

Harassment and Bullying

Doc Reference:	DoMN-WHSMS 3.29
Version Number:	1.3

Purpose

To define how the Diocese of Maitland – Newcastle duty holders will manage grievances about unfair treatment, discrimination, harassment, victimization, vilification and/ or bullying. This procedure also provides an avenue for the resolution of work health and safety issues.

An effective grievance management process is recognised as an essential component of good workplace relations by providing employees with a means for resolving conflict and maintaining harmony within the workplace.

A grievance is any type of problem, concern or complaint related to work or the work environment made by an employee. Some examples are:

- the work environment
- safety in the workplace
- the nature of supervision
- performance management
- discrimination* or harassment.
- wage or salary levels
- rosters or hours of work
- leave allocation
- transfer or promotion
- staff development or training availability

* As a Catholic organisation, however, *The Diocese of Maitland Newcastle* reserves the right to have regard to a person's suitability to work within the Catholic environment and their ability and willingness to support Catholic values. It is critical that Catholic organisations are able to attract and retain staff who respect the teachings and practice of the Catholic faith.

Scope

This procedure applies to all workers of the Diocese of Maitland – Newcastle (DoMN) including all full time, part time and casual employees and volunteers.

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Definitions and Terms

Term	Definition
DoMN or Organisation	Diocese of Maitland – Newcastle
Workers	Those engaged in both paid and volunteer employment with the Diocese of Maitland- Newcastle.
Grievance	Any type of problem, concern or complaint related to work or the work environment. A grievance may be about any act, behavior, omission, situation or decision which someone believes is unfair and unjustified.
Discrimination	<p>Occurs when someone or a group of people is treated less favourably or unfairly because of their:</p> <ul style="list-style-type: none"> ▪ Disability ▪ Race or religion ▪ Age ▪ Gender including Pregnancy, Marital Status, Family/Carer's Responsibilities <p><i>This list is not exhaustive.</i></p>
Harassment	<p>Harassment is prohibited under federal and state legislation. Harassment occurs when someone is made to feel intimidated, insulted, or humiliated because of their:</p> <ul style="list-style-type: none"> ▪ Age ▪ Disability ▪ Sexual preference ▪ Religion ▪ Skin colour or ethnicity ▪ Gender including Pregnancy, Marital Status, Family/Carer's Responsibilities. <p>or any other characteristic specified under anti-discrimination or human rights legislation. It can also occur when someone is working in a hostile or intimidating environment.</p>
Workplace Bullying	A form of harassment that until recently fell outside most current legal definitions of discrimination and harassment. It relates to a misuse or abuse of power in relationships between people. It includes the repeated less favourable treatment of a person by another or others in the workplace. It includes behaviour that intimidates, offends, degrades or humiliates a person, and is unreasonable in the circumstances.
Issue	A point in question or dispute concerning health and safety between employees and Health and Safety Representatives/OHS Committee Members. Issues are not necessarily only relating to hazards, however can stem from hazards reported which have not been rectified.

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Provision Improvement Notice (PIN)	In workplaces where a HSR has been elected, a PIN may be issued to management by this representative if there is evidence to suggest the PCBU has contravened a section of the WHS Act or Regulations. WHS Government Authority may be called to examine the workplace and has the power to also apply the same notice.
Improvement Notice	A legal document issued by a Government Authority, requiring the workplace to remedy a WHS breach or likely breach of the WHS Act or Regulation.
Prohibition Notice	A written direction, issued by the Government Authority, which prohibits the continuation of an activity or use of an item/equipment which the Inspector believes involves/will involve an immediate risk to the health and safety of any person. This activity and/or equipment cannot be used again until the WHS Government Authority certifies that the risk has been adequately controlled.

Responsibilities

Position	Responsibilities
Senior Managers	<ul style="list-style-type: none"> • Ensure compliance with policy • Use and follow the processes. • Provide a workplace environment free from discrimination and harassment by exercising appropriate leadership practices • Take reasonable steps to ensure that discrimination and harassment does not occur • Raise any behaviour that is bullying, harassing or discriminatory with employees
Managers	<ul style="list-style-type: none"> • Use and follow the processes. • Provide a workplace environment free from discrimination and harassment by exercising appropriate leadership practices • Take reasonable steps to ensure that discrimination and harassment does not occur • Raise any behaviour that is bullying, harassing or discriminatory with employees • Ensure that information and policies is available on discrimination and harassment, grievance process, bullying in the workplace, etc • Encourage staff to develop an awareness of harassment, bullying and discrimination • Ensure that all employees receive training on bullying, harassment and discrimination • Ensure that staff do not behave in a way that creates an intimidating or offensive work environment • Ensure that grievances are treated confidentially and sensitively and where appropriate seek assistance from Human Resources • Take action in response to complaints of victimisation, which may follow making a grievance
Workers	<ul style="list-style-type: none"> • Work within and enable an environment that is free from discrimination and harassment • Refer other employees seeking to discuss the possibility of discrimination and harassment to their supervisor • Refrain from victimising any person associated with a complaint

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Human Resources	<ul style="list-style-type: none"> • Act fairly and impartially to provide information to staff and managers on discrimination and harassment • Maintain confidentiality in dealing with enquiries • Provide information on options for resolution of the complaint and on the importance on maintaining confidentiality • Provide support to both respondents and complainants • Discuss strategies to deal with real or perceived threats of victimisation • Advise on the Associated Documents in line with this policy
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Procedure

1. Policy Statement

The organisation recognises that it is difficult for workers to do a good job or be fully productive if they feel they are being treated unfairly, discriminated against or harassed. In line with our mission, vision and values the organisation is committed to providing workers with a grievance management process that enables them to raise issues and feel confident that they will be effectively managed.

The organisation's worker management policies and procedures are used to set standards of behaviour and provide guidelines for the management of grievances.

The organisation provides several options for dealing with grievances, and in some situations one or more options may be required at particular times. These procedures do not need to be followed sequentially and the procedure may commence at any stage.

Option One: Seek information and support:

Information and support is provided by a supervisor / manager to assist the employee to decide how to best deal with the situation, and to explain all options for resolution. The complaint may not have been made in writing. The decision may be to take no action against the other party.

Option Two: Deal with the matter individually:

If you are not sure about how to deal with the situation or would like to discuss it with someone else then you may approach your supervisor or manager or another senior manager. Information and support is provided by the supervisor / manager to assist a complainant in dealing with the situation by themselves and to explain other options for resolution. Strategies will be discussed to support the complainant in resolving the matter themselves, without intervention from the supervisor / manager. The complainant may have documented the incident in writing to their supervisor / manager.

Option Three: Informal investigation (Third Party Assistance):

A representative (manager or Human Resources) of the organisation approaches the person complained against with details of the complaint obtains the respondents version of the situation and seeks to resolve the issue. Depending on the circumstances the identity of the complainant(s) need not necessarily be disclosed to the respondent. Resolution may be achieved at this point if the respondent agrees that the behavior indeed occurred, was inappropriate and gives an undertaking not to repeat the offensive behavior. An apology to the complainant may be appropriate in some instances.

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Option Four: Formal investigation:

A formal process of investigation is set up with a member of Human Resources. Both parties may be identified and be given the opportunity to state their case and how they would see the situation being resolved. The person managing the grievance will seek to reach an agreed resolution. Both parties in the process may bring along a support person with them to the meeting. The process should be documented by Human Resources. If the employees cannot reach resolution through the conciliation process it will be necessary to resort to the formal complaints process.

Option Five: Formal complaint:

A formal written complaint may be made through the Escalation Process (see appendix 2), whereby a formal process may be undertaken in assistance with a member of the Human Resources team, or by the Human Resources team. Prior to a formal complaint being made: 1) other informal attempts towards a resolution should have been made, 2) the respondent may have denied the allegations, 3) the complainant's allegations include serious misconduct, and 4) the person making the grievance wishes to undertake a formal process from the outset.

Option Six: Engage an external investigator:

A formal investigation may need to be undertaken by an external person, due to an internal conflict of interest.

Option Seven: External agency:

The organisation recognises the complainant's right to refer the matter to a relevant external agency at any time. External agencies may include the Police, Equal Opportunity Commission, Human Rights and Equal Opportunity Commission, the NSW Anti-Discrimination Board; or a Court or Industrial Tribunal. or relevant union. These options are outside the scope of the organisations processes.

Agreement of the Work Health and Safety Issue Resolution Process

The Manager and worker representatives shall agree upon the process to be followed as set out in this Issue Resolution procedure in writing (e.g. through committee meeting minutes).

2. Reporting Issues

Workers are to inform their immediate Manager of the health and safety issue; and

The Manager shall record the issue on the Hazard Identification Form and inform both the local manager and Health and Safety Representative (HSR).

3. Resolving Issues

As soon as the issue has been reported, the local manager and HSR shall meet to attempt to resolve the issue. An action plan is to be developed and documented on WHS Committee meetings to outline responsibilities and time frames for actions to be undertaken.

The resolution of the issue must consider the following factors:

- Isolation of the hazard;
- Number and location of employees affected;
- Appropriate temporary controls measures (ie. if an issue cannot be resolve immediately, interim measures should be implemented to remove immediate threat to the health and safety of any person);
- Whether environmental monitoring is required;
- Time frame before hazard can be rectified; and
- Responsibilities for those involved in the resolution process.

A copy of the completed Hazard Identification Form shall be provided to the HSR with the issue and agreed outcomes communicated in writing to employees via the local manager or the HSR.

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4. Implement Temporary Measures If Issue Is Not Resolved

Where the issue is considered to pose an immediate safety risk to employees, at a minimum interim measures should be put in place to prevent any adverse consequences until the issue can be satisfactorily resolved.

A HSR may also have additional powers under WHS legislation including the power to issue a PIN where an issue contravenes WHS legislation and/or an issue fails to be resolved. Where the issue concerns work which involves an immediate threat to the health and safety of any person, the HSR or local manager may direct that work will cease until the contravention is rectified.

Where an issue or an immediate threat remains unresolved, the assistance of the Government Authority may be requested by Senior Management or a HSR. The Authority may issue an Improvement Notice or a Prohibition Notice. It should be noted that in deciding the extent of concern, a specialist may need to be engaged for advice.

5. External WHS Complaints

Health and safety complaints that have been received from external parties such as customers, visitors, contractors, suppliers and relevant public authorities are to be referred to the local manager immediately with the Issue Resolution procedure contained within this document followed in resolving the issue.

The exchange of information to the abovementioned external stakeholders is to be conducted via the Senior Manager or other nominated person(s) as appropriate. Under no circumstances is information to be provided to external parties by an employee, HSR or local manager without the express authorisation of senior management such as State or Regional Management.

Complaints against the organisation

The organisation is aware that issues may arise which involve a complaint of discrimination, either direct or indirect, against the organisation, a cost centre, agency or work area. In these instances the complaint should be made in writing to the Vice-Chancellor and the matter will be dealt as a formal complaint.

Principles of grievance management

Confidentiality

Only the people directly involved in the grievance, or in working towards resolving it, will have access to information about a grievance. Minimal information will be provided to other parties and only divulged on a need to know basis. If a grievance is serious, a manager may be legally obliged to take action so the grievance may not be kept confidential. Documentation relating to the handling of a grievance, including the notes of the person handling the grievance will be securely maintained by a Manager or where appropriate, Human Resources. Information will only go on an Employee File if an employee is disciplined as part of resolving the grievance.

Procedural Fairness

The organisation understands that those who work with the organisation have the legal and ethical right to:

- a) raise any concern or complaint related to unfair treatment, discrimination, harassment, vilification, bullying or other such issues;
- b) have that concern, problem, complaint or grievance dealt with confidentially, fairly, effectively and within an appropriate timeframe
- c) have the support of another person throughout the process (support person)

The investigators into the grievance shall observe the rules of natural justice in any action taken in relation to a complaint. These include:

- a) informing all parties of the procedure being followed and providing them with copies of the relevant policies and guidelines

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- b) explaining to the complainant that the requirements of procedural fairness mean that their identity must be disclosed to the respondent
- c) informing the respondent of any allegation made against them, and allowing adequate time for a response
- d) providing the respondent with a reasonable opportunity to state their case, provide an explanation or put forward a defence
- e) conducting a factual investigation of the allegation, interviewing all parties and considering all relevant information, and,
- f) acting fairly, impartially and without bias by considering all relevant information and any mitigating factors.
- d) all people involved with the grievance will have an opportunity to explain their situation. Action will be taken only after all relevant information has been collected and considered. All sides will have access to support or counseling representation if they want or need it.

If disciplinary action is required for a breach of policy it will be carried out fairly and consistently in accordance with the organisations Counseling & Disciplinary Guide.

Conflict of Interest

Where it can be demonstrated that there is a conflict of interest or the potential for a perceived conflict of interest, the investigator should refer the matter immediately to an alternate investigator or the next level of management, and a complainant or respondent may request an alternate investigator.

Free of Unfair Repercussions or Victimisation

Management will take all necessary steps to ensure that people involved in a grievance are not victimised by anyone for coming forward with the grievance or for helping to resolve it. Any victimisation will be managed in accordance with the organisations Counselling & Disciplinary Policy.

Honesty

The grievance procedure is intended to help workers resolve legitimate issues. If a worker uses the grievance procedure to lie about someone or provide false allegations they will be disciplined.

Resolved with a Minimum of Fuss

The organisation aims to resolve grievances with minimal disruption for all parties involved that is possible. Ideally this will be by agreement between the people involved with no need for disciplinary action.

Timely

Grievances should be raised as soon as possible as delays often make resolution more difficult. It is the responsibility of the people resolving the grievance, to ensure that it is dealt with as quickly as possible.

Record Keeping

Records and documents created in the course of investigating the grievance should be stored appropriately and confidentially. The manager, who investigates grievances within their unit that are deemed less serious in nature, will keep the documentation in a locked cabinet on site where they were handled. After the matter is concluded the notes may be destroyed or forwarded to Human Resources for storage. If the records are destroyed the person conducting the investigation must provide the following details around the complaint: details of the complaint, method of resolution, outcome, gender and status of the complaint and respondent. No names or identifying details are recorded.

Records pertaining to serious grievances that were managed either by Human Resources or a higher level of management, and that may allege unlawful behaviour will be kept in accordance with relevant legislation, agreements and policy (generally within Human Resources).

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Role of the Person Handling the Grievance

- Receive the query or complaint sympathetically and seriously. Act fairly and impartially to provide information to staff on allegations and clarify any questions or concerns;
- Determine if you are the appropriate person to continue handling the grievance and if not refer the person to someone more appropriate using the escalation process;
- Obtain full information about the grievance and take accurate notes using the person's own words. Wherever practical this should be within 3 days of being approached;
- Confirm what outcome the person wants;
- Explain how the grievance process works, what action will be taken on their behalf and discuss timeframes for reaching an outcome. Provide all people involved in the grievance copies of appropriate policies and processes relating to the issue;
- Keep the person informed regularly of how their complaint is progressing;
- Maintain confidentiality in dealing with enquiries and provide a first point of contact for complainants and respondents;
- Provide information on options for resolution of the complaint and on the importance of maintaining confidentiality. Respect the wishes of the complainant or respondent with regard to the options taken;
- Conduct an investigation appropriate to the circumstances;
- In accordance with the principles of procedural fairness where the grievance involves an allegation against another person/s, the person/s being accused has the right to know the details of the allegation and the person making the complaint. To assist with this the person may be requested to put the grievance in writing;
- If the complaint is against another person interview them separately and objectively. State exactly what the complaint involves and give the person the opportunity to respond fully to the allegation. Wherever practical, this should be within one week of meeting with the person with the grievance;
- If it is necessary to interview witnesses keep their involvement to a minimum necessary to establish the facts and stress the need for confidentiality;
- Seek advice if required from senior management or human resources during the grievance process;
- Decide on the appropriate action to be taken based on findings of the investigation. This may involve mediation for a minor or non-disciplinary issue or disciplinary action for a more serious issue. The need for some education in particular policies or procedures may also be identified;
- Advise the person making the complaint of the result of the investigation and proposed action if appropriate;
- In normal circumstances no action will be taken without the consent of the person raising the grievance. However, if the person with the grievance refuses to allow certain information to be used or action taken, resolution may be difficult or even impossible;
- Consider if there is a need to use a mediator to help everyone readjust to working effectively together; and
- Monitor the outcome to make sure there are no further issues or repercussions. Discuss strategies to deal with real or perceived threats of victimization.

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Possible Outcomes

Joint Agreement

Many grievances will be able to be settled by joint agreement between the people involved in the grievance. In this situation no records or notes will go on anyone's Employee File.

Not Enough Proof to be Able to Act (not sustained)

If there is not enough proof to substantiate the grievance no action will be taken. Instead, it may be decided to:

- Monitor more closely the people involved; or
- Consider wider employee training on the particular policy or standard involved.

No records or notes will go on anyone's Employee File.

Disciplinary or Other Action

If the person handling the grievance decides that there has been a breach of policy disciplinary action may be required. Any disciplinary action will be managed in accordance with the Counselling & Disciplinary Policy which outlines the types of behaviour that can lead to disciplinary action and the types of disciplinary action that can be taken, including dismissal.

A record of the grievance and the resulting disciplinary action will be placed on the Employee File of the person who is disciplined.

Appeal Process

An appeal will generally involve 'rehearing' the grievance, by an independent person or external investigator where relevant, going through the same steps as the person who handled the original grievance. However, it may be decided to interview more witnesses if that is appropriate. The original decision may be confirmed or overturned as a result of the appeal and will be regarded as the final decision.

If, as part of the appeal process, it is found that the grievance was mishandled in a way that breaches this grievance procedure, disciplinary action may be taken against that person.

To submit an appeal an employee must state their reasons for the appeal in writing to the next level up Manager (please refer to the escalation process).

Additional Support

- **Manager**

Wherever possible the Manager should be the first point of contact.

- **External Agencies**

At any time during a grievance employees can get legal advice from their union representative or any other legal representative. Union or legal representatives can also attend any grievance meeting.



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In addition, at any time during the grievance procedure employees have the right to contact an external agency for advice or help.

Agencies that may be able to help are:

The Anti-Discrimination Board of NSW
Level 1, 414 Hunter Street
Newcastle West NSW 2302
Ph: (02) 4926 4300
Enquiries: 1800 670 812
Web address: www.lawlink.nsw.gov.au/adb

References

- [DoMN Grievance Management Guide](#)
- [DoMN Counselling and Disciplinary Policy](#)
- [DoMN Code of Behaviour](#)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Disability Discrimination Act 1992](#)
- [Age Discrimination Act 2004](#)
- [Counselling and Disciplinary Procedure](#)
- [Work Health Safety Commitment and Statement](#)
- [Anti-Discrimination Act, 1977; \(State\)](#)
- [Australian Human Rights Commission Act 1986 \(Commonwealth\)](#)
- [Work, Health and Safety Act 2011 NSW](#)
- [Work, Health and Safety Regulations 2017 NSW](#)

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