

Complaint Handling and Investigation Procedure – Sexual and Racial Harassment, Bullying and Discrimination

1. Purpose

This procedure outlines how NZ Comedy Working Group will deal with a complaint regarding discrimination, harassment, sexual harassment, bullying, vilification or victimisation.

2. Scope

This procedure applies to all persons performing work¹ at the direction of, in connection with, or representing or on behalf of NZ Comedy.

The Working Group encourages any worker, artist, producer or participant who believes they have been subjected to or have witnessed a worker being subjected to discrimination, harassment, sexual harassment or bullying to report the behaviour to one of the below representatives:

NZ Comedy Working Group
Donna Brookbanks
Amanda Kennedy
Livi Reihana
Justine Smith
Michèle A'Court
James Nokise
Lauren Whitney
Kirsty Hardwicke
Felicity Drace
Scott Blanks
Richard Carrington

NZ Comedy Safety Network
Bec Sandys
Eli Matthewson
James Roque
Natalie Samy
Hannah Campbell
Ben Hurley

¹ For the purposes of this document workers are defined as (but not limited to) persons working for the New Zealand Comedy Industry including performers (paid and unpaid), producers, venue staff, agents, managers, volunteers, staff, board members, technical crew and support crew including tour managers.

Bridget Davies
Jamaine Ross
Plus all members of the Working Group

The Working Group is made up of key industry leaders, and includes comedians, venue owners, producers and managers and organisations including the NZ Comedy Guild, the Classic Comedy Club & Bar, The NZ Comedy Trust (NZ International Comedy Festival), Notorious Management, and Comedy.co.nz productions.

Alongside the Working Group, is the NZ Comedy Safety Network – a wide circle of trusted comedians representing a range of age, experience, race, ethnicity and gender who people can safely report any complaints to. They will act as advocates and peer support for anyone who experiences harassment or abuse, and who can provide guidance to newcomers in the comedy industry.

The Working Group will usually deal with a complaint regarding discrimination, harassment, sexual harassment or bullying in accordance with this procedure. However, where it is considered appropriate to do so, the Working Group may deal with the complaint in an alternative way, in order to resolve the complaint in a confidential, efficient and sensitive manner. In those circumstances the Working Group will provide details of the process for dealing with the complaint that is fair procedurally.

All workers, artists, producers and participants must comply with the procedures set out in this document, which may be amended from time to time. While all workers, artists, producers and participants are required to comply with these procedures, these procedures are not incorporated as a term of any worker's contract and do not create any rights enforceable by a worker against the NZ Comedy Working Group. To the extent that there is an inconsistency between the law and this policy, the law will prevail.

3. Raising a complaint

3.1. Who can raise a complaint?

Anyone can raise a concern or complaint if they believe there has been a breach of NZ Comedy Working Group's *Preventing Sexual and Racial Harassment, Bullying and Discrimination Policy*.

A complaint may be raised by anyone who is experiencing or is a witness to discrimination, harassment, sexual harassment or bullying.

This Complaints Handling and Investigation Procedure only applies to complaints raised concerning a breach of NZ Comedy Working Group's policy on Preventing Sexual and Racial Harassment, Bullying and Discrimination.

3.2. How to raise a complaint

Workers, artists, producers and participants should raise any concerns or complaints with any of the representative listed in the contacts in clause 2, including:

- The NZ Comedy Working Group

- The NZ Comedy Safety Network
- Online complaints form

If the complaint is made to the Safety Network, the representative will then report to the Working Group. The Working Group will then lead the process described below.

If workers, artists, producers and participants do not feel comfortable raising a complaint with one of the representatives, they could seek independent legal advice or raise the complaint with one of the following organisations:

- Human Rights Commission;
- Ministry of Business, Innovation or Employment;
- The police (if the allegations are of a criminal nature such as physical or sexual assault, some instances of sexual harassment).

While workers, artists, producers and participants may choose to raise a concern or complaint with one of the organisations listed above, it is NZ Comedy Working Group's preference that any concern or complaint is raised internally with the appropriate person in the first instance (if safe to do so), so that it can be dealt with.

Workers, artists, producers and participants may raise concerns or complaints verbally or in writing. Depending on the nature of the complaint, the Safety Network or Working Group may ask the complainant to document the complaint in writing (e.g. in an email or using the complaint form).

In some cases, it will not be possible for the complainant to remain anonymous. Clause 5.2 outlines the possibilities and limitations around handling complaints anonymously.

4. Key considerations when dealing with complaints

4.1. Confidentiality

When a complaint is raised, the Working Group and Safety Network will maintain confidentiality to the maximum extent possible, taking into account its obligation to provide a safe work environment and to afford natural justice to those against whom a complaint is made (respondent).

Workers, artists, producers and participants who are directly involved in a complaint or an accompanying investigation (whether as a complainant, respondent, witnesses or support person) must maintain confidentiality.

4.2. Natural justice and impartiality

Where an allegation is made against another person, that person is entitled to be afforded natural justice – a right to have their side of the story heard and respond to those allegations.

When a complaint is raised, the Working Group will appoint someone (internal or external to the Working Group) to investigate the complaint. This person will collect and consider all relevant evidence before making a determination.

Complaints Persons are to remain impartial, as far as is reasonably practicable. If anyone on the Working Group has had a personal incident that may, or may be perceived to affect their judgement, they will remove themselves from any involvement in investigations.

4.3. No victimisation

Victimisation means adversely treating a worker, artist, producer or participant who has raised a complaint or has assisted someone in raising a complaint.

Victimisation is unlawful under the Human Rights Act and will not be tolerated within the NZ comedy industry. Any incidents of victimisation should be immediately reported to the Safety Network or Working Group.

A worker, artist, producer or participant who makes a complaint under this procedure will be treated with respect and the matter will be dealt with in the strictest confidence possible. The Working Group will take all reasonable steps so that no worker is treated poorly, victimised or disadvantaged as a result of:

- Making or intending to make a complaint;
- Providing information as a witness; or
- Providing support to a person who has made a complaint.

4.4. Availability of a support person

A participant in an investigation may wish to have a support person present during the process, such as another worker, a friend, family member or Guild representative. The support person should not be a party to the complaint or a witness to the behaviour that is the subject of the complaint. The support person may be the Contact Person from the NZ Comedy Safety Network.

A support person's role is to provide emotional support; they should not act as an advocate or speak for the participant. A support person is required to keep all details of the complaint and investigation confidential.

The participant should notify the Complaints Person, as soon as practicable, if they would like to have a support person present during an investigation. The participant should provide the Complaints Person with the details of the support person, so that the request can be considered. A request for a support person to be present will not be unreasonably refused. Reasonable efforts will be made to accommodate the availability of a participant's support person. However, if the support person's availability unreasonably delays the formal complaint process, the participant will be advised to nominate another support person.

If a participant does not request to have a support person present during meetings, this should be recorded as well as whether the participant was offered a support person.

5. Dealing with complaints

5.1. Deciding the most appropriate course of action

If a worker, artist, producer or participant believes they are experiencing discrimination, harassment, sexual harassment or bullying, and they feel comfortable doing so, they may wish to deal with the situation themselves – that is, the worker tells the other person(s) that the behaviour is unreasonable or unacceptable, they are offended by the behaviour and want it to stop.

In many cases, while it may be uncomfortable raising the issue directly with the person(s) concerned, explaining why the behaviour is unwelcomed and asking for it to stop will be sufficient, particularly if the person(s) was/were unaware of the impact of their behaviour.

If a concern remains unresolved or the worker, artist, producer or participant is not comfortable dealing with the situation themselves, the concern or complaint can be raised with any of the contacts from Clause 2, who will bring the issue to the Working Group.

Once a concern or a complaint has been raised, the Working Group will outline to the complainant the options available for dealing with the concern or complaint. Options include following NZ Comedy Working Group's internal informal or formal procedure, or raising the complaint with an external agency such as the Human Rights Commission, the Ministry of Business, Innovation or Employment, or the police if the allegations are of a criminal nature.

Informal procedures emphasise resolution rather than factual proof or substantiating a complaint. **Formal procedures** focus on proving whether a complaint is substantiated. A formal complaint procedure will be more appropriate where the alleged behaviour is of a serious nature and, if substantiated, would lead to disciplinary action (e.g. termination of employment, cessation of engagement, criminal disciplinary action).

It will not always be appropriate for the complainant to determine whether to use the informal or formal complaint procedure. For example, the Working Group may determine that the nature of the complaint is serious and warrants a formal investigation.

It is important to note that a worker, artist, producer or participant cannot 'own' a complaint. The NZ Comedy Working Group recognises that sometimes a worker may wish to inform the Working Group or the Safety Network of an issue or concern but not wish for either to take any action in relation to the issue or concern. However, when the Working Group or the Safety Network is made aware of an issue, **it may have a duty of care to act**, regardless of whether or not a worker has made a formal complaint, as other workers may be at risk.

5.2. Complainants wishing to remain anonymous

Where the complainant advises they wish to remain anonymous, the Working Group will seek to establish why the complainant does not want their identity disclosed. The Working Group will use its best endeavours to manage the complainant's concerns, while ensuring there is an appropriate balance in fairness to all parties concerned.

In some cases, it will not be possible for the complainant to remain anonymous due to the right of the respondent to natural justice and to know the nature of the allegation(s) being made

against them. While the complainant's wishes will be taken into account, they do not determine whether or how the complaint should be investigated. That is the responsibility of the Working Group. In this instance, the Working Group will ensure that the Complainant is kept informed and supported throughout the complaints process.

5.3. Dealing with complaints which may constitute a criminal offence

Some instances of unlawful conduct can also be criminal offences, including physical assault, sexual assault, stalking or cybercrime, which is where a carriage service is used to menace, harass or cause offence. This can include conduct that occurs over the phone, in text messages or online.

Where a complainant considers that the conduct involves a criminal offence, the Working Group will provide appropriate support to the complainant to report the matter to the police (or where they feel comfortable). In situations where the Working Group becomes aware of or has reasonable grounds to believe that a criminal offence has been committed against a child or young person, the Working Group has an obligation to, and will, report the matter to the police or relevant authority.

If a complainant does not wish to report the matter to the police, the Working Group will:

- respect this decision, unless the Working Group is required to report the incident;
- enquire whether the complainant would like access to counselling or other support;
- if appropriate, consider whether it is necessary to implement any changes to the workplace to provide the worker with a safe work environment, while the complaint is being investigated; and
- deal with the complaint consistent with the procedures outlined in this section.

5.4. Incident report

Where a worker, artist, producer or participant raises concerns with the Working Group or the Safety Network and it is determined by the Working Group that no action is required, as the situation has already been resolved or adequately dealt with, the Working Group may record details of the concerns. The Working Group will record essential information about the incident in a report including:

- time, date, location of the alleged incident;
- nature of the alleged incident;
- the people involved;
- what action was taken to resolve the alleged incident;
- why no further action was considered necessary; and
- that the matter was not investigated and no findings were made in relation to the alleged conduct.

If any representatives of the Working Group or the Safety Network become aware of an incident (e.g. unusual tension in the green room) and believes it is necessary, an incident report may be prepared.

The Working Group will only use this option if the incident is not serious and does not pose an immediate health and safety risk to workers.

Incident reports are confidential and will only be available to members of the NZ Comedy Working Group.

5.5. Informal complaint procedure

There is no one-size-fits-all response to deal with complaints informally. The most appropriate response for dealing with complaints informally will depend on each individual circumstance and the nature of the complaint.

5.6. When will a complaint be dealt with informally?

The Working Group may decide to deal with a complaint informally if:

- the complaint is of a less serious nature and can be most effectively dealt with informally;
- The Working Group considers the complaint can be most effectively dealt with informally and the complainant agrees;
- the complainant requests that the matter be dealt with informally and the Working Group considers this appropriate; and
- the complaint has arisen from a misunderstanding or lack of, or unclear, communication.

5.7. How will a complaint be dealt with informally?

Informal ways of dealing with complaints will emphasise resolution rather than factual proof or substantiating of a complaint and can include, but are not limited to the following actions:

- A direct private discussion is held or mediated between the complainant and the respondent (where the parties agree to participate);
- An impartial third person conveys information between those involved;
- An impartial third person helps those involved to talk to each other and find a resolution;
- A complaint is made, the respondent admits the behaviour, investigation is not required, and the complaint can be resolved through conciliation or counselling;
- The complainant wants to deal with the situation themselves but may seek advice on possible strategies from the Working Group;
- The complainant asks the Working Group to speak to the respondent on their behalf – the Working Group privately conveys the complainant’s concerns and reiterates the Working Group’s policy to the respondent without assessing the merits of the case; or
- A Bystander observes unacceptable conduct and takes action even though no formal complaint has been made.

An informal complaint may also be dealt with without individually identifying a respondent. Informal ways of dealing with the complaint can also include collective actions such as:

- Providing a refresher induction to all workers;
- Redistributing and again explaining the policies;
- Requiring workers to complete appropriate training; and
- Making alterations to working arrangements to reduce the risk.

In some instances, the Working Group may engage an independent mediator.

The Working Group will document steps taken to address and resolve a complaint using an informal process.

An informal process may be formalised at any point where the Working Group considers it appropriate, particularly where an informal process has been ineffective or new information is received.

5.8. Formal complaint procedure

5.8.1. Steps involved in a formal complaint and investigation

The usual process for dealing with formal complaints is set out below. However, where it is considered appropriate to do so, the Working Group may alter the process and advise the complainant of the new complaint handling and investigation process.

As part of a formal complaint process, the Working Group will appoint an impartial person to investigate the complaint (Complaints Person). This may be a person appointed by the Working Group, or an external investigator.

Please note that the Working Group will use its best endeavours to adhere to the timeframes outlined in this procedure. If changes to the timeframes need to be made, the Working Group will advise the complainant and respondent of these changes.

Step 1: Obtain information from the complainant

As soon as practicable but within one week of receiving the complaint, the Complaints Person will contact the complainant to better understand the complaint and obtain any additional information. At this time, the Complaints Person will also:

- Provide or confirm that the complainant has received a copy of the Preventing Sexual and Racial Harassment, Bullying and Discrimination Policy, and Complaint Handling and Investigation Procedure;
- Provide information about the complaint process, potential outcomes, options for assistance/support and protections from victimisation;
- Ensure the allegations are documented in writing, either by the complainant or the Complaints Person;
- Explain that the process is confidential, what this means and why it is important;

- Explain what records of the complaint will be kept, for how long and where;
- Explain the action that may be taken if the complaint is found to be vexatious or malicious; and
- Ask the complainant to provide relevant documents or details of witnesses that may support the allegations.

Where there is a concern about supporting information being destroyed or compromised, the Complaints Person should try to obtain this information before taking any further action.

Step 2: Advise the respondent about the complaint

As soon as practicable but within one week after receiving all necessary information from the complainant and understanding the scope of the complaint, the Complaints Person will inform the respondent that a complaint has been made. The Complaints Person will provide the respondent with details of the allegations, and if the Complaints Person considers it appropriate and necessary to do so, supporting information. The allegations may be provided to the respondent either in writing or verbally.

When the Complaints Person informs the respondent of the complaint, the Complaints Person will also:

- Provide or confirm that the complainant has received a copy of the Preventing Sexual and Racial Harassment, Bullying and Discrimination Policy, and Complaint Handling and Investigation Procedure;
- Confirm that the respondent will be given the opportunity to respond to the allegations;
- Provide information about the complaint process, potential outcomes and options for assistance/support;
- Explain that the process is confidential, what this means and why it is important;
- Explain what records of the complaints will be kept, for how long and where; and
- Explain that it is unacceptable to victimise someone who has made a complaint.

If it is considered necessary to the investigation and particularly when the complaint is of a serious nature, the Working Group may ask the respondent to remove themselves from gigs and remain away from industry work spaces while an investigation is underway.

Where the Working Group does not direct the respondent to remain away from work, the Working Group may nominate a representative to monitor interactions between the complainant and the respondent to identify whether there are any issues that need to be addressed.

Step 3: Provide the respondent with the opportunity to respond to the allegation(s)

The respondent will be provided with an opportunity to respond to the allegation(s). This will normally occur within three (3) working days of the respondent being notified of the allegation(s).

The Complaints Person will document the information obtained from the respondent, if it is not provided in writing, and the respondent will be asked to review and confirm the accuracy of the information.

Step 4: Interview any relevant witnesses

If the Complaints Person considers it necessary or appropriate, they will interview any relevant witnesses to the alleged conduct. To maintain confidentiality, witnesses should only be advised of the nature of the investigation insofar as it relates to them providing accurate and truthful evidence.

Step 5: Clarify contradictory or new evidence

If new or contradictory evidence comes to light during the investigation, the Complaints Person will hold further discussions with the respondent and/or complainant to clarify information.

If either the respondent or complainant disputes any of the new or contradictory evidence, the Complaints Person may:

- Seek further information from the respondent and/or complainant;
- Seek further statements/information from any witnesses; and
- Gather any other relevant evidence.

The Complaints Person may continue to seek additional information or clarification from the respondent, complainant or witnesses on any outstanding matters until the Complaints Person is satisfied that there is no additional evidence to be collected or no further clarification is required.

Step 6: Assess the evidence and make a determination

The Complaints Person will assess the information and evidence gathered and form an opinion about the complaint. The Complaints Person may find one of the following:

- The complaint is substantiated;
- The complaint is not substantiated; or
- It is not possible to make a conclusive finding about whether discrimination, harassment, sexual harassment and/or bullying occurred.

The Complaints Person's findings and the standard of proof in the investigation are based on 'the balance of probabilities' – which means it is more likely than not that the conduct occurred.

If the respondent confirms the alleged conduct occurred, the Complaints Person should provide the respondent with the opportunity to comment on any proposed decision and outcome before a final decision is made.

Where the complaint is substantiated, the Complaints Person may recommend disciplinary action. If the Complaints Person identifies an area that could be improved to reduce or avoid

such complaints in the future, the Complaints Person may recommend that the Working Group consider implementing those improvements.

Step 7: Notify the complainant and respondent of the outcome

As soon as practicable and within one week of being notified of the Complaints Officer's determination, the decision-maker will notify the complainant and the respondent of the outcome of the complaint. A copy of the decision will be placed on the respondent's file.

5.8.2. Variation to the timeframe

There may be occasions, when having regard to the complexity of the facts and the seriousness of the allegations, that the process takes longer or there is a departure from the process.

If the timeframes for the investigation are likely to differ greatly from those outlined above, the complainant and the respondent will be informed of this during the course of the investigation. However, the Working Group will take all practicable steps to undertake and conclude investigations in a timely way.

5.8.3. Outcomes from the investigation

Substantiated complaints

Where the complaint is substantiated, the decision-maker will make a decision on the appropriate action to take, based on the Complaints Person's findings.

Outcomes of a formal investigation can include any combination of the following:

- Counselling, coaching or mentoring;
- Formal written warning;
- Termination of employment (including without notice or pay in lieu of notice); or cessation of engagement
- The Working Group facilitating a meeting between the complainant and the respondent to attempt to resolve the matter by direct discussion;
- Developing a process for 'moving forward';
- Regular monitoring of behaviour;
- Further training and education;
- A commitment by the respondent to change the behaviour or conduct that was the subject of the complaint;
- A change in working arrangements; and
- An apology.

The most appropriate outcome in each case will depend upon factors such as:

- The severity and frequency of the conduct;

- The weight of the evidence against the respondent;
- The wishes of the complainant (however this will not be determinative of the matter);
- Whether the respondent has been given any prior warnings for the same or similar conduct; and
- Training previously provided to the respondent, specifically related to the subject matter of the complaint.

The disciplinary procedure will be applied in a manner that is consistent, clearly explained, fair and proportionate.

Unsubstantiated complaints

Where allegations have not been admitted or substantiated, the Working Group may decide to take some action as a result of the complaint. For example, the Working Group may:

- Provide refresher training for workers regarding appropriate workplace behaviour; or
- Re-issue the workplace discrimination, harassment, sexual harassment and bullying policy, the code of conduct and other related policies to all workers.

6. Frivolous, vexatious or malicious complaints

The Working Group encourages the reporting of behaviour that a worker genuinely believes to be discrimination, harassment, sexual harassment or bullying. Further, any such worker must not be disadvantaged or treated unfairly for making a complaint.

However, if a complaint is found to be frivolous, vexatious or malicious, then appropriate disciplinary action up to dismissal may be taken against the complainant. The purpose of this is not to prevent a worker from making a legitimate complaint, where they consider they have been subjected to discrimination, harassment, sexual harassment or bullying behaviour, but rather to prevent a worker from making a complaint in order to create difficulties for another person.

Examples of frivolous, vexatious or malicious complaints include, but are not limited to:

- Fabricating a complaint;
- Making a complaint for the malicious purpose of deliberately harming another person;
- Seeking to re-agitate issues that have already been addressed or determined; and
- Making a complaint that the complainant does not genuinely believe to be true.

7. Additional information, support and advice

If you have a query about this procedure or would like to raise a concern or complaint, please contact any of the representatives listed below:

NZ Comedy Working Group
Donna Brookbanks
Amanda Kennedy
Livi Reihana
Justine Smith
Michèle A'Court
James Nokise
Lauren Whitney
Kirsty Hardwicke
Felicity Drace
Scott Blanks
Richard Carrington

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Bec Sandys
Eli Matthewson
James Roque
Natalie Samy
Hannah Campbell
Ben Hurley
Bridget Davies
Jamaine Ross
Plus all members of the Working Group

8. Review details

This procedure was adopted by the NZ Comedy Working Group on 20 August 2020.

The procedure will be reviewed annually (or more frequently if needed) and changes to the policy and procedures may be made when necessary. A consultation process within the NZ comedy industry will be followed for all changes. Once a change has been made the NZ comedy industry will be notified.

This procedure is a live document and never final.

This policy was last updated on 19 August 2020.

If you have any questions about these policies and procedures, suggestions for improvement, or other concerns please email nzcomedyworkinggroup@gmail.com to get in touch with our team or make use of our Reporting Form at any time: <https://nzcomedy.typeform.com/to/fXfimMbX>