



Good practice guidelines for internal complaint processes

Why have an internal complaint process?

Addressing employee complaints about discrimination and harassment quickly and fairly is good for business because it can:

- identify ways to improve workplace practices and policies
- improve staff morale, productivity and retention
- help avoid complaints to external agencies and/or legal action.

Under federal anti-discrimination laws, if an employer wants to argue that the organisation should not be held liable for any discrimination or harassment by one of its employees, the employer will need to demonstrate that the organisation took 'reasonable precautions and exercised due diligence'¹ or took 'all reasonable steps'² to prevent the discrimination or harassment. While the size of the employer is relevant to these considerations, an important factor that is likely to be considered is whether the organisation has an effective complaint handling procedure.³

Employers can establish a specific procedure for discrimination and harassment complaints or use the procedure already in place for other types of complaints. However, it is important to note that discrimination and harassment complaints can be complex, sensitive and may potentially involve external agencies, such as the Commission. Therefore, it is vital that those responsible for dealing with internal complaints have the appropriate expertise and receive relevant training.

Characteristics of a good internal complaint process

A good complaint process will be:

- **Fair** – This means that both the person complaining (the complainant) and the person being complained about (the respondent) should have the opportunity to present their version of events, provide supporting information and respond to any potential negative decisions. In addition, the person investigating and/or making decisions about the complaint should be impartial; that is, he or she should not favour the complainant or the respondent or prejudice the complaint in any way.
- **Confidential** – This means that information about a complaint is only provided to those people who need to know about it, in order for the complaint to be actioned properly.
- **Transparent** – The complaint process and the possible outcomes of the complaint should be clearly explained and those involved should be kept informed of the progress of the complaint and the reasons for any decisions.





- **Accessible** – The complaint process should be easy to access and understand, and everyone should be able to participate equally. For example, an employee may require a language interpreter to understand and participate or a person with a disability may need information provided in a specific format.
- **Efficient** – The complaint process should be conducted without undue delay. As time passes, information relevant to the complaint may deteriorate or be lost, which will impact on the fairness of the process. In addition, unresolved complaints can have a negative and ongoing impact on a workplace.

A good complaint process will also include provisions to:

- protect employees from being victimised because they have made a complaint
- protect employees from vexatious and malicious complaints
- ensure appropriate confidential records are kept about complaints and that this information is stored and managed appropriately.

Stages in a complaint process

1. Initial contact point

An organisation's discrimination and harassment policy should explain how to make a complaint and, identify an initial contact person. In larger organisations, the contact person may be an Equal Employment Opportunity (EEO) Officer or a Harassment Officer. In smaller organisations, this person may be a line manager or supervisor.

The contact person should not be the same person who is responsible for investigating or making decisions about a complaint.

The contact person should:



- be available to listen to an employee's concerns about discrimination or harassment
- not form a view of the merit of any allegations
- provide information about the internal complaint process
- advise the person that in some situations where serious allegations are raised – for example, allegations that may expose the organisation to legal liability – the issue may need to be reported to management and dealt with as a formal complaint
- where appropriate, provide support for a person if he or she wants to try and resolve the issue personally
- provide information about available support services, for example, workplace counselling services
- outline other options available to the person, such as lodging a complaint of discrimination or harassment with an external agency.



2. Early resolution

In some situations it may be appropriate to consider early resolution of an initial complaint without undertaking an assessment of its merit. This approach may be useful where:

- the complainant indicates a desire to sit down and discuss the matter with the respondent informally and this seems appropriate in the circumstances
- the information on hand supports a view that the complaint has arisen from a misunderstanding or miscommunication
- the behaviour being complained about is not serious and does not appear to be discrimination or harassment, as defined by the organisation's policy.

Early resolution may involve:

- a direct private discussion between the complainant and the respondent
- an impartial third person conveying information between those involved
- an impartial third person helping those involved to talk to each other and find a solution.

In some situations the impartial third person may need to be someone external to the organisation, such as a professional mediator.

3. Formal resolution

If a person wants to proceed with a formal complaint about discrimination or harassment, or if this is considered to be the most appropriate course of action, the following steps are recommended.

a. Obtain information from the complainant

The person handling the complaint (the complaint officer) should:

- provide information about the complaint process, potential outcomes, options for assistance/support and protections from victimisation
- ensure the allegations are documented, either by the complainant or the complaint officer
- explain that the process is confidential, what this means and why it is important
- explain what records of the complaint will be kept, for how long and where
- explain the action that may be taken if the complaint is found to be vexatious or malicious
- ask the complainant to provide relevant documents or details of witnesses that may support the allegations.

Where there is a concern about supporting information being destroyed or compromised, the complaint officer should try to obtain this information before taking any further action.

b. Advise the respondent about the complaint

The complaint officer should:

- advise the respondent that a complaint has been made against him or her and provide as much information as possible about the allegations and supporting information (where applicable)
- confirm that he or she will be given the opportunity to respond to the allegations in writing or through an interview
- provide information about the complaint process, potential outcomes and options for assistance/support
- explain that the process is confidential, what this means and why it is important
- explain what records of the complaints will be kept, for how long and where
- explain that it is unacceptable to victimise someone who has made a complaint.

c. Assess the information

If the respondent confirms that he or she did what is alleged to have occurred, and if this behaviour would be considered discrimination or harassment as defined in the organisation's policy, the next step is to consider an appropriate outcome (see below). It is recommended that the respondent is provided with the opportunity to comment on any proposed decision and outcome before a final decision is made.

If there is disagreement about what happened, the complaint officer should consider whether there is other information that will help to determine what happened. It is generally understood that the person making the decision should be satisfied that it is 'more probable than not' that what is alleged to have happened did happen.

Given the nature of discrimination and harassment, there may often be no direct witnesses or documents to support the complainant's version of events. This does not mean that the allegation is untrue. In these situations the complainant should be given the opportunity to comment on the information that has been provided by the respondent and to provide any other information to support his or her allegations before a final decision is made.



4. Outcomes from the process

a. Where the allegations are admitted or substantiated

Outcomes for the respondent may include:

- disciplinary counselling
- an official warning
- a requirement to attend discrimination and harassment awareness training
- a requirement to provide a formal apology to the complainant
- disciplinary action (e.g. demotion, transfer, suspension, probation or dismissal)
- participation in mediation to restore relationships in the workplace.

Outcomes for the complainant may include:

- re-crediting of any leave taken as a result of the discrimination or harassment
- supportive counselling
- a change in the work environment, as requested, for example, a change in work teams or location
- participation in mediation to restore relationships in the workplace.

It is important that the complainant is provided with general information about the outcome of a complaint, as this may affect their decision to pursue the matter with an external agency. The level of detail provided should be balanced against the need to respect the privacy of the respondent.

b. Where the allegations are not admitted or substantiated

Where allegations have not been admitted or substantiated, it may still be appropriate for the employer to take some action as a result of the complaint. For example, it may be appropriate to:

- provide refresher training for all staff regarding appropriate workplace behaviour, and/or
- re-issue the discrimination and harassment policy or code of conduct to all employees.

If such action is taken, it is important that it is not done in a way which could be seen as singling out or punishing the respondent, especially where there has been no finding that he or she has breached the organisation's policy or code of conduct.



Further information

Australian Human Rights Commission

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Telephone: (02) 9284 9600
National Information Service: 1300 656 419
TTY: 1800 620 241

Email: infoservice@humanrights.gov.au
Website: www.humanrights.gov.au/employers



These documents provide general information only on the subject matter covered. It is not intended, nor should it be relied on, as a substitute for legal or other professional advice. If required, it is recommended that the reader obtain independent legal advice. The information contained in these documents may be amended from time to time.

Revised November 2014.

¹ See section 57 of the *Age Discrimination Act 2004* (Cth) and section 123 of the *Disability Discrimination Act 1992* (Cth).

² See section 106 of the *Sex Discrimination Act 1984* (Cth) and section 18A of the *Racial Discrimination Act 1975* (Cth).

³ See discussion of *Johanson v Blackledge* (2001) 163 FLR 58, 82 [105] in *Federal Discrimination Law Online*, Australian Human Rights Commission, 2011; available at www.humanrights.gov.au.