



HIGH COURT OF AUSTRALIA

JUSTICES' POLICY ON WORKPLACE CONDUCT

1. Purpose

- 1.1 The Chief Justice and Justices of the High Court of Australia are committed to ensuring that the Court is a safe and respectful workplace for all persons who are officers, employees, contractors and service providers of the Court, including but not limited to chambers staff comprising associates, executive assistants, judgment production officers and the Library Research Officer. To that end, the Justices individually and collectively are committed to adherence to this Policy.
- 1.2 The purpose of this Policy is:
- (a) to define clear standards of appropriate conduct by the Chief Justice and Justices towards all persons who are officers, employees, contractors or service providers of the Court;
 - (b) to provide a safe and secure method by which any officer, employee, contractor or service provider can raise a concern or make a complaint about inappropriate conduct by a Justice; and
 - (c) to set out the broad framework within which such concerns or complaints will be addressed.
- 1.3 This Policy is supplementary to all applicable laws and other applicable policies. It is complementary to obligations under the *Work Health and Safety Act 2011* (Cth) to take reasonable steps to protect officers, employees, contractors and service providers against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work.

2. Application

- 2.1 This Policy has application to all conduct by the Chief Justice and Justices in relation to all persons who are officers, employees, contractors and service providers of the Court in all work circumstances, including where the Chief Justice and Justices, officers, employees, contractors or service providers are required to travel or work away from chambers, and in all social circumstances.

3. Conduct of Justices

3.1 No Justice will engage in inappropriate conduct, including conduct of any of the following types:

(a) *Bullying*, in the form of belittling, insulting, victimising, aggressive or intimidating conduct. Bullying may include abusive or offensive language or comments, unjustified criticism or complaints, setting unreasonable or constantly changing timelines, or deliberate exclusion from work-related activities. Bullying does not include reasonable allocation of work, justified and reasonable discussion on work performance, differences of opinion and disagreement, and reasonable management action.

(b) *Harassment*, including sexual harassment within the meaning of the *Sex Discrimination Act 1984* (Cth). Harassment is any unwelcome conduct that could reasonably be expected to be offensive, humiliating or intimidating to the person to whom it is directed. Sexual harassment is any unwelcome conduct of a sexual nature that could reasonably be expected to be unwelcome, offensive, humiliating or intimidating to the person to whom it is directed. Under no circumstances is it appropriate for a Justice to engage in conduct of a sexual nature towards any officer, employee or contractor of the Court.

(c) *Discrimination*, within the meaning of the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth).

(d) *Retaliation*, in the form of subjecting a person to a detriment or treating that person unfairly or unequally on the ground that the person has or is suspected of having raised a concern or made a complaint about inappropriate conduct by a Justice. An example of unfair treatment amounting to retaliation might be refusing to give a reference or giving an unfair reference.

3.2 No Justice will require any person to participate in any social occasion.

3.3 No Justice will require any person to share any private transport with the Justice.

4. Training of Justices

- 4.1 At least once each calendar year, the Justices will together participate in an externally facilitated training session on appropriate workplace practices. The session is to be arranged by the Chief Executive and Principal Registrar in consultation with a committee of Justices. The subject-matter to be covered in the session is to encompass the subject-matter covered in externally facilitated training sessions that employees of the Court are required to attend that address issues covered in this Policy.

5. Raising concerns and making complaints

- 5.1 Any person can raise a concern or make a complaint about any inappropriate conduct or any suspected inappropriate conduct by the Chief Justice or any Justice. That is so whether the inappropriate conduct is directed to that person or to any other person. It is not only desirable but important that any such inappropriate conduct be reported. No obligation of confidentiality binding on the person is to be understood as in any way inhibiting the raising of the concern or the making of the complaint.

- 5.2 A concern can be raised, or the complaint can be made, to:

- (a) the Chief Justice or any Justice;
- (b) the Chief Executive and Principal Registrar; or
- (c) the Senior Registrar.

- 5.3 The concern can be raised, or the complaint can be made:

- (a) formally or informally; and
- (b) openly or confidentially.

- 5.4 A person who raises the concern or makes the complaint will always:

- (a) be taken seriously and treated with respect and courtesy;

- (b) be given an opportunity to participate in the process by which their concern or complaint is addressed;
- (c) be informed and kept informed about the progress and outcome of the process by which their concern or complaint is addressed;
- (d) be offered support, including external counselling;
- (e) be offered an opportunity to remove themselves from ongoing contact with the Justice about whose conduct the concern has been raised or complaint has been made, including where appropriate by movement to a position of equivalent status within the Court. For example, an associate raising a concern or making a complaint about inappropriate conduct by the Justice within whose chambers the associate works might in an appropriate case be offered an opportunity to complete the term of their contract of employment working with the Legal Research Officer or the Publishing Officer or in the chambers of the Chief Justice or the senior puisne Justice.

6. Addressing concerns and complaints

- 6.1 A concern raised or complaint made to a Justice, to the Chief Executive and Principal Registrar, or to the Senior Registrar about inappropriate conduct by a Justice will be referred to the Chief Justice if the person raising the concern or making the complaint wishes that to happen or if the Justice, the Chief Executive and Principal Registrar, or the Senior Registrar considers that it raises a serious issue which cannot be resolved without reference to the Chief Justice. Similarly, a concern raised or complaint made to a Justice, to the Chief Executive and Principal Registrar, or to the Senior Registrar about inappropriate conduct by the Chief Justice will be referred to the senior puisne Justice if the person raising the concern or making the complaint wishes that to happen or if the Justice, the Chief Executive and Principal Registrar, or the Senior Registrar considers that it raises a serious issue which cannot be resolved without reference to the senior puisne Justice.
- 6.2 The procedure adopted by the Chief Justice or the senior puisne Justice to address a concern or complaint will depend upon the circumstances. Those circumstances will include: the nature of the concern or complaint; how the person raising the concern or complaint may wish for it to be handled; and, if the concern or complaint relates to inappropriate conduct directed towards another person, the wishes of that other person.

- 6.3 An informal procedure focused on the resolution of the issue rather than substantiation of the underlying concern or complaint may be appropriate where the person raising a concern wishes to resolve the issue informally. Such a procedure may involve the Chief Justice or the senior puisne Justice speaking directly to the person raising the concern or complaint and then to the Justice about whose conduct the concern has been raised or complaint has been made.
- 6.4 A formal investigation focused on establishing whether a complaint is substantiated will be appropriate where the complaint involves a serious allegation of inappropriate workplace conduct which is denied and where the person making the complaint wishes to proceed with a formal investigation.
- 6.5 Any formal investigation will be conducted by an independent external adviser to be appointed by the Chief Executive and Principal Registrar at the direction of the Chief Justice or the senior puisne Judge. In such circumstances, the Attorney-General of the Commonwealth will be notified of the appointment of the external adviser and of the outcome of the complaint process.
- 6.6 Concerns and complaints, and documentation generated in addressing concerns and complaints, will be kept confidential to the extent possible. The extent to which the identity and personal circumstances of the person raising the concern or making the complaint may be kept confidential (and, if the concern or complaint relates to inappropriate conduct directed to another person, the extent to which the identity and personal circumstances of that other person may be kept confidential) will depend upon:
- (a) the need to investigate;
 - (b) the need to afford procedural fairness;
 - (c) the wishes of that person; and
 - (d) any statutory obligation to report particular conduct.

7. Publication of Policy

- 7.1 This Policy will be published on the Court website and will be drawn to the attention of all new employees of the Court at the time of induction.
- 7.2 The Chief Justice and the senior puisne Justice will participate in the induction of all new associates to ensure that they understand this Policy and the Justices' commitment to it.

8. Review of Policy

- 8.1 At least once each calendar year, a committee of Justices in consultation with the Chief Executive and Principal Registrar and the Senior Registrar will review this Policy with a view to ensuring that it reflects current best practice. The review will be informed by an annual anonymous survey of officers, employees, contractors and service providers of the Court concerning the operation of the policy to be designed and administered by the Chief Executive and Principal Registrar with the benefit of external human resources advice.

9. Recommitment to Policy

- 9.1 At the first Court business meeting after the appointment of each new Justice, and otherwise at a Court business meeting at least once each calendar year, the Justices will signify their individual and collective recommitment to adherence to this Policy irrespective of whether it has been revised as a result of a review.

Dated 14 November 2022

Chief Justice Kiefel

Justice Gageler

Justice Gordon

Justice Edelman

Justice Steward

Justice Gleeson

Justice Jagot