on ehub including:

- [CDPP Values and Behaviours Statement](#)
- [APSC Social Media Guidance](#)
- [Email and Internet Use Policy](#)
- [Suspected Misconduct Guidelines](#)
- [Procedures for Determining Suspected Breaches of the APS Code of Conduct](#)
- [Work Health and Safety Policy](#) and
- [Public Interest Disclosure – Principal Officer's Procedure.](#)

RESPONSIBILITIES

Agency Heads have a specific obligation under section 12 of the PS Act to uphold and promote the APS Values and the APS Employment Principles while Senior Executive Service (SES) employees have a specific obligation under subsection 35(3)(c) of the PS Act to promote the APS Values, the APS Employment Principles and compliance with the Code of Conduct by personal example and other appropriate means.

CDPP employees have shared obligations for creating a respectful, courteous and harmonious workplace and **must** treat everyone with respect and courtesy. This includes colleagues, APS employees in other agencies, employees of partner agencies, clients and other members of the public. It also includes treating everyone with civility and tact even when others may display behaviour which is critical, hostile or rude towards them. Employees must uphold these same values during all employment/work related social activities and when undertaking business travel, whether during or outside of normal work hours.

Manager responsibilities

If an employee raises a concern about inappropriate workplace behaviour with their manager, the manager **must** take the following steps as soon as possible:

- sensitively discuss the matter with the employee raising the concern
- listen to the employee's concerns with respect and treat the matter seriously and in the strictest of confidence
- advise the employee about confidentiality and privacy requirements and importantly that they **must not** discuss the issue with others in the workplace - with the exception of the relevant HR Advisor Harassment Contact Officer (HCO) and/or the [CDPP's EAP Provider](#)
- make an accurate detailed written record of the discussion with the employee
- **before** taking any other action of any type, managers **must** contact their HR Advisor and advise them of the concerns raised by the employee – they will provide managers with assistance and guidance to manage the issue appropriately and according to the particular circumstances of the matter.

In the vast majority of cases, with the assistance of their HR Advisor, complaints and concerns raised about inappropriate workplace behaviour can be decisively managed and resolved in the workplace through less formal alternative dispute mechanisms by the manager.

In such cases, and where it is considered appropriate to the particular circumstances, the HR Advisor will assist the manager with appropriate strategies to:

- sensitively discuss the matter with the employee alleged to be behaving inappropriately to give them the opportunity to respond to the concerns raised about their behaviour
- resolve the issue in the workplace through various appropriate alternative dispute resolution mechanisms such as counselling, training and/or conciliation/mediation and where possible and appropriate to the particular circumstances, seek an apology from the employee to the complainant employee
- take all reasonable steps necessary to ensure that the issue does not occur again
- take all reasonable steps necessary to ensure that the matter does not become an item of office gossip
- prevent any retribution or discrimination of the parties concerned
- maintain accurate written records of all action taken and discussions that occurred during the course of resolving the issue.

Transferring the complainant employee or the employee allegedly behaving inappropriately to another work location almost never satisfactorily resolves the matter in the absence of taking each of the above appropriate steps towards resolution of the issues.

While in some circumstances it may provide temporary relief from the immediate situation, it can also mean that the employee allegedly behaving inappropriately may go on to behave in a similar way towards

other employees. Other employees may also develop the incorrect perception that the complainant employee who raised concerns about the behaviour is being penalised by the manager or the CDPP for doing so. It is also possible that the manager's reputation may be damaged through perceptions of a failure to properly address and manage the situation.

HR Advisor responsibilities

The HR Advisors provide assistance to managers and employees with concerns raised about the conduct and behaviour of CDPP employees. They will assist with:

- conducting preliminary inquiries and assessments of allegations made about suspected breaches of the Code and makes recommendations about any further action that may be required in the circumstances of the particular matter
- assisting the Chief Corporate Officer (CCO) and the National Manager People (NMP) with respect to managing cases of suspected breaches of the Code
- liaising with all areas of the CDPP and other Commonwealth agencies including the Australian Public Service Commission (APSC) and the Merit Protection Commissioner about APS Code of Conduct and ethical behaviour issues
- providing education, guidance and advice to CDPP employees and managers on the Code to promote appropriate workplace behaviour, integrity in the performance of employee's duties and in the use of the CDPP's resources and Information and Communications Technology (ICT) systems.

Harassment Contact Officers (HCO) responsibilities

HCOs are trained employees who are available to assist employees with concerns they may have including inappropriate behaviour in the workplace.

The role of a HCO is to:

- provide information about the CDPP's Workplace Respect and Courtesy Guidelines
- discuss appropriate resolution options and outcomes
- help employees seeking assistance impartially, sensitively and in a timely manner
- listen without judgement and assist to clarify issues.

However, HCOs:

- are not responsible for the management of complaints
- are not able to offer advice about what employees should do in the circumstances or on the merits of their concern or complaint
- are not investigators or decision makers
- are not counsellors, mediators or advocates.

A list of HCOs can be found [here](#).

WHAT ARE INAPPROPRIATE WORKPLACE BEHAVIOURS?

The APS Code of Conduct at subsection 13(3) of the PS Act provides that an APS employee when acting in connection with APS employment, must treat everyone with respect and courtesy and without harassment.

The APSC adopts the Macquarie Dictionary definitions of respect and courtesy. Respect is defined as esteem or deferential regard felt or shown and courtesy as excellence of manners or behaviour; politeness. Workplace harassment includes offensive, belittling or threatening behaviour towards an individual or group of employees. The behaviour is unwelcome, unsolicited, usually unreciprocated, and often repeated.

It is important for employees to understand that even if an incidence of harassing behaviour is not deliberate, it can still be considered to constitute harassment in circumstances where a reasonable person would conclude that the inappropriate behaviour would humiliate, offend, intimidate or cause a person unnecessary hurt or distress. Harassing behaviour can also be unlawful under anti-discrimination legislation (such as sexual harassment or racial vilification).

Bullying is a form of harassment and constitutes inappropriate behaviour that does not show respect and courtesy. The term 'bullying' is generally used to describe repeated behaviour that could reasonably be considered to be humiliating, intimidating, threatening or demeaning to an individual or a group of individuals.

In the context of the Fair Work Commission's anti-bullying jurisdiction, section 789FD of the [Fair Work Act 2009](#) (FW Act) defines workplace bullying as repeated unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

Bullying and harassment

Combining the two terms of 'bullying' and 'harassment' means that it includes behaviour that is:

- offensive
- abusive
- belittling
- threatening

which is:

- unwelcome
- unsolicited
- unreciprocated
- usually, but not always, repeated.

Bullying and harassing behaviour can be:

- intended: where actions were intended to humiliate, offend, intimidate or distress, whether or not the behaviour did in fact have that effect; or
- unintended: where although not intended to humiliate, offend, intimidate or distress, the behaviour did have that effect and should reasonably have been expected to have had that effect.

Bullying and harassing behaviour may take the form of overt actions and may include:

- physical assaults, intimidating or aggressive body language
- verbal abuse and offensive language or derogatory remarks about another's lifestyle choices, physical or mental abilities, or background (race, ethnicity, social status)
- inappropriate behaviour or language that threatens, frightens, humiliates or degrades such as shouting and screaming, sarcasm and insults (whether face to face, by email or other media);
- interfering with a person's personal effects, work space or equipment

- inappropriate and unfair application of work policies and rules (eg: unreasonable denial of access to leave, training and/or development opportunities).

Bullying and harassing behaviour may also be more subtle and include:

- ostracism: physical or social isolation, exclusion from work-related activities, not acknowledging or responding to an individual's presence or comments
- undermining: persistent and baseless criticism, ridicule, taunts, spreading gossip and rumours (either verbally, by email or other media), belittling or derogatory remarks and/or actions that are intended to diminish a person's dignity (eg: eye rolling responses)
- sabotage: deliberately giving meaningless tasks, deliberately giving contradictory instructions, inappropriately and frequently changing deadlines, deliberately withholding important information and/or deliberately failing to complete tasks or miss deadlines.

Judicial bullying and harassment

The term 'Judicial bullying and harassment' is used to describe repeated unreasonable behaviour by a judicial officer towards a CDPP employee that could reasonably be considered to be humiliating, intimidating, threatening or demeaning and may include behaviour or language that threatens, frightens, humiliates or degrades eg: shouting and screaming, sarcasm and insults, and/or belittling or derogatory remarks.

Online or cyber-bullying

Online or cyber-bullying is inappropriate behaviour directed at CDPP employees by a member of the public using digital technologies such as a mobile phone, social media, e-mail, or setting up an offensive personal website or blog. This type of behaviour may include using offensive language, personal attacks, posting personal information about an employee, threats, unsubstantiated allegations, or content potentially contrary to the law.

What is not inappropriate workplace behaviour or bullying and harassment?

Examples of behaviours in the workplace that are **not** inappropriate or bullying and harassment include:

- respectfully and courteously expressing differences of opinion
- providing constructive and courteous feedback, counselling or advice about work-related behaviour and performance
- carrying out legitimate reasonable management decisions or actions, undertaken in a reasonable way and with respect and courtesy, for example:
 - taking action to transfer an employee
 - allocating work to an employee, and setting reasonable goals, standards and deadlines
 - making a decision not to select an employee for promotion or higher duties
 - warning employees about unsatisfactory performance or conduct
 - transferring or terminating excess employees
- making a complaint about a manager's or another employee's conduct, if the complaint is made in good faith and in a proper and reasonable way.

It is essential employees understand that legitimate management comments and feedback provided to them in a respectful and reasonable manner **does not** constitute a lack of respect and courtesy or bullying and harassment.

There are often circumstances in which normal exchanges in the workplace between managers and employees, and between colleagues, may cause distress or anguish to individuals. However, workplace bullying and harassment must not be confused with legitimate and courteous comment and feedback from a manager about an employee's work performance or work related behaviour which is consistent with the CDPP's [Promoting Excellence in Performance Scheme](#). Nor should it be confused with legitimate and courteous comment and feedback on working arrangements, whether originating from managers to staff or from staff to managers.

Legitimate feedback from managers about work performance or work related behaviour differs from being treated with a lack of respect and courtesy and bullying and harassing behaviour in that the feedback is intended to assist the employee to improve their work performance or the standard of their workplace behaviour. In this regard, managers must be mindful to ensure that comment about an employee's work performance and/or workplace behaviour does not become comment on the employee's person and that objectivity is always maintained in any formal or informal work performance or workplace behaviour discussions and/or counselling.

Managers must also be mindful that receiving negative feedback can cause distress to employees. It is therefore essential that managers conduct these processes with sensitivity and care, recognising the diverse backgrounds of employees, and in strict accordance with the CDPP's policies and guidelines on the appropriate management of underperformance and standards of workplace conduct. Discussion of career development and planning during performance feedback, whether formal or informal, is a legitimate role for managers whereas attempts or threats to diminish the career prospects or development opportunities of an employee can never be legitimate.

Equally, employees must be careful to ensure that they distinguish legitimate and constructive comment and feedback, delivered to them in a respectful and courteous manner about their work performance or workplace conduct, from inappropriate workplace behaviour such as bullying and harassment.

In the same way that legitimate management action taken in a reasonable, polite and legitimate way does not constitute a lack of respect and courtesy or bullying and harassment, the legitimate and reasonable actions and decisions that CDPP employees make that may have a negative impact on other colleagues and/or CDPP clients does not constitute a lack of respect and courtesy or bullying and harassment.

What is sexual harassment?

Sexual harassment is unwelcome sexual conduct and is a specific form of harassment which makes a person feel offended, humiliated and/or intimidated where a reasonable person would anticipate that reaction in the circumstances.

Whether the behaviour is unwelcome is a *subjective* test and looks at how the conduct in question was perceived and experienced by the recipient of the behaviour, rather than the intention behind it.

Whether the behaviour was offensive, humiliating or intimidating is an *objective* test and looks at whether a reasonable person would have anticipated that the behaviour in question would have this effect.

The [Sex Discrimination Act 1984](#) defines the nature and circumstances in which sexual harassment is unlawful and prohibited in all work-related activity. Sexual harassment is prohibited in the workplace and at work related activities such as training courses, conferences, field trips and other work related travel, work functions and office Christmas parties. An employer can be held vicariously liable for sexual harassment committed by an employee. It is also unlawful for a person to be victimised for making, or proposing to make, a complaint of sexual harassment to the Australian Human Rights Commission.

Sexual harassment in the workplace can take various forms and may involve:

- unwelcome sexual advances
- unwelcome touching, hugging or kissing
- sexually suggestive comments or jokes
- unwanted and/or persistent invitations to go out on dates
- insults based upon gender
- sexually explicit emails or SMS messages
- inappropriate staring or leering of a sexual nature
- unwelcome requests for sexual favours
- making comments/statements of a sexual nature either orally or in writing that offends, humiliates or intimidates.

What is not sexual harassment?

Sexual harassment is **not** sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual and reciprocated.

Can sexual harassment constitute criminal behaviour?

Some types of sexual harassment may also constitute offences under criminal law. These include incidents involving:

- indecent exposure
- sexual assault
- stalking
- obscene communications (telephone calls, SMS messages, emails, letters, etc).

If an employee suspects that a work related incident may have potentially constituted a criminal offence, the employee should immediately contact [People Branch](#) who will provide the employee with support, assistance and advice. This includes information and advice concerning the options of reporting the matter to the Police.

HOW INAPPROPRIATE WORKPLACE BEHAVIOUR CAN OCCUR

Inappropriate workplace behaviour can occur:

- on a person-to-person basis
- between employees at the same or different classifications
- between employees of the same or opposite gender
- between employees in the same or different work area or agency
- between employees and contractors or consultants
- via the telephone
- via email
- via third parties
- during work organised events during or outside normal work hours
- while off-site at external meetings or on interstate/overseas business trips.

Inappropriate workplace behaviour can also sometimes be focused on the gender, cultural or racial background or disability of an individual worker or group of workers.

WHAT ARE THE EFFECTS OF INAPPROPRIATE WORKPLACE BEHAVIOUR?

Inappropriate workplace behaviour can make a workplace or association with work unpleasant, humiliating or intimidating for an individual or group. It can also make it very difficult for effective and productive work to be accomplished. Other consequences can include:

- actual or potential disadvantage to an individual's employment opportunities in engagement to the APS, promotion, transfer or development
- a lack of self-esteem or confidence in carrying out tasks
 - lowered self-esteem and confidence can also affect employees outside of the workplace and result in social issues
 - this in turn may lead to increased employee absences on sick and other leave and hence even further lower performance and productivity
- adverse effects on individual or group work output with implications for the achievement of individual and/or team goals and on their performance assessments and ratings
- impacts to the health and wellbeing of the employee
- an intimidating, hostile environment where employees other than the individual being subjected to the inappropriate behaviour may also be impacted
- an increase in employee separation rates
- negatively impact on the reputation of the CDP and the APS.

However, everyone reacts differently to what happens in the workplace. It may be that a person treated with a lack of respect and courtesy or subjected to bullying or harassing behaviour does not complain because the incident was isolated, of a minor or inconsequential nature or does not have any particular impact upon them. Alternatively, it may be that the individual may not have the confidence to speak up, might feel intimidated, fears reprisal or is too embarrassed to complain.

The same behaviour may have a different impact on different people. People of different social and cultural backgrounds can often perceive the same conduct and behaviour very differently and what one employee may find offensive may not have any effect at all on another employee.

WHAT CAN I DO IF I BELIEVE I'VE BEEN SUBJECTED TO INAPPROPRIATE BEHAVIOUR IN THE WORKPLACE?

If you feel that you have been or are being subjected to inappropriate behaviour at work, you should consider:

- politely and respectfully raising the issue directly with the employee concerned
- discussing the matter with your manager/supervisor
- discussing the matter with a [Harassment Contact Officer \(HCO\)](#)
- discussing the matter with the Employee Assistance Program (EAP) provider
- discussing the matter directly with your HR Advisor

Will any other action be necessary?

There are occasions when it becomes apparent that a concern about inappropriate workplace behaviour was raised by an employee in good faith but is possibly untrue - perhaps because the behaviour in question did not actually amount to any inappropriate workplace behaviour.

Nevertheless, the employee who raised the concern may well be genuinely distressed or the specific issue may be a symptom of other problems among employees in a particular work area.

Therefore, even if no remedial action is required with regard to the original concerns raised, there may be a need for other management action to 'clear the air' and improve employee relationships within the work group. This could include conciliation, counselling and/or mediation with the assistance of the CDPP's EAP.

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Situations concerning inappropriate workplace behaviour and workplace conflict issues can be distressing for employees. If you are affected, you are encouraged to draw on the confidential counselling services of the CDPP's EAP. The EAP is available free of charge 24 hours a day, 7 days a week to CDPP employees and their families.

To access EAP services refer to the [EAP ehub page](#).

FURTHER GUIDANCE MATERIAL

Several APSC publications provide useful information in the context of appropriate standards of conduct and behaviour in the APS and include the following:

- [*Respect: Promoting a culture free from harassment and bullying in the APS*](#)
- [*APS Values and Code of Conduct in Practice*](#)
- [*Working Together: Promoting mental health and wellbeing at work*](#)
- [*Cyber-bullying of APS employees by members of the public*](#)

The *FW Act* provides that a worker may apply to the Fair Work Commission (FWC) for an order to stop bullying at work from continuing and also specifies that bullying does not include reasonable management action carried out in a reasonable manner. The [*FWC's Anti-Bullying Benchmark*](#) is a useful resource that may assist understanding what is considered 'reasonable' in the context of the FWC's anti-bullying jurisdiction along with information about 'Stop Bullying Order Applications'.

The following links may also be of assistance:

- [*APSC Ethics Advisory Service*](#)
- [*Australian Human Rights Commission*](#)
- [*Safe Work Australia - 'Dealing with Workplace Bullying—A Workers Guide'*](#)

LEGISLATION

The following subsections of sections 10, 10A and 13 of the PS Act (the APS Values, Employment Principles and the Code) are each relevant to appropriate workplace behaviour:

- the APS respects all people, including their rights and their heritage - subsection 10(3)
- provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued – subsection 10A(1)(e)
- provides workplaces that are free from discrimination, patronage and favouritism – subsection 10A(1)(f)
- an APS employee, when acting in connection with APS employment must treat everyone with respect and courtesy, and without harassment – subsection 13(3)
- an APS employee must at all times behave in a way that upholds
 - (a) the APS Values and APS Employment Principles

- (b) the integrity and good reputation of the employee's agency and the APS – subsection 13(11)

The [Work Health and Safety Act 2011](#) (WH&S Act) and the [Safety, Rehabilitation and Compensation Act 1988](#) (SRC Act) also impose the following obligations on APS agencies as employers:

- a duty of care, so far as is reasonably practical, to ensure 'the provision and maintenance of a work environment without risks to health and safety.' – subsection 19 (3)(a) of the WH&S Act
- responsibilities of Agency Heads in relation to employees who are suffering from injuries 'arising out of or in the course of employment' - section 6 of the SRC Act.

Other relevant legislation includes:

- [Sex Discrimination Act 1984](#)
- [Age Discrimination Act 2004](#)
- [Disability Discrimination Act 1992](#)
- [Australian Human Rights Commission Act 1986](#)
- [Racial Discrimination Act 1975](#)
- [Fair Work Act 2009](#)

NEED MORE ADVICE OR ASSISTANCE?

Please refer to the [CDPP Employee Conduct ehub page](#) or contact [People Branch](#) if you require any further information, advice or assistance concerning these guidelines or any aspect of the APS Values, the APS Employment Principles, the APS Code of Conduct or any issues concerning APS employee conduct and behaviour in general.

APPROVAL FOR RELEASE/DOCUMENT OWNER

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