

Social Media Protocols

1 Introduction

Social media is a broad term that covers a range of web-based platforms which allow users to share their thoughts, interact online and upload media content quickly and easily.

Social networks are one of the fastest growing areas in modern communications. Examples that the Commission currently use include:

- Facebook and Twitter
- YouTube and Flickr
- Online blogs
- LinkedIn

Social media provides great opportunities for the Commission to interact with the community. It also has inherent risks, particularly because it is so easy to post or tweet and to inadvertently say something you later regret.

The Commission encourages staff and Commissioners to take up the opportunities provided by social media in a smart and responsible way. These protocols aim to help achieve this and must be followed by all staff and Commissioners.

The protocols generally refer to accounts that the Commission operates, and not to your personal accounts. However, section two specifically deals with personal accounts, particularly as public servants are bound by the APS Code of Conduct in their personal use of social media.

Examples of accounts covered by these protocols include:

- Commissioners' Facebook and Twitter accounts
- The Australian Human Rights Commission Facebook, Twitter, YouTube and LinkedIn accounts
- Project accounts such as the Twitter account for Racism It Stops With Me and the Facebook and YouTube accounts for the BackMeUp anti-cyberbullying campaign.
- Blogs on Something In Common and on the AHRC website

Some of what is covered in the protocol is common sense like not posting anything that is rude or offensive.

Other aspects are harder to define like ensuring that people only post material that is consistent with Commission policy. The key message around these less easily defined guidelines is to always seek advice, particularly when you are unsure about something.

Both staff and Commissioners should always feel free to consult Communications. However, for staff working on a social media project within a team, their supervisor will be the best person to consult.

Equally Commissioners may wish to take a difficult issue directly to the Executive Director or President, or to a Commission meeting. For both staff and Commissioners, it is important to keep Communications informed of any developing issues.

Social media is fast-moving and dynamic, and these protocols don't cover all conceivable situations. This reinforces the need to talk to your manager if you're unsure about something.

The Victorian Department of Justice has produced a good introductory guide to responsible use of social media:

<http://m.youtube.com/watch?v=8iQLkt5CG8I>

2 Personal use of social media

All staff are allowed to access social media sites at work. Personal use of social media should not interfere with the performance of your normal work duties.

Personal use should be 'reasonable', in the same way that personal use of the internet and work phones are expected to be reasonable. In general, it should be no more than a few minutes a day and where possible in non-core times such as during your lunch break.

Any issues around what constitutes 'reasonable use' should be discussed with your manager.

Staff should make it clear on their personal sites that they are not commenting on behalf of the Commission.

Additionally, all staff need to be aware that they are legally responsible for their comments on social media. A recent defamation case awarded significant damages against a young man for making defamatory comments about a former teacher on Twitter.

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWDC/2013/295.html?stem=0&synonyms=0&query=andrew%20farley%20and%20twitter>

There have been also recent cases in the APS where staff have been held responsible for comments on personal social media accounts.

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCCA/2013/1052.html?stem=0&synonyms=0&query=bowles%20and%20banerji>

Comments on personal accounts may be found to be in breach of the APS Code of Conduct, which specifies "at all times behave in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the employee's Agency and the APS".

By referring to reputation, this requirement in the APS Code of Conduct suggests that staff need to be cautious about what they post on their personal accounts. Material that is scathing about the Commission could be considered to contravene the Code of Conduct, as could material deemed to undermine the reputation of the APS.

Some examples of behaviour that could contravene the APS Code of Conduct include:

- Content that you think is ok, but others take offence at. Examples could include a joke with a racial element on your Facebook account, or linking to a site featuring bikini-clad images of women via Twitter.
- Attacking the Federal Government or the Commission on one of your social media accounts in harsh and derogatory terms.
- Re-publishing a personal attack on a Minister, which accuses them of being dishonest and incompetent.

One of the potential dangers to be aware of both on personal and Commission accounts is that of linking to material that you haven't viewed thoroughly. This is because re-posting or re-tweeting material implies some sort of endorsement.

It may be that an article that starts off quite reasonably, contains extremely provocative material a couple of pages in. Another example could be a website that you've suggested people have a look at, without realising that some of the content is defamatory or offensive.

- 2.1 All staff are allowed to access social media sites at work.
- 2.2 Personal use of social media at work should be reasonable.
- 2.3 Staff should make it clear on their personal accounts that they are not commenting on behalf of the Commission.
- 2.4 Staff should be careful to abide by the APS Code of Conduct when using their personal social media accounts.
- 2.5 Care should be taken on both personal and Commission accounts to only link to or promote content that has been thoroughly checked.

3 Getting Started

The Commission operates a number of social media accounts. Some accounts are run by Communications, others are managed by Commissioners or policy teams.

Commissioners and staff posting in social media need to be guided by a common sense approach.

Some of the fundamentals are:

- 3.1 Be respectful and don't post anything that is derogatory, rude or offensive.
- 3.2 Don't do anything that may damage the Commission's reputation or may compromise the Commission's position as an independent and apolitical organisation.
- 3.3 Keep confidential information obtained through work out of social media.
- 3.4 Be aware that the Commission is legally responsible for material published on our social media sites. Material that infringes the law, such as defamatory posts, must be removed.
- 3.5 Remember that APS staff must abide by the Code of Conduct.
<http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/code-of-conduct>
- 3.6 If in doubt about something you'd like to post, take the time to ask for advice before you do something that could cause you or the Commission a problem.

4 Commission accounts

The Commission's social media accounts have a variety of functions:

- To promote the work and policies of the organisation to a wide and diverse audience.
- To inform the public about specific events that the Commission is organising.
- To provide a space where the general public can interact with the Commission.

All posts in social media should be treated as public comment, like a media release. A useful test is whether you would be happy to have your tweet or post quoted on the front page of a newspaper.

It is also worth remembering that your comments may remain publically available even if you attempt to delete them.

All Commission social media accounts must abide by the following protocols:

- 4.1 Only authorised staff should post to Commission accounts. Principal Advisors and Directors can authorise staff.
- 4.2 When commenting on behalf of the Commission, staff and Commissioners must disclose that they work for the Commission.
- 4.3 Commissioners and staff must stay within the bounds of agreed Commission policy. Any comments in social media must be consistent with the Commission's policies as set out in policy papers, submissions and media releases. If in doubt, ask Communications for advice.
- 4.4 New social media accounts must be approved by the Executive Director and established by Communications.
- 4.5 The Executive Director can close any social media accounts that infringe these protocols.

5 Getting Advice

It is important that staff and Commissioners get advice when they are unsure about an issue in social media.

This process is about involving the right people in critical decisions. By erring on the side of caution, staff will ensure that they are not taking responsibility for decisions that should have been made by somebody more senior.

Exactly what constitutes a critical issue is always going to be hard to define. However, anything that could be damaging to the Commission's reputation is a critical issue. Equally issues that are highly political or contentious in the public debate are likely to be critical.

For both staff and Commissioners, Communications is a good starting point for advice as it's their job to handle issues in social media. Communications will either provide some advice or they will refer the issue to the Executive Director or President.

For any problems outside working hours, the Communications Director and Web Manager are available on their mobile phones.

Communications and all personnel involved in social media are required to seek guidance when legal or policy issues arise. Where somebody refers to a complaint before the Commission, advice should be sought from the Director or Deputy Director of the Investigation and Conciliation Service.

Policy issues should be referred to the relevant Principal Advisor. Examples could include somebody asking the Commission what our position is on a topical issue, or asking us for our view on a particular piece of legislation.

Principal Advisors in turn may seek advice from the Director Policy and Programs. Again the final arbiters are the Executive Director and President.

- 5.1 Commissioners should refer critical issues to Communications, or directly to the Executive Director or President.
- 5.2 Staff should refer critical issues to Communications or to their supervisor.
- 5.3 Communications must be kept informed of any critical issues.
- 5.4 Advice must be sought from Director or Deputy Director of the Investigation and Conciliation Service where complaints issues arise.
- 5.5 Policy issues should be referred to the relevant Principal Advisor. Major issues should be then referred to the Director Policy and Programs.

6 Editorial Approach

The Commission's social media accounts should reflect the organisations' independence. As per 3.3, the content posted by Commissioners and staff must be consistent with our policies.

The Commission supports open debate and freedom of speech, and our social media sites should reflect this. Debate and discussion is welcome, including criticism of the Commission. Criticisms should be responded to, with advice sought from Communications on sensitive issues.

Extra care should be taken in posting 'live' in social media, such as 'live tweeting' an event. This should only be undertaken by those experienced in social media, and should be restricted to non-controversial material.

While the Commission has an advocacy role, it must remain politically neutral. In order to achieve this balance, the following protocols apply:

- 6.1 Announcements from the Government, Opposition and other parties on human rights issues can be highlighted, but care must be taken not to appear to be taking sides.
- 6.2 Caution should be exercised in re-posting material from MPs. Commission accounts must be balanced, and not give the impression of supporting a particular party or MP.
- 6.3 Social media sites must not be used to promote the personal or political views of Commissioners and staff.
- 6.4 Extra care must be taken with material re-posted from third parties. Only material that is consistent with Commission policies should be re-posted.

7 Moderation and Responding to the General Public

All Commission accounts must be moderated. This is to ensure that inappropriate material is deleted.

It is also important because social media is interactive, and the Commission needs to respond to queries, questions and comments. Being responsive sends a positive message to the general public, while ignoring people's queries has the opposite effect.

At the same time responding to queries shouldn't become a time-consuming process that is a burden on staff. Social media isn't the place to explain complicated policy positions.

Where an issue can't be summarised in two or three sentences, usually the best approach is to refer the person to the relevant section of our website for more detail or to just respond in general terms. There is also the option of suggesting that the issue is best dealt with 'offline' and asking for an email or phone contact.

It is worth being aware that some individuals use social media to vent their anger or frustration over a particular issue, and in some cases will not be satisfied with any response the Commission might make. It is important to respond initially, but getting involved in a protracted or emotionally charged debate is not productive.

There are also individuals who set out to cause controversy or hurt, commonly known as 'trolls'. Offensive comments by trolls should be deleted, and advice sought from Communications as to whether to ban the individuals.

Another aspect of moderation is fulfilling our duty of care. We have a responsibility to refer any people clearly in crisis to appropriate services like Lifeline or Kids Helpline.

Any posts threatening self-harm or suicide should be immediately referred to Communications – who will follow the protocols set down for this. The same applies to posts about child protection, such as allegations that a child has been abused or is in danger. Please talk to your manager if you have been exposed to material that is distressing.

In general the more contentious the subject matter, the more important it is that the relevant social media site is moderated. In some cases moderation may need to extend outside business hours, in which case appropriate work arrangements need to be instituted by the manager.

- 7.1 All Commission accounts must be moderated.
- 7.2 Responses to queries should be short and in plain English.
- 7.3 Always be respectful of other's opinions. Respond briefly and politely to criticisms or comments, and try to avoid engaging in a protracted debate.
- 7.4 Seek advice from the relevant team within the Commission if the question is outside your expertise.
- 7.5 Keep records of interactions in social media. For example, screen-shots should be taken of offensive comments before they are deleted.
- 7.6 Refer people clearly in crisis to appropriate support services.
- 7.7 If in doubt about how to respond, please refer up to your Manager or to Communications.
- 7.8 Accounts that are time-specific because they relate to a particular project should be closed when the project is completed.

8 Additional Information

All staff and Commissioners are also bound by the Commission's rules on the appropriate use of computers and the internet. <http://intranet/IT/Policies%20and%20Procedures/The%20Proper%20use%20of%20the%20Commission's%20ICT%20Facilities%202012.docx>

The social media protocols fit within the Commission's Communications strategy. <http://intranet/Commission/26June2013/Document%20Library/1/4.1%20Communications%20Strategy%20Report.doc>

Staff are required to abide by the APS Code of Conduct at all times. <http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/code-of-conduct>

The Proper use of the Commission's ICT Facilities

Revised May 2015

Executive Summary

It is important that in using the Commission's ICT (Information Communications Technology) facilities that you comply with this policy. The purpose of the *Executive Summary* is to highlight key points to remember when using the Commission's ICT facilities. All users are to read the Commission's complete policy on the Intranet.

The Commission's Policy

1. In achieving the Commission's vision of an Australian society in which the human rights of all are respected and promoted it is important that our internal policies reflect and support this.
2. Improper use of the Commission's ICT facilities may compromise its business objectives, expose the Commission to unfavourable publicity and breach the rights of other people under legislation such as the Sex, Race, Age, Disability Discrimination and Privacy Acts. Users therefore have an ethical and legal obligation to use the Commission's ICT facilities properly.
3. The Commission reserves the right to access staff email and file structures to determine if there is misuse. Users should realise that the email system and its contents and Internet access are the property¹ of the Commission.
4. Misuse may result in immediate withdrawal of access. Employees may be subject to disciplinary action under the Commission's policy on "*Breaches to the Code of Conduct*". Contractual staff may be subject to termination of their contracts. Legal prosecution may be taken for such offences as fraud.

A few important points to remember in using the Commission's computer facilities:

- Emails and the Internet are generally not private or secure. Normally you should assume that one day something you send is going to end up on the wrong person's screen. Emails can be copied, resent, cc-ed and generally broadcast to the world and the source can be traced. **What you may consider is "personal" may be public on the Internet.** The guiding rule for sending email is that if you are the least bit unsure as to whether to send an email then don't. Check with your supervisor first. A useful test to use when considering whether to email something is to assume that everything that you communicate via the email is going to be published in the letters page of *The Sydney Morning Herald* with your name on it.
- Do not use abusive, sexist, racist, defamatory or objectionable language in messages or attachments. Improper use of email and the Internet and the Commission's ICT facilities can compromise the Commission and damage our reputation. Do not download, circulate or store such as written material (e.g. jokes) and pictorial material that are offensive, harassing or obscene.

¹ Except material/information subject to copyright, registered trademark or intellectual property ownership.
Updated May 2015

- Do not circulate chain mail, jokes or store large multimedia files that are non-work related. These are time wasters and can result in the spread of viruses and spyware, which can corrupt Commission data. They can also take up a large amount of space on the network. Games are not to be downloaded or received or distributed by Email. No program should ever be installed on your PC without the clearance of the CIO (Chief Information Officer). Internet radio or any other type of streaming program is not to be used unless it is by arrangement for a work related event and only when cleared with the ICT CIO. Instant messaging programs such as Google Talk, Yahoo Messenger, IRC, AIM and MSN Messenger must not be installed or used due to the extremely high risk they pose to security unless approved by the ICT CIO and the HR Manager. If you attempt to use one of these programs and are able to access them this does not imply permission. If in doubt check with the ICT CIO.
- Do not download or copy onto the network drives or PCs, laptops, MacBooks, iPads or iPhones or other Commission owned equipment, any illegally obtained media such as pirated movies or TV series. Do not copy any large non work related files of any kind onto the ICT equipment.
- People sometimes disclose information, express views or include casual remarks in an email which they may not do in a formal letter or memo. Beware of responding in the heat of the moment. As a guide Commission Emails are not to be used to:
 - ◆ spread gossip, deride or criticise other staff or management,
 - ◆ express political views which are not part of your official duties without the approval of the Commission,
 - ◆ send confidential material or
 - ◆ send passwords or usernames.
- Email is not to be used to harass colleagues. Guidelines on the "*Prevention and Elimination of Workplace Harassment*" are located on our Intranet site.
- Staff are to comply with the SPAM Act 2003. This means that the ICT system, including the CRM System and its contact databases, is not to be used to conduct commercial enterprises. Under no circumstances should any email be sent using the Commission's facilities which advertise or link to any commercial enterprise apart from goods and services that the Commission offers itself.
- Reasonable personal use of the email and the Internet is allowed but is not to be excessive nor breach this policy. The Commission recognises that users may benefit from personal use of the email and Internet systems as with accepted personal use of the Commission's telephone system. ICT General social information may be posted to other users under the Commission's email address Social Group.
- Generally, staff are not permitted to access personal email (e.g. Gmail, Hotmail, Yahoo Mail, personal ISP, Fastmail or university) accounts. These types of free email accounts reside on external Web sites and are outside the security of the Commission's ICT facilities. Sending and receiving email from these sites bypasses most of the anti-virus scanning systems the Commission has in place. These sites commonly attract hackers with the potential to damage the Commission's ICT system. You are, however, able to receive and respond to these type of free email accounts as they are channelled through our filters. On occasion the Commission may grant written permission to some staff to access web based email for work related purposes.

- To prevent access to offensive material on the Internet and via email the Commission has installed filtering software. The filters block access to certain sites on the Internet and flag if inappropriate material has been sent or received by Email. If you receive inappropriate material by email you should respond as outlined below. The HR Manager may audit the filter from time to time. If you have taken appropriate steps no further action will be taken. These filters may also block sites that staff may legitimately need to access for work purposes and in these cases you will need to contact the ICT CIO.
- Do not access, distribute or create inappropriate materials on sites such as Twitter, YouTube, Google Talk, Myspace and Facebook.
- As new technologies and new web sites become available they will be examined for security risks and potential for misuse. As a result a site that you have access to one day may be blocked the next.
- Your outgoing emails may be copied and read by the Commission to protect against unauthorised use. All outgoing emails are scanned by the Commission for inappropriate/prohibited content. Where scanning indicates that an email may contain inappropriate/prohibited content, the email will be copied by the Commission and reviewed.

What to do if your receive inappropriate material by Email

If you receive an email that is inappropriate you are to:

- **Advise the sender by return email not to send material of that nature again (do not resend the material with your reply). In the case of Spam do not reply but follow the instructions for how to deal with Spam in the Spam Guidelines.**
- **Delete the material (you will need to delete it again from the deleted Items folder to delete it completely or use the shift and delete keys together to delete it permanently).**
- **Do not circulate this material.**

Advise your supervisor or the ICT CIO or the HR Manager if it is of a serious nature or has occurred regularly.

Personal Music

Personal music must not be copied onto network drives including H, I and J drives. This is a potential breach of copyright and also a major cause of excessive space use on the network.

Remember - These guidelines are to assist staff in using the Commission's ICT facilities properly. At all times behave professionally and responsibly in ICT facilities and if in doubt speak to your Manager.

The Proper use of the Commission's ICT Facilities

1. Scope and Purpose of this Policy

It is important that **all users** of the Commission's ICT facilities understand and adhere to the Proper use of the Commission's ICT Facilities policy. Users include all statutory appointees, permanent and temporary Commission employees, temporary agency staff, contractors, consultants, interns, work experience trainees and other service providers who have access to the Commission's ICT facilities.

In particular:

- The use of ICT facilities should be consistent with the Commission's business operations.
- Reasonable personal use is permitted but must not interfere with the Commission's business operations nor with your work responsibilities.
- Improper use of the Commission's ICT facilities will be addressed in accordance with this policy and may lead to withdrawal of access and in serious breaches, disciplinary action and/or legal action.

This policy applies to **all** of the Commission's ICT infrastructure and peripherals including servers, PCs, **email, Internet**, Intranet, laptops, telephones, mobiles, iPads, software, etc. and covers **all users** of the Commission's ICT facilities.

2. Information Security

Email is not generally a secure mail system and you should assume that one day something you send is going to end up on the wrong person's screen. Emails can be copied, resent, cc'd and generally broadcast to the world and the source is traceable.

3. Privacy and Acceptable Personal Use of the Commission's ICT Facilities

The ICT facilities owned and operated by the Commission are the property of the Commission. Apart from material that may be subject to copyright, registered trademark or intellectual property ownership, any information/material entered or stored using the Commission's ICT facilities, including any emails you send or receive at work, become the property of the Commission. This includes information/material of a personal nature. Emails received at the Commission's email or Internet address are deemed to be messages addressed to the Commission.

The Commission reserves the right to access any part of its ICT facilities for the purposes of examining, copying or deleting any information/material stored on those facilities. The Commission retains this right as a precaution against misuse, including waste of Commission resources, fraud, workplace harassment or breaches of confidences by employees. The Commission is itself subject to the Privacy Act 1988 in its handling of personal information. This would include any personal information generated as a result of employees' use of the email and ICT facilities. The Privacy Act sets out rules for the collection, storage, security, use and disclosure of personal information, and provides for individual rights of access to and correction of their own records of personal information.

The Commission allows reasonable personal use. There is a cost to the Commission in allowing staff access to the Internet. It is expected that staff will behave responsibly when using the Commission's computer facilities. Personal use of the Commission's facilities must not interfere with the Commission's functions, operations and objectives and, accordingly, the Commission may choose to set limits on reasonable personal use.

Reasonable personal use could include:

- Arranging appointments, personal travel schedules, internet banking etc. – this would be similar to current use of the Commission's telephone system.
- Short personal messages and letters.
- Preparation of job applications and assignments associated with approved external studies. This type of use should be restricted to outside work time and be with the permission of your manager.
- Reasonable personal use of Emails does not extend to large mail outs nor the transmission of large files as there is a cost to Internet use. Email larger than 20 Megabytes cannot be sent outside the network as other email systems will not accept them.

The Commission will not accept any liability for security breaches that may occur to staff that access their bank or other secure organisation over the Internet. The Commission strongly recommends that staff pay careful attention to the notices and advice given by the Banks and to security related Emails sent by ICT Services.

Generally, staff cannot access their personal email (e.g. Gmail, Yahoo Mail, Hotmail, personal ISP, Fastmail, and University) accounts for security reasons and compliance reasons. These types of free email accounts reside on external Web sites and operate independently of the Commission's scanning and filtering equipment. These sites commonly attract hackers with the potential to damage the Commission's ICT system. Sending and receiving email from these sites bypasses most of the anti-virus scanning systems the Commission has in place. You are however able to receive and respond to emails from these types of free email accounts as they are channelled through our filters. On occasion the Commission may grant written permission to some staff to access web based email for work related purposes.

Staff are to comply with the SPAM Act 2003 located at Appendix 2. This means that the ICT system is not to be used to conduct commercial enterprises such as running a personal business using the email system e.g. advertising your lawn mowing business by email as distinct from accessing your bank to pay bills. Under no circumstances should any email be sent using the Commission's facilities, including the CRM system and its contact databases, which advertises or links to any commercial enterprise apart from goods and services that the Commission offers itself.

Ultimately it is a manager's decision as to what constitutes reasonable personal use as it is they who are responsible for monitoring and achieving the work objectives of their unit/team. As a rule of thumb, almost all of your use of the ICT system should be for Commission business.

General social information may be posted to other users using the **Social Group** email address. Users should use this facility in line with the principles outlined in this policy. Access to sites such as YouTube, Google Talk, Myspace, Twitter and Facebook is permitted but not for inappropriate use.

As new technologies and new web sites become available they will be examined for security risks and potential for misuse. As a result a site that you have access to one day may be blocked the next.

4. Improper Use of the Commission ICT Facilities

The improper use of the Commission's ICT facilities may:

- compromise its business objectives,
- expose the Commission to unfavourable publicity and legal liability,
- breach the rights and privacy of other people under legislation such as the Sex, Age, Race, Disability Discrimination and Privacy Acts,
- breach the Commission's policy on "The Prevention and Elimination of Workplace Harassment", and
- breach the SPAM Act 2003.

Users therefore have an ethical and legal obligation to use the Commission's ICT facilities properly.

5. Network Security

Please refer to the Commission's ICT Security Policy. All users have a unique username by which the system is able to identify you. You should not share your password with any other user. You should use a password screensaver if you leave your computer on and unattended. You are responsible for your computer if you leave it logged on and unprotected.

Improper use may also compromise the security of the Commission's ICT systems. Viruses, Malware and spyware can be spread to the Commission's systems via chain mail, games etc. Spam is on the increase and poses a threat to the Commission's network. Please refer to the Commission's guidelines on how to manage spam. Trojan Horse viruses are more often obtained inadvertently from non-work related sites such as piracy and pornographic sites. These may result in either the corruption of Commission data on the computer system and/or compromising the security of the Commission network.

Users also have a responsibility to protect the confidentiality and privacy of the Commission's data and information resources.

Ensure that you read all security notices sent from ICT as they contain information that is essential to the ongoing protection of the network from malicious software. If unsure contact ICT before opening an attachment or clicking on a link within an email.

6. Access Privileges and Improper Use

Access may be withdrawn for improper use and cases of repeated misuse or serious breaches, disciplinary and/or legal action may take place.

Examples of improper use may include but is not limited to:

- the use of abusive, sexist, ageist racist and inappropriate comments to do with a person with a disability, defamatory or otherwise objectionable language in messages and attachments to Emails;
- the use of email to harass staff (note: the Commission's Guidelines on "*The Prevention and Elimination of Workplace Harassment*" is located on our Intranet site. Users are to comply with this policy and not use email or the Intranet to sexually harass , racially vilify or discriminate unlawfully);
- expressing personal views on Commission email about political, public policy, social justice or other potentially contentious or sensitive issues which do not form part of your official duties, without the approval of the Commission;
- downloading and/or viewing from the Internet any kind of inappropriate/unacceptable or illegal material;
- placing inappropriate/unacceptable or unlawful information on the ICT facilities;
- destruction of the integrity of computer-based information;
- time wasters such as games;
- use of communications programs like Google Talk, Yahoo Messenger, IRC, MSN Messenger or streaming audio programs like Internet radio;
- compromising the privacy of any person;
- using the Commission's ICT facilities outside the scope of the user's authority and for other than the purpose intended. This includes, conducting a business for commercial purposes or financial gain, gambling, misrepresentation to defraud or obtain money, property or services or any other benefit by untrue representation or "hacking" into unauthorised sites;
- bypassing or contravening any ICT safeguards or procedures without specific authority from the CIO or Executive Director;
- infringement of any laws covering the use of computing facilities or networks and use of software;
- excessive personal use;
- breaching the SPAM Act 2003; and
- repeated attempts to access blocked sites or use blocked programs.

7. Examples of Inappropriate/Unacceptable Material

Improper use includes the entry, access, storage and transmission of unacceptable material. Unacceptable material includes but is not limited to:

- material that breaches the requirements of anti-discrimination legislation such as the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Age Discrimination Act 2004 and the Disability Discrimination Act 1992. This includes, jokes, cartoons, animations that are racist, abusive, and sexist or which degrade people with disabilities;
- material that is embarrassing or has the potential to embarrass the Commission and may bring the Commission into disrepute or public condemnation;
- written or pictorial material, including material a reasonable person would consider offensive, harassing, obscene or pornographic;
- large joke files;
- image, graphics and video files that have been loaded without the approval of the CIO.
- chain mail (e.g. every recipient asked to forward an email to 10 further people);
- executable files - examples of executable files include moving graphics and animations and video clips - they are all generally not work-related and take up space on the network. All executable file have been blocked from being received;
- religious or political material that may be inappropriate or offensive;
- offensive screen savers and/or backgrounds;

- games;
- any material that breaches copyright legislation including pirated copies of movies or TV series;
- gambling; and
- material that contravenes the SPAM Act 2003.

8. Personal Music

Personal music must not be copied onto network drives. This is a potential breach of copyright and also a major cause of excessive space use on the network.

9. Scanning Filters

The Commission has installed filters to block access to pornographic and inappropriate sites on the Internet and to scan both incoming and outgoing Emails that may contain inappropriate material. The email scanning filter is able to detect pictures and offensive words. In the past, most of this material has been found to be non-work related and in some cases contains material that is unacceptable and offensive. The filter is not able to determine if they are appropriate or not and the HR Manager will audit the filter from time to time.

If pornographic internet sites are accessed it is flagged by the system. On occasion users have accidentally accessed inappropriate sites. If this occurs don't panic, just let the CIO know.

If the material is inappropriate the user is to advise the sender by return email not to send material of that nature to the Commission. A suggested reply is:

"The Commission's email policy does not allow material such as jokes, cartoons animations, or pornography that are sexually explicit, sexist, ageist, racist or which offend or degrade people with disabilities. Please do not send this type of material to me again.

If the sender persists in sending offensive material advise the CIO who will block Emails from that sender.

In the case of SPAM where the sender is not known, do not respond but refer the email to the ICT Help for further action.

All executables (this includes games) have been blocked on the Commission's email Filter. The sender will be advised that the Commission does not receive these attachments and that if it is work related they are to contact the CIO. In the majority of cases these are non-work related and in some cases pose a security risk to the system.

All Zip files are quarantined and examined by ICT staff before being passed on to staff as this is a major conduit through which malicious viruses enter our network. If you are expecting an urgent zip file let ICT staff know.

The Commission understands that at times staff are "passive recipients" to inappropriate material sent by Email. If it is detected during an audit of the scanning filter that an inappropriate email attachment is received, the HR Manager may enquire what action had been taken by the staff member in relation to the Email. The scanning filter is not able to indicate if you have sent an appropriate response to the sender.

This software may also block sites that staff may legitimately need to access for work purposes and in these cases you will need to contact the CIO.

10. Audit

Access to user email accounts and audit procedures

The HR Manager in consultation with the ICT section may access your computer account for the purposes of audit. This would be undertaken:

- Where there is an internal or external complaint.
- Where the scanning filter has detected that an email may contain inappropriate material.
- When requested as part of an investigation by the Police, or an authorised external agency.
- When investigating system problems caused by heavy use or particularly large data transfers.
- When the system flags a capacity problem e.g. large email files.
- To monitor for breaches of this policy, or if a breach is suspected.

The HR Manager will advise the user and request an explanation before any further action is taken.

Audits may be conducted from time to time.

11. Transmission of Classified Material

The network is rated as an UNCLASSIFIED DLM network or G Government system and as such cannot be used to transmit any classified materials at the PROTECTED or above level. If you need to send classified communications speak to ICT staff to arrange this. Do not use the email system for transmission of classified materials.

Staff wishing to send classified material MUST contact ICT Services.

12. Software Copyright

Users shall only use software that has been approved by ICT Services that has been legally obtained by the Commission. Users shall not, without authority, copy any software or distribute any software using the Commission's ICT facilities. Users are not to load software, shareware or freeware programs on their pcs without the consent of the CIO. Shareware must be registered if usage continues. Breaches of copyright legislation can attract severe penalties.

13. Responsibilities of Users

Users are responsible for the proper use of the Commission's ICT facilities. Users are expected to familiarise themselves with the responsibilities associated with the Commission's ICT facilities they are authorised to use.

Users are required to ensure that the Commission's ICT facilities under their control are protected from theft, damage, loss, unauthorised access and any other form of improper use

or abuse. Under the APS Code of Conduct APS employees must use Commonwealth resources in a proper manner.

In the event that a user receives an item of email containing material considered inappropriate, the user is required to delete the item and advise the sender to desist. It is to be brought to the attention of your manager if it is of a serious breach of these guidelines or occurs regularly. If you are in doubt please raise it with your manager. The circulating of any such email shall constitute a breach of this policy.

Improper use or suspected improper use of the Commission's facilities is to be reported either to the user's immediate manager, CIO, HR Manager or Executive Director.

14. Responsibilities of Managers and Team Leaders / Supervisors

Managers and Team Leaders are required to:

- Respond to staff queries on the proper use of the Internet and email systems and be prepared to explain the policy to all new employees. This also includes other users under your supervision such as casuals, consultants and interns.
- Supervise your staff and other users under your control to ensure that computer resources are used in a proper manner.
- Refer any breaches to the attention of the HR Manager.
- Take appropriate action when required to handle any breaches of this policy.
- Draw your staff's attention to security related Emails from ICT Services.

15. Responsibilities of the Commission's ICT Services

The Commission's ICT Services is required to:

- Monitor the use of the Commission's ICT facilities.
- Maintain and monitor the security of the Commission's ICT facilities.
- Remove access rights where appropriate, including for a breach of this policy.
- Provide support to Commission users.
- Address repeated or serious breaches of this policy or any applicable legislation by referral to the Executive Director.

16. Policy Breaches

If a user has been found to have improperly used the Commission's ICT facilities, or has engaged in activities prejudicial to the security of those facilities, they may be subject to immediate withdrawal of access. For Commission employees, action may be taken under the Commission's policy on "*Breaches to the Code of Conduct*". Action against other users shall be under the terms and conditions of their contract, or any applicable legislation and may result in termination of their services and further legal action being pursued.

Breaches of this policy or any applicable legislation will be dealt with on a case by case basis. However, as a guide:

- The user may in the first instance be asked for an explanation by the HR Manager. If this is satisfactory no further action shall be taken.

- If a satisfactory explanation is not provided, the user will be notified by the HR Manager or Manager in writing of the breach of this policy and a record kept of that notice.
- Any recurrence of the breach will be referred directly to the Executive Director, for consideration of formal disciplinary and /or prosecution action.

Sections 76A to 76F of the Crimes Act 1914 (Offences Relating to computers) can attract severe penalties.

17. Assistance to Users

Users who require help with ICT aspects of this policy may contact the CIO. Questions on counselling, disciplinary proceedings and other more general aspects of the policy can be directed to the HR Manager.

18. Related Policies

This policy replaces previous email and Internet policies. In addition, users are also to comply with the Commission's ICT Security Policy and Spam Guidelines
Users are also to comply with the following relevant legislation:

- Public Service Act 1999. In particular the APS Code of Conduct provides that "APS employees *"must use Commonwealth resources in a proper manner" and "must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS"*.
- Public Service Regulations.
- Public Service Commissioner's Directions.
- Freedom of Information.
- Archives Act.
- Human Rights and Equal Opportunity Commission Act 1986.
- Racial Discrimination Act 1975.
- Sex Discrimination Act 1984.
- Age Discrimination Act 2004.
- Disability Discrimination Act 1992.
- Privacy Act 1988.
- Crimes Act 1914.
- SPAM Act 2003
- AHRC and OAIC Remote Access Policy
- Social media – protocols and guidelines

This policy will be reviewed on a regular basis to keep up with the rapid development of the Internet and Information Technology.



2014

Maintaining a workplace that is free from harassment

.....
Harassment prevention policy

Table of Contents

1	Statement by the President.....	3
2	What is workplace harassment?	4
2.1	<i>Workplace harassment.....</i>	4
2.2	<i>Sexual harassment.....</i>	5
2.3	<i>Racial harassment.....</i>	6
2.4	<i>Harassment on the ground of disability.....</i>	7
2.5	<i>Pregnancy and harassment.....</i>	7
2.6	<i>Sexual orientation, gender identity, intersex status, relationship status and harassment.....</i>	7
2.7	<i>Other forms of workplace harassment.....</i>	8
2.8	<i>Harassment by contractors or clients.....</i>	8
3	Preventing harassment	9
3.1	<i>Legal Responsibilities.....</i>	9
3.2	<i>Commission wide responsibility.....</i>	11
3.3	<i>Induction and ongoing education.....</i>	12
3.4	<i>Responsibilities of managers and supervisors.....</i>	12
3.5	<i>Role of Harassment Contact Officers (HCOs)</i>	13
3.6	<i>Responsibilities of employees</i>	14
3.7	<i>Role of workplace representatives.....</i>	14
4	Resolving cases of harassment	14
4.1	<i>Options for complainants.....</i>	14
4.2	<i>Outcomes</i>	15
5	Other issues.....	15
5.1	<i>Confidentiality.....</i>	15
5.2	<i>Defamation</i>	15
5.3	<i>Keeping of records relating to complaints of harassment</i>	16
5.4	<i>Further information</i>	16

1 Statement by the President

The Commission is an organisation which values fairness, equity and diversity. The Commission seeks to promote a positive work environment which supports both productivity and the self-esteem of staff members. To meet these objectives, management has a responsibility to provide a suitable working environment and to ensure that proper standards of conduct are maintained at all times in the workplace. The Commission supports a workplace that upholds the APS values and is one in which all employees are treated with courtesy and respect and without harassment.

As the body with a statutory responsibility to ensure the observance of human rights in Australia it is important that respect and acceptance of diversity is an integral part of our own workplace. These guidelines are based on diversity principles requiring that the worth of the individual be respected and that diversity, tolerance and flexibility be valued. The Commission has staff with different cultural backgrounds and social outlooks and we recognise that diversity in our staff is one of our greatest assets and assists us to meet our organisational objectives.

Harassment in the Commission will not be tolerated, it is a form of employment discrimination and is unlawful. Ignoring workplace harassment can have serious consequences. Our managers and supervisors are responsible for providing leadership and example and for maintaining a non-discriminatory and harassment free workplace. They should ensure that all staff are aware of their rights and responsibilities regarding workplace harassment under this policy and are responsible for taking action if they become aware of harassment. Every staff member has a responsibility to treat colleagues and members of the public with courtesy and sensitivity, and to behave at all times in a manner that maintains or enhances the reputation of the Commission and the Australian Public Service (APS).

The Commission has appointed Harassment Contact Officers (HCO's) to provide information and support to staff and managers. Employees may choose to approach any of the HCO's even if they do not wish to make a formal complaint. There are procedures in place should staff choose to lodge a formal complaint in any matter of harassment.

The Commission is committed to providing a workplace free from harassment and one in which staff are supported and treated with courtesy and respect.

President

2 What is workplace harassment?

2.1 Workplace harassment

Workplace harassment is offensive, abusive, belittling or threatening behaviour directed at an individual or a group, which may result from some real or perceived attribute or difference. Such attributes or differences may include but not limited to, gender, race, disability, age, sexual orientation or religion. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour. Harassment may also occur in any work-related context not only in working hours and at the workplace. This may include attending conferences, office Christmas parties, business trips, social networking sites and also include interactions with clients.

Any form of harassment or victimisation is unlawful, is inconsistent with the APS Values and Code of Conduct and diversity principles and is likely to undermine work relationships and efficiency.

For harassment to occur there does not need to be an intention to offend or harass. Moreover, often harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subjected to harassment may seem unaffected. However, a series of individual incidents or a single serious incident can undermine the standard of conduct within a work area, which may erode the wellbeing of the individual or group targeted and lower overall staff performance.

The absence of complaints is not necessarily an indication that no harassment is occurring. The person subjected to harassing behaviour does not always complain. This is not necessarily because the harassment is trivial, but because the person may lack the confidence to speak up on their own behalf or feel too intimidated or embarrassed to complain.

Workplace harassment should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from managers and supervisors on the work performance or work related behaviour of an individual or group. The process of providing feedback to staff during a formal performance appraisal or counselling staff regarding their work performance will not always be free of stress. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening. Managers should manage these processes with sensitivity, but they should not avoid their responsibility to provide full and frank feedback to staff. The booklet "*Counselling for better work performance*" issued by the APS Commission and Comcare, advises managers about how to give effective feedback and counselling.

Neither should 'uncivil' behaviour be considered bullying or harassment. Whilst 'uncivil' behaviour clearly should be avoided, being discourteous, rude or impolite does not carry the same weight as bullying or harassing behaviour.

Examples of harassing behaviour include:

- offensive physical contact, derogatory language or intimidating actions;
- insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace;
- unjustified and unnecessary comments about a person's work or capacity for work;
- openly displayed pictures, posters, graffiti or written materials which might be offensive to some;
- phone calls or messages on electronic mail, SMS messages, computer or social media networks which are threatening, abusive or offensive to employees;
- persistent following or stalking within the workplace, or to and from work or elsewhere; and
- disparaging remarks about malingering to employees who have made a claim for compensation.

2.2 Sexual harassment

Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would have anticipated that reaction. Sexual harassment is legally recognised as a form of sex discrimination. Sexual harassment and sex discrimination are both unlawful under the *Sex Discrimination Act 1984 (Cth)*.

The legal test for sexual harassment under the federal *Sex Discrimination Act 1984 (Cth)* is that the behaviour must be unwelcome, be of a sexual nature and be such that a reasonable person would anticipate in the circumstances that the person who was harassed would be offended, humiliated and/or intimidated. The unwelcome behaviour need not be repeated or continuous. A single incident can amount to sexual harassment. A complaint of sexual harassment will not necessarily be dismissed because the person subjected to the behaviour did not directly inform the harasser that it was unwelcome. However, there does need to be some indication from the person's conduct or the surrounding circumstances that the behaviour was in fact unwelcome.

Sexual harassment can take various forms. It can involve:

- unwelcome touching, hugging or kissing;
- staring or leering;
- suggestive comments or jokes;
- sexually explicit pictures, screen savers or posters;
- unwanted invitations to go out on dates or requests for sex;
- intrusive questions about an employee's private life or body;

- unnecessary familiarity;
- insults or taunts based on your sex;
- sexually explicit emails or SMS messages;
- suggestive or sexually explicit comments or references on social media networks;
- accessing sexually explicit internet sites; and
- behaviour which would also be an offence under the criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

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

It is also unlawful for a person to be victimised for making, or proposing to make a complaint of sexual harassment to the Commission or asserting a right under the Act.

2.3 Racial harassment

Racial harassment is unwanted behaviour towards a person based upon that person's race, colour, descent, ethnic or national origin (including being Jewish or Sikh). While the *Racial Discrimination Act 1975 (RDA)* does not use the term 'racial harassment' the Act defines as unlawful any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin of a person which has the purpose or effect of nullifying or impairing the recognition enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life. The RDA also makes racial hatred unlawful. Clearly some types of workplace harassment could be seen as unlawful behaviour under the Act.

Examples of racial harassment at work may include:

- threatening language and behaviour;
- taunting or ostracising;
- mocking of accents, cultures and customs;
- practical jokes;
- the display of racist cartoons, posters and graffiti;
- racist emails or SMS text messages; and
- derogatory comments about race, accents, culture, religion and customs made in person, by electronic mail, SMS text messaging or through various social media networks.

2.4 Harassment on the ground of disability

Under the *Disability Discrimination Act 1992* (Cth) (the DDA), discrimination or harassment in employment based on disability can be unlawful.

Examples of harassment on disability grounds may include:

- humiliating comments/emails or actions about a person's disability;
- comments/emails or actions which create a hostile environment;
- overbearing or abusive behaviour towards staff with intellectual disabilities;
- electronic mail, SMS text messages or references made through social media networks that are insulting of a person's disability; and
- disparaging remarks/emails to staff referring to compensation claims they have made relating to their disability.

2.5 Pregnancy and harassment

The *Sex Discrimination Act 1984* (Cth) (the SDA) offers protections for employees who have experienced discrimination as a result of their pregnancy or potential pregnancy.

Pregnancy-related harassment may include:

- personal comments about body shape
- unwanted and inappropriate touching of their body
- sexualised comments
- references to abortion
- unwanted comments about when the worker is leaving and whether she should come back.

Some employees may also experience a lack of employment security in relation to their pregnancy.

2.6 Sexual orientation, gender identity, intersex status, relationship status and harassment

The *Sex Discrimination Act 1984* (Cth) (SDA) was amended on 1 August 2013 to make it unlawful to discriminate against someone on the basis of their sexual orientation, gender identity, intersex status or relationship status. While the SDA does not use the term 'harassment' with reference to sexual orientation, gender identity and intersex status, some types of workplace harassment may constitute unlawful discrimination.

Harassment on the basis of sexual orientation, gender identity and/or intersex status can be directed towards sexuality, sex and gender diverse people, as well as towards their partner and family members. Examples may include:

- comments about using the “right” bathroom or shower facilities
- comments about clothing and physical appearance
- use of derogatory terms, slurs and name-calling
- refusal to use someone’s chosen name and pronoun
- inappropriate questions or discussion of someone’s body
- demeaning jokes, comments, cartoons or emails
- unwanted disclosure of personal details on record
- dress code requirements that insist on gender conformity

2.7 Other forms of workplace harassment

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986 (Cth)* which defines discrimination to mean any distinction, exclusion or preference that has the effect of nullifying or impairing equality of opportunity or treatment in employment made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, medical record, criminal record, impairment, marital status, mental, intellectual or psychiatric disability, nationality, physical disability, sexual preference, or trade union activity.

The *Age Discrimination Act 2004 (Cth)* (the ADA) makes it against the law to treat you less favourably because of your age. The ADA protects both younger and older Australians. Although there are no specific provisions relating to age harassment, like the RDA the general discrimination provision may capture such behaviour if based on age.

Workplace bullying is also harassment and is “repeated, unreasonable behaviour directed toward an employee, or group of employees that creates a risk to health and safety.” In other words, bullying is a repeated behaviour that intimidates, offends, degrades or humiliates a worker, possibly in front of co-workers or clients. There are bound to be differences of opinion, conflicts and problems in working relations but bullying occurs when the behaviour is repeated and offends or harms an employee. The following types of behaviour, where repeated or occurring as part of a pattern of deliberate behaviour, could be considered bullying:

- verbal abuse;
- intimidation; and
- teasing or regularly being subject to practical jokes.

2.8 Harassment by contractors or clients

Harassment may also occur where an employee is harassed by a contractor or client. Harassing behaviour from contractors or clients will not be tolerated. In situations such as these the employee should immediately notify their manager. The matter should also be referred to the Human Resources

Manager for any follow up action with the contractor or client. Where the person is from an employment agency, the agency will be notified. “

3 Preventing harassment

Workplace harassment runs counter to the APS Values and Code of Conduct, as well as Commonwealth anti-discrimination laws which are administered by the Commission. Harassment is unacceptable in the workplace. Both managers and employees have a responsibility to ensure an appropriate and acceptable standard of behaviour in the workplace.

3.1 Legal Responsibilities

Management has a legal responsibility to prevent harassment. All employees are bound by various legislation that prohibits harassment of fellow employees and ensures that there is an appropriate standard of conduct maintained in the workplace. This includes:

APS Values

The APS Values set out in section 10 of the *Public Service Act 1999* provide for an inclusive environment that is directed at valuing people and their views and helping them to achieve their full potential.

Impartial - The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Committed to Service – The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

Accountable – The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful - The APS respects all people, including their rights and their heritage.

Ethical – The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

The APS Code of Conduct

All employees are subject to the Code of Conduct, set out in section 13 of the *Public Service Act 1999* and outlined in the Commission’s Enterprise Agreement. The Code of Conduct directly prohibits harassment:

The Code of Conduct requires that an employee must:

- *when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment.*
- *when acting in connection with APS employment, comply with all applicable Australian laws.*

An employee who fails to observe these requirements may be found to have breached the Code of Conduct and consequently be subject to a sanction under section 15 of the *Public Service Act 1999*. Breaches to the Code of Conduct procedures are available on the Commission's Human Resources Intranet site.

Commonwealth anti-discrimination legislation

In addition to being a breach of the Code of Conduct, workplace harassment on the basis of race, sex, age, sexual orientation or disability may also breach both the anti-harassment and the anti-discrimination provisions of Commonwealth anti-discrimination legislation.

This includes sexual harassment and discrimination under the *Sex Discrimination Act 1984*, disability harassment and discrimination under the *Disability Discrimination Act 1992*, and racial discrimination under the *Racial Discrimination Act 1975*. While the *Racial Discrimination Act 1975* does not use the term 'racial harassment', some types of workplace harassment could be unlawful discrimination under this Act.

In addition to an employee's potential personal liability for harassing behaviour under the anti-discrimination legislation, agencies can be held vicariously liable for the acts or omissions of their employees, unless they can demonstrate they have taken all reasonable steps to prevent the acts from occurring. An agency may therefore be liable for damages awarded in compensation for the harassment by one of its employees even though the employer is not directly involved in the harassing behaviour. The employer can seek to recover damages from the harasser.

Workplace harassment may also constitute discrimination under the *Australian Human Rights Commission Act 1986* if it is based on particular grounds including sexual preference, religion and trade union activities.

Other Commonwealth legislation

The Fair Work Act 2009 aims to help prevent and eliminate discrimination in the making of awards and agreements and in the termination of employment. New provisions introduced in December 2013 provide access to the Fair Work Commission to resolve complaints of bullying. Aspects of this Act may be relevant to a workplace harassment allegation.

Under the ***Work Health and Safety (Cth) Act 2011***, employers must also take all reasonably practicable steps to protect the health and safety of employees at work.

Criminal law

There may be instances where harassment amounts to a criminal offence. Sexual harassment involving physical or indecent assault, stalking, sending offensive emails, sending obscene material through the mail and making nuisance phone calls, for example, may be criminal offences. The police should be contacted for advice and assistance on what matters should be reported and appropriate action in these circumstances.

Public Interest Disclosures

The *Public Interest Disclosure Act 2013* (Cth) applies when people report a suspected breach of the Code of Conduct to an authorised person. The Act offers protections to those making such disclosures and requires agencies to take action in relation to the alleged breach. Allegations of such breaches may include reports made by employees who believe that harassment is occurring, even where there is no formal complaint from the person(s) being harassed.

3.2 Commission wide responsibility

Accountability for people management, including the prevention of harassment, lies with senior management and supervisors. They share the legal and managerial responsibilities for detecting and dealing with behaviour which constitutes harassment or has the potential to develop into harassment.

Although the Commission does not have the right to intrude into personal relationships freely entered into by staff, it does have a responsibility to ensure that proper standards of conduct are maintained at all times in the workplace. The Commission has a proper concern where the behaviour of staff towards others:

- adversely affects a staff member's prospects for employment or promotion or other work related benefits;
- adversely affects the work performance of an individual or group;
- undermines morale or causes distress through, for example, the display of the offensive material;
- creates an intimidating, hostile, offensive or distressing work environment;
- leads to physical or emotional stress, which may force a staff member

to take leave to cope with the behaviour or to seek transfer or resignation; and

- reflects adversely on the integrity and standing of the Commission as seen by members of the public or by staff.

3.3 Induction and ongoing education

The Commission will ensure that all new staff whether on ongoing, non-ongoing, on secondment or special placement receive an induction that includes information about harassment and bullying and our no tolerance approach. Interns will also receive information and guidance about our policy and approach.

Where opportunities and resources exist, the Commission will support ongoing education and/or training for staff to reinforce their understanding of what constitutes harassment and strategies for prevention of harassment.

3.4 Responsibilities of managers and supervisors

When workplace harassment does occur, it has a serious and sustained impact on both the complainant and the organisation. It is important that all managers and supervisors are familiar with, and actively promote and support, the Commission's policy and strategies for dealing with harassment. Managers and supervisors should advocate and explain the standards of behaviour expected of employees and be mindful of the need to model these standards in their own behaviour. Managers should also provide support for their staff when they seek advice about dealing with workplace harassment, including providing information about review and complaint mechanisms.

Managers and supervisors must take action when they become aware of harassment (even without a complaint necessarily being lodged). Failure by managers and supervisors when they become aware of harassment to act, investigate complaints or take prompt and effective remedial action to deal with such complaints may be perceived as condoning or tolerating such behaviour. Where no such action is taken, the agency may be held vicariously liable.

Managers and supervisors are usually best placed to become aware of and deal with harassment as part of their role in maintaining a productive environment and promoting proper standards of conduct in their work teams.

In particular managers and supervisors have a responsibility to:

- adhere to, support and promote the APS Code of Conduct and APS Values;
- support the Commission's policy on workplace harassment and ensure that their own conduct is above reproach;
- ensure that staff in their work teams are familiar with the Commission's

policy on workplace harassment and are aware of the appropriate and acceptable standards of behaviour at work;

- take early corrective action to deal with behaviour which may be offensive or intimidating;
- stop behaviour in the work area which may develop into harassment;
- deal promptly with any incidents of harassment, if possible before a complaint is made;
- where a complaint has been made, take action to ensure that the complaint is properly resolved and that there is no repetition of offensive behaviour or victimisation of the complainant;
- maintain confidentiality about any complaint.

Depending on the circumstances, the actions that managers and supervisors could take when they become aware of any harassing or intimidating behaviour at work may include:

- talking with the staff member about appropriate behaviour for work;
- explaining why another staff member may be interpreting behaviour as harassment;
- drawing attention to the Commission's policy on workplace harassment and the relevant legislation;
- referring a staff member to a Harassment Contact Officer or the Commission's Employee Assistance Program (PPC Worldwide);
- referring the matter to the Human Resources Manager or Executive Director for consideration as to what action should be taken if the matter is not resolved.

As in any situation where an employee is causing concern either for work performance or personal conduct, and informal discussions with the supervisor have not rectified the problem, the employee's manager can give the person a written direction about the standards expected and the possible consequences if those standards are not reached. Where an agency gives such written direction and this direction is not complied with, the issue could be dealt with under the Commission's misconduct procedures.

Situations may arise where the supervisor is the alleged harasser. Where this is the case the supervisor's manager or Human Resources Manager should assume the responsibility to deal with the situation.

3.5 Role of Harassment Contact Officers (HCOs)

The primary role of a HCO is to provide support and information to people who believe they are being harassed. The HCO is able to explain the various options for dealing with harassment and, if necessary, to accompany a

complainant to any meetings to resolve the problem. It is not necessary for a staff member to make a formal complaint against a named person in order to approach the HCO. More information about the role of HCOs is enclosed in **Attachment A**.

3.6 Responsibilities of employees

Staff who become aware of a situation that they consider to be harassment by fellow staff members may bring it to the attention of management. However, an accusation of harassment is a serious matter that should not be made lightly. It should be noted that it is not necessary to label someone an harasser in order to bring an issue to management's attention. Any situations of perceived harassment should only be discussed with a person who has a legitimate role in their resolution, such as a manager, Human Resources Manager, supervisor or Harassment Contact Officer.

All staff have responsibilities for preventing harassment in the workplace and ensuring that their own behaviour meets acceptable standards under the APS Code of Conduct.

Staff also have a duty under the *Work Health and Safety (Commonwealth Employment) Act 2011* (Cth) not to create or increase a risk to their own or other people's health and to co-operate with their employer to the extent necessary to enable the employer's duty to be met. Harassing fellow staff or failing to follow the Commission's policies and procedures in relation to the prevention of harassment could involve employees in a breach of the legislation.

3.7 Role of workplace representatives

Staff may approach a workplace (union) delegate regarding workplace harassment as they can about any matter affecting their employment. It is not their role to investigate or resolve cases of harassment, however they can support their members in resolving a complaint.

4 Resolving cases of harassment

4.1 Options for complainants

The Commission will treat harassment complaints (formal or informal) seriously and deal with them in a sensitive, fair, timely and confidential manner. A number of mechanisms are in place to support staff who feel they are being harassed and options available to staff include:

- seeking advice from a manager or supervisor, a Harassment Contact Officer, the Human Resources Manager, or workplace (union) representative to assist in resolving the matter;
- seeking support and assistance from the Commission's Employee Assistance Provider, PPC Worldwide. This is a confidential free service available to all employees (Tel: 1300 361 008)

- approaching the alleged harasser directly (but only if the individual feels confident to do so) ;
- lodging an informal complaint with their manager;
- lodging a formal grievance (review of action) under the Commission's Enterprise Agreement;
- lodging a complaint with the Fair Work Commission;
- lodging a PID to an authorised officer; and
- lodging a complaint with the Commission under its own legislation.

Staff are encouraged to seek an internal resolution as a first resort and further information on each of the options is available from the Human Resources Manager.

4.2 Outcomes

Depending on the severity of the matter, responses may include an apology, counselling, transfer, dismissal, demotion or other forms of disciplinary action. Action will also be taken against anyone who victimises a person who has complained of harassment.

5 Other issues

5.1 Confidentiality

All approaches to a Harassment Contact Officer will be treated in confidence. It is important that investigations of allegations of workplace harassment maintain confidentiality with information provided only on a 'need to know' basis.

5.2 Defamation

Allegations of harassment are serious issues which may reflect adversely on the reputation of the alleged harasser. The possibility of being sued for defamation arises when:

- a complainant speaks to anyone other than the alleged harasser or those with a genuine interest in knowing, and
- that communication is made other than in good faith.

A person with a "genuine interest in knowing" is a person who is involved in investigating or resolving a complaint, either informally or formally. This includes Harassment Contact Officers, the complainant's and/or alleged harasser's manager, the Human Resources Manager (or other HR staff member consulted for advice), workplace delegates, and any person directed to investigate a complaint.

"Good faith" for this purpose means that the complainant is not motivated by ill-will or malice towards the person against who the complaint is made.

5.3 Keeping of records relating to complaints of harassment

It is good management practice that records are kept of any formal complaints of harassment and of any follow-up counselling or other action. Because of the sensitivity of this material, special care should be taken to protect the confidentiality of such records. Records are to be kept in accordance with the Commission's policy on record keeping and with *Privacy Act 1988* (Cth)

5.4 Further information

Additional information regarding the elimination and prevention of workplace harassment is available from the Human Resources Manager.

Relevant references and links include:

- *Fair Work Act 2009*
- *Public Service Act 1999* www.apsc.gov.au
- Public Service Regulations 1999
- Public Service Directions 1999
- APS Code of Conduct and APS Values (also available on the Human Resources Intranet site and in the Enterprise Agreement)
- APS Values and Code of Conduct in Practice
- <http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/aps-values-and-code-of-conduct-in-practice>
- Enterprise Agreement 2011-14 (available on the Human Resources Intranet site)
- Breaches to the Code of Conduct (available on the Human Resources Intranet site)
- Workplace Diversity Plan (available on the Human Resources Intranet site)
- 'The proper use of the Commission's ICT Facilities 2012 (available on the ICT Intranet site)
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004*
- *Australian Human Rights Commission Act 1986*
- *Work Health and Safety (Commonwealth Employment) Act 2011*
- *Public Interest Disclosure Act 2013*
- "Effectively preventing and responding to sexual harassment: A Code

of Practice for Employers (2008)” - AHRC Publication

- “Respect: promoting a culture free from harassment and bullying in the APS” – APS Commission Publication - <http://www.apsc.gov.au/publications-and-media/current-publications/respect-building-a-positive-work-environment>
- “Sharpening the focus: Managing performance in the APS” APSC publication - <http://www.apsc.gov.au/publications-and-media/current-publications/managing-performance>

Other Contacts

Employee Assistance Program – PPC Worldwide – Tel: 1300 36 1008

APSC- Merit Protection Commissioner - 02 6202 3500



ATTACHMENT A

Harassment Contact Officers Role and Responsibilities

The Commission is committed to ensuring a workplace free from discrimination and harassment. Workplace harassment is a form of employment discrimination. It consists of offensive, abusive, belittling or threatening behaviour directed at an individual or a group. The behaviour is unwelcome and unsolicited. It makes the workplace unpleasant and is humiliating or intimidating for the person or group targeted by this behaviour.

As part of the mechanisms in place to resolve any instances of alleged workplace harassment, the Commission has appointed Harassment Contact Officers (HCO's) to provide information and support to staff and managers. Employees may choose to approach any of the HCO's even if they do not wish to make a formal complaint.

The HCO's role is to assist either a complainant or an alleged harasser to understand the Commission's policy and procedures and assist them work through the options available to them.

Harassment Contact Officers may:

1. Provide information on the options available for resolution of the situation.
2. Assist the complainant to clarify what outcome they want.
3. Assist the complainant or alleged harasser through any process as a support person. For example, assisting someone to clarify their thoughts for a letter, accompanying someone to a meeting at their request.

Harassment Contact Officers cannot:

1. Investigate the complaint or attempt to conciliate the parties.
2. Counsel the complainant or alleged harasser.
3. Present the case for the complainant or alleged harasser at meetings or inquiries.
4. Support both parties at the same time.
5. Recommend a particular course of action or pre-empt outcomes.
6. Disclose the information to anyone who does not have a need to know.

Other Options

As well as seeking support from the HCO's, employees who believe they have been discriminated against or harassed may choose to go directly to their supervisor, Human Resources, senior management, workplace (Union) representative or Employee Assistance Program. Employees can also request an external review by the Australian Public Service Commission in some circumstances and further information is available from the Human Resources Manager or HCO's.

Harassment Contact Officers

Level 5	Jenny Davis	Snr Policy and Project Officer	ext 675
Level 4	Jo Oliver	Investigation/Conciliation Officer	ext 822



Public Comment Policy

.....
Guidance for Commission staff making public
comment in a private capacity

Table of Contents

1	General principles.....	3
2	Dealing with Ministers and their advisers.....	4
3	Dealing with non-Government members of Parliament	4
4	Parliamentary inquiries	5
5	Participation in political activities.....	5
6	Whistleblowing compared with leaking	5
7	Restrictions on the release of information.....	6
8	Further information and advice	6
9	References	7

1 General principles

The term “public comment” is used broadly, and includes comment on political or social issues at public speaking engagements or in written articles, radio or television interviews, on the internet, in social media, in letters to the press or books or notices, or in other ways where the comment is intended for the community at large.

Some Australian Public Service (APS) employees, as part of their normal duties, provide comment to the media and the public about agency activities. The Commission’s *Media Policy* clearly defines who has responsibility for public comment on behalf of the Commission and the steps necessary before staff can speak on behalf of the Commission. Staff are to refer to the *Media Policy* on the Communications intranet site in these circumstances.

More generally, APS employees as private citizens may make public comment in a private capacity, so long as they make it clear they are expressing their own views. However, it is not appropriate for APS employees to make public comment where it involves unauthorised disclosure of official information. It is also not appropriate for APS employees to make public comment that could be perceived as:

- being on behalf of the agency or government rather than a personal view. (This applies particularly to senior public servants.)
- compromising the APS employee's capacity to fulfil his or her duties in an unbiased manner. (This applies particularly where comment is made about policies and programs of the Commission or issues that affect the Commission).
- so harsh or extreme in its criticism of the government or its policies it raises questions about the APS employee's capacity to work professionally, efficiently or impartially. Such comment does not have to relate to the employee's area of work. It is especially sensitive if it relates to the work of the Commission.
- so strong in its criticism of an agency's administration that it could seriously disrupt the workplace. (APS employees should always attempt to resolve grievances by informal discussion with a manager or by using internal dispute resolution mechanisms.)
- a gratuitous personal attack.
- compromising public confidence in the Commission or the APS,

It is essential that any “reasonable person” understand that any public comments are made specifically in a private capacity and under no circumstances associated with an employee’s position in the Commission. Staff should check with the Executive Director or Human Resources Manager if there is any doubt as to whether there may be a conflict of interest in making public comment.

The Commission’s Enterprise Agreement also states that “*In addition to the APS Code of Conduct, employees who participate in a private capacity in public discussions must:*

- (i) *ensure that the audience is clear that the public comment is being made in a private capacity and that the employee is not speaking on behalf of the Commission or the Government; and*
- (ii) *ensure that the public comment cannot be seen as compromising his or her ability to continue to carry out his or her official duties in an unbiased and apolitical manner; and*
- (iii) *not make public comment in circumstances where the employee's status or other reasons will make it difficult for the audience to believe that the comments are being made in a private capacity."*

Employees who are seeking to write articles that are associated with the work of the Commission must seek approval from the President through the Executive Director.

2 Dealing with Ministers and their advisers

When dealing with requests from Ministers, APS employees must be responsive to their requests for information and advice with material that is frank, honest, comprehensive, accurate and timely.

3 Dealing with non-Government members of Parliament

APS employees by virtue of the APS Values set out in section 10 of the *Public Service Act 1999* (the Act), have a duty and responsibility to serve the Government, to be responsive to its requirements and to be accountable for the way in which we help it achieve its goals.

The APS Values include being apolitical and impartial, but this does not mean that the APS gives equal treatment to all sides of politics. It is not the role of the APS to serve the opposition, which by convention means that APS employees should have little contact with Opposition or other non-Government parties as part of their duties.

If a public servant receives a request from a non-Government MP for a briefing on a policy or program, by convention (and subject to relevant Commission policies) that request is forwarded to the Minister's office for advice on handling.

For any other information, MPs are treated the same way as any individual or community group seeking information, that is:

- The request should be handled respectfully and courteously
- Information may be disclosed providing it meets the requirements of Public Service Regulation 2.1 and other relevant Commonwealth legislation
- If there is any doubt about what can or cannot be released then further guidance should be sought from someone in authority in the Commission.

There are also specific conventions for briefing opposition parties before an election (see Guidance on caretaker conventions, published by the Department of the Prime Minister and Cabinet http://www.pmc.gov.au/guidelines/docs/caretaker_conventions.pdf)

4 Parliamentary inquiries

A public servant's obligations to Parliament flow from section 57(2) of the Act. The President must assist the Minister in providing factual information to Parliament in relation to the operation and administration of the Commission. This duty is consistent with the APS Values and Code of Conduct, under which APS employees have an obligation to behave honestly and with integrity, to be apolitical, impartial and professional and to be accountable for their actions, within the framework of Ministerial responsibility to the Parliament.

The Department of Prime Minister and Cabinet publishes guidelines for official witnesses appearing before Parliamentary committees which can be found at www.pmc.gov.au/guidelines/docs/official_witnesses.pdf

5 Participation in political activities

It is quite acceptable for public servants to participate in political activities, or be a member of a political party, as part of normal community affairs. However, engagement with parliamentary members, their staff or publicly promoting party or other views on certain issues may raise public perceptions of conflict of interest or partiality and needs to be considered carefully having regard to an employee's role and duties.

6 Whistleblowing compared with leaking

A leaker is not a whistleblower.

A whistleblower is an APS employee who reports a suspected breach of the Code of Conduct to an authorized person within the APS, which can include the Public Service Commissioner or the Merit Protection Commissioner (see section 16 of the Act) or an Authorised Officer under the Public Interest Disclosure Act 2013. Whistleblowers maintain the integrity of the system by seeking to correct perceived wrongs through reporting to the proper authority.

Leaking, on the other hand, involves the unlawful release of official information and is a breach of the Code of Conduct. Leaking, whatever the motive, destroys the trust between Government and the public service and makes it harder to carry out our responsibilities. At its most serious, leaking information can damage Australia's national security or reputation and in extreme circumstances put the lives of Australian officials and others at risk.

7 Restrictions on the release of information

Detailed advice and guidance on the management of official information is contained in Chapter 3 of the *APS Values and Code of Conduct in Practice: Guide to official conduct for APS employees and agency heads*, which is available at: www.apsc.gov.au/values/conductguidelines5.htm. This sets out the legislative and policy framework governing the disclosure of official information:

- The APS Values and Code of Conduct set out the standards of behaviour expected of employees generally.
- Public Service Regulation 2.1, which is part of the APS Code of Conduct, imposes a duty on APS employees not to disclose certain information without authority (ie information communicated in confidence or where disclosure could be prejudicial to the effective working of government). A detailed discussion of this regulation is available at: www.apsc.gov.au/circulars/circular063.htm
- Section 70 of the *Crimes Act 1914* makes it an offence for an APS employee to publish or communicate any fact or document which comes to the employee's knowledge, or into the employee's possession, by virtue of being a Commonwealth officer, and which it is the employee's duty not to disclose.
- The release of official information is also covered in various ways by other Commonwealth legislation, including the *Privacy Act 1998*, the *Freedom of Information Act 1992* and the *Archives Act 1983*.
- Many agencies also have internal policies and directions governing the disclosure of official information that reflects their particular organizational and operational requirements relating to security and the protection of personal, client and commercial information.
- Finally, an employee has a duty of loyalty and fidelity under the common law.

8 Further information and advice

APS employees who have questions about the disclosure of official information in different circumstances and situations should in the first instance consult their supervisors or managers.

The *Guidelines on APS Values and Code of Conduct in Practice* issued by the APS Commission provide additional information. Staff should contact the Commission's Ethics Advisor, Michelle Lindley or the Human Resources Manager if they would like further guidance.

The Australian Public Service's Ethics and Advisory Service can also provide advice to any APS employee on the legislative and policy framework governing the disclosure of official information and the issues that may need to be taken into account in deciding when it can or cannot be released. The Service can be contacted by phone on 6202 3737 or by email at ethics@apsc.gov.au.

9 References

Australian Human Rights Commission Enterprise Agreement

APS Circular 2009/4

APS Act 1999

APS Regulations 1999

PID Act 2013

Public Service Commissioner's Directions 1999

APS Values and Code of Conduct in Practice – A Guide to Official Conduct for APS Employees and Agency Heads.

Crimes Act 1914

APS Values and Code of Conduct in Practice: a guide to official conduct for APS employees and agency heads: Australian Public Service Commission, 2009 <http://www.apsc.gov.au/values/conductguidelines.htm>

Australian Public Service Commission Circular 2006/3: Amendment to the Public Service Regulations 1999, Regulation 2.1 Disclosure of Information

<http://www.apsc.gov.au/circulars/circular063.htm>

Government Guidelines for Official Witnesses before Parliamentary Committee and Related Matters, Department of the Prime Minister and Cabinet, 1989 http://www.pmc.gov.au/guidelines/docs/official_witnesses.pdf

Guidance on caretaker conventions, Department of the Prime Minister and Cabinet, 2007

http://www.pmc.gov.au/guidelines/docs/caretaker_conventions.pdf

Supporting Ministers, Upholding the Values: a good practice guide, Australian Public Service Commission, 2006

<http://www.apsc.gov.au/publications06/supportingministers.htm>

Australian Public Service Commission Circular 2008/7: Code of Conduct for Ministerial Staff <http://www.apsc.gov.au/circulars/circular087.htm>

Standards of Ministerial Ethics, Department of the Prime Minister and Cabinet http://www.pmc.gov.au/guidelines/docs/ministerial_ethics.pdf