



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 mechanisms by which any officer, employee, contractor or service provider can seek advice or support and/or raise a concern or make a complaint about inappropriate conduct by a Justice; and
 - (c) to set out the framework within which such concerns or complaints will be addressed.
- 1.3 The Justices encourage officers, employees, contractors and service providers of the Court to raise concerns if they experience, witness, or become aware of inappropriate conduct by a Justice.
- 1.4 This Policy is supplementary to all applicable laws and other applicable policies. The Court has obligations under the *Work Health and Safety Act 2011* (Cth) to take reasonably practicable steps to ensure the health and safety of officers, employees, contractors and service providers through the elimination or minimisation of risks arising from work.
- 1.5 The Court also has an obligation under the *Sex Discrimination Act 1984* (Cth) to take reasonable and proportionate measures to eliminate, as far as possible, sex discrimination, sexual harassment, harassment on the basis of sex, victimisation and subjecting persons to a work environment that is hostile on the ground of sex.

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 Justices will act towards officers, employees, contractors and service providers of the Court in a manner that is respectful, inclusive and ensures, so far as is reasonably practicable, the health and safety of those workers at all times.

3.2 No Justice will engage in inappropriate conduct, including (but not limited to) conduct of any of the following types:

- (a) *Bullying*, which is repeated unreasonable behaviour towards a person. This may include belittling, insulting, victimising, aggressive or intimidating conduct. Bullying may also 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 and sex-based 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.

Sex-based harassment is any unwelcome conduct of a demeaning nature by reason of a person's sex or a characteristic that relates generally to (or that is generally imputed to) people of a particular sex, that could reasonably be expected to be offensive, humiliating or intimidating to the person to whom it is directed.

- (c) *Subjecting persons to a workplace environment that is hostile on the ground of sex*, as prohibited by the *Sex Discrimination Act 1984* (Cth). A hostile workplace environment exists where conduct occurs in the workplace which a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the conduct resulting in the workplace environment being offensive, intimidating or humiliating to a person of a particular sex (or a characteristic that relates generally to, or that is generally imputed to, people of a particular sex).
- (d) *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).

- (e) *Retaliation/Victimisation*, in the form of subjecting or threatening to subject 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.

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

3.4 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. Support and advice

5.1 Officers, employees, contractors and service providers of the Court may seek advice or support from the HR Senior Advisor with respect to any inappropriate conduct or any suspected inappropriate conduct by the Chief Justice or any Justice.

5.2 Advice and support can also be sought through the Court's online portal, including from consultants who are external to the Court. This support may also be obtained on an anonymous basis.

5.3 Support can also be obtained through the Court's Employee Assistance Provider.

6. Raising concerns and making complaints

6.1 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.

6.2 A concern or complaint may relate to inappropriate conduct that has been directed to the person raising the concern or complaint or to any other person.

6.3 It is not only desirable but important that any such inappropriate conduct be reported.

6.4 No obligation of confidentiality is to be understood as in any way inhibiting the raising of the concern or the making of a complaint.

6.5 A concern or complaint may be raised anonymously (including through the Court's online reporting platform, Elker). The raising of a concern on an anonymous basis may, however, impact on the Court's ability to deal with the concern or complaint.

Who can a concern or complaint be raised with?

6.6 A concern can be raised, or the complaint can be made:

- (a) directly to any of the following members of the Court:
 - i. the Chief Justice or any Justice;
 - ii. the Chief Executive and Principal Registrar;
 - iii. the HR Senior Advisor;
- (b) through the Court's online portal.

6.7 The Court's online portal allows for:

- (a) the anonymous reporting of complaints and concerns;
- (b) a person to seek advice or support in the first instance, or at the same time as raising a concern or complaint.

Principles for dealing with concerns and complaints

6.8 A person who raises a concern or makes a complaint will always:

- (a) be offered the opportunity to seek advice and/or support, including access to external counselling;
- (b) be taken seriously and treated with respect and courtesy;
- (c) be given an opportunity to participate in the process by which their concern or complaint is addressed.
- (d) be informed and kept informed about the progress and outcome of the process by which their concern or complaint is addressed;
- (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 undertake duties with the Publishing Officer or in the chambers of the Chief Justice or the senior puisne Justice.

7. Addressing concerns and complaints

7.1 Upon receipt of a concern or complaint, the concern or complaint will be assessed to determine what, if any, action needs to be taken to address it. The approach to addressing a concern or complaint will depend upon the circumstances. Those circumstances will include:

- (a) the nature and seriousness of the conduct in question;

- (b) the wishes of the person raising the complaint or concern and/or any person(s) impacted (including any request for anonymity);
- (c) the nature and extent of the impact of the conduct on the persons towards whom the conduct has been directed; and
- (d) the risk to the psychological and physical safety of others.

- 7.2 There are some circumstances where the issues raised by a concern or complaint may need to be escalated. A person who receives a concern or complaint may need to refer the issue to the Chief Justice, senior puisne Justice (if the matter is about the Chief Justice), or the Chief Executive and Principal Registrar, for example, where the conduct is serious and/or creates a risk to psychological or physical safety; where the person raising the concern or complaint wishes that to happen, or where the issue cannot be resolved without escalation.
- 7.3 The person who receives a concern or complaint will consult with the person raising the concern or complaint about how it will be addressed (including any proposed escalation) before any process is commenced.

Informal procedure

- 7.4 An informal procedure is one focused on the resolution of the issue rather than substantiation of the underlying concern or complaint. This procedure may be appropriate where:
- (a) the person raising a concern or making a complaint wishes to resolve the issue informally and this is appropriate having regard to the considerations set out above;
 - (b) there is insufficient information to warrant the commencement of a formal investigation;
 - (c) the conduct that is the subject of the concern or complaint does not warrant a formal investigation; and/or
 - (d) the person assessing the concern or complaint considers that any risks to health and safety can be appropriately eliminated or minimised through informal resolution.
- 7.5 An informal procedure may involve:
- (a) a mediation or conversation being facilitated between the persons involved in the concern or complaint (including with the involvement of an internal or external facilitator if necessary); and/or
 - (b) 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.

Formal procedure

- 7.6 A formal procedure will be focused on establishing whether a complaint is substantiated, and if so, the appropriate steps to deal with any established inappropriate conduct.
- 7.7 A formal resolution procedure may be appropriate where:
- (a) the complaint or concern involves a serious allegation of inappropriate conduct;
 - (b) the person making the complaint and/or person impacted wishes to proceed with a formal process; and/or
 - (c) the person assessing the complaint or concern considers that a formal resolution procedure is necessary to ensure the health and safety of officers, employees, contractors and service providers of the Court.
- 7.8 Where an allegation of inappropriate conduct is denied, a formal investigation will be conducted by an independent external investigator to be appointed by the Chief Executive and Principal Registrar at the direction of the Chief Justice or the senior puisne Judge.
- 7.9 A Justice who is subject to a formal resolution procedure will be afforded procedural fairness.
- 7.10 In circumstances where an independent external investigator is appointed, the Attorney-General of the Commonwealth will be notified of the appointment of the external investigator and of the outcome of the formal resolution procedure.

8. Record keeping

- 8.1 A person who receives a concern or complaint will keep a record of that concern or complaint, including a record of what, if any, action has been or will be taken to address the issues raised by the concern or complaint.
- 8.2 A person who deals with a concern or complaint, including under an informal or formal procedure as set out above, will also keep records of how the complaint or concern was dealt with under the procedure and the outcome of that process.
- 8.3 Records referred to in clause 8.1 and 8.2 will be provided to the Chief Executive & Principal Registrar. This will ensure that records can be retained securely, and in a manner consistent with paragraph 9 below.

9. Confidentiality

- 9.1 Concerns and complaints, and documentation generated in addressing concerns and complaints, including records referred to in paragraph 7, will be kept securely and access to those records will be limited
- 9.2 Details of these matters will be kept as confidential as the circumstances allow. There may be circumstances where it is not possible to keep a person's identity, and/or the

details of a concern or complaint, confidential. These circumstances may include where:

- (a) there is a need to afford procedural fairness with respect to an allegation of inappropriate conduct;
- (b) there is a need for an investigation to be conducted or other action to be taken to address a concern or complaint;
- (c) there is a need to prevent, or deal with, risks to the health and safety of the person, or other persons; and/or
- (d) there is a statutory obligation to report particular conduct and/or to disclose the information.

10. Publication of Policy

- 10.1 This Policy will be published on the Court intranet and will be drawn to the attention of all new employees of the Court at the time of induction.
- 10.2 The Chief Justice and the Chair of the Workplace Conduct Committee will participate in the induction of all new associates to ensure that they understand this Policy and the Justices' commitment to it.

11. Review of Policy

- 11.1 At least once each calendar year, a committee of Justices in consultation with the Chief Executive and Principal Registrar, the Senior Registrar and the HR Senior Advisor 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.

12. Recommitment to Policy

- 12.1 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.