

ALRC POLICY



Australian Government
Australian Law Reform Commission

WORKPLACE DISCRIMINATION, HARASSMENT AND BULLYING POLICY

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How to get more information before deciding what to do

If you require any assistance or guidance in understanding this policy or would like to explore any concerns or questions, do not hesitate to contact your manager, or you can contact the **external consultant** who has been nominated by the ALRC to give information and to receive and handle complaints:

Company/Agency:	Weir Consulting (National) (WEIR)
Email address:	[REDACTED]
Phone line:	[REDACTED]
Reporting:	[REDACTED]

Other options available to you include the following:

1. Contact your union for advice.
2. Call the Australian Human Rights Commission (1300 369 711), Fair Work Commission (13 13 94) or Queensland Human Rights Commission (1300 130 670) for information about your rights and responsibilities, or report any serious concerns to your local Police Station.
3. If you have questions about the potential relevance of the Public Interest Disclosure Regime and any interaction with a concern you have under this policy, call the Commonwealth Ombudsman (1300 362 072).

1. POLICY STATEMENT

1.1 Statement of Commitment

For the purpose of this policy, 'ALRC personnel' refers to ALRC current and former Commissioners, current and former staff members and any current or former contractors or consultants undertaking work for the ALRC.

The ALRC has no tolerance for discrimination, harassment, including sexual harassment, and bullying. The success of the Commission and the wellbeing of each of its Commissioners, staff, interns, student clinic participants, and consultants is founded on a collegial and respectful workplace.

The ALRC is committed to:

- providing a safe and respectful environment for staff and individuals interacting with it;
- wherever possible, preventing or eliminating unlawful discrimination, harassment and bullying; and
- responding sensitively and effectively to any incidents of unlawful discrimination, harassment and bullying.

If any ALRC personnel makes a complaint asserting that they have been, or are being, unlawfully discriminated against, harassed or bullied (or any person makes a complaint asserting that they have been, or are being, subjected to such conduct by any ALRC personnel) it will be dealt with thoroughly and as expeditiously as possible.

1.2 Purpose

This policy is designed to make ALRC personnel aware of:

- what constitutes unlawful discrimination, harassment, sexual harassment, and bullying;
- their obligations in relation to unlawful discrimination, harassment and bullying;
- the procedures the ALRC has in place to deal with complaints relating to unlawful discrimination, harassment and bullying, including an external confidential reporting service;
- who they can talk to in relation to unlawful discrimination, harassment or bullying; and
- the prohibitions on victimisation or reprisal and mechanisms to protect complainants and witnesses from that behaviour.

1.3 Application of this Policy

This policy applies to all ALRC personnel, including:

- Commissioners and Advisory Committee members;
- full time, part time, casual, permanent or temporary employees;
- contract or commission workers;
- volunteers, vocational and work experience placements; and
- individuals seeking such employment or engagement.

This policy applies to circumstances including:

- how the ALRC interacts with its stakeholders and other members of the public;
- all aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, shifts, hours, leave arrangements, workload, equipment and transport;
- on-site, off-site, work-related travel, meetings, conferences, social functions – **wherever and whenever** ALRC personnel may be as a result of their working duties;
- out of work hours interaction where there is a strong connection to the employment relationship; and
- ALRC personnel treatment of other ALRC personnel, stakeholders and members of the public encountered in the course of their working duties.

Consistent with *Sex Discrimination Act 1984* (Cth), this policy also covers ‘work related’ sexual harassment, which can take place:

- in the workplace;
- at the location of someone working remotely who is harassed by email, on a social networking site, or by mobile phone;
- on work-related trips (such as training and conferences or in hotels, cars or on trains etc);
- at work-related social events (such as work lunches, office parties, at bars and restaurants); and
- at any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.

1.4 Principles

The principles associated with this policy are that:

- unlawful discrimination, harassment and bullying will not be tolerated in the workplace.
- the ALRC has a positive duty to ensure the health and safety of employees:
 - to eliminate risks to health and safety so far as is reasonably practicable; and
 - if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
- ALRC personnel may be personally liable if allegations of discrimination or harassment are substantiated against them.
- legal action (civil and/or criminal) may be taken against a person who has engaged in discrimination or harassment.
- conduct constituting unlawful discrimination or harassment by an employee may also expose the ALRC to liability.
- all ALRC personnel are required to treat others with respect and courtesy, and without harassment, and are to behave in a way that upholds the integrity and good reputation of the ALRC.

1.5 Responsibilities of ALRC Personnel and Management

All ALRC personnel contribute to the creation of a discrimination-free and inclusive workplace and a healthy workplace culture.

A foundational principle for managers is that they must model appropriate behaviour; promote this policy; treat all complaints seriously and attend to them promptly; monitor the work environment and seek expert help for complex or serious matters.

All ALRC personnel have the responsibility to comply with this policy; report incidents to their managers; participate in any training provided by the ALRC; treat information in relation to claims of discrimination, harassment and bullying with appropriate confidentiality; and not to participate in discriminatory or harassing behaviour.

1.6 Interaction with the Public Interest Disclosure Regime

In certain circumstances, the ALRC is required to treat a report of discrimination, harassment or bullying as a public interest disclosure (PID) for the purposes of the *Public Interest Disclosure Act 2013* (Cth) (PID Act). If a report of unlawful discrimination, harassment or bullying is made to the President, or to an employee's supervisor, the ALRC will deal with the report in accordance with this policy read with the **ALRC Public Interest Disclosure Policy**. For further information on the Public Interest Disclosure regime see **Appendix A**.

2. THE PROHIBITED CONDUCT

Behaviour, or conduct, that may be considered as unlawful discrimination, harassment and bullying in a work-related context may breach not only the *Public Service Act*, but also various provisions in other Commonwealth legislation, including:

- *Sex Discrimination Act 1984* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth).

Such behaviour or conduct may also be a breach of the APS Values, Code of Conduct and Employment Principles set out in the *Public Service Act*.

2.1 Discrimination

What is discrimination?

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law, such as sex, age, race or disability.

Discrimination can occur:

Directly, when a person or group is treated less favourably than another person or group in a similar situation because of a personal characteristic protected by law (see list below).

*For example, a worker is harassed and humiliated because of their race
or*

A worker is refused promotion because they are 'too old'

Indirectly, when an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic protected by law (see list below).

For example, redundancy is decided based on people who have had a worker's compensation claim rather than on merit.

Protected personal characteristics under Federal discrimination law include:

- a disability, disease or injury, including work-related injury
- parental status or status as a carer, for example, because they are responsible for caring for children or other family members
- race, colour, descent, national origin, or ethnic background

- age, whether young or old, or because of age in general
- sex
- industrial activity, including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union
- religion
- pregnancy and breastfeeding
- sexual orientation, intersex status or gender identity, including gay, lesbian, bisexual, transsexual, transgender, queer and heterosexual
- marital status, whether married, divorced, unmarried or in a de facto relationship or same sex relationship
- political opinion
- social origin
- medical record
- an association with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability.

It is also against the law to treat someone unfavourably because you assume they have a personal characteristic or may have it at some time in the future.

2.2 Harassment: Generally

What is and isn't harassment?

In general, unlawful harassment is any form of behaviour that is not wanted, and not asked for, and in respect of which a reasonable person would have anticipated the possibility that the behaviour would humiliate, offend, or intimidate or embarrass the person at whom the behaviour is directed, or who is exposed to the behaviour, where the behaviour relates to one or more of the characteristics listed in 2.1.

Some forms of harassment are considered sexual harassment which may also constitute criminal behaviour and may be treated as a criminal offence.

Unlawful harassment may be unintentional. If a reasonable person would have anticipated that the recipient of the behaviour would be offended, humiliated or intimidated, then regardless of the intent, unlawful harassment is likely to have occurred.

Harassment will not be unlawful, as such, if it is not based on one of the characteristics listed in 2.1. However, consistent with the *Public Service Act*, the ALRC requires employees to treat everyone with respect and courtesy, and without harassment (*Public Service Act* section 13(3)). Failure to meet this requirement may be determined to be a breach of the Australian Public Service Code of Conduct.

In some cases, a single action or incident may be considered harassment. In other cases, there may need to be a persistent pattern of behaviour to establish harassment. Harassing behaviour is often, but not always, repeated. If the harassment is repeated, the person affected may initially try to ignore the offending behaviour. Often though, the harassment will continue or escalate, adversely affecting the person to whom the harassment is directed and others in the workplace, creating a hostile environment and generally poor working relationships.

2.3 Sexual harassment

Sexual harassment is a specific and serious form of harassment that is unlawful and prohibited by both State and Territory and Commonwealth legislation. The ALRC has no tolerance for sexual harassment.

Sexual harassment is particularly prevalent where gender inequality exists, and other factors such as age, gender identity, sexual orientation, indigeneity, other cultural and linguistic diversity and disability have also been shown to increase the likelihood that a person may experience sexual harassment.

The legislative framework

Section 28A of the *Sex Discrimination Act 1984* provides that a person sexually harasses another person (the “person harassed”) if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

The relevant circumstances to be taken into account may include, but are not limited to, the following:

- the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- any disability of the person harassed;
- any other relevant circumstance.

‘Conduct of a sexual nature’ includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Section 28B sets out a range of circumstances in which sexual harassment at work is unlawful.

Examples of sexual harassment

Sexual harassment in the workplace may take various forms and can be directed at, and perpetrated by, all persons including male, female, transgender and gender diverse. It may be physical, spoken or written and may include:

- unwelcome physical contact of a sexual nature;
- comments or questions of a sexual nature about a person’s private life or their appearance;
- sexually suggestive behaviour, such as leering or staring or offensive gestures;
- brushing up against someone, touching, fondling or hugging;
- sexually suggestive comments or jokes;
- displaying offensive screen savers, photos, calendars or objects;
- repeated requests to go out;
- unwanted displays or declarations of affection;
- requests for sex;
- sexually explicit emails, text messages or posts on social networking sites;
- sexual assault, indecent exposure, physical assault and stalking (which are also criminal offences); and

- actions or comments of a sexual nature in a person's presence (even if not directed at that person).

There is no requirement that the unwelcome conduct be repeated; a one-off incident can be sexual harassment. Equally, a broader pattern of behaviour can constitute sexual harassment.

Just because someone does not object to inappropriate behaviour in the workplace at the time, it does not mean that they are consenting to the behaviour.

All ALRC Personnel have the same rights and responsibilities in relation to sexual harassment.

All incidents of sexual harassment – no matter how large or small or who is involved – require employers and managers to respond quickly and appropriately.

Behaviour not considered to be sexual harassment

Sexual or romantic interaction that is entered into freely and is reciprocated between consenting ALRC personnel is not a form of sexual harassment. This includes sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated action.

However, ALRC personnel should be cognisant that this is a small office and that sexual or romantic interactions between staff may be corrosive to team morale if not managed appropriately. In addition, any relationship between supervisors and their direct reports is strictly prohibited. ALRC personnel may face disciplinary action where their actions adversely affect other ALRC personnel or their workplace responsibilities. ALRC personnel should also be familiar with the ALRC Conflict of Interest Policy.

ALRC personnel should take great care before engaging in conduct which they believe to be welcome or consensual. Just because someone does not overtly object to inappropriate behaviour in the workplace at the time it occurs does not mean that they are consenting to the behaviour or consenting for the behaviour to continue at another time. An employee should always remember that a person may not feel comfortable telling another employee that their behaviour or conduct is offending them and is not welcome. Consent is something actively given, and frequently people being sexually harassed are too uncomfortable, embarrassed or scared to object.

Consumption of alcohol at work functions or at a work related event outside the usual workplace and hours of work is not an excuse for conduct that constitutes sexual harassment.

2.4 Bullying

What is and isn't bullying?

Workplace bullying is defined by the *Fair Work Act 2009* (Cth), and occurs when:

- a person or a group of people repeatedly behaves unreasonably towards a worker or a group of workers while at work; and
- the behaviour creates a risk to health and safety.

Bullying does not include reasonable management action carried out in a reasonable manner. Reasonable performance management measures put in place by a manager or supervisor to address underperformance is not a form of bullying.

Bullying can occur by way of direct face-to-face or online communication, and can include a range of behaviours such as:

- yelling, screaming or offensive language;
- excluding or isolating employees;
- psychological harassment;

- intimidation;
- assigning meaningless tasks unrelated to the job;
- giving employees impossible jobs;
- deliberately changing work rosters to inconvenience particular employees;
- undermining work performance by deliberately withholding information vital for effective work performance;
- constant unconstructive criticism;
- suppression of ideas; and
- overloading a person with work or allowing insufficient time for completion, and criticising the employee's work in relation to this.

Behaviour or conduct, provided it is carried out in a reasonable manner, that does not constitute bullying includes:

- allocation of work in accordance with terms and conditions of employment and organisational practices;
- reasonable directions by management;
- expressing differences of opinion;
- carrying out legitimate managerial decisions; and
- making a complaint about the conduct of a manager or another employee, if the complaint is made in an appropriate and reasonable way.

3. WHAT TO DO

Don't ignore discrimination, harassment or bullying, thinking it will go away – often it just gets worse. Choose the action you feel most comfortable with. You can follow more than one action at the same time. The ALRC encourages you to reach out. Dealing with discrimination, harassment or bullying can be hard, but the President, Commissioners and General Counsel are committed to a no tolerance workplace.

3.1 Support and Counselling

The ALRC provides employees with a short-term, confidential, counselling service designed to offer a problem-solving, solution-oriented approach to support employees with personal or work-related issues.

The EAP is staffed by independent qualified practitioners.

All employees have access to this service, which provides for three counselling sessions per year at no cost to the employee, and can be provided over the phone or face-to-face. The provider does not advise the ALRC of who has used the service.

To access this service employees may contact Converge International (call 1300 OUR EAP, or <https://www.convergeinternational.com.au/cvi/about-us/contact-us/make-an-eap-booking>).

An employee may also wish to access other support services, such as:

- [1800RESPECT](#) (Phone: 1800 737 732) (confidential information, counselling and support service open 24 hours to support people impacted by sexual assault, domestic or family violence and abuse)
- [Beyond Blue Support Service](#) (Phone: 1300 22 4636) (referral line staffed by mental health professionals)
- [National Aboriginal and Torres Strait Islander Legal Services](#) (Phone: (03) 9418 5928)

- [People With Disability Australia](http://www.peopleswithdisability.org.au) (Phone:1800 843 929 (toll free) or email: info@wayfinderhub.com.au)
- [QLife](http://www.qlife.org.au) (Phone: 1800 184 527 3:00pm-10:30pm) (counselling and referral for LGBTI people)

3.2 Self-management

If you feel confident and want to deal with the situation yourself, you can use techniques that generally tell the person what you are unhappy about, why you are unhappy about it, and what you would like to happen. Such as:

1. an informal discussion with the person to let them know what behaviour has made you uncomfortable and you do not want to occur again;
2. resist an instance of the concerning behaviour and explain at that time that you do not like it and you are concerned it is contrary to ALRC policy;
3. send an email setting out your concerns and a request for the behaviour to stop, also noting that it is at this stage an informal request and if accurate, that you are aware they may not understand the behaviour makes you uncomfortable.

However, it is not necessary that you try to resolve the complaint this way – such an approach may be suitable for some situations and people but not others. You may discuss informal approaches with, and request the support or involvement of your supervisor should you wish to do so, and they may provide a support presence for any of the above informal exchanges.

Alternatively, if you think a more structured informal approach is required, a facilitated discussion or mediation session can be arranged using a trusted manager or the nominated external consultant, WEIR, which has expertise in this area.

3.3 Make a complaint

The starting point to resolving a complaint is to talk with someone.

- At the ALRC, this can be your **supervisor** (or another manager if more appropriate), the **General Counsel** or the **President**. (see further 3.3.1)
- Alternatively, you may speak to the **external consultant** nominated by the ALRC (see further 3.3.2).

The person you speak to may provide you with a range of options. One approach is to centre on the resolution of the issue, without deciding fault. The manager may speak to the person you are making a complaint about, to see if the situation can be resolved simply. Some matters are not resolved so easily, especially if the person being complained about denies or disputes the allegations, or the issues are complex or require escalation.

Part 5 sets out the processes that the ALRC and/or external contact will follow once a complaint has been made.

3.3.1 Complaint to ALRC management

ALRC personnel may make a complaint directly to ALRC management, including their supervisor, the General Counsel or the President. The ALRC is committed to treating all complaints of unlawful discrimination, harassment and bullying seriously. All complaints will be handled confidentially and impartially, assessed promptly, investigated where appropriate and managed in accordance with recommendations.

3.3.2 Contact the external consultant (for information and anonymous, confidential, or open reporting options)

The ALRC recognises that complainants may be reluctant to make reports internally, and that ALRC personnel may have concerns about timing, potential damage to reputation, career and situations of significant power imbalance because of the important and varied work of the ALRC. For this reason, we have engaged WEIR as an external consultant. WEIR provides:

1. an [REDACTED] for reporting that includes various options for reporting on anonymous and/or confidential bases;
2. a dedicated email for contact [REDACTED];
3. a disclosures hotline – WEIR Disclosures Hotline [REDACTED] through which information can be sought and reports made if the other options are not considered appropriate;
4. a dedicated Principal Consultant [REDACTED] and staff trained in complaints handling.

Where someone is concerned about conduct, but fearful of reporting it, WEIR can provide you with anonymous two-way communication to report the conduct, receive appropriate support and provide information.

WEIR can also receive your complaint information on a restricted confidential basis, where your complaint is received and recorded by them, but no information will be provided to the ALRC unless the reporter consents.

WEIR will provide assistance to the ALRC in assessment of complaints and recommended handling, including support by way of facilitated discussions where informal resolution is appropriate, further inquiry and investigation.

3.3.3 External complaints

Complaints of discrimination, harassment or bullying can also be lodged in some circumstances with the Fair Work Commission (Fair Work Infoline: 13 13 94), the Australian Human Rights Commission (Phone: 1300 369 711), and the relevant state or territory body (such as the Queensland Human Rights Commission (1300 130 670)). Complaints concerning non-judicial Commissioners can also be lodged with the Australian Public Service Commissioner.

4. BYSTANDER INTERVENTION

Bystanders, including colleagues, who witness or are aware of unlawful discrimination, harassment or bullying, can play an important role in preventing it. When grounded in behaviours of integrity and respect, action taken by colleagues can positively impact on defining workplace culture.

Bystanders who are aware of unlawful discrimination, harassment or bullying are encouraged to:

- provide support to the colleague who is being subjected to the concerning behaviour;
- formally or informally challenge concerning behaviour; and
- report the concerning behaviour.

The standard that people walk past is the standard that people accept.

Witnesses can also use the reporting options contained in this policy, and can do so anonymously or confidentially to ensure that the ALRC is made aware of the conduct.

5. RESPONDING TO DISCRIMINATION, HARASSMENT AND BULLYING

5.1 The ALRC's responsibility

If a complaint of unlawful discrimination, harassment or bullying is made, or such conduct is observed or brought to the attention of the ALRC, it must be acted upon as soon as practicable. All complaints must be managed in a manner that gives appropriate consideration to the sensitive and confidential nature of the complaints, while ensuring procedural fairness to those against whom the complaint is made.

All staff with management responsibilities, regardless of level, have a responsibility to improve the work culture by adopting a no tolerance approach to such behaviours. Management must take active steps to prevent such conduct in a workplace, not just respond to complaints if they arise.

The appropriate action for management to take when a complaint is raised, or when a matter is otherwise brought to their attention, is likely to vary on a case-by-case basis.

The ALRC must ensure that the complainant and respondent are informed of the supports available to them, such as the Employee Assistance Program (EAP), as early as possible (see further 3.1).

5.2 Confidentiality

The nature of the types of conduct prohibited by this policy and obligations that our organisation has when it is made aware of such conduct means that confidentiality needs to be carefully managed.

Where information is provided solely to the external consultant it will be kept confidential and no disclosure will be made to the ALRC without the consent of the person providing the information.

However—where a complaint is communicated to the ALRC—confidentiality means that only those who need to know about the issue in order to help resolve it and prevent further incidents will know the details. This means that there may be times when we cannot meet a person's request that the information 'goes no further' than the person they reported the issue to. This is particularly the case, for example, when the issues are serious, amount to a public interest disclosure, involve someone senior in the organisation or there are psychological and safety risks to others.

Although the ALRC may need to take specific action to comply with reporting and regulatory requirements, further support and protections for complainants and witnesses exist and can be explored in supporting disclosure and use of information provided in a way that ensures the conduct is appropriately managed. We will prioritise and protect the identity of a person impacted, and anyone else that an investigation reveals has been subjected to prohibited conduct.

Only relevant persons in the ALRC will be advised of the disclosure/complaint and any arrangements necessary for the purpose of managing the disclosure/complaint. At the time a disclosure/complaint is made, the ALRC will notify the complainant as to the parties who, within the organisation, will be privy to this information. In cases of reported conduct that may amount to alleged sexual assault, ALRC personnel will be encouraged to make a report to the police. ALRC personnel will also be encouraged to report the incident to their direct manager or the General Counsel, regardless of whether a report is made to the police or not.

Given the nature of the issues covered by this policy and the importance of ensuring the integrity of any complaint process, we also expect that—once a complaint under this policy has been made to the ALRC—any person involved in the complaint (including the complainant,

respondent, witnesses, interviewees and representatives) will:

- behave consistently with the APS Code of Conduct in relation to the matters raised; and
- keep all details of the complaint and process of resolution confidential until the process is concluded (with an exception for receiving legal advice or expert medical or support services).

Failure to do so may result in further consequences or disciplinary action. Once the matter is finalised, we will not restrict the impacted person's right to speak in their personal capacity, with any potential issues arising from this for their own consideration.

5.3 Process – Generally

Complaints of unlawful discrimination, harassment and bullying will be considered by the ALRC or the external consultant nominated by the ALRC to receive and handle complaints. Processes will be undertaken in line with the relevant legislation.

Informal procedures (focussed on resolution of the issue rather than substantiation of the underlying concern or complaint) may be appropriate where the person raising the concern wishes to resolve the issue informally. These may include conducting or facilitating discussions to address the behaviour, or refresher training for the general work area on the requirements of this policy. This training should support the regular training that is provided for employees regarding discrimination, harassment and bullying and other related people and culture matters.

In other cases, a more **formal approach** may be appropriate. Formal processes typically involve investigating the complaint, making a finding as to whether the conduct complained of occurred, and deciding on an appropriate outcome. Such process will be undertaken in line with relevant legislation, organisational policies, procedures and enterprise agreements.

Both the complainant and respondent are to be afforded natural justice and procedural fairness. This will allow relevant evidence to be examined in a procedurally fair way. Relevant evidence might include manager reports, emails, witness reports of the alleged conduct, text messages or the complainant's personal records.

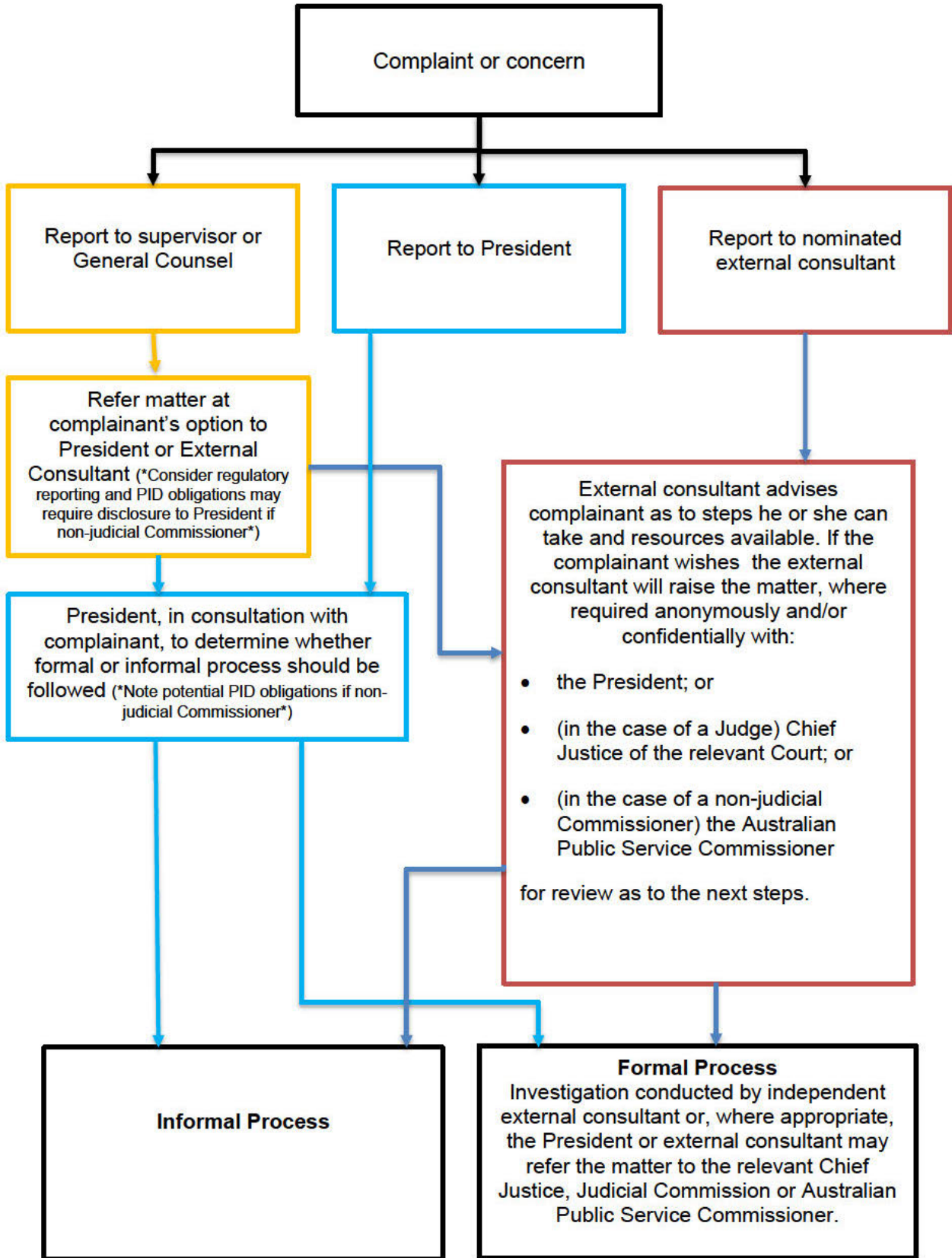
When considering a complaint, the complainant and subject will be:

- treated fairly and respectfully; and
- provided with support, resources and confidentiality of the processes undertaken.

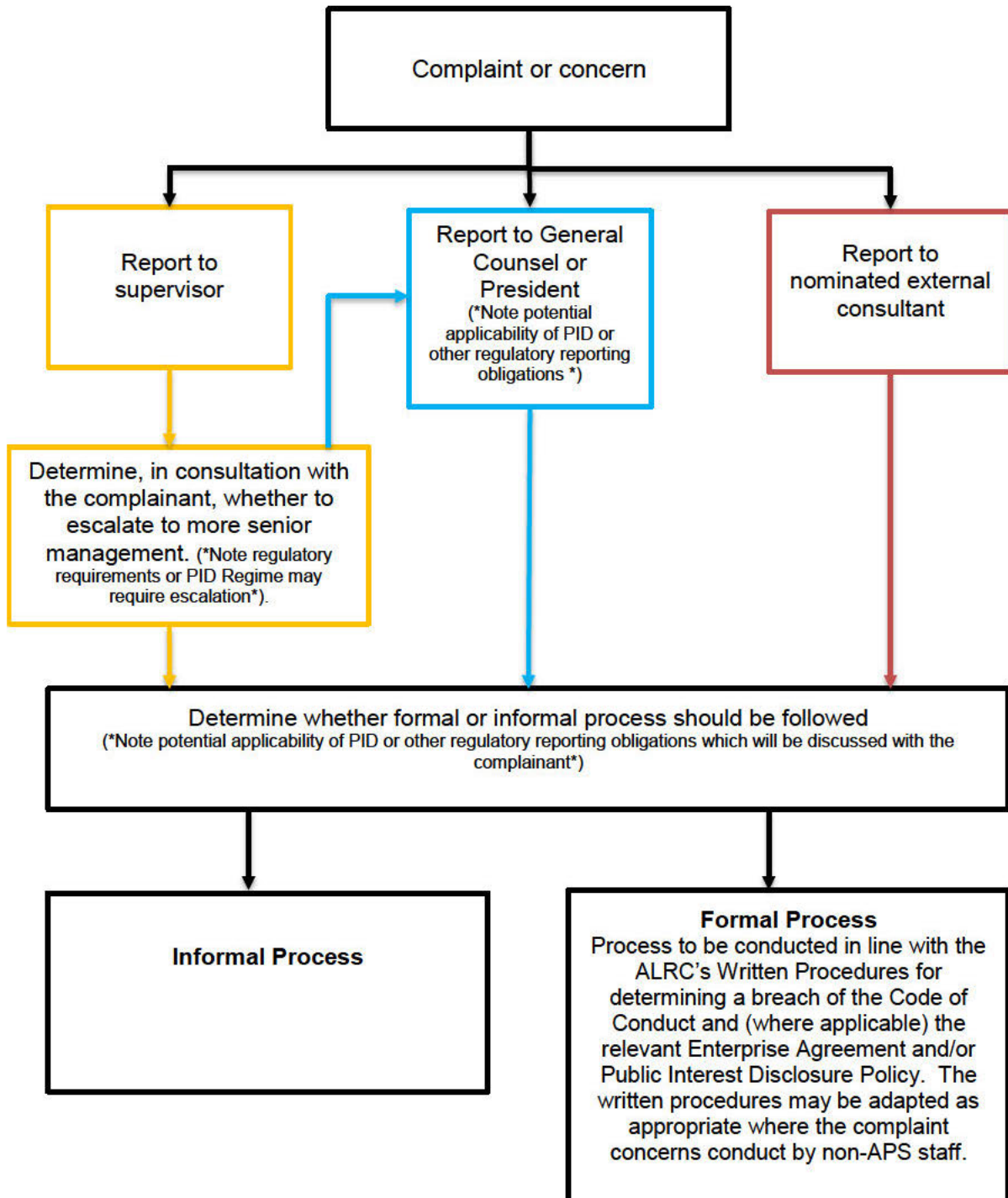
Where allegations of misconduct or breaches of legislation or policy are made, the respondent to those allegations will be given the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made.

The process for resolution of concerns or complaints will be as follows, in light of the different statutory regimes applicable to relevant ALRC personnel.

5.3 Process where a complaint concerns conduct by a Commissioner (judicial or non-judicial) or other holder of judicial office



5.4 Process where a complaint concerns conduct by any person other than a Commissioner or other holder of a judicial office



5.5 Temporary change of operations

Depending on the nature of the concerns raised and the parties implicated, it may be necessary or appropriate to temporarily change operations within a team to ensure a safe workplace and maintain the integrity of any review process. A number of temporary changes could be considered including:

- operational change to reporting lines and team composition;
- change to seating arrangements;
- change to physical work location;
- taking periods of approved leave; or
- suspension.

It will not be presupposed that the temporary change will involve the complainant. The complainant will be consulted before any decision relating to temporary change involving them or the respondent is finalised. It is important that the measures do not result in any detriment to the complainant (as this may amount to victimisation, which is unlawful).

Any operational change should only be enacted with the approval of the President to ensure it is an appropriate and proportionate response to the matter.

Disclosure of information or making a complaint can be very difficult for the affected staff member/s. Managers should take necessary welfare steps, such as letting staff members go home for the day, ensuring they have safe transport, connecting them with a support person and with the EAP or equivalent.

6. ADDITIONAL CONSIDERATIONS

6.1 Technology and social media

Discrimination, harassment and bullying can occur through electronic means (such as emails or text messages or by viewing pornographic websites) and through social media, regardless of whether the post was made during work hours or not. Where there is a link to employment, ALRC personnel are subject to the same rules about discrimination, harassment and bullying in the virtual world as they are in the real world.

As such, ALRC personnel are required to use technology and social media responsibly in the workplace and in relation to anything or anyone associated with the workplace. This extends to the use of technology and social media outside the workplace where there is a strong connection to the employment relationship (for example, between colleagues where the foundation of the relationship is a common workplace).

6.2 Reprisals and harassment

Any person found to victimise, harass or take reprisal action against people participating in procedures associated with this policy may be subject to separate disciplinary action.

Victimisation is subjecting or threatening to subject someone to a detriment because they have asserted their rights under this policy, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, harassment, sexual harassment or victimisation. Victimisation is against the law.

It is also victimisation to threaten someone (such as a witness) who may be involved in investigating an equal opportunity concern or complaint.

7. RELATED POLICIES

Conflict of Interest Policy

Public Interest Disclosure Policy

Whistleblower Policy

Work Health and Safety Policy

Written Procedures for Determining a Breach of the Code of Conduct

APPENDIX A: THE PUBLIC INTEREST DISCLOSURE REGIME

The ALRC is subject to the Public Interest Disclosure regime established by the *Public Interest Disclosure Act 2013* (PID Act). The ALRC has a Public Interest Disclosure Policy to reflect its obligations under the PID Act (available at: <https://www.alrc.gov.au/about/policies/public-interest-disclosure/public-interest-disclosure-policy/>).

Who can make a Public Interest Disclosure?

The Public Interest Disclosure Regime is applicable to disclosures made by current or former public officials ('whistleblowers').¹ This includes:

- public servants (ongoing, non-ongoing and casual)
- parliamentary service employees
- service providers under a Commonwealth contract
- statutory office holders
- staff of Commonwealth companies
- temporary employees engaged through a recruitment agency.

A public official also includes any other person deemed by the authorised officer to be a public official for the purposes of the PID Act.

What is a Public Interest Disclosure?

Public Interest Disclosures cover misconduct in the public sector that includes, but is not limited to, conduct that:

- is illegal, corrupt or fraudulent;
- contravenes Commonwealth, state or territory law;
- perverts the course of justice;
- wastes public funds;
- is a danger to health, safety or the environment;
- is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- represents an abuse of public trust;
- can provide information to identify and address problems in administration or maladministration; or
- is prescribed by the PID Rules (PID Act s 29(1)).

In addition, disclosable conduct includes conduct by a public official that involves an abuse of their position as a public official, and conduct that could give reasonable grounds for disciplinary action against them. It does not matter if the conduct occurred before or after the PID Act came into force in January 2014, or if the public official alleged to have committed the wrongdoing has since ceased to be a public official (PID Act s 29(2)).

The ALRC Public Interest Disclosure Policy explains that:

"4.3 Not every complaint about workplace conduct will be treated as a public interest disclosure, particularly as one of the grounds for not investigating a matter under the PID Act is that it is not 'serious disclosable conduct'. Complaints can cover a wide range of matters, including workplace disputes, harassment or bullying complaints, and health and safety concerns. Some matters will be managed by less formal approaches, such as resolving the matter by management in line with agency policies or procedures. In other

¹ *Public Interest Disclosure Act 2013*

cases, a matter may initially appear to be a personal grievance, but on investigation may reveal more complex or systemic issues (for example, investigation of a complaint about an incident of harassment may reveal a serious workplace culture issue) and it will be more appropriate to investigate it as a PID”.

What does the Public Interest Disclosure Regime Require?

The Public Interest Disclosure regime provides additional protections to those who make such disclosures (for example protections from reprisals), requires certain investigative steps to be taken and appropriate action to be taken, and requires the ALRC to report annually on the number of public interest disclosures received, the type of disclosable conduct involved, and the number of public interest disclosure investigations conducted.

Importantly in the context of this policy, where a public interest disclosure is made to an employee’s supervisor, or an ‘authorised person’ under the PID Act (in the case of the ALRC, the President), the PID Act requires that particular notification and investigative steps are taken.

In some cases a report about unlawful harassment, discrimination or bullying may amount to a Public Interest Disclosure. This has been taken into account in the procedures for reporting and responding to complaints set out in this Policy, and this Policy should be read in conjunction with the Public Interest Disclosure Policy.

If you have questions about the implications of making a complaint that could be considered a Public Interest Disclosure you can contact the external consultant WEIR or the Commonwealth Ombudsman (<https://www.ombudsman.gov.au/>) to obtain further information and discuss your options:.

APPENDIX B: LEGISLATIVE FRAMEWORK

Behaviour, or conduct, that may be considered as unlawful discrimination, harassment and bullying in a work-related context may breach not only the *Public Service Act*, but also various provisions in other Commonwealth legislation, including, but not limited to, the:

- *Work Health and Safety Act 2011*;
- *Racial Discrimination Act 1975*;
- *Sex Discrimination Act 1984*;
- *Australian Human Rights Commission Act 1986*;
- *Disability Discrimination Act 1992*;
- *Age Discrimination Act 2004*; and
- *Fair Work Act 2009*.

Such behaviour or conduct may also breach relevant State and Territory anti-discrimination legislation, including the *Anti-Discrimination Act 1991* (Qld).

Subsection 10A(e) of the *Public Service Act 1999* (Cth) (*Public Service Act*) requires that the Public Service provides a safe workplace. This policy supports that requirement.

Conduct covered by this policy may also constitute a breach of criminal law.

APS Values and Code of Conduct

ALRC personnel are required to conduct themselves in a manner that is consistent with the APS Values, Code of Conduct and Employment Principles set out in the Public Service Act. ALRC employees and statutory office holders, including non-judicial ALRC Commissioners,² are specifically obliged by the Public Service Act to comply with the Values, Code of Conduct and Employment Principles.

In the context of this policy, the following values are particularly relevant:

- **Accountable** - using powers responsibly and reporting improper conduct;
- **Respectful** - promoting an environment that encourages respect for colleagues and others by creating an environment that is free from discrimination, harassment and bullying; and
- **Ethical** – demonstrating leadership, trustworthiness and acting with integrity.

In the context of this policy, the following requirements of the Code of Conduct are particularly relevant:

- when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment;
- when acting in connection with APS employment, comply with all applicable Australian laws;
- take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment;
- not improperly use inside information or the employee's duties, status, power or authority:
 - to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or

² See *Public Service Act 1999* (Cth), s 14(2) and *Public Service Regulations 1999* (Cth), s 2.2, read with Australian Law Reform Commission Act 1996, s 10(3).

- to cause, or to seek to cause, detriment to the employee's Agency, the Commonwealth or any other person; and
- at all times behave in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the employee's Agency and the APS.

Breaches of the Code of Conduct

APS Employees

An employee who is found to have breached the Code of Conduct may be subject to sanctions, including termination of employment, reduction in classification, re-assignment of duties, reduction in salary, deductions from salary, or a reprimand.³ The ALRC's written procedures for determining a breach of the Code of Conduct are available here: <https://www.alrc.gov.au/about/policies/>.

Statutory Office Holders (Non-judicial ALRC Commissioners)

Subsection 6.1A of the *Public Service Regulations 1999* (Cth) provides that the Australian Public Service Commissioner ('APS Commissioner') may inquire into alleged breaches of the Code of Conduct by a statutory office holder. The APS Commissioner may determine whether a breach of the Code of Conduct has occurred and make recommendations.

The Australian Public Service Commissioner must tell the Secretary of the relevant portfolio department, or other relevant Agency Head, of the results of an inquiry unless the Australian Public Service Commissioner is satisfied that it would be inappropriate to do so.

The Australian Law Reform Commission Act 1996 (Cth) provides that the Governor-General may terminate a full-time member's appointment for misbehaviour (s 17(1)), and the Attorney-General may terminate a part-time member's appointment for misbehaviour (s 17A(1)). This does not apply to Commissioners who hold a judicial office (ss 17(4) and 17A(3)).

³ Public Service Act 1999 (Cth), s 15(1).