



Legislative Assembly for the
Australian Capital Territory

Respect in the Workplace Policy

Version information

Owner	Date and source of approval	Version and OLARIS #	Description of changes	Next review due
OLA HR & Entitlements	March 2021, Executive Manager, OLA Business Support	OLA19/0007	Final Endorsed Version	2025
OLA HR & Entitlements	June 2024 Executive Manager, OLA Business Support	OLA19/0007	Amendments include: - <ul style="list-style-type: none">• sexual harassment• sex-based harassment• workplace violence• sexual assault• mandatory and positive duty reporting• child safety code of conduct and policy	2026

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Statement of intent


As signatories to this policy, we recognise and affirm the following.

- The ACT Legislative Assembly (Assembly) is a workplace that brings together elected members, the personal staff of those members, Assembly support staff from the Office of the Legislative Assembly (OLA) and a range of other individuals from public sector agencies, the media, contractors and other external bodies.
- Like any workplace, there are a range of duties and obligations imposed on everyone – such as those set out in the *Work Health and Safety Act 2011* (WHS Act) and the various codes of conduct that apply to members, members' staff, OLA staff and others in the Assembly workplace.
- Everyone in the Assembly workplace is committed to providing a safe and harmonious work environment which promotes a positive workplace culture free from all forms of harmful behaviour including bullying, harassment (including sexual harassment and assault), and workplace violence.
- As a parliament, we must always lead by example, consider the expectations of the community that we serve, and uphold the highest standards of conduct. Ongoing public confidence in the Assembly depends on each of us taking active steps to prevent bullying, harassment, or violence in the workplace.

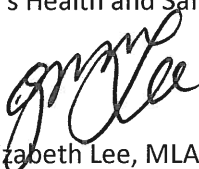
We affirm this policy which aims to assist people in the Assembly workplace to meet their various duties and obligations in the following ways.

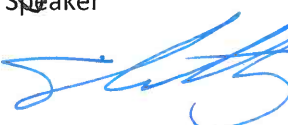
- Making it clear that respect in the workplace is essential to a safe working environment and bullying, harassment or workplace violence will not be tolerated.
- Making it clear that all individuals in the Assembly workplace have an obligation to behave respectfully at all times and to report bullying, harassment or workplace violence.
- Adopting prevention strategies, training and guidance on work health and safety obligations and duties to prevent and address harmful behaviours in the workplace.
- Providing information and options to report bullying, harassment or workplace violence.
- Making sure that there is appropriate support, confidentiality, and procedural fairness in effectively managing reports of bullying, harassment or workplace violence.


This policy has been developed in consultation with workers through the Assembly's Health and Safety Committee.


Joy Burch, MLA
Speaker


Andrew Barr, MLA
Chief Minister


Elizabeth Lee, MLA
Leader of the Opposition


Shane Rattenbury, MLA
Leader, ACT Greens


Tom Duncan
Clerk of the Assembly

26 June 2024

1. Introduction

- 1.1 Parliamentary workplace¹ culture and behaviour has been the focus of considerable attention in recent years. Reviews into parliamentary workplaces conducted both in Australia and overseas have documented both strengths and deficiencies.
- 1.2 In Australia, the Australian Human Rights Commission Respect@Work: Sexual Harassment National Injury Report (2020) and Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces (2021) highlighted the need for parliamentary workplaces to ensure that standards of behaviour, policies, processes and cultures are in line with community expectations.
- 1.3 Bullying, harassment, or violence in the workplace is unacceptable and can have significant consequences for individuals. Whether direct or indirect, intentional or unintentional, bullying and harassment (including sexual harassment and assault)² and workplace violence can manifest in different ways and can have profound effects on individuals and the workplace.
- 1.4 These kinds of harmful behaviour can:
- be perpetrated through in-person interactions, phone conversations, social media interactions, email, instant messaging or text messaging; and
 - occur at any location where individuals are working, including outside the usual place of work such as during official travel, whilst attending courses, during committee proceedings or during business related events.
- 1.5 Bullying, harassment, and workplace violence also increase the risk of a person developing serious mental health issues, depression, psychological distress, or emotional exhaustion. Unique workplace
- 1.6 Like other parliaments, the Assembly has a number of features that make it different to other workplaces—
- Members are elected and do not have an employer.
 - The arrangements for employing staff of Members of the Legislative Assembly (members or MLAs) are different to typical public sector employment arrangements.
 - There is a power imbalance between MLAs and staff.
 - Political affiliations and aspirations are ever present.
 - Members of the community come into close contact with members and their staff.
 - Debate, proceedings and the broader political environment can often be adversarial and robust.
 - Unlike other parliaments where members return to their electorates for significant periods, members' permanent offices are within the Assembly precincts. As a result, the precinct play host to a wide range of interaction between MLAs, their staff, staff of OLA, members of the ACT public sector, and members of the ACT community.

¹ In this document, 'workplace' refers not only to the Assembly precincts but to any place where work is carried out on behalf of the Assembly, its committees, its members, or the Office of the Legislative Assembly, and includes any place where a worker goes, or is likely to be, while at work.

² References in this document to harassment include sexual harassment and assault.

- 1.7 It is important to recognise how these and other factors can produce an environment where bullying, harassment or workplace violence may occur.
- 1.8 It is a cornerstone of this policy that those who have status, influence and authority do not use it in a way that leads to bullying, harassment, violence or harmful, inappropriate or unfair treatment of others; but, rather, use it to lead the way, to be exemplars for how a decent workplace, free of such behaviour, should operate and to actively and effectively deal with any inappropriate behaviour they encounter.

2. Bullying and harassment

Workplace bullying

- 2.1 Workplace bullying is a persistent pattern of mistreatment from others in the workplace that causes either physical or emotional harm. It can include such tactics as verbal, non-verbal, psychological or physical abuse and humiliation.
- 2.2 This type of workplace aggression is particularly difficult because, unlike the typical school bully, workplace bullies often operate within the established rules and policies of their organisation and society. In the majority of cases, bullying in the workplace is reported as having been done by someone who has authority over the victim. However, bullies can also be peers or subordinates.
- 2.3 Section 789FD(1) of the *Fair Work Act 2009* provides that workplace bullying occurs when:
- an individual or group of individuals **repeatedly** behaves **unreasonably** towards a worker or a group of workers **at work**; and
 - the behaviour creates a risk to health and safety.
- 2.4 The concept of repeatedly behaving unreasonably refers to the existence of persistent unreasonable behaviour and may include a range of behaviours over time. There is no specific number of incidents required for the behaviour to be 'repeated', provided there is more than one occurrence, nor does the same specific behaviour have to be repeated.³
- 2.5 A risk to health and safety means the possibility of danger to health and safety and is not confined to actual danger to health and safety.⁴
- 2.6 Under the Fair Work Act, **reasonable management action** undertaken in a reasonable manner is not workplace bullying (for more on this, see under the below heading 'What is not workplace bullying or harassment').⁵

³ *Re Ms SB [2014] FWC 2104 (Hampton C, 12 May 2014)* at para. 41.

⁴ *Thiess Pty Limited v Industrial Court of New South Wales [2010] NSWCA 252* (30 September 2010) at paras 65–67; [78 NSWLR 94]. *Abigroup Contractors Pty Limited v Workcover Authority of New South Wales (Inspector Maltby) [2004] NSW IRComm 70* (24 September 2004) at para. 58, [(2004) 135 IR 317].

⁵ Fairwork Act, s 789FD(2)

What does bullying in the workplace look like?

2.7 In *Amie Mac v Bank of Queensland Limited and Others*,⁶ the Fair Work Commission indicated that some of the features which might be expected to be found in a course of repeated unreasonable behaviour constituting bullying at work were:

... intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination.

2.8 Bullying may also constitute unlawful discrimination under relevant Territory and Commonwealth legislation.

3. Harassment in the workplace

3.1 Harassment is unwelcome and unsolicited behaviour that a reasonable person would consider to be offensive, intimidating, humiliating or threatening.

3.2 Harassment is further defined by the Australian Human Rights Commission (AHRC) as being against the law when a person is **treated less favourably on the basis of certain personal characteristics**, such as race, sex, pregnancy, marital status, breastfeeding, age, disability, sexual orientation, gender identity or intersex status. Some limited exemptions and exceptions apply.

3.3 Harassment can be one single incident and there does not have to be a series of incidents or sustained mistreatment. Each time a person experiences unwanted disrespectful behaviour it may be considered harassment.

What does harassment in the workplace look like?

3.4 Harassment can be physical, spoken or written. Examples of harassment include:

- intimidation, verbal abuse, or repeated threats or ridicule;
- making it impossible for an employee to meet deadlines, asking for unnecessary work edits or demanding work that is inconsistent with the capacity of the employee;
- isolating an employee, belittling his/her thoughts, spreading rumours, criticising or challenging everything they say;
- telling insulting jokes about particular racial groups;
- sending explicit or sexually suggestive emails or text messages;
- making derogatory comments or taunts about someone's race; or
- asking intrusive questions about someone's personal life, including their sex life.

⁶ [2015] FWC 774 (Hatcher VP, 13 February 2015) at para. 99

Sexual harassment

- 3.5 Sexual harassment and other forms of gender-based violence are unlawful under the *Sex Discrimination Act 1984* (Cth) in different areas of public life, including the workplace.
- 3.6 The Fair Work Act was amended in 2023 to prohibit sexual harassment in connection with work, including in the workplace. These changes expand the previous protections around sexual harassment in the workplace.
- 3.7 The AHRC defines Sexual harassment as **an unwelcome sexual advance, unwelcome request for sexual favours** or other **unwelcome conduct of a sexual nature** which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

What does sexual harassment in the workplace look like?

- 3.8 Examples of sexually harassing behaviour include:
- verbal forms of sexual harassment, such as sexually suggestive comments or jokes, intrusive questions about private life or physical appearance, repeated invitations to go on dates, or requests or pressure for sex;
 - sexually explicit pictures, posters or gifts;
 - intimidating or threatening behaviours such as inappropriate staring or leering, sexual gestures, indecent exposure, or being followed, watched or someone loitering nearby;
 - inappropriate physical contact, such as unwelcome touching, hugging, cornering or kissing, or actual or attempted rape or sexual assault; or
 - sexual harassment involving the use of technology, including sexually explicit emails, SMS or social media, indecent phone calls, repeated or inappropriate advances online, or sharing or threatening to share intimate images or film without consent (see under the below heading 'What does cyberbullying in the workplace look like?').
- 3.9 A person could also experience sexual harassment by being exposed to or witnessing this kind of behaviour in their work environment. For example, overhearing a conversation or seeing sexually explicit material in the workplace.

Sexual harassment 'in connection with' work is also prohibited in the Sex Discrimination Act, which means that sexual harassment can be unlawful even if it occurs outside a physical workplace, or outside of normal working hours.

Sex-based harassment

- 3.10 Sex-based harassment is unlawful under the Sex Discrimination Act. Although they sound similar, and often occur in combination, sexual harassment and sex-based harassment are different.
- 3.11 Harassment on the ground of sex ('sex-based harassment') involves unwelcome behaviour that is sexist and demeaning in nature, but that is not necessarily sexual. Sex-based harassment is unlawful when it occurs in circumstances in which a reasonable person, aware of those circumstances, would anticipate that the person being harassed might feel offended, humiliated or intimidated.

What does sex-based harassment in the workplace look like?

- 3.12 Examples of sex-based harassment include:
- asking intrusive personal questions based on a person's sex (for example, inappropriate questions about menopause, menstruation or genitalia);
 - making inappropriate comments and jokes based on a person's sex;
 - displaying images or making comments that are sexist or strongly prejudiced against a particular sex;
 - making sexist, misogynistic or misandrist remarks about a specific person;
 - verbal abuse, bullying, physical threats, attacks or other hateful conduct motivated by a person's sex;
 - asking a person to engage in degrading conduct based on their sex.
- 3.13 Under the Sex Discrimination Act, the sex-based harassment protections relating to work apply in the same way as the sexual harassment protections relating to work. This means that sex-based harassment does not need to happen in a workplace or 'at work' for it to be unlawful.

Cyberbullying and harassment

- 3.14 Cyber harassment, also known as cyberbullying, is a form of online harassment that involves the use of technology to threaten, intimidate, bully, harass or humiliate someone. It is sometimes referred to as cyber abuse or technology-facilitated abuse.
- 3.15 Harassers can use numerous forms of online media to attack others. They may use text messages, emails, online meeting places, social media, and other online tools.

What does cyberbullying in the workplace look like?

3.16 The eSafety Commissioner⁷ describes cyberbullying as including:

- sharing intimate or sexual photos or videos online without consent—either to humiliate or shame someone, or for the ‘entertainment’ of others (this is also known as [image-based abuse](#));
- targeted and persistent personal attacks aimed at ridiculing, insulting, damaging or humiliating a person—this might relate to someone’s physical appearance, religion, gender, race, disability, sexual orientation and/or political beliefs (‘online hate’ targeting an individual);
- seriously offensive and shocking material—this can include posting inflammatory comments on memorial and tribute pages or posting images of deceased people with intent to upset family members or others;
- repeatedly sending obscene messages to a person or their family, friends or work colleagues; or
- stalking a person online and hacking into their accounts, such as social media, banking or email accounts (‘cyberstalking’).

What is online sexual harassment?

3.17 Sexual harassment also applies to online communications that may occur in the virtual workspace. Workplace sexual harassment perpetrated using work devices and/or personal devices such as phones, computers, tablets is not acceptable and is unlawful under sexual discrimination and work health and safety legislation.

3.18 Even if people are using private equipment during non-work hours, if the sexual harassment involves specific work relationships, or occurs in connection with work, it may still be unlawful.

What does online sexual harassment look like?

3.19 Online sexual harassment means sexual contact or comments online that are unwanted or unwelcome and can be things like:

- repeated requests for nude images or to participate in sexual activity;
- online bullying that targets a person’s sexual behaviour or identity; or
- sending sexual content or pornography to another person without their consent.

⁷ <https://www.esafety.gov.au/>

What is not workplace bullying or harassment?

Reasonable management action

3.20 Under the Fair Work Act behaviour will not be considered bullying if it is reasonable management action carried out in a reasonable manner. This comprises three elements:

- the behaviour must be management action;
- it must be reasonable for the management action to be taken; and
- the management action must be carried out in a manner that is reasonable.

What does reasonable management action look like?

- Providing constructive feedback on a worker's work performance – sometimes staff may find feedback upsetting but this does not constitute work bullying.
- Managing performance or under performance issues including setting reasonable performance standards and achievable deadlines.
- Talking to a worker about inappropriate behaviour.
- Implementing reasonable organisational changes in accordance with the relevant enterprise agreement.
- Undertaking disciplinary procedures for misconduct.
- Transferring, terminating or taking action to make a staff member redundant where the process is conducted fairly and equitably and in accordance with relevant legislation.
- Making justifiable and reasonable decisions related to recruitment, selection and other development opportunities.
- Ensuring workplace policies are implemented.

Personality clashes, robust discussion, team dynamics

3.21 Disagreement or differences of opinion between workers do not necessarily equate to work bullying. The Assembly promotes respectful, robust discussion between individuals, which may sometimes be frustrating for those involved.

3.22 Ensuring these interactions occur respectfully will help minimise the likelihood of the interactions being perceived as bullying or harassing in nature.

4. Workplace violence and sexual assault

Workplace violence and aggression

- 4.1 Safe Work Australia describes workplace violence and aggression as any action, incident or behaviour in which a person is assaulted, abused, threatened, harmed or injured in circumstances relating to their work.
- 4.2 Workplace violence may not always begin in a critical or extreme situation; it sometimes follows a pattern of escalating behaviour—from agitation, expressed anger or frustration, and intimidating body language to verbal abuse and threats, physical threats or assault.

What might violence or aggression look like?

- 4.3 Workplace violence and aggression covers a broad range of actions and behaviours that create a risk to health and safety. It can be a single unexpected incident or a series of repeated incidents. For example:
- physical assault such as biting, scratching, hitting, kicking, pushing, grabbing, or throwing objects;
 - intentionally coughing or spitting on someone;
 - sexual assault or any other form of indecent physical contact;
 - harassment or aggressive behaviour that creates a fear of violence, such as stalking, sexual harassment, verbal threats and abuse, or yelling and swearing;
 - hazing or initiation practices for new or young workers;
 - gendered violence, which is any behaviour directed at any person or that affects a person because of their sex, gender or sexual orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety; or
 - violence from a family or domestic relationship when this occurs at the workplace, including if the person's workplace is their home.
- 4.4 Acts such as assault, stalking and obscene or threatening communications may be offences under criminal law and should be reported to ACT Police.

Sexual assault

- 4.5 Sexual offences, including sexual assault, are dealt under Part 3 of the *Crimes Act 1900* (ACT).
- 4.6 In general terminology, sexual assault is an act of a sexual nature carried out against a person's will (including when they have withdrawn their consent) through the use of physical force, intimidation or coercion, including any attempts to do this.
- 4.7 Under the *Work Health and Safety Act 2011* (ACT) (WHS Act), a sexual assault incident means an incident (including a suspected incident) in relation to a workplace, that exposes a worker or any other person at the workplace to sexual assault.
- 4.8 For this purpose, sexual assault is:
- a sexual assault that has been reported to the Police; or
 - a sexual incident that could be referred to police for an investigation; and
 - is an act, sexual in nature, inflicted on someone, that a reasonable person believes has sexual connotations; or
 - is an act inflicted on someone for the purpose of sexual arousal or sexual gratification; and includes sexual touching or sexual intercourse without consent.

5. Reporting bullying, harassment or violence

- 5.1 If you are the subject of bullying, harassment or workplace violence or if you witness such behaviour, you have a responsibility to make a report. There are various options for reporting available which include formal and informal avenues. In this section, the person reporting bullying or harassing behaviour is referred to as the 'reporter'.
- 5.2 All workplace bullying or harassment reports are taken seriously and action to facilitate resolution should be undertaken promptly.
- 5.3 Regardless of which approach is used it is recommended that the reporter document their concerns (for example, details of the incident/s, including dates and witnesses). Documenting these details can assist with recollection of the events in the future and it can also assist the reporter to decide on the seriousness of the behaviour and whether or not they want to pursue further action.
- 5.4 Reporters should note the obligations that exist under this policy for those who receive reports of inappropriate behaviour, including mandatory reporting requirements.
- 5.5 Workplace violence such as assault, stalking and obscene or threatening communications (e.g. phone calls, letters, emails, text messages and posts on social media) may be offences under criminal law and should be reported to the Assembly's Manager, Security and Building Services and well as ACT Police.

Informal reporting options

- 5.6 In the first instance, reporters are encouraged (where possible) to promptly address and resolve issues early and directly with the individual/s they are experiencing the issue with, rather than ignoring it. This provides the best opportunity for a quick resolution as it focuses on maintaining and improving working relationships, minimises the likelihood that a minor issue will escalate into a serious one, and supports continuity of work.
- 5.7 When dealing with an inappropriate behavioural issue in the workplace the reporter may find it helpful to have a conversation with a trusted confidant for support who is not involved in the issue.
- 5.8 If an individual is experiencing inappropriate behaviours issues in the workplace and does not feel confident or safe in addressing the situation themselves, they should seek the assistance of their employing MLA or manager, the Clerk, the relevant Human Resources area, a Health and Safety Representatives or, for members and their staff, any political party contacts.
- 5.9 If an individual is experiencing inappropriate behaviours issues in the workplace they are encouraged to access the Employee Assistance Program (EAP), mental health helplines, health care providers and sexual assault support services for confidential advice and support.

Formal reporting options—Internal

- 5.10 A formal report can be made to anyone in authority. It could be to a supervisor, manager or, employing MLA, or beyond that, a formal report may be directed as follows.
- **For staff of members**—an employing member, Chief of Staff or Party Leader, or the party may even have a mechanism within the party itself to receive complaints.
 - **For OLA staff**—the Executive Manager, Business Support, or the Clerk.
 - **For MLAs**—the Clerk who may refer the matter to the Assembly Commissioner for Standards.
- 5.11 Staff may also consider making formal complaints to a Health and Safety Representative, union representative, or WorkSafe ACT.
- 5.12 A formal report can be made verbally or in writing. An acknowledgement of receipt of any report should be provided in writing to the person making the report.
- 5.13 If the allegation the subject of a report involves the supervisor, manager or MLA, then the matter needs to be reported to the next most senior person. The appropriate HR area should also be contacted for assistance in these instances:
- For non-executive MLAs, their staff and OLA staff—OLA HR and Entitlements on 6205 0150 or olahrandentitlements@parliament.act.gov.au
 - For ministers and their staff—Executive Support on 6207 0582 or executivesupport@act.gov.au
 - For DLOs or public servants—Contact the HR area in the applicable directorate/agency.

- 5.14 All reports of bullying, harassment or violence will be evaluated with due seriousness. Complaints involving staff will be dealt with in accordance with the provisions of the relevant enterprise agreement.
- 5.15 Under the Assembly's Continuing Resolution 5AA, only the Commissioner for Standards can investigate a complaint that an MLA has not complied with the Members' Code of Conduct. Any such complaint can only be referred to the Commissioner via the Clerk of the Assembly. However, it is important to note that any complaint or allegation that an MLA may have engaged in bullying, harassing or inappropriate behaviour may also be investigated by other sources of authority, including by WorkSafe ACT.

Formal reporting options—External bodies

- 5.16 Depending on the matter to which the complaint relates, a complaint may be lodged with the following external entities:
- **ACT FLAG**— (Fixated and Lone-Actor Grievance) is an area within the Australian Federal Police dealing with individuals whose behaviour towards MLAs or staff is of concern. Reports about potentially fixated individuals or those with a grievance may be reported directly to the AFP on 131 444. For more information, please contact the Manager, Security and Building Services. To obtain a copy of the FLAG referral form visit the OLA Intranet.
 - The **ACT Human Rights Commission**—can investigate and conciliate complaints of harassment or sexual harassment. Contact the intake team on 1300 656 419 or email at: HRCIntake@act.gov.au or visit the website for more information: <https://humanrights.gov.au/complaints/make-complaint>
 - **ACT Policing**—Sexual assault or sexual offence matters concerning a child or young person is a crime under the *Crimes Act 1900*. If any person experiences, witnesses or is exposed to sexual assault or has a reasonable belief that a sexual offence has been committed against a child or young person, they should notify the police on 131 444, or if an emergency, call 000.
 - **eSafety Commissioner**—can investigate adult cyber-bullying and abuse matters. For eSafety to investigate adult cyber abuse, the harmful content must have first been reported to the service or platform used to send, post or share it before it is reported to eSafety. Reports can be submitted online via <https://www.esafety.gov.au/key-topics/adult-cyber-abuse/report-adult-cyber-abuse>
 - **Fair Work Commission (FWC)**—A worker who reasonably believes that they have been bullied or harassed at work may apply to the Fair Work Commission FWC for an [order to stop bullying](#) or a [stop sexual harassment order](#). Applications must include a completed and signed [application form](#).
 - **WorkSafe ACT**—can investigate situations that fall within the scope of the Work Health and Safety Act. Workers can submit a report online via the [ACT Access Canberra Smart Forms](#) website. All sexual assault incidents that occur in the workplace must be reported to [WorkSafe ACT](#).

6. Managing reports of bullying, harassment

6.1 Reports of bullying or harassment in the workplace will be treated seriously and managed promptly with Members and managers responding as soon as possible after suspecting or becoming aware that there is an incident.

6.2 The following principles should be applied when managing reports of inappropriate behaviour in the workplace:

- All reports should be taken seriously and assessed on their merits and facts.
- If there is reasonable belief that a sexual offence has been committed to a child or young person there are mandatory reporting requirements that must be adhered to. The Assembly's Child Safety Code of Conduct and Policy requires that if an MLA or staff member of the Office reasonably believes that a criminal offence may have been committed against a child or young person or receives a complaint or allegation about a possible criminal offence against a child or young person, they must report that belief, complaint, or allegation to the AFP within 24 hours (Telephone: 131 444).
- Ensure the health, safety and wellbeing of the person reporting. This may include providing adjustments, such as offering leave or changing the location where work is being performed.
- The parties involved should be informed of support that is available, for example the employee assistance program and external helplines, and allow a support person to be present at interviews or meetings.
- Information about the matter is only provided to those people who need to know about it, in order for the allegation/complaint to be actioned properly.
- Keep a record of the allegation/complaint and actions taken. Ensure, where it is appropriate, to escalate the matter or seek assistance from the relevant HR Manager.
- Where an allegation/complaint is made against another person, that person is entitled to be afforded procedural fairness – a right to have their side of the story heard and respond.
- The person investigating or making decisions about a report should be impartial – they should not favour either party or prejudge the complaint in any way.
- The reporting process and the possible outcomes should be clearly explained and those involved should be kept informed of the progress and the reasons for any decisions.
- It is important to ensure that individuals involved in inappropriate behaviour matters in the workplace are not victimised in any way.

6.3 Depending on the severity or complexity, in some situations, where an allegation/complaint is made, there may be an obligation to investigate even if the person reporting decides that they do not wish to pursue the complaint or does not want to make a formal report. In these instances, the parties involved will be informed.

Confidentiality

- 6.4 Individuals involved in inappropriate behaviour matters must make sure that all confidential information (including computer files) cannot be accessed by people who do not need to know and that sensitive information is only discussed with people who need to have access to it.

Victimisation or detrimental action

- 6.5 All Members, managers, and workers have a responsibility to ensure that a person is not victimised or treated unfavourably.
- 6.6 Victimisation occurs when a person does or threatens to do something that will be detrimental to another person because they have lodged a complaint, are considering lodging a complaint or they are or will be involved in the complaint resolution process. Victimisation usually involves retaliation or retribution.
- 6.7 Victimisation is illegal under the ACT Discrimination Act 1991 and can also be a criminal offence under the Criminal Code 2002.
- 6.8 Under the *Public Interest Disclosure Act 2012*, it is an offence to take detrimental action against a person be of a public interest disclosure.⁸ Detrimental action is action that involves—
- discriminating against a person by treating, or proposing to treat, the person unfavourably in relation to the person’s reputation, career, profession, employment or trade;
 - harassing or intimidating a person;
 - injuring a person; or
 - damaging a person’s property.

Code of conduct obligations

- 6.9 This policy reinforces that the Assembly will not tolerate disrespectful, harmful or inappropriate behaviour and is committed to fostering a safe working environment for all persons working or visiting its premises. It acknowledges that bullying, harassment or workplace violence in all its forms is a serious issue and must be seriously dealt with.
- 6.10 Any failure by individuals in the Assembly workplace to adhere to the expectations of this policy may constitute a breach of the relevant codes of conduct that apply to MLAs, their staff or OLA staff.

⁸ Disclosable conduct includes conduct that involves substantial mismanagement in the performance of official functions and conduct that results in a substantial and specific danger to public health or safety. See s 8 of the Public Interest Disclosure Act.

7. Information and training

- 7.1 The Assembly has an obligation to promote awareness of bullying, harassment and workplace violence issues in the workplace and can provide information in various ways including: induction, training and information sessions, staff newsletters, posters, on the intranet, in staff meeting and informal discussion groups.

8. Child safety in the workplace

Child Safety Code of Conduct and Policy

- 8.1 The Assembly has adopted a comprehensive *Child Safety Code of Conduct and Policy* [insert link] setting out a range of policy-based requirements that apply to all MLAs, their staff, staff of the Office, public servants and others working in the Assembly workplace. It also highlights a number of important legal responsibilities.
- 8.2 The document includes specific requirements under a child safety code of conduct for interacting with children in the course of their work, arrangements for protecting children and information on making complaints. MLAs and staff are required to promote the rights, wellbeing and safety of children and only engage with children in accordance with the law and in a respectful and appropriate manner.

Making complaints about a breach of the code or the policy?

- 8.3 A complaint about an alleged breach of the code *Child Safety Code of Conduct and Policy* can be made to the Speaker by email at speaker@parliament.act.gov.au or 6205 0020.⁹ The Speaker is responsible for referring complaints to the applicable investigating authorities—police, Assembly Commissioner for Standards, the Chief Minister, the Clerk, MLAs etc.
- 8.4 All complaints will be treated with due seriousness and will be dealt with in a way that is respectful to both the complainant and subject of the complaint.

Children and Young People Act

- 8.5 Under the [Children and Young People Act 2008](#), if a mandated reporter believes, on reasonable grounds, that a child has experienced or is experiencing sexual abuse or non-accidental physical injury; and the reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid), they must make a report to the responsible Director-General.¹⁰

⁹ A complaint about the Speaker can be made to the Deputy Speaker.

¹⁰ Child and Young People Act, s 356. It is a criminal offence for a mandated reporter not to make a report.

- 8.6 Mandated reporters include public servants who, in the course of employment as a public servant, work with, or provide services personally to, children or families.¹¹ MLAs and their staff are not mandated reporters.
- 8.7 If any person, including an MLA or a staff member, believes or suspects that a child is being abused, neglected or is at risk of abuse or neglect, they may make a voluntary report of the belief or suspicion and the reasons for the belief or suspicion to the Director-General.¹²
- 8.8 Reports can be made by calling 1300 556 729 or emailing childprotection@act.gov.au

Criminal offences

- 8.9 Under s 66AA of the [Crimes Act 1900](#) (Crimes Act), any adult who obtains information that leads them to have a reasonable belief that a sexual offence has been committed against a child¹³ commits an offence if they do not report that information to the police (Ph: 131 444) as soon as practicable. Failure to make a report is punishable by imprisonment for a period up to 2 years.
- 8.10 The Crimes Act provides for certain exceptions, including where a mandated reporter has made a report under Div 11.1.2 of the Children and Young People Act (see above), or where the person reasonably believes that a police officer already has the information. A person does not commit an offence if:
- they obtain the information when the alleged victim is no longer under the age of 18; and
 - the person reasonably believes that the alleged victim does not want a police officer to be told about the person's belief.¹⁴
- 8.11 Further advice is provided in the code/policy about what constitutes a reasonable belief and what is a sexual offence for the purposes of s 66AA.
- 8.12 In addition, under the policy, if an MLA or staff member obtains information that leads them to have a reasonable belief that a criminal offence of any kind has been committed against a person under the age of 18, and that information has not previously been reported under the Children and Young People Act, they must report that information to ACT Policing (Ph: 131 444) as soon as practicable.¹⁵
- 8.13 Members and staff should read and understand their legal and policy-based obligations under the Child Safety Code of Conduct and Policy. Further advice on complaints handling, referrals and contacts is contained in the code/policy available on the Assembly website and the intranet.

¹¹ A range of other professional classes are included within the definition of mandated reporter.

¹² Child and Young People Act, s 354.

¹³ Under the Crimes Act, a child is a person who is under the age of 18.

¹⁴ Crimes Act, s 66AA(2)

¹⁵ However, in order to respect the personal agency of an adult victim-survivor, an MLA or staff member is not required make a report to the police if:

- they obtain the information leading to the reasonable belief when the alleged victim is no longer under the age of 18; and
- they reasonably believe that the alleged victim does not want a police officer to be told about the person's belief.

Attachment A—Duties and obligations

1. Person Conducting a Business or Undertaking and Officers

WHS Act

1.1 The *Work Health and Safety Act 2011* (WHS Act) imposes an obligation on all workers, contractors, and visitors to take reasonable care for their own health and safety, and to take reasonable care that their acts or omissions do not adversely affect the health and safety of other (including through incidents of bullying, harassment and workplace violence).

1.2 Each Member of the Legislative Assembly and the Clerk is a Person Conducting a Business or Undertaking (PCBU) under the WHS Act. All PCBUs have a duty of care under the WHS Act to provide workers with a safe work environment, including detecting and dealing with bullying, harassment and workplace violence.

1.3 Section 27(1) of the WHS Act provides that:

*If a person conducting a business or undertaking has a duty or obligation under this Act, **an officer**¹⁶ of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.*

1.4 This obligation would extend to:

- **In the case of members' or ministers' offices**—a Chief of Staff or, depending on the authority extended by an employing MLA, a Senior Adviser.
- In the case of the Office of the Legislative Assembly—members of the Executive Management Committee.

1.5 PCBUs and 'officers under the WHS Act' must:

- ensure, so far as is reasonably practicable, the health and safety of all workers who carry out work in the Assembly;
- ensure that they are familiar with this policy so that they are able to respond to enquiries or concerns raised by staff;
- communicate this policy and procedures to all workers and ensure that those workers understand their rights and responsibilities in relation to this policy;

¹⁶ The definition of an officer under the WHS Act is more narrow than its meaning under the *Public Sector Management Act 1994*. Under the WHS Act (s 247), 'person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Territory is taken to be an officer of the Territory for the purposes of this Act'.

- ensure that their own conduct is above reproach and that they examine their own preconceptions, biases and stereotypes and question commonly accepted myths concerning bullying, harassment or workplace violence;
- take reasonable care that their own acts or omissions do not adversely affect the health and safety of other persons;
- treat all workers with respect;
- regularly consult with workers on matters that may affect their health and safety in the workplace;
- take all complaints seriously and respond to them immediately, sensitively and effectively in accordance with this policy;
- ensure that any investigation of complaints is undertaken in accordance with the principles of procedural fairness;
- take responsive action to ensure the health, safety and welfare of all staff involved; and
- respect the confidentiality of the complainant, the reporter, and/or the person complained about, keep records of the complaint and only share information with persons who have a need to know.

Sex Discrimination Act—Positive duties

- 1.6 Under the *Sex Discrimination Act 1984* (Cth), employers and PCBUs have a positive duty to eliminate, as far as possible, the following unlawful behaviour from occurring:
- Discrimination on the ground of sex in a work context.
 - Sexual harassment in connection with work.
 - Sex-based harassment in connection with work.
 - Conduct creating a workplace environment that is hostile on the ground of sex.
- 1.7 The Sex Discrimination Act provides for vicarious liability in certain circumstances. For example, if an employee sexually harasses a co-worker, an employer may be legally responsible for the actions of that employee (and may also be responsible for paying financial compensation), unless it can demonstrate that they took ‘all reasonable steps’ to prevent the unlawful conduct from occurring.
- 1.8 It is important to note that the positive duty complements—and does not replace—existing obligations under other Australian laws, including workplace health and safety laws.

Responding to complaints

1.9 When a complaint of bullying, harassment or violence is made, PCBUs and managers should:

- Provide information and support services to ensure the health and safety of all persons involved.
- Be aware of any mandatory reporting requirements (sexual assault or if there is a reasonable belief that a sexual offence has been committed against child or young person).
- Where appropriate, provide assistance to the reporter in an attempt to resolve the situation using an informal approach.
- Assure the reporter that the matter will be dealt with seriously, promptly and impartially.
- Discuss the matter with the relevant HR area (see as soon as practicable, so that a proportionate response to the situation, consistent with this policy, can be initiated).
- Ensure procedural fairness for all individuals involved.
- Share information only on a 'need to know' basis.
- Take all reasonable steps to prevent victimisation.
- Keep accurate records of all actions taken in response to the complaint and any events that may become relevant if the matter proceeds to a formal complaint.

1.10 With respect to the person who is making the complaint PCBUs and managers should:

- Provide them with an opportunity for a support person to attend any meetings or interviews.
- Listen without judgment and understand individuals may be feeling distress and/or trauma.
- Offer a range of adjustments which may include time off work or working in another area.
- Provide information on external support and counselling services where they can be receive medical, psychological and legal information and advice.
- Clarify issues of privacy and confidentiality and how the report will be treated, including explaining any mandatory reporting requirements.

1.11 With respect to the person who is alleged to have engaged in bullying, harassment or workplace violence, PCBUs and managers should:

- Provide them with an opportunity for a support person to attend meetings or interviews.
- Be given a chance to explain their version of events.
- Reserve judgement until all the facts are ascertained.

1.12 PCBUs and managers should encourage any witnesses to speak up about what they have seen or heard and ensure that they are not victimised for doing so.

Notifiable incident reporting requirements

- 1.13 A sexual assault incident is a notifiable incident in ACT workplaces from 9 June 2023.
- 1.14 For the purposes of notifying WorkSafe ACT, a sexual assault incident means an incident (including a suspected incident) in relation to a workplace, that exposes a worker or any other person at the workplace to sexual assault.
- 1.15 Unlike notifiable incidents, where the PCBU must contact WorkSafe ACT immediately using the fastest means available (normally this is over the phone), WorkSafe ACT is collecting notifications of sexual assault incidents using an online form.
- 1.16 Reports made to WorkSafe ACT do not replace or interfere with reporting sexual assaults to the police and any police investigations.

2. Responsibilities of staff

- 2.1 All staff have a responsibility to:
- take reasonable care for their own health and safety;
 - ensure that their own behaviour meets the expected workplace standard in accordance with the relevant code of conduct;
 - understand how their own behaviour may be perceived and impact on others in the workplace;
 - request that, if observed, the inappropriate behaviour cease, either by directly discussing this with the individual/s involved or by talking with a manager about the situation,
 - comply with the requirements of this policy;
 - be aware of any mandatory reporting requirements and policies;
 - offer support to anyone who is being bullied or harassed against, and let them know where they can obtain help and advice; and
 - maintain complete confidentiality if they provide information during the investigation of a complaint. Staff should be aware that spreading gossip or rumours might expose them to accusations of defamation; report any instances of bullying or harassment in accordance with this policy.
- 2.2 Workers should also note that if they have not personally witnessed inappropriate behaviours, they should exercise judgement in confronting the person who is allegedly responsible for the conduct or conducting their own inquiries. However, it may be appropriate to discuss the situation confidentially with your Member, manager or Human Resources. Remember that unless, and until, any allegation is investigated and is determined, workers are not to discuss their perceptions or observations as fact because to do so could give rise to a counter complaint or even defamation claims.
- 2.3 If a working relationship has broken down irretrievably between and MLA and a member of their staff, depending on the circumstances, the MLA may terminate the employment in accordance with the enterprise agreement. For this reason, all MLAs and LAMS Act employees should attempt to maintain productive working relationships and address emerging workplace issues at the earliest opportunity.

3. Responsibilities of other persons at the workplace

- 3.1 Similar responsibilities apply to other persons in the Assembly. Any person in the Assembly workplace (i.e. contractors, volunteers and visitors) must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given to comply with WHS laws and to report inappropriate behaviour.

4. Human Resources/Executive Support Area

- 4.1 The Office's HR and Entitlements area (for non-executive MLA, their staff and OLA staff) and Executive Support in CMTEED (for ministers and their staff) are responsible for:

- designing work systems and practices to minimise the risk of inappropriate behaviours in the workplace;
- promoting a workplace culture free of inappropriate behaviours;
- promptly responding to allegations of inappropriate behaviours;
- providing assistance and advice to PCBUs, managers and workers on inappropriate behaviour policies and procedures, including mandatory reporting requirements;
- providing training to help prevent inappropriate behaviours in the workplace; and
- facilitating mediation and investigation of inappropriate behaviour claims in accordance with relevant legislation.

- 4.2 Human Resources/Executive Support will generally be able to provide PCBUs with information and advice to assist them to manage allegations of inappropriate behaviours in the workplace. In some limited circumstances, the interests of the MLA and the Assembly may diverge, to the extent that Human Resources is required to discharge the Assembly's legal obligations as an employer and/or a PCBU. Should this scenario appear likely, Human Resources/Executive Support will discuss the matter with the MLA and Clerk as it arises.

5. Health and Safety Representatives

- 5.1 The Assembly's Health and Safety Representatives (HSR) can also provide an impartial avenue for individuals to bring forward issues in relation to bullying, harassment or workplace violence. HSRs are responsible for:
- being a role model to workers in the maintenance of professional and appropriate workplace behaviour;
 - providing information to workers on policy and processes available to resolve complaints;
 - taking complaints seriously and supporting reporters in the resolution of informal complaints;
 - being aware of any mandatory reporting requirements;
 - raising awareness that views on acceptable behaviour can differ between individuals;
 - disseminating information on the prevention of bullying, harassment and workplace violence; and
 - raising awareness of counselling options available to workers through the Assembly's Employee Assistance Program.
- 5.2 It is not the role of HSRs to resolve particular issues or grievances. Their role is to provide information and guidance to others who may be the victim of bullying, harassment or workplace violence in the workplace.
- 5.3 HSRs should also be aware that individuals who approach them about harmful or inappropriate behaviours may feel a range of emotions and they may be required to listen, be sensitive and be non-judgemental. In situations where the HSR feels uncomfortable about responding to an enquiry or complaint, they should refer the individual to the relevant HR area.

6. Health and Safety Committee

- 6.1 The Legislative Assembly Workplace Health and Safety Committee (the committee) is established as a consultative and communicative forum that is responsible for overseeing the requirements of the WHS Act as they relate to the Legislative Assembly workplace. The committee is the primary communication channel for Assembly workers, through workplace and management representatives, regarding workplace health and safety matters.
- 6.2 The committee undertakes an annual review of the Assembly's Health and Safety Risk Register to identify and assess whether the workplace has enough effective control measures in place to address and resolve workplace issues early, including addressing any factors in the work environment that may create a risk of bullying, harassment or workplace violence.

7. Respect, equity and diversity (RED)

7.1 The ACT Public Sector has adopted a respect, equity and diversity framework. The framework:

- outlines the legislative provisions supporting a respectful, equitable and diverse workplace culture;
- provides guidance to all ACTPS staff in meeting their obligations under the PSM Act and other relevant legislation, policies and guidelines;
- defines respect, equity and diversity;
- supports the creation of a work environment that is respectful, courteous, inclusive, collaborative, equitable and productive;
- aims to ensure the ACTPS workforce is reflective of the broader ACT community demographics;
- aims to develop a culture where ACTPS employees feel supported and confident disclosing their diversity status so that we have an accurate picture of the workforce;
- identifies the respect, equity and diversity challenges facing the ACTPS; and
- determines actions to be undertaken to meet the identified challenges and deliver results.

RED contact officers

7.2 Under the RED Framework, RED contact officers were introduced across the public sector to:

- promote activities associated with Respect, Equity and Diversity, in the workplace (or at work);
- undertake RED training;
- participate in relevant networks;
- raise issues while respecting confidentiality;
- advocate the inclusion of RED matters in planning/meetings; and
- provide information e.g. handouts.

7.3 The Assembly's HSRs perform RED contact officers duties. Contact list is available on the [OLA intranet](#).

Executive sponsor

7.4 The role of the Executive Sponsor is to provide leadership on RED matters for the Assembly. They are responsible for:

- providing RED leadership;
- ensuring RED is incorporated into agency planning processes;
- supporting the '[open door](#)' protocol; and
- support RED co-ordinators and contact officers in their roles.

7.5 The Assembly's Executive Sponsor is the Senior Director, Office of the Clerk.

Attachment B—Legislation and policies

1. [Codes of Conduct](#) (there are separate codes for members, members' staff and OLA staff) set out clear expectations for the standards of behaviour expected of members and all employees when performing their duties. All individuals must ensure that they are aware of, and familiar with, the behaviours and expectations as outlined in their relevant Code of Conduct.
2. The Assembly's Continuing Resolution 5AA establishes the [Commissioner for Standards](#) whose roles and functions include the investigation of complaints that an MLA may have breached the code of conduct.
3. **Enterprise Agreements** specify that work inappropriate behaviour, including bullying and harassment, will not be tolerated and any instances, or alleged instances, of such conduct will be investigated and resolved in a manner commensurate with the seriousness of the issue at hand. Work bullying and harassment will be managed and resolved in accordance with the procedures outlined in the [LAMS](#) and [OLA](#) enterprise agreements.
4. The Assembly's **Child Safety Code of Conduct** and associated policy has been developed to address National Principles for Child Safe Organisations, which are aimed at ensuring that organisations properly consider how to best meet the needs, safety and wellbeing of children and young people.
5. The [Fair Work Act 2009 \(Cth\)](#), defines workplace bullying and states that a person or company may be liable for sexual harassment committed by an employee or agent in connection with work, including if they were involved in the employer's contravention. A worker who has been bullied or harassed at work may apply to the Fair Work Commission for an order to stop the bullying or sexual harassment.
6. The Fair Work Act also prohibits an employer from taking adverse action against an employee for discriminatory reasons, including their sex, race, religion or gender. Adverse action can include firing or demoting someone.
7. [Work Health and Safety Act 2011](#) outlines the legal duties of persons conducting a business or undertaking (PCBU) to take all reasonable steps to eliminate or minimise harm from risks to the health and safety of their workers, including psychosocial hazards such as work bullying and harassment. Failure to do so could constitute a breach of the Act and could have serious repercussions, not only for those perpetuating the bullying or those being bullied, but also for the Assembly as a whole.
8. [Work Health and Safety \(Preventing and Responding to Bullying\) Code of Practice 2012](#) contains general information for PCBUs to assist with developing systems that will prevent bullying, respond to reports of bullying and effectively meet their legal duties under work health and safety laws.
9. The [Sex Discrimination Act 1984 \(Cth\)](#) prohibits harassment in the workplace by employers, co-workers and other "workplace participants", such as volunteers, and contract workers. Sexual harassment is broadly defined as unwelcome sexual conduct that a reasonable person would anticipate would offend, humiliate or intimidate the person harassed. The Act also makes it unlawful to discriminate against a person because of their sex, gender identity, intersex status, sexual orientation, marital or relationship status, family responsibilities.

10. Under the Sex Discrimination Act, PCBUs also have a positive duty and obligations to take proactive and meaningful action to prevent relevant unlawful conduct from occurring in the workplace or in connection to work. The Australian Human Rights Commission have published extensive resources about the positive duty and their powers to investigate suspected non-compliance with the positive duty on their Guidelines for Complying with the Positive Duty.
11. The [Disability Discrimination Act 1992](#) (Cth) prohibits harassment in the workplace based on or linked to a person's disability or the disability of an associate.
12. The [Racial Discrimination Act 1975](#) (Cth) prohibits offensive behaviour based on racial hatred. Racial hatred is defined as something done in public that offends, insults or humiliates a person or group of people because of their race, colour or national or ethnic origin.
13. The [Enhancing Online Safety Act 2015](#) (Cth) prohibits the posting of, or threatening to post, an intimate image without consent on a social media service, relevant electronic service or a designated internet service. It also established a complaints and objections system to be administered by the eSafety Commissioner.

