

DEFINITIONS

Bullying and Harassment:	Repeated, unreasonable behaviour directed toward a staff member, or a group of staff members, by a staff member and include conduct that intimidates, offends, degrades or humiliates another person. Bullying and harassment, whether intended or not, poses a significant risk to health and safety in the workplace.
Complainant:	A staff member who makes a complaint of bullying, harassment or discrimination
Complaints Officer:	Human Resources Manager
Discrimination:	Treating someone unfairly because of a personal characteristic protected by law and causing them to be disadvantaged as a result. In the workplace, it can be either direct or indirect discrimination on the basis of an attribute. It covers all stages of employment including recruitment, staff selection, workplace terms and conditions, promotion, and dismissal.
Respondent:	The staff member against whom a complaint of bullying and harassment, sexual harassment or discrimination has been made.
Sexual Harassment:	A specific form of harassment involving unwanted, unsolicited or unreciprocated conduct of a sexual nature that intimidates, offends, degrades or humiliates another person
Staff or staff member	An employee, student or contractor currently engaged by the ONJCRI and includes trainees, honorary and visiting scientists, and people undertaking work experience.
Victimisation	Occurs when a person subjects (or threatens to subject) another person to a detriment (which includes humiliation and denigration) because that other person has made a complaint or been involved in a Complaints Procedure, or because the first person thinks the other person intends to make a complaint or be involved in a Complaints Procedure.

OVERVIEW

The Complaints Procedure aims to provide in the first instance an advisory function, whereby staff may seek clarification on the policy expectations of the Olivia Newton-John Cancer Research Institute (ONJCRI). Where a staff member perceives that bullying and harassment, sexual harassment, discrimination or other inappropriate conduct has occurred, this Complaints Procedure provides a process by which such concerns can be raised and addressed.

Any staff member with a concern about matters addressed by the Bullying and Harassment Prevention Policy and the Equal Opportunity and Anti-Discrimination Policy is encouraged to seek advice from their manager or if the concern relates to their manager then seek the advice of the Complaints Officer or the COO.

Often, individuals will initially raise the concern with a supervisor, colleague, health and safety representative or other staff member. Regardless of who a person contacts initially, the initial contact should immediately recommend the person contact the relevant senior manager, who can provide initial advice and clarification.

As a consequence of raising a concern, if the person or the ONJCRI decides that some responsive action is required under the aforementioned policies, the concern becomes a complaint to be resolved using this Complaints Procedure.

PROCEDURE

A staff member with a complaint about bullying and harassment, sexual harassment, discrimination or other inappropriate conduct and/or victimisation against a staff member or a group of staff, can make a complaint to the ONJCRI by contacting the Complaints Officer.

The ONJCRI may decline to consider a complaint that took place more than 12 months before the complaint was lodged. In doing so, the ONJCRI will consider the particular circumstances of the complainant and the nature of the complaint.

Where practicable, complainants should maintain and have available accurate records of the alleged discrimination, sexual harassment, bullying and harassment, or victimisation, including the time and place of the alleged incident(s) and the names of any witness/es.

The ONJCRI aims to deal with complaints as quickly as practicable and to achieve early resolution.

The principles of procedural fairness apply to the complaints procedure as a whole. Primarily, this means:

- The ONJCRI will not make a decision that could adversely affect either party unless it has given that party an opportunity to present their case;
- The decision-maker will not be biased towards a party or have a separate interest in the complaint.

The ONJCRI aims to maintain the confidentiality of complainants and respondents. Only those staff members involved in advising on, conciliating, investigating or resolving the complaint will have access to material relating to the complaint.

In general, the complainant determines the progress of the complaint through the Complaints Procedure. However, in some circumstances, the seriousness of the allegations (e.g. a criminal assault) will mean the ONJCRI is under a legal obligation (e.g. to keep the work environments safe and without risks to the health of staff) to ensure a matter is investigated beyond what the complainant intends or wishes. For this reason, where it is appropriate in the circumstances, the ONJCRI may initiate a complaint or progress a complaint without the involvement of the complainant. Where appropriate, this may involve de-identifying details of the complainant.

The ONJCRI will provide the respondent with written notification of the complaint should the complaint progress to either Stage 2 (Conciliation) or 3 (Investigation and determination).

At any stage of the Complaints Procedure, or when a concern cannot be addressed using this Complaints Procedure, the ONJCRI may consider and implement actions as necessary to address concerns regarding individuals' safety, well-being, or participation in work activities. These actions do not imply any wrongdoing or any case to answer.

Stages of the Complaints Procedure

There are three stages to the complaints procedure:

- Stage 1 (Advice and Informal Resolution);
- Stage 2 (Conciliation);
- Stage 3 (Investigation and Determination).

The stages will generally, although not always, be undertaken in succession.

Stage 1 (Advice and Informal Resolution)

The aim of Stage 1 is to clarify the concern as perceived by the complainant or respondent and to facilitate informal resolution.

Individuals who have a concern should consult their manager or the Complaints Officer, who can assist the complainant or the respondent by:

- clarifying whether the alleged behaviour may constitute unlawful discrimination, sexual harassment, discriminatory harassment, bullying, or victimisation;
- providing information about this Policy and the Complaints Procedure;
- advising of their rights under relevant legislation;
- advising of the options available to them, including making a complaint to an external body;

- encouraging the person to seek the type of support that they need and provide referrals as appropriate;
- exploring strategies to resolve the matter.

At this stage, it is preferable that individuals seek to resolve the issue themselves informally and directly. However, if this is unsuccessful or inappropriate, a staff member who seeks informal resolution of his or her complaint in this stage of the Complaints Procedure may ask his or her supervisor/manager or other suitable person to speak to the respondent on their behalf. After seeking appropriate advice, the supervisor, senior manager, complaints officer or other suitable person should privately convey the individual's concerns, reiterate the ONJCRI's Policy to the respondent without assessing the merits of the case, and, if necessary, take practical steps to ensure, as far as possible, the behaviour that allegedly occurred ceases and cannot recur.

At this stage there is no requirement for the complainant to lodge a written complaint.

The complaint may end at Stage 1, either because it is resolved informally or the complainant chooses not to progress it to Stage 2 (conciliation) or Stage 3 (investigation and determination). The ONJCRI may also make the preliminary determination that the alleged behaviour does not constitute unlawful discrimination, sexual harassment, discriminatory harassment, bullying, or victimisation. Alternatively, the complaint may progress to Stage 2 (at the request of one of the parties) or Stage 3 (at the request of the complainant or the ONJCRI).

Stage 2 (Conciliation)

Stage 2 is about conciliation. Conciliation is a process in which a neutral third party (the conciliator) attempts to assist the parties to resolve the complaint by assisting them to negotiate a mutually acceptable agreement. The conciliator may be the Complaints Officer, the COO or an independent third party with experience in conciliation appointed by the ONJCRI.

Conciliation only occurs if both parties agree to it voluntarily.

Conciliation usually occurs at the request of the complainant. However, the respondent is also entitled to request conciliation, and should seek the advice of the complaints officer before proceeding.

For a conciliation to occur, the complainant must be willing to be identified to the respondent. The complainant must put the complaint in writing to the Complaints Officer in a document of up to two pages describing the particular incident/s. A complaint concerning the Complaints Officer should be addressed to the COO.

The respondent will be provided with a copy of the complaint. The respondent will be given the opportunity to seek advice and to submit a short written response (of up to two pages) to the complaint to the complaints officer, within ten working days. The response will be provided to the Conciliator and the complainant.

Upon referral of the request, the Complaints Officer will review the complaint and related documentation. If conciliation is appropriate, the Complaints Officer will invite the parties to participate. If conciliation does not proceed, the parties will be informed by the complaints officer of their further options.

The conciliation process will be conducted through the complainant and the respondent meeting with the conciliator either together or separately. The role of the conciliator is not to make a formal finding but to assist the parties to reach a mutually agreed resolution.

The complainant and respondent are entitled to have a support person during the conciliation, but not a legal representative or advocate unless both the complainant and the respondent wish to be represented and the circumstances are exceptional.

The complaint may end at Stage 2, either because the complaint was resolved through conciliation or because neither the complainant nor the ONJCRI wishes to progress the complaint to Stage 3. Alternatively, the complaint may progress to Stage 3 at the request of the complainant or ONJCRI.

Stage 3 (Investigation and Determination)

Stage 3 is about investigating the complaint and making determinations based on the investigation.

Discrimination, discriminatory harassment, sexual harassment, or bullying by a staff member may be regarded as serious misconduct or misconduct and may result in disciplinary action being taken by the ONJCRI up to and including dismissal.

If a complainant or the ONJCRI wishes to refer the complaint for an investigation, they must make a written request for investigation to the Complaints Officer and include details of particular incident(s) and any supporting documentation. A complaint concerning a senior manager should be addressed to and dealt with by the COO and a complaint concerning the COO should be addressed to and dealt with by the Scientific Director.

Upon receipt of a request for investigation, the Complaints Officer may do one or more of the following:

- (a) seek advice or consult with any other person they determine appropriate;
- (b) where relevant and appropriate, refer the complaint for informal resolution or conciliation;
- (c) refer the matter for investigation under this Policy and procedures;
- (d) refer the matter to an external agency (e.g. where action complained of may be a criminal offence);
- (e) refer the matter to alternative complaints resolution processes within or external to the ONJCRI;
- (f) decline to investigate a complaint if it is frivolous, vexatious, misconceived, or lacking in substance;

- (g) decline to investigate a complaint if more than 12 months has elapsed between the event complained of and the complaint notification and there is no good cause to address the complaint after this delay;
- (h) recommend actions as necessary to address any immediate concerns regarding individuals' safety, well-being, or participation in work.

The Complaints Officer will notify the parties accordingly.

In the event of the matter being referred for investigation, the complaints officer will consult the COO and Scientific Director to determine who will act as investigator/s to conduct the investigation. The general responsibilities of the investigator/s are to determine whether the allegations are proven according to the weight of evidence and on the balance of probabilities.

Any investigation undertaken under this Policy and Procedures will be conducted in a manner that the ONJCRI considers appropriate in the circumstances, with regard for procedural fairness, timeliness, privacy, and individuals' safety and wellbeing.

The respondent will be provided with a copy of the complaint if it has not already been provided. If the respondent has not already done so, they will be given the opportunity to seek advice and to respond to the complaint in writing within ten working days.

At the conclusion of the investigation, the investigator/s will prepare a report, setting out the complaint or terms of reference, how the investigation was conducted, relevant facts, conclusions, findings and recommendations. The Complaints Officer and COO will consider the report and recommend the outcomes of the investigation to the Scientific Director.

Internal Remedies

Where a complaint of bullying, harassment, sexual harassment, discrimination or unfair treatment is substantiated, the action taken to remedy the situation will vary according to the circumstances of each case.

Remedies could include:

- Written or verbal apology from the respondent;
- Relocation of the offending employee;
- General, group or individual education programs;
- Removal of offending material;
- Changed work practices;
- Group or individual counselling; or
- Disciplinary action, which may include demotion, transfer and/or disciplinary sanctions up to and including termination of employment.

External Remedies

Staff members are encouraged to make use of the internal processes to deal with complaints of bullying, harassment, sexual harassment, discrimination and unfair treatment. Nevertheless, if a staff member believes they have been bullied or harassed or discriminated against, they may choose to refer their complaint to WorkSafe Victoria or to the Victorian Equal Opportunity and Human Rights Commission for investigation, separate to any internal process.

From 1 January 2014, the Fair Work Commission also has jurisdiction to investigate allegations of bullying. For more information regarding that process, please refer to their website www.fwc.gov.au.

Should an individual employee find themselves the subject of a Fair Work Commission bullying complaint, they should contact Human Resources immediately to receive advice on their obligations during the process.

Where an external complaint is made, all documentation relevant to the investigation should be produced upon request.

REFERENCES/LEGISLATION

1. Code of Conduct Policy
2. Bullying and Harassment Prevention Policy
3. Equal Opportunity and Anti-Discrimination Policy
4. Victorian Equal Opportunity and Human Rights Commission
www.humanrightscommission.vic.gov.au
5. WorkSafe Victoria www.worksafe.vic.gov.au
6. Fair Work Commission www.fwc.gov.au