



# KENTISH COUNCIL POLICY

## HARASSMENT, BULLYING & ANTI-DISCRIMINATION

**Policy Number 02:24:2009**

<b>POLICY NUMBER</b>	02:24:2009
<b>PURPOSE</b>	This Policy applies to all executives, managers and staff, and at all worksites of Kentish Council. This includes places of work which may be 'off site', or away from a worksite of Kentish Council.
<b>STATUTORY AUTHORITY</b>	<i>Anti Discrimination Act 1998</i>
<b>POLICY</b>	Adopted 16 June 2009      Minute 7.3.5

### **1. OBJECTIVE:**

The Kentish Council is an Equal Opportunity Employer. While the nature and inherent requirements of employment roles may vary within the Kentish Council workplace, an intrinsic aspect of every role is that employers and employees treat each other with dignity and respect.

Discrimination, bullying and harassment will not be tolerated in any Kentish Council workplace. All employees, particularly those in a leadership role, need to ensure that proper standards of conduct are maintained at all times.

Kentish Council workplaces should be stimulating, pleasant and productive environments. Discrimination, bullying and harassment erode individual rights, lowers morale and interferes with the effectiveness of work environments by making them hostile, unpleasant or offensive.

Kentish Council recognises its responsibility to ensure that the rights of its employees and clients are protected. These include the rights to be physically and psychologically safe and to be treated fairly and with respect.

If a complaint is made, Kentish Council will provide a fair basis of information dissemination, conciliation, investigation and decision-making; observing the principles of 'due process' and 'natural justice'.

Kentish Council in making this policy, recognises that when discrimination, bullying and harassment occurs in the work environment the effects are likely to include an unproductive work setting and also psychological, and even physical, damage to an employee's health and wellbeing. Potentially, discrimination, bullying and harassment can cause problems which impact upon not only a person's career but also their personal life.

## 2. PRINCIPLES:

- All employees are entitled to make a complaint if they believe that they are not being treated with dignity and respect.
- Interventions that restore productive work practices (including conciliation and/or mediation) are the preferred approach to the complaint resolution process.
- Where this is not successful, a process to assist parties to reach an acceptable outcome will be used before utilising any formal investigative process.
- The principles of natural justice shall apply at all stages of the complaint resolution process.

Kentish Council shall use its best endeavours to maintain the confidentiality of complaints.

## 3. DEFINITIONS:

**'Personal Information'** – means information or an opinion (including information or an opinion forming part of a database), whether true or not about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information about an individual who has been dead for more than 30 years.

**'Personal Information Protection Principles (PIPPs)'** – A set of principles that regulates the handling of personal information.

**'Public Registers'** – documents that Councils are required to make publicly available pursuant to State Government legislation. These registers

- ♦ are open to inspection by members of the public
- ♦ contain information required or permitted by legislation
- ♦ may contain personal information

A list of these is provided at the end of this document.

**'Sensitive Information'** – personal information or an opinion about an individual's:

- ♦ Race or ethnic origin; or
- ♦ Political opinions; or
- ♦ Membership of a political association; or
- ♦ Religious beliefs or affiliations; or
- ♦ Philosophical beliefs; or
- ♦ Membership of a professional trade association; or

- ♦ Membership of a trade union; or
- ♦ Sexual preferences or practice; or
- ♦ Criminal record; and
- ♦ Health information about an individual.

#### 4. DEFINITION:

Under the *Tasmanian Anti-Discrimination Act 1998*, two types of discrimination are recognised; *direct* and *indirect*. Both forms of discrimination are defined separately.

**Bullying** – Bullying can be defined as ‘the repeated less favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice’.

Bullying comprises the systematic, repeated and deliberate abuse of power. It is inflicted on a less powerful person by a more powerful person or group of people. Bullying may be expressed as physical intimidation. It includes overt behaviours that intimidate, offend, belittle, disempower, degrade or humiliate a worker, possibly in front of co-workers, visitors to workplaces, clients or community members.

Bullying may also appear through subtle means, such as withholding information, isolating a person within the workplace or excluding them from decision-making processes or activities in which they would normally or should be involved.

Examples may include:

- Taking advantage of good nature, especially on a regular basis;
- Plagiarism, taking undeserved credit, but never accepting responsibility when things go wrong;
- Allocating all the unsavoury tasks to one person instead of sharing;
- Two-facedness, saying one thing to a person’s face, something else (especially the opposite) to others;
- Persistent unwillingness to make clear what is required.

**Direct Discrimination** – direct discrimination takes place if an individual treats another person, on the basis of any prescribed attribute, less favourably than a person without that attribute or characteristic.

Section 16 of the *Tasmanian Anti-Discrimination Act 1998* states, “A person must not discriminate against another person on the ground of any of the following attributes:-

- Race;
- Age;
- Sexual orientation;
- Lawful sexual activity;
- Gender;
- Marital status;
- Pregnancy;
- Breastfeeding;
- Parental status;
- Family responsibilities;

- Disability;
- Industrial activity;
- Political belief or affiliation;
- Political activity;
- Religious belief or affiliation;
- Religious activity;
- Irrelevant criminal record;
- Irrelevant medical record; or
- Association with a person who has or is believed to have any of these attributes.”

For direct discrimination to take place it is **not** necessary to show that the attribute is the sole reason for the unfavourable treatment. It is also not necessary that the person who discriminates regards the treatment as unfavourable, or even that the person who discriminates has any particular motive in discriminating. All that has to be shown is the person's attribute was at least a partial reason for the particular treatment of the other person. Even if genuine motives are the reason for the alleged discrimination, these do not and cannot justify the behaviour.

Once discrimination enters a decision-making process the entire process becomes 'compromised' and cannot be considered separately from the rest of the process.

**Indirect discrimination** – Indirect Discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who:

- o Share, or are believed to share, a prescribed attribute; or
- o Share, or are believed to share, any of the characteristics imputed to that attribute more so than a person who is not a member of that group.

For indirect discrimination to be proven, it is **not** necessary that the person who discriminates is aware that the condition, requirement or practice that is in question actually disadvantages the group of people.

**Harassment** - Harassment is behaviour that does not treat people with the respect and dignity they deserve. It can include a wide range of conduct that causes another person to feel offended, humiliated, intimidated, hurt, insulted, frightened or ridiculed and may cause damaging stereotyping. This could be a deliberate act or may be based on misunderstanding or ignorance. It involves the exertion of power by one person over another. This can be demeaning, particularly for those who are frequently not in a position to deal with their harasser on equal terms. Power does not necessarily imply authority - it can be informal or derived, for instance, from membership of a culturally dominant group or physical strength.

Division 2 of the *Tasmanian Anti Discrimination Act* 1998, relates to the prohibition of certain conduct and sexual harassment and states:-

*“A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of gender, marital status, pregnancy, breastfeeding, parental status or family responsibilities in circumstances in which a reasonable person, having regard to all the circumstances, would have*

*anticipated that the other person would be offended, humiliated, insulted or ridiculed."*

The *Tasmanian Anti Discrimination Act* 1998 also describes forms of unlawful harassment. However, it should be noted that any form of harassment which occurs in the workplace – even if it is not specifically referred to in the *Act* as being unlawful, will nevertheless, if proven, be treated as a breach of this policy.

The essential point in any type of harassing behaviour is that it is unwelcome, uninvited, unreciprocated and usually repeated. If an employee feels uncomfortable and powerless to stop the behaviour, or if it interferes with his/her ability to perform normal duties, then the distress caused by the behaviour is real, regardless of the actual intentions of the other party. Harassment can be either deliberate or unintentional.

***Inciting Hatred*** – The *Tasmanian Anti Discrimination Act* 1998 specifically states:

A person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of:-

- The **race** of the person or any member of the group; or
- Any **disability** of the person or any member of the group; or
- The **sexual orientation** or **lawful sexual activity** of the person or any member of the group; or
- The **religious belief, activity or affiliation** of the person or any member of the group.

In relation to inciting hatred, examples may include:-

- Repeated and unnecessary references to a person's racial or cultural background;
- Derogatory remarks about a person's racial origin, accent or manner of speech;
- Staring and other physical behaviour which causes discomfort to a person with a disability;
- Derogatory remarks about a person's disability, impairment or appearance;
- Teasing or personal questions about an individual's alleged sexual activities;
- Offensive verbal or practical jokes based on any of the above categories; and/or
- Derogatory remarks about a person's religious practices.

***Sexual Harassment*** - The *Tasmanian Anti Discrimination Act* 1998 specifically states;

Sexual harassment takes place if a person:-

- Subjects another person to unsolicited acts of physical contact of a sexual nature;
- Makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person;
- Makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence;

- Makes any unwelcome gesture, action or comment of a sexual nature;
- Engages in conduct of a sexual nature in relation to another person that is offensive to that person,

In circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, insulted or ridiculed.

Examples of this type of behaviour may include:-

- Physical contact against an employee such as touching, patting, pinching, deliberate pushing against a person, kissing or embracing;
- Physical abuse including rape;
- Verbal comments such as innuendo, smutty jokes, suggestive comments, persistent unwelcome social invitations, intrusive questions about a person's sex or private life and requests for sexual favours;
- Non verbal actions such as leers, displays of sexually explicit material, offensive body or hand movements, suggestive letters or drawings, derogatory or offensive material sent through the electronic mail system or other computer systems and indecent exposure;
- Belittling jokes or comments based on sex role stereotypes for example - implying that a woman cannot perform any practical or technical task because she is a woman or that a man who performs household tasks or provides care to his children has something wrong with him; and/or
- Behaviour which insists that gender stereotypes be maintained and exercised in the workplace, which promotes gender divisions in task or work allocation, or which is aimed at restricting access to career roles, educational opportunities and responsibilities on the basis of gender.

**Intimidatory harassment** – Intimidatory harassment involves the thoughtless or intentional use of physical or organisational power to coerce a person to perform a particular action or to instil in the person a feeling of humiliation or intimidation.

Examples of this type of behaviour may include:-

- Offensive, abusive, belittling, threatening or manipulative behaviour;
- Offensive physical contact or coercive behaviour which is intended to be derogatory or intimidating;
- Insulting or threatening gestures;
- Continual unjustified and unnecessary comments about a person's work or capacity for work; and/or
- Persistent following or stalking within the workplace, or to and from work. (This may also constitute a criminal act.)

Intimidatory harassment should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from a supervisor or manager, on work performance or work related behaviour, delivered in a reasonable manner.

**Victimisation** - Victimisation takes place if a person subjects, or threatens to subject, another person or an associate of that other person to any detriment. The *Tasmanian Anti Discrimination Act 1998* specifically states that a person must not victimise another person because that other person:

- made, or intends to make, a complaint under the *Anti-Discrimination Act 1998*; or
- gave, or intends to give, evidence or information in connection with any proceedings under the *Anti-Discrimination Act 1998*; or
- Alleged, or intends to allege, that any person has committed an act which would amount to a contravention of the *Anti-Discrimination Act 1998*; or
- Refused or intends to refuse to do anything that would amount to a contravention of the *Anti-Discrimination Act 1998*; or
- Has done anything in relation to any person under or by reference to the *Anti-Discrimination Act 1998*.

Victimisation takes place if a person subjects, or threatens to subject, another person or an associate of that other person to any detriment.

## 5. COMPLAINTS:

### 1 Complaints

If an employee believes they are subject to discrimination, bullying or harassment, there are a number of options available for resolving a complaint. While the options are not interdependent, employees are encouraged to progress through the options in a way that will provide a satisfactory outcome with the least anguish for the employee concerned as well as other employees in the immediate work area.

The options available to the employee subjected to unacceptable behaviour are:-

- Do nothing;
- Speak to the person(s) involved directly;
- Write a note to the person(s) involved;
- Seek assistance from your manager, supervisor, etc.;
- Conciliation and/or mediation facilitated by a competent manager, HR staff member or external mediator;
- Lodge a formal complaint.

Flowcharts have been included to demonstrate the broad processes that can be followed by an employee if they have been subject to unacceptable behaviour.

#### 1.1 Do Nothing

You may choose to ignore unacceptable behaviour, however, it is possible that ignoring the behaviour may appear to the person involved that you do not object to the behaviour and encourage them to continue. It is also possible that the behaviour may continue and involve other persons who may be fellow employees.



If you decide to do nothing, be aware:-

- that it may be repeated or happen again to you and possibly to others;
- try and take control if it recurs; and
- Seek help and support to learn empowering strategies.

## **1.2 Speak to the person(s) involved directly**

Often the most effective way to stop inappropriate behaviour is to speak directly to the person(s) involved. This need not be a confrontational discussion but instead, it may be an opportunity for you to explain the way the behaviour affects you and ask that it not continue. If you feel unsure about your ability to speak to the person involved about the issue, you can seek advice from a supervisor, manager or HR staff person on how best to raise the matter and what approach to take. If you raise the matter and the person reacts badly/negatively or the inappropriate behaviour continues, you have other options to deal with it in seeking a resolution.

If you decide to speak to the person(s) involved:-

- be assertive (not aggressive);
- state what behaviour you find unacceptable; and
- request clearly that the unacceptable behaviour.

## **1.3 Write a note to the person(s) involved**

It may be that you wish to deal with the matter directly in the first instance but are unsure about whether a discussion with the person involved would be satisfactory or whether the person would listen to your concerns. In those circumstances you may wish to write a note to the person involved explaining your feelings and concerns and asking them to stop. This option is also an appropriate method to deal with the situation without escalating to a formal complaint at the outset. You can seek advice from supervisor, manager or HR staff prior to sending a note if you are uncertain or would like an opinion on what you have written. This option does not limit any other options being used if the inappropriate behaviour continues or you receive a negative reaction to the note.

If you decide to write a note to the person involved remember to:-

- be assertive(not aggressive);
- state what behaviour you find unacceptable; and
- request clearly that the unacceptable behaviour stop.

## **1.4 Seek assistance from your manager, supervisor, area manager, contact officer etc**

Where possible, complaints should be resolved by discussion and co-operation with the aim of eliminating inappropriate behaviour with the least impact on all persons involved. While every person may seek to achieve this, it can be



daunting to some people to have to confront an aggressor to try and discuss their inappropriate behaviour. There is a range of people and organisations that can provide you with advice and assistance to work through the options and provide guidance on how to approach people and to assist everyone to reach agreement on an acceptable outcome.

The following resources are available to you:

- your Workplace Contact Officer(if applicable);
- the HR staff;
- your manager, supervisor or other senior staff;
- your EAP provider, (Employee Assistance Program) (if applicable).

If are unable to obtain appropriate advice from these resources you can contact:-

- your Union;
- the Anti-Discrimination Commissioner;
- the Human Rights and Equal Opportunity Commission;
- support services (e.g. Sexual Assault Referral Centre); or
- lawyers / legal advisors.

### **1.5 Conciliation and/or Mediation**

If a direct approach has been unsuccessful, or you feel unable to use a direct approach due to the circumstances of the behaviour towards you, seeking assistance to reach resolution may provide you with the support you need and a process to follow without initially taking formal action.

Conciliation and/or mediation are processes which focus on solving the problem and repairing the harm done to a person. It recognises the victim's rights and needs and encourages the offender to understand the harmful consequences of their actions. These processes involve the recipient of the inappropriate behaviour as well as the person undertaking that behaviour through the use of conferencing, conciliation or mediation under the guidance of a person who is competent in these processes. You are entitled to have someone with you to support you in these processes.

To use this type of approach the first step is to request assistance from your manager – or another manager if your manager is involved in the issue. A flow chart has been included to provide an insight into the process that may be followed (Chart 2).

### **1.6 Lodge a formal complaint**

If other options have not been successful in stopping the inappropriate behaviour towards you, you can lodge a formal complaint to Kentish Council or alternatively you may lodge a formal complaint with an outside agency. A formal complaint should be lodged on the form attached to this policy which is available from your manager or HR staff. If a form is not readily available, the complaint

can be written on plain paper but should contain, as a minimum, the information requested on the standard form.

The written complaint may go to:-

- Your manager (for internal handling);
- The HR staff (for internal handling);
- The Anti-Discrimination Commission (for external handling);
- The Human Rights & Equal Opportunity Commission (for external handling);
- Your union (for external support); or
- The Australian Industrial Commission (if the employee has been dismissed).

If you prefer the formal complaint to be handled internally, the complaint should be forwarded to your manager or to the HR staff who will discuss the complaint with you and determine the most appropriate course of action. You will be kept informed of progress of the claim at each major step in the process.

A flow chart has been included to provide a picture of the processes to occur in the event of a formal complaint (Chart 3).

## 2 More Serious Issues

If the behaviour is likely to amount to a criminal act or is serious in nature, the complaint should be referred to a senior manager who will decide if the matter is to be referred to the police and if the employee against whom the complaint is made should be suspended while the investigation and decision making processes are underway.

Any actions which, on face value, may be a criminal matter **must** be referred to the police prior to any investigation proceeding to ensure that any evidence or evidence trail is kept safe.

## 3 Conflict of Interest

It is vital that any person involved in dealing with a matter under this policy eg the employees, manager/supervisor or HR staff, do not expose themselves to a conflict of interest. Should they experience a conflict of interest then they must immediately notify the most senior person dealing with the complaint of the conflict and no longer participate in the process.

In this way all people involved can continue to have faith in the process.



## Discrimination / Harassment Incident Report

<b>RESPONSIBLE MANAGER</b>	
Surname:	First Name:
Workplace:	Phone No:
<b>COMPLAINANT DETAILS:</b> Male <input type="checkbox"/> Female <input type="checkbox"/>	
Surname:	First Name:
Workplace:	Phone No:
Position:	
<b>TYPE OF ALLEGATION:</b> Please circle the number against the any of the following areas that describes the form of harassment or discrimination you feel you have experienced:	
1. Race 2. Age 3. Sexual orientation 4. Lawful sexual activity 5. Gender 6. Marital status 7. Pregnancy 8. Breastfeeding 9. Parental status 10. Family responsibilities 11. Bullying	12 Disability 13. Industrial activity 14. Political belief or affiliation 15. Political activity; 16. Religious belief or affiliation; 17. Religious activity 18 Irrelevant criminal record 19. Irrelevant medical record 20 Association with a person who has, or is believed to have, any of these attributes. 21 Harassment – Sexual, Intimidatory or otherwise
<b>COURSE OF ACTION THE COMPLAINANT WISHES TO TAKE (TICK BOX)</b>	
1. Notification of incident but no action required <input type="checkbox"/>	
2. Request assistance in approaching the other party <input type="checkbox"/>	
3. Request assistance through resolution process (mediation / conference / conciliation) <input type="checkbox"/>	
4. Have the matter investigated (Formal Internal Process) <input type="checkbox"/>	
<div style="border: 1px solid black; padding: 5px;"><b>Note:</b> If in the future an investigation results from this complaint or other related complaints received, then you will be approached about the reported incident and information contained on this form may be used as part of any investigation conducted by the Kentish Council.</div>	

[illegible]



WHAT OUTCOME DO YOU WANT TO ACHIEVE?




Signed: \_\_\_\_\_

Signed:

\_\_\_\_\_  
**(Employee  
report)**

**(Person receiving the**

Date:

Date:

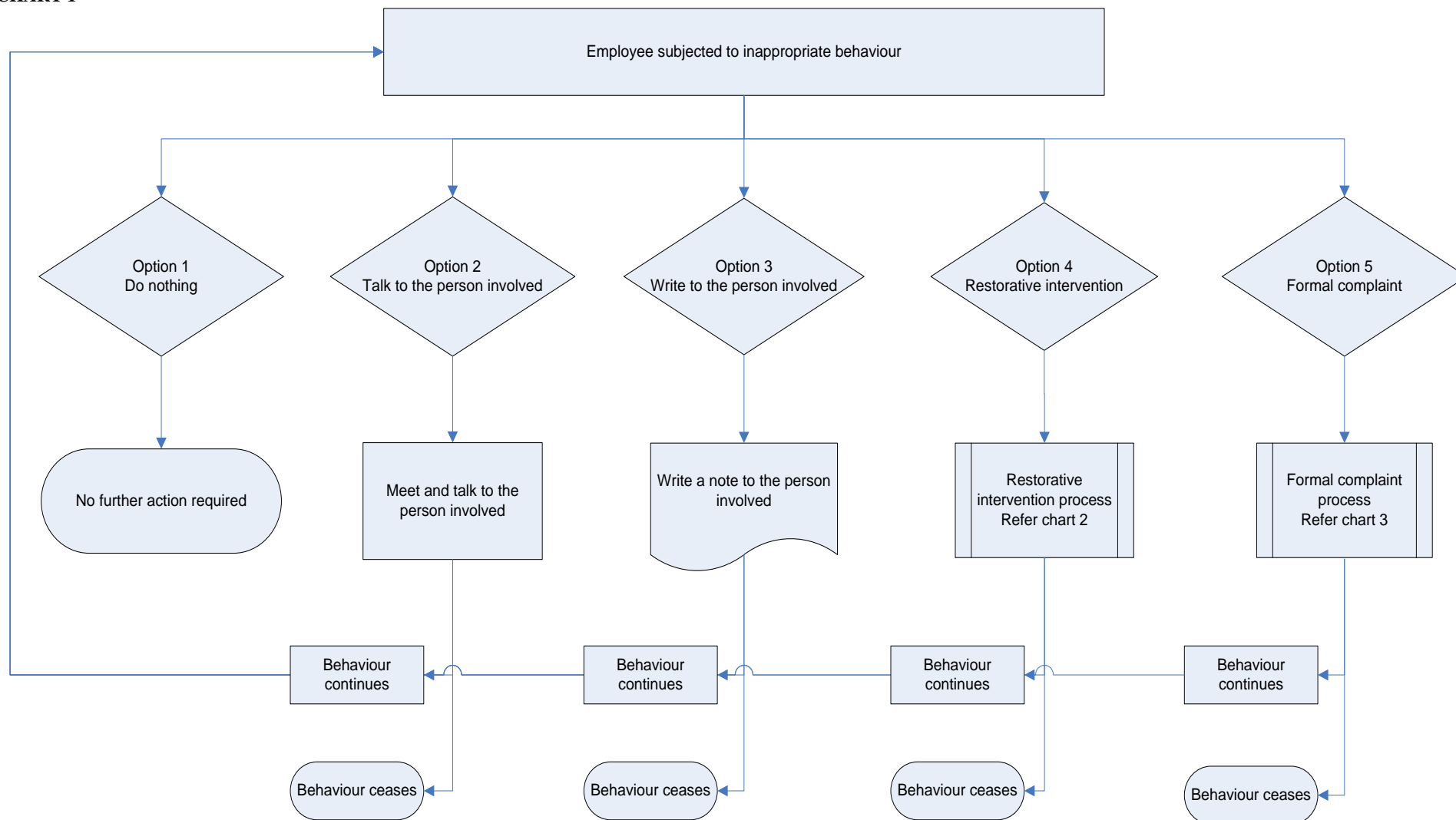
Subject: Discrimination & Harassment Incident Report  
approval  
Version No  
for review

Last amended: [Date of](#)  
Due for Review: [Date](#)



## Discrimination, Harassment and Bullying

CHART 1

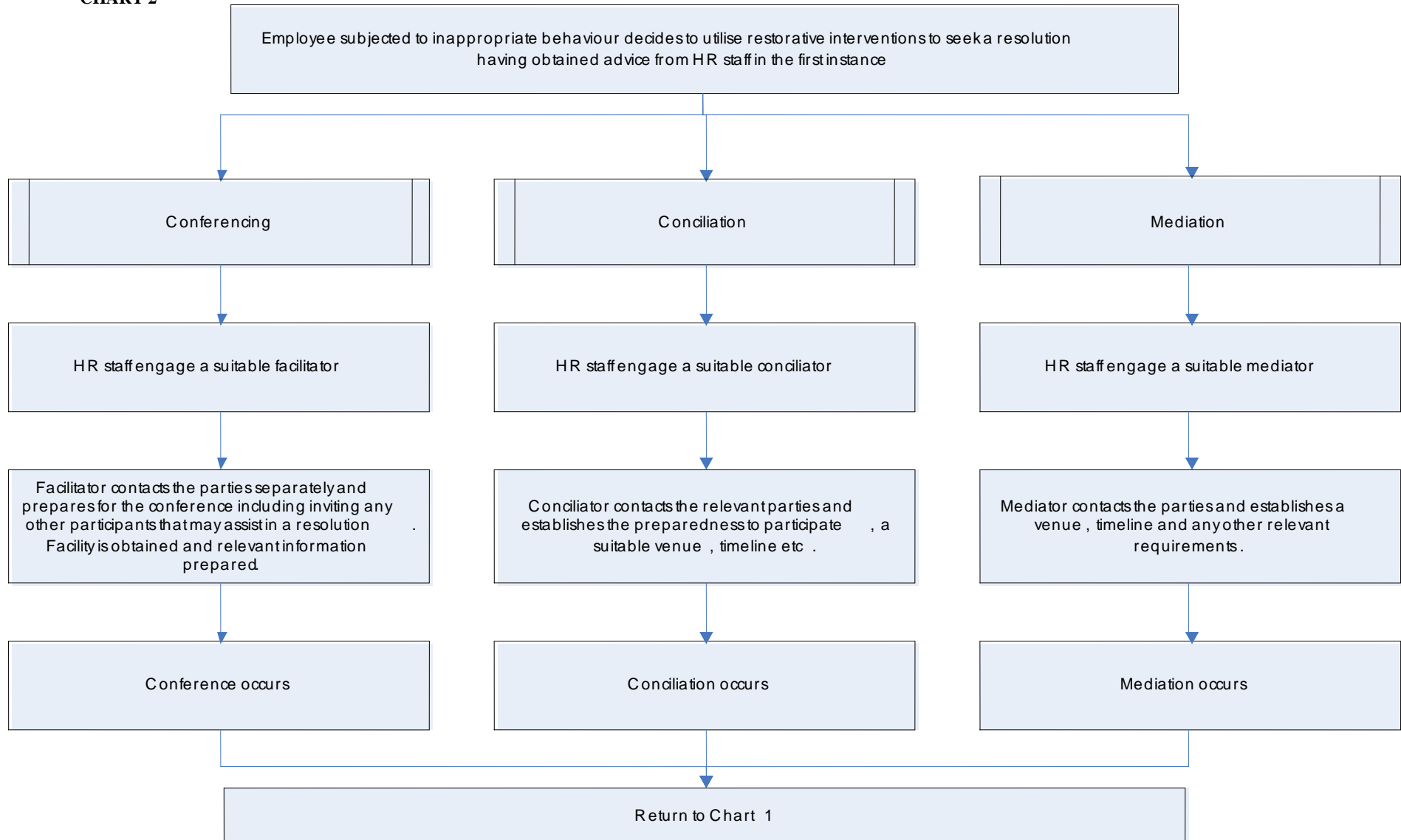






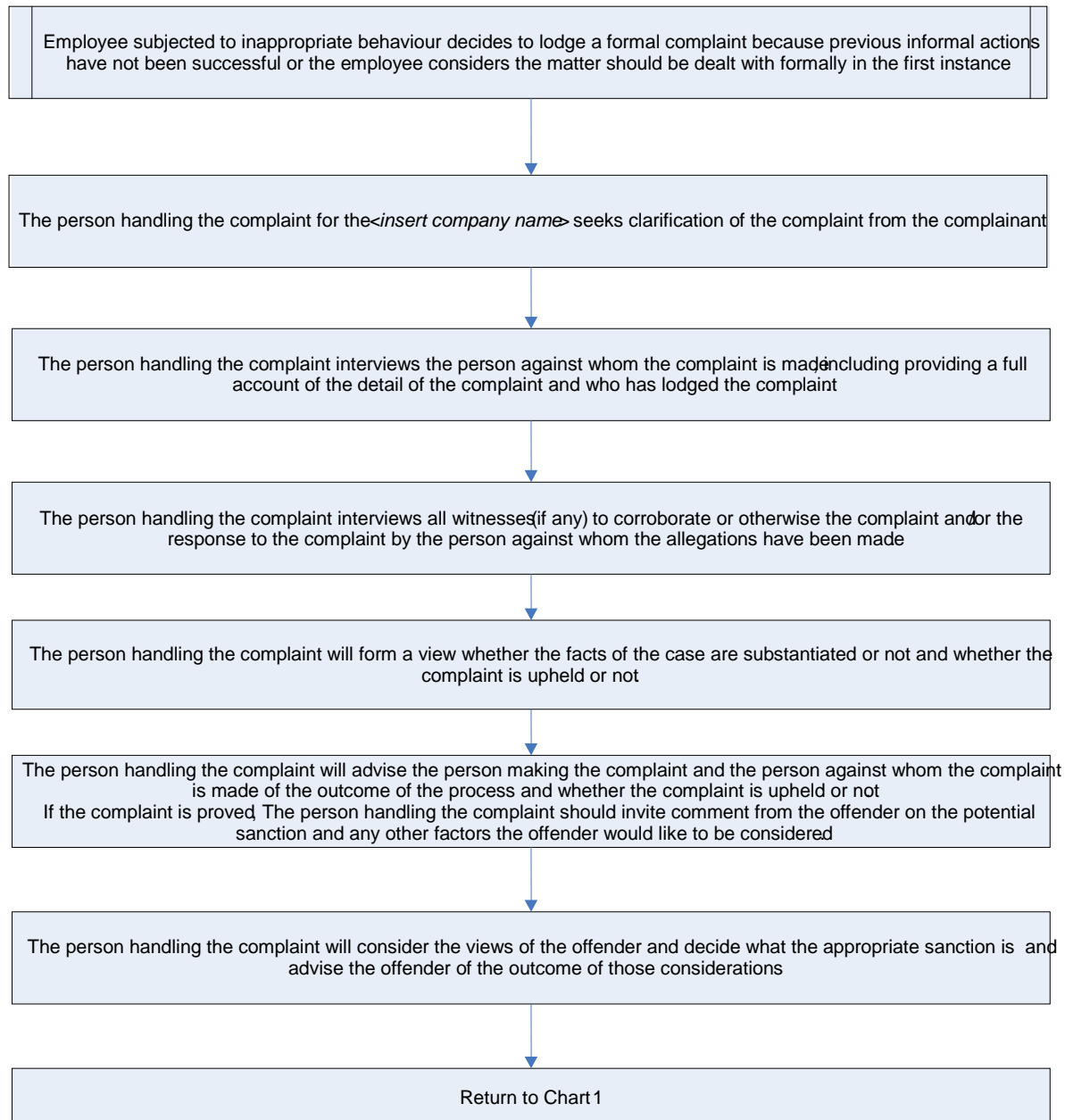
## Restorative Intervention Process

CHART 2





**NB:**  
It is important that good records are kept of the process, facts, findings, decision and sanction



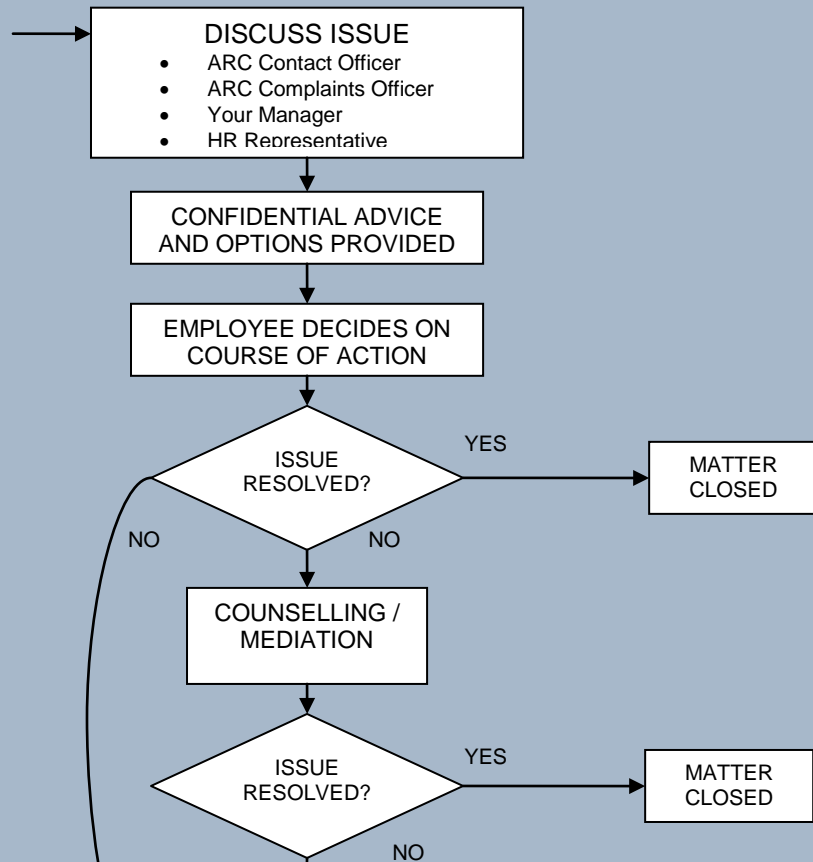


## Attachment D

### Illustrative Guideline of Internal EEO Complaint Procedure

#### INFORMAL

If an employee feels they have been discriminated against or harassed (including sexual harassment)



#### FORMAL

If an employee feels they have been discriminated against or harassed (including sexual harassment)

