



THE LAW SOCIETY
OF NEW SOUTH WALES

COMMITTEE HANDBOOK

Committee administration and
responsibilities of members

Revised November 2016



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OF NEW SOUTH WALES

COMMITTEE HANDBOOK | REVISED SEPTEMBER 2016

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INTRODUCTION

The Law Society's committees are committees of the Council with powers, authorities and tasks delegated by the Council. They are established as a source of expert advice and assistance to Council, the Society and the profession and are convened annually on the basis of need. Functions vary somewhat from committee to committee but, typically, are as follows:

- a source of policy proposals and reform initiatives;
- a forum for consideration of practical issues and resolution of problems;
- a review body and commentator (in relation to legislation, discussion papers, reports, etc);
- a monitor of practice standards and advocate of ongoing training and skills development;
- a liaison body.

Committees have an important role and the way in which they perform is integral to the professionalism of Council's decision making and the performance of the Society as a whole. Members' participation is critical to the success of committees and is therefore welcomed. (In order to facilitate participation by country-based members, The Law Society of New South Wales offers assistance with travel costs incurred – refer protocol at Appendix 1.)

Committees address a range of issues and can be broadly divided into three categories:

- Policy and practice committees – for example: Business Law
Family Issues
- Liaison committees – for example: Office of State Revenue/Law Society Liaison
- Regulatory committees – for example: Fidelity Fund Management
Licensing
Professional Conduct

(Task forces or working groups are also convened where there are finite tasks to be undertaken or where there is an agenda which does not necessarily require the ongoing support of a committee.)

The Society ensures that the effectiveness of its committee network is maintained by

1. an annual assessment of the relevance of existing committees and the need for new committees;
2. providing committees with a balance of necessary skills and knowledge and a dynamic membership;
3. ensuring that committees are manageable in terms of numbers;
4. testing optional structures;
5. maximising profession-wide awareness of and interest in the committees and their role;
6. having a membership broadly representative of the Society's constituent groups and of relevant outside bodies; and
7. requiring that committees prepare papers in accordance with quality principles.

APPOINTMENT TO COMMITTEES

Committee appointments are made annually for a term of one year. The process is governed by guidelines based on principles of effectiveness and equal opportunity, and takes account of statutory requirements.

1. Eligibility

- 1.1 All NSW solicitors with current practising certificates are eligible for appointment to two of the Law Society's statutory committees – the Licensing and Professional Conduct Committees.
- 1.2 Solicitor appointments to other committees, including the Fidelity Fund Management Committee, are restricted to members of The Law Society of New South Wales.
- 1.3 Lay¹ applicants with the requisite skills are eligible for appointment to most Law Society of New South Wales committees.

2. Committee vacancies

- 2.1 Approximately 25 standing committees of the Council are convened each year and current guidelines set a maximum of 12 to 14 as the optimum committee membership. Although this varies in accordance with need, vacancies are limited and the number of applications always greatly exceeds available places.
- 2.2 Vacancies occur as a result of resignations as well as The Law Society of New South Wales' turnover policy.
- 2.3 Casual vacancies are filled by suitable applicants who were not appointed due to lack of vacancies at the time of application, or by a new nominee if the vacancy is the result of a departing representative.

3. Recruitment

(Dates are indicative only)

- 3.1 In September each year, the Society invites expressions of interest in the committees via a notice to the profession included in Monday Briefs and published on The Law Society of New South Wales website. All interested practitioners, including current committee members, are asked to complete a one-page form and to provide brief details pertinent to their eligibility for the appointments sought.
- 3.2 Expressions of interest in appointment are also sought from lay persons whose participation in the work of the committees may be required under the Legal Profession Uniform Law (NSW) or who have particular skills and expertise useful to the work of other committees.

4. Selection process

(Dates are indicative only)

- 4.1 During November, an Executive Panel comprising the President Elect (Chair), President, Junior Vice President, a non-Executive Councillor rotated annually, and supported by staff is convened to carry out the selection process.
- 4.2 When making its selections, the Panel takes into account, as far as is feasible, the balance on the committee in terms of relevant expertise, representation of the Society's constituent groups and outside organisations, and gender.
- 4.3 Members are advised of the outcome of their applications during December.

5. Chair

- 5.1 The best candidate will be the Chair, whether he/she is a Councillor or non-Councillor. Where a non-Councillor is appointed Chair, a Councillor is appointed a member of the committee.

1. According to the legal profession legislation (as defined in the *Legal Profession Uniform Law Application Act 2014*, a lay member is a person who is not an Australian lawyer (i.e. has not been admitted in Australia).

6. Committee membership

- 6.1 In addition to members selected from the legal profession, committees may also include representatives of outside bodies such as government departments, the courts, other professional associations and so on. This provides committees with a range of relevant perspectives and expertise on matters under consideration.
- 6.2 A number of committees also have lay members appointed from among those who have submitted expressions of interest.

7. Period of appointment

- 7.1 Committee members are appointed for one calendar year, but may have up to three consecutive appointments.
- 7.2 Reappointment is not automatic. It depends on a number of factors including the member's contribution to the work of the committee (see "Responsibilities of Committee Members", p.7).

8. Reappointment

- 8.1 In order to allow as many interested Society members as possible to serve on committees and to facilitate the regular introduction of new ideas, tenure is generally limited to a maximum of three consecutive years.
- 8.2 Committee tenure can be extended to a maximum of five consecutive years if, at the time of selection, the Executive Panel is satisfied that an extension beyond the preferred three-year tenure is justified.
- 8.3 In order to facilitate ongoing membership of practitioners with unique expertise or skills, where appropriate committees are allowed two quarantined positions – that is, positions free of any tenure restrictions.
- 8.4 Periods of appointment of representatives of outside bodies are subject to consultation from time to time with the nominating body.
- 8.5 Tenure restrictions do not apply to lay members fulfilling a role required under the Act.
- 8.6 Chairs are appointed to Policy and Practice and Liaison Committees for a maximum period of four years.

9. Termination of appointment

- 9.1 A member is free to resign his/her committee appointment at any time. (See also clause 7, "Responsibilities of Committee Members", p. 8).
- 9.2 In the absence of extenuating circumstances, a member's appointment can be terminated by the President of The Law Society of New South Wales if he/she has failed to attend three meetings and/or is regularly unable to complete allocated tasks (see clause 3.2, "Responsibilities of Committee Chairs", p.7).
- 9.3 A committee member's appointment will be terminated by the President of The Law Society of New South Wales if his/her practising certificate is cancelled or suspended as a consequence of a regulatory issue.

10. MCLE Units

- 10.1 Refer to Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015.

8.1.4 membership of a committee, taskforce or practice section of a professional association, designated local regulatory authority or the Law Council of Australia or of other committees, provided that the solicitor regularly attends its meetings, if the work performed on the committee, taskforce or practice section is of substantial significance to the practice of law and is reasonably likely to assist the solicitor's professional development.

9.1 CPD unit means:

9.1.3 in relation to a CPD activity referred to in rule 8.1.4, two hours of the activity.

9.2 in calculating the relevant CPD units of CPD activity in respect of a CPD year, the total must not include:

9.2.3 more than 3 CPD units of CPD activity referred to in rule 8.1.4.

COMMITTEE MEETINGS

1. Most Law Society of New South Wales committees meet monthly or bimonthly. Some meet more often (for example, the Professional Conduct Committee meets fortnightly), and others less often.
2. Meeting schedules for the year are settled during January and circulated to members.
3. Meetings are held at The Law Society of New South Wales' premises, 170 Phillip Street, Sydney, generally between 12.00 noon and 2.00 pm if possible, or outside business hours.
4. Duration of meetings is approximately 1.5 hours.
5. The quorum for all committee meetings is three. In the case of statutory committees, there are particular requirements under the Legal Profession Uniform Law (NSW) regarding membership and meetings.

The following sections on responsibilities provide additional information in relation to administrative matters associated with committee meetings.

RESPONSIBILITIES - GENERAL

1. Confidentiality

- 1.1 All committee members are expected to observe strict rules of confidentiality with respect to committee business. They must be conscious that from time to time
 - they may be given the opportunity to consider and comment on highly sensitive documents relevant to the committee's specific field released to the Society by government and other authorities;
 - they may also be given the opportunity to consider draft policy proposals intended for debate within the committee which should not be presumed to reflect approved Law Society of New South Wales policy relevant to the committee's specific field;
 - they may have before them information which may affect the reputation and livelihood of solicitors and other members of the community.
- 1.2 Any breach of confidentiality could materially affect individuals; or damage the trust which exists between The Law Society of New South Wales and a number of institutions and organisations; or create false impressions about Law Society of New South Wales policy. It is therefore the responsibility of all committee members to maintain the security of business papers with which they have been provided and to treat as strictly confidential any information to which his or her membership of a Society committee has provided access.
- 1.3 Where a committee member has been appointed to a Policy & Practice committee as a representative of another organisation, including Young Lawyers –
 - the requirement for confidentiality is not intended to prevent the representative member from reporting to his/her organisation general information about the committee's activities. If the representative member wishes to make a more detailed report on a particular issue, he/she should check with the committee's policy lawyer;
 - the representative member must maintain the confidentiality of all documents circulated to committee members by Law Society staff or other committee members, including draft submissions, agendas and minutes. If a representative member believes it would be beneficial to share a document with his/her organisation, a request should be made to the committee's policy lawyer.
- 1.4 The provision made at 1.3 above does not apply to the Law Society's regulatory committees (including Ethics and Costs) where strict confidentiality must be maintained at all times. In particular, the confidentiality provisions of the Legal Profession Uniform Law (NSW) apply to the discharge of statutory responsibilities.

2. Powers and authorities

- 2.1 The powers and authorities of the Society's committees are delegated by the Council. It is the responsibility of all committee Chairs and members to act within the parameters of these delegated powers and authorities.

3. Media

- 3.1 Only The Law Society of New South Wales' President and the Chief Executive Officer are authorised to speak to the media on behalf of The Law Society of New South Wales. If speaking to the media, committee members must not imply or allow it to be inferred that they are speaking on behalf of The Law Society of New South Wales or its committees. The only exception to this is if they have the specific authority of the President or the CEO to do so.
- 3.2 Any enquiries concerning The Law Society of New South Wales that are raised with committee members directly should be passed in the first instance to the Society's Media and Public Relations Manager on 02 9926 0288.

4. Tasks

- 4.1 Committees' primary responsibilities for the year are tasks determined by the needs of Council. Some tasks are included in the directives approved by Council in February each year and others arise during the year.

5. Participation in the work of the committees

- 5.1 Membership of the Society's committees is voluntary and unpaid. However, the value of committees' contribution to the profession is a product of members' commitment to the tasks at hand.

6. Copyright

- 6.1 The Law Society of New South Wales will be the sole and exclusive owner throughout the world in perpetuity of all materials, including all papers and recordings and including all intellectual property rights in such materials, prepared for it by committee members as part of their committee responsibilities including for the following purposes:
- to reproduce such materials; and
 - to commercially exploit such materials, including by way of sale or hire.
- 6.2 Committee members will sign any documents which The Law Society of New South Wales may request to confirm the assignment to The Law Society of New South Wales of copyright in the materials.

7. Quality principles

Documents to be submitted to Council or to outside bodies must be in accordance with the Law Society's commitment to quality principles. Adherence to this guideline is the shared responsibility of committee Chairs, members and staff.

7.1 Content

Reports and submissions to Council should be clear and concise in terms of –

- recommendations
- the context in which these should be considered
- options and the implications of adopting these, including financial and other impacts, and associated risks
- rationale for resolutions sought
- implementation of strategies and responsibilities

See appendix 2 for the format in which papers to Council should be prepared.

7.2 Timeframe

Lengthy or complex papers to Council should be prepared in time for circulation to Councillors with the first drop of Council meeting business papers one week prior to the meeting date.

7.3 Form

A memo to Council should be in the approved form set out in this Handbook (see Appendix 2).

7.4 Reporting responsibilities

Each committee is to report monthly to Council.

RESPONSIBILITIES OF COMMITTEE CHAIRS

The Chairs of the committees are accountable to the Council for the output of those committees. It is the responsibility of the Chair to work with committee staff in relation to procedures to assist the efficiency and productivity of the committee. These should include the following:

1. Time commitment

- 1.1 Chairs must be prepared to commit a minimum of 10 hours per month for each committee and advise the President of the need for a replacement if they are unable to meet this commitment.
- 1.2 Management of The Law Society of New South Wales will arrange an induction/training session to be attended by all Chairs in January each year, session topics to include the conduct of meetings, monitoring of performance, relevant procedures and the Committee's advisory role to the President of The Law Society of New South Wales.

2. Annual directive

- 2.1 The committee's annual directive should comprise viable objectives, the achievement of which is capable of measurement.
- 2.2 The committee's program for the year comprises the means via which it meets those objectives and includes tasks determined by Council.
- 2.3 This combined document is to be settled by the staff officer with the committee Chair in consultation with the President if necessary and submitted to the Council for approval at its February or March meeting as part of its directives to committees.

3. Measures of performance

- 3.1 The committee Chair and responsible staff officer are responsible for monitoring the committee's achievements – such as completion of timetabled tasks, development and progress of committee agenda, and implementation of objectives.
- 3.2 Measures for assessing the performance of committee members include meeting set deadlines, record of attendance at meetings and general contribution to the work of the committee.
- 3.3 The President of The Law Society of New South Wales' approval can be sought to replace a committee member who is regularly unable to attend meetings and/or complete allocated tasks.

4. Meeting procedures

- 4.1 Commence meetings promptly at the scheduled times.
- 4.2 Allow committee members' views to be heard to the fullest extent possible.
- 4.3 Give clear directions to the responsible staff officer in relation to resolutions adopted.

RESPONSIBILITIES OF COMMITTEE MEMBERS

It is the responsibility of Committee appointees:

1. to inform themselves fully of the committee's mission/objectives, its tasks and agenda issues;
2. to be in a position to devote approximately one day per month to the work of their committees;
3. to attend meetings regularly or, if absence from a meeting is unavoidable, to inform the responsible staff officer in advance of their inability to attend;
4. to come to meetings well prepared with respect to agenda issues;
5. to participate fully in decision making on the direction the submissions and work of the committee will take, through the expression of their considered views on the matter being discussed; and by exercising where relevant the right of all individual members to cast his or her vote on those matters put to the vote in committee;
6. to inform the Chair of a conflict of interest or potential conflict of interest that may occur where personal interests or those of the appointee's firm could affect or be seen to affect the appointee's recommendations or decisions;
7. to undertake tasks requested by the Chair and/or the responsible staff officer, especially - although not exclusively - in areas in which the member has particular expertise, and to meet the agreed deadlines for completion of those tasks. From time to time members are asked to prepare submissions and comments at short notice;
8. to offer his or her resignation from the committee should he or she be consistently unable to meet these responsibilities due to work or other commitments. (Members who are absent for three meetings or more without a leave of absence may be invited to resign.)

RESPONSIBILITIES OF STAFF OFFICERS

1. Committee administration personnel

- 1.1 The staff member responsible for the work of a committee may be either a solicitor or a non-solicitor with other relevant experience.

2. Responsibilities

- 2.1 The responsibilities of these personnel are -
- to perform secretariat duties for their committees;
 - to raise issues for the committee's consideration;
 - to undertake appropriate research;
 - to prepare draft recommendations, proposals and submissions for the committee's consideration;
 - to undertake other tasks as directed by the Chair.

3. Tasks

3.1 Contributions to the committee's agenda

- Keep abreast of developments of interest to the committee through, for example
 - liaison with staff of other committees, political staff and bureaucrats, relevant outside bodies and individuals;
 - perusal of material received by the Society;
 - current knowledge of Society policy issues;
 - research.
- Include relevant issues on the committee's agenda.

3.2 Facilitating committee discussion and decision making

- Provide a focus for committee discussions by
 - developing views on matters to be discussed;
 - preparing executive summaries of lengthy documents;
 - drawing to the committee's notice aspects of reports, etc which require particular attention;
 - drafting recommendations in the form considered appropriate (letters, reports, proposals, etc) where a Society response is required.

3.3 Meeting arrangements

- Establish meeting dates, times and venues for the new year and circulate schedules to all committee members as soon as practicable.

3.4 Agendas and business papers

- Develop agendas and prepare and assemble papers for each meeting
- the extent of consultation with the committee Chair on this task is the choice of individual Chairs;
- agendas must be manageable in terms of length.
- Dispatch agenda papers seven days prior to the meeting date
- late dispatch of papers and tabling of papers are to be avoided where possible.

3.5 Meeting outcomes

- Take notes of the meetings: the essential content of the outcomes comprises agreed actions and brief background to these actions;
- Circulate outcomes with the papers for the next meeting.

3.6 Circulation of agendas, business papers and minutes

These are circulated to -

- the committee Chair and all committee members
- any other designated members of staff

3.7 Action arising from meetings

- Follow up action items with each committee member who agreed to take responsibility for a particular item.
- Take action for which the staff member is responsible, including preparation of memoranda to Council and other tasks allocated by the committee Chair.

3.8 Memoranda to Council and submissions to outside bodies

- Prepare memoranda and submissions in accordance with quality principles.
- Memoranda to Council are to be in the attached form (Appendix 2) and a separate memorandum is to be prepared for each topic.
- Give notice to the Principal Executive Assistant of items proposed for inclusion on the Council agenda in accordance with the schedule of Council meeting dates and due dates for papers published on the intranet.

SUB-COMMITTEES: ROLE AND FUNCTIONS

Set out below is an overview of the role and functions of sub-committees convened from time to time by the Law Society's 19 policy and practice committees.

1. Purpose

- 1.1 Committees may utilise sub-committees in the way most appropriate for their individual work programs. Some committees choose to establish standing sub-committees which may be in operation for the whole year while others prefer a system of ad hoc sub-committees formed to execute specific tasks. Some committees do not require sub-committees for their particular activities.

2. Scope and number

- 2.1 The scope and number of sub-committees convened from time to time will be determined by the committee Chair and policy lawyer for the committee. New sub-committees may be convened in response to legislative or other reform initiatives from existing committee members.

- 2.2 The number and role of sub-committees should be reviewed by the Chair and the policy lawyer and discussed with the Director, Policy and Practice Department, The Law Society of New South Wales at the commencement of the committee recruitment period each year.

3. Role

- 3.1 Sub-committees are subsets of the committee and have no separate role or authority to act outside normal committee processes. The members of each sub-committee will perform their role as committee members as described in this Handbook and as set out in this section. This includes the functions, in relation to their particular sub-committee areas, as listed on page 1.

4. Sub-committee operation

- 4.1 Each sub-committee may determine, by agreement of its members, how it proposes to deal with its committee tasks depending on the particular task, the timeframe and the preference of sub-committee members. Options include holding meetings in person, in which case the policy lawyer can assist by arranging to book Law Society of New South Wales meeting rooms if required, or by teleconference or by email.
- 4.2 The policy lawyer should attend subcommittee meetings unless otherwise agreed by the policy lawyer and Chair.
- 4.3 Where meetings of a sub-committee occur in the absence of the policy lawyer the sub-committee will provide a short report of the meeting and its outcomes to the Chair and the policy lawyer as soon as practicable after the meeting.

5. Reporting

- 5.1 To allow the sub-committees to function effectively, it is necessary for each sub-committee to report regularly to the Chair on any ongoing actions, copying the policy lawyer. The Chair or policy lawyer will, if considered appropriate, circulate any written communications, including emails to the whole committee.
- 5.2 Each sub-committee must report to the committee at each committee meeting on any actions or developments since the last committee meeting.

6. Sub-committee chair/spokesperson

- 6.2 The Chair may appoint a sub-committee Chair or spokesperson on an annual basis or in relation to a particular issue or task. The sub-committee Chair or spokesperson should report verbally or in writing to the committee at each committee meeting.

7. Joint sub-committees

- 7.1 There may occasionally be a proposal to convene a joint sub-committee made up of members of two or more committees. These are dealt with on an ad hoc basis and would not normally be considered necessary, for example, to draft a joint submission, where it is more common for each committee to provide comments which are then included in the joint submission co-ordinated by the relevant policy lawyer.
- 7.2 Where a joint sub-committee is formed, each contributing committee should receive regular reports on any actions or developments. The policy lawyer assisting the sub-committee will be able to advise on this process. Any proposal for the appointment of a joint sub-committee Chair should be considered by the Chairs of the contributing committees with the advice of the policy lawyer.

8. Queries

- 8.1 Any questions about the scope or operation of sub-committees should be directed to the committee's policy lawyer.

APPENDIX 1

Reimbursement of costs for country based committee members

Cost calculations

1. Country based committee members are able to claim reimbursement of expenses incurred in calendar year by travel as follows:
 - return road travel x 11 (the maximum number of meetings commonly scheduled annually for committees),

or

 - refundable return economy air fares from the member's region x 11

or

 - return train travel

or

 - a combination of the above over the year
2. The road travel claim per meeting is calculated at 66 cents per km for the return road distance between Sydney city centre and the member's country centre. This is in accordance with current Australian Taxation Office recommended cents per km. A single rate of 66 cents per km is used for all motor vehicles for the 2016-2017 income year. The Commissioner of Taxation will determine the rate for future income years.
3. The air fares should be the cheapest economy fares offered by either Qantas "flexi saver", Rex "RexBiz" or Virgin.
4. Additional assistance capped at \$225 per night is offered in respect of accommodation costs subject to the following conditions:
 - the member is domiciled more than 150 km outside Sydney and has travelled by either rail or air to the committee meeting;
 - return rail or air travel is not available due to the late conclusion of the committee meeting;
 - when the meeting schedules are circulated, the member advises the Principal Executive Assistant at the Law Society that he/she is likely to claim assistance for accommodation during the year.
5. Teleconferencing (for example, in the case of Rural Issues Committee meetings) will be utilised where feasible.

Claiming reimbursement

6. Claims can be made on either a per trip or a per annum basis.
7. Claims are to be forwarded to The Principal Executive Assistant and must state the name of the committee and the dates of the meetings against which travel assistance is being claimed.
8. For road travel claims, no additional information is required.
9. For air travel and accommodation claims, tax invoices must be provided with each claim to allow the Law Society to claim input tax credits, together with receipts where necessary to validate claims made. Practitioners may either
 - submit a bill as individuals to the Law Society (if the practitioner has personally incurred the air fare)

or

 - submit the firm's tax invoice (if the travel costs are incurred by a firm).
10. Receipts or tickets are to be provided with claims for travel by taxi (e.g. to and from the airport) or by train and for parking.

APPENDIX 2

Memorandum to council

TOPIC: ##

FROM: (Committee/Task Force/Other)

DATE: ##

Objective(s) and time limits

(eg. to inform government of the Law Society's position on the proposed ... legislation; or to seek amendment of the Legal Profession Uniform Law (NSW) for the purposes of ...; etc)

Resolution(s) sought

Background

Existing Society policy

(eg. international practice guidelines adopted by Council on (date))

Associated policy areas

(eg. Aboriginal justice; or consumer rights; etc)

Overview/summary of issues

(ie. main issues addressed by the submission/letter/report - in point form)

Financial implications

(Where applicable, indicate the source of funding for any programs/activities proposed, viz: membership fees, licensing fees, or Public Purpose Fund.)

Confidentiality

(Level of confidentiality - "full", "partial" or "confidentiality not required" - to be recommended by author.)

Risk assessment

(Risks associated with recommended position/action and options.)

Public Relations Implications/PR Action Required

(eg. nil or positive or negative implications for image of Society and/or profession; or initiative should be promoted by way of media release; or no public comment to be volunteered but briefing paper should be prepared in case comment sought; etc)

Attachments

Person responsible for action required to execute resolution

Inclusion in Law Society Journal

(Yes/no)

(Signature)

(Responsible Policy Lawyer/Administrative Officer for ... Committee)

APPENDIX 3

Appropriate Workplace Behaviour Policy

Policy Principles

The Law Society of New South Wales strives to attract and retain the most qualified employees by taking steps to:

- provide equal opportunities with respect to compensation, benefits, promotions, development and other employment conditions; and
- promote a safe, healthy and productive working environment for all employees.

The Law Society of New South Wales requires all members of staff, whatever their level of responsibility, to promote equality of opportunity by making decisions on the basis of merit not irrelevant considerations, and respecting diversity.

The Law Society of New South Wales also aims to create a work environment where staff are treated with respect regardless of their personal characteristics, and which is free from discrimination, harassment and bullying. Discrimination, vilification, harassment (including sexual harassment), bullying and victimisation are unacceptable and will not be tolerated by the Law Society of NSW.

Scope

Who does the Policy apply to?

This Policy applies to all employees (permanent, casual and temporary), agents and contractors of the Law Society of New South Wales, collectively referred to in this Policy as ‘workplace participants’.

Where and when does the Policy apply?

This Policy extends to all places where work is performed beyond The Law Society of NSW’s premises and outside normal working hours, including:

- public/common areas such as lifts and foyers;
- other workplaces such as supplier or client premises;
- work-related travel; and
- work-related functions, for example lunches, conferences, Christmas parties, after-work drinks and client events.

Inappropriate behaviour may occur in internal and external communication of different types, including:

- verbal communication in person or over the phone;
- written communication such as letters, notes and faxes; and
- electronic communication such as email, text or instant messages and on-line social media/networking forums: Facebook, LinkedIn, Twitter etc.

This Policy applies to all areas of employment, including recruitment, terms and conditions of employment, promotion, transfer, training, leave and termination of employment. Workplace participants must also not engage in any unlawful conduct in the course of providing services to clients of the Law Society of New South Wales.

What type of behaviour is inappropriate?

Under State and Federal legislation and this Policy, the following types of conduct are unlawful and strictly prohibited:

- discrimination
- workplace harassment
- sexual harassment
- victimisation
- vilification
- bullying

It is important to note that in some circumstances, workplace participants can be individually sued for their inappropriate workplace behaviour. Workplace participants who aid, abet or encourage other persons to engage in unlawful conduct can also be personally liable. In circumstances where a workplace participant’s behaviour may involve a breach of the criminal law, the Law Society of New South Wales may also be obliged to notify the police or other relevant government authority.

Discrimination

Discrimination occurs when a person is treated less favourably in their employment because they have a certain attribute that is protected by law. Discrimination generally arises from stereotypes or assumptions about a person who has that attribute.

There are a number of protected attributes under Federal and NSW laws, including the following:

- sex
- marital/domestic/relationship status
- religion
- Carer/family responsibilities
- sexual orientation/preference, gender identity and intersex status
- disability, including physical, mental and intellectual disability
- age
- HIV/AIDS
- political opinion
- pregnancy (including potential pregnancy) and breastfeeding
- race (including colour, nationality, descent, ethnic, ethno-religion or national origin)

These grounds apply whether the person has the attribute now or had it previously, or where they are presumed to have it. Discrimination may also occur where there is a condition, requirement or practice which appears to be the same for everyone, but in fact disadvantages someone with a protected attribute, and the condition, requirement or practice is unreasonable.

A person can unlawfully discriminate against another even if they did not intend to do so, if they treat that person less favourably because of one of these protected attributes.

Examples of Discrimination

- failing to offer training to an older worker because you assume they will retire soon
- failing to give a female employee a promotion because she has children or is pregnant
- excluding a colleague from social functions because of their religion

Vilification

Under Federal and NSW laws, vilification is a form of discrimination involving a public act which incites hatred, severe contempt or severe ridicule of a person or group on the basis of race, homosexuality, transgender, transsexuality or HIV/AIDS. A public act can include communication to the public in the media or on the internet through Facebook or Twitter.

Serious vilification threatening or inciting physical harm to a person or group because they possess one of these characteristics is an offence under NSW laws and will be dealt with accordingly by the Law Society of New South Wales.

Harassment

Harassment is a form of discrimination. It may consist of unwelcome, offensive, belittling or abusive behaviour towards another because they possess one of the protected characteristics. For example, harassing someone by making an insulting joke or derogatory remark about their race, age, religion, sexual orientation, disability etc is less favourable treatment of them than someone who does not have that characteristic and therefore constitutes discriminatory treatment.

Harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other workplace participants can also be unlawful. The fact that no offence was intended, or that the behaviour was in jest, is not a defence.

Examples of workplace harassment

- racial or culturally insensitive jokes or nicknames
- offensive comments about a person's sexuality
- teasing a person about their disability

Sexual Harassment

Sexual harassment is unwelcome, unwanted or uninvited conduct of a sexual nature that makes a person feel offended, humiliated or intimidated. Behaviour can amount to sexual harassment even if the person did not intend to offend, for example, because they were telling a joke. However, conduct will not be sexual harassment if a reasonable person would not have anticipated the possibility the conduct would offend, humiliate or intimidate the other person.

Sexual harassment is not behaviour which is based on mutual attraction, flirtation or friendship. If the behaviour is consensual and reciprocated, it is not sexual harassment.

Examples of Sexual Harassment

Physical

- intimate physical contact, such as pinching, touching, grabbing, kissing or hugging
- sexual assault

Non-Physical

- staring or leering at a person or at parts of their body
- persistent requests to go out where they are refused
- suggestive comments about a person's body or appearance
- sexual jokes or comments
- sexually explicit conversations
- displays of material containing nudity/semi-nudity or otherwise of a sexual nature such as posters, photographs, postcards, screen savers etc
- viewing, accessing, downloading or transmitting nude/semi-nude, sexually explicit, pornographic or other material of a sexual nature using the internet or social media
- sending sexually suggestive or explicit emails, attachments or text messages
- sexually explicit gifts e.g. 'Kris Kringle' gifts

Both men and women can experience sexual harassment at work. Same-sex harassment is also covered. Often sexual harassment involves a pattern of unwelcome behaviour. However, one act is sufficient to constitute sexual harassment in some circumstances.

Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a 'sexually hostile' working environment for other workplace participants can also be unlawful – for example, overhearing a colleague talking about sex, telling sexual jokes or making innuendoes.

In some circumstances, workplace participants can be individually sued for their behaviour and comments and ordered to pay damages. Physical sexual harassment can constitute criminal conduct such as assault and indecent exposure.

Bullying

Bullying is repeated, unreasonable behaviour directed towards an individual or group that creates a risk to health and safety (physical or psychological). Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, intimidate or threaten another in the workplace. Bullying may be perpetrated by a colleague(s), a manager or even a client. It includes behaviour that degrades or undermines others in the workplace.

Bullying behaviour may also be workplace harassment (based on a person's protected characteristic such as race, sex, age etc) and/or sexual harassment. Or it may simply be based on personal dislike or animosity. A person can be bullied for any reason. It can occur between a worker and a manager, or between co-workers/colleagues.

For behaviour to constitute bullying it must be repeated. A one-off incident would not normally constitute bullying, although single incidents may still present a risk to health and safety. There is no requirement that the person deliberately or intentionally bully the person, however, intention may be relevant in assessing the severity of the conduct.

Examples of Bullying

- physical assault or threats
- abusive, insulting or offensive language or comments, or name calling
- teasing, humiliating comments or practical jokes
- deliberately excluding or isolating someone/ignoring them
- belittling opinions or unjustified criticism, particularly where communicated in front of others
- initiation rites
- deliberately withholding important information vital for effective work performance
- intimidating actions
- rumours, gossip and innuendo
- encouraging other employees to participate in the bullying behaviour
- aggressive behaviour such as shouting/yelling, throwing objects or slamming doors
- allocating meaningless or impossible tasks to carry out

What is not Bullying?

Differences of opinion and robust debate are not bullying. Neither is interpersonal conflict, although conflict that is not resolved may escalate into bullying and should therefore be resolved wherever possible.

It is also not bullying for a Manager or Supervisor to counsel a workplace participant about their performance or conduct in a reasonable manner. Performance management and/or counselling are a necessary part of ensuring that workplace participants meet required standards of work and behaviour. While

receiving negative feedback may be stressful, it does not in itself constitute bullying. Provided they are carried out in a reasonable manner, other examples of reasonable management action include:

- transferring, demoting, counselling, warning, disciplining or dismissing an employee;
- setting performance goals, expectations and deadlines;
- refusing requests or making decisions not to provide a benefit;
- issuing work directions and orders;
- allocating work tasks consistent with business needs and systems.

Victimisation

If a workplace participant feels they have been subjected to unlawful conduct, they are encouraged to raise the issue using the complaint procedure outlined in the Staff Complaints Resolution Policy. It is unlawful to retaliate against or treat someone detrimentally because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of discrimination, harassment or bullying.

Workplace participants must not retaliate against a person who raises a complaint or subject them to any detriment. Doing so may result in disciplinary action up to and including termination of employment.

Further, the Law Society of New South Wales will not treat a workplace participant less favourably in their employment or engagement because they have made a complaint in good faith. However, if a person makes a false complaint in bad faith, that person may be disciplined, including termination of employment or contract.

Breach of Policy

All workplace participants are expected to comply with the standards of behaviour contained in this Policy, as varied from time to time. A breach of a workplace participant's obligations under this Policy may result in disciplinary action, up to and including immediate termination of employment. In the case of agents or contractors, their contract may be terminated or not renewed.

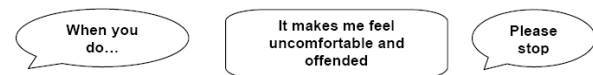
If you observe someone else at work being subjected to behaviour that is potentially in breach of this Policy, the Law Society of New South Wales encourages you to report it, particularly where it involves serious

harassment or bullying that creates an unsafe work environment.

What should you do if you have a concern about inappropriate workplace behaviour?

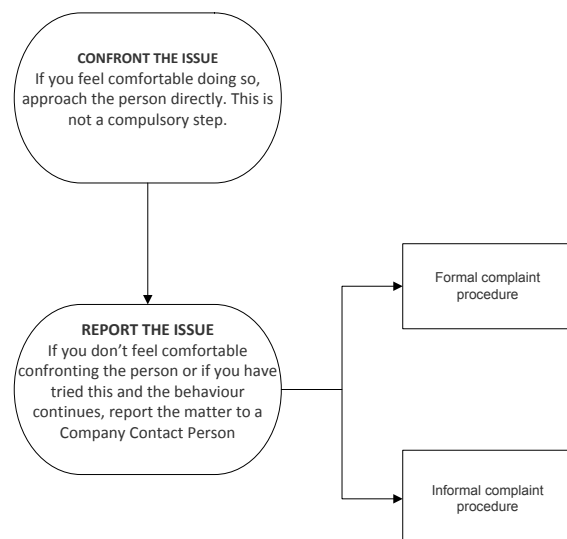
If you feel that you have been subjected to any form of inappropriate behaviour in breach of this Policy, you should not ignore it.

As an initial step, if you feel comfortable doing so, address the issue with the person concerned. You should identify the inappropriate behaviour, explain that the behaviour is unwelcome and offensive and ask that the behaviour stop. It may be that the person was not aware that their behaviour was unwelcome or caused offence. For example, you could say:



This is not a compulsory step. If you do not feel comfortable confronting the person, or you confront the person and the behaviour continues, you should report the issue under the Staff Complaint Resolution Policy. The Law Society of New South Wales encourages all workplace participants to raise issues of conduct in breach of this Policy, and will treat all complaints seriously.

Workplace participants are able to obtain professional, confidential support by accessing the Law Society of NSW's Employee Assistance Programme. This is a confidential service and is not divulged to the Law Society of NSW. Details are available on the intranet or from Managers and the Human Resources Department.



Workplace Participant Acknowledgement

You are required to review this Policy and keep yourself updated as to any changes that may be made to it from time to time. If you are unsure about any matter covered by this Policy, you should seek the assistance of your Manager or Human Resources.

This Policy does not form part of any contract between you and the Law Society of New South Wales. Any reference to obligations or requirements of the Law Society of New South Wales in this Policy does not, and is not intended to, give rise to contractual obligations binding on the Law Society of New South Wales.

External Resources

The following bodies can provide further information:

Australian Human Rights Commission

www.humanrights.gov.au/
1300 656 419

NSW Anti-Discrimination Board

www.antidiscrimination.justice.nsw.gov.au
(02) 9268 5544

Fair Work Ombudsman

www.fairwork.gov.au/
13 13 94

Safe Work Australia

www.safeworkaustralia.gov.au/sites/SWA
1300 551 832

Workcover NSW

www.workcover.nsw.gov.au
13 10 50

The Law Society of NSW reserves the right to amend or replace this Policy at any time.

APPENDIX 4

Staff Complaints Resolution Policy

Policy Principles

The Law Society of New South Wales aims to create and maintain a harmonious and productive work environment, free from conflict and inappropriate workplace behaviour. However, disagreements and grievances will arise in any workplace. Where the problem cannot be resolved between the parties involved, this Policy provides for a fair process to manage complaints.

The Law Society of NSW seeks to handle complaints in a confidential, impartial and timely manner, taking reasonable steps to prevent victimisation against those who raise a complaint in good faith (or assist someone else to do so).

Scope

This Policy applies to all employees (permanent, casual and temporary), agents and contractors of the Law Society of NSW, collectively referred to as 'workplace participants'. Workplace participants can use this Policy to resolve a problem, concern or grievance (collectively referred to as a 'Complaint') during their employment or contract period that relates to work or the work environment. A Complaint may involve any of the following:

- manager, supervisor or other staff member;
- Law Society Council or Committee member;
- contractor/consultant;
- visitor to the workplace; or
- third parties dealt with in the course of performing work.

A Complaint can be made about an act, omission, decision or behaviour that a workplace participant considers is unfair, unlawful or in breach of a policy of the Law Society of NSW, for example:

- acting up opportunities
- promotions
- transfers
- leave allocation
- work allocation
- hours of work, rosters or overtime

- training and development opportunities
- the nature of supervision
- performance appraisal
- work environment
- workplace health and safety
- discrimination
- harassment
- sexual harassment
- bullying.

This Policy does not apply to complaints relating to the following:

- termination of employment, or termination or non-renewal of contract, of a workplace participant; or
- improper conduct within the meaning of the Law Society of NSW Whistleblower Policy.

What should you do if you have a Complaint?

Workplace participants who have a Complaint should not ignore it. The Law Society of NSW encourages all workplace participants to raise issues under this Policy and will treat all Complaints seriously. Accordingly, once a Complaint is made, the Law Society of NSW will deal with the matter appropriately in accordance with this Policy.

Step 1 - Address directly with the person concerned

Where possible, parties involved in a Complaint are encouraged to attempt to sort it out between themselves, as being closest to the source of the problem. As a first step, if a complainant feels comfortable doing so, he or she should address the issue with the person concerned. It may be that the person was not aware of the impact of their decision or behaviour. This does not mean that it is acceptable. However, it does mean that, in some circumstances, the issue can be resolved by simply advising the other person of the concern. They then have the chance to stop or to change what they have done or are doing.

This is not a compulsory step.

Workplace participants are able to obtain professional, confidential support by accessing the Law Society of NSW's Employee Assistance Programme. This is a

confidential service and is not divulged to the Law Society of NSW. Details are available on the intranet or from the Human Resources Department.

Step 2 - Escalate to Contact Person

If directly addressing the problem does not work, or if the complainant does not feel comfortable with this approach, the issue may be escalated to the following persons (referred to as 'Contact Persons'):

- their Manager;
- their Manager's Manager;
- Human Resources Representative.

There are some situations where a workplace participant may not want to take a complaint to their manager (for example if the complaint is of a sexual nature and the manager is of the other sex, or the complaint is about or directly involves the manager). If so, the complaint can be taken to an alternative Contact Person.

The Contact Person will seek the involvement/assistance of Human Resources in the resolution process as they consider appropriate.

What will the Contact Person do?

Given the need to maintain flexibility to resolve complaints, the action taken by the Law Society of New South Wales will depend on the particular circumstances. Normally, the following will occur (or something similar):

Discuss

The Contact Person will discuss the complaint with the complainant. They will explain the relevant steps that can be taken to address the complaint.

The Contact Person will generally need to meet with the complainant to discuss the complaint. A support person can attend the meeting.

Determine complaint process

The Contact Person will then determine the best way to deal with the complaint. There are two types of complaint procedures that can be used: informal and formal. The type of complaint procedure used will depend on the individual circumstances. In deciding on the best course of action, the Contact Person will consider the nature of the complaint and any other relevant factors.

Usually, the process will involve speaking with the person(s) against whom the complaint is made to obtain their account of events.

What happens under the Informal Complaint Procedure?

Under the informal complaint procedure there are a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case.

Possible options include:

- the Contact Person discussing the issue with the person against whom the complaint is made; and/or
- the Contact Person facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

The informal complaint procedure is more suited to less serious complaints that are unlikely to warrant disciplinary action being taken. In the informal complaint procedure there is no decision made about what did or did not occur, but rather, the Contact Person attempts to facilitate an outcome that is acceptable to all parties, including the Law Society of New South Wales.

What happens under the Formal Complaint Procedure?

The formal complaint procedure involves a formal investigation of the complaint. Formal investigations may be conducted by a Contact Person or a person from outside the Law Society of New South Wales (including legal representatives), appointed by the Law Society of New South Wales.

Where a complaint involves a disputed allegation that, if substantiated (proven), may result in disciplinary action, it will generally be dealt with in accordance with the formal complaint procedure.

An investigation involves collecting information about the complaint and then making a finding based on the available information as to whether it is more likely than not that the alleged behaviour occurred or did not occur. Once a finding is made, the Law Society of New South Wales will consider any outcomes arising from the Investigation.

If the Law Society of New South Wales considers it appropriate for the safe and efficient conduct of an investigation, workplace participants may be required not to report for work during an investigation. The Law Society of New South Wales may also provide alternative duties or work during an investigation. Employees will be paid their normal pay during any such period.

Are complaints confidential?

The Contact Person will maintain confidentiality as far as possible and therefore endeavour to limit disclosure of information about the Complaint to those who need to know. However, it may be necessary to disclose aspects of the Complaint in order to properly investigate or otherwise resolve the issue – for example, speaking with witnesses to determine what happened; to afford fairness to those against whom the Complaint has been made; and to senior management/external advisors. Where criminal conduct is involved the Law Society may need to notify appropriate authorities.

If a Complaint raises matters which if proven would constitute a breach of the law or policies of the Law Society of NSW, appropriate action in relation to the Complaint will be taken (including completing the Complaint handling process), irrespective of the wishes of the complainant or others.

All workplace participants who are in any way involved in a complaint procedure must maintain confidentiality, including the Complainant. This includes what the complaint is about and the identity of those involved. If a workplace participant breaches confidentiality, they may be subject to disciplinary action. Spreading rumours or gossip may also expose workplace participants to a defamation claim.

Workplace participants may discuss the complaint with a designated support person or representative. However, the support person or representative must also maintain confidentiality.

How long does the complaint process take?

Given the nature of Complaints and the need to maintain flexibility to resolve them, there is no set time frame for the complaints process. The Contact Person will commence the complaint handling process as soon as possible after a Complaint has been reported. The Complaint will be treated as a matter of priority in order to bring about a resolution as quickly as possible.

What if a Complaint has been made against me?

The Law Society of NSW seeks to handle complaints in accordance with the principle of impartiality by giving both sides an opportunity to provide their account of disputed events.

Workplace participants who have had a complaint raised against them are able to obtain professional, confidential support by accessing the Law Society of

NSW's Employee Assistance Programme. This is a confidential service and is not divulged to the Law Society of NSW. Details are available on the intranet or can be obtained from Human Resources.

Possible Outcomes

The possible outcomes will depend on the nature of the complaint and the procedure followed to address the complaint. The procedures outlined below are intended as a GUIDE ONLY to the possible outcomes which may be implemented. In every case, the actual outcomes and/or disciplinary procedure to be adopted will be a matter for the Law Society of NSW to determine, in consideration of the circumstances as a whole.

What are the possible disciplinary outcomes?

If an investigation of a Complaint results in a substantiated (proven) finding that a person has engaged in unlawful conduct or breaches of policy, that person may be disciplined. The type and severity of disciplinary action will depend on the nature of the conduct/breaches and other relevant factors concerning the employment or engagement of the person. Disciplinary action may include:

- a formal warning
- transfer to another area
- counselling
- suspension / termination of employment/ termination of contract

Where the investigation results in a finding that the person complained against has engaged in serious misconduct, this may result in instant dismissal. Agents and contractors who are found to have engaged in unlawful conduct and/or breach of policy may have their contracts with the Law Society of New South Wales terminated or not renewed.

Any disciplinary action is a confidential matter between the affected workplace participant and the Law Society of New South Wales.

Are there other non-disciplinary outcomes?

The Law Society of New South Wales may implement a range of other non-disciplinary outcomes to resolve a complaint, depending on the particular circumstances. Examples include:

- training to assist in addressing the problems underpinning the complaint

- monitoring to ensure that there are no further problems
- requesting an apology
- requiring an undertaking that certain behaviour stop
- changing work arrangements.

What if the Complaint is not substantiated?

If a Complaint is not substantiated (i.e. there is not enough proof of unlawful conduct or breach of policy), typically the following will occur:

- both parties will be informed that the Complaint could not be proven and the reasons why (for example, due to a lack of evidence)
- the standard of behaviour expected in the workplace will be explained to both parties
- whether there is a need for generic intervention (e.g. training for all staff) will be considered
- both parties will be warned about confidentiality and victimisation
- monitoring will occur

The Law Society of NSW reserves the right to adopt a different approach, as appropriate in the circumstances.

Frivolous or vexatious complaints

Raising a Complaint under this Policy is a serious matter, with potentially serious consequences for those involved. If a person makes a false complaint in bad faith (eg. making up a complaint to get someone else in trouble), that person may be disciplined, including termination of employment or contract. Such malicious complaints can also expose the complainant to a defamation claim. Further, if a person lodges an excessive number of complaints that the Law Society of NSW determines to be unfounded, they may be disciplined.

What to do if you are not satisfied with the outcome

If any of the parties to a Complaint are not satisfied with the way the Complaint was handled or the outcome of the process, they can contact the Chief Executive Officer who may then conduct a review. The Chief Executive Officer may nominate a senior management representative, human resources or an external person to conduct the review on their behalf.

The nominated person will be someone who has not previously been involved in the matter.

Depending on the circumstances, the person may conduct the review by examining the paperwork only. They may decide that the original decision as to outcomes should remain, or that it should be overturned. The parties will be advised of the outcome of the review and the decision in relation to the review will be final.

The Law Society of New South Wales' goal is to resolve issues internally wherever possible. Workplace participants may seek the assistance of an outside agency if they feel that their complaint has not been adequately addressed. Depending on the nature of the Complaint, the following bodies can provide further information:

Australian Human Rights Commission

www.humanrights.gov.au

NSW Anti-Discrimination Board

www.antidiscrimination.justice.nsw.gov.au

Fair Work Ombudsman

www.fairwork.gov.au

Safe Work Australia

www.safeworkaustralia.gov.au/sites/SWA

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This Policy does not form part of any contract between you and the Law Society of New South Wales. Any reference to obligations or requirements of the Law Society of New South Wales in this Policy does not, and is not intended to, give rise to contractual obligations binding on the Law Society of New South Wales. However disciplinary action including termination of employment or contract may be taken against any workplace participant who breaches this Policy.

The Law Society of NSW reserves the right to amend or replace this Policy at any time.

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