



MAHI MIHINARE
ANGLICAN ACTION

Anti-Harassment Policy

It is the policy for Anglican Action to ensure as far as possible that all staff are safe and secure in their work.

February 2016

ANTI-HARRASSMENT POLICY

PURPOSE

Anglican Action strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The aim is to ensure that the work environment is characterised by mutual trust, and the absence of intimidation, oppression, and exploitation. Employees should be able to work and learn in a safe, stimulating atmosphere. The accomplishment of this goal is essential to the mission of the organisation. The basic premise is that if the work environment is not safe, the employees are not safe, and the work undertaken by employees is undermined as a result. Anglican Action will not allow this situation to develop. For that reason, it will not permit unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, Anglican Action will seek to prevent, correct, and discipline behaviour that violates this policy.

All employees, regardless of their positions, are covered by, and expected to comply with this policy, and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the violation, disciplinary action may include verbal or written warnings, suspension or termination of employment.

PROHIBITED CONDUCT

Anglican Action's Code of Conduct describes in part the expectations around conduct between employees in their interaction with one another. But the law also sets out, in the Harassment Act, the Human Rights Act 1993, and the Employment Relations Act 2000, prohibitions against various forms of conduct

In general terms harassment is the use of verbal or written language, visual material or physical behaviour that is unwelcome, offensive, and either repeated, or is of such a significant nature, that it has a detrimental effect on a person in their employment or education.

Harassment may be based on a person's –

- Gender
- Disability
- Age
- Sexual orientation
- Religion

There may be a number of reasons why a person embarks on a course of conduct which harasses another person, but any of the reasons would be unacceptable and without justification.

The Harassment Act provides a legal remedy to prevent harassment, and it is an option for an employee who complains of harassment by another employee to consider action under the Act, although in the normal course of events it would be expected that the issue would be dealt with within the procedures described in this policy. Further information about the Harassment Act will appear later in this policy

Sexual Harassment

Sexual harassment is unlawful, in that it contravenes both the Human Rights Act 1993 and the Employment Relations Act 2000.

The Human Rights Act, Section 62 states that it is unlawful for any person to be sexually harassed, either through a request for some sort of sexual activity with an implied or overt threat of detrimental treatment, or promise of preferential treatment; by the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by physical behaviour of a sexual nature that is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person), and is either repeated or so significant that the person experiences some form of detriment in their employment or education.

Sexual harassment take many forms such as:

- Requests for sexual activity with threats or promises.
- Sexually orientated visuals (eg. Cartoons, posters, pin-ups, computer images).
- Sexually offensive questions, comments, jokes, abuse, leering, wolf-whistles.
- Unwanted and deliberate physical contact (eg. Touching, pinching).
- Suggestive remarks, questions and comments about one's private life.
- Repeated unwanted invitations to social events.

Racial Harassment

The Human Rights Act 1993, Section 63 states that it is unlawful for any person to use language (whether spoken or written), or visual material, or physical behaviour that expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; and is hurtful or offensive to that person (whether or not that is conveyed to the first-mentioned person); and is either repeated, or of such significant nature, that it has a detrimental effect in their employment or education.

Employer Responsibilities

No form of harassment will be tolerated by Anglican Action. Anglican Action's key responsibilities include:

- The administration of a fair procedure for dealing with allegations of harassment
- Taking any complaint of harassment seriously, and resolving it as quickly as possible.
- Protection of the complainant(s) from recrimination once a complaint has been made. The Human Rights Act, Section 66 states that it is unlawful to victimise a person for making a complaint of discrimination under the Act, or for making a disclosure under the Protected Disclosures Act 2000.
- Ensuring appropriate disciplinary penalties are carried out.
- Working to prevent harassment by making known to staff members their rights and responsibilities and encouraging codes of conduct which promote appropriate behaviour.

Who can make a complaint and when

Any person who is, or has been, a staff member (either full-time or part-time) may lay a complaint within a period of 12 months after the last incident of harassment.

However, if a staff member wishes to lodge a personal grievance complaint under the Employment Relations Act 2000 the statute provides that it must be made within 90 days of the actions which constitute the complaint. Under the Human Rights Act, the complaint should be made within 12 months of the action which constitutes the complaint. The Human Rights Commissioner also has a discretionary right not to become involved in the matter if there is an adequate remedy elsewhere

Rights of Complainant and Respondent

These include:

- The right to be accompanied by a support person.
- The right to be informed of the nature and extent of the complaint.
- The right to respond to all relevance evidence.
- The right to have all contributing factors taken into account.
- The right to be heard before any decisions are made about the respondent; and before any person's identity is made known to anyone outside the complaints procedure.

Complaint procedure

Anglican Action will respectfully treat any person who invokes the complaint procedure, and will handle all complaints in a timely and confidential manner in view of the need to take appropriate corrective action. Employees are assured that lodging a complaint will not be held against the employee or have an adverse impact on the individual's employment status. Because of the damaging nature of harassment to the victims and the entire workforce,

aggrieved employees are strongly urged to use this procedure. However, filing groundless or malicious complaints is an abuse of process, and will be treated as a serious violation of the Code of Conduct.

During the complaint process, the confidentiality of the information received, the privacy of the individuals involved and the wishes of the complainant will be protected to the greatest degree possible.

A complainant may initiate the complaint process by forwarding a written complaint to the General Manager. The complaint should provide sufficient details of the matters alleged to enable the General Manager to make a decision that the complaint gives rise to concerns that should be investigated. If that determination is made, the investigation must proceed within five working days of receipt of the complaint.

The General Manager will appoint an investigator to undertake the investigation to determine whether there is a reasonable basis for belief that harassment as alleged has occurred. The investigator will meet with the complainant and respondent, and any key witnesses to determine whether the alleged conduct occurred.

Within 15 working days of receipt of the complaint the investigator will conclude the investigation and submit a report of his or her findings to the General Manager

If it is determined that harassment has occurred, the General Manager will recommend appropriate disciplinary action. The disciplinary action will depend on the following factors –

- The severity and frequency and pervasiveness of the conduct
- Any prior complaints made by the complainant
- Any prior complaints made against the respondent
- The quality of the evidence – for example first-hand knowledge, credible corroboration.

If the investigation is inconclusive, or if it is determined that there has been no harassment but instead potentially problematic behaviour, the General Manager may recommend appropriate preventive action

Within five days following completion of the investigation, the General Manager will meet with the complainant and respondent to inform them of the outcome of the investigation, and the action to be taken

Both the complainant and the respondent may submit statements to the General Manager challenging the factual basis for the findings. Any such statement must be forwarded to the General Manger within five working days following notification of the outcome of the investigation

Following receipt of the statement, the General Manager will review the investigation report and any statements made by the complainant and respondent. A decision must then be made as to what action will be taken. This decision will be final and will be notified to the complaint and respondent within five working days of the final determination. The General Manager's

decision will be in writing and will include findings of fact and a statement for or against disciplinary action. If disciplinary action is to be taken, the respondent will be informed in writing of the nature of the discipline and how it will be effected

If disciplinary action is to be taken, the General Manager must be satisfied that the process in reaching that decision is fair, and that any action taken to implement the decision will also follow a fair process. Once a decision is made as to the type of action to be taken the respondent must be informed, and given an opportunity to respond before any action is taken.

Warnings

Disciplinary action may include warnings. Any warning shall be in writing and must contain the following elements:

- The respondent must be fully aware that his or her place in Anglican Action is in jeopardy if his or her behaviour does not improve as required.
- The respondent must be told exactly what has been done wrongly and of the process which has been followed to verify the complaint.
- The respondent must be told how to perform or act correctly.
- The respondent may be directed to undergo specified counselling, or counselling being provided for the complainant and/or respondent.

In considering the appropriate course of action, the General Manager shall:

- Consider how best to remedy the harm done to the complainant as a result of the behaviour of the respondent.
- Consider how the complainant can be guaranteed the right to work in a harassment-free environment.
- Ensure that the risk of any victimisation of the complainant is minimised.
- Consider the safety of other people/staff in view of the respondent's behaviour.
- Consider the appropriate redress if the complaint is found to be malicious and with no substance.

Mediation

In dealing with complaints, an option the General Manager may consider is whether the complaint may be resolved by mediation. In making that determination, the General Manager would have to have regard to the nature of the complaint, the circumstances of the complainant and the respondent and whether they would be prepared to undergo mediation

- An appropriate mediator will be selected for each case by the General Manager who then informs the complainant and the respondent. Where a party has strong grounds for

opposing the choice of mediator, an alternative mediator, acceptable to both parties will be appointed.

- The complainant and the mediator are to meet. The complainant has the right to request the presence of a support person.
- Where possible the mediator is to effect conciliation by any method which appears to be appropriate. These methods include:
 - Hearing the complainant alone and the respondent alone ('shuttle diplomacy').
 - Mediating between parties together.
- The outcome of such a meeting may result in a settlement of the complainant and could include such conditions as:
 - The respondent agreeing to apologise and giving an assurance that there will be no more repetition of the behaviour.
 - Requiring that the respondent undertake counselling or training.
 - Enabling the complainant to have counselling or training.
 - Remedying any detriment to the complainant's work performance in any way which is appropriate.
 - The respondent's personal file should contain a summary of the details of the complaint, the outcome, and details of any penalty. The complete record pertaining to the case will be kept under strict security by the General Manager with access restricted only to those with a 'genuine need to know'.
- The mediator will write a report for the General Manager which records the outcome of the mediation, but no other details
- The General Manager will be responsible for ensuring that the conditions of settlement are carried out by Anglican Action

The processes executed at each stage of a complaint are confidential and all parties involved may discuss them only with those persons who have a 'genuine need to know'.

It is considered important that procedures for handling allegations of harassment be flexible. It is recognised that behaviour leading to a complaint of harassment covers a wide range of human emotions, and similarly, that the appropriate steps which can be taken to resolve a complaint or censure a respondent are many and varied, and it would therefore be inappropriate to spell these out in detail.

Documentation

- If a complaint of harassment is made, the General Manager will file a critical incident report that records dates, times and brief account – but with no names. These records are to be held in a locked cabinet.
- If a complaint is substantiated and the respondent disciplined, the respondent's personal file should contain a summary of the nature of the complaint, the outcome and the penalty. The full record will be kept under strict security by Anglican Action's Administrator for as long as necessary, with access granted only to those with a genuine and legal 'need to know'.
- If the complaint has been made and found not to have substance all records will be destroyed by the Administrator within a reasonable period of time.

Harassment Act 1997

The procedures described in this part of the manual should provide an adequate response to any harassment encountered in the workplace. However, there are some situations in which harassment may extend to situations between employees outside the workplace, and this can have a severe effect on the person being harassed especially if the harassment involves threats against members of his or her family, as it well may in extreme cases.

In the interests of having a comprehensive policy, employees are advised that in extreme situations they may need to resort to remedies provided under the Harassment Act 1997. An employee would be well advised to seek legal advice if an application under this Act is considered necessary, but what follows is a brief outline of the Act's process.

Under the Harassment Act, 'harassment' is described as a pattern of behaviour against a person that includes the occurrence of any 'specified act' on at least two occasions within a 12month period. A 'specified act' includes:

- Following, stopping or accosting a person; or
- Interfering with a person's property; or
- Giving offensive material to a person, or leaving where it will be found or brought to the attention of the person being harassed; or
- Acting in a way that causes a person to fear for his or her safety.

To obtain what the Act refers to as a 'restraining order' from the District Court, an applicant will have to file an application which shows that the following is occurring, or has occurred:

- The respondent has harassed or is harassing the applicant; and
- The order is necessary to protect the applicant from further harassment; and
- The behaviour is causing, or is threatening to cause distress to the applicant; and

- The behaviour would have the same effect on a reasonable person in the applicant's circumstances; and
- The degree of distress caused by the behaviour justifies the making of a restraining order.

All these elements must be shown in the application. The Court will not grant a restraining order if any one of these elements is not present.

A restraining order prevents further harassment and can be enforced if necessary. The Act imposes a penalty of imprisonment for up to six months, or a fine of up to \$5000 for breach of a restraining order without reasonable excuse.

The Act will not allow a restraining order to be made where the applicant and respondent are part of a household or married, or in a de facto relationship. In those cases, an applicant would have to resort to the Domestic Violence Act 1995.

Workplace Bullying

Workplace bullying can be regarded as a type of harassment. This will be addressed separately as part of Anglican Action's policies.

Policy compliance

This policy complies with the Employment Relations Act 2000, Human Rights Act 1993, and Harassment Act 1997.

The section in the policy which describes the process for dealing with complaints, is based on guidance provided by the Society for Human Resource Management, available online at

https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms_000534.aspx