

Unacceptable Behaviour Policy

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Contents

CEO message.....	4
Executive Summary	5
What is unacceptable behaviour?	5
Workplace bullying.....	6
Workplace violence and aggression	6
Workplace harassment.....	7
Discrimination	7
What is <i>not</i> unacceptable behaviour?	9
Reasonable management action	9
What can I do if I experience or see unacceptable behaviour?	9
Reporting options	10
What should I do if unreasonable or unacceptable behaviour is reported to me?	11
Roles and responsibilities.....	12
Employee responsibilities	12
Manager responsibilities	12
Responding to complaints	13
Initial assessment	13
Informal resolution process.....	15
Formal investigation.....	15
Confidentiality	17
Reporting unacceptable behaviour from external parties	17
Internal reporting.....	17
Reporting to external bodies.....	19
Am I protected if I make a complaint or a report of unacceptable behaviour?	19
Support for our employees	20
Records and data collection	20
Other relevant policies.....	21
Review	21
How this policy was developed	21
Appendix 1	22
Legal Aid NSW complaint reporting process	22
Appendix 2	23
Informal resolution options.....	23
Appendix 3	25
Appendix 4	27

Dealing with unacceptable behaviour: a practical guide.....	27
Appendix 5	29
External contacts	29
Appendix 6	30
NSW Government Ethical Framework.....	30

CEO message

Everyone in our workplace has the right to be treated with respect. No one should experience bullying, bigotry, racism, harassment or violence while going about their work or returning to work after an injury or illness. This behaviour, which places the physical and mental health, safety and wellbeing of employees at risk, is unacceptable and will not be tolerated.

It is not unusual for there to be differences of opinion and disagreements in a workplace. However, there are behaviours that may result from an escalation of these issues, as outlined in this policy, that are unacceptable. Behaviour that is threatening, abusive, offensive, demeaning, intimidating, insulting, malicious as well as threatened and actual assault is completely unacceptable and has no place in our workplace. I ask all of you to speak up against any form of unacceptable behaviour that you witness, whenever and however you can.

Legal Aid NSW has a duty of care to all employees to ensure a workplace that is safe and healthy. Treating our colleagues with respect is essential to developing a positive workplace culture that fosters staff wellbeing. This also applies to conduct by third parties such as court staff, prosecutors, other lawyers, counsel, Magistrates, Tribunal Members and Judges. Court rooms, tribunals and offsite meetings are also our workplace. We expect everyone to be treated with respect, and if you aren't, we will support you and do something about it.

We are committed to having effective processes in place to deal with unacceptable workplace behaviour promptly and fairly. This policy addresses physical and psychological violence, including face to face, on the phone or online. We also now have a separate policy that addresses sexual harassment in the workplace. These policies cover unacceptable behaviour from a manager to an employee, an employee to a manager and unacceptable behaviour from third parties (other than clients which is covered by separate, specific policies).

It is important for Legal Aid NSW to have effective systems and procedures in place for identifying, reporting and responding to incidents of unacceptable behaviour. It is also very important for all of us to call out and 'speak-up' about unacceptable behaviour, safely, if we witness it. In particular, I ask everyone to be aware of and support colleagues who may be more vulnerable to unacceptable behaviour, including those with a disability, those who are new to Legal Aid NSW, young, are injured or in a minority because of their cultural background, religion or sexuality.

Unacceptable behaviour, whether it is psychological, physical or even indirect, can cause serious harm, including to people's mental health. It can also negatively impact the broader organisation in terms of our morale and overall productivity.

Our aim is to prevent unacceptable behaviour, but if it does occur, we encourage you to report it. Anyone who reports unacceptable behaviour will be treated with compassion and respect.

Let's stand together for a respectful, supportive and safe workplace.

Monique Hitter
Acting CEO, Legal Aid NSW

Executive Summary

The purpose of this policy is to ensure that everyone in our organisation is clear about the standards of behaviour that are expected of them at Legal Aid NSW and understands their obligations under the law and Legal Aid NSW policies. Our aim is also to increase awareness about different forms of bullying, bigotry, racism, harassment and violence and the impact of this behaviour on individuals and the organisation.

Legal Aid NSW has a duty under work health and safety laws to eliminate risks posed to the health and safety of employees as far as is reasonably practicable. This policy is an important part of meeting that duty. It also plays an important part in shaping our workplace culture and ensuring that everyone feels safe and respected at work.

This policy describes what constitutes unacceptable behaviour, what to do if you experience or witness unacceptable behaviour, how to address or report it within the organisation as well as to relevant external bodies. The policies also describe how Legal Aid NSW will respond to complaints of unacceptable behaviour. There is also a practical guide about how to deal with unacceptable behaviour in the workplace (Appendix 4).

Preventing and responding effectively to unacceptable behaviour ensures that we have a safe and respectful workplace. This policy outlines our approach to responding to complaints or reports of unacceptable behaviour. It also makes it clear that we all have a role to play in preventing and responding to unacceptable behaviour. Managers, in particular, are expected to act decisively to report unacceptable behaviour and model our organisational culture of respect.

These policies were drafted by staff, for staff and in consultation with staff from across the organisation. Legal Aid NSW has also drawn heavily from material produced by a SafeWork Australia and SafeWork NSW in developing this policy.

We thank those who contributed to the preparation of this policy.

What is unacceptable behaviour?

Unacceptable behaviour is a term used to describe a range of behaviours that are not acceptable in the workplace, including bullying, violence and aggression, harassment, and discrimination.

All Legal Aid NSW employees are required to abide by the Legal Aid NSW Code of Conduct. Behaviour contrary to the Code of Conduct is also considered unacceptable behaviour.

Unacceptable behaviour can occur when:

- an employee or group of employees bully, harass, discriminate against another employee or employees
- a manager harasses an employee
- an employee harasses a manager/supervisor, or
- a employee from another agency harasses an employee.

Legal Aid NSW has a separate policy on sexual harassment. Our policies regarding personal relationships in the workplace, and in connection with the workplace, are contained in the Code of Conduct.

Workplace bullying

Workplace bullying is repeated and unreasonable behaviour directed towards an employee or group of employees that creates a risk to health and safety. Bullying can take different forms including psychological, physical or even indirect – for example deliberately excluding someone from work-related activities. It can be obvious, and it can be subtle and difficult to identify.¹

Some examples of workplace bullying include:²

- abusive or offensive language or comments
- aggressive and intimidating behaviour
- belittling or humiliating comments
- practical jokes or initiation, or
- unjustified criticism or complaints.

Workplace bullying can be verbal, written or online (such as via social media platforms).

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time. *Unreasonable behaviour* means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.³

Workplace violence and aggression

Workplace violence occurs where an employee is abused, threatened or assaulted at the workplace or while they are carrying out work.⁴ Examples of violent or aggressive acts include, but are not limited to:

- 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 (see Legal Aid NSW Sexual Harassment policy)
- harassment or aggressive behaviour that creates a fear of violence, such as stalking, verbal threats and abuse, or yelling and swearing (in-person or via phone, email or online)
- hazing or initiation practices for new or young employees

¹ Safe Work Australia, *Bullying*, accessed 9 April 2021, < <https://www.safeworkaustralia.gov.au/bullying>>

² Safe Work Australia, *Bullying*, accessed 9 April 2021, < <https://www.safeworkaustralia.gov.au/bullying>>

³ Safe Work Australia, *A Workers Guide to Dealing with Bullying*, accessed 9 April 2021, <<https://www.safeworkaustralia.gov.au/doc/dealing-workplace-bullying-workers-guide>>

⁴ Safe Work Australia, *Work-related violence*, accessed 9 April 2021 <<https://www.safeworkaustralia.gov.au/work-related-violence>>

- 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, and
- violence from a family or domestic relationship when this occurs at the workplace, including if the person's workplace is their home.

Acts such as assault, stalking and obscene or threatening communications (phone calls, letters, emails, text messages and posts on social media) may be offences under criminal law and can be referred to NSW Police as well as managed under Work Health and Safety laws.

In some circumstances, Family and Domestic Violence (FDV) can become a Work Health and Safety issue if the perpetrator makes threats or is violent towards a partner or family member in the workplace, including while working from home. If this occurs, managers need to work with the relevant employee and potentially other employees in the workplace to develop strategies to prevent domestic and family violence in the workplace. Refer to the Safe Work Australia Information Sheet [Family and domestic violence at the workplace](#) and the [Domestic and Family Violence Workplace Support Policy – Guiding Principles for Agencies, Treasury Circular, Industrial Relations TC19-08](#) for further information and guidance about how to manage work health and safety issues arising as a result of FDV.

Workplace harassment

Workplace harassment includes behaviours or incidents that demean, upset, intimidate or victimise a person. It can involve an isolated incident or repeated behaviour. Examples of harassment in the workplace may include:

- Offensive material such as graffiti, pictures, internet websites or posters that are displayed in the workplace
- Offensive emails
- Verbal abuse or comments
- Racist or bigoted remarks, including casual racism and bigotry, such as offensive stereotypes
- Imitating an employee's accent or cultural habits
- Imitating an employee's disability
- Offensive jokes, gossip and innuendo
- Offensive physical gestures
- Ignoring, isolating or segregating an employee
- Stalking or persistently following an employee
- Intrusive questions about an employee's personal life.

Discrimination

Discrimination is treating someone differently because they belong to a particular group of people. It occurs when someone is treated less favourably (than another person without the

protected attribute) or an employer takes adverse action against an employee because of a particular attribute or attributes.⁵

Discrimination based on a protected trait in employment may be unlawful under anti-discrimination, equal employment opportunity and/or workplace relations laws. The grounds of unlawful discrimination covered by NSW legislation are:

- **Disability** – when you are treated less favourably because you have a disability, someone thinks you have a disability, you used to have a disability, you may acquire a disability in the future, or you are the friend, relative or colleague of a person with disability. The law protects against the following disabilities and illnesses:
 - physical disability
 - diseases that make a part of the body or brain work differently
 - mental illness or psychiatric disability
 - behavioural disorders
 - intellectual disability
 - learning or cognitive disability
 - a change to a part of the body or brain after an accident or surgery
 - a different formation of a body part
 - a disease or illness caused by a virus or bacteria.
- **Sex** – when you are treated less favourably because you are a woman or because you are a man.
- **Race** – when you are treated less favourably because of your race, or because you are the relative, friend or colleague of someone of a particular race. The definition of race includes colour, nationality, descent, ethnic and/or ethno-religious background.
- **Age** – when you have been treated less favourably because of your age or because you are the relative, friend or colleague of someone of a particular age.
- **Pregnancy and breastfeeding** – when you have been treated less favourably because you are pregnant, breastfeeding or expressing milk. It's also against the law to be treated unfairly because you're the relative, friend or colleague of a person who is pregnant, breastfeeding or expressing milk.
- **Marital or domestic status** – when you are treated less favourably because of your marital status; for example, because you are single, married, in a de facto relationship, separated, divorced or widowed.
- **Gender and Sexual Diversity** - – when you are treated less favourably because of your gender and sexual diversity or you are the relative, friend or colleague of someone who is gender and sexually diverse. For employees who are transgender, discrimination can also include being treated as your former sex (misgendering); being forced to follow a rule or requirement as your former sex.
- **Carers responsibilities** – when you have been treated unfairly because of your responsibilities as a carer. The law protects people who support or care for:
 - their child (including a step-child, adopted child or foster child)
 - a child or adult for whom they are a guardian
 - a family member.

⁵ Fair Work Ombudsman, *Workplace Discrimination*, <<https://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/workplace-discrimination>>

What is *not* unacceptable behaviour?

Reasonable management action

Reasonable management action is not workplace bullying. Managers are responsible for monitoring the quality and timeliness of work and providing staff with feedback on their performance.⁶ If an employee is not performing to accepted standards, managers should identify and deal with performance issues in a constructive way that does not humiliate or threaten the employee.

A manager or supervisor may undertake reasonable management action that may involve directing staff or otherwise initiating action that may have a direct impact on staff. This may include:

- setting reasonable performance goals, standards and deadlines.
- allocating work or changing role descriptions
- informing an employee that their performance is unsatisfactory, after following established performance development guidelines, or
- informing an employee, objectively and confidentially, that their behaviour is inappropriate.

What can I do if I experience or see unacceptable behaviour?

It is important for everyone to speak-up about unacceptable behaviour and for Legal Aid NSW to have effective systems and procedures in place for identifying, reporting, and responding to incidents of unacceptable behaviour. This includes employees who witness unacceptable behaviour against another employee.

For example, you could call out unacceptable behaviour by saying “This behaviour is inconsistent with our code of conduct, would you please stop”. Other strategies could involve assisting a colleague to physically remove themselves from an inappropriate conversation. In some circumstances it may involve actively assisting to de-escalate a situation (see Appendix 4).

Staff who hold senior roles with a management function⁷ in the organisation are expected to take steps to prevent the conduct from occurring including addressing the issue with the harasser if they observe incidents of unacceptable behaviour and reporting these incidents to HR. This expectation arises because Legal Aid NSW has a legal responsibility to take all reasonable steps to prevent unacceptable behaviour and may be held ‘vicariously liable’ for unacceptable behaviour committed by employees or agents if it doesn’t.⁸ Legal Aid NSW is committed to providing ongoing training to support managers to do this.

You can report an incident of unacceptable behaviour to the Workplace Standards team via workplacecomplaints@legalaid.nsw.gov.au or call 02 9219 6383 for advice. You can use the reporting form at Appendix 3 to make a report, but it is not essential to use this form when reporting an incident.

⁶ Safe Work Australia, *Bullying*, accessed 9 April 2021, <<https://www.safeworkaustralia.gov.au/bullying>>

⁷ This includes Grade 5 Solicitors and above, Grade 9/10 Clerks and above, as well as Office Managers.

⁸ Section 53(3) *Anti-Discrimination Act 1977* (NSW)

If the behaviour involves violence, for example physical assault or the threat of physical assault, it must be reported to the police.⁹

If you have experienced unacceptable behaviour in the workplace and are unsure about whether you want to report the incident formally, we encourage you to contact Workplace Standards to discuss your experience. Even if you decide not to proceed to a formal complaint, discussing your experience with someone can be helpful. The staff in Workplace Standards are also well placed to link you to any additional supports that you may need.

For further information on reporting options and the complaint handling process see the [Workplace complaint guidelines](#).

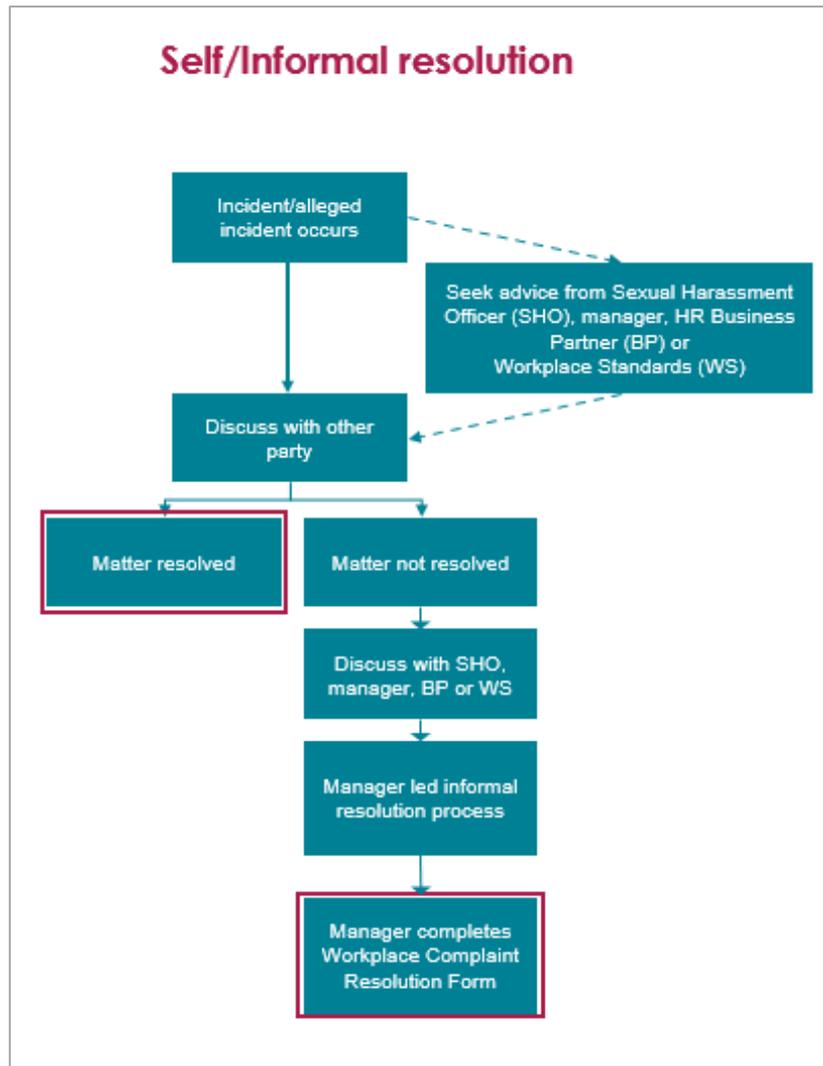
Reporting options

There are a number of options available to employees, bystanders and managers to manage and report incidents of unacceptable behaviour in the workplace, including:

- self-resolution
- informal and formal internal processes, and
- formal external complaint options.

Where an employee feels comfortable to attempt to raise and address the unacceptable behaviour themselves, the self-resolution approach outlined below can be used. Manager resolution and facilitated resolution processes can also form part of an informal resolution process.

⁹ Note: Section 316 of the *Crimes Act 1900* (NSW) obliges Legal Aid NSW to report serious indictable offences to police. Pursuant to s 316 of the *Crimes Act 1900* (NSW), a person who fails to report a serious indictable offence without a 'reasonable excuse' risks imprisonment for up to 5 years. However, section 316(1A) of the *Crimes Act 1900* (NSW) provides that a person has a 'reasonable excuse' if the alleged victim was an adult at the time the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be report to police or another appropriate authority. Therefore, if the victim asks Legal Aid NSW not to report the matter to the police, Legal Aid NSW employees will not contravene s 316 of the *Crimes Act 1900* (NSW) if they do not do so.



More detail about how to approach self-resolution or informal resolution is set out in Appendix 2.

Efforts should be made to document the matter as soon as possible. To assist employees in reporting their concerns they may utilise the Workplace Complaint Reporting Form attached to this policy at Appendix 3.

What should I do if unreasonable or unacceptable behaviour is reported to me?

Managers and directors have an obligation to act promptly and with due process on any complaint of unacceptable behaviour to prevent and address any breaches of the ethical framework and government sector core values outlined in Part 2 of the *Government Sector Employment Act 2013 (NSW) (GSE Act)*.

Managers should contact their Human Resources (HR) Business Partner or Workplace Standards team to discuss and report any complaint of unacceptable behaviour.

For further information see the [Workplace complaint guidelines](#).

Roles and responsibilities

Employee responsibilities

NSW Work Health and Safety laws require all employees to take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other people in the workplace. The Legal Aid NSW Code of Conduct, which all employees must read, understand, and sign before commencing in their role, specifies the responsibilities placed on employees regarding expected standards of behaviour and reporting obligations.

Legal Aid NSW employees have a responsibility to:

- ensure their behaviour is consistent with the Legal Aid NSW Code of Conduct.
- take responsibility for their behaviour, conduct and actions and treat others with respect, courtesy and fairness.
- attempt to resolve differences directly with the people involved as soon as they arise, where appropriate.
- report inappropriate behaviour or conduct.
- maintain confidentiality.

More generally, the GSE Act establishes a legal requirement for all NSW government employees to act ethically and in the public interest. All government sector employees have responsibilities to:

- demonstrate high levels of personal conduct consistent with the ethical framework
- seek assistance when unsure about how to implement the ethical framework
- promote the implementation of the ethical framework to their colleagues, and
- report possible breaches of the ethical framework to relevant officers.

Manager responsibilities

In addition to the responsibilities of employees, as outlined above, managers and supervisors have the responsibility to:

- Ensure staff know the standards of appropriate behaviour in the workplace, in accordance with the Code of Conduct.
- Model and encourage acceptable workplace behaviour and maintain a professional work environment.
- Deal promptly and appropriately with reported or observed incidents.
- Provide an employee with the necessary assistance and support to resolve their issue.
- Advise employees who have been subjected to inappropriate workplace behaviour about the avenues available for resolving their issue consistent with the [Workplace Complaint Guidelines](#).
- Provide employees who behave inappropriately with the necessary guidance to help ensure they behave appropriately.
- Be aware of and support vulnerable employees, including employees with a disability, young employees, new employees, part time employees, employees with carer's responsibilities, trainees, injured employees, workers on return to work plans and employees in a minority because of ethnicity, religion, disability, political views, gender or sexual preference.

Under the GSE Act, all managers and executives have the responsibilities of government sector employees (as above), and in addition have responsibilities to:

- lead and promote implementation of the ethical framework in their workplace
- ensure their workplace culture, practices and systems (including recruitment and promotion) operate consistently with the ethical framework
- recognise and promote employee and team conduct that exemplifies the ethical framework
- act promptly and with due process to prevent and address any breaches of the ethical framework
- in the case of a senior executive (including an acting senior executive), declare in writing private interests that have the potential to influence, or could be perceived to influence, decisions made, or advice given by the senior executive, and
- ensure that any real or perceived conflicts of interests are avoided or effectively managed.

Responding to complaints

Part 8 of the *Government Sector Employment (General) Rules (2014)* sets out the processes that public sector organisations such as Legal Aid NSW must follow in response to an allegation of misconduct.

Initial assessment

When Workplace Standards receives a report about an alleged sexual harassment, they contact the complainant within 48 hours to discuss next steps and offer support. In certain circumstances contact will be made immediately.

Workplace Standards assess the matter, in consultation with the complainant, and determine the appropriate response – informal resolution or formal investigation. This assessment process will have regard to:

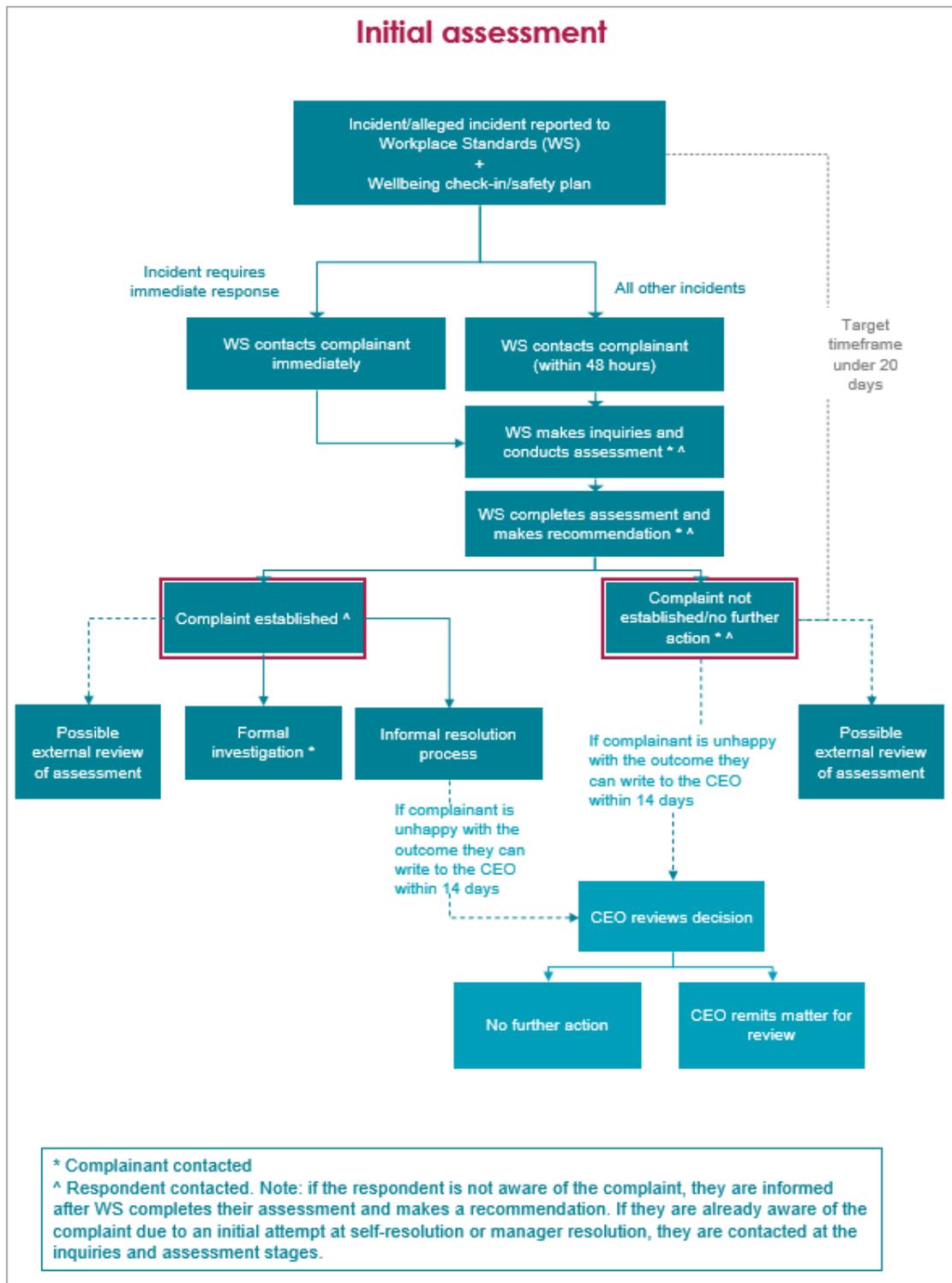
- the seriousness of the matter
- whether the conduct was wilful, unintentional (an ‘honest mistake’), blatant or accidental,
- whether the alleged misconduct occurred as part of a pattern of behaviour or an isolated incident
- relevant complaint and performance history of the employee
- likelihood of establishing the facts of the matter
- public interest considerations.

Workplace Standards may decide not to proceed with the matter if, after making an initial assessment of the allegation, they are satisfied that either the allegation is vexatious or trivial; the incident or conduct concerned does not amount to misconduct; or there is likely to be difficulty in establishing the facts of the matter (GSE Rule 38(2)).

The complainant is kept informed as the assessment progresses and is notified of the complaint assessment outcome as soon as finalised. The respondent is usually notified at this point also. If the complaint is not established, the respondent is informed that a complaint was lodged and assessed but no further action is to be taken.

If a matter is resolved informally, there is no record of this kept on the respondents personnel file. A record is kept in the Workplace Standards register to meet record-keeping requirements.

The initial assessment conducted by HR can be externally reviewed. The decision whether to undertake an external review of the initial assessment is made by the CEO, in consultation with the Director HR.



Informal resolution process

There are several options available to informally resolve a complaint of unacceptable behaviour without a formal investigation. The focus is on trying to educate the respondent about acceptable standards of behaviour and mitigating the risk of the conduct occurring again in the future. Informal resolution can include facilitated resolution by a manager, or an independent external facilitator. These options are set out in more detail in Appendix 2.

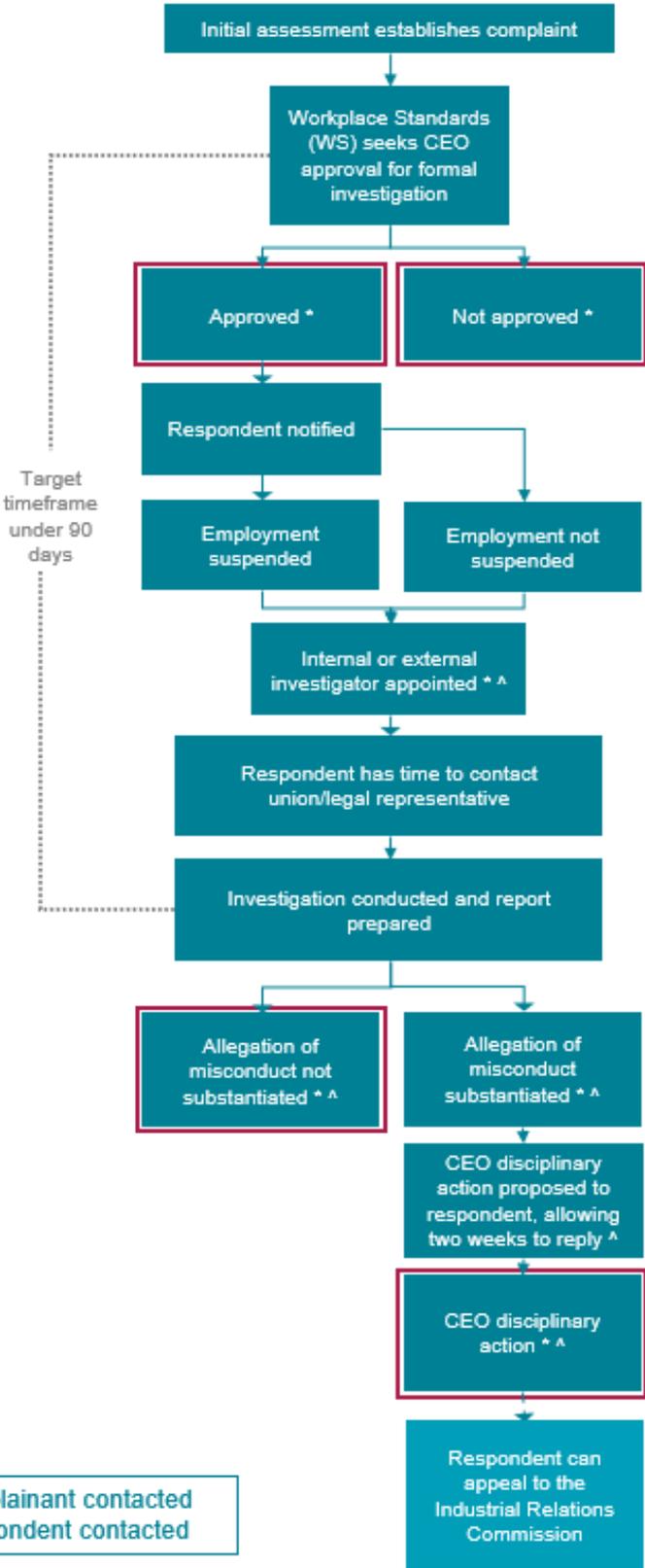
Formal investigation

HR may proceed to a formal investigation following an initial assessment of the complaint if there is substantive evidence to support the allegation. This process requires approval from the CEO. Once approval is given to proceed with a formal investigation, the respondent is notified. The respondent is advised of the details of the alleged misconduct, and of the action that may be taken in response under section 69(4) of the GSE Act. The complainant and respondent are also notified of their right to have a support person assist them throughout the process.

A formal misconduct investigation may be conducted in-house by Workplace Standards or an external investigator. There are a few different companies that Legal Aid NSW uses. If you would prefer an external investigator you can request this. The target timeframe for a formal misconduct investigation is up to 90 days. There are factors that influence the timeliness of investigations including, but not limited to, witness/complainant availability, extension requests for submissions by the respondent, legal representation, and the complexity of the allegations.

The relevant employee is to be given a reasonable opportunity to make a statement in relation to the allegation in accordance with procedural fairness (GSE Rule 38(4)).

Formal investigation



Confidentiality

Legal Aid NSW is committed to creating an environment where employees feel confident to talk about their experience of unacceptable behaviour and feel supported throughout the process. Legal Aid NSW will maintain confidentiality as far as possible and therefore endeavour to limit disclosure of information reported to managers, HR Business Partners and Workplace Standards to only those that need to know.

However, it may be necessary to disclose aspects of the information reported in order to properly investigate or otherwise resolve the issue - for example, speaking with witnesses to determine what happened; to afford fairness to those against whom a complaint has been made; and to senior management or external advisors.

Further, where there is reason to believe that a person is a risk to themselves or others, and in the case of reportable conduct, such as child protection (see Child Protection Policy for further information), Legal Aid NSW may need to notify appropriate authorities. As noted above, there will be circumstances where police need to be notified of an incident of unacceptable behaviour.

However, it is expected that the complainant and the respondent will not speak to anyone other than those Legal Aid NSW representatives involved in the process about the complaint. This includes not speaking to others in Legal Aid NSW. This is necessary to preserve the integrity of the investigative process and to reduce any adverse effects for the complainant and the respondent.

Ensuring confidentiality will not prevent the employees involved from seeking support, such as through the employee assistance program, or bringing a support person or representative to meetings provided they also keep the complaint confidential.

Reporting unacceptable behaviour from external parties

Internal reporting

Legal Aid NSW recognises that bullying, aggression, violence and discrimination are workplace hazards which are known to cause psychological and physical harm. Unacceptable behaviour can be overt or quite subtle. Any form of this behaviour is unacceptable.

There are several ways in which employees can report unacceptable behaviour by external parties, such as private solicitors, barristers, magistrates and judges. Depending on the circumstances, an individual may make the complaint themselves or it may be more appropriate for Legal Aid NSW to lodge the complaint. You can discuss the available options with your manager or HR.

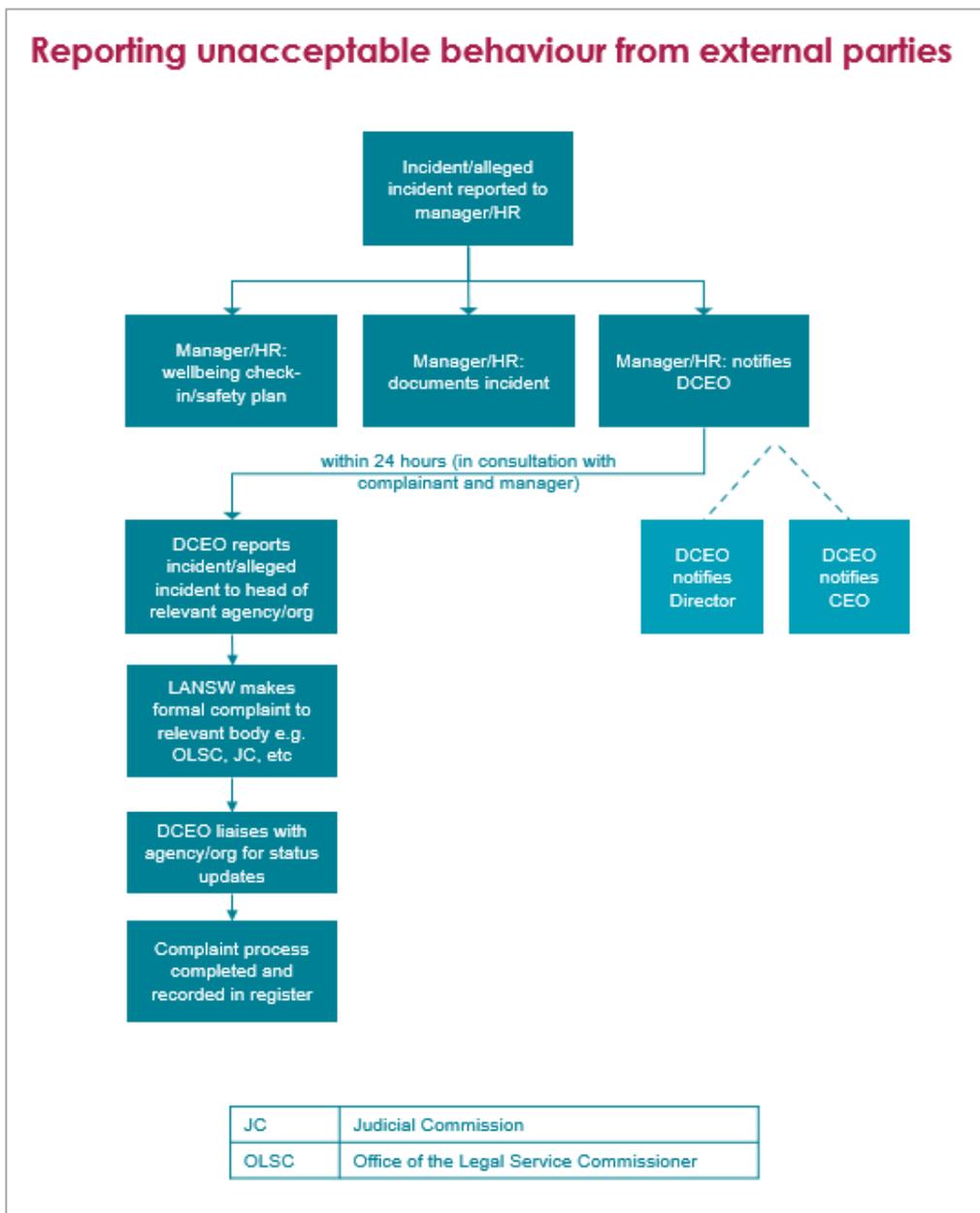
An employee's desired outcome and preferred way of managing the complaint will be priority considerations when dealing with a report of unacceptable behaviour by external parties and any referral to other agencies.

The first step in the reporting process is to notify your relevant manager. It is the manager's responsibility to support the employee's safety and wellbeing, in consultation with HR if required, and take detailed notes about the incident. If you don't feel comfortable reporting to

your manager, you can contact Workplace Standards Directly or approach a different manager for assistance.

The manager must report the incident to their relevant Director and the Deputy CEO immediately. A range of options are available if a third party behaves in an unacceptable manner towards a Legal Aid NSW employee. The DCEO will work closely with the staff member to arrive at the most appropriate approach in the circumstances. The Deputy CEO will consult with the CEO and where appropriate, notify the head of the relevant firm, agency or organisation within 24 hours of receipt of the complaint.

Bystanders can also report matters to their manager or another manager. Information and statements provided by bystanders can also assist to strengthen any formal complaints made to external bodies.



Reporting to external bodies

There are also a range of external bodies that employees can direct complaints to themselves, including:

- The Office of the Legal Services Commission
- The Judicial Commission
- The Australian Human Rights Commission
- Anti-Discrimination Board NSW

These options are also available to complainants who report an incident involving a third party internally.

Individuals have the option to make complaints on their own behalf to these external bodies, or other relevant professional bodies such as the Bar Association or Police Internal Standards Command.

In some circumstances it will be appropriate for Legal Aid NSW to take action on behalf of the staff member and in these instances, Legal Aid NSW is the complainant. In these circumstances, Legal Aid NSW will work with the complainant to determine whether they are identified or not as part of the complaint process. There may also be circumstances where it is determined, in consultation with the complainant, that the external body is notified of the incident but no formal action is sought in relation to it.

It is not necessary to make an internal report before making a report of unacceptable behaviour to an external body.

Am I protected if I make a complaint or a report of unacceptable behaviour?

If you have been bullied, harassed or subject to violence in the workplace or witness any unacceptable behaviour, we encourage you to report the incident to your manager or HR. It may be, depending on the nature of the complaint, against the law for people to penalise a person for coming forward and making a complaint about unacceptable behaviour unless the complaint is false and not made in good faith.

Section 50 of the *Anti-Discrimination Act 1977* (NSW), provides that it is unlawful for a person (the discriminator) to subject another person (the person victimised) to any detriment in any circumstances on the ground that the person victimised has:

- Brought proceedings against the discriminator or any other person under the Anti-Discrimination Act
- Given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the Anti-Discrimination Act
- Alleged that the discriminator or any other person has committed an act which, whether or not the allegation so states, would amount to a contravention of the Anti-Discrimination Act, or
- Otherwise done anything under or by reference to this Act in relation to the discriminator or any other person
- Or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them

Further, taking action against an employee for making a complaint can also constitute misconduct under section 69 of the *Government Sector Employment Act 2013* (NSW).

Victimisation can include, but is not limited to:¹⁰

- Demoting or threatening to demote someone because they have made a complaint or might make a complaint
- Ostracising or excluding a worker in the workplace because they helped a colleague make a complaint
- Denying a promotion to a complainant because they alleged that someone in the workplace behaved unacceptably towards them
- Moving a worker who has made a complaint to another office without first checking if they want to move
- Sacking, or threatening to sack, someone who has made a complaint

Victimisation includes behaviour towards people who have, or might, complain of bullying, harassment or violence, as well as bystanders or people perceived to have helped a person make a complaint of unacceptable behaviour.

Support for our employees

Legal Aid NSW encourages all staff to engage in an appropriate level of debriefing when necessary. Following an incident of unacceptable behaviour, employees may naturally do this with a supervisor or senior manager, family, friends, or colleagues. However, employees may require more formal mental health support following an incident. All employees who are involved in a workplace incident must be advised of the availability of and provided time to attend counselling with a registered clinician.

Legal Aid NSW has contracted an external counselling service provider, Converge International, through the Employee Assistance Program (EAP) to provide short term counselling support to employees. To make an appointment call 1300 687 327. You can also visit www.convergeinternational.com.au and click on Contact Us to access the Live Chat service or download the EAP Connect App and connect with them through the appointment icon.

In addition to the EAP, there are a range of other support options available for use by employees in this instance, these include:

- Preferred Psychologist
- General Practitioner Mental Health Treatment Plan

Records and data collection

The Workplace Standards team within HR regularly collects and assesses reporting and complaints data for trends, patterns and lessons to drive continuous improvement. These trends (de-identified) are reported to the Board, the Executive, and to employees during Induction, Manager Essentials and Code of Conduct training.

¹⁰ Victorian Equal Opportunity and Human Rights Commission, *Guideline Preventing and responding to workplace sexual harassment*, August 2020

Legal Aid NSW complies with NSW State Archives administrative record-keeping requirements specified in the *General retention and disposal authority: administrative records (GA28)* and the *Government Sector Employment (General) Rules (2014)*.

Other relevant policies

This document should be read in conjunction with the Sexual Harassment Policy, Legal Aid NSW Code of Conduct and Workplace Complaint Guidelines.

Key sections of the Workplace Complaint Guidelines are included in this policy, but you can refer to the Workplace Complaint Guideline for more detailed information about how to make a complaint and the complaint process.

This policy does not address unacceptable behaviour from clients. That is covered by the [Unreasonable Client Conduct Policy](#).

Review

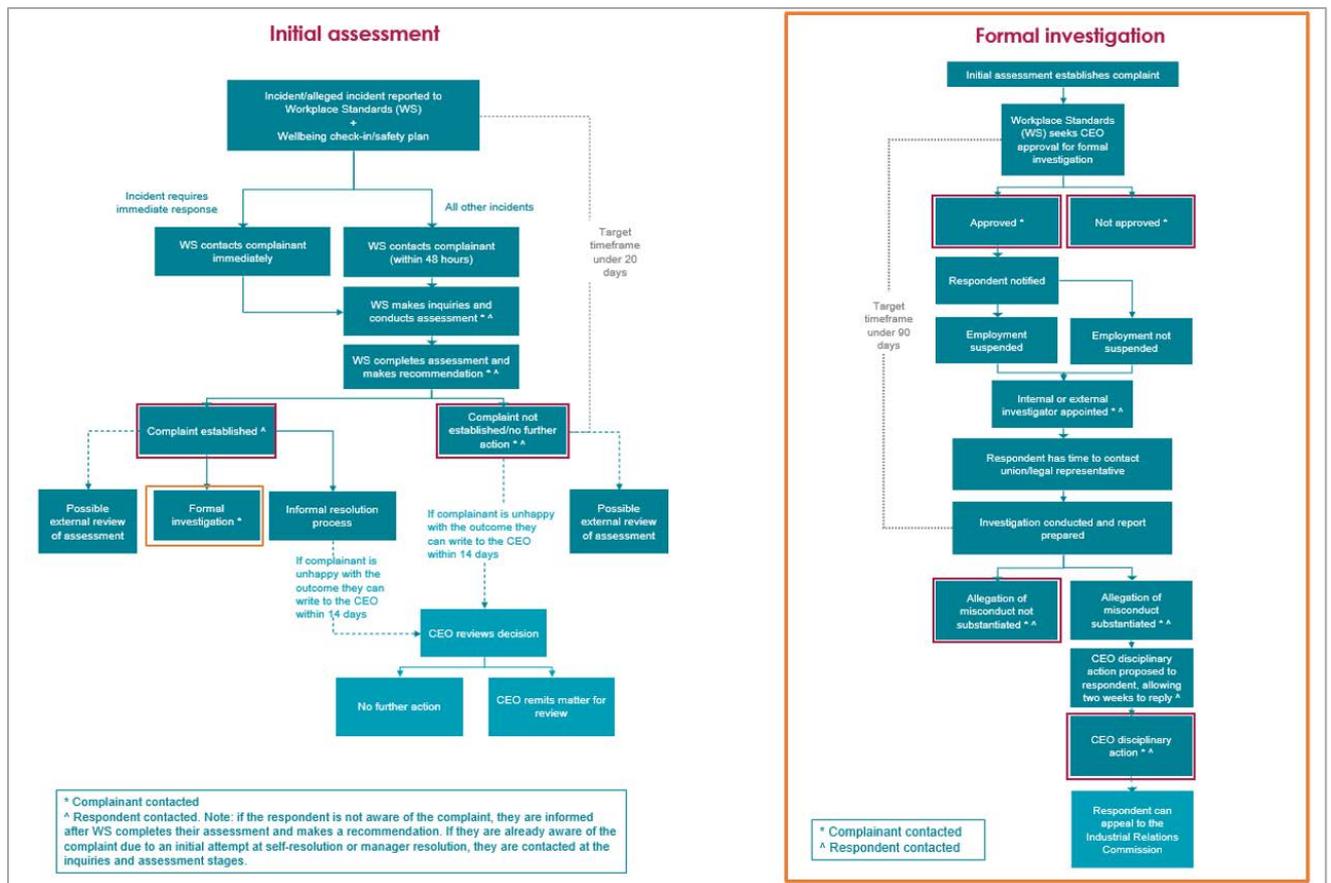
This document will be reviewed every two years. It was produced in November 2021.

How this policy was developed

This policy was drafted by Legal Aid NSW employees from HR, Strategic Policy, the Civil Law Division and the Executive Unit. It was also reviewed by Senior and Junior Counsel.

We consulted with the Legal Aid NSW Board, staff and union representatives about the policy. All staff were given an opportunity to express their views and provide feedback on the draft policy. We provided a range of avenues for staff to provide input into the policy, including in writing and in person through focus groups.

Legal Aid NSW complaint reporting process



Informal resolution options

Self-resolution

Unacceptable behaviour is best dealt with as soon as the matter arises and as close to where the problem arose as possible. To resolve an issue yourself, the first step will be to discuss the issue with the other person(s) involved and try to resolve the issues directly. Sometimes people behave unacceptably without realising or make decisions without considering the repercussions. Telling them of your concerns will give them a chance to stop or change what they are doing.

As the speaker:

1. State the purpose of the conversation.
2. Describe the behaviour specifically.
3. Describe the effect of the behaviour on you.
4. Give the other person an opportunity to respond.
5. State what you would like them to do differently.
6. Return responsibility to the person and offer support.

As the listener:

1. Have the conversation.
2. Act respectfully.
3. Clarify critical information.
4. Don't argue thoughts, feelings or perceptions.
5. Respect reasonable requests.

Seek advice

If you are unsure about how to handle the problem yourself, or just wish to get more information about what you can do, contact your relevant Business Partner or Workplace Standards.

Resolution

Many issues can be resolved at this point, in which case nothing more needs to be done.

Management resolution

If you are not able to resolve the matter yourself, or if you feel unable to do so, you should talk to your manager about the issue. If your concern is about your manager, you should report to the next available manager in your line of reporting. If this is not possible you should contact your relevant HR Business Partner for advice on how to proceed.

Having raised the matter with your manager, they will need to consider it. Wherever practical, this should be completed as soon as possible (usually within 2-5 working days of your talk). During this process the manager may consult confidentially with a more senior manager or the relevant HR Business Partner.

If the matter is considered suitable for local resolution your manager may, depending on the particular circumstances of the matter, take a range of approaches to addressing the matter. This may include speaking to the other party, arranging a meeting between the parties to discuss and resolve the issue, reviewing local policies and procedures that may have given rise to the issue and/or by providing informal guidance, counselling, training and reminders.

At the conclusion of the resolution process the manager must notify HR by completing the **Workplace Complaint Resolution Form** and sending it to the relevant Business Partner.

This information will not be included on any employee's personal file but the matter will be recorded on the confidential complaints database.

Facilitated resolution

Your manager will meet with you and with the other(s) involved as soon as possible and will help you to work out with the other person(s) involved:

- What happened?
- How people were affected?
- What can be improved?
- Recommendations from both parties about how the issue may be resolved.

Your manager will monitor the situation to ensure that all parties are abiding by the agreed resolution. In the event that any of the parties or the manager considers that the agreement is not being adhered to, the matter may be referred to HR.

Facilitated resolution by external third party

It is sometimes worthwhile for an independent third party external to Legal Aid NSW to seek to resolve complaints swiftly and informally. At the discretion of Legal Aid NSW, an external third party may be appointed to facilitate an informal resolution where appropriate.

Resolution by determination

If the matter is not resolved by mutual agreement or an employee remains dissatisfied with the resolution of their complaint, they may request a review.

In this process the relevant reviewer – a more senior manager or ultimately the CEO – will consider the matter, determine whether further strategies should be implemented to resolve the matter and issue a written direction as to the action to be taken (if any) to conclude the matter.

Workplace Complaint Form

Complainant Details

Name:

Position:

Location:

Preferred method of contact:

Date:

Details of Workplace Complaint

Describe your complaint and have regard to the what, where, when, who, and how. Please provide as much detail as you can.

Witness/es:

Other relevant information:

Have you reported this matter to anyone else?

Yes

No

If yes, please provide details:

Attachments

Please list any attachments provided with this report:

Support Services

EAP: 1300 687 327

[WHS Support](#)

Further information

[Conduct, Ethics and Complaints intranet page](#)

[Workplace Complaints Guidelines](#)

[Code of Conduct](#)

[Respect Guidelines](#)

[Fraud and Corruption Prevention Framework](#)

Contact us

Workplace Standards Team

Email: WorkplaceComplaints@legalaid.nsw.gov.au

Tracey Macmillan, A/Manager: (02) 9219 9683

Glen Phillips, IR & Investigations: (02) 9219 5963

Angelique Barnes, Project Officer: (02) 9219 5784

Dealing with unacceptable behaviour: a practical guide

<p>Resolve the matter directly with the other party, or parties</p>	<p>Try to resolve the problem yourself by:</p> <ul style="list-style-type: none"> • Remaining calm. • Finding a private area where you can speak with the other party without being overheard or interrupted. • Describe their behaviour you found to be inappropriate. • Tell the other party that you do not like the behaviour and you would like it to stop. It may help to tell them why you do not like the behaviour and how it makes you feel. • Tell the other party that if they do not stop the behaviour you may consider telling a manager or supervisor. • If you cannot resolve the problem directly with the other party, talk to your manager or supervisor. • If the issue is with your manager or supervisor, discuss the matter with another senior person.
<p>Remove yourself from the situation</p>	<p>In some cases, it may be better to simply walk away from the immediate behaviour. This means that you cannot be subjected to more behaviour and it gives you time to recover from the situation. Later, it may well be possible to resolve the situation directly with the other party.</p>
<p>Talk to your manager or supervisor</p>	<p>Talk to your supervisor or manager or another senior employee that you feel comfortable with and:</p> <ul style="list-style-type: none"> • Clearly describe the behaviour you found inappropriate. • Explain why you do not like the behaviour and how you feel. • Explain that you do not like the behaviour and you would like it to stop. • Agree about how to resolve it. (What you would like them to do?) • Consider if you want to lodge a grievance.
<p>Talk to HR</p>	<p>If you are not comfortable talking to your manager or supervisor, contact your relevant HR Business Partner for advice or contact Workplace Standards directly.</p>

To help remember what happened, if asked later, you may also find it useful to:

- Keep a diary or written notes about what happened such as dates, times, names of people involved, description of the incident or behaviour.
- Keep any physical evidence such as emails, SMS or documents.
- Make a note of the names of any witnesses to the behaviour.

Violent behaviours

If you are subjected to violent behaviour in the workplace, the following steps should apply.

Use the personal duress alarm or other device if available	Ensure there is no further risk to your health and safety before taking this action.
Remove yourself from the situation	Shut the door or leave your desk, office or other public area.
Seek support	Seek immediate assistance from your manager or supervisor or other senior employees. Contact security person for your building if appropriate.
Seek first aid or medical assistance if necessary	Find the first aid officer or call an ambulance.
Call the police if necessary	The police are usually contacted by a manager or other senior officer.
Seek assistance from the Employee Assistance Program if necessary	Legal Aid NSW has partnered with an external counselling service provider, Converge International, to deliver its employee assistance program (EAP) to provide short-term counselling support to employees. To make an appointment call 1300 687 327. You can also visit www.convergeinternational.com.au and click on 'Contact Us' to access the Live Chat service or download the EAP Connect App and connect with them through the appointment icon.
Submit a WH&S incident report form if necessary	Refer to the WH&S intranet page for more information.

External contacts

Employee Assistance Program	Legal Aid NSW has contracted an external counselling service provider, Converge, through the Employee Assistance Program (EAP) to provide short term counselling support to employees. To make an appointment call 1300 687 327. You can also visit www.convergeinternational.com.au and click on Contact Us to access the Live Chat service or download the EAP Connect App and connect with them through the appointment icon.
Anti-Discrimination Board of NSW	Phone: 02 9268 5544 or 1800 670 812 (for regional NSW only) A free service for issues relating to discrimination and harassment.
Human Rights Commission	Phone: 02 9284 9600 or 1300 656 419 A free service for issues relating to discrimination and harassment.
Industrial Relations Commission NSW	Phone: 02 9258 0866 For issues relating to unfair dismissal and disciplinary decisions.
Public Service Association (union)	Phone: 1300 772 679 For union members who need assistance with any aspect of working life matters.
SafeWork NSW, Care NSW, State Insurance Regulatory Authority (formerly WorkCover NSW)	Phone: 13 10 50 For issues relating to bullying, health and safety, workers compensation and injury management.

NSW Government Ethical Framework

Part 2 of the *Government Sector Employment Act 2013*

Unacceptable or unreasonable behaviour is conduct inconsistent with the NSW Government Ethical Framework (Part 2 of the GSE Act). The framework details the core values for the government sector and the principles that guide their implementation.

The core values for the government sector and the principles that guide their implementation are as follows:

Integrity

- Consider people equally without prejudice or favour.
- Act professionally with honesty, consistency and impartiality.
- Take responsibility for situations, showing leadership and courage.
- Place the public interest over personal interest.

Trust

- Appreciate difference and welcome learning from others.
- Build relationships based on mutual respect.
- Uphold the law, institutions of government and democratic principles.
- Communicate intentions clearly and invite teamwork and collaboration.
- Provide apolitical and non-partisan advice.

Service

- Provide services fairly with a focus on customer needs.
- Be flexible, innovative and reliable in service delivery.
- Engage with the not-for-profit and business sectors to develop and implement service solutions.
- Focus on quality while maximising service delivery.

Accountability

- Recruit and promote staff on merit.
- Take responsibility for decisions and actions.
- Provide transparency to enable public scrutiny.
- Observe standards for safety.
- Be fiscally responsible and focus on efficient, effective and prudent use of resources.

Any behaviour inconsistent with the core values is considered misconduct. It may also include any improper, or potentially unlawful conduct that is outside of policy, directions, or the law.

Specific examples may include:

- fraud, theft, misappropriation of resources
- threats of personal harm towards colleagues
- acts of workplace violence

- bullying and harassment
- discrimination on the basis of a personal trait
- breaching confidentiality
- being charged with or convicted of a criminal offence
- accessing information or systems without authority or a legitimate work purpose
- repeat incidents where informal measures have not resulted in improved behaviour.