



# Harassment Prevention and Complaint Management Policy

## INTRODUCTION

At TVNZ we recognise that all forms of harassment are unacceptable, and we're committed to ensuring appropriate standards of conduct are maintained in the workplace. This policy provides information about what constitutes harassment and about the process to follow to resolve complaints.

## POLICY

- TVNZ is committed to providing a safe working environment - ensuring employees, contractors, clients and visitors are treated with respect and dignity.
- TVNZ will ensure that all employees are aware of what constitutes harassment and what they should do if they have a complaint.
- TVNZ is committed to the prevention of all forms of harassment in the workplace and will take every reasonable step to prevent the occurrence and recurrence of harassment of its employees by other TVNZ employees or clients.
- No employee shall harass another employee, or client of TVNZ. Harassment may constitute misconduct or serious misconduct and offending employee/s may be disciplined and/or dismissed.
- No person shall be victimised for making a complaint of harassment in good faith. Victimisation of any employee or client who makes a complaint of harassment or any person who helps an employee or client to make a complaint is deemed to be serious misconduct and offending employees may be disciplined and/or dismissed.
- Any employee who has a concern about the behaviour of a manager, co-worker, or client is assured that their complaint will be taken seriously, treated confidentially and investigated quickly and fairly.

## DEFINITION

Harassment is a form of discrimination and is unlawful under both the Employment Relations Act 2000 and the Human Rights Act 1993.

Harassment of any kind is broadly defined as:

Any behaviour directed towards an individual or group that a reasonable person, having regard to the circumstances would expect to insult, intimidate, victimise or disadvantage the recipient, and which is;

- Unwelcome, hurtful or offensive to the recipient; and is
- Repeated, or is of such significance as to adversely affect the recipient's employment or well-being.

Harassment may include, but is not limited to the following:

- Unwelcome and suggestive scrutiny of physical characteristics
- Improper suggestions, physical closeness or contact, stalking, verbal innuendoes, and jokes or comments of a sexual, racial or offensive nature
- Mocking remarks about appearance, race, colour or speech

- Display of offensive printed or electronic material
- Bullying

## LEGAL POSITION

Harassment is unlawful under both the *Employment Relations Act 2000* and the *Human Rights Act 1993*. TVNZ and individuals who harass may be legally liable if harassment occurs. In addition, many of the things that constitute harassment are also offences or crimes.

## HARASSMENT

Harassment includes but is not confined to the following categories:

### Discrimination

Conduct which is likely to result in less favourable treatment, or create a less favourable environment, for any person/group than for another under similar circumstances, by reason of any of the prohibited grounds set out in the [Human Rights Act 1993](#) including race, colour, ethnic or national origin, gender age, disability, physical appearance, marital or family status, religion, ethical belief, union affiliation, political opinion or sexual orientation.

Discrimination may arise from official statement, actions, omissions, decisions or policies as well as from informal or personal statements or conduct. It may also be indirect, that is it may have the effect of treating someone differently on a prohibited ground, even if the discrimination is not explicit.

### Sexual Harassment

Sexual Harassment may occur irrespective of the recipient's gender and includes:

- Unwanted or offensive attention of a sexually oriented nature
- Implied or express promise of reward for complying with a sexually oriented request
- Implied or expressed threat of reprisal for not complying with a sexually oriented request.
- It is either repeated, or of such a significant nature, that it has a detrimental effect on the recipient

Examples of Sexual Harassment: include but are not restricted to:

- **Verbal behaviour:** persistent sexual innuendo, sexual or smutty jokes, name-calling, questions about a person's private life, requests for dates or sexual activity, wolf whistles, obscene telephone calls
- **Visual and written material:** graffiti, suggestive or obscene letters, display or unwanted exposure to sexual material in the form of posters, calendars, magazines, computer games, screen savers and other computer images
- **Physical behaviour:** offensive hand or body gestures, peeping or exposure, or any unwanted physical contact
- **Any such behaviour that is unwelcome or offensive to the recipient**

### Racial Harassment

It is unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that:

- Express hostility against, or brings into contempt or ridicule, any other person on the grounds of the colour, race or ethnic or national origins of that person; and
- Is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and

- Is either repeated, or of such a significant nature, that it has a detrimental effect on that other person

Examples of Racial Harassment include but are not restricted to:

- **Verbal behaviour:** derogatory comments, name-calling or nick-names made on the basis of a person's race, colour or accent; "jokes" which ridicule or portray individuals of certain races or nationalities in a demeaning way
- **Visual and written material:** racist graffiti or the use or display of racist propaganda
- **Physical behaviour** - ostracising a person because of their race, colour, national or ethnic origins, physical assault of a person on the grounds of their race
- **Where such behaviour is hurtful or offensive to the person experiencing it.**

#### **Personal Harassment:**

Personal harassment means any behaviour by an employee or client of TVNZ, which explicitly or implicitly intimidates, humiliates, undermines or dominates another person; or involves the use of abusive and/or threatening language, verbal or physical threats, or any form of physical assault.

#### **Abuse of Managerial Authority:**

Abuse of Managerial authority means conduct by a manager in relation to an employee who reports to them or over whom they have supervisory authority and which:

- Intimidates, humiliates or undermines another person by belittling them, or excessively, destructively or inappropriately criticising or reprimanding them, or excessively scrutinising their work; or
- Makes demands that are unreasonable or outside the other person's role; or
- Makes a demand to perform an action that is in breach of the principles of any policy of TVNZ

#### **Bullying**

Bullying is a form of personal or managerial harassment, as described above, which is characterised by repeated and persistent, abusive, intimidating, malicious or insulting behaviour and has an effect on upon a person's dignity, sense of safety or well-being.

Overt bullying can include, for example:

- Threats and intimidation
- Manipulation and coercion
- Verbal abusive or degrading language or gestures
- Belittling remarks either to the recipient or behind their back
- Unjustified threats of dismissal or other disciplinary action

Covert bullying can include acts such as, for example:

- Deliberately overloading someone with work and imposing impossible deadlines
- Constantly changing targets or work guidelines
- Isolating or ignoring an employee on a consistent basis
- Changes in the duties or responsibilities of an employee to their detriment without reasonable justification

### **WHAT HARASSMENT IS NOT**

Occasional differences of opinion, conflicts and problems in working relations are a part of working life and do not constitute bullying or harassment.

Workplace counselling, managing underperformance, or other legitimate action in accordance with departmental policy and procedures, are not bullying or harassment.

Specific types of non-harassment are:

- Mutually acceptable light-hearted exchanges, jokes and compliments
- Friendships, sexual or otherwise, where both people consent to the relationship

- Assertively expressing opinions that are different from others
- Free and frank discussions about issues or concerns in the workplace, without personal insults
- Issuing reasonable instructions and expecting them to be carried out
- Insisting on high standards of performance in terms of quality and timeliness of work
- Insisting on high standards of performance in terms of safety and team cooperation
- Legitimate criticisms about work performance
- Giving negative feedback, including a performance appraisal, and requiring justified performance improvement
- Warning or disciplining someone in line with organisation policy
- Targeted affirmative action policies, or reasonable accommodation and provision of work aid for employees with disabilities

## **HARASSMENT PREVENTION AND COMPLAINT MANAGEMENT**

Where TVNZ has information to suggest that any form of harassment or discrimination might occur or recur, TVNZ has a duty under the Human Rights Act 1993 to prevent this.

The formal process of complaint and remedy is at the option of the employee, and includes:

- TVNZ's internal procedure
- The Employment Relations Act (2000) Personal Grievance procedure; or
- The Human Rights Act (1993) complaint provisions

TVNZ's management includes:

- Providing information for employees on what constitutes harassment and the process to follow if they need to make a complaint.
- Ongoing review of TVNZ's complaints procedure.

## **UNSUBSTANTIATED ALLEGATIONS**

- The possible consequences for someone accused of harassment are severe. Therefore an allegation of harassment against another employee which is found to be malicious and or unfounded could itself be considered an act of harassment.
- An unsubstantiated allegation which is found to be malicious and/or unfounded may result in disciplinary action against the complainant.
- This should in no way discourage an employee from making a legitimate complaint.

## **COMPLAINTS PROCEDURE RESPONSIBILITIES**

### Contact Person Responsibilities

A contact person can be a trusted colleague, a manager, a People & Talent business partner or one of the exec team.

It is the contact person's responsibility to:

- Act on any harassment concerns immediately, with empathy and in line with this complaints procedure
- Ensure that complainants are not victimised for exercising their right to make a complaint

Where a contact person is uncertain of how to deal with a complaint, they should refer the matter immediately to one of the exec team or to their People & Talent business partner.

- Approaches to contact people are made in confidence subject to the following paragraph (Limitation regarding confidentiality) of this procedure.
- **Limitation regarding confidentiality**  
If, after speaking with a potential complainant, a contact person believes the complainant or other people may be at risk of harassment if no intervention occurs, he/she may approach an exec team member or People & Talent business partner in confidence, and discuss the concern. It may be that even without the complainant's consent TVNZ will have to intervene or investigate if it appears that a serious incident has taken place which puts either the complainant or other employees at continued risk of harassment.

#### **Complainant Responsibilities**

- The role of the complainant is to either follow the self-help procedure or approach a contact person as soon as they feel they are being subjected to harassment.
- They can then receive help to identify the behaviour and the options open to them.
- The complainant may need to provide details of the behaviour in either verbal or written form and may need to indicate a preference of one of three options for dealing with a complaint of harassment.

#### **People & Talent Responsibilities**

- The role of People & Talent is to ensure any complaints are dealt with fairly and impartially, and to monitor and address any trends in relation to harassment.
- People & Talent business partners may also be responsible for liaison with the manager and the complainant to advise on the need to intervene or investigate and to decide if the alleged harasser should be approached.

**Depending on the severity of a complaint, the People & Talent business partner may be required to investigate and decide if intervention is required in a case where there is a continued risk of harassment, even without a complainant's consent.**

## **PROCESS TO MAKE A COMPLAINT**

### **Where the complaint is about the behaviour of a client of TVNZ:**

The complainant should report the behaviour directly to their chosen contact person, who can arrange for an immediate inquiry into the facts of the allegations and, if satisfied that harassment has occurred, take reasonably practicable steps to prevent recurrence of the behaviour. Any such steps will not be to the disadvantage of the complainant in his or her employment.

### **Where the complaint is about the behaviour of a manager or co-worker:**

Three options are available for dealing with a complaint of harassment from a manager or co-worker. A complainant may choose any one of these options as their preferred first choice. Choosing self-help or informal intervention doesn't stop a complainant from lodging a formal complaint if their efforts to informally deal with the problem are unsuccessful.

#### **1. Self-help**

If the complainant feels immediately able to deal with the problem themselves, or feels confident enough to do so after discussions with a contact person, this is encouraged. They should approach the alleged harasser alone or with a friend, explain what behaviour concerns them and that they do not welcome it and ask that it stops.

#### **2. Management intervention or mediation**

If the complainant wishes, another person may intervene on their behalf without a formal complaint being made and investigated. This could be their manager or their People & Talent business partner.

Intervention may take the form of mediation. In consultation with the complainant TVNZ may decide to engage a mediator from an external agency. Any such person will be experienced in dealing with harassment issues.

The purpose of management intervention or mediation will be to facilitate a satisfactory resolution of the problem between the complainant and the person being complained about.

Management intervention or mediation can be "shuttle" where the parties are not brought together or "round table" where the parties work through the problem together. Attendance by the complainant at a "round-table" discussion or mediation must be voluntary and not made a condition of the process.

Any agreement reached between the parties or between a party and their manager during informal intervention or mediation will be made known to and will be monitored by the managers of the parties concerned.

Subject to the paragraph below, no disciplinary action will be brought against a party who participates in management intervention or mediation, and who reaches and abides by an agreement reached in management intervention or mediation under these procedures.

Failure by a party to participate in management intervention or mediation or to fulfil the terms of an agreement under these procedures may be treated as a disciplinary matter by the manager of the party breaching the agreement.

### **3. Formal Complaint**

A formal complaint should be lodged in cases where:

- The complainant wants to make a formal complaint.
- The self-help or informal intervention approach has not resolved the problem and the complainant wants to make a formal complaint.
- The allegations are so serious that, if substantiated, they would result in disciplinary action being taken against the harasser. In these situations the complainant should be advised that a formal complaint is the most appropriate option.

A formal complaint can be lodged by speaking with a People & Talent business partner, or a member of the exec team.

A formal complaint will be investigated by People & Talent, or the Director of People & Talent may decide to engage an independent investigator from an external agency. Any such person will be experienced in investigating harassment issues.

#### **Investigation of a Formal Complaint**

The broad procedures are:

- The investigator will interview the complainant. The complainant will outline and record their allegations as a formal complaint; they may do this by writing their own letter of complaint and/or by telling their story to the investigator.
- The investigator will provide written notification to the person accused of harassment that a formal complaint has been made and will include the details of the allegations. The person accused of the harassment must be advised that they can have a support person present at the interview that will follow.
- A copy of this Policy should be provided to both the complainant and the person accused of harassment.
- The investigator will interview the person accused of harassment. The person accused of harassment must be given an adequate opportunity to respond to the allegations.
- The investigator will interview any persons who may have information relevant to the complaint. Where a witness reasonably requests confidentiality with respect to their statement(s) then that confidentiality shall be respected in accordance with the [Privacy Act 1993](#).
- The investigator will gather or record any physical evidence of the action(s) complained of.
- The investigator will write a confidential investigation report and within that report make recommendations as to whether:
  - the complaint has substance; or
  - the complaint cannot be established; or
  - the complaint does not have substance
- The investigator will deliver the investigation report to the Director of People & Talent who will make a decision on the complaint. The Director of People & Talent shall

communicate their decision in writing to the complainant and to the person accused of harassment **within 7 days** of receiving the investigation report.

- Either the complainant or the person accused of harassment may, within **14 calendar days** of receiving notification of the decision of the Director of People & Talent, appeal that decision through their People & Talent business partner.
  - In all cases where the Director of People & Talent finds that the complaint is substantiated, the harasser will be disciplined by their line manager in accordance with the TVNZ Employment Code. This will include as a minimum:
    - An apology to the complainant; and
    - A formal warning
- It may also include any or all of:
- Direct counselling on behaviour
  - Attendance at formal counselling, therapy or training
  - Transfer
  - Dismissal
- Where a complaint is substantiated, the complainant must not be transferred as part of the resolution of a complaint, unless this is what they freely want to do.
    -
  - Should the investigation of a complaint result in a complaint being found to have been made maliciously, such complaint will be considered to be serious misconduct and the complainant shall be disciplined accordingly.

**Where the complaint is by a client of TVNZ, about a TVNZ employee:**

- The complaint will be formally investigated in accordance with the procedures outlined in the Formal Complaint Procedures above.

**Record Keeping**

- When a formal complaint has been lodged, full notes should be taken at the time of all formal interviews, discussions and actions.
- If a person approaches a contact person for discussion and information, the contact person must make a record of the contact - including detail of the complainant and the alleged harasser, the date and a brief account of the interview including what action the complainant intends to take.
- All such records of contact concerning harassment complaints must be forwarded to the People & Talent team, who will store the document and keep it confidential. In this way TVNZ can monitor the incidence of harassment and how effectively its complaints procedures are operating. No information from the complaint record will be included in the personal files of either party. Information received that alleges offensive behaviour will not be used in any way so as to disadvantage that individual. However, if a pattern of alleged conduct emerges through an individual being the subject of enquiry more than once, then People & Talent may invoke management intervention, mediation or an investigation into allegations against that individual in accordance with these procedures.
- If management intervention or mediation has resolved the issue a record of the agreement reached will be kept in a confidential file within People & Talent so that the agreement can be monitored. No details of the complaint or agreement are to be entered onto the personal files of either party.

**If a formal complaint is made:**

- If a complaint is investigated and substantiated, then the harasser's personal file will contain a summary of the nature of the complaint, the outcome and the penalty if any disciplinary action is taken.
- A full record of the information obtained during the investigation and the disciplinary interview will be kept in a separate, confidential file within People & Talent with restricted access. No copies of the information shall be held outside People & Talents.

- No record of the harassment complaint will be placed on the complainant's personal file unless it is with the complainant's permission and necessary to explain a work performance problem.
- If a complaint is found not to be proven or cannot be resolved, all records will be kept but in a separate, confidential file within people & Talent with restricted access.

## **DISCLAIMER**

Nothing in this policy affects the complainant's and alleged harasser's rights under the Employment Relations Act 2000 and/or the Human Rights Act 1993.

## **BREACH OF POLICY**

TVNZ will take appropriate action if this policy is breached. A breach of may result in disciplinary action being taken, possibly including termination of employment.

## **FURTHER INFORMATION**

[Human Rights Act 1996](#)

[Employment Relations Act 2000](#)

[Health & Safety in Employment Act 1992](#)

[Privacy Act 1993](#)

## **PEOPLE & TALENT SUPPORT**

For further support regarding this policy please contact your People & Talent business partner.

Policy Owner	Director of People & Talent
Policy Effective Date	1 July 2017
Policy Review Date	1 July 2018