



Creating a Positive Work Environment

Respect and Safety in the Public Service Workplace



STATE SERVICES COMMISSION
Te Komihana O Ngā Tari Kāwanatanga



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FOREWORD

It is the job of the Public Service to translate into action the objectives of the government of the day, and to do so in ways that maintain the trust that New Zealanders have in the institutions of government. Trust in government is influenced by the behaviour of all government departments and agencies in the wider State sector. This requires, among other things, strong leadership, good management and quality employment practices.

In 2000 the State Services Commission carried out a comprehensive survey which examined the working environments for staff in the Public Service. The survey asked staff how they felt, among other things, about their working environment, their work/life balance, and their working relationships with managers and colleagues.

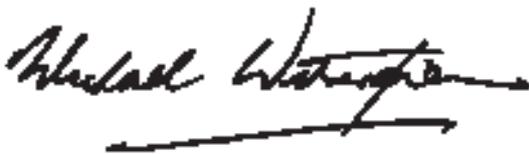
The survey showed that many public servants were positive about their working environment, liked the challenging work, enjoyed a co-operative atmosphere with colleagues and felt supported by their managers. It also revealed some concerns about aspects of the Public Service working environment, and the State Services Commission is dealing with these issues through a follow-up work programme. For instance, in response to expressed wishes for more access to mentoring, new guidance material has been developed on improving coaching skills and mentoring, which will be shared with all government agencies.

Equal employment opportunities, respect for a diverse workforce, and fairness for every individual were intrinsic to the Career Progression and Development Survey questions. For public servants to perform well, they must feel well treated. The survey results showed some perceptions of unwelcome behaviour in the Public Service working environments. Unwelcome behaviour is a broad term which covers inappropriate behaviours that could constitute bullying, harassment and discrimination. This document promoting positive and safe working environments has been produced by the State Services Commission partly in response to those concerns. The document also responds to the new requirements of the revised Health and Safety in Employment Act.

In preparing these guidelines, the Commission has received assistance and input from the Human Rights Commission, human resources staff in a number of departments, and the Public Service Association. I wish to express my warm appreciation of this support.

The international research that forms the basis of these guidelines emphasises that leadership is all-important in creating a culture of respect and a positive work environment. Those of us in positions of leadership have a responsibility to work with our staff to create an environment where each person feels recognised for their contribution, feels valued for their particular skills and is respected as a whole person with a life outside the workplace. Only with committed leadership will public servants work in an encouraging, affirming and safe workplace, where diversity is valued and mutual respect applies.

It is my hope that these guidelines will assist departmental and State sector leaders in this process.



Michael Wintringham
State Services Commissioner

PART ONE

RECOGNISING THE PROBLEM



Introduction/background

The purpose of this document is to give human resources staff, line managers, project managers and others with responsibility for staff both in Public Service departments and the wider State sector practical assistance in creating a work environment where every staff member feels valued and respected and where harassment and bullying are unacceptable.

This guidance is a continuation of work arising from the Career Progression and Development Survey carried out by the State Services Commission in 2000 and published in 2002¹. It also links with the recent Amendment to the 1992 Health and Safety in Employment Act².

The Career Progression and Development Survey was designed to investigate public servants' perceptions not only of their career progression opportunities but also of the work environment in the Public Service. The responses showed that while there were many areas where Public Service workplaces rated well (e.g. challenging work, support from colleagues and managers), some areas needed attention. These included unwelcome behaviour, the subject of this guidance.

Staff indicated strongly that they wanted to:

- be treated fairly;
- be in an environment where staff worked co-operatively; and
- have their ideas valued.

In other words, they wanted a workplace that was positive and respectful and where they felt valued.

Public servants were asked in the survey about their personal experiences of unfair treatment and unwelcome behaviour. One in five public servants considered that they had experienced unfair treatment in the 12 months prior to the survey, while a third said they had experienced some form of unwelcome behaviour. Offensive remarks, offensive jokes, offensive communications and inappropriate comments on appearance were the most commonly reported forms of unwelcome behaviour.

The term 'bullying' was not mentioned in the survey questionnaire, but some types of bullying behaviour were listed in the questions. The results were that:

- 16% of public servants reported being set unrealistic goals³;

- 11% had experienced the circulation of negative rumours about them;
- 10% reported being denied access to particular areas of work;
- 8% felt they had been excluded from conversations and staff social occasions;
- 6% said they had experienced verbal threats at work; and
- 3% said they had experienced physical threats.

The qualitative (open-ended) responses included other experiences, such as being shouted at or repeatedly humiliated in front of others, being denied credit for their work, put-down comments, and having things thrown at them. Thus the survey revealed that bullying behaviour did take place in some Public Service workplaces.

Although there are no comparable statistics for the private sector or the wider State sector in New Zealand, these results fit with studies that have been carried out internationally. Research on the extent of workplace bullying has been carried out in the United States, the United Kingdom, Australia, Germany, Norway, Sweden, Finland, Canada and Ireland. European research showed that bullying is more widespread than other forms of harassment⁴. Australian research revealed workplace bullying to be affecting one in four workers⁵. In Britain, unions' work on stress identified bullying as one of the major causes of stress at work⁶.

The State Services Commission wishes to assist departments by offering models of workplace environments where a culture of respect is encouraged and harassment is not tolerated. Many departments have already done excellent work in this regard, and excerpts from departmental policies and codes of conduct are used as examples in this document. The Career Progression and Development Survey results, together with increasing attention in New Zealand and internationally to the subject of workplace stress, including bullying, makes guidance on this topic to public sector organisations timely.

In addition, new Health and Safety in Employment legislation includes recognition of workplace stress. International research strongly indicates that harassment, including bullying, is one cause of stress in the workplace. This document is intended therefore to assist departments to address the issue in the context of health and safety.

¹ State Services Commission. *Career Progression and Development Survey, 2000 – Results for the New Zealand Public Service*. Wellington: SSC, 2002

² Health and Safety in Employment Amendment Act 2002

³ See page 12 for definitions of overt and covert bullying

⁴ ILO Report no. 26, 1998, cited in Olsen, 2002 (b), p 7

⁵ Queensland Workplace Bullying Taskforce, 2001

⁶ Mellish, 2001

The guidance draws on information from a number of resources and research documents produced in recent years (see Bibliography). It is not intended as a source of legal advice. Departments should seek such advice from their own legal officers and/or from the relevant legal body.

Definitions and behaviours

Some harassing and bullying behaviours may be a form of discrimination. Such behaviours may be unlawful if they are based on one or more of the thirteen grounds covered by the Human Rights Act 1993: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation. Bullying and/or harassment may constitute discrimination if disadvantage based on one of the above grounds can be shown.

Discrimination occurs when a person is treated unfairly or less favourably than another person in the same or similar circumstances in any of the areas of public life covered by the Act. Employment is one of these areas.

Structural (systemic) discrimination occurs when an entire network of rules and practices disadvantages less empowered groups while serving at the same time to advantage the dominant group.

Direct discrimination specifically excludes a person from a benefit or opportunity because of factors or characteristics unrelated to their ability to do the job – for example, refusing to promote someone because of their sex, race or sexual orientation.

Indirect discrimination occurs when people are treated the same, but in practice that treatment has a detrimental effect on a particular person or persons, based on a ground of discrimination.

Workplace harassment

While New Zealand has specific legal protection from sexual and racial harassment in the workplace, other forms of harassment are a developing area of employment law. There is currently active worldwide campaigning to educate employers and employees about workplace harassment and bullying and to legislate against such behaviour.

Many workplaces, including in the New Zealand Public Service, have anti-harassment policies and try to resolve their own conflicts internally. While those policies usually include definitions, further definitions

and examples are included in this document as a reminder of the kinds of behaviour under discussion. Definitions give clear guidance to employers and employees as to what is not acceptable behaviour in the workplace and should clarify the rights and obligations of both employees and managers. Clear definitions may impose a test of reasonableness to protect employers from overly sensitive employees⁷.

There are many different definitions of general workplace harassment. Hadyn Olsen, a New Zealand workplace trainer in this field, has defined it as:

*“...unwanted and unwarranted behaviour that a person finds offensive, intimidating or humiliating and is repeated, or significant enough as a single incident, to have a detrimental effect upon a person’s dignity, safety and well-being”*⁸.

The behaviour can range from that causing slight embarrassment through to criminal acts. For example:

- a generally “hostile” work atmosphere of repeated put-downs, offensive stereotypes, malicious rumours, or fear tactics such as threatening or bullying;
- a general work atmosphere of repeated jokes, teasing, flirting, leering or sleazy “fun”;
- an isolated but significant incident, such as a violent attack or sexual assault;
- comments or behaviour that express hostility, contempt or ridicule for people of a particular race, age, etc.⁹.

Racial harassment

The Human Rights Act 1993 defines racial harassment as uninvited behaviour that humiliates, offends or intimidates someone because of their race, colour, or ethnic or national origin. It can involve spoken, written or visual material or a physical act. Racial harassment provisions are also contained in sections 103, 109 and 117 of the Employment Relations Act 2000.

Racial harassment can include:

- making offensive remarks about a person’s race;
- mimicking the way a person speaks;
- making jokes about a person’s race;
- calling people by racist names; and
- deliberately pronouncing people’s names wrongly¹⁰.

⁷ Ayling, 2002

⁸ Olsen, 2002(b), p 9

⁹ Drawn from the Department of Internal Affairs Harassment Policy

¹⁰ Human Rights Commission, Fact Sheet 09, March 2003

Sexual harassment

Sexual harassment is covered by both the Employment Relations Act and the Human Rights Act (section 62). Part 9 of the Employment Relations Act 2000 provides a definition of sexual harassment. The definition and various other provisions relating to sexual harassment are contained in sections 103, 109 and 117.

Sexual harassment can include:

- personally sexually offensive verbal comments;
- sexual or smutty jokes;
- repeated comments or teasing about someone's alleged sexual activities or private life;
- persistent, unwelcome social invitations, telephone calls or emails from workmates at work or at home;
- following someone home from work;
- offensive hand or body gestures;
- unwelcome physical contact – e.g. patting, pinching, touching or putting an arm around another person's body;
- provocative visual material – e.g. posters of a sexual nature;
- hints or promises of preferential treatment in exchange for sex, or threats of differential treatment if sexual activity is not offered; and
- sexual assault and/or rape¹¹.

Bullying

Bullying can be considered a form of harassment. There is no legal definition, and definitions in the research literature are many and various. The behaviours below have been drawn from a number of sources¹².

Overt bullying can include:

- threats;
- intimidation;
- standover tactics;
- coercion;
- verbally abusive or degrading language or gestures;
- shouting or yelling or screaming;
- unexplained rages;
- unjustified criticism and insults, nit-picking and fault finding without justification;
- constant humiliation;
- belittling remarks;

- unjustified threats of dismissal or other disciplinary procedures; and
- punishment imposed without reasonable justification.

Covert bullying can include acts such as:

- deliberately overloading an employee with work and imposing impossible deadlines;
- sabotaging an employee's work by withholding information that is required to fulfil tasks;
- hiding documents or equipment;
- constantly changing targets or work guidelines;
- not providing appropriate resources and training;
- isolating or ignoring an employee on a consistent basis; and
- changes in the duties or responsibilities of an employee to the employee's detriment, without reasonable justification¹³.

Bullying between staff may include teasing, practical jokes, gossiping, excluding co-workers and criticising co-workers on a regular and systematic basis.

Technology as a tool of harassment

The sending and receiving of pornographic, sexually explicit or offensive material through email is already forbidden in some departmental guidelines, as is harassing other email users, whether through language, frequency or size of messages.

The images used on screensavers are the technological equivalent of posters, and the same guidelines as apply to such visual materials in the workplace apply to them.

What is not harassment

The following are examples of behaviours that are *not* considered to be harassment or bullying:

- friendly banter, light-hearted exchanges, mutually acceptable jokes and compliments;
- friendships, sexual or otherwise, where both people consent to the relationship;
- issuing reasonable instructions and expecting them to be carried out;
- warning or disciplining someone in line with organisation policy;
- insisting on high standards of performance in terms of quality, safety and team cooperation; legitimate criticisms about work performance (not expressed in a hostile, harassing manner);

¹¹ Human Rights Commission, Fact Sheet 08, March 2003

¹² E.g. Beale, 2001, p 80; Olsen 2002(b), pp 9-10; Hoel and Cooper, 2001, p 4; Queensland Workplace Bullying Taskforce, 2001, pp 7-9

¹³ Sources: see footnote 12

- giving negative feedback, including in a performance appraisal, and requiring justified performance improvement;
- assertively expressing opinions that are different from others;
- free and frank discussion about issues or concerns in the workplace, without personal insults; and
- targeted affirmative action policies, parental leave provisions, or reasonable accommodation and provision of work aids for staff with disabilities, etc.¹⁴.

Addressing harassment should not be seen as an attempt to prevent managers from doing their jobs or to prevent people from having a reasonable amount of fun or good humour at work. It is an attempt to respect the dignity of people and to support their right to feel safe and respected at work¹⁵. Occasional differences of opinion, conflicts and problems in working relations are part of working life and do not constitute bullying. Workplace counselling, managing underperformance, or other legitimate action in accordance with departmental policy and procedures, are not bullying or harassment¹⁶.

People may sometimes cause offence or harm unintentionally, but the issue is about the effect upon the person concerned, not about intention¹⁷.

Who it involves

Harassment/bullying can occur between a worker and a manager or between co-workers. It crosses lines of gender, race and age. It may involve: employees harassing other staff; employees harassing clients, sub-contractors or members of the public; members of the public, sub-contractors or clients harassing staff. Research indicates that both men and women can be bullies. There are no defining characteristics of victims – anyone can become the target of bullying behaviour.

Usually there is some imbalance of power – actual or perceived – involved in the relationship. When a balance of power exists between two individuals in conflict, the behaviour would not usually be regarded as bullying. Power may be formal, drawn from one's hierarchical position within the organisation, or informal, referring to sources of power such as personal contacts, organisational standing and experience. Knowledge of an opponent's vulnerabilities may be a further source of informal power exploited in cases of

bullying¹⁸.

Managers and supervisors need to be aware of the power differentials between themselves and subordinate employees and how this impacts on employee interactions¹⁹.

Effects of harassment and bullying

Employers who fail to tackle discrimination, harassment and bullying pay a price. The cost is in:

- lost time because staff are affected by stress and ill-health;
- lost incentive because morale is low;
- reduced work output and quality of service; and
- lost resources because people who are trained and experienced leave the organisation.

If the poor environment becomes known publicly, the organisation also becomes less attractive to possible applicants.

The United Kingdom Department of Health estimated that the cost of sickness absence for stress and mental disorders in Britain is more than five billion pounds a year, while an Institute of Management 1996 survey gave figures representing lost production and national health charges of seven billion pounds annually²⁰. Australian research estimated a cost to industry of \$12 billion in the year 2000, from workplace bullying²¹.

No costings have been carried out in New Zealand, so figures cannot be produced. However, when New Zealand public servants were asked in the Career Progression and Development Survey about the impacts of unwelcome behaviour, those affected reported that:

- their relationship with their manager deteriorated (30%);
- they became less productive at work (29%);
- their relationship with their co-workers deteriorated (25%);
- they began to look for another job (23%);
- they became disengaged from the organisation (19%); and
- they took more time off work (12%).

In responses to open-ended questions in the survey, staff mentioned experiencing stress and stress-related

¹⁴ Olsen, 2002(b), p 10; DIA Harassment Policy, p 5

¹⁵ Olsen, 2002(b), p 10

¹⁶ Department of Human Services, Victoria. *Preventing and Eliminating Bullying in the Workplace*, 2001

¹⁷ See e.g. Olsen, 2002(b) p 11; Beale, 2001, p 83 ff

¹⁸ Hoel and Cooper, 2001, p 5

¹⁹ Department of Human Services, Victoria. *Preventing and Eliminating Bullying in the Workplace*, 2001

²⁰ Mellish, 2001, p 205

²¹ Queensland Workplace Bullying Taskforce, 2001

illnesses, losing self-confidence, depression, inability to concentrate, and feeling angry and disillusioned. Health effects, both physical and psychological, are borne out by international research. The U.S. Hostile Workplace Survey 2000 found respondents suffering from depression, severe anxiety, lost concentration, sleeplessness, and symptoms of post-traumatic stress disorder²². Other physical impacts of stress include heart and blood pressure problems, headaches, stomach ulcers, muscle cramps, and digestion problems²³.

Example from Ministry of Fisheries Prevention and Removal of Harassment Policy

Harassment is personally offensive and has serious and undermining consequences for both the individual and our workplace. Specifically for the individual harassment can:

- Make the harassed person tense and anxious, affecting their health, job performance and personal relationships and reducing self-confidence. If these problems lead to recurring illness and absenteeism, it can put a person's job in jeopardy.
- Adversely affect work performance, sometimes resulting in bad reports and unjust charges of inefficiency.
- Make some harassed people resign, others are unfairly dismissed and some are transferred to less satisfactory jobs, or may find her/his work or attempts to move or get promotion being sabotaged.

Career Progression and Development Survey respondents who had experienced abusive, threatening and intimidating behaviour from members of the public or clients reported fears for their own safety and that of their families.

Departments have used varying styles of wording in their policies to describe the effects of harassment (see boxes).

Example from Department of Internal Affairs training handout, "Harassment doesn't belong in DIA":

Harassment hurts people by causing:

- Humiliation
- Isolation
- Distress
- Making it difficult for them to do their job.

Harassment costs DIA through:

- People missing work
- People leaving
- Having to spend time and money on investigations and court hearings
- Giving us a bad name.

DIA can't afford either the personal or the business costs.

Workplace harassment as a health and safety issue

The State Sector Act, section 56(2), requires departments as good employers to operate personnel policies necessary for the fair and proper treatment of employees in all aspects of their employment, including "good and safe working conditions". The New Zealand Court of Appeal has noted that the duty to take reasonable steps to maintain a safe workplace is an implied term of employment contracts²⁴.

Health and safety legislation has long required employers systematically to identify hazards in the working environment. Bullying and harassment are stressors that may lead to reports of stress, and may thus constitute hazards under the 2003 Amendment to the Health and Safety in Employment Act 1992. Failure to take all practicable steps to manage stress in the workplace leaves the employer susceptible to prosecution or other action under that Act.

While identification of a workplace stress may be less obvious than identifying and eliminating physical hazards at work, there are still many objectively identifiable warning signs. These can include:

- high levels of absenteeism and sick leave;
- high staff turnover and low levels of staff morale;
- accumulated untaken annual leave;

²² Namie, 2000

²³ Olsen, 2002(b), p 14

²⁴ See e.g. Attorney-General v Gilbert [2002] 2 NZLR 342 (CA)

- an increase in resignation or retirement rates; and
- an increase in utilisation of personal grievance procedures.

The Department of Labour/OSH guidelines on *Healthy Work: Managing Stress in the Workplace* lists poor relationships with supervisors and fellow workers and interpersonal conflict and violence at work among the conditions possibly stressful to an employee. Any investigation where serious harm is alleged would examine whether there was clear evidence of recognisable stressors that the employer knew about, or should have known about, and whether there was clear evidence of some significant hazard that led directly to the harm. Persistent bullying in the workplace is given as one example of such clear evidence. If it is recognised that harm has occurred because of a failure to have systems in place to recognise stressors such as these, or because known stressors or stress were not responded to, the normal range of actions under the Health and Safety in Employment Act can be considered by OSH²⁵.

Setting in place an anti-harassment policy is a step towards eliminating the hazard of workplace stress caused by harassment or bullying.

²⁵ Workinfo/Department of Labour/OSH. *Healthy Work: Managing Stress in the Workplace*, 2003, p 19

PART TWO

ADDRESSING THE PROBLEM



Organisational culture and organisational values

Organisations are complex systems with their own rules and cultures. The way that organisations manage people plays an important role in the creation of a culture that is either respectful or bullying towards its employees²⁶. An organisation has to ensure that its systems and culture do not reward bullying behaviour, but rather that such behaviour will be discovered and challenged²⁷:

“In a sense, the culture of an organisation is built around unwritten ‘rules’, the tacitly unspoken and understood premises that ‘this is how you have to behave, and what you need to do to fit in round here’. ... Some organisations may not necessarily actively support a negative culture, they are often more likely to condone by default. In other words, by passively going along with the situation, pretending that everything is fine or even ignoring or denying that there are problems, a negative climate will prevail”²⁸.

Recurring incidence of bullying or harassment would signal that an analysis of the organisation itself is warranted, in addition to investigation of individual complaints²⁹.

Values are the timeless guiding principles that influence everything the organisation does. They are the invisible force that can make or break strategic and operational decision-making. They are not necessarily uniform across an organisation. They can help or hinder managers in their efforts to achieve alignment between organisational and individual objectives. They can, if developed, supported and used appropriately, reduce the turbulence of change and increase the organisation’s ability to meet a crisis³⁰.

Many writers on organisational development believe that work on general values is an essential precondition to any work on staff rights in organisations, because this establishes the ground on which a culture of respect can be built³¹. Work on a culture of respect is sensitive, because it exposes private and deep-rooted prejudices. It therefore needs a strong foundation or it will fail. It also needs time and a determination to keep going.

Written statements of mission, vision and principles, developed by a sound participative process, are regarded by experts as the most important element of creating a positive working environment³².

The University of Auckland, in a statement of commitment to creating and maintaining a safe and respectful work environment, lists the positive factors that contribute to making a productive and effective workplace. These include where staff are:

- valued for their particular contribution;
- provided with the opportunity to receive training to develop their skills and familiarity with the workplace;
- respected for their individual differences;
- disciplined for unacceptable behaviour, using well-publicised policies and procedures about expectations of staff;
- taken seriously when they have a grievance;
- assigned manageable tasks within their capabilities;
- provided with productive feedback on their work;
- provided with clear instructions/goals/expectations for each task; and
- provided with orientation activities, performance appraisals and clear work plans³³.

²⁶ Proctor and Tehrani, 2001, p 165

²⁷ Beale, 2001, p 83

²⁸ Douglas, 2001

²⁹ Crawford, 2001, p 24

³⁰ Walker, 2001, p 131

³¹ Walker, 2001, p 130

³² Wilson, n.d., p 1; Rosier, 2001, p 18

³³ University of Auckland, www2.auckland.ac.nz/mdr/bullyhout.html

Example. Department of Conservation policy guide, "Harassment – What Is It and How to Deal with It", 2001

STATEMENT FROM THE DIRECTOR GENERAL

I am committed to providing an environment within the Department of Conservation which is free from harassment and discrimination.

The department takes its responsibility for maintaining a work environment free of harassment very seriously, and recognises the adverse effect such behaviour has on all people who work for the department, as staff, volunteers or contractors. Whether intentional or unintentional, harassment demonstrates a lack of respect for the dignity and character of the individuals whom it targets.

The department will not tolerate harassment for two important reasons. The first relates to the effect it has on people's well being, morale and job satisfaction. Harassment denies equality in the workplace, and contravenes the department's Code of Conduct, which requires all employees to respect the rights of their colleagues and the public while performing their duties. The second reason is because harassment is against the laws of New Zealand.....

Making a complaint of harassment is a serious matter and unreasonable complaints are in themselves a form of harassment. I do not condone harassment and regard it as entirely unacceptable behaviour. In striving to provide a safe and secure working environment in the department, I am seeking the active co-operation of every employee, particularly those who hold managerial and supervisory positions. Their role is to lead through good example.

I encourage you to read this guide. It provides a description of behaviours which may be construed as harassment, it describes some ways to avoid harassing behaviours in the first place, and it outlines the procedures for dealing with complaints should incidences of harassment arise.

I hope that no employee, volunteer or contractor to the department tolerates harassment, or hesitates to use the internal complaints procedures if they feel they are either experiencing such behaviour or observers of it.

Hugh Logan

Director-General

Commitment from the chief executive

The research literature is uniform in asserting that the creation of a positive, safe and respectful work environment will only occur when senior management demonstrate their commitment to it. Commitment from the chief executive is of particular importance³⁴.

Right to work/dignity at work

The right to work is enshrined in Article 23, Universal Declaration of Human Rights. Discrimination at work is prohibited in the same Article. Harassment and bullying, with their potential to denigrate and humiliate an employee, strike at the free exercise of this right³⁵.

The concept of dignity in the workplace has its roots in the human rights forum. It is more than just eradicating harassment and bullying: it is about promoting the ethos of a positive working environment through good working relationships, embracing and valuing difference.

A European Commission recommendation, 'Dignity at Work' in 1991 spearheaded new legal thinking³⁶. The British 'Dignity at Work' Bill, which passed its third reading in the House of Lords in May 2002³⁷, would penalise persistent bullies and employers who allow bullying behaviour to take place. The Bill basically asserts that all employees have a right to dignity at work and to be protected from any form of harassment and bullying that causes them distress in the course of their employment. This right is a term of the employment contract.

The Bill provides complaint procedures, remedies, and an employer's defence. The defence involves the development and reasonable enforcement of a dignity at work policy, and the appointment of a competent person to assist with the implementation of the policy³⁸.

While the concept of 'dignity at work' is not one that has been familiar in this country, the term is being used increasingly. The Ministry of Foreign Affairs and Trade's Code of Conduct refers to "the individual's right to dignity at work", while the New Zealand Customs Service recognises the "dignity" of the individual in its Integrity Principles.

³⁴ See e.g. Walker, 2001, pp 129-132; Tehrani, 2001, pp 136-137

³⁵ Fitzsimons, 2001

³⁶ Leighton, 2001, p 98

³⁷ Ishmael, 2003, p 6

³⁸ Ayling, 2002

Excerpt from New Zealand Customs Service Integrity Principles

In carrying out our roles as law-enforcers and public servants, we acknowledge the rights of all people; be they the citizens we serve, the users of our services, our stakeholders or the staff of our organisation.

We make a commitment to treat each of these people fairly and reasonably – demonstrating respect for their worth and dignity as individuals in all that we do....

The value of respect also applies to how we, as employees, treat each other. We are conscious always of how we speak and act towards our co-workers, keeping any personal bias against others out of our professional relationships with them....

Customs, as a good employer, recognizes the value of all staff to the organisation and expects all staff will be treated fairly and with respect.

practices, internal sabotage, vandalism, personal grievances, compensation costs associated with constructive dismissals, harassment, discrimination, time taken to investigate and manage complaints, strikes, lockouts, etc.”

Codes of conduct

Codes should make clear what behaviour is expected of staff. Usually codes make broad statements of principle regarding the standards set for the organisation, but some include quite detailed policy statements. All codes should contain statements about the need for respect in dealing with colleagues and refer to the non-acceptability of discrimination, harassment or bullying.

The New Zealand Public Service Code of Conduct, published in September 2001, is based on three principles, the second of which is that “Public servants should perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues”. Under the heading “Respect for the rights of others”, the Code says:

“As well as being responsible for their own performance, public servants also have a duty to contribute to the smooth functioning of the workplace by treating their colleagues and the public with courtesy and respect. This means public servants are expected:

- *To avoid behaviour which might endanger or cause distress to their colleagues, or otherwise contribute to disruption of the workplace;*
- *Not to discriminate against any person because of their sex, marital status, colour, race, ethnic or national origins, age, political opinion, employment status, family status, sexual orientation, ethnicity, disability or religious or ethical beliefs;*
- *Not to harass, bully or otherwise intimidate clients or colleagues;*
- *To respect the cultural background of colleagues and clients in all official dealings....”*

While some departments use this Code as it stands, others have used it as the basis for an individually drafted code of conduct that adds an extra level of detail tailored to the needs of their own values and standards.

The benefits of “a dignified workplace” have been described as³⁹:

“A happier workforce

People enjoy working in jobs where they feel important, valued, respected and safeguarded against abusive behaviour. Happier workers mean better productivity, more harmonious workplace relationships and more honest and open communication.

A more stable and productive workforce

When the dignity of employees is upheld, employees generally stay longer, commit themselves to a greater degree, become more innovative and creative and work harder to achieve results.

A healthier and safer workforce

Upholding dignity is the true basis of a health and safety culture. It means we uphold safety and health because we value our employees, not just because we don’t want to lose money through incidents, levies and compensation costs.

A less combative and costly workforce

Reduced costs due to less time spent dealing with disputes and harmful conflict. This means reducing such things as ‘working to rule’

³⁹ Olsen, 2002(a), p 49

Excerpt from Ministry of Foreign Affairs and Trade Code of Conduct, 2003

RESPECT FOR THE RIGHTS OF OTHERS

2.17 As well as being expected to ensure satisfactory individual performance, employees also have a duty to contribute to the smooth functioning of the workplace by treating their colleagues (including locally engaged staff) and the public with courtesy and respect. In meeting this obligation, employees are expected:

- to avoid behaviour which might endanger or cause distress to other employees, or otherwise contribute to disruption of the workplace;
- to refrain from allowing workplace relationships to affect adversely the performance of official duties;
- to respect the privacy of individuals when dealing with personal information;
- not to discriminate against or harass others because of their sex, marital status, family status, ethnicity, race, colour, age, sexual orientation, disability, political opinion, religious or ethical beliefs, or employment status;
- to respect the cultural background of colleagues and clients in all official dealings;
- to have due regard for the safety of others in the use of departmental property and resources.

2.18 Employees shall conduct themselves in a polite, friendly and helpful manner in all written (including electronic) and oral communications and at all times.

WORKPLACE HARASSMENT

2.19 The Ministry issues specific policy guidelines on workplace harassment that aim to provide a healthy, safe, respectful and professional working environment for all staff in Wellington, and seconded and locally engaged staff at overseas posts. Internal procedures are in place to deal with cases of harassment.

2.20 Workplace harassment is defined as any unwelcome verbal or physical behaviour, conduct or display of material which has no legitimate workplace function and which has the effect of offending, humiliating or intimidating another workplace participant. It may involve the actions of an individual or a group. It involves unwelcome behaviour from

a colleague, manager, employee, member of the public or a person whom an employee meets in his/her official capacity.

Harassment includes unwelcome behaviour that occurs at work or between workplace participants in settings outside the workplace.

2.21 Harassment and victimisation may result in disciplinary action and might result in a complaint being made to the Human Rights Commission or the Employment Court against individual(s) and/or the Ministry.

2.22 Discrimination on the basis of sex, marital status, religious or ethical belief, race and colour, ethnic and national origins, disability, age, political opinion, employment status, family status and sexual orientation is unlawful under the Human Rights Act 1993.

2.23 Sexual harassment is also unlawful under the Employment Relations Act 2000. The Act defines sexual harassment as:

- requesting a sexual contact from a worker with the promise of preferential treatment or the threat of some harm to the worker's future employment;
- using words of a sexual nature, or physical behaviour of a sexual nature, which is unwelcome or offensive and repeated or serious enough to cause harm to the worker's employment, job performance or job satisfaction.

2.24 Workplace bullying is not tolerated by the Ministry. It is defined as repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work.

2.25 Workplace bullying is language, visual material or physical behaviour that directly or indirectly: expresses hostility against or intimidates or ridicules an employee(s); is unwanted, hurtful and offensive to the employee(s); and has, by its significant nature or through repetition, a detrimental effect on an employee(s).

2.26 Workplace bullying may result in disciplinary action.

Anti-harassment policies

The research literature is uniform in emphasising that employers should tackle workplace harassment and bullying by having a written policy that names and provides a description of the behaviour, and a clear message to staff that such behaviour will not be tolerated.

The policy should contain the following elements:

- statements of the beliefs and values of the organisation;
- the ethical commitment of the employer to fostering an environment free from harassment and bullying;
- the scope of the policy and who it covers;
- the legal framework;
- definitions of harassment and bullying, with examples to illustrate the behaviour;
- description of the effects to the organisation and the individual;
- a commitment to ensure no retaliation or victimisation;
- clarification of the degree of confidentiality;
- the step-by-step procedure to be followed in the case of an informal allegation;
- the step-by-step procedure to be followed in the case of a formal allegation;
- explanations of the roles of the human resources staff, manager, supervisor, contact/support colleague, union representative/official. More than one person should be identified to whom a complaint may be made. Contact details should be given beside each name;
- the sanctions involved;
- details of counselling available for complainant and perpetrator; and
- commitment to training⁴⁰.

Separate and specific anti-harassment/anti-bullying policies need to suit each department's requirements. This provides the opportunity for staff to be involved in the development and to agree to the provisions. Where a policy is borrowed or copied, it could be inappropriate for the organisation concerned⁴¹.

Having a written policy is not in itself sufficient. Policies and procedures can create the illusion that the organisation has tackled the problem. To be effective,

policies need to be backed by designated groups who are responsible for the sensitive dissemination, maintenance and monitoring of policy.

Example of opening statement. Department of Internal Affairs Harassment Policy, para 2: (Note: capital letters are as in the original)

Harassment is UNACCEPTABLE in any form at DIA. It is a breach of:

- DIA's workplace principles of valuing people and treating people with integrity
- DIA's Strategic Human Resources policies and commitment to EEO
- DIA's legal obligation to be a "good employer" and provide a safe working environment.

DIA will work to make sure everyone who comes in contact with our organisation is aware of our ZERO-TOLERANCE policy to harassment, and be proactive in reducing the risk of any incidents of harassment.

DIA takes any complaint of harassment seriously.

Information about how to make a complaint is contained in the DIA "Problem Resolution procedure".

Example of scope of policy. Department of Internal Affairs Harassment Policy

Who is covered by the policy?

- All employees are protected by the policy, whether they are harassed by another employee, contractor or member of the public.
- All employees are responsible under the policy to make sure that they do not harass other employees, contractors or members of the public. If you do harass others, you may face disciplinary action.

Where does the policy apply?

This policy covers all behaviours that happen:

- In the workplace
- During work activities
- At work-related social events.

⁴⁰ Largely based on Douglas, 2001 and Irish Task Force, 2001

⁴¹ Irish Task Force, 2001; Crawford, 2001, p 24

Cultural differences

“One size does not fit all!”

The valuing of diversity in the workplace means that cultural differences should be acknowledged in departmental policies, and in training. Ethnic group differences include not only language, religion and customs, but also attitudes. This will influence how people from different ethnic groups behave and react in the workplace. Staff training for the majority culture needs to include developing understanding and awareness of differences in, for example, verbal and non-verbal cues and issues of face-saving, acquiescence or shame. Staff training for those from ethnic minority groups new to New Zealand should include identifying aspects of the workplace that may be confusing for them, and clarification of what constitutes proper behaviour.

There is a risk that complaints systems will not be seen as appropriate or accessible to some people, which means that discrimination or harassment can go unreported or under-reported. Cultural safety practices can help to enable staff to bring these matters to light. Use of a support person may assist in this process.

When dealing with any incident of harassment, those involved need to be aware that gender, language, ethnicity, culture, and dis/ability are factors that may have to be taken into account and may necessitate different procedures. Extra assistance (e.g. interpreters) may be required.

Specific support requirements in the case of people with disabilities should be discussed with the parties concerned prior to the commencement of the resolution process. For more information, refer to the State Services Commission’s guide *Moving Forward: EEO for People with Disabilities in the Public Service*.

Example. Department of Conservation, “Harassment – What Is It and How to Deal with It”, section 1.4

DIFFERENT CULTURES, DIFFERENT CUSTOMS, DIFFERENT GENDERS

Reading different things into the same behaviour

Behaviours, words and gestures have different meanings in different cultures. What may be acceptable in one culture may not be in another. For example, a welcoming gesture of a brief kiss on the cheek may be common and acceptable to one group, yet not another. In these cases, the effect of the behaviour depends on how the person on the receiving end feels.

Likewise, different genders interpret and react to behaviours, words and gestures differently.

It is important to:

- think about how your colleagues or a member of the public might think or feel about your behaviours
- try and understand their behaviour within their culture or context.

Increased understanding and awareness can help reduce feelings of harassment. However, it is important that this does not in any way excuse harassing behaviour

Different cultures have different ways of responding

Because of cultural or language difficulties, people who have been harassed may be unable to express their objections to the behaviour, or may lack the experience to deal with the situation. They may not know where to go for help. In the case of sexual harassment, women from some ethnic minority communities may find it difficult to discuss the problems with their family or community. In some communities, sexual violence is still a very taboo subject.

Training – managers and staff

Written policies are of little use if they are not accompanied by and followed up with training. The research literature is consistent in stressing that workshops on harassment and bullying should be held for all staff, and need to become integral to induction activity, with regular follow-up.

Part of the challenge of developing a diverse workforce is to ensure that all new employees, regardless of who they are, are fully integrated into the existing teams and

activities of the organisation and understand the organisation's values and expected standards of behaviour⁴².

With managers, a comprehensive programme of training is needed to provide them with the knowledge and skills necessary to implement the organisation's policies effectively. They need training on:

- what harassment and bullying are, what they not, and why they are an issue;
- the options open to complainants;
- managers' responsibilities towards all parties involved;
- handling interviews with complainants and respondents;
- why it is difficult for people to complain; and
- what managers can do to prevent harassment⁴³.

Senior and middle managers in particular need to be trained to know what to do when harassment is alleged and how to deal with the complainant as well as the alleged harasser. The provision of an open learning environment for managers could usefully include shadowing more experienced managers undertaking a harassment investigation⁴⁴.

Many writers⁴⁵ stress the need for increasing manager skills in what are sometimes called the "softer" skills of, for example, effective delegation, motivation and improving communication and interpersonal skills, as well as in dealing with employee differences and conflict. If managers are poorly trained in managing people, they will not necessarily have the insight into how to encourage and support a positive working culture. This was borne out by the Career Progression and Development Survey, where many respondents said their managers had poor communication skills or poor "people" skills.

Management roles and acceptable behaviours must be clarified, and managers need to know that it is possible to be an effective manager without resorting to bullying.

Performance management/appraisals

Performance management/appraisal systems can also be used to tackle the issue of unacceptable behaviour⁴⁶. Managers are not always skilled appraisers and can feel uncomfortable with difficult employees. They may

either fudge things or avoid the problem entirely, in a sense giving licence to bullying.

Managers can be alerted to interpersonal problems among their staff through performance management/appraisals systems — particularly if the exercise is designed as a mutual learning exercise rather than simply as an assessment of a subordinate by a superior. Some organisations include 'upwards' and 'sideways' appraisal, so that employees are assessed by their colleagues and subordinates as well as by their superiors. Such systems might identify any harassment/bullying at an early stage, as well as discouraging unreasonable behaviour in the first place⁴⁷.

It is important that staff training makes it clear that feedback on work performance or work-related behaviour of an individual or group, which might include critical comments indicating performance deficiencies, is not to be confused with workplace harassment or bullying. Performance feedback is intended to assist employees to improve their work performance or the standard of their behaviour. It should always be carried out in a constructive way that is not humiliating or threatening⁴⁸.

Training and support – contact people

Anti-harassment advisors need initial training in the issues, refresher training, and ongoing support, since their role can at times be stressful. In particular, those investigating cases of bullying often report that they are bullied and are accused of being bullies during the investigations. Such contact people must be given the support they require in order to contend with the complex and difficult situations they encounter.

Dissemination of policy

A written policy, no matter how brilliantly drafted and how all-encompassing its coverage, is of no use if it does not reach all the staff of an organisation. Dissemination needs to take a number of avenues.

While copies of the policy in printed form are essential, staff who already work with large quantities of paper are unlikely to take notice of yet another circular appearing on their desk⁴⁹. Attractive brochures and posters are more likely to catch the eye and to remain in the mind. (The Department of Conservation and Archives New Zealand have excellent models of these. See the Appendix for the Department of Conservation poster.)

⁴² Wainwright Trust, 2002, p 35

⁴³ Top Drawer, 1998, p 28

⁴⁴ Wainwright Trust, 2002, p 35

⁴⁵ e.g. Mellish, 2001; Brennan, 1999; Douglas, 2001

⁴⁶ Douglas, 2001

⁴⁷ Beale, 2001, p 90

⁴⁸ Ayling, 2002, citing Australian Public Service guidelines

⁴⁹ Walker, 2001, pp 120-121

Likewise, busy staff, whether or not they are desk-based and linked to their own computer, are unlikely to make the effort to go into the department's Intranet to read a new policy. Posting a policy on the Intranet without using additional avenues of dissemination is of little use.

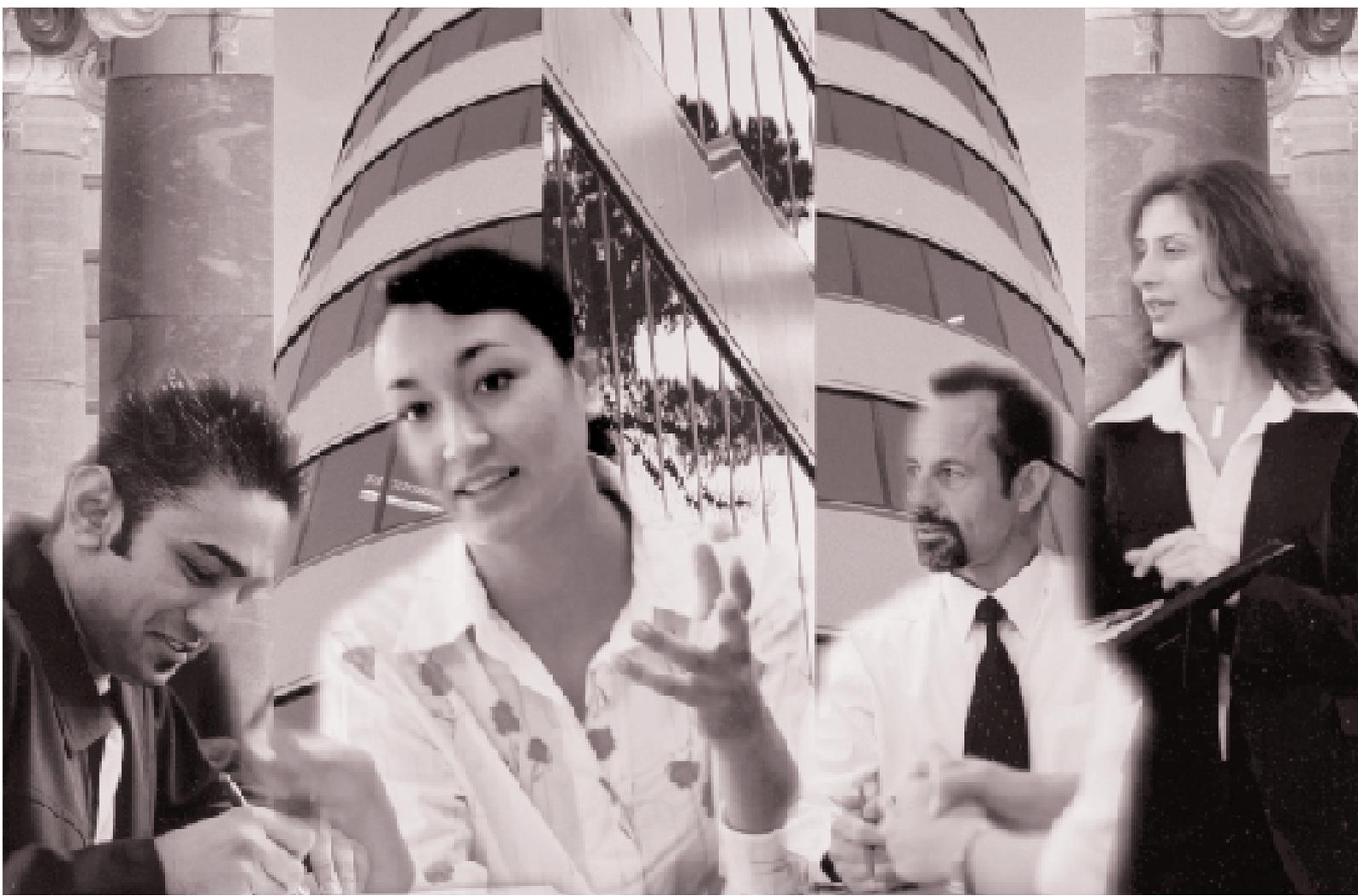
Training is also an essential dissemination tool. As has been discussed above, every opportunity should be taken to incorporate anti-harassment policies into the training programme – to introduce new entrants to the policies and to remind existing staff of what the policies convey.

Example. Department of Prime Minister and Cabinet Anti-Harassment Policy

The department will ensure that all staff are aware of the anti-harassment policy and the harassment complaints procedures for dealing with harassment. Information will be included in the induction process for new staff.

PART THREE

MANAGING THE PROCESS WHEN THINGS GO WRONG



Complaints reporting systems

Creating effective internal procedures for dealing with complaints is an essential part of the process of creating an environment that is free from discrimination and harassment. It is also essential that witnesses of harassment⁵⁰, as well as those directly affected, be encouraged to report the behaviour.

The complaints procedure should be spelled out in the anti-harassment policy, offering a range of options so that a complainant or witness can use the channel that feels comfortable and appropriate for them. The usual options are as follows⁵¹:

Self-help

This involves the person who has experienced harassment letting the offender know that their behaviour is offensive and needs to stop. This may mean telling the person directly what behaviour they don't like and asking them to stop it, or writing a letter to the person on a 'private and confidential' basis.

Informal procedures

This means getting a third person – usually a manager or human resources staff member or other designated contact person – to help resolve the situation. This person needs to talk both with the complainant and then with the person against whom the complaint is made. If there is agreement on what happened and what will fix the situation, the issue can be resolved confidentially between the immediate parties.

Sometimes mediation may be an appropriate way to resolve the issue. Mediation is not a suitable process for determining the facts of a situation, but can be a powerful tool for both parties to understand the intention and impact of the harassing behaviours and to find practical solutions that will facilitate an ongoing working relationship⁵². Mediation may be appropriate when:

- there is basic agreement on the facts;
- both parties are interested in trying to resolve the situation through mediation;
- the harassment is of a low level; and
- an appropriately trained and skilled mediator is available who has the confidence of both parties.

Departments need to take great care in selecting people to take on the role of mediator. They need not only to

be highly skilled in mediation or conflict resolution but must also have a thorough understanding of harassment issues and the impact of harassment. They must also have credibility with managers and staff in the organisation⁵³.

Sometimes mediation can be inappropriate. Unless it provides the basis for changing behaviour, it may serve to let an harasser 'off the hook', while disempowering a complainant⁵⁴.

Formal procedures

This typically involves the complainant submitting a written complaint that will be formally investigated. If the complaint is upheld, there may be disciplinary consequences for the harasser.

Complainants should put in writing:

- who the complaint is about;
- what happened (including the time, date, place, what was said and done);
- how they responded and what impact the behaviour had on them;
- whether anyone else witnessed the behaviour; and
- what they want to happen as a result of their complaint, including what would fix the situation for them⁵⁵.

The complaint can be given to any manager or directly to the human resources section. Managers who receive formal complaints are expected to liaise immediately with human resources to jointly identify an appropriate, impartial person to investigate the complaint.

Obviously, staff confidence in the department's procedures is essential. In the Career Progression and Development Survey, only 16% of affected staff who knew there was a formal process in their organisation to deal with harassment complaints had used the process in the previous 12 months. This suggests that informal processes may have been used to deal with incidents of unwelcome behaviour, which would be expected for the less serious forms. However, it might also be a reflection of relatively low confidence in the procedures. Of affected staff who knew there was a formal process in their organisation to deal with harassment complaints, only 19% were confident that complaints were dealt with fairly, and 32% were not confident. The remainder said they were unsure of their confidence levels.

⁵⁰ For the sake of brevity, in the remainder of this section the term 'harassment' will be used to cover all forms of unwelcome behaviour, including bullying

⁵¹ This section draws heavily on Top Drawer, 1998, p 25 ff

⁵² Top Drawer, 1998, p 48 ff

⁵³ Top Drawer, 1998, p 49

⁵⁴ Wainwright Trust, 2002, p 36

⁵⁵ Archives New Zealand Harassment Policy

Employment Relations Act – Personal Grievance

If a complainant is not satisfied with the way an organisation has dealt with a harassment complaint, they can lodge a personal grievance under the Employment Relations Act.

The Employment Relations Act promotes mediation as the preferred way to resolve any employment relationship problem. If a personal grievance cannot be resolved by direct discussion between the parties involved, they are encouraged to use the mediation services provided by the Department of Labour.

Human Rights Commission – Complaint

Alternatively, the complainant can lodge a complaint with the Human Rights Commission, under the Human Rights Act. Generally, the Human Rights Commission encourages people to try to resolve the complaint internally in their organisation first.

Both the Human Rights Act 1993 and the Employment Relations Act 2000 have provisions on discrimination on thirteen grounds (see page 11). Harassment related to any one of these grounds could be seen as a form of discrimination. There are specific provisions related to sexual and racial harassment.

Police

Complaints of a criminal nature, for example physical or sexual assault or stalking, are a police matter as well as an employment matter. The complaint should be reported immediately to the human resources manager, who will seek appropriate legal advice.

Harassment by customers or contractors

When the harassment is being carried out by a customer, client, member of the public or contractor, the employee should inform their manager, another manager, or human resources staff. The complainant's employer will need to investigate and take all reasonable steps to stop it happening again. This may involve speaking directly with the person concerned, lodging a complaint with the contractor's employer, or obtaining a trespass order against the person⁵⁶.

Resolution of complaints

In resolving a *substantiated* complaint, the organisation needs to think about appropriate action for:

- the person who has carried out the harassment (e.g. making an apology, behavioural contract, counselling, formal warning, dismissal);
- the complainant (e.g. receiving an apology, reinstatement of any leave taken as a result of the harassment, payment of medical or counselling fees incurred in coping with the harassment);

- the organisation (e.g. further training for managers or staff on the issues of harassment, adjustment of policies and procedures to either reduce the risk of harassment or to enable the organisation to respond more effectively)⁵⁷. The human resources manager and/or legal adviser should be consulted, so that any such action meets legal/procedural fairness requirements.

If the complaint is *not substantiated*, but does not appear to be malicious or vexatious, the reasons for the decision will need to be explained to both parties, separately. The manager may also need to discuss further options with each of the parties and monitor the relationship between them.

If, however, it appears that the complaint is *malicious, vexatious or frivolous*, there may be grounds for disciplinary action against the complainant.

Employer liability

Under the Human Rights Act 1993, an employee alleging harassment may make a complaint both about the employer and the offending employee, but in practice most claims will be directed to the employer. The employer, however, has a defence if they can show that reasonably practicable steps have been taken to prevent harassment (or any unlawful discrimination), or to deal with it if it occurs.

That the employer is also liable for the behaviour of customers or clients – over whom, as a general rule, he or she has little or no control – is a complicating factor. To avoid liability, the employer must take all practicable steps to prevent a repetition of the alleged offence; if the harassment is repeated, the employer becomes responsible. The extent of liability is then judged on the effort made to prevent the harassment. Efforts to reduce or ameliorate the behaviour will not remove the liability, but will be taken into account by the Human Rights Commission in deciding what remedy will be granted and what penalty, if any, will be imposed.

Role of contact people

'Anti-harassment advisors', 'harassment support officers', and 'contact persons' are some of the terms used for people appointed as the point of approach for complainants or witnesses wishing to discuss harassment in the workplace. They are usually appropriately skilled employees who take on this role alongside their other responsibilities. Generally their role is not to resolve the issue, but to provide information and support to assist the harassed person in reaching their ideal solution. With this early assistance,

⁵⁶ Archives New Zealand Harassment Policy

⁵⁷ Archives New Zealand Harassment Policy

people are often able to deal with issues for themselves, without having to have an organisational response. It is not the role of the contact person to be a personal counsellor for the individual or a stand-in for a manager⁵⁸.

The names and contact details for the anti-harassment advisor need to be included in the anti-harassment policy, with any other relevant details as to availability, etc.

Example. New Zealand Defence Force Prevention and Management of Discrimination and Harassment Policy

Anti Harassment Advisors (AHAs) are trained, voluntary personnel who provide confidential assistance and support to individuals who believe they have an issue with harassment. AHAs are not to speak for a complainant, provide counselling or be involved in investigations of discrimination, harassment or bullying. The AHA's role is to:

- 1 Listen to the individual;
- 2 Provide advice of the options for resolving the issue;
- 3 Support the individual to choose a course of action;
- 4 Create an environment that assists the individual to follow through with their chosen course of action; and
- 5 Follow up to ensure the problem is resolved.

Harassment Mediators are AHAs who have undergone recognised training in conflict resolution strategies. They provide a service to personnel who have an issue with harassment or bullying by acting as an intermediary between affected parties. A complainant may formally request assistance from a Mediator through contacting their CO in writing.

Harassment Investigators are AHAs who have undergone recognised training in procedures of investigation where a disciplinary course of action has not been pursued. A CO may appoint two Harassment Investigators to investigate an allegation of discrimination, harassment or bullying when a written complaint has been received.

.... AHA training does not provide personnel with the skills to be an investigator, mediator or trainer. Commanders and managers may decide to nominate selected personnel for further training in these more specialist areas. AHAs should be selected from the most suitable personnel, taking into account the balance of the rank, gender and ethnic profile within the unit.

Contact people need to be able to “opt out” of their role, to avoid burnout. It is important for departments to provide this option – for example, by appointing such officers for a fixed term.

Role of managers

Managers have a critical role in responding to and resolving complaints, so they need to be trained to deal with these issues effectively. It is essential that managers (a) know enough to handle informal complaints competently and (b) get advice as soon as they receive a formal complaint. Departments should ensure that managers have support as they go through the process of handling complaints – some organisations make it mandatory for managers to call human resources staff as soon as they receive a formal complaint⁵⁹.

Modelling appropriate behaviour, promoting the harassment policy to staff, intervening in inappropriate behaviours and creating an environment where harassment is less likely to happen, are all vital in the manager's role.

The manager must also ensure that no retaliation or victimisation occurs.

Example. Ministry of Foreign Affairs Policy on Prevention of Harassment and Discrimination

Manager's responsibilities

Managers within the Ministry need to be familiar with these guidelines and be prepared to explain the options to any staff who complain of harassment. Managers must:

- act quickly and effectively where a complaint is brought to their attention
- treat any complaint with confidentiality and sensitivity
- not trivialise any complaint
- make it clear to staff that the Ministry will not tolerate any form of harassment
- set standards of behaviour
- ensure that the work environment does not condone language, behaviour or visual material that is unwanted by, or offensive to any staff member
- have a role within the Ministry promoting and explaining the Ministry's policies in these areas.

⁵⁸ Top Drawer, 1998, p 33

⁵⁹ Top Drawer, 1998, p 28

Principles of natural justice

The rights of both parties to a formal complaint should be protected by the principles of natural justice. These are:

- freedom from bias on the part of the person making the decision/judgment; and
- transparency and fairness of the procedure.

Guidelines for a fair process include:

- take a complaint seriously and act on it immediately;
- maintain confidentiality;
- give the problem resolution procedure priority and respond in a timely manner;
- inform a respondent of the allegations against them;
- give a respondent the opportunity to respond to the allegation;
- do not ask irrelevant questions;
- keep both parties informed about progress of an investigation;
- ensure the parties' safety is protected during an investigation, including protection from retaliation or victimisation;
- give both parties a full opportunity to read/see and respond to all evidence collected in an investigation before a decision is made;
- consider all the evidence and weigh it carefully before deciding whether there is substance to the complaint;
- provide both parties with a copy of the decision and the reasons for the decision, and their options in terms of settlement, right of appeal or review, etc.; and
- ensure any disciplinary action is proportionate to the level of behaviour complained of⁶⁰.

Defamation

The possibility of defamation arises when someone broadcasts the problem outside the proper channels to those with no genuine interest or need to know about it. A person can sue another person for defamation if they believe a false statement has been made that is likely to injure their reputation.

The complainant, alleged harasser and those properly involved in a complaint are protected against defamation where the complaint is made honestly and without malice, and is made only to those who have a duty to receive it.

Victimisation

Victimisation can arise as part of, or as a result of, an experience of harassment or discrimination. It includes treating people (or threatening to treat people) less favourably than they otherwise would have been, because they have made use of their rights to complain about harassment or discrimination or intend to make use of their rights; or because the person has given evidence or information in an investigation of a complaint.

The Human Rights Act 1993 prohibits victimisation of people because of their assertion of their human rights under the Act or because of the making of a disclosure under the Protected Disclosures Act 2000⁶¹.

Examples of victimisation include being sidelined for training or promotion, being snubbed by co-workers, or being pressured to drop the idea of making a complaint.

It is important that departmental policies state clearly that there will be no retaliation against workers who make a genuine complaint of harassment and discrimination, and that the organisation ensures that no victimisation takes place.

Example from Ministry of Fisheries Prevention and Removal of Harassment Policy

Care will be taken during the investigation of any complaint of alleged harassment and afterwards to prevent any disadvantage to the complainant. Care will also be taken to protect the position of the person against whom the complaint was made and any other parties involved in case the complaint is found to be unwarranted.

Example from Archives New Zealand Harassment Policy

Retaliation against people who have been involved in a harassment complaint in any way is unacceptable. Any work difficulties experienced by people involved in either an informal or formal complaint should be reported immediately to their manager or to Human Resources.

⁶⁰ Department of Internal Affairs Harassment Policy, p 23

⁶¹ Human Rights Commission, Fact Sheet 12, March 2003

Managing the work environment during/after complaints

A complaint of harassment affects more people than those immediately involved, sometimes having a ripple effect throughout the organisation. Those on the edges of bullying scenarios – friends and colleagues – may witness the harassment, sometimes having to pick up the pieces. This role can take its toll⁶². Managers need to be aware of the whole environment surrounding a complaint or incident and its aftermath.

Once a complaint has been made, working relationships can deteriorate rapidly, so a quick response is needed. During the investigation, it may be necessary to make some changes to working patterns, for example in order to separate the parties. This should be done in a way that keeps any disruption to a minimum while ensuring that no-one feels they have been victimised or that the case has been prejudged⁶³.

The following steps need to be taken to minimise the damage of harassment complaints:

- responding promptly;
- being firm about confidentiality requirements;
- ensuring that both parties have appropriate support;
- keeping the immediate parties informed;
- squashing the gossip;
- resolving the complaint internally; and
- not rushing a resolution.

An accurate, complete written record of the conduct of the investigation should be made, including agreed records of interviews undertaken. If the case should proceed to a hearing, evidence will be required of how the complaint was handled and whether the organisation followed its own policies and procedures⁶⁴.

Complainants need to be supported throughout – to encourage them to come forward in the first place, to sustain them while the complaint is under investigation and to encourage them to remain with the organisation afterwards. Support should also be given to those against whom complaints have been made. They may be genuinely unaware of the impact of their behaviour or perplexed that a complaint has been made and about what caused it⁶⁵.

Moving on after the investigation may involve:

- sometimes deliberately saying or doing nothing;
- talking with the team;
- providing training and education for the whole team on the issue of harassment;
- establishing an agreed contract of behaviour;
- monitoring any agreements;
- establishing a protocol for the ongoing work; and
- checking how it is going⁶⁶.

The Wainwright Trust in the United Kingdom has devoted a research study to investigating how organisations manage the aftermath of employment tribunal cases of harassment brought against them⁶⁷. Their guidelines to employers mention the need to:

- learn lessons and acknowledge mistakes;
- hold debriefing sessions while still taking account of confidentiality;
- recognise that there are no “winners” in such situations;
- rebuild relationships; and
- ensure appropriate support for those involved in the complaints.

Complainants returning to work after periods of sickness or special leave may need help and support to readjust. Alleged harassers returning after periods of absence or moved as part of disciplinary action may also need support, additional training and supervision during their reintegration into the workforce. Depending on the circumstances, it may be appropriate to have team briefing sessions to restore morale. Managers who become responsible for employees moved as a result of a harassment complaint will need to be fully informed and supported during the resettlement period, in order to minimise any adverse impact on the employee’s new workplace⁶⁸.

The Wainwright Trust recommends the use of communications and training to convey and instil the organisation’s values and standards and the way to resolve problems, not least for managers in respect of dealing with harassment and bullying. Detailed changes to existing policies and procedures may be necessary, perhaps to clarify the types of behaviour which are

⁶² Crawford, 2001, p 27

⁶³ Wainwright Trust, 2002, p 35

⁶⁴ Wainwright Trust, 2002, p 35

⁶⁵ Wainwright Trust, 2002, p 36

⁶⁶ Top Drawer, 1998, pp 52-54

⁶⁷ Wainwright Trust, 2002, pp 36-37

⁶⁸ Wainwright Trust, 2002, p 37

unacceptable, to cover bullying behaviour more explicitly, or to develop additional informal options for early resolution of problems.

They conclude that employers need to strive continuously to create working environments in which people treat everyone with dignity and respect, confident that any problems they might raise will be effectively resolved.

Example. Department of Prime Minister and Cabinet Anti-Harassment Policy

The department will ensure that support mechanisms exist for all staff who believe they are being, or have been, harassed.

Likewise, any staff member who has been accused of harassment is also entitled to support during the resolution process. The department may also be able to provide assistance to a staff member where their behaviour is found to constitute harassment and they have agreed to undertake some counselling or the like to help/rehabilitate them.

The department recognises the potential impact of harassment on the parties involved. Complainants should therefore not have to confront their alleged harasser or vice versa, if either party so wishes.

Monitoring

Monitoring the incidence and nature of harassment is important in order for organisations to know the extent of the problem in their organisation and the potential risks, the kinds of issues they need to be alert to, the problem areas or problem people, the training and coaching they need to provide to managers and contact people and so that the organisation can focus the targeting and timing of staff awareness campaigns⁶⁹.

Effective monitoring has to utilise a multi-pronged strategy, gleaning information from as many sources as possible. Ideally, evidence should be obtained relating to:

- the likely risk factors for harassment/bullying present in the organisation (or sections of the organisation);
- workers' perceptions of the amount and nature of harassment/bullying occurring; and
- behavioural and health outcomes that might be

measured more objectively, such as absenteeism, turnover, or visits to occupational health practitioners⁷⁰.

In practice, it is more usual that organisations monitor the incidence and outcome of formal complaints, the area of the organisation in which the complaints have occurred, and the type of harassment.

Strategies for monitoring can include⁷¹:

- having all managers, contact people or Employee Assistance Programme advisors notifying human resources or a harassment coordinator each time they are informed of a formal or informal complaint;
- having contact people or Employee Assistance Programme advisors complete a summary form every three months describing the nature and level of contact; and
- getting contact people together every three months to debrief.

It is useful to have one person coordinate and manage the monitoring of the incidence of harassment. Information must be stored in a secure place, be accessed only by those authorised to use it, and used only for the purpose it was collected. People must be informed of any information about them that will be kept by the organisation, how it will be stored, how long it will be stored and how it will be used, in line with the Privacy Act⁷².

Any increase in reporting may be a sign of increasing confidence in the management attitude to supporting people who feel they have been harassed or bullied, rather than a sign of an increase in the behaviour. When management actively promote anti-harassment/bullying measures, they should expect an initial increase in reporting and see it as a positive sign⁷³.

⁶⁹ Top Drawer, 1998, p 55

⁷⁰ Beale, 2001, p 87

⁷¹ Top Drawer, 1998, p 55

⁷² Top Drawer, 1998, p 56

⁷³ Beale, 2001, p 89

PART FOUR

TOOLS AND RESOURCES



Self-help checklist – anti-harassment strategies

This checklist is designed to assist managers and human resources staff to take stock of their workplace in terms of the issues and suggestions contained in this document.

Is there an acceptance by senior management that harassment, including bullying, does take place in every organisation, and therefore yours?

Does the department's anti-harassment policy or code of conduct include a statement of zero tolerance to harassment?

Is any anti-harassment or anti-bullying policy seen as an organisational rather than just a human resources initiative?

Has the policy been endorsed specifically, and publicly, by the chief executive and by senior management?

Is your department one where clients or members of the public may harass or bully your staff? If so, are there procedures in place for dealing with this and maximizing your staff safety?

Is the anti-harassment policy actively disseminated, and by means other than circulars – e.g. posters, staff seminars, leaflets, videos?

What means are used to ensure that policies are actively read, absorbed, "taken on board" – e.g. not just posted on the Intranet?

Is the policy backed up by training for all staff, including managers?

In particular, are such issues included in induction training?

Are there contact people in place whom complainants can safely approach?

What training do those contact people have?

If the organisation is a male-dominated one numerically or culturally, are there women contact people appointed for women staff to approach?

Are there Maori, Pacific and Asian contact people appointed, if the staff population mix justifies that?

Is there a process of support for those contact people?

Are there processes of support for the complainant and also for the alleged harasser/bully?

Are there processes of support for witnesses and colleagues of the complainant?

Are the complaints procedures well publicised, in languages and formats that are accessible to all staff, including new New Zealanders and people with disabilities?

Does the policy state "no retaliation" for complainants? How is non-retaliation ensured?

Is there monitoring of complaints, to assess levels of harassment in the organisation and to check whether incidence is lessening?

Is there follow-up support for all involved in any complaint, after the investigation is over?

Are managers getting training in "soft" people skills?

Does the department's health and safety policy view harassment/bullying as a "workplace hazard"?

Has there been an examination of exit interviews, staff turnover statistics, complaints, etc, to monitor whether harassment and/or bullying is taking place?

Are the department's managers trained in undertaking appraisals and giving performance feedback?

Self-help checklist – creating a positive work environment⁷⁴

This checklist is a prompt to deeper thinking on the concept of a positive working environment.

Has discussion on values taken place throughout the organisation?

Is there a values statement in the organisation that mentions respect for staff?

Was the values statement drawn up through a participatory process?

Does management have a commitment to individuals' personal and professional growth and development?

Is there flexibility of work patterns that honours people's needs outside work, such as their family and community?

Are differences of personality and culture respected and taken into account?

Are there opportunities for celebration?

Is there a sense of shared values and endeavours?

Are people able to air their frustrations and irritations in a safe way?

Are people appreciative of each other?

Are long, tough hours unacceptable?

Is the workplace attractive, with colour, art, light and plants? Is there fresh air?

Are there regular (at least weekly) feedback mechanisms?

Is there conviviality and welcome?

Are mistakes accepted as an inevitable part of life? Is it a no-blame culture?

⁷⁴ Based on Lamont, 2002, pp 270-274

Are professional difficulties acknowledged, faced up to and dealt with promptly?

Is stress kept at a healthy level and excess stress removed? Can people sleep at night?

Is there plenty of positive authentic feedback?

Do people want to come to work?

Does management listen?

Are people free and able to develop their work roles according to their strengths?

Is there a place where people can take time to be quiet and still?

Is there real listening between individuals?

When people achieve something, is it recognised and appreciated?

Do you have a sense of your organisation as a community of which you are proud to be part?

Is there zero tolerance of gossip and back-biting?

Are words and concepts such as happiness and joy acceptable and used?

Is it an environment where it is safe to say what you think?

The differences between bullying behaviour and assertive behaviour⁷⁵

BULLYING BEHAVIOUR	ASSERTIVE, RESPECTFUL BEHAVIOUR
Dominating, victimising and attacking people when they do not perform well enough	Focus on their behaviour and explain where it is deficient and what the performance standards are. Don't attack personalities or people. Be consistent and fair. Learn to use assertive, respectful language rather than put-downs, sarcasm or hostility.
Undue pressure to produce outcomes	Explain the requirements, keep people informed of external and internal constraints. As much as possible, include people in decision-making and sharing responsibility for outcomes.
Changing job descriptions, goals or guidelines unfairly	Create clear boundaries around job descriptions, goals and guidelines. Review these regularly and consult over changes rather than simply imposing change irregularly and irresponsibly.
Removing responsibility unfairly or without explanation	Discuss issues and measure performance regularly. Coach people to improve behaviour. Don't assume blame before discussing it. Inform people of the standards required and explain consequences of failure to perform.
Imposing menial tasks or meaningless tasks	Provide clear boundaries so that people understand their roles and expectations. Consult before making changes.
Threatening dismissal on the spot. Public reprimands	Don't threaten what you don't have a legal right to perform. Reprimand in private and don't use public humiliation to deal with unacceptable behaviour. Be specific about the standards required.

⁷⁵ Olsen, 2002(b), p27

Further information

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Human Rights Commission

P O Box 5045

Wellington

Phone: 0800 496 877

www.hrc.co.nz

Occupational Safety and Health

National Office

Department of Labour

P O Box 3705

Wellington

Phone (04) 915 4444

(Offices nationwide – see local telephone directory)

Public Service Association

P O Box 3817

Wellington

Phone 0508 367 772

www.psa.org.nz

WAVE (Workplaces Against Violence in Employment)

10 Union St

Rotorua

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www.theworkfoundation.com	The Work Foundation, United Kingdom
www.workplacebullying.com	Workplace Bullying, United Kingdom
www.workrelationships.com	Work Relationships Inc., California
www.bullybusters.org/	Workplace Bullying & Trauma Institute, USA and Canada

The Department
encourages diversity
in the workplace

Ko ta te Papa Atawhai
he rangawairua
momotikanga i roro
i te wahi mahi

Respect Consideration Fairness

— you should expect no less

If this is not your experience, write to the
Harassment Procedure or contact EAP (Employment Assistance Programme)

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