

NSW Ministerial Offices

Respectful Workplace Policy

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Our Respectful Workplace Policy

The NSW Government has zero tolerance for bullying, harassment, discrimination, and sexual misconduct. This means that individuals cannot behave in the workplace in ways that are bullying, harassing, discriminatory, victimising, or involve sexual misconduct. Individuals who do this in the workplace can expect to be held accountable, investigated and potentially be subject to disciplinary and other legal consequences under employment and criminal law.

All workplaces must be places of safety and respect, including the workplaces of staff employed by Ministers.

You are encouraged to speak up about bullying, harassment, discrimination or sexual misconduct towards you or another staff member. Use the information and procedures in this policy to make a complaint or disclosure.

Any complaint or disclosure will be treated confidentially. You will be supported and protected from retaliation or reprisal. There are systems to ensure fairness for all people involved in complaints or disclosures.

Experiencing bullying, harassment, discrimination, or sexual misconduct is distressing. If you do feel distressed, the Employee Assistance Program (**EAP**) provides free, confidential, and independent counselling and support via Converge International on 1300 687 327.

1. Overview

1.1 Purpose

The NSW Government takes seriously its obligations under work, health and safety laws and other laws and regulations. This policy aligns with the NSW Government's commitment to create and maintain safe workplaces. It also supports equity, diversity, inclusion, and respect.

This policy operates beside and does not replace other rights and obligations of Ministers and staff, including:

- the Staff Code of Conduct, which sets the ethical conduct standards required of Ministerial staff, and
- the *NSW Ministerial Code of Conduct*, which requires Ministers to exhibit the highest standards of probity and ethics.

This policy aims to:

- make Ministers and their staff aware of what bullying, harassment, discrimination, victimisation, and sexual misconduct means, and
- set procedures for how to make and handle complaints and disclosures informally, formally, and anonymously.

1.2 Who this policy is for

This policy is for:

- staff employed by Ministers (or their delegate) under Part 2 of the MOPS Act. Ministerial staff to which this policy applies includes both current and former staff,
- government sector employees seconded to work in the office of a Minister (this does not include Department Liaison Officers, who remain employed by their agency and are subject to their agency's workplace policies), and
- consultants engaged by Ministers to provide services in connection with their official duties.

This policy applies to any activity associated with the Ministerial office workplace, including any activity outside normal business hours that has a connection with the business or undertakings of Ministerial offices. This includes Ministerial offices in Martin Place, Sydney, Parliament House, and electorate offices. It extends to places outside physical offices such as events (conferences, sporting, and concerts, as well as social events such as work Christmas parties) and during work-related trips and travel (hotels, venues, and in-transit). Activities associated with the workplace may include use of email, text messaging and use of social media.

This policy does not apply to staff of Members of Parliament employed under Part 3 of the MOPS Act or staff employed by the Leader of the Opposition in the Legislative Assembly under Part 2 of the MOPS Act. Complaints by staff of Members of Parliament or those employed by the Leader of the Opposition should be raised with the Member of Parliament or Opposition Leader as employer, or with the Department of Parliamentary Services, or the Parliamentary Compliance Officer and dealt with under relevant Parliament workplace policies. Any adverse findings concerning unreasonable conduct by a Minister should be referred by the Presiding Officers to the Premier or the Premier's delegate for further action or sanctions.

2. Definitions

Anti-Discrimination Act	<i>Anti-Discrimination Act 1977 (NSW)</i>
ADB	Anti-Discrimination Board
Complainant	a person who makes a complaint or disclosure under this policy
DPC	NSW Department of Premier and Cabinet
EAP	Employee Assistance Program – a free and confidential counselling service, available by calling 1300 687 327
Investigator	is external and independent of the Minister’s Office, is apolitical, and is engaged by the Minister or Chief of Staff ¹ (with support of DPC) to investigate a complaint under this policy.
Minister	a Minister of the Crown appointed under section 35E of the <i>Constitution Act 1902 (NSW)</i> and who who may employ staff under the MOPS Act
Ministerial staff	persons employed by a Minister under section 5 of the MOPS Act and includes current and former staff
MOPS Act	<i>Members of Parliament Staff Act 2013 (NSW)</i>
Party or parties	the complainant, the respondent or both
Respondent	a person complained about under this policy
The Handbook	<i>NSW Ministers’ Office Handbook</i>
The Staff Code	<i>NSW Office Holder’s Staff Code of Conduct (Attachment B to the Handbook)</i>
Unreasonable conduct	includes bullying, harassment, discrimination, victimisation, and sexual misconduct
WHS Act	<i>Work Health and Safety Act 2011 (NSW)</i>

¹ If the complaint is about a Minister or Chief of Staff, the Investigator may be engaged by the Premier, or the Premier’s Chief of Staff or a delegate of the Premier under section 11 of the MOPS Act, with the support of DPC. Where the complaint is about a Minister or Chief of Staff, the complainant may also raise the complaint directly with DPC for advice about how the complaint may be handled. Where the complaint is made directly to DPC, they will need to raise the matter with the Minister or Chief of Staff before commencing a formal investigation.

3. Your responsibilities

Ministers	<ul style="list-style-type: none"> • Be familiar with the information and procedures in this policy • Understand their duties and responsibilities as employers under the WHS Act², MOPS Act and Anti-Discrimination Act and undertake mandatory training about these responsibilities and this policy • Promote a respectful workplace culture by treating all Ministerial staff with respect, including complainants • Prevent victimisation of parties to a complaint and call out unreasonable conduct in the workplace.
Chiefs of Staff	<ul style="list-style-type: none"> • Be familiar with the information and procedures in this policy • Understand their duties and responsibilities under the WHS Act, MOPS Act and Anti-Discrimination Act and undertake mandatory training about these responsibilities and this policy • Chiefs of Staff are officers for the purpose of the WHS Act, and have additional duties under section 27 of the WHS Act to exercise due diligence to ensure that WHS obligations are being complied with • Promote a respectful workplace culture by treating all Ministerial staff with respect, including complainants³ • Prevent victimisation of parties to a complaint and call out unreasonable conduct in the workplace • Encourage all staff to be alert to and call out unreasonable conduct in the workplace • Assist to resolve complaints informally and promptly • Offer assistance and support when required to those making a complaint • Have regard to confidentiality and procedural fairness requirements when managing complaints • Implement changes arising from individual complaints and from the analysis of complaint data as directed by the Minister.
Ministerial staff	<ul style="list-style-type: none"> • Be familiar with the information and procedures in this policy • Understand their duties and responsibilities under the WHS Act⁴ • Undertake mandatory training about what constitutes unreasonable conduct and this policy • Treat all colleagues with respect, including complainants • Prevent victimisation of parties to a complaint and call out unreasonable conduct in the workplace • Provide feedback to the Minister or Chief of Staff or DPC on issues arising from complaints.

² Ministers, Chiefs of Staff, and all other staff have duties to take reasonable care for their own safety under section 29, WHS Act.

³ Under the Staff Code, Ministerial staff must treat individuals with respect and courtesy and not make improper use of their position, gain or seek to gain a benefit or advantage for themselves or another: page 53.

⁴ Under the Handbook, everyone working in a Minister’s office, including staff, contractors, and visitors, must comply with the WHS Act: page 7.

DPC	<ul style="list-style-type: none"> • Be familiar with the information and procedures in this policy • Receive and record anonymous disclosures • Provide advice to Ministerial offices about this policy including ways to promote a respectful workplace culture⁵ • Provide advice to complainants about complaint options and processes • Follow-up with Ministerial offices the acquittal of actions recommended in the investigation report by the Investigator • Report annually to the NSW Government on formal complaints under this policy.
Investigator	<ul style="list-style-type: none"> • Be familiar with the information and procedures in this policy • Is independent of and external to Ministerial offices and is politically neutral • Mediate informal complaints • Investigate formal complaints in accordance with this policy • Be qualified and experienced in conducting investigations, interviewing witnesses and supporting complainants • Conduct investigations having regard to confidentiality and procedural fairness requirements • Maintain accurate records of complaints and treat complaint information with sensitivity.

⁵ Under section 10 of the MOPS Act, DPC is to provide administrative and other support services (including information technology services) for Ministers and their staff.

4. What is bullying?

Bullying happens in many ways. It can be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of **power** that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened.

Bullying in the workplace is **repeated**⁶ and **unreasonable behaviour** directed towards a person or group of people and creates a risk to their health and safety.⁷

- **Power** does not always mean being in a position of authority and can include for example both physical strength and the power to coerce through fear or intimidation.
- **Repeated behaviour** refers to the persistent nature of the behaviour and can involve a range of behaviours over time.
- **Unreasonable behaviour** means behaviour judged by a reasonable person to be unreasonable in the circumstances, including behaviour that is victimising, humiliating, intimidating, or threatening.

Bullying can occur at your place of work or outside work.⁸

Behaviour may be unintentional but may still be workplace bullying if it is repeated, unreasonable and creates a risk to health and safety. This may include:

- abusive, insulting, or offensive language or comments
- unjustified criticism or complaints
- deliberately excluding someone from workplace activities
- withholding information that is vital for effective work performance
- setting unreasonable timelines or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person's skill level
- denying access to information, supervision, consultation, or resources to the detriment of the staff member
- spreading misinformation or malicious rumours
- hazing or initiation activities (where you are made to do humiliating or inappropriate things to be accepted as part of the team)
- manipulating someone to the point where they question their ability and self-worth
- changing work arrangements such as rosters and leave to deliberately inconvenience a staff member.

Workplace bullying can be carried out in person, through email, text messages or via social media.

⁶ Generally, a single incident of unreasonable behaviour is not workplace bullying.

⁷ SafeWork NSW provides guidance on workplace bullying: <https://www.safework.nsw.gov.au/hazards-a-z/bullying>.

⁸ Under the Handbook, the Minister's office is the principal place of work for Ministerial staff, but the staff member may be required to work in other locations in Sydney and NSW, interstate and overseas in the course of duty: page 35. The workplace is therefore more than just the Minister's office. At law, the 'workplace' is not confined solely to a person's physical place of work, and behaviour outside of work may still be covered by workplace laws and policies.

Bullying behaviour can be by one or more persons against others. Staff at any level can either be responsible for carrying out bullying or be at the receiving end of bullying.

Bullying is not limited to the above examples. All relevant information is considered to determine whether particular circumstances or incidents constitute bullying.

This policy does not cover all issues and should be seen and used as a source of general principles rather than a full list of behaviours and actions that make up bullying.

4.1 What is not bullying

It is important to not confuse lawful workplace performance management with bullying. Legitimate and reasonable managerial actions, to direct and guide how work is done in the workplace are not bullying, including:

- providing appropriate fair and reasonable feedback on a staff member's work performance (the fact that a staff member may find the feedback upsetting, does not on its own constitute bullying)
- managing performance or underperformance issues
- issuing reasonable directions about work allocation and attendance at the workplace
- transferring a staff member or taking action to make a staff member redundant where the process is conducted fairly and equitably
- making justifiable decisions related to recruitment, selection and other development opportunities
- ensuring that workplace policies, procedures and reporting are implemented
- managing allegations of misconduct and taking disciplinary actions where appropriate
- overseeing injury and illness processes in accordance with work, health and safety, injury management and workers compensation laws and policies.

An important feature of the Ministerial office workplace is the opportunity for Ministers and their staff to have robust discussions about significant policy matters and issues. Discussion and debate, differences of opinion and disagreements in these contexts are not considered workplace bullying. However, in some cases, conflict that is not managed may escalate to the point where it meets the definition of workplace bullying.

5. What is harassment

Harassment⁹ is any behaviour that is unwanted, offensive, humiliating or intimidating to the recipient that creates a hostile environment.

Harassment can involve sexual harassment which is any unwelcome sexual behaviour that could reasonably be perceived as offensive, humiliating, or intimidating. Sexual harassment is prohibited under the Anti-Discrimination Act. Sexual harassment is a type of sexual misconduct, referred to below.

⁹ SafeWork NSW provides guidance on harassment: <https://www.safework.nsw.gov.au/safety-starts-here/our-aboriginal-program/culturally-safe-workplaces/harassment>. The Fair Work Ombudsman has also provided information about what constitutes bullying and harassment: <https://www.fairwork.gov.au/employee-entitlements/bullying-and-harassment>.

Harassment may be persistent or an isolated incident. Unlike bullying, harassment does not have to be repeated. It can be verbal, non-verbal, physical, visual, deliberate, accidental, subtle, or obvious.

The key to understanding harassment is that the words or behaviour are unwanted or unacceptable to the recipient. The intention of the harasser is not relevant to the question of whether the behaviour is harassment.

Take as an example, a person who speaks or behaves in a way that they do not find offensive, but another person does. This is harassment because it is behaviour that:

- the recipient does not want
- offends, humiliates, or intimidates the recipient
- creates a hostile environment.

Harassment tends to be based on particular characteristics of the person being harassed, such as age, gender, race, religion, or disability.

As noted above, it is a key feature of the Ministerial office workplace that Ministers and their staff have robust discussions about significant policy matters and issues. These discussions may involve differences of opinion and disagreements, but they should never involve unwanted, offensive, humiliating, or intimidating behaviour by one person to another that creates a hostile work environment.

If unwelcome or unreciprocated, the following may be examples of harassment:

- unnecessary physical contact or requests for sexual favours
- stalking
- suggestive looks implying a sexual interest
- offensive gestures, mimicry, or wolf whistles
- persistent verbal abuse or threats, including the use of profanities or swearing that could have the effect of intimidating a person, or ridicule them
- asking intrusive questions about someone's personal life
- persistently disrupting an individual's work, workspace, equipment or interfering with their personal property
- jokes, derogatory or dismissive comments
- circulating or displaying material that is offensive or belittling
- deliberate exclusion of colleagues from activities organised within the workplace
- sending or displaying offensive material in any format
- use of unacceptable or inappropriate language or stereotypes relating to race or ethnicity
- deliberately holding meetings or social events in a location that is not accessible for an individual with a disability.

6. What is discrimination

Unlawful discrimination means treating someone unfairly because they happen to belong to a particular group of people or have particular characteristics. Discrimination may be intentional or unconscious.¹⁰

The following types of discrimination are unlawful under the Anti-Discrimination Act:

- racial
- sex and sexual harassment
- transgender
- marital and domestic status
- disability
- carer responsibilities
- sexuality¹¹
- age
- HIV/AIDS.¹²

Discrimination can be direct or indirect.

- **Direct discrimination** occurs where someone is treated less favourably because of their sex, age, race etc. An example of direct discrimination is when an employee misses out on an internal promotion because they are considered too old for the job.
- **Indirect discrimination** occurs where everyone is treated on the same terms according to a rule, policy, or directive but which has the effect of being less favourable to people of a particular sex, age, race etc, and which is not reasonable in all the circumstances. An example of indirect disability discrimination could be if the only way to enter a public building is by a set of stairs because people with disabilities who use wheelchairs would be unable to enter the building.¹³

Apart from complaining under this policy, a discrimination complaint may be made to the ADB¹⁴ or the Australian Human Rights Commission.¹⁵

The ADB deals with complaints made about discrimination, sexual harassment, and vilification under the Anti-Discrimination Act. The President of the ADB may investigate and conciliate complaints and can also refer complaints to the NSW Civil and Administrative Tribunal. The Tribunal has the power to award damages by way of compensation if the complaint is substantiated.¹⁶

¹⁰ See [NSW Law Society Workplace Guide and Model Discrimination and Harassment Policies \(May 2021\)](#).

¹¹ A person may be vilified on this ground. Vilification is where someone shows extreme hatred towards you in public.

¹² See guidance produced by the [NSW Anti-Discrimination Board](#).

¹³ <https://humanrights.gov.au/quick-guide/12049>

¹⁴ <https://www.antidiscrimination.justice.nsw.gov.au/>

¹⁵ <https://humanrights.gov.au/>

¹⁶ Section 108, Anti-Discrimination Act.

7. What is sexual misconduct

Sexual misconduct incorporates a range of behaviours including sexual assault, sexual harassment,¹⁷ stalking, voyeurism, and any other unwelcome conduct of a sexual nature. Sexual misconduct can include behaviours that constitute criminal offences.

The following behaviours¹⁸ may constitute sexual misconduct:

Verbal behaviours and actions

- sexual remarks including those about appearance or clothing, jokes, catcalls, questions about sexual life and raising sexual topics
- asking personal questions about sexual or social life or offering unwanted personal information about one's own activities
- remarks that draw attention to someone's gender in an inappropriate or unwanted way
- enquiring about sexual history, fantasies, or preferences
- making sexual comments about a person's clothing, anatomy, or appearance
- obscene phone calls of a sexual nature
- repeatedly propositioning someone
- subtle or overt pressure for sexual activity, including requests or demands for sexual favours and promises of reward in return
- threats of reprisals if requests for sexual activity are turned down
- treating someone less favourably because they have rejected or submitted to unwanted sexual conduct.

Online behaviours and actions

- displaying pornographic or sexually explicit material, sexist comments, and pictures on social media
- image-based sexual abuse such as up-skirting, revenge porn, deep fake porn
- obscene texts or emails of a sexual nature
- inappropriate advances or stalking via social media
- sharing private sexual materials (for example, photographs) online or via text of another person without consent.

Physical behaviours and actions

- suggestive looks and gestures, staring, leering, threatening behaviour, brushing past someone, pinching, touching, groping¹⁹
- promises or threats related to career prospects in return for sexual favours

¹⁷ Sexual Harassment is prohibited under Part 2A of the Anti-Discrimination Act. It is defined in section 22A and sexual harassment of employees and contractors is unlawful under section 22B of the Act.

¹⁸ Note the UK Parliament has identified these behaviours in the [Sexual Misconduct Policy for UK Parliament](#).

¹⁹ This conduct may also constitute sexual harassment which is unlawful under the Anti-Discrimination Act.

- unwelcome touching, hugging, or kissing
- indecent exposure (for example, masturbation, nudity) and acts of voyeurism or exhibitionism
- attempting to or engaging in sexual intercourse or a sexual act without consent.²⁰

8. What is victimisation

Victimisation is a type of bullying behaviour. It can occur as retaliation by a person in response to being complained about for unreasonable workplace behaviour. An example of victimisation is a complainant being treated unfavourably in the workplace by the respondent as retaliation for the complaint made. Victimisation is unlawful.²¹

Unfavourable or detrimental treatment can include:

- failing to adequately investigate complaints
- disciplining or dismissing the complainant
- ignoring a complaint
- ostracising or singling out the complainant.²²

In handling a complaint under this policy, the complainant must be protected from victimisation. A person handling a complaint under this policy must take steps to ensure the complainant does not experience any repercussions and is not victimised or disadvantaged because of complaining.

Ministers, Chiefs of Staff, and Ministerial staff also have a responsibility to prevent victimisation of parties to a complaint and call out unreasonable conduct in the workplace.

Complaints will be handled under this policy to prevent victimisation by:

- maintaining confidentiality in the handling of complaints
- identifying ways to change workplace arrangements so that the complainant is not working directly or closely with the respondent²³
- enabling access to counselling via the EAP.

9. Preventing unreasonable conduct

Unreasonable conduct is unwelcome, and most complainants want the behaviour to stop, preferably to have never commenced. For this reason, complaints should be addressed early before the behaviours either escalate or become more widespread in the workplace.

²⁰ This conduct may also be a criminal offence under the *Crimes Act 1900* (NSW).

²¹ For the purpose of the *Anti-Discrimination Act 1977* (NSW), victimisation is unlawful: section 50.

²² See [NSW Law Society Workplace Guide and Model Discrimination and Harassment Policies \(May 2021\)](#).

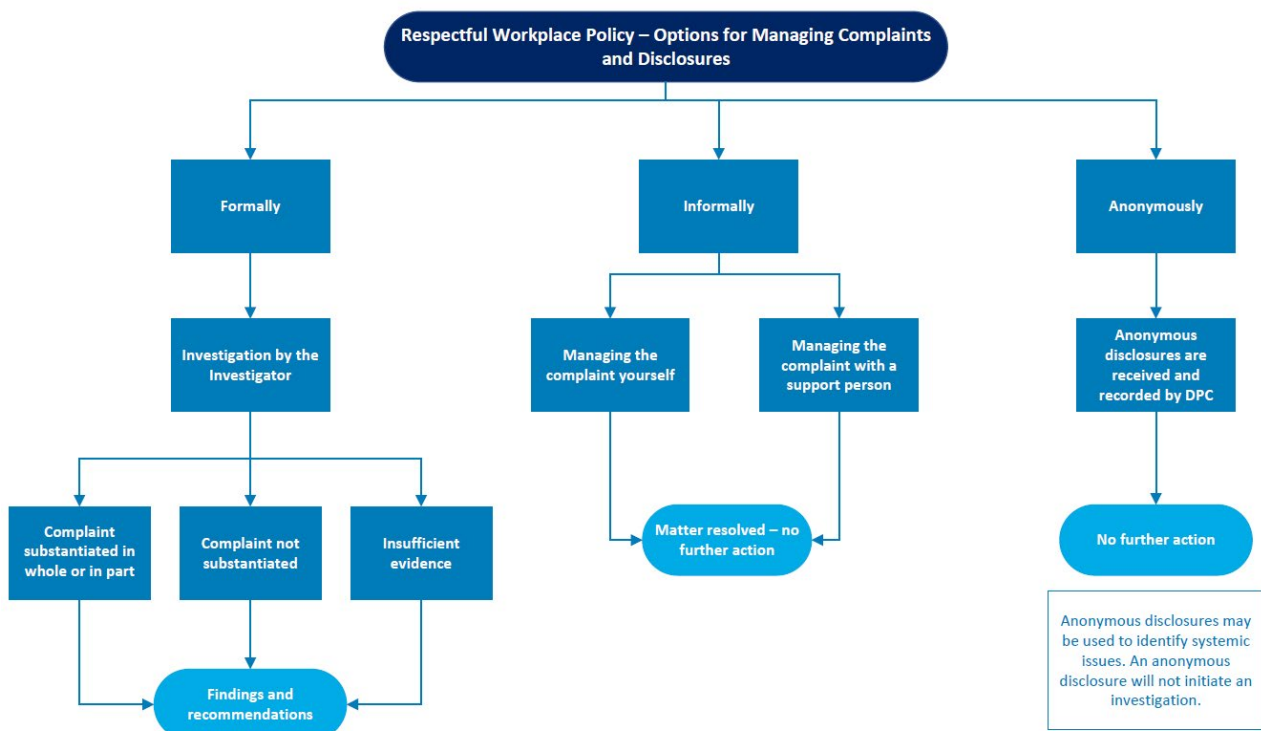
²³ Under section 9 of the MOPS Act, Ministerial staff can be temporarily assigned to another Minister, which may be an option to separate the parties in the workplace.

The following activities should be undertaken by Ministers and their staff to prevent unreasonable conduct and promote a respectful workplace culture:

- training²⁴ for Ministers and staff about what constitutes bullying, harassment, discrimination, and sexual misconduct and how to manage a complaint of unreasonable conduct
- training for Ministers and staff about their responsibilities under the MOPS Act, WHS Act and Anti-Discrimination Act
- Ministers and Chiefs of Staff model respectful workplace behaviours at all times
- regular discussions at staff meetings about respectful behaviours and openly encouraging staff to bring any concerns about unreasonable workplace behaviour to their Chief of Staff or Minister
- staff should also be encouraged to call out the unreasonable conduct of their colleagues, especially when they witness it.

10. How to make a complaint

The figure below shows the options for managing complaints or disclosures under this policy:



10.1 Complaint options

If you want to make a complaint or disclosure about bullying, harassment, discrimination or sexual misconduct towards you or another staff member, you are strongly encouraged to do so. The information and procedures in this policy are set out clearly for you to follow.

You can make a complaint or disclosure:

- informally,
- formally, or

²⁴ Training is available at induction and as part of an ongoing program of annual refresher training.

- anonymously.

You may also seek support to make a complaint by contacting independent support services such as those listed in sections 12.3 and 14 of this policy.

Do not ignore circumstances where you or a colleague feels bullied or harassed (sexually or otherwise) or discriminated against. Ministerial staff must feel safe in their workplace. These types of behaviours will not be tolerated.

The complaint and disclosure options are set out in following chapters in this policy.

10.2 No Wrong Door

For Ministerial staff, the workplace consists of various locations, including NSW Parliament, and staff engage with various people, including Members of Parliament and their staff.

Ministerial staff may complain under this policy about any unreasonable conduct that happens in the workplace. Where a complaint or disclosure is made, the complainant should receive immediate support by the person who receives the complaint or disclosure in line with that person's responsibilities under this policy.

If your complaint concerns unreasonable conduct by a Member of Parliament or their staff (electorate office staff) or staff of the NSW Parliament, it can be raised with the Minister or Chief of staff (as employer of Ministerial staff) to be handled under this policy.

While any sanctions against a Member of Parliament for unreasonable conduct are a matter for the Houses, the Minister or Chief of Staff may take management action in response to a complaint, for example, making sure that Ministerial staff do not have to deal directly with the Member of Parliament or their staff.

If a complaint about a Member of Parliament or their staff is investigated under this policy and the complaint is substantiated, it may be appropriate to refer the matter to the Presiding Officers of Parliament or to the Department of Parliamentary Services for consideration under any applicable NSW Parliament workplace policies.

As noted above, this policy does not apply to staff of Members of Parliament employed under Part 3 of the MOPS Act or staff employed by the Leader of the Opposition in the Legislative Assembly under Part 2 of the MOPS Act. Complaints by staff of Members of Parliament or those of the Leader of the Opposition should be raised with the Member of Parliament or Opposition Leader as employer, or with the Department of Parliamentary Services, or the Parliamentary Compliance Officer and dealt with under relevant Parliament workplace policies. Any adverse findings concerning unreasonable conduct by a Minister should be referred by the Presiding Officers to the Premier or the Premier's delegate for further action or sanctions.

10.3 Confidentiality

This section provides an overview of confidentiality considerations when complaints are dealt with under this policy. Complaints are handled in a way that respects the confidentiality and privacy of those involved. However, it may be necessary for those handling the complaint to contact others to clarify information. If you have concerns about the confidentiality of your complaint, you can raise these at any time during the handling of your complaint.

All persons associated with complaints should maintain confidentiality and only discuss the complaint with those involved or those responsible for managing the complaint. In certain circumstances, there may be a requirement under law or policy to disclose information about a complaint, for example, the requirement to disclose criminal conduct to the NSW Police. If you

have been sexually assaulted, your complaint will not be referred to the NSW Police unless you want it to be. Under the *Crimes Act 1900* (NSW) a sexual offence does not have to be reported to the NSW Police if the victim does not wish to do so (see further below).

While all efforts will be made to uphold your right to privacy, there is a risk that complaints made under this policy and provided on a confidential basis may be made public by the Legislative Council under Standing Order 52. Ministers and agencies are required to comply with calls for State papers made by the Legislative Council even if to do so would reveal sensitive or confidential information.

Post script

On 19 May 2022, after the publication of the Policy, the Legislative Council agreed to amend Standing Order 52 to protect the confidentiality of complaints made under the Policy. This means that complaints made under this Policy will **not** be made public by the Legislative Council under Standing Order 52.

For further detail, see [New South Wales, *Parliamentary Debates*, Legislative Council, 19 May 2022, 30 \(Damien Tudehope\)](#).

Information about a complaint will be provided to the respondent as a matter of procedural fairness so that the respondent has an opportunity to respond (see below). The respondent will be given a summary of the complaint, and you will be told about this in advance so that you know when and what information about the complaint is being disclosed.

You should also be aware that disciplinary action taken because of a substantiated complaint following formal investigation (see below) may not be kept confidential.

Finally, you should note that an obligation of confidentiality does not stop a staff member from seeking advice or assistance, for example, from the EAP or a nominated support person, or the Chief of Staff from having a support person present when dealing with the parties to a complaint.

10.4 Procedural fairness

Where a complaint, a decision about a complaint, or action is taken under this policy, which is detrimental to a party, the party should be told and given an opportunity to respond to the complaint, or the proposed decision or action.

Procedural fairness requires the parties are given:

- information about the substance of the complaint
- information about the findings of fact and recommendations following formal investigation of the complaint.

The parties will be treated fairly and kept informed of developments in any investigation under this policy.

10.5 Recording the complaint

A written record of a complaint should be made and kept by Ministerial offices in accordance with section 12 of the *State Records Act 1998* (NSW).²⁵

A record of a complaint should include the following:

- the name and contact details of the complainant – including whether any supports are required, or anonymity is requested
- the date of the complaint
- details of the complaint – the conduct complained about and the incidents where the conduct occurred.

10.6 Vexatious complaints

Complaints which are vexatious will not be managed under this policy. A vexatious complaint is one that is baseless, is not made for a proper purpose or may have been made to harass the person complained about. Making a vexatious complaint may constitute a breach of the Staff Code or this policy and may have workplace and disciplinary consequences.

11. Informal complaints handling

The focus of managing complaints informally is to resolve the issue without formal investigation.

Wherever possible and appropriate, issues of concern should initially be addressed within the Ministerial workplace. Efforts should be made to resolve such issues before moving to formal complaints handling under this policy. However, a complaint may be managed formally without first being subject to informal complaint handling. This may be appropriate in certain circumstances, for example, a complainant is not comfortable or feels unsafe engaging in informal complaint handling.

A complaint about an issue that involves possible criminal conduct (for example, assault, corruption or misuse of public funds) is not suitable for informal complaint handling. These matters should be formally investigated.

11.1 Managing the complaint yourself

In managing a complaint informally, if you feel comfortable, you can ask the person who is behaving contrary to this policy to stop, making clear that their behaviour is offensive or unwelcome.

In managing the complaint yourself, you can bring the respondent's attention to the conduct you consider is unacceptable or inappropriate. It is an opportunity for you and the respondent to discuss the behaviour and identify solutions to support a respectful workplace.

11.2 Managing the complaint with support of a colleague

You may also manage a complaint informally with support of a colleague in the following way:

- a colleague will support you to raise the complaint with the respondent
- the colleague will discuss the complaint separately with you and with the respondent

²⁵ Records management guidance is included in the Handbook.

- the colleague will then seek to resolve the complaint promptly and decide on any further action. If the Chief of Staff is not the supporting colleague, they should be consulted and agree to any further actions proposed to support a respectful workplace.²⁶

A complaint that is initially being dealt with informally may ultimately be handled under the formal complaints handling process, if appropriate. For example, where the complaint cannot be resolved between the parties informally.

Informal complaints should be managed promptly, and steps taken to resolve the complaint should occur within no more than two weeks of the complaint being made.

12. Formal complaints handling

The focus of formal complaints handling is to determine whether a complaint can be substantiated (that is, supported by objective evidence) and, if so, what action should be taken. Formal complaints handling involves investigation of the complaint. The Minister or the Chief of Staff, with the support of DPC will request the external, independent Investigator undertake the investigation of a complaint made under this policy that cannot be dealt with informally. The independent investigator is politically neutral.

If the complaint is about a Minister or Chief of Staff, the Investigator who is independent may be engaged by the Premier, or the Premier's Chief of Staff or a delegate of the Premier under section 11 of the MOPS Act, with the support of DPC. Where a complaint is made under this policy about a Minister or Chief of Staff, the complainant may also raise the complaint directly with DPC for advice about how the complaint may be handled. Where the complaint is made directly to DPC, they will need to raise the matter with the Minister or Chief of Staff before commencing a formal investigation.

12.1 Investigation process

- The Investigator will interview you and you may have a support person present at the interview. The Investigator will prepare a written record of the interview. A copy will be provided to you, including to confirm that it is a true and accurate record of the interview.
- The Investigator will inform the respondent of the substance of the complaint and give the respondent the opportunity to respond. The Investigator will interview the respondent who may have a support person present. The Investigator will prepare a written record of the interview. A copy will be provided to the respondent, including to confirm that it is a true and accurate record of the interview.
- The Investigator may conduct interviews with witnesses and other persons, if appropriate. The Investigator may use other avenues for gathering evidence concerning the complaint, including inspecting records or surveillance footage, as required.
- The Investigator will prepare a report on the investigation including findings of fact (for example that, because of substantiated conduct, the respondent breached the Staff Code or this policy) and recommendations (for example, disciplinary action should be taken, or training implemented).

²⁶ It is open to the Chief of Staff to engage the Investigator (with the support of DPC) to mediate the complaint as a means to resolve an issue without recourse to formal investigation under this policy. Mediation is suggested as a last resort to resolve a complaint informally. It is otherwise preferable that the parties seek to resolve the issues between them with as little formality as possible.

- You and the respondent will be given a summary of any findings and recommendations made by the Investigator following the investigation and provided with a reasonable opportunity to respond to those findings and recommendations before the investigation report is finalised. Once the report is finalised, it will be provided to the Minister and Chief of Staff to determine further employment actions.²⁷
- Where necessary, the Minister or Chief of Staff may establish different work arrangements to ensure that you and the respondent are provided with safe and appropriate work arrangements during the investigation process.²⁸ Where possible all attempts will be made to ensure the complainant remains in his/or her office, if preferable.

12.2 Outcome of formal investigation

An investigation leads to the making of factual findings and recommendations for action. The Investigator will notify parties to a complaint of findings and recommendations before the investigation report is finalised and they will be given a reasonable opportunity to respond. The final report with findings and recommendations will also be provided to the Minister and Chief of Staff. The Premier, Minister or Chief of Staff may request advice from DPC about the investigation report, including steps to respond to any recommendations made.

An investigation report generally covers the following matters:

- details of the complaint made by the complainant
- applicable policies and laws
- details of the investigation process in line with this policy
- an overview of the evidence considered and gathered in the investigation
- factual findings
- recommendations.

Findings may include any of the following:

- the complaint is substantiated in whole or in part
- the complaint is not substantiated in whole or in part
- there is insufficient evidence to make a clear determination about the complaint, in whole or in part.

The matters to consider when deciding what action or recommendation to take may include:

- the seriousness of the conduct
- the likelihood of the conduct occurring again
- whether the staff member has engaged in unreasonable conduct more than once
- the risk the unreasonable conduct poses to staff, stakeholders, and any other people.

Recommendations may include:

- that specified staff undertake further training to support a respectful workplace culture
- that disciplinary action is warranted against a staff member for breach of this policy or the Staff Code

²⁷ Ministers may delegate their employer functions under Part 2 of the MOPS Act; sections 11 and 12. This means, for example, that the Minister may delegate to his or her Chief of Staff the function to employ Ministerial staff.

²⁸ Under section 9 of the MOPS Act, Ministerial staff can be temporarily assigned to another Minister, which may be an option to separate the parties in the workplace.

- that workplace arrangements are warranted, such as assigning a staff member to another Ministerial office or termination of a staff member who has breached this policy, or the Staff Code, or conditions of their employment²⁹
- that the matter is referred to the Presiding Officers of Parliament or to the Department of Parliamentary Services for further action where the substantiated complaint concerns Members of Parliament or their staff
- that the matter is referred to the Premier or the Premier's delegate for further action or sanctions where the substantiated complaint concerns the conduct of a Minister.

DPC is responsible for following-up with the Ministerial office whether the actions recommended in the investigation report have been undertaken and acquitted. DPC will report on these activities in the annual report to the NSW Government (see below).

12.3 Reporting complaints to the Police

Conduct that is criminal conduct may be reported to the NSW Police. Sexual misconduct may constitute a criminal offence; for example, sexual assault, stalking and technology-facilitated and/or image-based abuse.

In NSW 'concealing a serious indictable offence' is a crime in certain circumstances.³⁰ A 'serious indictable offence' is punishable by imprisonment for life or for a term of 5 years or more. Sexual assault is a type of serious indictable offence with liability for imprisonment up to 14 years.³¹

A person has a reasonable excuse for failing to report a serious indictable offence to the NSW Police if:

- the information relates to a sexual offence or a domestic violence offence against a person (the alleged victim), and
- the alleged victim was an adult at the time the information was obtained by the person, and
- the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police or another appropriate authority.³²

Where it is apparent either before or during the investigation that the matter may constitute a criminal offence, this must be reported to the NSW Police, if the complainant agrees. The complainant's wishes about whether to report to the NSW Police must be considered.

Alternatively, if the complainant does not wish to report the matter to NSW Police, they may complete a sexual assault reporting option (**SARO**). This is an online questionnaire that is not the same as making a formal report to police and will not initiate a criminal investigation. The primary purpose of a SARO is to make a record of what occurred to allow the NSW Police Force to gather information on sexual offences and offending.³³

The complainant, respondent, witnesses, and other people involved should be provided with service information to support informed decision making. These could include [NSW Health Sexual Assault Services](#) and/or [NSW Sexual Violence Helpline](#). In the case of a recent sexual assault (past 7 days), referral to a NSW Sexual Assault Service will provide an integrated psychosocial,

²⁹ A Minister may terminate Ministerial staff at any time: section 8(3). Any employment dispute (including termination) is not subject to industrial proceedings under the *Industrial Relations Act 1996* (NSW): section 26, MOPS Act.

³⁰ Section 316 of the *Crimes Act 1900* (NSW).

³¹ Section 61I, *Crimes Act 1900* (NSW).

³² Section 316(1A), *Crimes Act 1900* (NSW).

³³ https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/sexual_assault_reporting_option

medical and forensic response and the opportunity for collection of forensic evidence and/or documentation of the history of the sexual assault with no requirement to immediately report to the NSW Police.

A formal investigation of sexual or other misconduct that could constitute a criminal offence should occur under this policy as a workplace matter. The advice of DPC may be sought in respect of managing a matter that may involve criminal conduct.

In dealing with the matter as a workplace matter, the Minister, as the employer, is obliged to consider employment arrangements which would maintain the work, health and safety of the complainant and other staff. Those employment options may include suspension from duties of the staff member who is the subject of the complaint.

Where an investigated matter may also constitute a criminal offence, the following steps should be taken:

- the complainant is notified of the requirement to report the offence to the NSW Police and the complainant's wishes about making the report must be obtained and considered
- the complainant is provided with support – a support person³⁴, EAP assistance, the opportunity to raise concerns and wishes with the Investigator or DPC about the report to the NSW Police and the investigation
- where reported to the NSW Police, consultation should be undertaken with the NSW Police about the continuation of the workplace investigation – so that any criminal investigation is not compromised, but that the workplace investigation and any employment consequences can still be pursued
- where the complainant does not wish the matter to be reported to the NSW Police, regular check-ups should be undertaken of the complainant's well-being and to ascertain whether he or she wishes to change their mind about reporting the matter to the NSW Police.

13. Anonymous disclosures

13.1 Making an anonymous disclosure

There may be some situations where staff do not want to identify themselves when making a disclosure. Staff may make a disclosure of unreasonable conduct anonymously to DPC and seek guidance from DPC about making disclosures or complaints under this policy. Information in anonymous disclosures may be used to identify systemic issues and enable DPC to support Ministers and Chiefs of Staff to promote a respectful workplace culture and prevent unreasonable conduct through training and advice (see section 9 above).

Anonymous disclosures may be made by phone at 8574 7433 or by email at Ministerial_respectfulworkplace@dpc.nsw.gov.au

Under this policy, DPC will keep appropriate records, store information securely and protect the anonymity of all parties in accordance with principles of confidentiality and procedural fairness.

13.2 Limitations of anonymous disclosures

Although anonymous disclosures will still be dealt with appropriately under this policy, identification of the complainant allows:

³⁴ When the complaint involves sexual misconduct, including sexual assault the person should be referred to a specialist service such as NSW Health Sexual Assault Services and/or NSW Sexual Violence Helpline.

- the matter to be investigated in a way that is procedurally fair and evidence-based
- feedback to be provided to the parties on how the complaint is handled
- tailored support and assistance to the complainant through workplace arrangements and EAP supports.

Confidentiality and protection from victimisation are important aspects of complaint handling under this policy and best endeavours will be taken to ensure the complainant's personal and sensitive information is protected and the complainant is not victimised because of the complaint.

It is also important to note that an anonymous disclosure may not prevent some people from drawing conclusions about who the complainant is based on their knowledge of events or circumstances surrounding the disclosure.

14. Employee Assistance Program

Ministerial staff and their immediate family members may access free, confidential, and professional counselling assistance through the EAP. The telephone number for this service is 1300 687 327.

You may also get in touch with DPC, People, Culture and Talent (by phone at 8574 7433 or by email at Ministerial_respectfulworkplace@dpc.nsw.gov.au) who can assist you to obtain support from service providers who offer specialist support, for example, to people who identify as Aboriginal or Torres Strait Islander or as LGBTIQ+.

Experiencing bullying, harassment, discrimination, or sexual misconduct is distressing. If you do feel distressed, please contact EAP or:

- Lifeline: Ph. 13 11 14; <https://www.lifeline.org.au/>
- Beyond Blue: Ph. 1300 224 636; <https://www.beyondblue.org.au/>
- NSW Sexual Violence Helpline: Ph. 1800 424 017; <https://www.fullstop.org.au/>
- QLife: Ph. 1800 184 527; <https://qlife.org.au/>
- Suicide Call Back Service: Ph. 1300 659 467; <https://www.suicidecallbackservice.org.au/>
- Australian Government Health Direct: <https://healthdirect.gov.au/mental-health-helplines>

15. Monitoring Complaints

15.1 Reporting to the NSW Government about complaints

DPC is responsible for monitoring formal complaints made under this policy and providing annual reports to the NSW Government on formal complaints handled under this policy.

The annual report should identify among other things, the number of formal complaints made and whether the complaints were substantiated; the type of unreasonable conduct complained about; whether workplace or systems improvements are warranted because of the complaint; and any other matter relevant to the application and effectiveness of this policy.

16. Contacts

If you or a colleague have experienced or are experiencing bullying, harassment, discrimination, or sexual misconduct in the workplace, you are encouraged to speak up about any incidents in accordance with this policy.

External Bodies

[Anti-Discrimination New South Wales](#)

PO Box W213, Parramatta Westfield NSW 2150;

complaintsadb@justice.nsw.gov.au

[SafeWork NSW](#)

Locked Bag 2906 Lisarow NSW 2252

Enquiries: 13 10 50

[Australian Human Rights Commission](#)

GPO Box 5218 Sydney NSW 2001

Enquiries: 1300 369 711

17. Review of the Policy

This Policy will be reviewed on an ongoing basis to ensure it achieves its purpose and to assist in identifying appropriate modifications if it is not.

Monitoring the effectiveness of this policy also depends upon feedback from those to whom it applies. As part of the ongoing review of this policy, an annual anonymous survey will be conducted of all Ministers and their staff to evaluate whether this policy is effective, and to identify any patterns of unreasonable conduct so that action can be taken.

Review record

Date	Action	Version
May 2022	Publication	1.0

Version 1.0