

Marianna Olding

Subject: Call Kristen re media

Start: Wed 8/02/2023 3:00 PM
End: Wed 8/02/2023 3:15 PM

Recurrence: (none)

Organizer: Lisa Studdert

Marianna Olding

From: Lisa Studdert
Sent: Friday, 10 February 2023 9:52 AM
To: [REDACTED]
Cc: Kristen Connell
Subject: contact details [SEC=OFFICIAL]

OFFICIAL

Hi Krystian
Good to meet you yesterday and again, welcome aboard.

Just a quick line to give you my contact details – this email + my mobile [REDACTED]

Also, I've copied on this email Kristen Connell who is currently handling all media matters for the Commission. I expect she'll make contact also but please contact her in the first instance with any questions or should you receive any inquiries on the announcement of the inquiry. As I'm sure you are used to having worked in government, we're keen to coordinate and manage closely and most important, to ensure you are supported.

I'm also looking to find the right person to give you advice and support corporate – expenses, etc – so you should hear from us about that today also.

Kind regards,
Lisa

Lisa Studdert
Head Of Office | Executive

Productivity Commission

Ngunnawal Country
4 National Circuit, Barton ACT 2600
P. [REDACTED]

[pc.gov.au](https://www.pc.gov.au)



Marianna Olding

From: [REDACTED]
Sent: Wednesday, 8 February 2023 4:50 PM
To: Lisa Studdert
Cc: Jane Holmes
Subject: RE: forward program for reports/releases [SEC=OFFICIAL]

OFFICIAL

Ok, thanks.

[REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Lisa Studdert [REDACTED]
Sent: Wednesday, 8 February 2023 4:33 PM
To: [REDACTED]
Cc: Jane Holmes [REDACTED]
Subject: RE: forward program for reports/releases [SEC=OFFICIAL]

OFFICIAL

Thanks [REDACTED] Not urgently need this afternoon – sometime tomorrow will be just fine.

L

Lisa Studdert | Head Of Office | Executive | p. [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: [REDACTED]
Sent: Wednesday, 8 February 2023 4:29 PM
To: Lisa Studdert [REDACTED]
Cc: Jane Holmes <[REDACTED]>
Subject: RE: forward program for reports/releases [SEC=OFFICIAL]

OFFICIAL

Hi Lisa, welcome to the Commission! Yes, I can provide a list of upcoming releases, expected ToRs etc, to Kristen and you. Will do so this afternoon.

[REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Lisa Studdert <[REDACTED]>
Sent: Wednesday, 8 February 2023 4:24 PM
To: [REDACTED]
Cc: Jane Holmes [REDACTED] >
Subject: forward program for reports/releases [SEC=OFFICIAL]

OFFICIAL

Hi [REDACTED]

Look forward to meeting soon. I understand you had a late night last night with Prod Inquiry submission – hope you eventually managed to get some rest.

I made an introductory call to Kristen Connell earlier this afternoon to introduce myself and to clarify with her she would be handling all media inquiries for the PC for next 3-4 weeks. As I think you know, she was a bit concerned that she has the capacity to do that should things get busy given her other commitments. I offered to get her a list of the planned releases in next few weeks – inquiries, other reports etc. This would be of interest to me also. Are you able to provide that?

Kristen also mentioned she wanted us to be sure her contract was 'fit for purpose' for this work. I've mentioned this to Jane and I think she will make the necessary checks.

Hope that all sounds okay,
Kind regards,
Lisa

Lisa Studdert

Head Of Office | Executive

Productivity Commission

Ngunnawal Country

4 National Circuit, Barton ACT 2600

P. [REDACTED]

pc.gov.au



Marianna Olding

From: Jane Holmes
Sent: Wednesday, 8 February 2023 3:19 PM
To: Lisa Studdert
Cc: [REDACTED]
Subject: Hello [SEC=OFFICIAL]

OFFICIAL

Hi Lisa

We need to close the loop with the MPW team on reporting lines and media responsibility. I have drafted an email for you to consider sending below:

Team members: [REDACTED].

Hi all

Just a quick note to say hello and confirm reporting lines. As Jane Holmes suggested yesterday, I will be the Media, Publishing and Web teams' SES. Ros has kindly provided me with a handover and I will ask [REDACTED] to find a time for us all to meet soon.

I can also confirm that Kristen Connell from Talkforce media will be managing all media issues until further notice.

If you have any questions or concerns please contact me, Jane or [REDACTED].

Kind regards
Jane

Jane Holmes
Assistant Commissioner | Corporate Group

Productivity Commission

Wurundjeri, Woi-wurrung Country
Level 8, 2MQ, 697 Collins Street, Docklands VIC 3008
p. + [REDACTED]

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Marianna Olding

From: [REDACTED]
Sent: Wednesday, 8 February 2023 4:38 PM
To: Lisa Studdert; [REDACTED]
Cc: Jane Holmes; [REDACTED]
Subject: RE: Hello [SEC=OFFICIAL]

OFFICIAL

Hi Lisa,

Thanks for your email and for confirming reporting lines. We look forward to working with you.

Most of MPW will be in the Melbourne office tomorrow, so we'll get to meet you in person at the morning tea.

Kind regards,

[REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Lisa Studdert [REDACTED]
Sent: Wednesday, 8 February 2023 3:59 PM
To: [REDACTED]
Cc: Jane Holmes [REDACTED]
Subject: Hello [SEC=OFFICIAL]

OFFICIAL

Hi all

Just a quick note to say hello and advise on reporting lines.

As Jane Holmes advised you yesterday, I will be the Media, Publishing and Web teams' SES going forward. Ros has kindly provided me with a handover and I will ask [REDACTED] to find a time for us all to meet soon.

I can also confirm that Kristen Connell from Talkforce Media will be managing all media issues until further notice.

If you have any questions or concerns please contact me, Jane or [REDACTED]

Kind regards,
Lisa

Lisa Studdert
Head Of Office | Executive

Productivity Commission

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4 National Circuit, Barton ACT 2600

p. + [REDACTED]

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Marianna Olding

From: Lisa Studdert
Sent: Wednesday, 8 February 2023 4:41 PM
To: [REDACTED]
Cc: Jane Holmes; [REDACTED]
Subject: FW: Hello [SEC=OFFICIAL]

OFFICIAL

[REDACTED] my apologies, I should have copied you on this email also.
FYI.
L

Lisa Studdert | Head Of Office | Executive | p. + [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Lisa Studdert
Sent: Wednesday, 8 February 2023 3:59 PM
To: [REDACTED]
Cc: Jane Holmes [REDACTED]
Subject: Hello [SEC=OFFICIAL]

OFFICIAL

Hi all

Just a quick note to say hello and advise on reporting lines.

As Jane Holmes advised you yesterday, I will be the Media, Publishing and Web teams' SES going forward. Ros has kindly provided me with a handover and I will ask [REDACTED] to find a time for us all to meet soon.

I can also confirm that Kristen Connell from Talkforce Media will be managing all media issues until further notice.

If you have any questions or concerns please contact me, Jane or [REDACTED]

Kind regards,
Lisa

Lisa Studdert
Head Of Office | Executive

Productivity Commission

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4 National Circuit, Barton ACT 2600
p. + [REDACTED]

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Marianna Olding

From: [REDACTED]
Sent: Friday, 3 February 2023 1:17 PM
To: Jane Holmes
Subject: RE: media contact [SEC=OFFICIAL]

OFFICIAL

Kristen Connell kristen@talkforcemedia.com.au

[REDACTED]
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From: Jane Holmes [REDACTED]
Sent: Friday, 3 February 2023 1:11 PM
To: [REDACTED]
Subject: RE: media contact [SEC=OFFICIAL]

OFFICIAL

Hi [REDACTED]

What is Kristen's email pls?

Jane Holmes | Assistant Commissioner | Corporate Group | p. + [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: [REDACTED]
Sent: Friday, 3 February 2023 11:11 AM
To: Rosalyn Bell [REDACTED] >; Jane Holmes <[REDACTED]>
Cc: Lisa Studdert <[REDACTED]>
Subject: RE: media contact [SEC=OFFICIAL]

OFFICIAL

Noted, thanks for this update.

[REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Rosalyn Bell <[REDACTED]>
Sent: Friday, 3 February 2023 11:09 AM
To: [REDACTED] <[REDACTED]>; Jane Holmes <[REDACTED]>
Cc: Lisa Studdert <[REDACTED]>
Subject: media contact [SEC=OFFICIAL]

OFFICIAL

Hi all,
I've just spoken to our external media adviser – Kristen Connell from Talkforce Media (0400 054 227). She has agreed that all media queries coming into the Commission for the next couple of weeks at least can be diverted to her

if we need (ie anything that is not project background in nature). She does have other commitments which might delay her capacity to answer her phone, but we will work around this.

Jane – Kristen has asked for us to send her, as background, documentation we have (from HR) about our current internal processes for handling staff complaints of this nature. This could include, for example, our anonymous online complaint form, the workplace behaviour policy and practice guide, generic harassment officer info, and the availability of our EAP services.

Could you take care of that please?

Ros

Rosalyn Bell

Head Of Office (Acting) | Productivity Inquiry

Productivity Commission

Ngunnawal Country

4 National Circuit, Barton ACT 2600

p. +

pc.gov.au



Marianna Olding

From: [REDACTED]
Sent: Saturday, 4 February 2023 4:49 PM
To: [REDACTED]
Subject: FW: media contact [SEC=OFFICIAL]
Attachments: Workplace Behaviour Policy.pdf; 20230201 - Workplace Behaviour information.docx

Importance: High

Categories: Synced to SharePoint

OFFICIAL

FYI - as highlighted below with my emphasis in bold

[REDACTED] [REDACTED]) | [REDACTED] | p. [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#) | Work days: I work flexibly, and may choose to send emails outside standard business hours. If so, I do not expect you to read or reply outside your standard hours.

From: [REDACTED] <[REDACTED]@[REDACTED].au>
Sent: Friday, 3 February 2023 5:10 PM
To: Jane Holmes [REDACTED] >
Cc: [REDACTED] <[REDACTED]@[REDACTED]>
Subject: RE: media contact [SEC=OFFICIAL]
Importance: High

OFFICIAL

Hi Jane

Please find attached the one-pager on our current internal processes and support options for handling workplace behaviour complaints.

You will see that I have referred to our Workplace Behaviour Policy and Procedure (2021) (attached) but I have not detailed the process step by step because it's in the policy. I am hoping that this is not an issue.

Please call me if you need anything further from me on this.

Thanks

[REDACTED] | [REDACTED] | p. + [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#) | [HR Hub page](#)

From: Jane Holmes <[REDACTED]@[REDACTED]>
Sent: Friday, 3 February 2023 1:11 PM
To: [REDACTED]
Subject: FW: media contact [SEC=OFFICIAL]

OFFICIAL

Hi [REDACTED]

Could you please pull the background information together, as per Ros' request below? Liaise with [REDACTED] and [REDACTED] as needed, in terms of anything else they think would be warranted.

Please send to me when ready - I'd like to get this to Kristen by COB please.

Regards
Jane

Jane Holmes | Assistant Commissioner | Corporate Group | p. + [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Rosalyn Bell <[REDACTED]>
Sent: Friday, 3 February 2023 11:09 AM
To: [REDACTED] <[REDACTED]>; Jane Holmes <[REDACTED]>
Cc: Lisa Studdert <[REDACTED]>
Subject: media contact [SEC=OFFICIAL]

OFFICIAL

Hi all,
I've just spoken to our external media adviser – Kristen Connell from Talkforce Media (0400 054 227). She has agreed that all media queries coming into the Commission for the next couple of weeks at least can be diverted to her if we need (ie anything that is not project background in nature). She does have other commitments which might delay her capacity to answer her phone, but we will work around this.

Jane – Kristen has asked for us to send her, as background, documentation we have (from HR) about our **current internal processes for handling staff complaints of this nature. This could include, for example, our anonymous online complaint form, the workplace behaviour policy and practice guide, generic harassment officer info, and the availability of our EAP services.**

Could you take care of that please?

Ros

Rosalyn Bell
Head Of Office (Acting) | Productivity Inquiry

Productivity Commission

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4 National Circuit, Barton ACT 2600
p. + [REDACTED]

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Marianna Olding

From: Rosalyn Bell
Sent: Monday, 6 February 2023 9:19 AM
To: Jane Holmes
Subject: FW: media inquiry re review of harrassment allegations at PC [SEC=UNOFFICIAL]

Rosalyn Bell | Head Of Office (Acting) | Productivity Inquiry | p. + [REDACTED]

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From: [REDACTED] <[REDACTED]>
Sent: Monday, 6 February 2023 9:18 AM
To: Kristen Connell <kristen@talkforcemedia.com.au>
Cc: Rosalyn Bell [REDACTED]; [REDACTED] <[REDACTED]>; Lisa Studdert <[REDACTED]>; Michael Brennan <[REDACTED]>
Subject: FW: media inquiry re review of harrassment allegations at PC [SEC=UNOFFICIAL]

Hi Kristen, see below media query. I've not responded, let me know if you need me to handle.

Our response to the AFR last week was: The Commission has been advised of the Treasury investigation and we will fully cooperate with the process.

Thanks,

[REDACTED]
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From: Mark Skulley <skulleymark@gmail.com>
Sent: Sunday, 5 February 2023 5:30 PM
To: MPW (Media, Publications & Web – Productivity Commission) [REDACTED]
Subject: media inquiry re review of harrassment allegations at PC

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

I write for a specialist online publication, Workplace Express (see <https://www.workplaceexpress.com.au>).

My inquiry relates to a report in the Fin Review on Feb 3 which said Treasury has commissioned a review of allegations of sexual harassment and sexism at the Productivity Commission.

The article said Treasurer Jim Chalmers referred the allegations to Treasury Secretary Steven Kennedy.

Seeking comment from the PC re the allegations - which appear to have been raised over several years - and the review.

Thanks,

Mark Skulley
Journalist
Workplace Express
[REDACTED]

Marianna Olding

From: [REDACTED]
Sent: Tuesday, 21 February 2023 3:59 PM
To: Lisa Studdert; Jane Holmes
Subject: RE: report from Kristen on media [SEC=OFFICIAL]

OFFICIAL

Hi Lisa, this sounds like a good idea to me. I'm sure Kristen will be more than happy to do this.

Let me know if you need me to discuss with her.

[REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Lisa Studdert [REDACTED] >
Sent: Tuesday, 21 February 2023 3:36 PM
To: Jane Holmes <[REDACTED]>; [REDACTED] >
Subject: RE: report from Kristen on media [SEC=OFFICIAL]

OFFICIAL

Thanks Jane. Very helpful.
I'm hoping it can be accommodated within that.

[REDACTED] – I'll await your thoughts before contacting Kristen.

L

Lisa Studdert | Head Of Office | Executive | p. [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Jane Holmes <[REDACTED]>
Sent: Tuesday, February 21, 2023 3:29 PM
To: Lisa Studdert <[REDACTED]>; [REDACTED]
Subject: RE: report from Kristen on media [SEC=OFFICIAL]

OFFICIAL

Hi Lisa

I attach an excerpt from the Talkforce contract. While this doesn't specifically state anything about weekly state of plays, you can request it and if Kristen would like the contract varied, then we can arrange this.

Jane

Jane Holmes | Assistant Commissioner | Corporate Group | p. + [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Lisa Studdert <[REDACTED]>
Sent: Tuesday, February 21, 2023 3:11 PM
To: [REDACTED]

Cc: Jane Holmes [REDACTED]

Subject: report from Kristen on media [SEC=OFFICIAL]

OFFICIAL

Hi [REDACTED],

You might have this visibility, but I have been thinking that I'd like to hear from Kristen Connell regularly, perhaps at the end of each week?, about any media queries she's received, handled or any other issues on the media front. Does that seem okay? Sensible? Any reason I couldn't ask that of her under her current contract arrangements?

Grateful for any thoughts/advice.

With thanks,

Lisa

Lisa Studdert

Head Of Office | Executive

Productivity Commission

Ngunnawal Country

4 National Circuit, Barton ACT 2600

p. + [REDACTED]

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Commonwealth Contract – Services

C.A.2 The Requirement

- Facilitate messaging sessions to develop media releases that are clear, concise and interesting (this includes reading overview and associated material to prepare for messaging sessions).
 - Draft media release, op eds, talking points, as required.
 - Work with Commissioners to prepare for media interviews. Review talking points for media as necessary.
 - Provide advice on release strategy, such as identifying specialist journalists.
 - Provide feedback on accompanying communications products.
- Hold workshops on media and presentation training for new Commissioners, Assistant Commissioners and other staff, as required.
- Provide media management for publication releases, if required.

Marianna Olding

From: Jane Holmes
Sent: Monday, 1 May 2023 1:15 PM
To: FOI
Subject: Request 002 FW: Talkforce contract [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: 002

OFFICIAL

Jane Holmes | Assistant Commissioner | Corporate Group | p. + [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Jane Holmes
Sent: Tuesday, February 21, 2023 12:51 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Talkforce contract [SEC=OFFICIAL]

OFFICIAL

Hi [REDACTED]

When we meet today, could you please bring along a hard copy of the Talk Force contract?

Cheers
Jane

Jane Holmes
Assistant Commissioner | Corporate Group

Productivity Commission

Wurundjeri, Woi-wurrung Country
Level 8, 2MQ, 697 Collins Street, Docklands VIC 3008
p. + [REDACTED]

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Kristen >



iMessage
Wed, 8 Feb at 13:11

Hi Kristen, this is lisa studdert from the productivity commission. Hoping we could find some time to chat this afternoon. Please let me know if there is a good time. Thanks, lisa

Hi Lisa. Is 3pm too late?

Thanks Kristen. 3pm is fine. I'll call you then.

Fri, 10 Feb at 09:34

Deborah Brennan
Assoc commissione...

DB



Fri, 17 Mar at 16:21

Can I call you in about 10 mins?

Delivered

Was just checking in before COB re Michael's interviews but no need to call back, I'll wait and hear from him.



iMessage



Marianna Olding

From: Lisa Studdert
Sent: Wednesday, 22 February 2023 4:46 PM
To: Kristen Connell
Cc: [REDACTED]
Subject: weekly touch-base [SEC=OFFICIAL]

OFFICIAL

Hi Kristen,

I hope all is going well.

We haven't had occasion to talk since early last week so I'm assuming 'no news is good news' and there hasn't been much to deal with re media.

I wanted to ask if you could provide a short email report to me at the end of each week just to briefly advise on what, if any, media activity or inquiries there have been. Under the current model of operating I think that would be most efficient – better than setting up a weekly meeting (unless you want that). But for my own comfort, I feel it would be good to hear from you on a regular basis, one way or the other. Even if it is just to say 'nil to report'.

Does that sound okay?

I'm very happy to discuss – please call if helpful.

Kind regards,
Lisa

Lisa Studdert
Head Of Office | Executive

Productivity Commission

Ngunnawal Country
4 National Circuit, Barton ACT 2600
p. + [REDACTED]

pc.gov.au



Marianna Olding

From: Jane Holmes
Sent: Monday, 1 May 2023 12:53 PM
To: FOI
Subject: Request 002 FW: Workplace Behaviour [SEC=OFFICIAL]
Attachments: 20230201 - Workplace Behaviour information.docx; Workplace Behaviour Policy.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: 002

OFFICIAL

Jane Holmes | Assistant Commissioner | Corporate Group | p. + [REDACTED]
[Schedule a meeting](#) | [Chat on Teams](#)

From: Jane Holmes
Sent: Saturday, February 4, 2023 12:04 PM
To: kristen@talkforcemedia.com.au
Cc: Rosalyn Bell <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Workplace Behaviour [SEC=OFFICIAL]

OFFICIAL

Hi Kristen

As requested, please find attached our Workplace Behaviour Policy and a summary Word document for any media queries.

If you have any questions or require further information, please don't hesitate to ask.

Kind regards
Jane

Jane Holmes
Assistant Commissioner | Corporate Group

Productivity Commission

Wurundjeri, Woi-wurrung Country
Level 8, 2MQ, 697 Collins Street, Docklands VIC 3008

p. + [REDACTED]

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Workplace Behaviour and complaints processes and procedures

Staff wanting to make a complaint about unacceptable workplace behaviour have several avenues to do so. The Workplace Behaviour Policy and Procedure 2021, available on the intranet, details what constitutes harassment and bullying in the workplace and outlines the responsibilities and procedures to be implemented should any instances arise. It also provides clear guidance on how to make a complaint – either direct or anonymously.

Staff have the option of talking to Harassment Contact Officers and a list of HCOs are on A4 posters in the Canberra and Melbourne office as well as on the intranet.

Staff needing support can contact the Commission's EAP provider or contact Carfi, who provide specialised employee support services. This information is also listed on the intranet.

Current process for handing staff complaints

Process

The policy for Workplace behaviour details how to make a direct complaint or an anonymous complaint for disrespectful, harassing or bullying behaviour and outlines the process with roles and responsibilities.

- A direct complaint can be made informally or formally and further information details these processes.
- An anonymous complaint can be made via the online form. (Attachment B)
 - HR maintains an anonymous complaint register and follows up on all complaints.

Policies

The Workplace Behaviour Policy and Procedure 2021

Referral services and support:

Staff can contact harassment contact officers which are listed on the intranet and on Melbourne and Canberra offices. They can also contact the EAP provider or more specialised employee support provided by Carfi. HR also refers employees to Carfi if specialised support is required.

- Commission Harassment Contact Officers (all HCOs are trained)
- EAP services – Benestar (as at 1 February 2023), previously LifeWorks
- Specialised employee support services - Carfi



Human Resources

Workplace Behaviour

Policy and Procedure

Date authorised: 11 August 2021

Review date: 11 August 2024, or sooner if required

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Message from the Chair

There are many things that make the Productivity Commission what it is. But the most important – the attribute that makes us one of Australia's premier public policy institutions – is the capability of our people.

That capability is supported by our culture, based on professionalism, respectful dealings and concern for one another. It includes our behaviours, including, very importantly, how we behave towards and communicate with each other in the workplace.

There is a saying to the effect that how we act is who we are.

This policy places a positive expectation on each of us in terms of how we act towards each other – that we will always behave respectfully and courteously in every interaction – no matter the situation, and certainly no matter the role, level or personal characteristics of the people we are working with.

Feedback however, including via APS Census results over time, tells us that we have some work to do in this regard. With that in mind we took the opportunity through the review to:

- help all staff and Commissioners understand the expectations of them in terms of workplace behaviour
- clarify the roles and responsibilities of staff and managers in maintaining and contributing to a positive and respectful workplace
- set out a clear framework for raising, reporting and resolving instances of unacceptable behaviour

I hope we can continue to work together to build and enhance our positive workplace culture, one that is safe, productive and rewarding – for everyone.

Michael Brennan
Chair
August 2021

Policy

Context

This policy intersects with a range of other policies and initiatives designed to support and maintain a productive, safe, and rewarding workplace. These include those relating to workplace health and safety, diversity and inclusion, flexible work, performance management, and learning and development.

This policy focuses on the standards of personal conduct expected when interacting and communicating with other people in the workplace.

Coverage

This policy applies to everyone:

- the Chair as Agency Head
- Commissioners
- staff employed under the *Public Service Act 1999* (PS Act)
- contractors

Policy objectives

To support the maintenance of a respectful and productive workplace free from all forms of unacceptable behaviour by:

- Assisting employees understand their legal obligations and the expectations of them in terms of workplace behaviour
- Providing clear definitions of relevant concepts including harassment, bullying and discrimination
- Articulating the roles and responsibilities of employees and managers in contributing to a positive and respectful workplace
- Providing an accessible framework for raising, reporting, and resolving incidences of unacceptable behaviour in the workplace

A respectful workplace

The Commission is committed to promoting and maintaining a safe, rewarding, and supportive workplace in which everyone treats each other with respect, courtesy and without harassment.

Disrespectful, harassing and/or bullying behaviour (collectively referred to in this policy as 'unacceptable behaviour') is contrary to the APS Values and Code of Conduct (the Code), and other relevant legislation. It undermines a productive, safe, and rewarding workplace and will not be tolerated in the Commission.

Everyone is required to behave respectfully, honestly and with integrity. For Commissioners (as statutory office holders) and staff employed under the PS Act, these, and other conduct requirements, are articulated in the PS Act and APS Commissioner's Directions 2016 (the Directions).

Those in senior leadership positions (Commissioners and SES) have a responsibility for modelling the required behaviours at all times.

Managers also have some additional responsibilities including being alert to issues in the workplace and taking timely action in response to reported or observed disrespectful, harassing, or bullying behaviour.

With the common goal of promoting a respectful and productive workplace, the Commission will seek to ensure:

- A fair, flexible, safe, and rewarding workplace for all employees characterised by respect, courtesy, and inclusion.
- Early intervention in instances of disrespectful, harassing, or bullying behaviour and the fair treatment of all employees involved.
- Appropriate and timely resolution of direct complaints about alleged disrespectful, harassing, or bullying behaviour.

When respect is missing

In the context of this policy, **unacceptable behaviour** is personal conduct (words, actions, or inactions) beyond that which is normally accepted as respectful interpersonal behaviour.

Such behaviour exists on a continuum, from, for example, a single, uncharacteristic act of discourtesy through to behaviour, which is deliberate, intentionally damaging and causes serious psychological and/or physical harm to another person.

In deciding what is an appropriate response to an incidence of unacceptable behaviour, the Commission will consider a range of factors including:

- the nature of the behaviour
- the context in which it arises
- the consequences that flow from it

Roles and Responsibilities

Everyone

Everyone who works in the Commission has a responsibility for supporting and maintaining a respectful, harassment-free workplace by:

treating everyone with respect, courtesy and without harassment

taking reasonable care of their own health and safety at work

taking reasonable care that their behaviour does not adversely affect the health and safety of other people

taking seriously any incidents of bullying or harassment both for themselves and other employees and reporting them promptly

familiarising themselves with this policy, including the complaint resolution process, individual responsibilities, and legislative requirements.

raising, with a manager, any instances of unacceptable behaviour observed

In addition to these responsibilities for everyone, the following additional obligations apply.

Senior Management Group (SMG)

The SMG (Head of Office, Executive Managers and Assistant Commissioner Corporate) is responsible for:

the effective and consistent application of this policy

ensuring, as far as is reasonably practicable, that employees and others are not exposed to health and safety risks in the course of working for the Commission.

All managers

In addition to the responsibilities for everyone, managers are also responsible for:

modelling positive behaviours

promoting understanding of this policy in their work areas

monitoring potential for, and acting promptly on, any unacceptable behaviour

not diminishing or seeking to excuse reported instances of unacceptable behaviour

if reported unacceptable behaviour involves them personally, passing the matter on to their manager

remaining neutral and impartial when handling complaints raised under this policy

dealing with complaints in a fair, effective, and expeditious manner for the benefit of all involved.

Human Resources (HR)

HR is responsible for the effective operation of this policy, including:

providing advice, guidance and support to staff, managers and the SMG on workplace behaviour matters

supporting work health and safety across the Commission

a range of other responsibilities, as set out in the complaints resolution process

Harassment Contact Officers

Trained Harassment Contact Officers:

have an important role to play in providing information and support to staff

have a range of other responsibilities, as set out in the complaints resolution process

Definitions and Guidance

Background and context to this guidance

Harassment, bullying and disrespectful behaviour:

- **does not have to be obvious to cause harm** – it can be subtle and implicit rather than explicit
- **can involve any person in the workplace** – colleagues, supervisors, or managers
- **can happen in a variety of ways** including face to face, via email, text messaging, videoconference, social media, or other online forums
- **may occur in or outside the workplace, during or outside normal business hours**, for example, at conferences, external training courses or work-related social activities.

Guidance: Workplace Behaviour Continuum

Workplace behaviour exists on a continuum, ranging from consistently respectful interpersonal conduct to disrespect and harassment /bullying.

About the continuum

The top arrow in the diagram illustrates how conflict at work may escalate if not managed and that disrespectful behaviour can lead to harassment or bullying if not addressed. The top arrow also shows that the negative impact on the mental/physical health of an affected employee may escalate over time.

The bottom arrow illustrates how unacceptable behaviours can move back towards respectful behaviour through appropriate interventions and support, including responding to and managing unacceptable behaviour (including via complaint resolution processes), training, and expectation setting. The focus should always be on building understanding and moving back to, and sustaining, respectful behaviour.

The circles overlap

The same behaviour could, for example, be assessed as disrespectful in one circumstance, and as harassment in another.

This concept is shown in the overlapping of the circles in the diagram. A case-by-case assessment is always needed to determine how best to respond to an incidence of unacceptable behaviour. A range of factors are considered including:

- the nature of the behaviour
- the context in which it arises
- the consequences that flow from it.

For example, a single incidence of an attempt at humour by questioning a team member's cognitive ability because they are 'getting old' could be categorised as disrespectful. If, however, this comment was one in a series of similar comments and jokes over time, this may constitute discriminatory harassment on the basis of the team member's age.

Unmanaged conflict, escalating behaviour and impact on mental / physical health



Setting expectations, training, support, responding to and managing unacceptable behaviour

	Examples:	Examples:
<ul style="list-style-type: none">▪ Respecting differences – acknowledging and valuing differences in others, their culture, beliefs, values, ideas or characteristics like gender or age.▪ Valuing others – creating a supportive and collaborative team environment where all employees feel valued, and their professional skills and attributes are acknowledged.▪ Positive communication – engaging in open, clear, and honest two-way communication – this involves listening as well as talking.	<ul style="list-style-type: none">▪ Speaking over others, not allowing others to be heard▪ Ignoring or working around someone who should be involved in a work activity▪ Displaying a contemptuous attitude towards other employees▪ Attempting humour by diminishing the dignity of a colleague▪ Making belittling or derogatory remarks that diminish the dignity of other staff▪ Taking the credit for other people's work▪ Initiating or spreading gossip about another employee	<ul style="list-style-type: none">▪ aggressive or intimidating conduct▪ humiliation through sarcasm▪ persistent and unjustified criticism▪ starting or spreading offensive or malicious rumours/gossip▪ isolation – deliberate exclusion from work conversations, activities, or meetings▪ telling insulting jokes about racial groups▪ sending explicit or sexually suggestive emails or text messages▪ repeated unwelcome invitations to go on a 'date'▪ making derogatory comments about a person's disability.

Definitions

Harassment and Bullying

Workplace harassment entails offensive, belittling, or threatening behaviour directed at an individual or group of employees. Such behaviour is unwelcome, unsolicited, usually unreciprocated, and usually, but not always, repeated.

Even if the behaviour is not meant deliberately, it can still be harassment where a reasonable person would conclude that it would humiliate, offend, intimidate, or cause a person unnecessary hurt or distress.

Some forms of harassment may also be **workplace bullying**. Bullying at work, as defined at section 789FD of the *Fair Work Act 2009*, occurs when a person or a group of people **repeatedly** behaves unreasonably towards a worker or a group of workers at work, and the **behaviour creates a risk to health and safety**.

'In practice'

What it is	Examples of behaviour that may be considered as harassment, and bullying if repeated and creates a risk to health and safety, include, but are not limited to:
	<ul style="list-style-type: none">• aggressive or intimidating conduct• humiliation through sarcasm• persistent and unjustified criticism• starting or spreading offensive or malicious rumours/gossip• isolation – deliberate exclusion from work conversations, activities, or meetings• imposing unreasonable deadlines or withholding information needed to complete work.

What it is not	Examples of behaviours that are not considered to be harassment or bullying include:
	<ul style="list-style-type: none">• expressing differences of opinion and engaging in debate as long as this is done respectfully and courteously• providing constructive and courteous feedback, counselling, or advice about work-related behaviour and performance• making a complaint about a manager's or other employee's conduct, if the complaint is made in a proper and reasonable way.

Reasonable Management action	Management action carried out in a respectful and courteous way is not workplace harassment or bullying. This includes:
	<ul style="list-style-type: none">• allocating work to an employee, and setting reasonable goals, standards, and deadlines• transferring an employee to another team or work area for operational reasons• informing an employee about unsatisfactory work performance when undertaken in a reasonable manner.

Discrimination

Some forms of harassment are also discrimination. Under anti-discrimination law, it is unlawful to treat a person less favourably on the basis of particular protected attributes such as a person's gender, sexual orientation, race, disability, or age.

The law also has specific provisions relating to sexual harassment, racial hatred, and disability harassment.

'In practice'

Legal basis

Under the *Sex Discrimination Act 1984*, sexual harassment is:

- any unwelcome sexual advance
- unwelcome request for sexual favours, or
- other unwelcome conduct of a sexual nature in relation to the person harassed in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

The *Racial Discrimination Act 1975* prohibits offensive behaviour based on racial hatred. Offensive behaviour includes an act that is likely to offend, insult, humiliate or intimidate another because of their race, colour or national or ethnic origin.

The *Disability Discrimination Act 1992* prohibits harassment in relation to an employee's disability.

What it is

Examples of discriminatory harassment include but are not limited to:

- telling insulting jokes about racial groups
- sending explicit or sexually suggestive emails or text messages
- displaying or communicating racially offensive or sexually explicit material
- repeated unwelcome invitations to go on a 'date'

making derogatory comments or taunts about a person's disability.

Pattern of Behaviour

There may be circumstances where individual actions appear relatively minor when viewed in isolation but reveal a pattern of harassing or bullying behaviour when viewed in conjunction with other actions..

Failure to act with respect and courtesy

Behaviour that falls outside the definition of workplace harassment or bullying may still constitute a failure to act with respect and courtesy and so constitute unacceptable behaviour.

'In practice'

Examples include, but are not limited to:

What it is

- speaking over others and/or not allowing others to be heard
- ignoring or working around someone who should be involved in a work activity
- displaying a contemptuous attitude towards other employees
- attempting humour by diminishing the dignity of a colleague
- making belittling or derogatory remarks that diminish the dignity of other staff
- taking the credit for other people's work
- initiating or spreading gossip about another employee.

Victimisation

Victimisation is subjecting, or threatening to subject someone, to a detriment because they have made a complaint, helped someone else make a complaint or reported unacceptable behaviour. It is also victimisation to cause a detriment to someone (such as a manager or witness) who may be involved in the resolution of a complaint.

Employees who report or makes a complaint about unacceptable behaviour are legally protected from discrimination or victimisation.

'In practice'

Any retaliatory action taken against someone who has, in good faith, reported unacceptable behaviour, made a complaint, or is involved in the resolution of a complaint (e.g., a manager or witness) will not be tolerated, and may be investigated as a suspected breach of several elements of the Code, including the requirements to:

- behave with integrity in connection with employment
 - comply with all applicable Australian laws
 - treat everyone with respect, courtesy and without harassment.
-

Complaints Procedures

The starting point in resolving a complaint about unacceptable behaviour is to talk to someone.

HR, our EAP provider, trained HCOs and managers can provide support and information about making a complaint.

You can make a direct complaint or an anonymous complaint. Please consider the information provided about both before deciding on which option to take.

Direct Complaints

If you have experienced disrespectful, harassing, or bullying behaviour you can make a complaint directly to your manager, another manager* or the Director or Assistant Director, HR.

If the complaint is about your manager, you should raise this with their manager, another manager at that level (or above), or the Director or Assistant Director, HR.

It is important that you document your complaint (what happened – details of the incidents(s) – who was involved, dates, and any witnesses). This will support your recollection of events in the future.

All complaints are taken seriously and action(s) to facilitate resolution will be taken as promptly as possible.

There are, broadly, two complaint resolution approaches when a direct complaint is made:

- Local/Informal resolution
- Formal Action

Note: It is not intended that local/informal approach(s) must be attempted before formal action(s) can be taken to resolve a complaint. In some cases, for example where a complaint involves allegations of serious misconduct, the Commission may take formal action to address the matter.

'In practice'

Who to? *Manager	For the purposes of the complaint resolution process, when a direct complaint is made, 'managers' occupy the following positions:
	<ul style="list-style-type: none">• Executive Manager• Assistant Commissioner• Team Leader, Inquiry & Research• GPRA EL2 Manager• Corporate Director (EL2)
	In the case of complaints involving Commissioners, 'manager' also includes the Chair and Head of Office as direct points of contact.
	Note: A manager may observe, or become aware of, because someone else has observed, unacceptable behaviour and take action to address this, even if no complaint has been made.

Local / Informal Resolution

In some situations, it may be appropriate to consider an informal process to resolve the complaint. An informal approach focusses on early intervention and resolution rather than on a formal investigation process to establish proof or substantiation of a complaint.

Circumstances that may indicate informal action may be appropriate include:

- the complainant wishes to pursue informal resolution
- the complaint involves allegations of a less serious nature
- it is a single incident of a less serious nature
- it appears the behaviour is unintentional
- it appears that it can be resolved within the work area.

The Commission's informal process for resolving workplace behaviour complaints has two components, early intervention, and initial review. These are explained below.

Early Intervention

Early intervention actions may include:

- If the complainant feels comfortable and safe to do so, a direct private discussion with the respondent.
- A facilitated meeting with the respondent.
- The complainant asking the manager to speak to the respondent on their behalf. The manager privately conveys the complainant's concerns and reiterates the standards of behaviour required to the respondent.
- The manager restating to the team/organisational unit that unacceptable behaviour will not be tolerated. This may be done in a way that does not identify the parties or any particulars of the complaint.

The outcome could be a clearer understanding of the person's concerns, an apology, an agreement about future behaviour, and/or improved work practices.

The manager will monitor the situation closely, including by speaking with the complainant to ascertain whether the situation has improved, the behaviour of concern has stopped, and that the complainant has not experienced any adverse consequences as a result of making the complaint.

Initial Review

Where early intervention actions have commenced and the complainant feels that the behaviour in question has continued, they can request an initial review.

An initial review is an informal and independent investigation, undertaken by a person appointed by the Head of Office. This person may be a Commission employee or an external party.

Formal Action

Where resolution at the local, informal level is not possible or is not appropriate due to the nature and seriousness of the behaviour being alleged, the Commission will take formal action to resolve the matter.

Formal processes may involve investigations undertaken in accordance with the Commission's [procedures for determining breaches of the Code of Conduct](#) issued under subsection 15 (3) of the Public Service Act 1999, or the [procedures established under section 59 of the Public Interest Disclosure Act 2013](#).

Circumstances that indicate formal procedures may be the appropriate course of action include:

- the complaint involves allegations of serious misconduct
 - the person making the complaint also alleges victimisation
 - informal attempts at resolution have failed.
-

Anonymous Complaints

The Commission encourages staff to make a direct complaint about disrespectful, harassing or bullying behaviour.

Making a direct complaint enables the Commission to act to ensure:

- the complainant has access to support services and advice
- there is sufficient information to respond, and take action to resolve the complaint.

As stated elsewhere in this policy, **any** retaliatory action taken against someone who has, in good faith, reported unacceptable behaviour or made a complaint, will not be tolerated, and may be investigated as a suspected breach of the APS Code of Conduct.

Even so, the Commission acknowledges that some staff may be concerned they may be victimised or discriminated against for making a complaint.

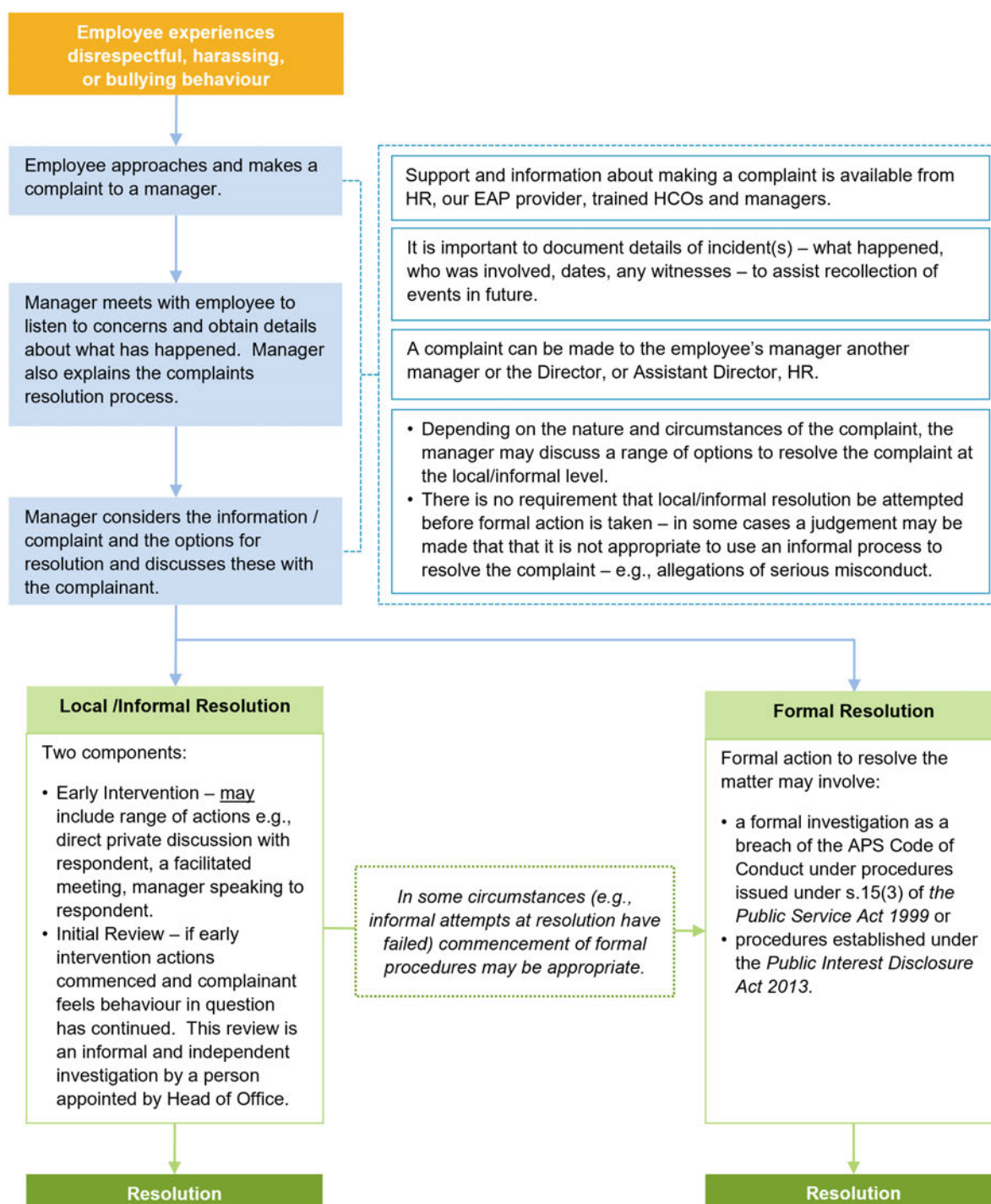
If you have experienced or witnessed disrespectful, harassing, or bullying behaviour but do not want to make a direct complaint, you can make an anonymous complaint.

While the Commission is committed to addressing all complaints raised, it is important to be aware that the anonymous nature of the complaint may affect the Commission's ability to directly investigate or resolve your complaint. In such circumstances, the Commission may take action such as:

- Recording your complaint in the Central Workplace Behaviour Register. The register assists in determining whether an incidence of unacceptable behaviour raised is isolated or forms part of a pattern of behaviour over time.
- Monitoring and/or reviewing the workplace to gain further information or explore the issues raised in your complaint.
- Reminding employees of the standards of workplace behaviour required, for example via awareness/training sessions or discussions.

If you wish to make an anonymous complaint you may do so via this [online form](#).

Direct Complaint resolution flowchart



Roles and Responsibilities

Employee

All employees are responsible for taking seriously any incidents of bullying, harassment, or discrimination both for themselves and other employees, and reporting them promptly.

Managers

In addition to the responsibilities above, managers are also responsible for:

ensuring they understand the complaints resolution processes

dealing promptly and fairly with any complaints that are raised with them

undertaking prompt action to ensure all employees concerned feel safe in the workplace

remaining neutral and impartial in handling complaints raised under this policy

protecting the confidentiality of those who report and/or have experienced harassment or bullying, to the extent possible

if they receive a complaint about unacceptable behaviour, notifying HR in accordance with the Central Workplace Behaviour Register procedures.

Human Resources (HR)

HR is responsible for:

undertaking prompt action to ensure all employees concerned feel safe in the workplace

providing advice and support to managers and employees involved in complaints resolution processes

conducting or supporting any informal/formal reviews or investigations as required

facilitation of conciliation, mediation, or professional counselling services as required

protecting the confidentiality of those who report and/or have experienced harassment or bullying to the extent possible

maintaining central records relating to concerns and complaints, and the analysis of these to identify any patterns of behaviour developing over time and/or wider more systemic issues arising in the workplace.

Harassment Contact Officers

Contact officers are selected from various areas and levels of the organisation to provide information and support to a person who has a concern about or makes a complaint of harassment, bullying or discrimination.

What it is	listen to the person's concerns
	provide information on workplace harassment, bullying and discrimination
	provide information on options available for making and resolving a complaint
	discuss possible strategies the individual might consider to deal directly with the alleged harasser, if this is the individual's preferred course of action protect the confidentiality of those who report and/or have experienced harassment or bullying, to the extent possible.
What it is <u>not</u>	make or express a judgement on the merits of any allegations made
	investigate or resolve a complaint
	advocate for the complainant (or respondent) in any context.

Support person

Complainants or respondents to a particular matter may wish to bring a support person to meetings conducted during the complaint resolution process. In this context, it is important to note that the support person should be independent - i.e., not be someone who is, or may be, involved in the matter (e.g., a potential witness or someone who may be involved in making decisions relating to the matter).

What it is	provide emotional support and reassurance for the employee
	observes the proceedings, and may take notes
	may assist with clarifying the process and give advice to the employee, including requesting a break if needed
	must respect and maintain confidentiality at all times.
What it is <u>not</u>	answer on behalf of the employee
	advocate for the employee

Confidentiality

To protect the rights and privacy of all involved and to maximise the prospect of successful and sustainable resolution, those involved (including the complainant, respondent, and witnesses) should maintain confidentiality before, during and after the complaint resolution process.

This does not preclude the complainant or respondent from seeking support from a partner, family member, trusted friend or colleague however they must also respect and maintain confidentiality in relation to the matter.

Record Keeping

Central Workplace Behaviour register

Records are kept of matters relating to concerns or complaints about unacceptable behaviour. These assist the Commission in monitoring the workplace to ensure actions to resolve these matters are implemented and effective.

These records also assist in determining if an incident is isolated or forms part of a pattern of behaviour over time. They may also highlight that there are wider, more systemic issues in the workplace if a number of incidents of a similar type are raised over time.

These records are kept centrally and securely (managed by HR), and access allowed on a strictly need-to-know basis.

Procedures relating to the management of the register can be found here: [Workplace Behaviour - Supporting Procedures](#)

Formal misconduct action

Records relating to formal misconduct action are kept separate from the personnel file of the employee (or former employee) concerned.

Procedures relating to record keeping in relation to formal misconduct action can be found here: [Workplace Behaviour - Supporting Procedures](#)

Privacy

Confidentiality of complaints and any personal information will be maintained in accordance with privacy legislation and the Commission's privacy policy.

Other avenues for resolution

If a complainant has made a direct complaint to their manager and considers their complaint has not been resolved satisfactorily, a review of action under section 33 of the PS Act may be available.

If the alleged harassment involves discrimination covered by federal anti-discrimination laws, a complaint may be lodged with the Australian Human Rights Commission (AHRC). The AHRC can investigate and try to resolve the complaint.

Investigation without consent of complainant

The Commission may, due to the nature and seriousness of the behaviour being alleged, decide to investigate a matter without the consent of the complainant. The complainant will however be informed if and why this decision has been made and provided with the opportunity to consent.

The outcome of the investigation will be informed by the information gathered as part of the investigation which may be in the form of an informal or formal process. The complainant may be asked to participate in the investigation. However, they may choose not to participate.

Workers Compensation

Where bullying or harassment allegations are made through a worker's compensation claim, the Head of Office will initiate an investigation appropriate to the nature of the allegations. Any information gathered as part of the investigation may be submitted to Comcare to assist with determination of the claim.

Reporting by Witnesses

Employees not directly involved but who observe an incident they consider involves disrespectful, harassing, or bullying behaviour should report this matter immediately to their manager or any other manager with whom they feel comfortable or the Director, or Assistant Director, Human Resources. Having done so, they must keep the matter confidential.

Misconduct in the APS

The Chair, as Agency Head, Commissioners, as statutory office holders, and all APS employees are bound by the provisions of the APS Code of Conduct. Section 15(3) of the PS Act requires Agency Heads to develop written procedures for determining:

- whether an APS employee (or a former employee) in their agency has breached the Code of Conduct
- the sanction, if any, that is to be imposed on an employee where a breach of the Code has been found.

Note: The Commission's [section 15 \(3\) procedures](#) note that not all suspected breaches of the Code of Conduct need to be dealt with by way of formal determination under the procedures. In some circumstances the Commission may decide that there may be a more appropriate way of dealing with the suspected misconduct.

Depending on the circumstances, the Commission may decide on alternative methods to address the suspected misconduct such as a warning to the employee that continuation of unacceptable behaviour may result in a formal misconduct investigation, issuing a formal direction about appropriate behaviour, counselling and/or training.

Misconduct Terms

Misconduct	Misconduct refers to any action or behaviour by employees which has been determined, under the agency's section 15 (3) procedures , to have breached the Code. Until that point, any unacceptable action or behaviour by an employee is a 'suspected' or 'alleged' breach of the Code.
Serious Misconduct	For the purposes of this policy, 'serious misconduct' is conduct on the part of an APS employee that could, if proved, give reasonable grounds for a sanction under s 15(1) of the PS Act.
Sanctions	<p>Where an APS employee is found to have breached the APS Code of Conduct the following sanctions may apply:</p> <ul style="list-style-type: none">• termination of employment• reduction in classification• re-assignment of duties• reduction in salary• deductions from salary, by way of a fine• a reprimand.
Objective Test	<p>The question of whether particular conduct breached the Code is not determined by the subjective standard of the particular employee.</p> <p>The fact that an employee genuinely believed that the action he or she took was proper is not relevant to the decision about whether that action was in breach of the Code.</p> <p>For example, an employee may genuinely believe that he or she was justified in using defamatory and hurtful language about a colleague, but such behaviour would not meet the objective standard of respect and courtesy in the Code</p>

Determining the level of a sanction for a breach of the Code

The APSC has provided guidance on the range of other factors that are, or may be, relevant in determining the level of a sanction imposed for a breach of the Code. These are outlined below.

The nature and seriousness of behaviour including:

the type of conduct involved (e.g., discourtesy as compared to harassment)

the period over which the behaviour has occurred

the actual and potential consequences of the employee's behaviour on others and the reputation of the agency and the APS.

The degree of relevance to the employee's duties:

the seniority of the employee, with more senior employees expected to model appropriate behaviour and exercise a greater degree of judgement

whether the nature of the behaviour if found, calls into question the confidence the agency has in the employee's ability to perform their current duties and responsibilities (e.g., a supervisor has bullied a team member).

Whether the behaviour was uncharacteristic including:

the length of service, balancing a previously unblemished record against the expectation of greater awareness of behavioural requirements

whether there are records of previous complaints, counselling, or breaches of the Code about similar issues.

The presence of mitigating factors that may warrant the imposition of a lesser sanction than might otherwise have been imposed including:

the degree of responsibility taken for the breach

the intention of the employee to breach the Code and whether the breach was premeditated or involved a spur of the moment decision

experience and length of service

extent to which the breach may have reflected a culture or common practice in the work area which needs to be addressed as a systemic problem.

Merit Protection Commissioner Reviews - Case Summaries

The following case summaries are **based on actual APS agency cases/decisions** relating to misconduct reviewed by the Merit Protection Commissioner.

The summaries are de-identified and focus on the key issues presented by a case. Some case summaries are an amalgam of several similar cases.

Case summary - Reduction in classification for harassment that was characteristic behaviour

An employee was reduced in classification to Executive Level 1 for sending an email to a colleague that was aggressive and offensive in nature. The employee acknowledged the breach of section 13(3) of the Code of Conduct but argued that the sanction was extreme and not commensurate with the breach.

The Merit Protection Commissioner considered the nature and seriousness of the conduct and a previous warning about the inappropriate tone of some of the employee's emails. The employee accepted that the email had been intemperate but did not accept that it had been harassing. However, it was the opinion of the Merit Protection Commissioner that a reasonable person would conclude that the email to the colleague would humiliate and offend and also cause unnecessary hurt and distress. That the employee would send such an email, having previously been warned about sending inappropriate emails, demonstrated that they were dismissive of, or uncaring about, any offence the email may have caused, and that the behaviour was characteristic. A concern therefore remained that the behaviour might be repeated.

The employee raised a number of mitigating circumstances, including that the email needed to be considered in context, which included the particular work environment; that the recipient was a peer and not a subordinate; and that the relationship was complicated. The Merit Protection Commissioner accepted that the employee's relationship with the recipient was complicated but noted that employees were still required to act in a way that was respectful and courteous, regardless of the employee's views about the relationship or the fact that the recipient was a peer. The Merit Protection Commissioner also did not accept that the use of 'rugged' language in the workplace excused using language towards an individual that was personalised, belittling and offensive.

The employee also disputed that they had failed to demonstrate leadership behaviour and provided references as evidence of their leadership and management skills. The Merit Protection Commissioner considered that a senior employee could have been expected not only to be fully aware of the effect of their behaviour in the workplace but also to take on board feedback from managers.

Employees at Executive Level 2 are expected to be able to see things from other people's perspectives, anticipate their reactions and use appropriate strategies to resolve conflicts. It was found that the employee did not demonstrate leadership behaviour in these respects. The Merit Protection Commissioner considered that a further reduction in classification to the APS level might have been warranted but for other factors, including a medical condition and positive character references. In all the circumstances, the Merit Protection Commissioner was satisfied that the reduction in classification to an Executive Level 1 was an appropriate sanction.

Case summary - Lack of respect and courtesy and dishonesty by team leader

An employee who was a team leader was found to have breached a number of elements of the Code of Conduct for requesting topless photographs from a junior member of his team and for lying to his manager about his behaviour. The employee was reduced in classification.

The employee argued that the behaviour was private behaviour between consenting adults. It had not offended the junior member of his team, who had found it funny and had willingly complied with the requests. The employee apologised for lying to his manager, arguing that it was done before he was aware that he was under investigation and that he lied to protect the reputation of his junior colleague.

The Merit Protection Commissioner found that the conduct had occurred in the course of employment as the majority of requests for photographs occurred in the workplace and the photographs were viewed in the workplace.

The Merit Protection Commissioner also found that the behaviour was a breach of the requirement in section 13(3) of the Code of Conduct to treat others with respect and courtesy. The Merit Protection Commissioner noted that the standards in the Code of Conduct were objective, not subjective standards. Even though the junior team member was not offended by the requests, the Merit Protection Commissioner was of the opinion that a reasonable observer would conclude that such behaviour was lacking in respect and courtesy. This is because the behaviour failed to demonstrate professional esteem and regard for the junior colleague and was behaviour that in many contexts, including a professional workplace, would be considered impolite.

When considering sanction, the Merit Protection Commissioner noted that there was evidence that the employee tolerated and indeed participated in unprofessional behaviour with his team more generally, including sexual innuendo. The Merit Protection Commissioner considered that the employee's requests for photographs were characteristic behaviour.

The employee argued that had he known that he was under investigation he would have been truthful. The Merit Protection Commissioner noted that the employee had an obligation at all times to be truthful to his employer about matters relating to his employment, not just in the circumstances of a formal investigation.


The Merit Protection Commissioner viewed the behaviours as very serious and considered that they potentially warranted termination of employment, except for the existence of significant mitigating factors relating to the employee's personal circumstances and that he had no previous findings of misconduct. The Merit Protection Commissioner therefore confirmed the sanction of a reduction in classification.

Supporting documents

- Workplace Behaviour Policy Supporting Procedures

Review and approval

Version control

Date	Version	Changes made	Author	Next Review
August 2021	1.0	Policy and process review and complete rewrite		3 years unless required sooner

Approval

Consultation	Approved by	Signature	Date
All staff and PCCC	Head of Office	Nina Davidson	August 2021

Marianna Olding

From: Jane Holmes
Sent: Wednesday, 8 February 2023 4:10 PM
To: Lisa Studdert
Subject: Re: Hello [SEC=OFFICIAL]

Thanks Lisa, you may also like to forward it to [REDACTED] for info.

From: Lisa Studdert <[REDACTED]>
Sent: Wednesday, February 8, 2023 3:59:02 PM
To: [REDACTED]
[REDACTED]
[REDACTED]
Cc: Jane Holmes <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Hello [SEC=OFFICIAL]

OFFICIAL

Hi all

Just a quick note to say hello and advise on reporting lines.

As Jane Holmes advised you yesterday, I will be the Media, Publishing and Web teams' SES going forward. Ros has kindly provided me with a handover and I will ask [REDACTED] to find a time for us all to meet soon.

I can also confirm that Kristen Connell from Talkforce Media will be managing all media issues until further notice.

If you have any questions or concerns please contact me, Jane or [REDACTED].

Kind regards,
Lisa

Lisa Studdert

Head Of Office | Executive

Productivity Commission

Ngunnawal Country

4 National Circuit, Barton ACT 2600

p. + [REDACTED]

[pc.gov.au](https://www.pc.gov.au)

